



The Constitutionality of the Italy– Albania Protocol of November 2023

RESEARCH

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ABSTRACT

In recent years, the management of asylum-seeker flows has increasingly become a subject of political contention, prompting several states to explore the externalization of asylum procedures as a policy response. Within this context, in November 2023, the Italian Government concluded an agreement with the Republic of Albania to process up to 3,000 applications annually on Albanian territory. Building upon the longstanding legal and diplomatic ties between the two countries, this paper examines the responses of national institutions in Italy and Albania, as well as briefly mentioning the positions adopted by international and supranational actors, following constitutional approval by the Albanian Constitutional Court.

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For decades, irregular migration has remained a pressing political and legal issue. Although the number of irregular migrants in the European Union (EU) decreased in 2024 (Eurostat 2025), the year 2023 recorded the highest figures since the 2015–2016 crisis of European solidarity in refugee management. Over the past two years, considering the total number of asylum seekers, Italy has ranked fourth in terms of first-time asylum applicants and second in the number of applications processed under the accelerated procedure. According to Premise 30 and Article 31(8) and Asylum Procedure Directive (Directive 2013/32/EU), a fast-track mechanism for assessing asylum claims deemed manifestly unfounded or inadmissible. Consequently, Italy continues to hold the highest number of pending asylum applications in the EU.

Scholars have underlined that the increase in the number of migrants staying without a regular resident permit and the absence of their social integration in the host countries impact the equilibrium of the labor market and national security (Adamson 2006; Bigo 2002; Venturini & Villosio 2006; Veshi 2024).

The growing number of migrants residing without regular residence permits exerts considerable pressure on both wages and employment opportunities for the local workforce. These individuals often act as *perfect substitutes* for native workers or for migrants with regularized status, as they tend to accept employment under poorer conditions and lower wages, which is particularly evident in traditionally blue-collar sectors such as agriculture, textiles, maintenance, and transportation (Rye & Scott 2018). Moreover, protracted waiting periods for legal recognition and prolonged uncertainty regarding legal status can foster conditions conducive to radicalization and participation in illegal activities. The lack of legal status and access to formal employment significantly correlates with increased involvement in property-related crimes (Bell, Machin & McNeil 2013).

This paper investigates the constitutionality of the Italy–Albania Protocol on Migration of November 2023 by considering the position of the Albanian Constitutional Court. After highlighting the potential constitutional violation and recent reactions, the contribution examines the Protocol in context, along with legal and political responses in Italy and from supranational and international bodies.

This research employs a doctrinal legal research methodology, which remains the predominant approach within legal scholarship (Hutchinson & Duncan 2012). This methodology is particularly suited for the constitutional analysis and normative evaluation of the Italy–Albania Migration Protocol of November 2023. Specifically, the doctrinal method, as applied herein, involves a systematic interpretation of constitutional provisions alongside a critical engagement with authoritative legal literature, all structured within a coherent framework of legal reasoning (Hutchinson & Duncan 2012). The objective is to elucidate the legal nature of the Protocol, assess its conformity with the Albanian Constitution, and contextualize it within the context of the wider European migration governance regime.

The present study undertakes an examination of Decision No. V-2/2024 rendered by the Albanian Constitutional Court, giving due consideration to both the majority and dissenting opinions pursuant to Article 132(3) of the Albanian Constitution, which mandates the publication of dissenting views alongside final rulings. This analysis draws upon established constitutional interpretative traditions, with a particular focus on the classification of international agreements and the procedural requirements for

treaty ratification under Articles 121–122 of the Albanian Constitution. Moreover, the role of the President in treaty ratification—governed by Articles 92(1)(ë) and 121(1) (a) and (b) of the Albanian Constitution—is critically examined in light of relevant Albanian Constitutional jurisprudence.¹ To enrich the doctrinal inquiry, the analysis is supplemented by a context-sensitive legal approach (Van Hoecke 2011), which incorporates the political and policy dimensions of migration management alongside the historical bilateral relations between Italy and Albania.

The theoretical framework underpinning this paper is threefold. First and foremost, it foregrounds the constitutional principle of separation of powers in treaty-making, emphasizing the necessity of procedural safeguards—such as legislative or presidential approval—for international agreements of significant political import, in line with constitutional democratic norms (Tushnet 2003). Within this conceptual lens, this paper argues whether the Protocol constitutes a political agreement under Albanian constitutional law, thereby triggering the requisite presidential involvement. Second, it examines the political dynamics between Italy and Albania and their influence on the negotiation and implementation of the Protocol. Third, the analysis engages with critical migration governance scholarship, especially theories pertaining to the externalization of asylum procedures (Moreno-Lax 2017; Stock et al. 2019; Zaiotti 2016).

Therefore, the key theoretical concepts guiding this study are threefold: first, the identification and legal characterization of the political nature of the 2023 Italy–Albania Migration Protocol; second, the analysis of the broader context of Italy–Albania diplomatic and migration relations; and third, the positioning of the Protocol within the theoretical framework of externalization in migration and asylum governance.

This study centers on the following research questions: First, and more importantly, does the Protocol violate the Albanian Constitution? Or, better stated, does this Protocol have a political nature? According to the Albanian Constitution, the ratification of international agreements of a political nature requires the formal involvement of the President of the Republic. In the case of the Protocol signed in November 2023, the President did not participate in the ratification process. Therefore, should the Protocol be classified as an international agreement of a political nature, the procedure followed would be constitutionally flawed, as it would contravene the applicable constitutional provisions (Koka & Veshi 2024). Second, after reviewing the strong relations between Italy and Albania, what are the national reactions to this Protocol in Italy and Albania?

The existing scholarship primarily addresses either the extraterritorial dimensions of asylum governance regarding the collaboration of Italy and Albania in this context (Fontana & Rosina 2024; Nicolosi 2024; Rosina & Fontana 2024; Punzo 2024) or the constitutionality of this protocol by the Albanian Constitutional Court (Koka & Veshi 2024). On the contrary, this paper, after problematizing the political nature of this Protocol, updates readers with the reactions to this Protocol at the national levels in Albania and Italy, then briefly overviews the reaction from supranational and international actors. In addition, the analysis offers insights that situate the Protocol within the broader policy framework of externalizing asylum procedures as part of contemporary migration governance.

This paper critically examines the Albanian legal and political response to the Italy–Albania Protocol. While Section II of this paper provides a concise overview of Italy–Albania relations, with a particular emphasis on the periods preceding and following the collapse of the communist regime, Section III offers an analysis of Constitutional Court

Decision No. 2, situating it within the broader context of constitutional review requests submitted in 2023. Particular attention is devoted to both the majority judgment and the dissenting opinions, in accordance with Article 132(3) of the Albanian Constitution, which mandates the publication of dissenting views alongside final rulings. Section IV of this paper explores the classification of the Protocol—whether it constitutes an agreement of a political nature or an executive protocol stemming from the Treaty of Friendship (Article 19(1), n.d.), as argued by the Constitutional Court. This section critically assesses the Court's reasoning. Furthermore, it addresses the second research question by examining national responses in both Albania and Italy, as well as reactions from international and supranational actors. The concluding section synthesizes the key findings and reflects on their broader significance for the future of migration governance in Europe, also following the decision of the Court of Justice of the EU made August 1, 2025 (Joined Cases C-758/24 and C-759/24).

A BRIEF OVERVIEW OF ITALY–ALBANIA RELATIONS IN THE 20TH CENTURY

The Italian externalization of the asylum process in Albania has been viewed with interest by other EU countries. Thus, the particular relations between Italy and Albania should be briefly uncovered since the relationship between Albania and Italy has historically been characterized by close political, cultural, and legal ties (Basciani 2012). Although Italian–Albanian relations go back for centuries (Xhaferri 2023), this section briefly uncovers the post-communist regime.

The collapse of the Albanian regime in 1990 triggered significant migratory flows. Owing to cultural proximity—particularly the widespread knowledge of Italian among Albanians—Italy became a primary destination. By July 1990, the Italian Embassy in Tirana had provided refuge to approximately 800 individuals. As border controls weakened, maritime arrivals surged: in March 1991 alone, more than 28,000 Albanians reached the Italian coast. Initial public sentiment in Italy was welcoming, with many families offering hospitality (Vehbiu & Devole 1996), though governmental responses were criticized for lacking coordination. Over time, the perception of Albanian migrants deteriorated due to increasing associations with illegal activities, prompting Italy to prioritize repatriation efforts.

Italy simultaneously provided humanitarian and economic assistance to Albania, mobilizing both governmental and civil society actors, including the Catholic community of Sant'Egidio. It also lobbied the European Community to extend PHARE Programme aid to Albania, which had previously been given primarily to Poland and Hungary. Despite limited EC assistance—mainly emergency aid in food, medicine, and a financial package of \$100 million—Italy facilitated Albania's engagement with international financial institutions such as the International Monetary Fund, World Bank, and European Bank for Reconstruction and Development.

Given the limited responsiveness of international actors, Italy assumed a leading role in managing the Albanian crisis. In August 1991, bilateral agreements permitted the Italian Navy to patrol Albanian territorial waters to prevent further departures. Italian military personnel and the Red Cross also established humanitarian centers in Durrës and Vlorë to coordinate the distribution of aid (Varsori 2012).

Throughout the 1990s, migratory pressures persisted, intensified by the 1997 collapse of Albania's pyramid schemes and the 1998 Kosovo crisis. Italy remained

one of the primary destinations for Albanians, reinforcing its commitment to bilateral cooperation. Ensuring Albania's political and economic stability was perceived as essential to curbing transnational criminal activity. This cooperation culminated in Operation Alba, after which Italy maintained a security presence through a Delegation of Italian Experts, supporting reforms of Albania's armed forces and police, pursuant to a protocol signed on August 28, 1997.

On November 18, 1997, Italy and Albania concluded a Readmission Agreement and a bilateral labor migration accord (Chaloff 2008). These were consistent with Article 19 of the 1995 Treaty of Friendship, which provided for regulated seasonal employment for Albanian citizens in Italy. This treaty clause has been later invoked as a legal foundation for the Italy–Albania Protocol of November 2023, framed as a continuation of pre-existing international obligations.

To sum up, the historical relationship between Italy and Albania is marked by deep political, economic, and legal ties, with Italy exerting significant influence over Albania. The collapse of communism in Albania in the early 1990s led to mass migration to Italy and prompted bilateral agreements on border control, readmission, and cooperation. These longstanding relations provide important context for understanding the 2023 Italy–Albania Protocol on asylum, which Italy presents as part of a broader legal and historical continuity.

A BRIEF OVERVIEW OF THE ITALY–ALBANIA PROTOCOL OF NOVEMBER 2023: AN ALBANIAN CONSTITUTIONAL APPROACH

This section gives a short overview of the Italy–Albania Protocol of November 2023. In addition, it compares it with the constitutionality requests in 2024.

Focusing on solidarity with non-EU countries for migration management, the Italy–Albania Protocol signed on November 6, 2023, followed a fast-paced negotiation process (Koka & Veshi 2024). The Protocol grants Italy the use of two sites—Shëngjin and Gjadër (77,700 m² total)—for five years, renewable once, to host up to 3,000 ‘third-country nationals and stateless persons for whom the existence must be ascertained or the non-existence of the requirements for entry, stay, or residence in the territory of the Italian Republic has been ascertained’ (Article 1(1) (d) Protocol 2023).

While the Albanian Government signed it, the Protocol raised constitutional issues under Albanian legal system. Article 121(1) of the Constitution requires treaties involving territory, human rights, or citizen obligations to be ratified by law and involve the President (Article 92(1)(ë)). The government claims the Protocol is an implementation of the 1995 Treaty of Friendship, which covers migration (Article 19). Yet, if it's a ‘new’ agreement, bypassing legislative ratification may render it unconstitutional, calling into question its legal validity (Koka & Veshi 2024).

Moreover, the Albanian Constitutional Court was asked to seek an advisory opinion from the European Court of Human Rights (ECtHR) under Protocol No. 16 of the European Convention on Human Rights (ECHR) since Albania is a party to Protocol No. 16 to the ECHR, which states that ‘the highest courts and tribunals of a High Contracting Party may request the Court to give advisory opinions on questions of principle relating to the interpretation or application of the rights and freedoms defined in the Convention or the protocols thereto’ (Article 1(1)).

Based on Article 134(1)(c) of the Albanian Constitution,² 30 Albanian deputies requested the Constitutional Court's decision on the constitutionality of this Protocol. From the review of the decisions of the Constitutional Court of 2024, the constitutionality requests were 11 out of 86 decisions. From these, there were eight constitutionality requests for codes and laws out of the 11 total requests.³ From these, a request for the constitutionality of primary sources coming from 20–30 Albanian deputies was found only in five decisions.⁴

This might be a small number compared to the yearly legal decisions. However, it should be mentioned that, in Albania, an individual constitutional complaint has been established. This means that, following a decision of the Supreme Court, citizens have direct access to the Constitutional jurisdiction if their constitutional rights have been breached. In concrete, in 2024, 77 out of the 86 decisions⁵ (i.e., 89.5%) dealt with individual constitutional complaints. Indeed, the importance of individual constitutional complaints has also been underlined by other work (Koka & Sheme 2025).

Moreover, on December 11 and 13, 2023, the Parliament was asked to suspend its approval. After the first filter, on December 13, 2023, the Constitutional Court decided to transfer the case to a plenary session. As a result, the ratification process was suspended. From the review of the decisions of the Constitutional Court in 2024, in all the 11 decisions for a request for constitutionality of normative acts, the Constitutional Court decided to transfer the case to a plenary session by suspending their execution.⁶

The Albanian Constitutional Court upheld the Protocol's constitutionality by majority, with five out of nine judges in favor. Dissenting opinions are common in constitutional review, as confirmed by several 2024 rulings. This decision is aligned with the traditional position of the Constitutional Court. For instance, in 2024, among the 11 constitutionality requests, the Constitutional Court declared the law partly or fully unconstitutional in four cases.⁷ During the same period, among the 11 constitutionality requests, there were nine decisions⁸ where the Court published dissenting opinions.

The majority of Albanian constitutional judges held that the Protocol does not alter Albanian territory or infringe human rights, emphasizing dual jurisdiction: as such, Albania retains constitutional oversight and rights protection, while Italy exercises administrative control over designated areas. Accordingly, they viewed the Protocol as implementing the 1995 Treaty of Friendship, specifically Article 19 on migration, thus not requiring presidential involvement or additional ratification.

In contrast, four judges dissented,⁹ arguing that the Protocol restricts Albanian jurisdiction, thereby implicating territorial integrity under Article 121(1)(a) of the Constitution. Three of them¹⁰ contended that Article 19 of the 1995 Treaty addressed seasonal Albanian migration, not third-country nationals, while one judge¹¹ stressed the primacy of the Constitution over international treaties (Article 116).

Notably, the Court failed to justify its decision not to seek an advisory opinion from the ECtHR, leaving unresolved questions about the Protocol's compatibility with the ECHR (Koka & Veshi 2024).

In conclusion, the Italy–Albania Protocol reflects the solidarity between Italy and Albania in terms of migration management. The Constitutional Court upheld its constitutionality, ruling that it neither affects territorial integrity nor violates human rights, and, thus, does not require presidential involvement, as it derives from the 1995 Treaty of Friendship.

REACTIONS TO THE ITALY–ALBANIA PROTOCOL OF NOVEMBER 2023

This section discusses Albania's and Italy's reactions to the Italy–Albania Protocol and considers its contextualization in migration policy.

Externalization of the asylum-seeking process is not a new phenomenon, and the Albanian doctrine has criticized this Protocol by highlighting the possibility that it has a political nature (Koka & Veshi 2024). For instance, both parliaments ratified the Protocol within a day of each other (Italy on February 21, 2024; Albania on February 22, 2024).

From an Albanian constitutional perspective, a key issue concerns the access of migrants in the Albanian 'hotspots' to the ECtHR. The Albanian Constitutional Court has affirmed that the Protocol does not 'exclude the jurisdiction of the Albanian state at the constitutional and convention level for the protection of fundamental human rights and freedoms' (par. 44 Decision No. 2 of 29.01.2024). Thus, these areas fall under Albanian constitutional jurisdiction, while administrative and ordinary proceedings are governed by Italian law, and EU law applies insofar as Italy is an EU Member State (Koka & Veshi 2024). This dual framework¹² raises complex questions under Article 35 ECHR, which requires the exhaustion of domestic remedies. Albania has established an effective individual constitutional complaint mechanism (Articles 131(1)(f) and 134(1) (i) of the Albanian Constitution), which is regularly invoked in practice (Koka & SHEME 2025). In contrast, Italy lacks such a mechanism (Pupe et al. 2023). Given that Albanian constitutional jurisdiction formally persists in the 'hotspots,' it is unclear whether migrants must first exhaust the individual constitutional complaint in Albania before accessing the ECtHR—even though their administrative proceedings are conducted under Italian law. Furthermore, the Albanian Constitutional Court has reiterated that the Constitution prevails over international treaties. Consequently, the Protocol cannot derogate from the right to individual constitutional complaints for migrants located on Albanian territory. This overlap between Albanian constitutional remedies and Italian administrative procedures creates a problematic legal asymmetry, raising concerns about coordination and effective access to justice.

Again, in the Italian territory, a new issue has been raised related to the supremacy of a decision of the European Union Court of Justice (EUCJ), especially after the EUCJ's ruling in Case C-406/22 on October 4, 2024. The EUCJ emphasized that the designation of a third country as 'safe' cannot be solely based on the safety conditions applicable to specific categories of individuals but must involve a comprehensive evaluation of the country's overall safety, as well as the individual's situation (Case C-406/22, para. 45). Based on this decision, the Tribunal of Rome (Decrees no. 42251 and 42256 made October 18, 2024) ruled against validating the detention orders for the first migrants sent to these centers, holding that their countries of origin—Egypt and Bangladesh—could not be classified as 'safe' according to the EUCJ's decision. This ruling highlighted that the accelerated asylum procedure, which allows for swift detention and processing of migrants, could not be applied due to the safety concerns associated with these countries. The Tribunal's decision was not a direct challenge to the legality of the 'hotspots' themselves but focused on the procedural legitimacy and the conditions for activating the accelerated asylum process.

In response to the Tribunal's decision, the Italian government enacted Decree-Law No. 158 on October 21, 2024, which was later converted into Law No. 187 on

December 9, 2024. This law provided a formalized 'safe country' list, thus creating a primary source of law to regulate the classification of safe countries, in contrast to the earlier inter-ministerial decree of May 7, 2024, which was a secondary source. This legal shift indicated the government's attempt to address the issues raised by the Tribunal, although the controversy over the list's legality and its consistency with EU law remained unresolved. On October 31 and November 4, 2024, the Tribunal of Rome sought preliminary rulings from the EUCJ regarding whether the determination of a country's safety should rest with the national judge or whether national judges are bound to interpret and apply the national safe country list.

As a result of these ongoing legal challenges and procedural shifts, Decree-Law no. 37 of March 28, 2025,¹³ converted into Law no. 75 of May 23, 2025, establishes that these 'hotspots' can also be used for 'those subjects to detention measures validated or extended' (Article 1(1)(a) of Decree-Law no. 37 of March 28, 2025). Considering the definition of Article 1(1) (d) of [Protocol 2023](#),¹⁴ this modification does not impact the definition established in the Protocol. However, serious doubts remain regarding its constitutionality as well as its concrete implementation.

The Protocol was signed in November 2023 and ratified by the Italian Parliament on February 21, 2024. However, the criteria regarding the categories of individuals to be transferred to Albania were amended only in March 2025 through a decree-law, more than a year after ratification. Given that decree-laws require conditions of urgency and necessity, the significant temporal gap raises legitimate concerns about the existence of such prerequisites.

The Italian–Albanian Protocol received the attention of Amnesty International, which underlined that, 'while the agreement is highly unlikely to reach its stated aim in terms of migration management, its implementation would have a negative impact on a range of human rights, including the rights to life and physical integrity of people in distress at sea and the rights to liberty, to asylum, and to adequate remedy of people transferred to Albania' ([Amnesty International 2024](#)).

Also adverse was the reaction of the European Commissioner for Human Rights, Dunja Mijatović, who stated that the Italian–Albanian Protocol 'raises several human rights concerns and adds to a worrying European trend towards the externalization of asylum responsibilities' ([Council of Europe 2023](#)). In addition, this Protocol 'creates an ad hoc extra-territorial asylum regime characterised by many legal ambiguities' ([Council of Europe 2023](#)).

Contrary to the negative international reaction, the European Commissioner for Home Affairs, Ylva Johansson, stated that the 'preliminary assessment by our legal service is that this is not violating the EU law; it's outside the EU law' ([Euronews 2023](#)). Since the Italian judges have requested several¹⁵ preliminary rulings from the EUCJ, it is important to see its final decision.

On August 1, 2025, the CJEU clarified that Member States enjoy discretion in determining the form of the national legal act used to implement an EU directive. This discretion includes a broad interpretation of 'legislation,' which may encompass legislative, regulatory, or administrative acts (Joined Cases C-758/24 and C-759/24, para. 56). Accordingly, the Italian legislature may choose to transpose the directive through a primary legislative act—in this case, Decree-Law No. 158 of October 21, 2024, subsequently converted into Law No. 187 of December 9, 2024.

Although Directive 2013/32/EU does not explicitly require Member States to disclose the sources of information that underpin a designation of a country as a safe country of origin, such disclosure becomes necessary in light of the obligation to guarantee the right to an effective remedy. In particular, an applicant must be afforded the opportunity to challenge the presumption of safety—a rebuttable presumption—by accessing the factual basis for such a designation. Furthermore, national courts are required to assess these facts *ex nunc*, i.e., in light of the current circumstances at the time of judicial review (Joined Cases C-758/24 and C-759/24, paras. 71–76).

Equally significant is the CJEU’s interpretation of the terminology used in Directive 2013/32/EU, specifically the references to ‘countries’ and ‘third countries.’ The Court held that nothing in the wording of the Directive suggests that the designation of a safe third country must apply uniformly to the entire population of that country. Rather, the designation may not exclude certain categories of persons or segments of the population arbitrarily (Joined Cases C-758/24 and C-759/24, para. 92).

To sum up, this section showed the conceptualization of this Protocol within the externalization asylum process. In addition, it briefly uncovered the national reaction to this Protocol in Italy and in Albania as well as by the Council of Europe and Amnesty International, along with the recent decision of August 2025 of the EUCJ.

CONCLUSIONS

This paper studied the constitutionality of the Italy–Albania Protocol of November 2023. After showing the strong collaboration between Italy and Albania, this contribution uncovered the conceptualization of this Protocol on migration policies as well as the reactions of national, supranational, and international institutions to this type of policy.

Italy and Albania have historically maintained a strong bilateral relationship: more recently, following the collapse of the communist regime, Italy contributed significantly to Albania’s democratic transition, including through technical and legislative assistance in drafting key constitutional and legal texts.

The 2023 Italy–Albania Protocol has sparked considerable national debate in both countries. In Albania, 30 Members of Parliament petitioned the Constitutional Court to assess its constitutionality. An analysis of constitutional referrals in 2024 demonstrates that the Albanian Constitutional Court has engaged with similar high-profile cases. In its ruling, the majority of the Court held that the Protocol is constitutional and does not possess a political nature, thereby eliminating the necessity of presidential involvement, which would be required for international treaties of a political character. Nevertheless, four dissenting judges maintained that the Protocol is, in fact, unconstitutional.

The Protocol forms part of a broader trend toward the externalization of migration control policies, increasingly adopted by European and non-European states. The Albanian Constitutional Court upheld the legality of the Italy–Albania Protocol.

The Protocol has also raised serious concerns at the international level. Amnesty International and the Council of Europe Commissioner for Human Rights have both expressed reservations, highlighting significant legal ambiguities. In particular, the

Council of Europe underscored the lack of clarity surrounding individual legal remedies and procedural safeguards. The paper illustrates this concern through the example of potential applications to the ECtHR, which requires the exhaustion of domestic remedies. Unlike Italy, which lacks a constitutional complaint mechanism, Albania's legal framework allows for individual constitutional complaints. Importantly, the implementation of accelerated asylum procedures—central to the logic of the Protocol—necessitates individual assessment by an independent judicial authority rather than reliance on governmental or parliamentary lists of so-called 'safe countries.' This position is also confirmed by the Court of Justice of the EU in its August 1, 2025, judgment (Joined Cases C-758/24 and C-759/24).

In light of this recent CJEU judgment, it may appear at first glance that the Italy–Albania Protocol could be rendered incompatible with EU law. However, this is not necessarily the case, for two primary reasons. First, under Decree-Law No. 37 of March 28, 2025, converted into Law No. 75 of May 23, 2025, the so-called 'hotspots' established in Albania may also accommodate individuals subject to detention measures that have been validated or extended by Italian judicial authorities (Article 1(1)(a) of Decree-Law No. 37/2025). Second, Article 61(2) of Regulation (EU) 2024/1348 of the European Parliament and of the Council of May 14, 2024, which establishes a common procedure for international protection within the Union and repeals Directive 2013/32/EU (OJ L 2024/1348), explicitly provides that 'the designation of a third country as a safe country of origin, whether at the Union or national level, may be made with exceptions for certain parts of its territory or clearly identifiable categories of persons.' It shall be underlined that this regulation will apply as of June 12, 2026.

Therefore, prior to June 2026, foreign nationals subject to validated or extended detention measures may be transferred to Albania under the current legal framework. From June 2026 onward, it will also be possible to transfer individuals originating from specific parts of safe third countries or belonging to clearly defined safe categories within such countries, in accordance with the new Regulation.

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COMPETING INTERESTS

The authors have no competing interests to declare.

DIVISION OF THE WORK

D. Veshi: Abstract & Conclusions

E. Pupe: Reactions to the Italy–Albania Protocol of November 2023

D. Mirtella: A Brief Overview of Italy–Albania Relations in the 20th Century

M. Kiškis: Introduction

E. Koka: A Brief Overview of the Italy–Albania Protocol of November 2023: An Albanian Constitutional Approach

- 1 Albanian Constitutional Court, no. 15 of 15.04.2010.
- 2 The Constitutional Court initiates a proceeding only on the request of: c. not less than one-fifth of the deputies.
- 3 The [Albanian Constitutional Court's 2024](#) constitutionality requests for international treaties are: Decision no. 1 of 25.01.2024; no. 2 of 29.01.2024; no. 3 of 30.01.2024; no. 5 of 13.02.2024; no. 20 of 03.04.2024; no. 34 of 24.04.2024; no. 52 of 27.06.2024; no. 53 of 08.07.2024; no. 54 of 09.07.2024; no. 56 of 16.07.2024; and no. 85 of 24.12.2024.

The [Albanian Constitutional Court's 2024](#) constitutionality request for rules established in Codes are: Decision no. 20 of 03.04.2024 and no. 85 of 24.12.2024. It shall be mentioned that, in Albania, while Codes are approved by three-fifths of the Albanian Parliament (Article (2)(d) Constitution), laws are approved with a simple majority (Article 78(1) Constitution).

The [Albanian Constitutional Court's 2024](#) constitutionality requests for rules established in laws are: Decision no. 1 of 25.01.2024; no. 3 of 30.04.2024; no. 5 of 13.02.2024; no. 34 of 24.04.2024; no. 52 of 27.06.2024; no. 53 of 08.07.2024; no. 54 of 09.07.2024; and no. 56 of 16.07.2024.

- 4 The request for the constitutionality of a law or bylaw coming from 20–30 Albanian deputies in 2024 are: Decision no. 1 of 25.01.2024; no. 2 of 29.01.2024; no. 34 of 24.04.2024; no. 52 of 27.06.2024; and no. 54 of 09.07.2024.
- 5 In 2024, the individual constitutional complaints were: Decision no. 4 of 31.01.2024; no. 6 of 15.02.2024; no. 7 of 20.02.2024, no. 8 of 20.02.2024; no. 9 of 27.02.2024; no. 10 of 28.02.2024; no. 11 of 28.02.2024; no. 12 of 28.02.2024; no. 13 of 07.03.2024; no. 14 of 07.03.2024; no. 15 of 08.03.2024; no. 16 of 12.03.2024; no. 17 of 13.03.2024; no. 18 of 19.03.2024; no. 19 of 21.03.2024; no. 21 of 04.04.2024; no. 22 of 04.04.2024; no. 23 of 04.04.2024; no. 24 of 09.04.2024; no. 25 of 09.04.2024; no. 26 of 09.04.2024; no. 27 of 11.04.2024; no. 28 of 11.04.2024; no. 29 of 16.04.2024; no. 30 of 18.04.2024; no. 31 of 18.04.2024; no. 32 of 23.04.2024; no. 33 of 23.04.2024; no. 35 of 25.04.2024; no. 36 of 30.04.2024; no. 37 of 07.05.2024; no. 38 of 07.05.2024; no. 39 of 14.05.2024; no. 40 of 14.05.2024; no. 41 of 29.05.2024; no. 42 of 29.05.2024; no. 43 of 04.06.2024; no. 44 of 04.06.2024; no. 45 of 11.06.2024; no. 46 of 11.06.2024; no. 47 of 11.06.2024; no. 48 of 19.06.2024; no. 49 of 20.06.2024; no. 50 of 20.06.2024; no. 51 of 20.06.2024; no. 55 of 10.07.2024; no. 57 of 17.09.2024; no. 58 of 17.09.2024; no. 59 of 17.09.2024; no. 60 of 19.09.2024; no. 61 of 19.09.2024; no. 62 of 23.09.2024; no. 63 of 24.09.2024; no. 64 of 01.10.2024; no. 65 of 02.10.2024; no. 66 of 03.10.2024; no. 67 of 03.10.2024; no. 68 of 08.10.2024; no. 69 of 08.10.2024; no. 70 of 15.10.2024; no. 71 of 15.10.2024; no. 72 of 17.10.2024; no. 73 of 17.10.2024; no. 74 of 02.10.2024; no. 75 of 28.10.2024; no. 76 of 29.10.2024; no. 77 of 05.11.2024; no. 78 of 06.11.2024; no. 79 of 12.11.2024; no. 80 of 21.11.2024; no. 81 of 21.11.2024; no. 82 of 26.11.2024; no. 83 of 05.12.2024; no. 84 of 23.12.2024; and no. 86 of 30.12.2024.
- 6 In 2024, the Constitutional Court decided to transfer the case to a plenary session by suspending the execution in the following cases: Decision no. 1 of 25.01.2024; no. 2 of 29.01.2024; no. 3 of 30.01.2024; no. 5 of 13.02.2024; no. 20

of 03.04.2024; no. 34 of 24.04.2024; no. 52 of 27.06.2024; no. 53 of 08.07.2024; no. 54 of 09.07.2024; no. 56 of 16.07.2024; and no. 85 of 24.12.2024.

- 7 In 2024, the Constitutional Court decided the unconstitutionality of the acts in the following cases: Decision no. 1 of 25.01.2024; no. 20 of 03.04.2024, no. 52 of 27.06.2024; and no. 54 of 09.07.2024
- 8 In 2024, the Constitutional Court published dissenting opinions in the following cases: Decision no. no. 2 of 29.01.2024; no. 20 of 03.04.2024; and no. 34 of 24.04.2024.
- 9 Ms. Marsida Xhaferllari, Ms. Sonila Bejtja, Mr. Ilir Toska (first dissenting opinion), and Ms. Elsa Toska (second dissenting opinion).
- 10 Ms. Marsida Xhaferllari, Ms. Sonila Bejtja, and Mr. Ilir Toska (first dissenting opinion).
- 11 Ms. Elsa Toska (second dissenting opinion).
- 12 For the sake of legal clarity, it is important to highlight that Italy is one of the founders of the EU, and, as such, is bound by EU law, including in the field of asylum and migration. Furthermore, both Italy and Albania are parties to key international instruments, such as the 1951 Geneva Convention relating to the Status of Refugees and its 1967 Protocol. Consequently, international refugee law, alongside EU law, remains applicable in the interpretation and implementation of relevant measures. Although jurisdiction over certain areas may formally fall under the Albanian constitutional framework—with administrative and ordinary proceedings governed by Italian law—the applicable legal framework must be assessed in light of both EU and international legal obligations.
- 13 In Italy, a decree-law (*decreto-legge*) is an act issued by the Government in cases of urgency and necessity, which has the force of law but must be converted into law by Parliament within 60 days.
- 14 Article 1(1) (d) [Protocol 2023](#) defines migrants as ‘third-country nationals and stateless persons for whom the existence must be ascertained or the non-existence of the requirements for entry, stay or residence in the territory of the Italian Republic has been ascertained.’
- 15 Until now, among others, there were more than 15 referrals raised by Italian courts: among others, Florence Court, decrees of June 4, 2024 (Cases C-388/24, Oguta, and C-389/24, Daloa); Bologna Court, decree filed on October 29, 2024 (Case C-750/24, Ortera); Rome Court, decrees of November 4 and 5, 2024, which formulated three further questions in Cases C-758/24, Alace, and C-759/24; and Palermo Court, decrees of November 5, 2024, in Cases C-763/24, Mibone, and C-764/24, Capurteli.

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