Border Wounds

The new phase of the “Albania model”

Asylum and immigration Coalition (Italy)

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Introduction

1.1 Objectives of the Report

This report further develops and updates the publication "Beyond the border. The Italy-Albania agreement and the suspension of rights" (Oltre la frontiera. L'accordo Italia-Albania e la sospensione dei diritti), by Asylum and Immigration Coalition(Tavolo Asilo e Immigrazione) in March 2025. Regarding the first phase, which focused on the forced transfer to Albanian territory of asylum seekers intercepted at sea and coming from countries considered safe by the Italian government, the situation has radically changed. In April 2025, the Italian government launched a new operational framework: the forced transfer to the Gjader centre in Albania of people already detained in Italian CPR (Centre for Stay and Repatriation), introducing a transnational administrative detention system with low transparency and high risk of violations of fundamental rights, as confirmed by evidence emerging from TAI's (Asylum and Immigration Coalition) various on-site monitoring activities.

The objectives of this second report are twofold: on the one hand, documenting with rigour legal, organizational and material aspects of this new phase of the so-called "Albania model"; on the other hand, critically analyse the effects on individual safeguards and on the protection of fundamental rights, including the right to health, and on the democratic framework governing the management of migration flows.. The analysis focuses in particular on the procedural opacity around transfers, curtailment of the rights of the people involved, the evasion of judicial oversight, constituting an exceptional legal and material space outside the Italian national territory, and the impact of detention conditions on the physical and psychological health of detained people.

These conditions, characterised by isolation, legal uncertainty, lack of assistance, environments with limited health guarantees, and lack of cultural mediation services, contribute significantly to the deterioration of the overall well-being of detainees, worsening their vulnerability and impeding the effectiveness of fundamental rights. The work relies on direct and indirect sources: systematic analysis of collected testimonies and documented cases, consultation of administrative and normative documentation – where available. Limited access to official information and the government's reluctance to provide them has forced an inductive approach, based on partial but converging sources.

This approach reflects the structural opacity that accompanies the entire implementation of the Protocol. Despite these obstacles, the data collected is qualitatively significant and allows for an accurate reconstruction of how the model works, thanks to the monitoring carried out by Tai delegations directly at the Gjader facility, a large number of interviews with people directly involved in the transfers, and specific analysis of the legal and health framework. The Asylum and Immigration Coalition has conducted numerous field missions in the context of the

administrative detention of migrants, both in Italy and Albania, with the support of members of the Italian Parliament and the European Parliament, whose presence and involvement have facilitated access to the sites. This highlights the isolation and invisibility to which people subjected to the system are relegated, as well as the significant obstacles faced by civil society in monitoring these facilities. This report has a concise and focused structure. The choice of brevity responds to a need for effective communication and operation: to provide clear and documented reading tools that are useful for guiding the political, legal and social intervention in an evolving context.

1.2 How this report was compiled

This report is the result of collective and interdisciplinary work, combining field monitoring and legal investigation, document analysis and direct engagement with detainees. Between April and July 2025, six missions were carried out in Albania, some lasting several days. The missions were conducted by members of the organisations that make up the Asylum and Immigration Coalition, in collaboration with Italian and European parliamentarians, whose presence was essential not only to ensure access to detention facilities, but also to reconstruct the overall legal and institutional framework with greater precision.

The report was compiled with the contribution of a variety of individuals: civil society organisations with different profiles and approaches – from local to national and international levels – professionals with legal and health expertise, and parliamentarians committed to the defence of fundamental rights.[1] This diversity was essential in order to understand the complexity of the 'Albanian model': not only as a legal mechanism, but also as a political, health and social phenomenon. In addition to fieldwork, the report was informed by extensive desk research: access to administrative records, FOIA requests, and the study of Italian and European regulations, circulars and case law. Interviews were conducted with a total of around thirty detainees, and the Asylum and Immigration Coalition spoke directly or indirectly with approximately sixty people from different backgrounds in terms of national origin, age, migration history, health status, family situation, working conditions and living conditions.

These differences were connected by a common thread of suffering and disorientation, expressed in many ways: silence, uninterrupted streams of words, acts of self-harm, rational lucidity or total mistrust. The heart of the report was formed at the intersection between the micro-history of individual lives and the macro-history of institutional transformations. The

[1] Members of the Italian Parliament and the European Parliament who participated in monitoring missions in Albania: PD - Chiara Braga, Matteo Orfini, Rachele Scarpa, Patrizia Prestipino, Eleonora Evi, Augusto Curti, Fabio Porta, Marco Simiani, Nadia Romeo, Debora Serracchiani, Andrea Casu, Paolo Ciani, Ouidad Bakkali, Laura Boldrini, Claudio Stefanazzi, Toni Ricciardi; AVS - Francesca Ghirra, Franco Mari; M5S - Alfonso Colucci; S&D MEP - Cecilia Strada, Sandro Ruotolo; Greens/EFA - Benedetta Scuderi, Anna Strolenberg, Melissa Camara.

words collected at the Gjader CPR are not mere 'testimonies': they are living documents, traces of legal violations, clues to a political and social system of exclusion.

“I just want something to pass the time. We are forgotten. When they call me, I say 'I'm not here', because since I've been here, I haven't been here. I've been taking medicine for my head for five days. I've never done that before. It's a kennel. I chose a lawyer at random from a list. We have been abandoned by everyone.”

Every fragment is a sign. Talking to the people detained is an irreplaceable opportunity to learn about and restore truth to places built to deny it. All interviews were conducted on a voluntary basis, respecting anonymity. Sources were cross-referenced through access to records, direct observation, testimonies, and health and legal documentation. The result is a composite and clear picture: a necessary attempt to shed light on one of the opaquest aspects of current migration policy management.

The objectives of this second report are twofold: on the one hand, to rigorously document the legal, organisational and material contours of this new phase of the so-called Albania model; on the other, to critically analyse the effects on the upholding of individual safeguards, the protection of fundamental rights, including the right to health, and the democratic framework governing the management of migration.

1.3 The political and regulatory context of the Italy-Albania Protocol

The Italy-Albania Protocol is not only a migration management tool: it is a political device that operates by redefining the boundaries of legality and the role of the state. In this sense, the 'Albanian model' is a permanent political laboratory, where practices of rights suspension and concentrating executive power are being tested. The Protocol is part of a broader, decades-long strategy of externalisation, which is common to many European countries and is based on a specific idea: migration management must take place outside the national territory and outside the scope of common law.

The agreement with Albania radicalises the logic of the European Pact on Migration and Asylum, building a legal and logistical infrastructure to transfer migrants into a suspended space, physically external but legally controlled, where transparency is minimal and safeguards are drastically reduced. However, the Protocol should also be read – especially in light of its evolution – as an internal government decision. It is part of a broader political operation that aims to strengthen consensus around a security agenda, fuelled by the rhetoric about invasion and threats to national identity.

The Meloni government has used the issue of migration as a basis on which building a narrative of firmness and order, in which the detention in Albania of people already detained in Italy for

the purpose of expulsion becomes not only a technical measure but a performative gesture. It is in this sense that forced transfer takes on an eminently political and symbolic dimension: it is a form of government through exemplary punishment. Albania has thus become the external space onto which projecting internal insecurity, transforming bilateral cooperation into a mechanism for outsourcing control and detention. But the 'Albanian model', even more so in its current configuration, is not just an operational project: it is a government device based on opacity and the emptying of democratic spaces. Parliament has been marginalised, the role of civil society reduced, and information made inaccessible even to institutional actors legitimised to exercise control. In this sense, the model is based on the active production of invisibility: of the people detained, the places where they are held, and the procedures concerning them. It is no coincidence that the logic applied in this migratory context is the same that, in a latent form, pervades other areas of public policy today.

Centralised management, the constant evocation of emergency, the erosion of guarantees and the removal of responsibility from the competent authorities are signs of a profound transformation in the relationship between the state and its citizens. For this reason, we can say that the 'Albanian model' is a laboratory of authoritarianism, where forms of post-democratic power are being tested. Finally, it is necessary to place this mechanism within a broader plan for the restructuring of the European border: a border that is no longer just a demarcation line, but a complex system of exclusion, detention and selection.

The forced transfer from Italy to Albania represents a further push towards the construction of a fortified, mobile, and non-territorial border, immune from legal obligations and public scrutiny. For these reasons, it is essential to confront with this model and thoroughly investigate its effects, not only in terms of violated rights, but also in terms of changes to democratic institutions. In this context, Albania is not simply a logistical partner: it is the threshold against which our willingness to suspend the rule of law in the name of security is measured. A threshold that, if not opposed, risks widening and becoming the norm.

1.4 The new phase of the 'Albania model'

After the setback of the Italy-Albania Protocol caused by the interventions of the European and Italian judiciary, the Meloni government amended the legislation with the aim of insisting on a model conceived by the executive as instrumental to propaganda based on anti-immigration rhetoric. Even the legislative amendment, which transferred jurisdiction over the validation of extra-territorial detention to another court, did not have the effect hoped for by the government: the detention of persons intercepted in international waters by the Italian authorities and transferred to Albania, after applying for international protection, was not validated by the competent courts; this decision was taken in compliance with the law and pending a ruling from the Court of Justice of the European Union on several preliminary references concerning the

interpretation of the notion of a “safe country of origin” and the application of the accelerated border procedure for examining asylum claims.

In light of the obligation to stop the practice of transferring people intercepted at sea to Albania, the Italian government once again amended the law, completely changing the originally designated purpose of the centres provided for in the Protocol. The stated objective has shifted from deterring the arrival of migrants and asylum seekers to the forced transfer of persons already in administrative detention for the purpose of repatriation. This change to the Protocol is not only legally illegitimate, but also completely illogical and economically irrational in practical and organisational terms. The new intended use of the 'Albania model' coherent only with the objective of state propaganda. It is impossible to find any effectiveness or logic in this new phase of the Protocol, in practical, organisational and, broader migration policy term. It is difficult to understand the rationale behind the transfer of people already in detention in Italy, whose repatriation, if feasible, does not require any transfer to Albania. If, on the other hand, repatriation is not possible, for example due to a lack of agreements with the country of origin, deportation to Albania is even more pointless, appearing to be a mere performance in contrast to the failure of the Protocol as it was originally conceived.

A farce that, before the predictable intervention of the judiciary, led to violations of fundamental rights in the name of interests that were completely at odds with those of Italy. The numbers for administrative detention in Italy reveal the ineffectiveness of the instrument: of the approximately 1,400 places that the 11 active CPRs should have, less than 800 are actually available. The monitoring visits carried out, including recent visits, by civil society together with opposition members of parliament, show that there are also places available within these 800: a circumstance indicating that that there is no concrete need linked to the facilities in Italy underlying the launch of the second phase of the 'Albania model'. All this comes at a cost: an estimated 800 million euros over five years, amounting to no less than 170 million euros per year. Looking at the number of people transferred and repatriated, approximately 132 and 32 respectively, it is clear that there is a total disregard for the public interest. Prime Minister Meloni and the entire executive have publicly defended the Italy Albania Protocol, deciding not to back down despite the obstacles imposed by the judiciary. All this comes at a very high human and economic cost for migrants and for all Italian citizens.

1.5 Institutional opacity and lack of transparency

The obscurity surrounding the 'Albania model' is not is not accidental, but part of a deliberate grammar of governance. The information blackout serves to reduce the possibility of informed debate by civil society. In fact, many of the decision-making processes remain confined to the opaque space of the executive, while only the echo of press conferences without real answers to the critical issues raised or ministerial notes without verifiable data reaches the outside world. In the face of an operation that relocates the deprivation of liberty outside national territory, the

withholding of information becomes itself a device of power: it removes visibility from the detained people, effectively erodes their rights, and weakens public criticism.

A qualitative shift is evident in the relationship between the government and the supervisory bodies. Parliamentary missions to the Gjader facility in Albania have been repeatedly denied access to information: no lists of detainees, no indication of nationalities, silence on the methods of transfer. The oversight role of parliamentary representatives is thus compromised from the outset. The opacity affects movements, NGOs and investigative journalists even more acutely. In this context, generalised right of civic access – presented as a transparent panacea in government rhetoric – proves to be an empty shell. The timing is incompatible with the speed with which transfers, accelerated hearings and repatriations take place. On the other hand, the government holds a monopoly on knowledge that it systematically bends to fit its own narrative. The Prime Minister's Office disseminates figures purporting to show ‘efficiency – without providing complete data series or calculation methods.

The Ministry of the Interior, for its part, declines specific requests for information on the composition of the group of detained persons, only to then present aggregate figures, sometimes misleading, to demonstrate a supposed reduction in irregular arrivals thanks to the 'Albanian deterrent'. The selective manipulation of data constructs a narrative of full functionality that has no connection with reality. The institutional opacity that characterises the model is not neutral. It disables institutional control, preventing Parliament from fully exercising its supervisory function. It erodes social control, forcing movements and organisations to work on partial data, obtained mainly through direct contact with detainees.

Ultimately, the lack of transparency surrounding the 'Albania model' is not a flaw in the process, but a founding clause: it removes the space for decision-making from the public sphere and consolidates a laboratory of authoritarianism. Piercing this veilrequires a strategy that combines field research, strategic litigation and coordinated political pressure to restore visibility to the lives hidden behind statistics tailored to political needs and reaffirm the principle that there can be no security without democratic transparency.

2. Legal aspects of forced transfer

2.1 Absence of formal measures and further violations

Transfers from Italian CPRs to the Albanian CPR in Gjader, currently numbering 132, are systematically carried out without any formal written justification. Both during the first forced transfer of 41 people on 11 April 2025 and during subsequent transfers, the Asylum and Immigration Coalition was able to establish lack of any written individual or group transfer order

with justification. Furthermore, all the people interviewed by the Tai reported that they had been picked up from their Italian CPR of origin (often in the evening and without prior notice), handcuffed with cable ties and transferred without any indication of their destination (in most cases), or with the CPR in Bari or Brindisi indicated as their final destination.

During transfers by land (by bus and/or plane, for example from the CPR in Macomer), the cable ties were used continuously except when removed for the time strictly necessary to attend to physiological needs. Cable ties were also used during transfers by sea for an average total time of 20 hours. The unlawfulness of the transfer to a CPR located outside the EU, which was unjustified and contrary to constitutional principles, is evident. Firstly, as already pointed out, no reason was ever given for the transfer, and it is believed that no written justification for it was ever adopted. This was also found after reviewing the individual personal files of the persons transferred. The files examined by the delegations showed that there was no measure communicating or otherwise explaining the reasons for the transfer to Albania, clearly violating Article 14 of the TUI, which requires, as a priority, that the facility be located nearby. As proof of this, below is the response from the Police Headquarters following a request for access to documents submitted on behalf of one of the transferred persons, in which the Administration explicitly denied being in possession of the relevant measure - 'In response to the request (...) it is noted that, based on the information acquired by the immigration office staff based in this area, the requested reasoned transfer order for the above-mentioned person is not on file with this Office'.

In this way, the competent Administration, effectively admitting that it never came into possession of this measure, has committed a clear violation of the principles underlying the administrative procedure), as well as greatly restricting the rights of the individuals affected by this action. In all cases of transfer to the CPR in Gjader, there is in fact a further compromise of the right to personal freedom, as the persons are transferred to a foreign country (outside Europe), far not only from any close relatives who may be present in Italy but also from their lawyers, since they are unable to use a personal telephone and are forced to communicate via brief, restricted phone calls.

The implementation of such transfers should not be without justification, precisely because the Administration should have justified, in each specific case, why the CPR in Gjader would be more suitable for the detention of the transferred individuals, to the point of contradicting the provisions of Article 14 of the TUI. Furthermore, as this is an even more severe restriction of personal freedom than that experienced by the detainees while they were held in Italian CPRs, the obligation to provide reasons is based on the constitutional principle expressed in Article 13 of the Constitution, which states that 'No form of detention, inspection or personal search, or any other restriction on personal freedom, is permitted, except by reasoned order of the judicial authority and only in the cases and in the manner provided for by law'.

This is reinforced by the Article 42 of Law 354/75 (Penitentiary System) concerning transfers from one penal institution to another, which is applicable, by analogy, to the case in question. Article

42 of the Prison Regulations (O.P.) identifies a series of specific reasons for exercising the above-mentioned power and provides that transfers shall be ordered for "serious and proven reasons of security, for the needs of the institution, for reasons of justice, health, study and family" and that “when arranging transfers, individuals shall in any case be sent to institutions closest to their home or that of their family or to their social centre of reference, to be identified taking into account reasons of study, training, work or health. The prison administration shall give reasons for any derogation from this rule.”

Moreover, not only does the prison system provide for a specific obligation to give reasons for the transfer order, but it also provides for the possibility to lodge an appeal against the measure pursuant to Articles 35 and 35bis of the Prison Regulations; by contrast, no means of complaint is provided for in the present case. A constitutionally oriented interpretation of the provisions applicable to the present case therefore requires that there must be a written and reasoned measure to justify the transfer from one State to another of the person subject to administrative detention and that this measure must be contestable in court, as is the case for prisoners under Articles 35 and 35bis of the Prison Administration Act.

Moreover, in Decision No. 526/2000, in a partially similar case (searches in prison), the Constitutional Court specified that all measures restricting personal freedom must be justified, even in cases where there is no express provision. The clear consequence of such unjustified, and therefore unlawful, transfers is clear: the right to territoriality in the enforcement of measures restricting personal freedom under Article 14 of the TUI and the right of defence have been compromised. The failure to indicate the conditions and requirements justifying the transfer of persons detained in a CPR located on Italian territory to the Gjader facility located on Albanian territory particularly infringes the exercise of the right of defence referred to in Article 24 of the Constitution, as well as Article 6 of the ECHR on the right to an effective remedy, since, in the absence of a formal measure, the factual and legal grounds underlying the administrative decision are not specified and cannot be ascertained.

It is also considered that in all cases of transfer from an Italian CPR to the Albanian one, the right to respect for private life, pursuant to Article 8 of the ECHR, has been violated. Furthermore, in cases of health vulnerability, transfer to non-EU territory also violates the right to health, as it is quite clear that this right can only be exercised to a limited extent in non-EU territory where the Italian national health system does not operate (see also specific paragraph on this point).

2.2 Use of coercive measures in transfers

Given that the transferred people were not notified of any written and reasoned decision relating to the transfer – and that, in all likelihood, no such decision was ever taken – the manner in which the transfers from the CPR located in Italy to the one located in Albania were carried out is also contested. By way of example, we would like to mention a case (for which a claim for

damages is also pending regarding how the transfer was conducted) of a transfer that took place in May 2025 from the CPR in Macomer to the one in Albania, where it was found that: 1. during the entire journey, divided into the sections Macomer–Rome, Rome–Brindisi and Brindisi–Gjader, coercive measures (handcuffs) were used, and the journey, which lasted at least 24 hours in total, took place in conditions that were violating human dignity, in a manner that could be described as inhuman and degrading; 2. the final destination was never revealed. The transfer therefore took place under deceptive circumstances, as the person concerned was told that the destination would be a different CPR located on national territory. Furthermore, despite the absence of any resistance, from the moment he left the CPR in Macomer, the person concerned was subjected to restraint measures through the use of Velcro straps, a device used continuously during the subsequent stages of the journey, with removal only on three occasions to allow access to the toilet. In light of the above, the transfer – which lasted approximately 24 hours in conditions contrary to the principles of humanity and proportionality – was carried out in violation of the fundamental rights of the person and was therefore unlawful.

It should be noted that all the persons transferred reported having suffered the same restrictions and that, although the transfer is formally classified as a move from one CPR to another, it is in fact a transfer from Italian territory to a third country outside the European Union, lasting a total of approximately 24 hours and involving both land and sea transport. Considering these characteristics, it is necessary to apply the regulatory provisions and recommendations on return procedures. Precisely because of the particular methods used to carry out such operations, the risk of violations of fundamental rights occurring during their implementation is significantly high, as highlighted by the European Union Agency for Fundamental Rights (FRA) and various national monitoring bodies.[2]

As is well known (see the reports of the National Guarantor for the Rights of Persons Deprived of Liberty), the average ratio of escort personnel to returnees is 2 to 1. It is clear that this numerical composition in itself creates a condition of inherent subordination of the individual to the police, rendering additional security measures unnecessary, especially in the absence of other passengers on board. On this point, reference is also made to civil aviation legislation, and in particular Article 6 of the Tokyo Convention on Offences and Certain Other Acts Committed on Board Aircraft, which confers specific powers on the flight captain. In light of these considerations, it appears crucial to ascertain whether the use of force through the continuous application of Velcro straps throughout the entire repatriation operation can be considered reasonable and proportionate to the circumstances of the specific case.

The legislation on repatriation (applicable to the case in question, precisely because it involved transfer to a non-EU country) provides for the use of coercive measures - such as Velcro straps to restrain returnees - with precise limits deriving from their actual necessity and functionality. In particular, Article 3.2 of the Annex to the Decision provides: Coercive measures shall be used as

[2] Forced Return Monitoring Systems – 2024 update | European Union Agency for Fundamental Rights

follow: (a) coercive measures shall be implemented with due respect to the individual rights of the returnee. (b) coercion may be used on individuals who refuse or resist removal. All coercive measures shall be proportional and shall not exceed reasonable force [...] d) the immobilisation of resisting returnees may be achieved by means of restraints that will not endanger their dignity and physical integrity '.

A corollary to this statement is the principle, expressed in the same provision, (that “in case of doubt, the removal operation including the implementation of legal coercion based on the resistance and dangerousness of the returnee, shall be stopped”) following the principle ‘no removal at all cost’. Velcro straps, therefore, like other forms of coercive measures, may only be used against those who refuse or oppose return, and in any case with respect for the individual rights of returnees. Furthermore, according to the 2016 Frontex Guidelines, the assessment of the use of coercive measures must be carried out on an individual basis, not collectively and generally. The use of means of restraint cannot be preventive but must be based on a dynamic risk assessment, i.e. current and case-by-case. The Agency explicitly states that particular attention must be paid to the use of means of restraint on vulnerable persons, such as those with physical and mental disabilities. In the cases examined by the TAI, it is clear that the coercive measures were adopted in a completely arbitrary manner and in violation of the legislation in force. Firstly, it does not appear that the police carried out any preliminary assessment of the need for restraint in relation to the actual level of risk, which, as highlighted, cannot be considered significant, also in view of the nature of the sea transfer. In this regard, it should be noted that a negative risk assessment can be suggested from the very absence of incidents of revolt or disorder during the operation.

It is also significant that the restraints were applied indiscriminately to all those transferred without any individual risk assessment being carried out or any account being taken of any oppositional behaviour on the part of individuals. Finally, the Velcro straps were used for the entire duration of the operations. Such prolonged use of instruments of personal restraint – in the absence, it should be reiterated, of an individual risk assessment or hostile behaviour – is clearly detrimental to the fundamental rights of the persons involved, who were forced to remain in physical restraint for many hours, under constant surveillance by a large escort team.

The European Court of Human Rights has condemned several member states (including Italy) for conducting repatriation operations with excessive use of force and, in the case of Italy, specifically for the use of Velcro straps in the absence of any dangerous situation (see A. E. and others v. Italy, Selmouni v. France, Berlinski v. Poland). In particular, the ECHR condemned the lack of explanations to justify the use of physical restraints on the asylum seeker and “the use of hooding, which has already been found to cause, if not direct physical injury, at least severe psychological and physical distress to those subjected to it (see Ireland v. United Kingdom, cited above, §§ 96 and 167)" (El-Masri v. Former Yugoslav Republic of Macedonia, no. 39630/09 § 209) and highlighted that any brevity of the treatment imposed is irrelevant, establishing specific parameters for assessing the use of restraint measures. According to the ECHR: "when an

individual is deprived of his liberty or, more generally, is confronted by law enforcement officers, any use of physical force that is not strictly necessary in view of the person's conduct undermines human dignity and constitutes, in principle, a violation of the right enshrined in Article 3 of the Convention (see Bouyid v. Belgium ([GC], no. 23380/09, § 100, ECHR 2015). […] Any interference with human dignity undermines the core principles of the Convention.

For this reason, any behaviour by law enforcement officers towards an individual that diminishes human dignity constitutes a violation of Article 3 of the Convention. This applies in particular to the use of physical force against an individual when it is not strictly necessary in view of his conduct, regardless of the impact on the person (ibid., § 101, and see Pranjić-M-Lukić v. Bosnia and Herzegovina, no. 4938/16, § 73, 2 June 2020). [...]. The Court also notes that the first appellant was an asylum seeker and had been taken to hospital to assist his pregnant wife." The need to use means of physical restraint only when strictly necessary, in a manner that respects the fundamental rights of those subjected to them and is proportionate to the resistance offered, has been reiterated by various international bodies. In March 2005, the Council of Europe adopted '20 Guidelines on Forced Returns', which state: 'Guideline 19. Means of restraint 1. The only acceptable forms of restraint are those that constitute strictly proportionate responses to the actual or reasonably expected resistance of the returnee in order to control him or her'.[3]

The Council of Europe, commenting on the provision adopted, states that "This guideline indicates that escorts may use coercive measures on individuals who refuse or resist removal only if they are proportionate and do not exceed reasonable force. This requirement of proportionality has been expressed by the European Court of Human Rights under Article 3 of the ECHR, in relation to which it has observed that, with regard to coercive measures, the Court has established that, in relation to a person deprived of liberty, the use of physical force that is not strictly necessary as a result of their own conduct diminishes human dignity and constitutes, in principle, a violation of the right enshrined in Article 3 of the ECHR, but that the use of force may be necessary, provided that it is not excessive, as a result of the conduct of the person against whom the force is used (Eur. Ct. HR (4th Section), Berlinski v. Poland, judgment of 20 June 2002 (applications no. 27715/95 and 30209/96), paragraphs 59-65)."

The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment had already stated in its 13th General Report [CPT/Inf (2003) 35] that "The CPT recognises that enforcing an expulsion order against a foreign national determined to remain on the territory of the State is often a difficult and stressful task. It is equally clear, in the light of all the findings made by the CPT in various countries [...], that removal operations by air imply a manifest risk of inhuman and degrading treatment. This risk exists both during the preparation of removal operations and during the flight itself; it is linked to the use of a number of

[3] https://www.coe.int/t/dg3/migration/archives/source/malagaregconf/20_guidelines_forced_r eturn_en.pdf

means/methods of coercion applied individually and is all the greater when these means/methods are used in combination."[4]

More recently, in its report to the German Government on the monitoring visit carried out by the same body in 2023, the CPT recommended that the German authorities "take the necessary measures to ensure that means of restraint are not systematically applied as a precautionary measure by the competent police authorities of the federal states", a principle that is certainly applicable also in the Italian context and to the case in question.[5] In light of the above considerations and the regulatory framework referred to, it is clear that the conduct of the Administration in the present case is unlawful and in clear violation of the Directive 2008/115/EC (the so-called Return Directive), the Council Decision 2004/573/EC of 29 April 2004, and the Article 3 of the European Convention on Human Rights.

Transfers from Italian CPRs to the Albanian CPR in Gjader, currently numbering 132, are systematically carried out without a written and reasoned decision. The Asylum and Immigration Coalition has been able to establish the absence of any written and reasoned individual or collective transfer order. In the cases examined, it is also clear that coercive measures have been adopted in a completely arbitrary manner and in violation of the legislation in force.

3. Material conditions and treatment of transferred persons

3.1 Suitability assessment

Health checks and medical assistance within CPRs are regulated by Article 3 of the Ministry of the Interior Directive: "Criteria for the organisation and management of repatriation centres provided for in Article 14 of Legislative Decree No. 286/1998 and subsequent amendments" (19 May 2022, known as the "Lamorgese Directive"), which specifies the following with regard to the assessment of suitability for entry and detention: "Foreign nationals shall be admitted to the Centre after a medical examination, normally carried out by a doctor from the local health authority or hospital, arranged at the request of the Chief of Police - even at night - to ascertain the absence of manifest pathologies that would make their entry and stay in the facility incompatible, such as infectious diseases that are contagious and dangerous to the community, psychiatric disorders, acute or chronic degenerative diseases - detected through anamnesis or symptomatology, as well as

[4] Extract from the 13th General Report [CPT/Inf (2003) 35] on the removal by air of persons being repatriated, https://rm.coe.int/16806cd166
[5] https://rm.coe.int/1680af2743

through available health documentation - that cannot be adequately treated in confined communities. The medical certificate must, in any case, confirm the compatibility of the foreign national's health or vulnerability, pursuant to Article 17, paragraph 1, of Legislative Decree No. 142 of 18 August 2015[6], with living in confined communities." Article 3.3 of the same Decree provides that "After entering the Centre, the foreign national shall undergo a medical screening by the doctor in charge of the health facility present in the Centre, for an overall assessment of their state of health, as well as to ascertain any conditions of vulnerability pursuant to Article 17, paragraph 1, Legislative Decree No. 142/2015 and/or any conditions of unsuitability for staying in the Centre, taking into account the structural characteristics of the Centre, or the possible need to arrange specialist visits or diagnostic and therapeutic pathways at the competent public health facilities, also on the basis of the form drawn up by the health facility of the prison of origin.

In the context of the medical examination, particular attention must be paid to actively identifying signs or symptoms of specific medical conditions, signs of trauma or scarring from torture, in accordance with the guideline 'Border controls - The border of controls' developed by the National Institute for Health, Migration and Poverty (INMP), the National Institute of Health (ISS) and the Italian Society of Migration Medicine (SIMM), and approved by the State-Regions Conference on 10 May 2018. During their stay at the Centre, when the foreign national's condition so requires or when deemed necessary, the foreign national shall undergo a medical examination."

Article 3.4 also specifies that: "In the presence of elements that may determine incompatibility with life in a restricted community that did not emerge during the certification of suitability, the doctor in charge of the Centre shall request a new assessment by the Local Health Authority or hospital. In the meantime, where appropriate, the doctor may arrange for the foreign national to be accommodated in an observation room, located near the health centre referred to in paragraph 5 below, in order to safeguard the health of the individual and the community, keeping track of this in a special chronological register."

Lastly, Article 3.6 emphasises that "In the event of transfer to another centre, the certification referred to in paragraph 1 is not required. In this case, a copy of the health record [prepared by law by the doctor responsible for the centre] shall be delivered to the health manager of the destination facility through the escort manager."

Health suitability for detention in Albania is based exclusively on the examination carried out upon entry into the CPR in Italy, from where the detainees are picked up and transferred to the centre in Gjader, without any reassessment. This is despite the fact that the specific 'structural' and logistical characteristics of the CPR in Gjader make it even more difficult to access 'specialist

[6] Legislative Decree No. 142 of 18 August 2015. Art. 17: Reception of persons with special needs, paragraph 1: The reception measures provided for in this decree take into account the specific situation of vulnerable persons, such as minors, unaccompanied minors, persons with disabilities, the elderly, women, with priority given to those who are pregnant, single parents with minor children, victims of human trafficking, persons suffering from serious illnesses or mental disorders, persons who have been found to have suffered torture, rape or other serious forms of psychological, physical or sexual violence or violence related to sexual orientation or gender identity, and victims of genital mutilation.

examinations or diagnostic and therapeutic procedures at the relevant public health facilities'. According to the documentation that we were able to review, when the remote commission was asked by the managing body to reassess suitability, the Maritime, Air and Border Health Office (USMAF) issued certificates of 'supervening unsuitability', basing it also on the lack of a follow-up examination within 72 hours of arrival in Albania. The failure to carry out a reassessment of medical suitability prior to transfer to Albania has also recently been criticised as a critical issue by the Court of Cassation.[7]

Local medical staff reported that they examine all persons entering the centre, both medically and psychologically, and that they receive the files from the CPRs of origin, but the timing of the transfer of such documentation is unclear. At any time, in case of doubt about the suitability of staying in the CPR, the centre's medical staff can activate a competent commission based in Italy and composed of the USMAF and the INMP. According to reports from centre staff during monitoring visits, the commission has full discretion to carry out this assessment remotely, simply by acquiring clinical documentation, or to visit the centre in person, raising serious doubts about the reliability of a remote assessment. Through interviews conducted during monitoring missions and documentation consulted by members of the TAI delegations, it appears that, in all cases where a new visit to assess the conditions for detention was requested, the USMAF certified that the person was unfit to remain in the Gjader centre and requested their immediate return to Italy.

3.2 Access to healthcare

The Gjader Centre has a healthcare facility, managed by the Medihospes Social Cooperative, located in an independent area separate from both the accommodation and the detention area. When fully operational, the facility will include a medical clinic, two isolation rooms, a minor surgery room (without HEPA filters, with no plans to install them in the future, making it impossible to perform major surgery), an emergency analysis laboratory, an X-ray machine and an ultrasound scanner. This equipment will be used to reduce the need for external referrals for routine and less serious medical cases. At the time of the inspections (spring 2025), the operating room and radiology department were still being set up and tested, despite the fact that the

[7] Court of Cassation, Office of the Massimario and the Role, Reports on new legislation Decree-Law No. 37 of 28 March 2025, containing 'Urgent provisions to combat irregular immigration', converted, with amendments, into Law No. 75 of 23 May 2025, page 36: 'the second [critical issue] concerns the failure to provide for a second suitability assessment, given that the so-called relative suitability certificate attests to the compatibility of detention with the characteristics of a specific centre. This shortcoming, which also exists for the transfer of foreigners from one CPR to another within the national territory, is made more serious with regard to transfers to Albania, given the complexity of the transfer and the difference in the healthcare services provided by an Italian healthcare facility compared to an Albanian healthcare facility."

dedicated staff (consisting of a surgeon, an orthopaedic and an anaesthetist) were already formally under contract. According to representatives of the managing body, reception staff and law enforcement officers will also be able to use the internal healthcare services.

The healthcare management of the centre is entrusted to the managing body Medihospes and is based on a protocol between the Albanian and Italian Ministries of Health, which also regulates access to emergency rooms and local hospitals in general. All health cases that cannot be managed by the health facility within the centre or that do not fall within the specifications are referred to Albanian facilities. In particular, the centre does not provide certain specialities such as cardiology, diabetology and dental care, which, according to the managing body, would be necessary for both the detainees and the centre's staff; these services are currently provided, including non-urgent cases, by Albanian facilities such as the hospitals in Lezhe, Shkoder or Tirana. According to the agreement between the ministries, the Albanian government periodically reports on healthcare costs arising from the use of local facilities and services in the area. In addition, in order to operate in Albania and hire local staff, Medihospes had to set up an Albanian branch – Medihospes Albania.

In this regard, it should be noted that Albanian healthcare personnel working in the centre are not subject to the procedures for the equivalence of qualifications as provided for in the Decree of the Ministry of Health of 10 April 2018 for non-EU doctors, and that the same healthcare facilities outside the centre, which are used by detainees, are not subject to quality control standards for the level of care provided. On this point, the Court of Cassation has expressed concerns about 'possible serious prejudice to the right to health' (Article 32 of the Constitution).[8] The healthcare staff consists of doctors of various specialities (general medicine, surgery, anaesthesia, radiology and psychiatry), nurses, laboratory and radiology technicians and psychologists.

3.3 Critical events at the Gjader CPR

The CPR management body is required to keep a register of critical events, "in which to immediately record any event that has caused disruption within the centre and any incidents that have caused injury to guests or operators and acts of self-harm and suicide, as well as a register of interviews with foreigners for each service: legal information, social and psychological support" (Directive of the Minister of the Interior of 19 May 2022, Art. 4, paragraph 2, letter p). On 30 April 2025, following visits to the Albanian centre, MEPs Rachele Scarpa and Cecilia Strada sent a letter to Human Rights Commissioner Michael O'Flaherty and the President of the Council of Europe's

[8] Court of Cassation, Office of the Massimario and the Role, Reports on new legislation Decree-Law No. 37 of 28 March 2025, containing 'Urgent provisions to combat irregular immigration', converted, with amendments, into Law No. 75 of 23 May 2025, page 9: 'Finally, it has been observed that Article 5(8) of the Protocol - in establishing that 'in the event of health needs that the Italian authorities are unable to meet ... the Albanian authorities shall cooperate with the Italian authorities responsible for the same facilities to ensure the essential and urgent medical care of migrants detained there' - may seriously prejudice the right to health of 'migrants', protected by Article 32 of the Constitution, given that the level of healthcare in Albania is not comparable to that in Italy.

Committee for the Prevention of Torture (CPT) Alan Mitchell to express serious concerns about living conditions in Gjader and request urgent intervention in Albania by the CPT itself. In their joint statement, the two MEPs reported 35 critical incidents in the Critical Incidents Register (approximately 2.7 per day during the reference period), in particular 21 incidents of self-harm or suicide attempts by at least nine detainees, highlighting serious health concerns about the mental and physical condition of the people inside the centre. As of 16 May 2025, just over a month after the first forced transfer of detainees from Italy to the CPR in Gjader on 11 April 2025, and with an estimated total of 40-60 people present, the Critical Events Register reported 42 cases, most of which related to health issues, some of which are reported below:

- one person was taken to the local emergency room after voluntarily ingesting a zip fastener but was sent back to the CPR with the indication that he would evacuate the foreign bodies in the following days; he reported having been unable to defecate for several days (the centre's doctor reported having administered a laxative syrup); the same person reported suffering from asthma, but their inhaler had been confiscated and was being administered directly by medical staff; he also had obvious and recent signs of self-harm on their arms;

- a person with a post-traumatic pancreatic cyst was taken to the local emergency room for abdominal pain; once back at the CPR, he reported no improvement in his symptoms despite antibiotic therapy;

- a person with shoulder pain and obvious functional impairment of the arm reported not having received any medical examination (the doctor claimed the opposite);

- at least two cases of attempted hanging using clothing hooked onto the fire sprinkler system installed in the rooms;

- at least two persons were placed in isolation for the general reason of 'behavioural disturbance' and were held for several hours under observation; subsequently, a reassessment of medical suitability was requested from the USMAF-INMP commission, which, having reviewed the clinical documentation, deemed the individuals unsuitable for detention, resulting in the return of the two vulnerable patients to Italy. It is important to note that the isolation rooms are intended solely for infection-related isolation and not for psychiatric purposes; indeed, the rooms are equipped with windows, doors that can be opened from the inside and glasses, which increases the risk to the patient's safety and the possibility of self-harm;

- a person with severe toothache had not received any pain relief;

- there was an attempted protest, resulting in a broken window and superficial injuries to the upper limbs of three people;

- an attempt to ingest shower gel (125 ml per person per week is provided) as a demonstrative act of protest against the conditions inside the CPR.

3.4 Geographical isolation and its impact

The Gjader facility is located in a remote area outside Mali-Kakariq village, about 18 kilometres from the port of Shengjin and 75 kilometres from Tirana. As observed during inspections, the part intended for the CPR consists of 9 sections for 16 people: four cells for four people, with two bunk beds and a small table in the centre, with a shared 'courtyard' for each block; the courtyard is completely surrounded by wire mesh, even toward the sky. The cell doors can only be opened from the outside with a code, and food is administered through a slot in the door. During the latest inspections, the managing body stated that it had started to leave the doors open for longer during the day.

Although CPRs are defined as 'non-punitive' facilities, in reality they operate according to highly coercive logic. Detention can last up to eighteen months, in a context marked by severely reduced legal guarantees and systemic limitations on access to essential services. In this scenario, isolation is an additional social determinant of mental health, acting in a cross-cutting way and aggravating any existing vulnerabilities.

Bessel van der Kolk's neurobiological approach[9] highlights how experiences of helplessness, loss of control, and isolation activate the same areas of the brain affected by severe trauma, producing profound psychological and somatic consequences.

Among the most common symptoms are dissociative symptoms, hypervigilance, insomnia, somatisation and marked emotional dysregulation. These are not rare or isolated dynamics: in CPRs, these conditions are the norm, not the exception.

A recent systematic review confirmed the severity of the psychological impact of administrative detention on migrants. According to the study, detainees are twice as likely to develop mental disorders as non-detainees, with high incidences of depression (68%), anxiety (54%) and post-traumatic stress disorder (42%).[10]

Institutional isolation is one of the most severe forms of isolation: restrictions on freedom of movement, difficulty communicating with the outside world, and the opacity of legal procedures are all factors that generate a profound sense of powerlessness, frustration and humiliation in people, as documented by the Council of Europe in the report of the Committee for the Prevention of Torture.[11]

The deprivation that results from isolation is not only material, but also relational and symbolic: it entails the loss of the ability to exercise self-determination and to understand what is happening around oneself. Added to this is linguistic and cultural isolation: the lack of linguistic and cultural mediators hinders the ability to understand one's rights, expressing one's needs and receiving

[9] B. Van der Kolk. The body bears the brunt. Mind, body and brain in the processing of traumatic memories. Raffaello Cortina Editore, 2015

[10] Verhülsdonk I et al. Prevalence of psychiatric disorders among refugees and migrants in immigration detention: systematic review with meta-analysis. BJPsych Open 2021, Vol. 7, Issue 6 (15 November 2021).

[11] Report to the Italian Government on the visit to Italy carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 2 to 12 April 2024. Strasbourg, 13 December 2024.

adequate assistance, fuelling a perception of exclusion and disorientation, and making people feel as if they no longer have any control over their lives (loss of agency).

The situation becomes paradoxical in the Gjader centre, where the staff are predominantly Albanian, while many of the detainees speak fluent Italian. This lack of a shared language amplifies the feeling of isolation: detainees not only do not know what will happen to them, but they are also unable to communicate with those who manage them. This communication gap generates profound disorientation, fuels a sense of exclusion and reinforces the perception of being completely invisible and powerless.

Another level of isolation, often overlooked but deeply impactful, is relational and emotional, resulting from forced separation from affective and social networks. In many CPRs, detainees live in conditions of total disconnection from the outside world, with very few opportunities for contact with family, friends or support figures. In the Gjader centre, for example, detainees do not have access to personal phones (according to the managing body, phones are taken at the entrance, but not SIM cards, which in any case, being from Italian operators, would have a very high cost of use. On this point, the managing body stated that it had purchased smartphones without cameras in order to provide a phone to each person: it was not possible to verify this), and the only way to communicate with the outside world is via the centre's telephone, the use of which is limited to only 20 minutes per day per person. This makes it almost impossible to maintain emotional ties or manage one's legal situation.

Isolation in Repatriation Centres is not a temporary or marginal experience: it is a structural condition operating on multiple levels — psychological, relational, symbolic and geographical — producing a profound and cumulative impact that undermines the psychological integrity of the individual. These dynamics have already been widely documented in Italian CPRs, but in the centre in Gjader, in Albania, conditions are further aggravated by extreme geographical distance, the total absence of civic monitoring and support networks, and language barriers that make any form of mutual understanding impossible.

In addition to the more well-known disorders, detention in CPRs causes a complex set of psychological consequences, including institutionalisation syndrome, apathy, withdrawal, loss of initiative, difficulty imagining a future, adjustment disorders, anhedonia, and self-harming or aggressive behaviour. In Gjader, where even the most basic elements of communication, listening and human recognition are lacking, these effects are amplified, turning into a real psychological and relational emptiness.

The living conditions in the Gjader centre and the level of isolation are perceived as worse than detention in Italian CPRs: the possibility of making phone calls and thus contacting the outside world is reduced to only 20 minutes per day; the only common area is a 17m x 10m courtyard enclosed by a metal fence, including at the top; there are no recreational activities and the TV does not work; there is no common canteen and meals are delivered and eaten directly in the rooms, on small tables that do not allow all occupants to sit at the same time.

Forced isolation in Gjader is not only a material condition, but a systemic condition of marginalisation that makes people invisible, silent and passive, contributing to an institutionalised dehumanisation that is even more extreme than in the CPRs on Italian territory.

4. Violated fundamental rights

4.1 Right to health, physical and mental integrity and dignity

In Italy, health is a constitutional right, including the choice to undergo any medical treatment: "The Republic protects health as a fundamental right of the individual and in the interest of the community, and guarantees free medical care to the indigent. No one may be obliged to undergo any given health treatment except under the provisions of the law" (Art. 32 Italian Constitution). Health coverage also extends to people who are on Italian territory without valid documents, through the free and renewable issuance of the so-called STP (Straniero Temporaneamente Presente - Temporarily Present Foreigner) code, which gives access to "urgent or essential outpatient and hospital care, even if continuous, for illness and injury, and [...] preventive medicine programmes to safeguard individual and collective health" (Article 35, paragraph 3 of the Consolidated Law on Immigration - Legislative Decree No. 286 of 25 July 1998). Regarding the persons subject to administrative detention, European Directive 2013/33/EU (the so-called Reception Directive) stipulates that: "The state of health, including mental health, of detained seekers [asylum seekers] who are vulnerable persons shall be the primary concern of the national authorities. Member States shall ensure that vulnerable persons in detention receive regular checks and adequate support, taking into account their particular situation, including the health perspective" (Article 11: Detention of vulnerable persons and applicants with special reception needs, paragraph 1).

In Italy, according to Legislative Decree No. 142 of 18 August 2015: "Seekers [asylum seekers] whose health or vulnerability, as defined in Article 17, paragraph 1, is incompatible with detention may not be detained in the centres referred to in Article 6 [detention centres for repatriation]. As part of the social and health services guaranteed in the centres, periodic checks are also carried out to verify the existence of conditions of vulnerability requiring special assistance measures" (Art. 7: Conditions of detention, paragraph 5). It should be noted here that, unlike in the prison health system, health protection in CPRs is subject to secondary legislation such as ministerial regulations and is incorporated into tender specifications through agreements and contracts. This leads to the privatisation of healthcare and the establishment of 'health extraterritoriality', with a consequent reduction in the possibility of control by the

National Health System and clarity in the chain of responsibility, with serious repercussions on respect for the fundamental right to health of detained persons.

Healthcare within CPRs presents numerous critical issues in several respects:[12]

1. failure to identify any vulnerabilities and a flawed system for certifying suitability for entry and detention;[13]

2. widespread mental health problems already present at the time of entry or arising during detention, pathologization of mental health issues with abuse/misuse of psychotropic drugs and tranquillisers (also with the aim of sedating riots, making medical intervention dangerously functional to the needs of discipline and security in CPRs), difficult access to mental health centres;

3. widespread acts of self-harm (including to claim one's rights) and numerous suicides;

4. inadequate management of people with chronic illnesses and/or disabilities: difficult access to specialised facilities, inability to use orthopaedic devices and walking aids (e.g. crutches, etc.) for security reasons. On this issue, and even more so on mental health issues, we should also consider the possibility of access to treatment and support in the countries of origin, in the event of actual repatriation;

5. inadequate management of people with pathological addictions and lack of access to public services for their clinical and therapeutic management;

6. lack of respect for privacy and presence of law enforcement officers during medical examinations;

7. difficulty in viewing and obtaining copies of one's medical records;

8. absence of clear and shared health protocols.

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[12] See also Beyond that door. A year of observation through the keyhole of the Milan Repatriation Centre. Edited by NAGA in collaboration with the Mai più Lager – No ai CPR network, 2023. Punishment without crime. Snapshot of the CPR in Milan. One year later. Report on Senator Gregorio De Falco's visit to the Repatriation Centre in Milan, Via Corelli 28, on 29 May 2022. BLACK HOLES. Detention without crime in the Centres for Repatriation (CPR). Edited by Federica Borlizzi and Gennaro Santoro, Italian Coalition for Civil Liberties and Rights (CILD), 2021. Report on the visit to the Centre for Repatriation (CPR) in Milan - Via Corelli. Edited by the Association for Juridical Studies on Immigration (ASGI), 2022. Reports of the National Guarantor for the Rights of Persons Detained or Deprived of Liberty. 2018, 2019, 2019-20, 2020 part 1, 2020 part 2. DETAINED. An X-ray of the detention system for foreigners. ActionAid Italia, University of Bari, 2024. LOCKED IN A CAGE. Journey into the hell of the Ponte Galeria CPR, edited by Federica Borlizzi and Valentina Muglia, CILD, 2024. Punishment without crime. Snapshot of the Milan CPR. Report on Senator Gregorio De Falco's visit to the Milan Repatriation Centre, Via Corelli 28, on 5 and 6 June 2021. Locked up and sedated: the daily abuse of psychotropic drugs in Italian CPRs. Luca Rondi and Lorenzo Figoni, Altreconomia, 1 April 2023. Cocco N et al. Health protection in CPRs: a right withheld. In Law, Immigration and Citizenship, Issue no. 3/2024.

[13] See also APPEAL FOR A CAMPAIGN TO RAISE AWARENESS AMONG DOCTORS ON THE CERTIFICATION OF MIGRANTS' FITNESS FOR LIFE IN CPRs - Italian Society of Migration Medicine. Cocco N et al. Doctors should not declare anyone fit to be held in immigration detention centres. BMJ 2024;384 doi: https://doi.org/10.1136/bmj.q531 (Published 01 March 2024)

Several studies have shown that administrative detention causes serious and long term damage to the mental health of detainees: a higher incidence of anxiety, depression and post-traumatic stress disorder (PTSD) in people subjected to administrative detention compared to the general population, both during and after detention, and the severity of the symptoms has been directly correlated with the length of detention.[14] Unlike prisons, where healthcare is managed by the National Health Service, in CPRs healthcare is privatised and entrusted directly to the managing bodies that administer the centre, with a generic supervisory role played by the relevant Local Health Authorities (ASL).

The healthcare staff consists of doctors, nurses and psychologists, and is hired directly by the managing body, without specific expertise in the field of migration (e.g. migration medicine, transcultural psychology, aptitude for multidisciplinary work and intercultural mediation, knowledge and recognition of vulnerabilities as signs of torture, consequences of migration, etc.). Assessments of suitability for detention in CPRs are carried out by public health personnel, in the relevant local health authorities, or directly in the emergency room, through a memorandum of understanding between prefectures and public health facilities. For the CPR in Gjader, healthcare management is entrusted to the managing body Medihospes and is based on a protocol between the Albanian and Italian Ministries of Health (see paragraph 3.1). The healthcare personnel are Albanian, while the relevant local health authority is the one of Rome, and it is unclear at the healthcare level which protocols and guidelines are followed, whether Italian or Albanian. Furthermore, extraterritoriality also poses major limitations in terms of control over possible violence and abuse within the two Albanian centres.

As detailed above (Chapter 3), the healthcare issues in CPRs are further amplified for people detained in Albania. As recently analysed by the Association for Juridical Studies on Immigration (ASGI), despite the fact that European Directive 2008/115/EC, laying down common standards and procedures in Member States for the return of illegally staying third-country nationals, provides for the right to adequate and immediate access to essential medical care during detention (Art. 16: Detention conditions, paragraph 3), and the Italy-Albania Protocol provides that “Within the facilities referred to in paragraph 1 [Gjader and Shëngjin], the Italian side shall establish health facilities in order to ensure the necessary health services. [...] In the event of health needs that cannot be met by the Italian authorities within the facilities referred to in paragraph 1, the Albanian authorities shall cooperate with the Italian authorities responsible for those facilities to ensure that migrants detained there receive essential and urgent medical treatment" (Law No. 14 of 21 February 2024, Art. 4, paragraphs 6 and 8), these provisions make it clear that it is impossible to access specialist care and continue any ongoing treatment under the

[14] Baggio S et al. The Mental Health Burden of Immigration Detention: An Updated Systematic Review and Meta-Analysis, Criminology, vol 2/2020, pp. 219-233. Verhülsdonk I et al. Prevalence of psychiatric disorders among refugees and migrants in immigration detention: systematic review with meta-analysis. BJPsych Open 2021, Vol. 7, Issue 6 (15 November 2021). von Werthern M et al. The impact of immigration detention on mental health: a systematic review. BMC Psychiatry. 6 December 2018;18:382. doi: 10.1186/s12888-018-1945-y

conditions provided for by the National Health Service, including Addiction Services and Mental Health Centres.[15]

Furthermore, it is clear that the Albanian health system cannot compensate for these shortcomings, as it is unable to guarantee a level of care comparable to that in Italy: "[In Albania] Public medical and hospital facilities are still severely lacking. Private healthcare facilities, although of a higher standard than public ones, are still unable to perform complex procedures. The sanitary situation appears precarious, due to open sewers, sewage infiltrating the water supply, insufficient water supply and poor waste disposal."[16]

In this regard, given the situation confirmed by the Italian Ministry of Foreign Affairs itself, the use of Albanian health facilities for the possible treatment and/or hospitalisation of detained persons appears to be in contrast with Article 3 of the Constitution: "All citizens have equal social dignity and are equal before the law, without distinction of sex, race, language, religion, political opinion, personal and social conditions. It is the duty of the Republic to remove economic and social obstacles which, by limiting the freedom and equality of citizens, prevent the full development of the human person [...]". At the end of 2024, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) published a report on its visit to Italy in April 2024, focusing in particular on the CPRs in Milan, Gradisca, Potenza and Rome. The report highlights numerous critical issues and shortcomings:

1. allegations of physical ill-treatment and excessive use of force by police personnel, in the absence of rigorous and independent monitoring;

2. widespread practice of administering psychotropic drugs diluted in water to detainees without a prescription (Potenza);

3. degrading transfers to or between CPRs, carried out in handcuffs without food or water for several hours;

4. a punitive detention environment, similar to that of special regime detention facilities, with the presence of riot police;

5. poor quality food and insufficient supplies of personal hygiene items;

6. complete absence of recreational activities;

7. inadequate system for certifying suitability for detention and medical screening on admission.

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[15] Extraterritorial detention and repatriation of irregular migrants from Albania: doubts about compatibility with EU law. Legal analysis. Association for Juridical Studies on Immigration (ASGI), July 2025.
[16] Travel Safely website of the Ministry of Foreign Affairs and International Cooperation, Country Profile Albania: ALB

Finally, the CPT raises doubts about the application of this type of model in an extraterritorial context such as Albania.[17]

The World Health Organisation's Regional Office for Europe has also recently commented on administrative detention, highlighting its long-term consequences on the health, especially mental health, of detainees, and recommending that alternatives to detention should always be considered, with administrative detention being used as a last option.[18]

The Italian Society of Migration Medicine has recently launched both an 'Appeal for a campaign to raise awareness among doctors about the certification of migrants' suitability for life in CPRs' and an appeal to the Medical Boards on CPRs and the right to health, welcomed by the National Federation of Medical-Surgical and Dental Boards (FNOMCeO) and supported by the National Council of the Board of Psychology (CNOP): "Numerous pieces of evidence describe CPRs as contexts of poor hygiene and sanitation, physical and mental suffering and social abandonment, with repeated acts of self- and hetero-inflicted violence on the bodies of detainees. The same evidence, 25 years after their establishment, confirms that these places, wherever they are and regardless of who runs them, are systematically and profoundly pathogenic and put the health and lives of the people detained there at risk." The FNOMCeO itself also recently expressed its opinion on the Italy-Albania Protocol on migrants: "the doctor, in compliance with the above-mentioned articles [articles of the Code of Medical Ethics: Article 3, on the duties of the doctor, Article 4, on the principles of freedom, independence, autonomy and responsibility, Article 6, on the effectiveness, safety and humanisation of health services and the optimal use of public and private resources, and Article 32, on the protection of fragile and vulnerable individuals] has a single purpose, which is to treat people without discrimination, respecting their dignity and the rights recognised by the Constitution and the International Conventions signed by Italy. This purpose of care must be ensured in all procedures provided for in the protocol when involving doctors. Due to the specific characteristics of the service, it appears necessary to foresee the presence of professionals adequately trained or with specific specialised skills, equipped with adequate healthcare tools, without which it is not possible to make a correct overall assessment of a person's state of health. In general, we can say that the selection of migrants for administrative purposes does not constitute a healthcare process."

Based on what has been said so far, we can say that CPRs are structurally pathogenic places that are harmful to individual and collective dignity, where not only should people with illnesses or vulnerabilities not be detained, but where even those who are generally healthy will experience a deterioration in their health, particularly their mental health, precisely because of the conditions of detention and health management within the CPRs themselves. The CPR is a place

[17] Report to the Italian Government on the visit to Italy carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 2 to 12 April 2024. Strasbourg, 13 December 2024.

[18] Addressing the health challenges in immigration detention, and alternatives to detention: a country implementation guide. Copenhagen: WHO Regional Office for Europe; 2022.

unsuitable for life, where a vicious circle of violence (physical and institutional) is established and normalised to justify the dehumanisation of those detained.

There is no way that the health of those detained can be improved: even attempts to medicalise and make administrative detention more attentive (see, for example, the intervention of ASL psychiatrists within some CPRs) can only contain mental illness and marginalisation, which must instead be taken care of by society and institutions, and not locked up in places that violate the fundamental human rights of detainees on a daily basis. The consequences of possible forced repatriation must also be taken into account: failure to take charge of chronic diseases, disabilities or psychological or psychiatric problems, stigmatisation, deterioration of mental health.[19]

'Whichever house I enter, I will enter for the relief of the sick, and I will refrain from any offence and voluntary harm' (Hippocratic Oath). The double extraterritoriality in place in the CPR in Albania (health extraterritoriality within geographical extraterritoriality) makes the institution of administrative detention even more dangerous, both because of the even more limited medical assistance and because of a further restriction on the control of possible violations and violence within the CPR itself.

4.2 Right to information

The Decree Law No. 37 of 28 March 2025 containing "Urgent provisions to combat irregular immigration" (converted with amendments by Law No. 75 of 23 May 2025) extends the use of facilities in Albania, initially reserved for asylum seekers who had never entered Italy, to ‘person subject to detention measures validated or extended pursuant to Article 14 of the Consolidated text on immigration - Legislative Decree No. 286 of 25 July 1998', therefore persons already present in the national territory.

The modification of the categories of recipients and the expansion of the purposes for which the centre is used have merely aggravated the violations already identified in the previous report, while giving rise to additional breaches. The right to information is one of the fundamental rights of every person forced to live in a facility that deprives them of their personal liberty, as it contributes to the protection of the dignity and rights of detainees. For this reason, information must be provided with the utmost effort in terms of communication and explanation. During the joint monitoring missions conducted by the TAI and the parliamentary contact group, and on

[19] Code of Medical Ethics, Art. 32: Duties of the doctor towards vulnerable individuals. The doctor must undertake to protect minors, the elderly and the disabled, in particular when he or she considers that the environment, whether within or outside the family, in which they live is not sufficiently attentive to their health, or is the scene of physical or psychological mistreatment, violence or sexual abuse, without prejudice to the reporting obligations provided for by law.

the basis of interviews with detainees, it emerged that, from the outset of the transfer operations from Italy to Albania, the right to information was openly violated.

The persons were in fact taken (in some cases in the middle of the night) from the CPRs where they were being held in Italy and forcibly transported, using coercive measures (handcuffs for the entire journey) to the port of Brindisi, and then on to the CPR in Gjader, without anyone providing them with any information about their destination, nor communicating the reasons and/or criteria used for their individual 'selection'. The administrative measure, for which no clear record can be found, does not appear to be grounded in predefined criteria and gives rise to a clear discriminatory treatmentt. It should also be noted that the right to information, more generally, also implies the possibility of seeking and receiving information without hindrance. Within CPRs, it is essential to ensure that detained foreigners are informed about their status, procedures, possible safeguards, specific conditions of detention, rights and duties, as well as how to apply for international protection or challenge the expulsion decision.

This right is protected by both legislation and international recommendations. However, in a detention context such as the CPR in Gjader, this function can only be exercised by the facility operator, as no other protection bodies are present in the facility and it is objectively difficult for lawyers to meet with their clients. The European Court of Human Rights, whose judgments, it should be remembered, constitute a standard for the constitutionality of national laws pursuant to Article 117(1) of the Constitution, has ruled extensively on this matter. In the Hirsi Jamaa et. al. v. Italy judgment, it stated that “the lack of information is one of the main obstacles to access to asylum procedures”, as well as the absolute importance of the right to information for those who are subject to removal measures so that they have effective access to procedures and appeals. Furthermore, it stated that, in the context of expulsion procedures, the possibility of applying for asylum must be guaranteed as a fundamental right of the individual. Already in 2023, in judgment 32070, the Supreme Court clearly stated that the public administration has a duty to document “the timing and manner in which the information was provided.” The information contained in the so-called ‘landing information sheet’ is not sufficient, nor is the standard clause usually included in rejection decrees.

The importance of this type of information is further confirmed by the fact that, in a ruling dated 19 April, the Court of Appeal of Rome did not validate the detention of a Moroccan citizen transferred on 11 April to the CPR in Gjader and already subject to an expulsion order, who, after his transfer to Albania, urged and informed by his trusted lawyer, applied for international protection. In this case, since the person was an asylum seeker, the Court of Appeal had jurisdiction over the validation of the detention. As this specific case was not expressly provided for in the Italy-Albania Protocol, nor in Implementation Law No. 14 of 21 February 2024, as amended by the recent Decree Law No. 37 of 28 March 2025 subsequently converted into Law 75/2025, the Court of Appeal of Rome issued an order not to validate the decree of detention in the Gjader repatriation centre adopted by the police commissioner.

4.3 Access to judicial protection

One of the most problematic aspects related to legal protection is the question of how the right to an effective remedy and fair access to judicial protection can be reconciled with delocalised procedures, also in light of Article 47 of the EU Charter, which states that "Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal." The detention of foreign nationals in the Gjader facility, with the current changes, constitutes a violation in terms of access to justice, the effectiveness of judicial remedies and legal assistance, thereby violating Articles 24 and 3 of the Constitution.

In particular, the objective distance between the defence lawyer and his/her client, together with the limited time allowed for hearings to extend and review detention, has concrete and effective repercussions on the exercise of the right to defence by persons detained in centres in Albania in at least two respects: the participation of the defence lawyer in the hearing and the right to communicate with his/her client. It should not be underestimated that both the extraterritoriality and the isolated location of the Gjader centre create enormous practical and economic obstacles to meeting and contacting the defence lawyer and protection agencies, resulting in radical discrimination based on personal circumstances, which is prohibited by Article 3 of the Constitution and occurs when a law 'without reasonable cause' provides for different treatment between those who are in 'equal situations' (Constitutional Court Judgment No. 15 of 1960).

Similar observations can be made with regard to assistance during the validation or extension hearing, since, unlike in Italian CPRs, the defence lawyer cannot choose whether to attend the hearing with his or her client in the centre or in the courtroom: instead, they can only conduct the hearing remotely, at the Court or the Office of the Justice of the Peace in Rome, regardless of specific defence requirements. It is primarily the extraterritoriality of the centre that prevents effective access to defence protected by Article 24 of the Constitution and Article 6 of the ECHR. Italian law governing the conduct of hearings in Albania allows the defence lawyer to go to the centre in Albania only if there are technical problems with the remote connection, but it is clear that this is completely incompatible with the time limits for hearings to extend or validate detention. The Directive of 19 May 2022 (the so-called Lamorgese Directive) containing 'Criteria for the organisation and management of detention centres for repatriation' protects access to the Centre for the foreigner's defence lawyers, subject to the presentation of a specific mandate, but it is undeniable that in Albania this access - which is formally guaranteed - is in fact severely limited for the reasons indicated above.

The problems associated with the exercise of the right to defence are even more evident and glaring for foreigners forcibly transferred to Gjader who did not already have a counsel of choice. From the Albanian centre, and with the conditions of unlawful restriction of the rights to information indicated in paragraph 4.2, together with language barriers, it becomes almost impossible to contact a lawyer in Italy and confer a mandate for defence. In this context, the stay

in the Albanian facility is therefore destined to continue without the detainee having any real possibility of asserting his or her case during the review of the detention order. The ECHR, in the context of a violation of Article 13 of the ECHR in relation to the right to an effective remedy, has recognised a violation when, in specific situations, it is not possible to avail oneself of effective remedies that allow possible complaints to be substantiated by evidence, with access to interpreters and legal assistance from counsel (Abdolkhani and Karimnia v. Turkey, 2009; M.S.S. v. Belgium and Greece [GC], 2011).

4.4 Violation of constitutional, international and European principles

The Constitutional Court, in its ruling no. 96 of 2025, expressly recognises that "The rules governing detention are certainly subject to the constitutional guarantees relating to the deprivation of personal liberty referred to in Article 5 of the ECHR and to the conventional rights that may be affected during detention, including the right to an effective remedy referred to in Article 13 of the Constitution," and there is no doubt that an absolute legal reserve must be recognised for Article 13. The recent ruling cannot be read in isolation from that of the Constitutional Court itself (judgment no. 105/2001), which recognises that “(...) Nor can it be said that the guarantees of Article 13 of the Constitution are mitigated with regard to foreigners, in view of the protection of other constitutionally relevant interests.

Although there are many public interests at stake in the field of immigration and although the problems of security and public order associated with uncontrolled migration flows may be perceived as serious, this cannot in any way undermine the universal nature of personal freedom, which, like the other rights that the Constitution proclaims to be inviolable, belongs to individuals not as members of a particular political community, but as human beings." While it is true that the absence of primary legislation, in line with Article 13 of the Constitution, governing the 'means' of restricting personal freedom affects the entire CPR system, and not only the Gjader facility, it is equally clear, as illustrated below, that the lack of guarantees to protect the rights of detainees is even more serious in the facility located in Albanian territory, where even the current regulatory and administrative provisions for CPRs operating in Italy are not fully complied with.

The Directive of the Ministry of the Interior of 19 May 2022, known as the Lamorgese Directive,[20] aiming at ensuring uniform rules and levels of reception for the internal organisation and provision of services within CPRs established on national territory, has been violated, as it is not possible to comply with the same rules and guarantee similar standards in the facilities built in

[20] https://www.interno.gov.it/sites/default/files/2022-06/direttiva_ministro_lamorgese_19.5.2022_accessibile.pdf

Albania, creating significant inequalities between persons in the same legal situation. Among the most critical points are:

· Communications: a letter and telephone correspondence service must be provided, ensuring the daily dispatch or delivery of correspondence. The location of the centre in Albania can only delay and complicate communications, also entailing additional costs for the Italian State.

· Access to the centre: the Lamorgese Directive provides that, among others, family members, ministers of religion accredited to the religious denomination to which they belong, may access the Center at the request of the foreign national; staff of the diplomatic or consular representation of the country of origin, at the request of the foreign national or the organisational unit of the Immigration Office present in the Centre, representatives of bodies protecting beneficiaries of international protection with consolidated experience in the sector and voluntary associations or social solidarity cooperatives authorised to carry out assistance activities. In addition, of course, to the foreign national's defence lawyer, who may access the centre upon presentation of a specific mandate. In Albania, this access is clearly limited.

A further violation is related to the right to health enshrined in Article 32 of the Constitution. The so-called 'Lamorgese Directive' recognises a series of rights related to health protection, which cannot be protected within the Centre in Albania. In fact, the CPRs are required to have a health facility, where medical and paramedical staff are available 24 hours a day, including public holidays. Article 3 of the Directive, entitled 'Health assessment and medical care', is a crucial provision for ensuring that the health rights of migrants detained in CPRs are protected, but it appears to be completely disregarded.

Particular problems arise in relation to the proper assessment of a person's health before they enter the centre. In fact, “Foreign nationals shall be admitted to the centre after a medical examination, normally carried out by a doctor from the local health authority or hospital, at the request of the police commissioner – even at night – to ascertain the absence of obvious pathologies that would make their admission and stay in the facility incompatible, such as infectious diseases that are contagious and dangerous to the community, psychiatric disorders, acute or chronic degenerative diseases detected through anamnestic or symptomatic investigation, as well as through available health documentation.”

The main purpose of the provision is to assess the health state of migrants who will be detained in order to evaluate whether they can receive adequate care in confined communities such as CPRs. We would like to point out that failure to a proper assessment screening prior to restrictive measures would violate the principles of respect for human dignity, as it could result in the restriction of persons who are potentially unsuitable. Furthermore, if this preventive health check is not carried out, the Directive provides for the examination to be carried out within 24 hours of entry into the CPR by the ASL doctor with whom the Prefecture where the CPR is located has entered a specific protocol.

The Directive also provides for a medical screening to be carried out by the doctor in charge at the Centre after entry into the CPR, in order to assess the person's general state of health and any vulnerability profiles pursuant to Article 17, paragraph 1, of Legislative Decree No. 142/2015. Once again, the rationale is to gather health information in order to arrange any specialist medical examinations or diagnostic and therapeutic procedures at the relevant public health facilities and to assess the person's suitability for restricted community life. The certification of medical suitability for staying in the CPR also plays a fundamental role in the validation and extension of detention. In fact, the documentation is attached to the person's file and submitted to the judge at the time of validation/extension of detention. In the case of an application for international protection, the documentation is forwarded to the Territorial Commission responsible for deciding on the asylum application.

A further violation is found in relation to the application of Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for the returning of third-country nationals whose stay is irregular. Since the Protocol does not provide for the transfer of responsibility for return to other countries, not assigning Albania the task of carrying out return procedures, but instead extending the jurisdiction and applicability of Italian and European legislation to third countries in relation to third-country nationals 'as it is compatible' (Article 4 of the Protocol), persons are being detained in a third country that is not involved in the return procedure.

This is incompatible with the provisions of the Return Directive, which allows for transfer to a third country only if it is the country of origin, transit (on the basis of Community, bilateral or equivalent agreements), or another third country to which the person has voluntarily decided to be returned, and which accepts their entry. It is clear that this falls outside the scope of the Directive, as currently in force, in a legal fiction in which an agreement on the deterritorialization of asylum, expulsion and return procedures currently affects common EU rules by modifying their scope and anticipating the provisions of the European Pact on Asylum. The legitimacy of this deterritorialization was the subject of an intervention by the Criminal Cassation Court, Section I, which, in its order no. 23105 of 20 June 2025 (hearing of 29 May 2025),[21] questioned the legitimacy, in the light of European law, of the equivalence of the Gjader facility with the CPRs and hotspots located on national territory and, therefore, on the legitimacy of the provision, referred to in the Italian-Albanian Protocol, to apply in such centres, “insofar as they are compatible”, the provisions of domestic and European law on the entry, stay and removal of foreigners. The Section therefore referred the question of the compatibility of the transfer from Italy to Albania with the Return Directive and the Procedures Directive to the Court of Justice of the European Union pursuant to Article 267 TFEU, raising the following preliminary questions:

- “whether Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning

[21] Order Number: 23105, filed on 20 June 2025.

illegally staying third-country nationals its irregular, and in particular Articles 3, 6, 8, 15, and 16, preclude the application of domestic legislation (Article 3(2) of Law No 14 of 21 February 2024) which allows persons subject to detention measures validated or extended pursuant to Article 14 of Legislative Decree No 25 of 25 July 2023 to be transferred to the areas referred to in Article 1(1)(c) of the Protocol between the Government of the Italian Republic and the Council of Ministers of the Republic of Albania on strengthening cooperation on migration matters, signed in Rome on 6 November 2023, in the absence of any predetermined and identifiable prospect of return;

- if the answer to that question is in the negative, whether Article 9(1) of Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection precludes the application of domestic legislation (Law No 14 of 21 February 2024) which allows, on the basis of the deemed instrumental nature of the application for protection, the detention, in one of the areas referred to in Article 1(1)(c) of the Protocol between the Government of the Italian Republic and the Council of Ministers of the Republic of Albania on strengthening cooperation on migration, signed in Rome on 6 November 2023, of migrants subject to expulsion orders who, once transferred there, have submitted such an application."

Finally, it should be noted that the constitutionality of the Italy-Albania Protocol is the subject of Report No. 60 of 17 June 2025 of the Office of the Massimario and the Role of the Court of Cassation. The report focuses on "the amendments introduced in the provisions contained in Law No. 14 of 2024 ratifying and implementing the Protocol between the Government of the Italian Republic and the Council of Ministers of the Republic of Albania, as well as those (contained in Legislative Decree No. 142 of 2015, and in Article 14 of the Consolidated Law imm.) relating to the transfer of persons to facilities in Albania and the grounds for detention, the consequences of submitting an application for international protection and the applicability of the aforementioned provisions even in the presence of a centre located in a border or transit area."

4.5 Direct repatriation from Tirana: a double violation

A thorough investigation by Altreconomia revealed that on 9 May 2025, Italy carried out its first 'outsourced' operation: five Egyptian citizens were taken from the Repatriation Centre (CPR) in Gjader, accompanied along the road to Tirana and boarded a charter flight that departed from Rome and continued to Cairo after its stop in Albania. The repatriation operation directly from Albania was also the subject of a question by Rachele Scarpa. Contrary to what was stated by sources at the Interior Ministry, namely that the transfer on 9 May was legitimate because it took place in accordance with agreements between Italy and Albania, the operation clearly violates

EU law due to a clear violation of Article 3 of Directive 2008/115/EC and also goes beyond the provisions of the Protocol, which stipulates that operations must take place in areas under 'full Italian jurisdiction'. The police operations carried out outside the Gjader centre on Albanian territory against the persons transported (transport from the centre to Tirana airport, boarding operations, etc.) are completely devoid of judicial control and therefore took place outside any legal framework.

5. Conclusions and recommendations

5.1 Suspend transfers and cancel the agreement

As reported following the monitoring visits organised by the Asylum and Immigration Coalition in collaboration with the Italian Parliament and EU Contact Group and reported in this second report, the implementation of the Italy-Albania protocol on the forced transport to Albania of foreign nationals awaiting expulsion must be immediately suspended, both because of the seriousness of the facts found within the Gjader facility and for legal grounds. In the aforementioned order of 20 June 2025, the Court of Cassation clearly stated that the provisions contained in the Italy-Albania Protocol 'do not transform the areas in question [the Gjader centre] into a part of Italian territory', which raises the question ‘of the purpose of removal and, consequently, the objective pursued by detention measures’.

The Court of Cassation bases its reasoning on the definition of 'return' contained in Article 3 of Directive 115/EC/2008 on return as the process of removing a person to their country of origin or to a transit country, if this is provided for in international agreements, or to a third country only if the foreign national voluntarily chooses to return there. However, the agreement between Italy and Albania does not fall within any of these scenarios. Since, according to European law (Article 15 of the Return Directive), detention is a measure that can only be taken as a last resort when other less restrictive measures have proven to be impossible in practice, and can be maintained for the shortest possible period, according to the Court of Cassation, “it is necessary to verify that the measures adopted – with the consequent deprivation of personal liberty that accompanies them serve to ensure repatriation as identified above” (i.e. as defined in Article 3 of the Directive). The Court of Cassation emphatically points out that “there are no specific regulatory provisions in the [Italy-Albania] Protocol demonstrating the pursuit of the objective of ensuring the return of irregular migrants.”

It should also be noted that “nowhere in the agreement is it established how the objective should be implemented (...) in a territory that remains (...) that of a non-member state, even if subject to Italian jurisdiction - in terms of greater efficiency than in Italian territory with the necessary respect for the guarantees of current EU legislation.” According to the Court of Cassation, which expresses a broadly shared view, “the Member State does not have unlimited power to transfer [expelled migrants], but may only order, in general terms, repatriation under the terms of the aforementioned Article 3 of the Directive.” In other words, persons in the process of being expelled cannot be taken to and then detained in a third country, thereby thereby violating their fundamental rights, for the sole purpose of pursuing political objectives (e.g. the desired deterrent effect on arriving in Europe).

According to the Court of Cassation, the new Italian legislation represented by the Italy-Albania Protocol is therefore incompatible with the overall structure of the Return Directive and in particular with Articles 3, 6, 8, 15 and 16 (in fact, all the fundamental articles of the European law). The fact that the preliminary ruling referred to the Court of Justice of the European Union concerns precisely the assessment of the lawfulness of the decision to establish an administrative detention facility in a non-EU country for the purpose of enforcing expulsion should have had the immediate consequence of the Italian Government suspending transfer and detention operations at the Gjader centre until the EU Court of Justice had reached a decision. However, this did not occur at all.

Taking advantage of the fact that transfers from Italy to the Gjader centre are not subject to judicial scrutiny and that persons detained in Gjader can only apply for a review of the detention measure (and many detainees are unable to access effective legal assistance) the Italian Government not only failed to order the cessation of detentions already in place but continued transfers to the Gjader CPR even after the aforementioned order of the Court of Cassation. It should also be noted that the closure of the Gjader centre is a necessary step on the part of the Government, also in light of Constitutional Court ruling no. 96/2025, which, while rejecting the constitutionality objection raised by the Justice of the Peace of Rome in an order dated 17 October 2024, recognised that, with regard to detention in CPRs 'there is the violation complained of by the referring court with reference to the absolute legal reserve referred to in Article 13, second paragraph, of the Constitution'. In fact, in compliance with the Article 13(2) of the Constitution, it is the sole responsibility of the 'primary source to provide not only for the 'cases' but also, at least in their essential core, for the 'ways' in which detention may restrict the personal freedom of the person subjected to it’. However, this has never happened because “the legislator has failed to fulfil its positive obligation to regulate by law the 'ways' in which personal freedom may be restricted, thereby circumventing the guarantee function that the absolute legal reserve performs in relation to personal freedom in Article 13, second paragraph of the Constitution”.

The 'methods' of detention are currently improperly regulated (or not regulated at all) by regulatory sources that do not have the force of law and often only by simple administrative

provisions. The spare legislation in force is therefore 'completely unsuitable for defining, in a sufficiently precise manner, the rights of persons detained during the period – which may also be long-lasting – in which they are deprived of their personal freedom' (10). According to the Court, the legislator has an 'unavoidable duty to introduce comprehensive regulations that dictate, in abstract terms and in general for all detained persons, the content and methods that limit the discretion of the administration, so that the detention of foreigners ensures respect for fundamental rights and human dignity without discrimination' (11). On the basis of this highly significant ruling, several courts have held that 'in the absence of a determination of the methods of detention not yet regulated by the legislator with a primary source, the right to personal freedom, the violation of which is clearly expressed by the Council, can only be extended, because any 'method' not regulated by primary law does not have the seal of constitutional legality and is legally unsuitable for restricting it' (Court of Appeal of Cagliari, Sassari Detached Section, N.R.G. 290/25).

In its recent thematic report[22], the Court of Cassation highlighted that “in the absence of a declaration of constitutional illegitimacy, the provision brought to the attention of the judge of laws remains in the legal system and, consequently, remains binding on the judge," urging the judges of merit to, if anything, "request the Constitutional Court to re-examine the provision already examined, taking into account the assessments already made in the previous ruling on the existence of the alleged violation."

Without going into further detail here on different jurisprudential approaches that are beyond the scope of this report, what should be emphasised is the fundamental difference between the situation at the CPR in Gjader and that at any other CPR located on Italian territory; in the extraterritorial CPR in Gjader, there is a further serious restriction of even the minimum rights granted to foreigners detained under the current administrative provisions. Those who are unlawfully detained in Gjader are therefore subjected to particularly detrimental treatment that is in no way tolerable, even in light of the alleged radical illegality of extraterritorial detention, which is the subject of a preliminary ruling referred to the CJEU by the Court of Cassation. In conclusion, it is in no circumstances possible for the Italian Government to continue to apply the provisions of Law No 14 of 21 February 2024, which allow detention in the Gjader facility.

The Italian Government's decision to establish an administrative detention facility outside the national territory at all costs is an expression of its desire to position itself as a leader in Europe in defining increasingly cruel and oppressive externalisation policies, undermining the principles of law contained in European legislation and attempting to restrict judicial oversight at both national and EU level. This objective seems to be shared by many governments, even though what they are pursuing is a rejection of the very foundations of the European Union itself. If the Union continues along the path laid out by the European Pact, further worsening the legislative framework shared by member countries, there is a risk of effectively nullifying the right to

[22] Court of Cassation - Office of the Massimario and the Role, Rel. no. 65 Rome, 15 July 2025.

asylum as established by international law and of substantially violating the values enshrined in the founding treaties of the Union itself. This is a risk that not everyone seems to be fully aware of at the moment and which we, as Italian civil society, want to denounce in all national and international public forums.

This report was produced by the organisations participating in the Asylum and Immigration Working Group (Tavolo Asilo e Immigrazione) a civil society network committed to the protection of the rights of migrants, refugees and asylum seekers.

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