cep Centres for European Policy Network
FREIBURG | BERLIN | PARIS | ROMA

cepAdhoc *network*

No. 24 | 2024 26 November 2024

The Italy-Albania Deal on Migrants Clashes with European Constraints and the Rule of Law

Andrea De Petris

© shutterstock

The decision issued by the Court of Rome on 18 October 2024 not to validate the detention requests of 12 Egyptian and Bangladeshi migrants transferred to the detention Centre in Gjader, Albania, has aroused the ire of the Meloni government. The decision is based on an EU Court of Justice ruling of 4.10.2024, which stated that only a country in which human rights are guaranteed without exception in certain areas of its territory or for certain categories of individuals can be classified as safe. According to these criteria, Egypt and Bangladesh could not be considered safe, and therefore the asylum applications of the 12 migrants transferred to Albania could not be submitted to the accelerated assessment procedure and were therefore transferred to a reception centre in Bari.

- ► The Italian government has issued a decree-law with which it intends to define its own list of safe countries even if they do not correspond to the parameters defined by European case law and regulations. Thus, since this is a rule of domestic law, even the decree-law is bound to comply with European law, of which the Luxembourg Court ruling and Directive 2013/32, on which the ruling is based, are part. However, it is impossible for the Italian decree-law to allow migrants from unsafe countries to be transferred to Albania, at least as long as the current European regulations remain in force.
- ► The situation may only change in June 2026, when the new EU Pact on Migration and Asylum will enter into force: in principle, this would also allow countries where fundamental rights are not guaranteed nationwide or for well-identified groups of individuals to be defined as safe, but it remains to be seen whether this is compatible with other domestic and international legal constraints on asylum.
- ► Given the difficulty of implementing the rules that created the 'Albania Model', it should be avoided, at least for the time being, for other EU Member States to replicate such model elsewhere.

Contents

1. What happened in Albania 3
2. Government’s and Opposition’s Reactions 4
3. The Contents of the Rome Court Decision and the EU Jurisprudence 4
4. The interpretative Disagreement between the Italian Authorities and the EU Court of Justice on the ‘Safe Country’ Concept 6
5. The Italian Government's Countermove - which is likely bound to fail 8
6. Conclusions and Prospects: Legal constraints still matter, after all 9

1. What happened in Albania

The Italian government's plan was to transfer part of the migrants bound for Italy to Albania, thanks to a Protocol signed between the two countries in November 2023. The Protocol foresees the construction on Albanian territory but under exclusive Italian jurisdiction of two centres: one on the coast in Shengjin, where the identification procedures of asylum seekers will be carried out, and a second one in Gjader, inland, where migrants will be retained pending the outcome of their applications for international protection. Under the Protocol, only migrants rescued in international waters by Italian coast guard or navy vessels may be sent to Albania, thus excluding those rescued by NGO ships, and only if they are adult males, not physically or mentally vulnerable, and coming from safe countries.

After several months of postponements, the Albanian centres were declared operational on 11 October, and already on 14 October the Italian navy's Libra ship, after rescuing some migrants in international waters off Lampedusa and conducting an initial interview with them, had selected sixteen men from Egypt and Bangladesh - countries considered safe by Italy - to transfer them to the new Albanian centres, where they were to be held under administrative detention.

Once they arrived in Shengjin on 16 October, the 16 migrants underwent further investigations, where it was ascertained that two of them were minors, while another two were in vulnerable conditions: according to the requirements set out in the Protocol, the four could not be detained in Albania and were therefore immediately transferred to Italy. The remaining 12 were instead subjected to the provisions of the agreement between Rome and Tirana, and in particular to the so-called ‘accelerated’ assessment of asylum applications, introduced in Italy by Law Decree 20/2023, which provides for the possibility of submitting an application for international protection directly at the border (or in transit zones) by a foreigner coming from a country of origin designated as ‘safe’. In the intentions of the government in Rome, the Albanian centres should be equated to a border zone belonging to Italian territory, and this would allow asylum applications submitted by migrants detained in Albania to be evaluated in a total process of just 28 days.

In fact, the 12 migrants who arrived at the Gjader centre applied for international protection on 17 October, and at the same time the application for validation of the detention issued against the 12 migrants was submitted to the 18th section of the Court of Rome competent in the matter: according to the Italian Constitution, in fact, any restriction on the freedom of an individual subjected to the authority of the Italian legal system must be validated by a judge within 48 hours from the beginning of the restriction.

At 8:30 a.m. on 18 October, the Commission in charge of assessing the asylum applications of the 12 Egyptian and Bangladeshi migrants rejected their requests for protection: for them, according to the Protocol, the doors of the structure built inside the Djaer centre should have been opened, where they should have been detained while waiting to be repatriated, which in the Italian government's intentions should have been done within a maximum of 28 days. However, the plan was interrupted by the decision of the Court of Rome, which a few hours later did not validate the detention order of the 12 migrants, on the grounds that, since they came from countries considered unsafe according to European Union law and jurisprudence, they could not be subjected to the accelerated procedure for assessing their asylum applications. Since in the Albanian centres, as mentioned, only the accelerated procedure for assessing asylum applications can be carried out, the 12 migrants should not have been

transferred to Albania, but should have been brought to Italy, where their applications for international protection should have been assessed through the ordinary procedure, which takes much longer than the accelerated one.

For this reason, on 19 October, the 12 migrants who remained in Albania were also released and transferred to a Reception Centre for Asylum Seekers in Bari, leaving the Shengjin and Djader facilities empty for the moment, or rather occupied only by the Italian personnel sent to make the two centres functional and complete their construction.

2. Government's and Opposition's Reactions

The reaction of the government, and in particular of the Italian Prime Minister, was not long in coming. From Beirut, where she is engaged in meetings related to the Israeli-Palestinian war crisis, Giorgia Meloni strongly criticised the rulings of the Court of Rome by which the 12 migrants detained in Albania were released. According to Meloni, the Italian judge's decisions are unjustified interference by the judiciary in the government's political competences, and that in any case she is determined 'to do everything possible to keep her word and stop human trafficking'.[1] Strong criticism also came from Interior Minister Piantedosi, who intends to appeal against the Rome judges' decisions all the way to the Court of Cassation, while Foreign Minister Tajani stated that "the judiciary must apply the laws, not change them or prevent the executive from being able to do its job".

Elli Schlein, secretary of the Democratic Party, the main opposition party, accused the government of having built a model for managing asylum policies that was in reality inapplicable, and of having caused the Italian State a financial loss of 800 million Euros - that is how much it would cost to build and run the two Albanian centres over the next five years, while the transfer of the 16 migrants to Albania by the military ship Libra alone would have cost at least 250,000 Euros. On 15 October - thus before knowing the outcome of the events of 18/19 October - a group of MEPs from the PD, Movimento 5 Stelle and Alleanza Verdi Sinistra had submitted a written question to the European Parliament, asking whether the transfer of migrants outside EU territory, as envisaged by the Italy-Albania Protocol, is legal: the answer was negative, since, for this option to be legitimate, European law would have to regulate forced return to a third country other than the migrant's country of origin, and this is currently not allowed under current European rules. Consequently, the Italian MEPs asked to verify whether an infringement procedure against the Italy-Albania Protocol for violation of EU rules and case law could be initiated on this occasion.

3. The Contents of the Rome Court Decision and the EU Jurisprudence

The temporary halt to the application of the Italy-Albania Protocol is due to the decisions by which the 18th civil section of the Court of Rome, Section for Personal Rights and Immigration, refused to validate the requests for the detention of the 12 migrants detained in Albania. The communiqué of 18 October, which announced the rulings, motivated the decisions as follows: " Considering the attention given to the Protocol [Italy-Albania] by the media, it is considered appropriate to represent that the measures adopted by the specialised section analysed the specificity of each request, taking into account the

[1] Tondo L., Henley J., Kassam A., Blow to Meloni's Albania deal as court orders asylum seekers' return to Italy, The Guardian, 18.10.2024.

provisions of the Protocol and its ratifying law. The detentions were not validated in application of the principles, binding on national judges and on the Administration itself, set out in the recent CJEU ruling of 4 October 2024 following the reference for a preliminary ruling made by the judge of the Czech Republic. The refusal to validate the detentions in Albanian facilities and areas equated to Italian border or transit zones is due to the impossibility of recognising as 'safe countries' the States of origin of the detained persons, with the consequence of the inapplicability of the border procedure and, as provided by the Protocol, of the transfer outside the Albanian territory of the migrants, who are therefore entitled to be brought to Italy'.

The rulings of the Italian judges, therefore, recall and are based on a decision of the Court of Justice of the EU, issued on 4 October 2024 (Case C-406/22), in which the Luxembourg judges clarified what is to be understood by 'safe country' under current EU law. Specifically, the Luxembourg judges had intervened at the request of a court in the Czech Republic, where a Moldovan citizen had applied for protection. An appeal had followed the rejection of the application for asylum, and the Brno Regional Court had then submitted to the European Court several questions on the interpretation of Directive 2013/32 of 26 June 2013, which defines common procedures for granting and withdrawing international protection status: on the basis of these appeals, the Luxembourg judges defined precisely the criteria to be followed for the interpretation of the relevant rules. First, EU law does not currently allow Member States to designate as a safe country 'only part of the territory of the third country concerned'. In the case of the applicant Moldovan national, the Czech authorities had deemed Moldova 'safe' with the exception of Transnistria: a circumstance not in line with European parameters, since 'the criteria for designating a third country as a safe country of origin must, in fact, be met throughout its territory', the judgment states.

Secondly, the EU Court held that the fact that a third country derogates from its obligations under the European Convention on Human Rights (ECHR) does not preclude it from being designated as safe but, in any case, the authorities of the member states 'must assess whether the conditions for implementing the right of derogation are such as to call that designation into question'. In other words, it must be verified on a case-by-case basis whether the third country's non-compliance with the parameters of the ECHR is of such an extent that it can still be considered a safe country or not. Finally, the national court 'called upon to review the lawfulness of an administrative decision on international protection must find ex officio, as part of the full examination, that there has been a breach of the rules of European Union law relating to the designation of safe countries of origin'. The decision of the Court of Rome of 18 October merely transposes the assumption established by the Court of Justice: countries can be considered safe under European law only if they are so in every part of their territory and indiscriminately for all, without distinction between categories of persons.

In all 12 sentences issued in response to the requests for validation of the detention of the 12 Egyptian and Bangladeshi citizens, it is stated instead that although they are included in the list of 22 countries considered safe by the Italian government, Egypt and Bangladesh are not safe countries for e.g. people belonging to the LGBTQI+ community, for victims of gender-based violence (including female genital mutilation), for members of ethnic and religious minorities, for individuals accused of political crimes, sentenced to death and displaced due to climatic emergencies. Therefore, as anticipated, the 12 migrants should not even have arrived in Albania, where the only asylum application procedure is the accelerated one, but should have been taken from the start to reception centres on Italian territory, where they would have had to follow the traditional procedure - much longer than the accelerated one - to apply for

international protection, and without being subjected to administrative detention, as would have happened to them if they had remained in the Albanian detention centre.

4. The interpretative Disagreement between the Italian Authorities and the EU Court of Justice on the 'Safe Country' Concept

The real crux of the matter is the different interpretation given to the concept of 'safe country' by the Italian authorities and by case law, first of all European and then Italian. On 7 May 2024, the Italian government had issued the Interministerial Decree No. 105, which updated the list of countries considered safe from 16 to 22: Albania, Algeria, Bangladesh, Bosnia-Herzegovina, Cameroon, Cape Verde, Colombia, Ivory Coast, Egypt, Gambia, Georgia, Ghana, Kosovo, North Macedonia, Morocco, Montenegro, Nigeria, Peru, Senegal, Serbia, Sri Lanka and Tunisia. It was on the basis of that decree that, after the rescue of migrants off Lampedusa on 14 October last, it was decided that 16 of the migrants rescued at sea should be transferred to Albania, precisely because they were citizens of Bangladesh and Egypt: countries classified by the Italian authorities as safe, and which should have allowed their rapid repatriation in the event that their asylum applications were not accepted.

In the Country Fact Sheets produced and published by the Italian Ministry of Foreign Affairs and International Cooperation (MAECI), indications are provided on the degree of recognition and protection of fundamental rights in the 22 countries in question. With regard to Egypt, for example, the Italian authorities refer to reports from international agencies denouncing executions without guarantee of a fair trial, numerous cases of arbitrary detentions and arrests without warrants by the Egyptian police forces, the recent recourse to the practice of 'pre-trial detention' during the trial of the accused, and therefore before the pronouncement of sentence, against at least 1,700 persons for a period of more than two years, cases of 'enforced disappearances' of persons critical of the Egyptian government, the use of criminal laws to repress the activity of social media users perceived as critical of the regime and to criminalise activities characterised as 'violation of public morals' and 'threatening family values' (the latter in particular being the case of women and girls who had published their own videos and photographs of them dancing and singing) allegations of systematic use of torture and ill-treatment by the police, prison guards, members of the security forces and military apparatus, mainly directed against opponents and critics of the government, and more generally exceptions in the protection of human rights in some areas of Egyptian territory for political opponents, dissidents, activists and human rights defenders.

The MAECI fact sheet on Bangladesh states that law enforcement in the country takes place in an opaque context and, quoting the latest report of the European Asylum Support Office (EASO), now EUAA (European Union Agency for Asylum), that 'the lack of independence of the judiciary is among the main problems in Bangladesh. [...] A large number of problems undermine the country's judicial system, in particular corruption, political interference and a substantial backlog of cases'. In addition, a gradual narrowing of freedom of expression and space for dissent is reported in the country, with thousands of political opponents being arrested in the pre-election period and many of them fleeing abroad for fear of violence and unjustified arrests; the phenomenon of enforced disappearances and extra-judicial killings by the Rapid Action Battallion (RAB), an inter-agency anti-crime and counter-terrorism unit founded in 2004, whose members have allegedly been responsible for acts of torture, enforced disappearances (of more than 300 people in the custody of the RAB from 2009 to the present, according to BBC sources) and extra-judicial killings as of 2018; the entrenchment of fundamentalist terrorism,

which has resulted in a series of attacks including that of 1 July 2016 in Dhaka at the Holey Artisan Bakery that cost the lives of 20 people, including nine Italian citizens; exceptions in the protection of the rights of individuals belonging to the LGBTQI+ community, victims of gender-based violence, including female genital mutilation, ethnic and religious minorities, persons accused of crimes of a political nature and those sentenced to death, as well as the growing phenomenon of 'climate' displaced persons.

Thus, it is the Italian authorities themselves who acknowledge in official documents issued by the Ministry of Foreign Affairs that in some of the countries considered safe by Italy, fundamental human rights are being violated for certain categories of individuals. As reported above, however, the EU Court of Justice ruling of 4 October 2024, expressly states that 'the designation of a country as a safe country of origin depends [...] on being able to demonstrate that, in a general and uniform manner, there is never persecution as defined in Article 9 of Directive 2011/95, torture or inhuman or degrading treatment or punishment, and that there is no threat of indiscriminate violence in situations of international or internal armed conflict', and that "the conditions set out in that annex must be satisfied throughout the territory of the third country concerned in order for that country to be designated as a safe country of origin". The judgment goes on to state that 'to interpret Article 37 of Directive 2013/32 as allowing third countries to be designated as safe countries of origin, with the exception of certain parts of their territory, would have the effect of extending the scope of that particular examination regime. Since such an interpretation finds no support in the wording of Article 37 or, more generally, in that directive, recognition of such an option would infringe the restrictive interpretation to which the derogating provisions must be subject.'

In other words, according to the Luxembourg judges, it is not possible to designate a third country as safe by authorities subject to Directive 2013/32 when evidence emerges that certain parts of its territory or the living conditions of certain categories of individuals residing in it are not safe. In order for the attribution of the designation 'safe country' to be legitimate, explains the 4 October ruling, it is necessary for a judge to verify compliance with the criteria set out in Directive 2011/95, when assessing an application for international protection, by carrying out a full and ex nunc examination of the asylum seeker's country of origin, possibly even ex officio. In carrying out this examination, the judge cannot limit himself to the examination of country files such as those compiled in the Italian case by the Ministry of Foreign Affairs, but must examine the entire file relating to the country concerned, taking into account all the Country of Origin Information (COI) available. Further confirming the rigidity of the assessment parameters to be adopted, the judgment finally explains that 'Article 37 of Directive 2013/32 must be interpreted as meaning that [the Directive] precludes a third country from being designated as a safe country of origin where certain parts of its territory do not meet the substantive conditions for such designation set out in Annex I[2] to that directive'.

[2] Annex I to Directive 2013/32, entitled 'Designation of safe countries of origin for the purposes of Article 37(1)' reads: 'A country is considered as a safe country of origin where, on the basis of the legal situation, the application of the law within a democratic system and the general political circumstances, it can be shown that there is generally and consistently no persecution as defined in Article 9 of Directive 2011/95/EU, no torture or inhuman or degrading treatment or punishment and no threat by reason of indiscriminate violence in situations of international or internal armed conflict. In making this assessment, account shall be taken, inter alia, of the extent to which protection is provided against persecution or mistreatment by:

(a) the relevant laws and regulations of the country and the manner in which they are applied;

(b) observance of the rights and freedoms laid down in the European Convention for the Protection of Human Rights and Fundamental Freedoms and/or the International Covenant for Civil and Political Rights and/or the United Nations Convention against Torture, in particular the rights from which derogation cannot be made under Article 15(2) of the said European Convention;

(c) respect for the non-refoulement principle in accordance with the Geneva Convention;

(d) provision for a system of effective remedies against violations of those rights and freedoms'.

The consequence of the interpretative line produced by the ruling of the EU Court of Justice is that the list of 22 countries considered safe according to the Italian government is no longer valid. In light of the parameters of Directive 2013/32, which is the basis of the decision of the Luxembourg judges, there would remain only 7 countries that can be considered safe, namely: Albania, Bosnia and Herzegovina, Cape Verde, Kosovo, North Macedonia, Montenegro and Serbia. Consequently, any migrants from Algeria, Bangladesh, Cameroon, Colombia, Côte d'Ivoire, Egypt, Gambia, Georgia, Ghana, Morocco, Nigeria, Peru, Senegal, Sri Lanka and Tunisia intercepted on the high seas by Italian navy or coast guard vessels could not be transferred to Albania, but would have to be sent to reception centres on Italian territory and follow the ordinary procedure for assessing their asylum applications.

5. The Italian Government's Countermove - which is likely bound to fail

The situation created after 18 October entails, for the time being, a substantial unusability of the centres built on Albanian territory, and the inapplicability of the so-called 'Albania Model', which has so far cost, as mentioned, about 800 million Euros: a model that had been considered both by the Italian authorities and by various European politicians as a valid alternative to the traditional management of asylum applications, and which should have prevented the burden of migration policies from falling exclusively on the territory of the Member States interested in implementing the strategy attempted by the government in Rome.

Clearly, for Meloni and her majority, this would be a heavy political and media defeat, which is why on 23 October a Council of Ministers issued the decree-law nr. 158/2024, aimed at giving the Italian authorities the competence to periodically update the list of countries considered safe. The decree-law is a source of legislation equivalent to ordinary law, therefore hierarchically superior to the inter-ministerial decree with which the government had drawn up the list of 22 safe countries put in crisis by the Court of Justice ruling on 7 May 2024, and it is immediately applicable, although it must then be converted into law by Parliament within 60 days of its enactment. The decree-law slightly modifies the already existing list of 22 countries considered safe, excluding three (Cameroon, Colombia and Nigeria) and retaining the other 19. At the press conference following the issuing of the decree-law, Undersecretary for the Interior Mantovano explained that the new rule incorporates the criterion of the guarantee of fundamental rights in the entire national territory as a condition for designating a country as safe, expressly referred to by the EU Court of Justice ruling: therefore, according to Mantovano, there should no longer be any interpretative discrepancies on the concept of safe country between the government and the judiciary. Mantovano also pointed out that with the decree-law, the list of safe countries is made 'meditated, not apodictic', and countries that contain unsafe territorial areas are excluded, in deference to the European Court of Justice ruling. Mantovano went on to say that the deliberation on a country's security is something that is primarily the responsibility of the government, in confrontation with Parliament, as established by the decree-law that has just been issued, which introduces a periodic update, which will be annual, and will also be scrutinised by the parliamentary commissions. Indirectly, therefore, the decree-law has amended shortcomings in the previous interministerial decree with respect to the safe country designation.

In Meloni's intentions, the decree should overcome the constraints posed by the European ruling, impose on Italian judges a list of countries considered safe according to the classification made by the Government, and therefore allow the repatriation of asylum seekers even if they come from countries considered unsafe according to European law and jurisprudence: in practice, the decree should allow the

Italian authorities to decide autonomously and punctually on the conditions of respect for human and fundamental rights in the countries of origin of asylum seekers, and when conditions suitable to the classification as 'safe' of such countries are found, proceed to the transfer of migrants to Albania, subjecting them to the so-called border procedure, which provides for an accelerated assessment of their asylum applications and, in case of rejection of applications, their return to their countries of origin.

However, the fact that the rank of the rule regulating the designation of safe countries changes from an administrative act to a rule with the force of law does not actually change the situation. As it has been known for decades, the primacy of European Union (EU) law stems from the principle that in the event of a conflict between a rule of EU law and a rule of domestic law of an EU Member State (national law), EU law will always prevail. Clearly, whether it is a government decree or an act with the force of law does not change anything with regard to the normative hierarchies between EU law and domestic law.[3] Therefore, the internal rules of the Member States must compulsorily comply with EU law, to which the Court of Justice's ruling of 4 October refers.

In other words, as long as Directive 2013/32 remains in force, the interpretative line provided by the ruling issued by the Luxembourg courts remains binding for all Member States, and cannot be suspended by a rule of domestic law, whatever its hierarchical rank. Therefore, it seems very doubtful that the decree-law issued by the Italian Government can follow criteria for classification as a safe country that do not fully coincide with those required by European legislation.

6. Conclusions and Prospects: Legal Constraints still matter, after all

If the current regulatory situation does not seem to allow much room for the Italian government to intervene, something might change as of 12 June 2026. On that day, in fact, the new EU Pact on Migration and Asylum, definitively approved on 14 May 2024, should enter into force. The Pact constitutes a set of new rules for the management of migration and establishing a common asylum system at the European level, of which Regulation 2024/1348, which establishes a common procedure for international protection in the Union and repeals Directive 2013/32/EU, and whose Section V introduces new criteria for the definition of the concept of 'safe country', is part. In particular, Article 59 provides that a third country may be designated as a safe third country only when in that country: a) there is no threat to the life and freedom of foreign nationals on account of race, religion, nationality, political opinion or membership of a particular social group; b) there is no real risk of serious harm to foreign nationals as defined in Art. 15 of Regulation (EU) 2024/1347; c) foreign nationals are protected from refoulement in accordance with the Geneva Convention and from removal in violation of the right to protection from torture and cruel, inhuman or degrading treatment or punishment enshrined in international law; d) the possibility exists to request and, if the conditions are met, to receive effective protection as defined in Article 57 of the same Regulation 2024/1348.[4]

The novelty, with respect to the European legislation currently in force, is that the new Regulation admits that the designation of a third country as a safe third country at both Union and national level may be made with exceptions for certain parts of its territory or categories of clearly identifiable persons: this

[3] Burchardt D. (2019), The relationship between the law of the European Union and the law of its Member States - a normbased conceptual framework, European Constitutional Law Review, 73-103.

[4] De Leo A. (2024), Managing Migration the Italian Way. The "Innovative" Italy-Albania Deal under Scrutiny, Verfassungsblog, 29.10.2024.

would theoretically allow countries such as Egypt and Bangladesh, for example, to be considered safe, since the failure to respect fundamental rights would not concern their entire national territory, but only certain parts of it or specific categories of individuals. Aware that such a difference would substantially broaden the applicability of border procedures to the assessment of asylum applications, facilitating the conditions for return for those not entitled to international protection, several Member States are pressing the European institutions for Regulation 2024/1348 to enter into force at least one year earlier than planned, i.e. already in 2025.

The prospect of a reform of European asylum law does not change the current situation for the Italian government: any internal regulatory changes do not allow for circumventing the European constraints currently in force. As for the Italian domestic context, the issue of the Albanian migrant centres is degenerating into a heavy institutional clash between the government and the judiciary. With the decree-law modifying the internal parameters for the classification of safe countries, the Italian government is in fact trying to reach a showdown with the national judges, who with their decisions are the ones who decide from time to time whether the migrants sent to the Albanian centres by the Italian military authorities should remain in Albania or should be returned to Italy. However, since the reference standards in this matter remain the European ones, it is not clear how the recently enacted decree-law can produce substantial changes for the foreseeable future.

That the conflict is destined to widen is quite certain. On 25 October, the Court of Bologna referred to the Court of Justice of the European Union for a preliminary ruling two questions concerning the identification of the substantial conditions that allow the designation of a country of origin as 'safe', in the light of Law Decree no. 158/2024 (so-called 'd.l. Paesi sicuri'). The Court of Bologna was called upon to rule on the appeal filed by an asylum seeker who was a Bangladeshi national against the decision of the Territorial Commission of Bologna which, at the end of an accelerated procedure, had declared his application for international protection manifestly unfounded on the grounds that he came from a safe country of origin and that there were no serious reasons to believe that Bangladesh was not safe due to the particular situation in which the applicant found himself. The Court, however, held that there were grounds for making a reference to the Court of Justice of the European Union for a preliminary ruling, since it was necessary to resolve 'certain differences of interpretation which have arisen in the Italian legal system and which concern the relevant rules contained in Directive 2013/32/EU and, more generally, the regulation of the relationship between European Union law and national law'. Since, then, such divergences - both with regard to international protection and in relation to the hierarchy of sources of law - have found 'specific expression in the legislative decree of 23 October 2024', for the Court there is 'a general interest in a clarification by the Court of Justice aimed at ensuring the uniform application of European Union law'.

The case at hand does not concern one of the twelve asylum seekers involved in the case of the centres in Albania; however, the direct involvement of Bangladesh (i.e. the country, together with Egypt, from which the asylum seekers brought to Albania came) as well as the close commonality of the issues involved, make the question crucial for the future functioning of the centres located on Albanian territory intended for the detention of migrants coming only from 'safe' countries, a requirement which allows the so-called accelerated procedure for the examination of asylum applications to be applied to them.

A key weakness of those who want to facilitate the return of migrants by outsourcing the assessment of asylum applications outside Europe is the concept of a safe third country. For migrant centres in Albania, this is an indispensable element because only asylum seekers from safe third countries can benefit from

the accelerated procedure for the examination of applications for international protection, which is the only procedure available in Albania. This is why the Italian government has entered into an institutional conflict with judges who want to maintain the supremacy of European law, which establishes objective criteria for classifying a country as safe and removes it from the discretion of the political authority.

The concept of a safe country is inextricably linked to the effective guarantee of fundamental rights, an inalienable element of European law and the constitutional traditions of the EU Member States: whether it is the rights of migrants or those of European citizens, this in no way diminishes their centrality in the Union's legal system, as a powerful body of jurisprudence from the European Courts has shown over the years. However complex the management of migratory flows has become for European states, the idea of solving the problem by compressing human rights does not seem to be a viable option, because - as the Italy-Albania affair shows - even governments are bound by the rule of law. From this point of view, the shift from an eminently national dimension to one shared between the Union and the Member States, as the EU Pact on Migration and Asylum aims to do in a few years' time, is unlikely to change the situation.[5]

The ruling of the EU Court of Justice of 4 October 2024 confirms, inter alia, that the concept of 'safe country of origin' is an exception: it must be interpreted strictly, by analogy with the case law on the inadmissibility of asylum applications, which often finds that member states' interpretations of inadmissibility grounds have been too restrictive. This logically applies by analogy to all grounds for accelerated procedures, all the more so since they were supposed to become mandatory under the 2024 Asylum Pact.[6] Attempts to undermine the cornerstones of the right to asylum also risk provoking institutional conflict in other Member States, which may be seeking ways out of objectively complex situations in response to public pressure, but whose viability should always be questioned before attempting to implement them.

The political/regulatory conflict that has arisen in Italy over the actual feasibility of migrant centres in Albania confirms that attempts to relocate asylum seekers outside EU territory are far from simple to implement, since regulatory constraints, not only at the European level, are very stringent when it comes to protecting the fundamental rights of individuals. It is therefore to be hoped that the EU institutions, as well as the other EU Member States, will reflect carefully on whether to consider the Albanian centres as a model to be followed and replicated in other non-European contexts.

[5] Venturi, F. (2024), Italy's 'safe countries of origin' legislation under CJEU scrutiny: challenging the (un)safety, Diritti Comparati, 4.7.2024.

[6] Peers, S.(2024), 'Safe countries of origin' in asylum law: the CJEU first interprets the concept, EU Law Analysis, 14.10.2024.

Author:

Prof. Dr. Andrea De Petris
Direttore scientifico, Centro Politiche Europee | Rome
depetris@cep.eu

Centro Politiche Europee ROMA
Via A. Brunetti, 60 | I-00186 Roma
Tel. +390684388433

The **Centrum für Europäische Politik** FREIBURG | BERLIN, the **Centre de Politique Européenne** PARIS and the **Centro Politiche Europee** ROMA form the **network of the Centres for European Policy** FREIBURG | BERLIN | PARIS | ROMA.

The Centres for European Policy Network analyses and evaluates European Union policies independently of vested interests and political parties, with a resolutely pro-European orientation and on the basis of market economy principles.