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Opinion of the Advocate General in Joined Cases C-706/25 and C-707/25 | [Comeri and Sidilli] ¹

Advocate General Medina: in the exercise of their competence as regards the location of detention facilities, including outside the European Union, Member States remain obliged to observe the guarantees provided for by EU law in asylum matters

The protocol signed on 6 November 2023 between Italy and Albania is a bilateral international agreement which permits Italy to create detention and repatriation facilities in Albania in order to manage migration flows.

Two third-country nationals, who had been detained in Italy and were the subject of removal decisions, were transferred to a detention facility in Albania pursuant to that protocol and the national legislation which implements it. Once there, they applied for international protection. As a result of those applications, new detention decisions relating to them were given, and forwarded to the Court of Appeal, Rome, for validation.

Against that background, that court turned to the Court of Justice in order to verify whether Italy has competence to conclude such an international agreement, or whether the European Union has exclusive competence in that respect. ² Secondly, it asks the Court of Justice to verify that the regime established by that protocol respects the guarantees relating to detention, the rights of the defence, visiting rights and the right to health of applicants for international protection. ³

Advocate General Laila Medina considers that EU law does not allow Member States to conclude international agreements in the matter of asylum where those agreements cover an area that is harmonised by EU law and they are likely to affect the common EU rules or alter their scope. ⁴

As a preliminary observation, the Advocate General notes that the detention facilities in the present case are placed under the exclusive territorial control of the Italian authorities, which exercise all legislative, executive and judicial powers under the protocol and the Italian legislation implementing it. She therefore considers that **the relevant European directives apply there territorially.**

The detention decisions at issue were adopted on the basis of the protocol and the national implementing legislation, which falls within the field of asylum. In that field, **competence is shared between the European Union and the Member States, and may become an exclusive competence of the European Union by virtue of the adoption of common rules.** Those directives govern the field of the detention of applicants for international protection, and **the Member States retain competence in that field solely on subjects that those instruments do not govern.** In order to determine the competence of the Member States in that field, it is therefore necessary to examine the extent and degree of harmonisation of the common rules in order to determine whether the field of detention of applicants for international protection has been covered by EU legislation.

In that context, the Advocate General observes that **there is no provision of EU law that provides for the geographical location of detention facilities for applicants for international protection.** Consequently, the Member States remain free to locate those facilities on Albanian territory, without encroaching on the exclusive competence of the European Union.

That, however, is not the case as regards the grounds for detention, which the Advocate General considers has been fully harmonised by EU law, leaving no discretion to the Member States in the transposition of that law. In that regard, the national measures at issue do not depart from the grounds for detention exhaustively permitted by EU law.

As regards the **conditions of detention of applicants for international protection, the relevant directives fully harmonise the minimum guarantees, below which the Member States may not go.**

In that regard, the Advocate General underlines several requirements flowing from EU law. As regards the rights of the defence, confidentiality of audiovisual communications between the lawyer and the person concerned must be guaranteed, including immediately before and after the hearing.

As regards free legal assistance and representation, the reimbursement for lawyers' costs of travelling to the detention facilities must be sufficient to cover the actual costs, and access to those facilities must be granted to them by the applicable legislation.

On the subject of respect for family life, the right to visits and to communicate with family must be guaranteed by that legislation.

EU law imposes a requirement for the release of a person detained at the end of the period for validation of the detention, which would be deprived of its effect if the person concerned remained in *de facto* detention after that period.

In the present case, the protocol and the national implementing legislation **do not appear to contain clear and precise rules making it possible to guarantee all of those rights, namely the rights of the defence, the right to respect for private and family life, as well as the right to immediate release at the end of the period for validation of the detention.**

Consequently, the protocol and national implementing legislation are likely to affect or alter the minimum procedural guarantees provided for by EU law.

Finally, as regards the questions raised secondarily, the Advocate General considers that EU law provides for a minimum level of protection. Thus, the national court must ensure, first, that EU standards of detention have been complied with, and second, the right to effective judicial protection has been guaranteed.⁵ Those **requirements must be guaranteed to a level equivalent to that applicable on national territory.**

NOTE: The Advocate General's Opinion is not binding on the Court of Justice. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court are now beginning their deliberations in this case. Judgment will be given at a later date.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of EU law or the validity of an EU act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text](#) of the Opinion is published on the CURIA website on the day of delivery.

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¹ The names of the present cases are fictitious names. They do not correspond to the real names of any of the parties to the proceedings.

² Article 3(2) TFEU, which provides that the European Union is to have exclusive competence for the conclusion of an international agreement in so far as its conclusion may affect common rules or alter their scope. That is external competence which becomes exclusive subsequently.

³ [Directive 2013/32/EU](#) of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection; [Directive 2013/33/EU](#) laying down standards for the reception of applicants for international protection.

⁴ See judgment of 31 March 1971, *ERTA*, [22/70](#).

⁵ In particular, the national court must verify whether the assessment of the grounds for detention is based on an individual reasoned assessment, that the minimum requirements for the material conditions of detention and the requirement for immediate release on expiry of the period of detention are complied with, and that the person concerned is able to benefit from all the legal guarantees to which he or she would have been entitled on Italian territory. The same principle applies to the questions relating to the rights to visits and to health of applicants for international protection, which are considered to be hypothetical in the present case.