

The Italy-Albania Migration Protocol: Externalised Border Governance and Rights Protection in the European Union

Eda Gemi

Head of Law Department, University of New York Tirana

Hektor Ruci

PhDc, University of Hamburg, University of New York Tirana

doi: <https://doi.org/10.37745/gjplr.2013/vol14n51725>

Published October 01, 2026

Citation: Gemi E. and Ruci H. (2026) The Italy-Albania Migration Protocol: Externalised Border Governance and Rights Protection in the European Union, *Global Journal of Politics and Law Research*, 14(5),17-25

Abstract: *The Italy-Albania Migration Protocol is a new type of migration externalisation, involving extraterritorial processing of asylum claims and the exercise of Italian jurisdiction over migration centers in Albania. This article critically evaluates the Protocol from the perspective of constitutional law, international human rights law and European migration governance, with particular focus on the decision of the Albanian Constitutional Court on the constitutionality of the Protocol. It examines the legal implications of overlapping Albanian and Italian jurisdictions and highlights outstanding concerns related to territorial sovereignty, access to justice, effective remedies, detention and protection of asylum seekers under Albanian, Italian, EU and European Convention on Human Rights standards. The article also examines the legal basis cited for the Protocol and the difficulties arising from the extraterritorial application of Italian law in Albania. The Protocol exposes a core contradiction in the externalisation of migration control: while migration management functions may be displaced territorially, the obligations of states to ensure fundamental rights and effective judicial protection cannot. The Italy–Albania deal thus constitutes a critical test case for the changing relationship between migration externalisation, state sovereignty, jurisdiction and human rights protection in Europe. The article warns that jurisdictional ambiguity and accelerated procedures for migration can weaken effective rights protection unless accompanied by accessible judicial remedies and strong institutional oversight.*

Keywords: Italy-Albania Migration Protocol; migration externalisation; asylum governance; extraterritorial jurisdiction; human rights; state sovereignty; access to justice; EU migration policy

INTRODUCTION

Following a significant delay, the two migration centers established under the Italy-Albania “Migration Protocol” of November 3, 2023 (ratified by the Albanian Parliament on February 22, 2024), are set to

begin receiving migrants from September 10 through the end of the month.¹ This agreement involves Italy funding the construction of two centers in Albania, which fall under Italian jurisdiction and can accommodate up to 3,000 migrants simultaneously. While Albania will provide security and external surveillance, the protocol stipulates that Albania will manage deportations for rejected asylum applications, bypassing the Dublin Regulation which traditionally requires the first EU country of arrival to process asylum claims.

The "Migration Protocol" has sparked considerable controversy and legal challenges within Albanian, Italian, and broader EU legal and political spheres. As the first agreement of its kind involving an EU candidate country, it introduces complexities regarding its implementation and legitimacy. The agreement's primary challenge lies in its legal uncertainties and its alignment with both national and EU laws.² Although this protocol is part of a broader trend of outsourcing migration control, it is unique in its involvement of Albania, a country seeking EU membership. The arrangement faces scrutiny over its constitutionality and compliance with EU standards, especially in light of problematic precedents set by similar agreements in the UK,³ Denmark, and Australia.

Prime Minister Giorgia **Meloni** of Italy views this "Protocol" as a potential model for EU-non-EU cooperation in managing migration flows, describing it as a significant breakthrough in addressing one of Europe's pressing challenges. Despite criticism related to similar deals with Libya, where severe human rights abuses have been reported, **Meloni** defends the deal as a forward-looking example of European spirit. Human rights organizations have sharply criticized the deal, with the International Rescue Committee (IRC) condemning it as undermining EU solidarity, while Doctors Without Borders (MSF) arguing that it sets a dangerous precedent for asylum management.

At the EU level, the agreement is seen as part of a broader effort to manage irregular immigration more effectively. European Commission President Ursula **von der Leyen** has endorsed the agreement as an innovative approach to fair responsibility sharing with third countries. However, other EU institutions have expressed reservations with the EU Commissioner for Home Affairs suggested that the agreement might not directly breach EU law, but there is significant skepticism among EU officials. The Council of Europe has raised concerns about potential human rights violations and legal uncertainties, which could

¹ La Stampa Newspaper, September 1st, 2024, "Colonia albanese. Viaggio a Shengjin nel Cpr italiano per i profughi: "Pronti a fine settembre". Available at: https://www.lastampa.it/cronaca/2024/09/01/news/colonia_albanese_viaggio_a_shengjin_nel_cpr_italiano_per_i_profughi-14596559/

² Mazellu, A. and Methasani, E. (2024), The Italian- Albanian Agreement on migrants offshoring: Constitutional challenges and its abidingness forward. *Questione Giustizia* (January 2024). Available at: <https://www.questionegiustizia.it/articolo/l-accordo-fra-italia-e-albania-sulla-delocalizzazione-dei-migranti-sfide-costituzionali-e-prospettive-future>

³ Even though, the Italy-Albania Protocol draws comparisons to the UK's controversial deal with Rwanda, however it differs in that Italy will manage the centers directly, whereas the UK was supposed to send migrants to Rwanda. More importantly, Albania is protected by the European Convention on Human Rights, which means the migrants there are subject to different legal protection.

set a troubling precedent for future migration agreements. The Council of Europe’s Commissioner for Human Rights has expressed concern that such externalization measures increase the risk of human rights violations and could undermine both European and global protection systems.

Politically, the “Migration Protocol” has faced resistance. In Italy, there are claims that it may violate the Italian Constitution, particularly Article 80, which governs the ratification of international treaties. The Italian opposition has condemned the plan as a form of deportation reminiscent of controversial extrajudicial detention camps. Similarly, in Albania, the protocol has been challenged for potentially breaching constitutional provisions and ECHR standards. Despite a final decision from the Albanian Constitutional Court (January 29, 2024), the agreement remains under scrutiny as it moves towards implementation.

Regarding EU standards and human rights concerns, the protocol's adherence to EU *acquis* standards is also questionable. The 2016 EU-Türkiye agreement was considered a more structured model compared to the Italian-Albanian “Migration Protocol.” The EU-Türkiye accord allowed returns only for migrants (from Greece) not seeking asylum or those with inadmissible claims. In contrast, the Italian-Albanian agreement lacks clarity on compliance with EU asylum procedures and human rights protections, potentially impacting access to protection and legal remedies as outlined by the European Convention on Human Rights (ECHR).

In a broader context, the Italy-Albania Protocol may be seen as a paradigm reflecting new political trends in the EU, triggering concerns about the:

- (1) **EU Externalization of Migration**, with Italy's outsourcing of asylum processing to manage migration outside its borders,
- (2) **EU Enlargement**, with the “Migration Protocol” underscoring Italy's strategic role in Albania, reflecting a post-colonial approach. It seems that Italy seeks to bolster (or to revive its colonial influence) in Albania, leveraging this partnership to offset concerns about Albania's democratic standards deficit and country's EU accession prospect.
- (3) **Human Rights**, with the “Migration Protocol” raising significant concerns about the right to asylum by undermining established protections through extraterritorial management of asylum processes. Despite the Albanian Constitutional Court's contentious ruling on the agreement's constitutionality, unresolved issues remain, including the applicable jurisdiction, the standing of Albanian courts, and the efficiency of processing asylum claims.

This policy brief aims to address these concerns through an analysis of current developments and legal and political opinions. It seeks to highlight the constitutional risk management prompted by the Italo-Albanian Migration Protocol and its implications for human rights protection.

Finally, the policy study includes a series of recommendations based on these analyses, offering pathways to address the identified challenges.

The EU Externalization of Migration: A Troubling Paradigm of Offshoring Migration Control Constitutional risk management: The Italo-Albanian Migration Protocol and its impact on human rights.

On November 2023, the Italian and Albanian Prime ministers in a surprise press conference announced the signature of the “Migration Protocol”. It aimed at sending into Albania asylum seekers while their demands were being processed in Italy.

The procedure of negotiations and drafting of the Protocol has been carried out in a relative concept of secrecy and the public opinion was notified only at the moment of signature. Despite the fact that this “silent” procedure it is not an illegal one per se it gives grounds to founded fears of lack of transparency. In issues regarding the treatment of humans and their basic rights concepts of secrecy should normally be avoided since the importance of such rights stays above any other concept of State relations in consisting on *Ius Cogens* norms as such norms are enshrined on article 53 of the Vienna Convention on the Law of Treaties.

The location of the shelters is scheduled to be on two old military bases in Lezha district a property of the Albanian State. Such locations according to the protocol shall be managed by the Italian authorities, Italian and EU law shall be applied and disagreements between migrants and Italian authorities shall be settled exclusively by Italian jurisdiction (art. 4/2)⁴

This protocol arises a series of questions as per the way it was negotiated, its content vis a vis the Albanian legislation, the obligations of the Albanian State as a party to the ECHR, 1951 Refugee Convention and other human rights principles.

From another perspective to the Protocol, it was also given an extensive political coverage and also justification, based on the so called “debt” that Albania has towards Italy for hosting and integrating hundreds of thousands Albanians right after the end of the communist regime and the economic collapse of the country.⁵ Nevertheless, despite emotional connections and practical issues we shall try to give a more legal overview on the applicability of the Protocol, its outcomes and implications by treating it *inter alia* under the prism of the decision of the Albanian Constitutional Court which on a 5 to 4 decision uphold the constitutionality of the Protocol.⁶

As a matter of fact, there are several human right and administrative concerns regarding this Protocol, but we shall refer only to a few of them such as:

⁴ Protocol between the Government of the Italian Republic and the Council of Ministers of the Albanian Republic, retrieved <https://odysseus-network.eu/wp-content/uploads/2023/11/Protocol-between-the-Government-of-the-Italian-Republic-and-the-Council-of-Minister-of-the-Albanian-Republic-1-1.pdf>

⁵ Balkanweb, “If Italy calls, Albania answers; We own that”, retrieved from <https://www.balkanweb.com/marrevshja-per-perballimin-e-refugjateve-rama-ne-konference-me-melonin-nese-italia-therret-shqiperia-pergjigjet-ua-kemi-borxh/#gsc.tab=0>.

⁶ Constitutional Court of Albania, Decision nr. 2 date 29.01.2024 (V-2/24).

1. **Territorial applicability and integrity:** based on the Albanian Constitution (art 116)⁷ international agreements, law and normative acts are valid upon the entirety of the Albanian territory which includes as principle also the applicability of public institutions activity and competencies. The (according to decision nr 2, dt. 29/01/2024 of the Constitutional Court) double jurisdiction applicability gives to Italian authorities the rights to apply their jurisdiction in public law terms, by limiting/ excluding in time and space the applicability of the Albanian one.

2.

Furthermore, the Protocol provides on its articles 4 et seq, for concepts which run simultaneously such as: the usufruct of immovable property (belonging to the Albanian State, limiting Albanian legal jurisdiction and also limiting Albanian public authority jurisdiction. Since the concept of sovereignty has been defined *inter alia* as: “A State’s sovereignty is based on the exclusive power that it exercises over its territory and its nationals. In international law, States themselves (i.e., governments) write the rules that they will be required to follow.”⁸

All the above composes *per se* a form of limitation of the Albanian sovereignty, as it is evident that the Albanian State and/or government have decided to refrain from such applicability of rights on the two aforementioned areas where the camps shall be deployed.

In this regard the Protocol is an act of international law concerning territory as such it has to fall under the stipulations of the art. 121/ 1 of the Albanian Constitution, therefore a direct power of attorney should had been given by the President of the Republic.

Article 121

The ratification and denunciation of international agreements by the Republic of Albania is done by law if they have to do with:

- a) territory, peace, alliances, political and military issues;*
- b) freedoms, human rights and obligations of citizens as are provided in the Constitution; c) membership of the Republic of Albania in international organizations;*
- ç) the undertaking of financial obligations by the Republic of Albania;*
- d) the approval, amendment, supplementing or repeal of laws.*

Apparently, such a provision has not been applied and the Court has created a different approach from a similar case of signing and ratifying international agreement based on the institution of sovereignty such as the case of the agreement between Albania and Greece on the delimitation of the sea zones.⁹

3. **Human right issues:** Unlike what the Constitutional Court has claimed, this is an international agreement dealing with human rights. The Protocol *per se* is limited in providing tools and remedies for such protection. With the exception of art. 6/7, (*The competent authorities of the Italian side will bear any expenses necessary for the accommodation and treatment of the subjects who will be accommodated in*

⁷ Constitution of Albania, retrieved from: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF\(2016\)064-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF(2016)064-e).

⁸ Hehir, J. Bryan. “Military Intervention and National Sovereignty: Recasting the Relationship.” In *Hard Choices: Moral Dilemmas in Humanitarian Intervention*, edited by Jonathan Moore, 29–54. Lanham, MD: Rowman & Littlefield, 1998.

⁹ Constitutional Court, Decision Nr: 15 Date: 15.04.2010.

the structures mentioned in Annex 1, including food, health care (including cases where the assistance of the Albanian authorities is required for this) and any other service that will be deemed necessary by the Italian party, taking care that this treatment respects basic human rights and freedoms according to international law.) merely mentioning the engagement of the Italian party to respect human rights and freedoms, there is no direct reference to any effective remedy and the practical access into them.

Therefore, the limitation of the applicability of Albanian legislation on the said premises shall limit on the applicability of constitutional and international remedies concerning human rights.

From the other side the application of the Italian legislation, jurisdiction and procedure represents serious difficulties regarding the right of access to justice and fair trial as they are enshrined on the ECHR, art. 6. Such difficulties can be but are not limited to:

a. Distance: the applicant is physically in Albania and the courts are in Italy. Therefore, access shall by default be limited and the Protocol has no provision of such supposed movements of the asylum seekers in order to follow their cases.

b. Costs: distance is also connected to the concept of costs. Any legal assistance which shall be provided to those in camps will include added travel costs, independently who covers them.

c. Uncertainty of jurisdiction: According to the aforementioned decision of the Constitutional Court both jurisdictions shall be applied on the territory of the camp(s). On article 9, paragraph 2 it is explicitly mentioned that: *“To ensure the right of defense, the Parties allow the access to the facilities of lawyers, their assistants, as well as to international organisations and European agencies which provide advice and assistance to people seeking international protection, within the limits of the applicable Italian, Albanian and European law.”*

Despite that at a first glance this provision looks like ensuring a wide prism of protection on the contrary it creates discordance and confusion. Questions can be risen as:

- What kind of legal assistance shall be given and based on which legislation?
- Which procedure shall be followed, etc?

On the same topic it is also important to note that despite the concept of *bona fide* as it is mentioned on art. 26 of the Vienna Convention of the Law of Treaties and which should guide inter- state relations, since the camps are found into Albanian territory, the non-applicability and / or limitation of applicability of Albanian material and procedural law, shall limit the legal and especially constitutional guaranties offered by the Constitution to all Albanian or foreign citizens but also to other persons without a citizenship.

4. **Obsolete legislation reference:** The Protocol finds legal support into art. 19 of the Treaty of Good Friendship between Italy and Albania (1995), which refers *inter alia* to the mutual engagement of controlling migratory movements. The reference to this framework Protocol is ill founded and out of scope. Article 19 refers to another time and problem. Its' aim was to obstacle and create retention on the waves of Albanian illegal migrants whom at the time were crossing the Adriatic in massive numbers and became a serious problem. The article provides specifically that: *"The Contracting Parties agree to attach primary importance to close and energetic cooperation between countries to regulate, in accordance with the legislation in force, migratory movements (paragraph one). They recognize the need to control the*

migratory flow through the development of cooperation between the competent bodies of the Republic of Albania and the Italian Republic and the conclusion of an organic Protocol that also regulates the admission of citizens of both countries to the seasonal labor market, in accordance with the legislation in force (second paragraph). In order to achieve such objectives, a joint working group has been set up for migration problems (third paragraph). ”¹⁰

Therefore, applying an old Treaty, whose letter and spirit meant something totally different in an attempt to justify today’s Protocols it gives to that Protocol an unsafe legal environment and severe vulnerability due exactly to the inconsistency of the facts, events and interests.

- 5. Acting *Ultra vires*:** The Constitutional Court on the aforementioned decision (point 64) is of the opinion that: *Also, the Court notes that the requests of the migrants of this Protocol, who will be accommodated in the territory of the Albanian State will be examined by the authorities of the Italian State, according to the legislation of the latter. This means that the Italian State, which during the implementation of Protocol on Migration will exercise its jurisdiction, is obliged to apply international norms for asylum seekers, refugees and human rights, which include the Geneva Convention and the ECHR, according to the principle of extraterritoriality.*¹¹

What distinguishes this paragraph (and a few other similar to it) is the attempt of the Albanian Constitutional Court, to demand specific action by the Italian State and authorities. Such demands are not only clear *ultra vires* concept, but also realistically and practically not applicable.

The Albanian Constitutional Court cannot extend its binding decision on issues involving the Italian sovereignty and jurisdiction. Neither can predict or suppose that the Italian authorities shall all the time respect and perpetuate no breach on the basic human rights norms as they are foreseen by the Italian, EU and/or ECHR requirements and provisions. Therefore, such justification finds no sound legal logics and its form of applicability is found on a grey zone of at least overlapping jurisdictions.

6. Issues of Italian legislation: The Protocol provides for a period of 28 days from the moment of arrival to the final decision regarding the asylum status.¹² According to Amnesty International this time frame is not effective and unrealistic. Furthermore, it creates fertile ground for severe violations of human rights even from the point of view of Italian legislation by containing a high risk of overcoming detention time frames.

“All individuals brought to the centres in Albania, including asylum seekers, would be automatically detained. Automatic detention is inherently arbitrary and therefore illegal. Combined with recent changes to Italian law, the agreement could lead to people being detained continuously for more than 18 months. Furthermore, accessing legal aid and legal representation to challenge in Italy the legality of one’s

¹⁰ Treaty of Friendship and Cooperation between Italy and Albania, 1995, retrieved from: <https://www.infocip.org/al/wp-content/uploads/2012/10/AKTE-NDERKOMBETARE-TE-VITEVE-TE-TRANZICIONIT-ME-TEKST-TE-PABOTUAR-NE-FLETOR-ZYRTARE.pdf>

¹¹ See above, Decision nr 2, date 29.01.2024, point 59.

¹² See above Decision nr 2, date 29.01.2024, point 57

*detention from Albania would inevitably be very difficult, adding to the risk of arbitrary detention. Children, pregnant women and survivors of trafficking and torture have to endure long and unnecessary transfers by sea and, due to shortcomings in screening procedures, they may be exposed to further harm. People disembarked in Albania will be arbitrarily detained and will also face serious challenges in accessing asylum and effective remedies for human rights violations”.*¹³

7. Civil law implications: According to the Protocol (art 4 and 5) the building of the structures shall be exclusively subject to Italian law and such buildings do not need standard building permissions according to Albanian legislation. Therefore, local authorities have no jurisdiction over them as well as no jurisdiction over their documentation, quality, safety measures, etc. it is therefore evident that the duality of jurisdictions as mentioned above finds no effective applicability in practice by creating thereof a serious legal gap.

The Memorandum between Italy and Albania on the sheltering of the asylum seekers on Albanian soil has created a series of inquiries and insecurities as it regards the due protection of human rights and their access to justice. Despite a debatable decision of the Albanian Constitutional Court on the constitutionality of the aforementioned agreement there are still important concerns especially on the kind and type of jurisdiction to be applied, the *locus standi* on the Albanian courts, as well as on the time and efficiency of treating their demands. The sheltering of such asylum seekers is today and shall be even more tomorrow one of the most important humanitarian and legal challenges of both Albanian, Italian and EU legislation.

CONCLUSION AND RECOMMENDATIONS

In conclusion we might say that the question of this “Migration Protocol” and the subsequent decisions regarding it, it is not how effectively Italian and Albanian legislation, and authorities protect human rights. The real point is how volatile migrant rights, and their protection can be, so that Public Authorities, bilateral treaties and even Courts, can neglect procedures, principles and sovereignty itself, in order to find a quick and practical way out to these kinds of issues.

Therefore, our recommendations are as follows:

1. Despite the immense pressure of the migratory waves and the difficult position of many governments due to them, increased care should be shown in protecting their rights, especially when such pressure exists. Human rights are fundamental right and as such should not be neglected anytime, independently of the burden either political or economic which is created by them. Therefore, *fast solutions* from the governing bodies should be countered with fast action from the side of those whistleblowers of the relevant field.
2. All legal remedies should be available and approachable which in the aforementioned case involve the use of both Italian and Albanian Court system (mainly due to the duality of jurisdiction sanctioned by the decision of the Constitutional Court) and the right to a fair trial should be secured from both sides of the

¹³ De Bellis, M. Amnesty International, retrieved from: <https://www.amnesty.org/en/latest/news/2024/01/italy-mps-should-reject-unworkable-harmful-and-unlawful-migration-deal-with-albania/>

Adriatic. This includes also the putting into motion of the ECHR as well, independently from which part of the Adriatic the exhaustion of all domestic remedies shall take place.

3. Effective control needs to be applied by all legal actors of the civil society, the Ombudsman (of both Albania and Italy) since this is the first time such a Protocol is applied and as we tried to demonstrate all parties are navigating on uncharted waters. The fact that the Albanian Ombudsman was involved from the very beginning of the case and become a party in the trial in front of the Constitutional Court is a good sign in this direction.

The legal and jurisdictional gaps should not be allowed to worsen the position and conditions of the asylum seekers but used in their interest in an effort of maximizing the legalistic outcome of it.