

# European Court of Justice : Towards new legal battlegrounds?

## Reflections on the future of European Court of Justice rulings in light of the entry into force of the European Pact on Migration

The European [Pact on Migration and Asylum](#) is set to enter into force in June 2026, yet since its approval in June 2024, some of the changes it introduced have been the subject of radical legal battles at the local, national, and European levels.

As [we monitored over the past year](#), legal battlegrounds around border procedures started in Sicily between 2023 and 2024 – where the judges of the specialized immigration sections of [Catania and Palermo](#) had refused to validate the detention of asylum seekers from supposedly safe countries of origin – then continued at the [Court of Rome](#) – competent for the validation of detentions in Albania – and finally reached the [Court of Justice of the European Union](#).

The subject of debate in the latter forum, which – due to its relevance – would then have an impact on the decisions taken by the Italian courts, was essentially two issues, namely: a) the criteria to be adopted in order to classify a country of origin as safe and b) the possibility – or duty – of judges in Member States to disapply measures or rules deemed unlawful or contrary to the principles and standards of European Union law.

Certainly, the [‘list of safe countries of origin’](#) – drawn up by Italy and published in the form of an interministerial decree – was one of these, so much so that the Italian government, with the aim of strengthening its nature and ‘protecting its content’, had proceeded to transform it into law. Fortunately, the Court of Justice of the European Union would later reiterate the need for judges to disapply any act potentially contrary to EU law, and this is what happened.

Since 2023, in various forums, the debate on the concept of Safe Country of Origin (SCO) had become increasingly central and decisive. In Italy, starting with the [controversial Cutro decree](#) (then converted in Law 50/2023) and continuing with the [agreement signed between Italy and Albania](#), it had become a key criterion in the processes of access to the right of asylum: no longer just, as in the past, a means of channelling asylum seekers into accelerated rather than ordinary procedures, but also a means of selecting people to be subjected to measures of deprivation of personal liberty on Italian territory, or possibly to forced transfers by sea to Albania, where they would be subjected to forms of extraterritorial detention. However, the obstacles that emerged at the judicial level—through the non-validation of detentions and, therefore, orders for the release of detained persons—had caused the government’s plans to fail, leaving first the centres in [Ragusa-Modica](#) and [Porto Empedocle](#) empty, and then the facilities built in [Gjadër](#), Albania. Furthermore, faced with the impossibility of implementing the Italy-Albania agreement in its original form, confirmed by the failure of three experiments, the Italian government was forced to modify the nature of the facilities on site, redefining their intended use and allowing them to be ‘filled’ with [people already detained in Italian CPRs](#), without the need for new validations.

In light of these events – already discussed here and here – this article aims to reflect on the impact – or possible legacy – of the ECJ’s decisions in view of the imminent entry into force of the European Pact on Migration.



*Picture: demonstration in Albania, Alessandro Murtas*

### **The ECJ's decision of August 1, 2025, in line with that of October 4, 2024**

On August 1, 2025, the Court of Justice of the European Union adopted an important decision on the [reunited cases of Alace and Canpelli](#).<sup>[4]</sup> These cases originated from two preliminary rulings by the Civil Court of Rome concerning two Bangladeshi citizens who had been transferred to Albania as part of the second trial of the procedures provided for in the agreement. In referring the cases to the ECJ, the [Court of Rome](#) – which has jurisdiction over the validation of detentions in Albania – asked the court to rule on two points. Firstly, regarding the concept of a safe country of origin – in this case Bangladesh – and therefore the criteria used to qualify it as such, as well as the legitimacy of this qualification; secondly, on the possibility for an ordinary court, such as that of Rome, to disapply the list of safe countries, as it is not consistent with European standards and principles on asylum and human rights.

At the [first hearing](#) – on February 25, 2025 – the European Commission radically reversed its position, arguing that it was possible to consider a country a safe country of origin despite the presence of exceptions for certain categories of the population and parts of the territory. This possibility had already been ruled out by the Court in its [October 2024 decision](#), when it intervened on the issue at the request of the Czech Republic.

Nevertheless, in its decision of August 1, 2025, the ECJ ruled in full continuity with its decision of October 4, 2024, on [two fundamental issues](#). First, the correct interpretation of the concept of a safe country of origin, which, according to Article 37 of the Procedures Directive, could not provide for exceptions with respect to parts of the territory or categories of persons. A safe country of origin, therefore, had to be 'consistently and generally' safe, with no exceptions for specific categories of persons or parts of the territory.

Furthermore, on the second point, the Court established the autonomy of judges to exercise their function of 'legal control' over any sources of law that conflict with EU law and, where necessary, to disapply them. Several Italian judges had already begun to exercise this function

since 2023, and in greater numbers after the October 2024 decision on the CV case. However, this ruling gave greater legitimacy to their actions.

The [Italian government's critical response](#) to this decision—in its attempt to highlight an alleged “intrusion” by the judiciary into “political matters”—ended up emphasizing its very broad scope. A statement from the Presidency of the Council of Ministers read: “The decision of the EU Court of Justice regarding the safe countries of origin of illegal migrants is surprising. Once again, the judiciary, this time European, is claiming powers that do not belong to it, in the face of responsibilities that are political. The EU Court of Justice has decided to hand over to any national judge the decision not on individual cases, but on the part of migration policy relating to the regulation of returns and expulsions of irregular migrants.”

Once again, a judicial body found itself “hindering” the Italian government’s plans to radically limit access to asylum and its recognition through accelerated procedures at the border and the detention of asylum seekers, first within and then outside Italian territory.

However, the legacy of these decisions in terms of the effective protection of the right to asylum would be severely tested by the increasingly imminent entry into force of the European Pact on Migration.

### **The European Pact: from procedural regulations to screening, to the ‘force majeure’ directive and the return regulation**

From June 2026 on, the European Pact will enter into force, enabling the application of various provisions contained in the [10 legislative acts](#) that it introduces. In view of the general translation of the directives on asylum – [qualification](#) (EU 2024/1347) and [procedures](#) (EU 2024/1348) – into more ‘binding’ regulations, and thus the limitation of the autonomy of member states in their transposition, the European Pact would bring with it new developments regarding access to the right to asylum, that entail a real [erosion of refugee’s rights](#).

Firstly, the possibility of considering a country of origin safe despite the existence of exceptions ‘to its safety’, both territorial in nature and about certain categories of persons – and thus the expansion of potentially safe countries of origin and the number of persons to be channelled into less protective accelerated procedures at the border. Secondly, the introduction of a new ‘criterion’ for channelling people into such procedures, namely the ‘20% rate of recognition of international protection for persons from a given country’. As is well known, recognition rates at first instance are often low, as most of the battles are then fought on appeal, i.e. in court. Furthermore, this criterion did not appear to be in any way capable of taking into account the security of a country of origin, partly—but not only—because of the time lag between “unrecognized” asylum applications and the submission of those “affected” by the same mechanism.

Furthermore, in its proposal for a return regulation, the pact introduced an increasingly binding link between the denial of asylum and the urgency of returning persons ‘excluded from any form of protection’ – which materialized in the practice of continuous detention from arrival to return.

The close connection between the border procedures provided for in the new [screening regulation](#) (2024/1356) and the [proposal for the return regulation](#) was further emphasized in the European Commission’s Communication on the “[State of play on the implementation of the Pact on Migration and Asylum](#)” of June 11, 2025, one year after its adoption and entry into force. In “building block 2” – referring to ‘A new system to manage migration at the EU external borders’, the Commission made direct reference to the establishment of new ‘multipurpose centres, that combine screening and the asylum and return border procedures’, to be defined with the support of the EUAA and Frontex agencies, and gave Member States

until April 2026 to communicate the locations where the new border procedures would be implemented.

While, on the one hand, the introduction of these new “multipurpose centres” opens up new room for manoeuvre for governments, where it is possible to further restrict access to asylum, the effective access of detained persons to information, communication with the outside world, and therefore the exercise of the right of defence, thus violating the rights of persons on the move, on the other hand, it constitutes a new area of struggle, both legally and politically.

The European Commission itself seems to be aware of the possible proliferation of legal battles around the new border screening procedures, (lack of) access to asylum, and returns, and identifies “necessary cooperation with judicial authorities” as an indispensable element for their implementation.

*“The implementation of the mandatory border procedure will need to be accompanied by an independent fundamental rights monitoring mechanism (see section 3.10) and **rely on effective cooperation with the judiciary** to meet the deadlines and take account of procedural changes introduced by the Pact. **Member States have identified cooperation with the judiciary as an important element of the implementation process.** This requires taking into account the additional needs of the judiciary, ensuring the independence of the judiciary and meeting the requirements established by EU law for courts or tribunals.”*

#### **Sicily as a testing ground, again: towards new litigation and new struggles?**

In line with the past, Sicily would have been set up as a [testing ground](#) for the new border procedures provided for in the pact – including identity checks, biometric data collection, coordinated support for returns, with Frontex playing a central role. Between August 13 and 24, the Frontex agency will travel to the island of Lampedusa to test a new “[screening toolbox](#)” on 240 people who just arrived by sea. To date, no information is available on the nature of this tool, and it is therefore too early to assess the impact that it – and the other measures introduced by the pact – will have on people who have survived the Mediterranean crossing and on asylum seekers. We know that accelerated procedures at the border tend to undermine the guarantees afforded to asylum seekers and further empty them of their content, and we imagine that the new measures introduced by the pact will seek to have exactly the same effect.

Yet the legacy of the legal battles fought at the local, national, and European levels in recent years exists and cannot be erased. The judiciary has de facto blocked illegitimate political designs, in the simple, honest, and courageous exercise of its prerogatives. The judges who—speaking out one after another in failing to validate detentions and ordering the release of asylum seekers—have done so with reference to an existing framework of protections at the constitutional, European, and international levels. We are well aware of the ambiguities and know that it is not appropriate to idealize it, yet we feel it is necessary to recognize that – if the aim is to protect people on the move, their desires, their expectations, and their rights, and to continue to challenge in court policies that would undermine, criminalize, and demean them – legal battles will continue to be an important part of their protection. While it is difficult to imagine what form these battles will take – as well as extremely premature – we expect them to continue to multiply.

It will be important for civil society to continue to monitor the implementation of the Pact and to engage with people who are forcibly detained and deported, denouncing the violence and violations to which they are exposed. Only these alliances and dialogues can fuel the challenges to increasingly discriminatory, racialized, violent, and dehumanizing border and asylum management policies.