

OPINION OF ADVOCATE GENERAL
EMILIOU
delivered on 23 April 2026 (1)

Case C-414/25 [Sedrata] (i)

**Ministero dell'Interno,
Questura di Roma**

v

S.H.,

A.H.,

joined parties:

Procuratore generale della Repubblica presso la Corte Suprema di Cassazione

(Request for a preliminary ruling from the Corte suprema di cassazione (Supreme Court of Cassation, Italy))

(Reference for a preliminary ruling – Border controls, asylum and immigration – Directive 2008/115/EC – Directive 2013/32/EU – Return procedures – Examination of applications for international protection – Bilateral agreement between a Member State and a third State – Detention in facilities located in third countries)

I. Introduction

1. In 2023, the Italian Government concluded a bilateral agreement with the Albanian Government which, in essence, enables the Italian authorities to operate certain facilities located in Albanian territory in which third-country nationals subject to border or return procedures may be detained for the period

necessary to complete those procedures. Under that agreement, those facilities fall within Italian jurisdiction, and the relevant national and EU legislation remains applicable with respect to the third-country nationals concerned.

2. By its questions, the referring court – the Corte suprema di cassazione (Supreme Court of Cassation, Italy) – seeks, in essence, clarification as to whether the Italian rules implementing that agreement are compatible with the provisions of Directive 2008/115/EC (also known as ‘the Return Directive’) (2) and of Directive 2013/32/EU (also known as ‘the Asylum Procedures Directive’). (3)

II. Legal framework

A. European Union law

1. Directive 2008/115

3. Point 3 of Article 3 of Directive 2008/115 defines ‘return’ as ‘the process of a third-country national going back – whether in voluntary compliance with an obligation to return, or enforced – to:

– his or her country of origin, or

– a country of transit in accordance with Community or bilateral readmission agreements or other arrangements, or

– another third country, to which the third-country national concerned voluntarily decides to return and in which he or she will be accepted’.

4. Article 6(1) of Directive 2008/115 reads as follows:

‘Member States shall issue a return decision to any third-country national staying illegally on their territory, without prejudice to the exceptions referred to in paragraphs 2 to 5.’

5. Article 8(1) of Directive 2008/115 provides:

‘Member States shall take all necessary measures to enforce the return decision if no period for voluntary departure has been granted ... or if the obligation to return has not been complied with within the period for voluntary departure granted ...’

6. Article 15 of Directive 2008/115 provides:

‘1. Unless other sufficient but less coercive measures can be applied effectively in a specific case, Member States may only keep in detention a third-country national who is the subject of return procedures in order to prepare the return and/or carry out the removal process ...

Any detention shall be for as short a period as possible and only maintained as long as removal arrangements are in progress and executed with due diligence.

2. ...

The third-country national concerned shall be released immediately if the detention is not lawful.

...

4. When it appears that a reasonable prospect of removal no longer exists for legal or other considerations or the conditions laid down in paragraph 1 no longer exist, detention ceases to be justified and the person concerned shall be released immediately.

...'

7. Article 16(1) of Directive 2008/115 reads as follows:

'Detention shall take place as a rule in specialised detention facilities. Where a Member State cannot provide accommodation in a specialised detention facility and is obliged to resort to prison accommodation, the third-country nationals in detention shall be kept separated from ordinary prisoners.'

2. Directive 2013/32

8. According to point (p) of Article 2 of Directive 2013/32, which includes definitions, "remain in the Member State" means to remain in the territory, including at the border or in transit zones, of the Member State in which the application for international protection has been made or is being examined'.

9. Article 3(1) of Directive 2013/32, which concerns the scope of the directive, provides:

'1. This Directive shall apply to all applications for international protection made in the territory, including at the border, in the territorial waters or in the transit zones of the Member States, and to the withdrawal of international protection.'

10. Article 9(1) of Directive 2013/32, concerning the right to remain in the Member State pending the examination of the application, reads: 'Applicants shall be allowed to remain in the Member State, for the sole purpose of the procedure, until the determining authority has made a decision in accordance with the procedures at first instance set out in Chapter III. That right to remain shall not constitute an entitlement to a residence permit.'

B. International and national law

11. In its request for a preliminary ruling, the referring court refers, primarily,⁽⁴⁾ to (i) the Protocollo tra il Governo della Repubblica italiana e il Consiglio dei ministri della Repubblica di Albania per il rafforzamento della collaborazione in materia migratoria (Protocol between the Government of the Italian Republic and the Council of Ministers of the Republic of Albania on the strengthening of cooperation in the field of migration; 'the Protocol') signed in Rome on 6 November 2023; and (ii) the national law implementing the Protocol ('Law No 14'), as subsequently amended. ⁽⁵⁾

1. The Protocol

12. According to Article 2 of the Protocol, its purpose is to 'strengthen bilateral cooperation between the Parties on the management of migration flows from third countries, in accordance with international and European law'.

13. Article 4 of the Protocol provides for the right of the Italian Republic to use certain areas of Albanian territory (which, pursuant to Article 1(1)(c) of the Protocol, are identified in Annex 1 thereto) to establish facilities for the administrative detention of migrants. According to Article 4(2) those facilities must be managed by the Italian Republic in accordance with national and European regulations. Article 4(3) provides, first, that the entry and stay in Albanian territory of migrants accommodated in the facilities are to be allowed 'for the sole purpose of performing the border or return procedures provided for by Italian and European legislation, and for the time strictly necessary to perform them', and, second, that 'in the event that the right to stay in the facilities ceases for any reason whatsoever, the Italian Republic shall immediately transfer those migrants out of Albanian territory.' According to Article 4(3) and (4), the entry of migrants into Albanian territorial waters and Albanian territory takes place exclusively with the means of the Italian authorities and is permitted by the Albanian authorities for the sole purpose of carrying out border and return procedures, and for the time strictly necessary to perform them.

14. Article 6(5) and (6) of the Protocol imposes on the Republic of Italy the duty to adopt 'the necessary measures in order to ensure migrants remain within the areas, preventing their unauthorised exit into the territory of the Republic of Albania' and, in case of such an exit, to grant the Albanian authorities the power to return the migrants to the centres.

15. Pursuant to Article 9(1) of the Protocol the stay of migrants in Albanian territory may not exceed the maximum detention period allowed by the Italian legislation in force. Article 9(2) of the Protocol provides that 'the Parties shall allow access to the facilities provided for in this Protocol to lawyers, their assistants, and international organisations and EU agencies providing advice and assistance to applicants for international protection, within the limits provided for by the applicable Italian, European and Albanian legislation'.

2. Law No 14

16. Article 3(3) of Law No 14 equates the areas referred to in Article 1(1)(c) of the Protocol with the border or transit areas identified in other instruments of Italian law. Article 3(4) of that law equates transfers between a facility located in Italian territory and a facility identified in the Protocol with transfers between two facilities located in Italian territory.

17. Article 4 of Law No 14 provides that the Italian legislation on immigration and 'the Italian and European regulations concerning the requirements and procedures relating to the admission and stay of foreigners in the national territory', apply to migrants transferred to the facilities located in Albanian territory, 'in so far as they are compatible'.

III. Facts, procedure and the questions referred

18. The main proceedings originate from two decisions adopted, respectively, by the Prefetto di Ancona (Ancona Prefect, Italy) and the Prefetto di Firenze (Florence Prefect, Italy), ordering the expulsion of two third-country nationals found to be staying in that Member State illegally.

19. In both cases, since the removal could not be carried out, the competent Questore (Police Chief) ordered that the persons concerned be detained for the purpose of removal at the return centre in Bari (Italy). Those detention orders were subsequently endorsed by the Giudice di pace di Bari (Magistrate, Bari, Italy).

20. Subsequently, the Ministero dell'Interno (Ministry of the Interior, Italy) decided to transfer the persons concerned to the return centre in Gjadër (Albania), a facility established pursuant to the Protocol and located in Albanian territory. After their arrival at that centre, both individuals lodged applications for international protection with the Italian authorities. In each case, the continued detention of the persons concerned at the same centre was ordered by the Questore di Roma (Police Chief, Rome, Italy).

21. By two judgments of 24 April 2025, the Corte di Appello di Roma (Court of Appeal, Rome, Italy) refused to uphold the orders of the Police Chief, Rome, finding that the national legislation at issue was incompatible with EU law.

22. Disagreeing with that assessment, the Ministry of the Interior lodged an appeal on points of law against those judgments before the Corte suprema di cassazione (Supreme Court of Cassation). That court joined the two sets of proceedings and, harbouring doubts as to the correct interpretation of the relevant provisions of EU law, decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

- (1) Does Directive [2008/115] and, in particular, Articles 3, 6, 8, 15 and 16 thereof, preclude the application of national legislation ... which allows recipients of detention orders endorsed or extended ... to be taken to the areas referred to in Article 1(1)(c) of [the Protocol], in the absence of any predetermined and identifiable prospect of return?
- (2) If the answer to that question is in the negative, does Article 9(1) of Directive [2013/32] preclude the application of national legislation ... which allows, on the grounds of an application for protection deemed to have been lodged for improper purposes, the detention in one of the areas referred to in Article 1(1)(c) of [the Protocol], of the migrant who is the subject of an expulsion order and who, having been brought to said areas, has submitted such an application?

23. The referring court also requested that the case be dealt with under the urgent preliminary ruling procedure provided for in Article 107(1) of the Rules of Procedure of the Court of Justice. Following the reply of the referring court to a request for clarification – in which that court indicated that the individuals concerned were no longer detained – the Court decided that there was no need to grant that request. The case was nevertheless accorded priority treatment pursuant to Article 53(3) of the Rules of Procedure.

24. Written observations have been submitted by the Netherlands, Italian and Polish Governments, as well as by the European Commission. Those parties, with the exception of the Polish Government, also presented oral argument at the hearing on 24 March 2026.

IV. Analysis

25. In the present Opinion, I shall first address the objection raised by the Italian Government concerning the admissibility of the request for a preliminary ruling (A). I shall then make certain preliminary remarks

concerning, first, the applicability of Directive 2008/115 and Directive 2013/32 to the main proceedings (B) and, second, my understanding of the national legislation at issue in the main proceedings (C). I shall then address the two questions referred (D and E).

A. The admissibility of the request for a preliminary ruling

26. The Italian Government submits, at the outset, that the request for a preliminary ruling is inadmissible. In its view, the order for reference does not explain with sufficient clarity why the referring court entertains doubts as to the compatibility of the national legislation at issue with EU law.

27. That argument can, in my view, be set aside without difficulty. The order for reference sets out, with sufficient clarity, the reasons which led the referring court to seek guidance on the interpretation of certain provisions of Directive 2008/15 and Directive 2013/32, as well as their relationship with the national legislation applicable to the main proceedings.

28. It is, therefore, clear which legal issues the referring court must resolve in order to give judgment and why it considers that guidance from the Court of Justice would be useful in that regard. Indeed, it is noteworthy that neither the Italian Government nor the other interested persons who submitted observations encountered any difficulty in addressing the substantive issues raised in the request for a preliminary ruling.

B. Preliminary remarks (I): applicability of Directive 2008/115 and Directive 2013/32

29. I will now turn to the examination of those issues. Before doing so, however, it is appropriate to make certain preliminary remarks concerning the relationship between the national legislation at issue and the EU instruments referred to in the order for reference.

30. I understand that, under national law, the EU legislation governing the procedures applicable to individuals detained in the facilities located in the Republic of Albania – including Directive 2008/115 and Directive 2013/32 – applies to those individuals.

31. Article 4(2) and (3) of the Protocol refers, in that regard, to the relevant ‘Italian and *European* legislation’. (6) In addition, Article 4 of Law No 14 provides that Italian legislation on immigration, and ‘the Italian and *European* regulations concerning the requirements and procedures relating to the admission and stay of foreigners in the national territory’, applies to migrants transferred to facilities located in Albanian territory, ‘in so far as they are compatible’. (7)

32. When asked at the hearing to clarify the meaning of the expression ‘in so far as they are compatible’, the Italian Government explained that it is only intended to ensure that certain terms included in the relevant national and EU provisions, which might not expressly cover situations such as those arising from the Protocol and Law No 14, are interpreted in a manner which ensures the applicability of the provisions in question. (8) I therefore understand that, in situations such as those at issue in the main proceedings, Directive 2008/115 and Directive 2013/32 apply, as a matter of national law, and do so *in full*. Indeed, when asked at the hearing whether the principle of primacy of EU law would operate in case of a conflict between a provision of the relevant national legislation and a provision of Directive 2008/115 or Directive 2013/32, the Italian Government answered in the affirmative.

33. That being said, it is also necessary to explain why, in my view, those directives apply in the present case as a matter of EU law.

34. In that regard, it scarcely needs to be recalled that a Member State cannot unilaterally restrict the scope *ratione personae* or *ratione materiae* of EU legislation, or apply its provisions selectively, depending on whether they are consistent with subsequently adopted national legislation. Such conduct would plainly be incompatible with the principle of primacy of EU law.

35. As regards the scope of Directive 2008/115, the Court has consistently held that, '[its scope] is defined by reference *solely* to the situation of the illegal stay in which the third-country national finds him- or herself, irrespective of the reasons for that situation or the *measures that may be adopted* in respect of that national'. (9) The Court has also made clear that that directive 'sets out *specifically* the procedure to be applied by each Member State for returning illegally staying third-country nationals and *fixes the order* in which the various successive stages of that procedure should take place'. (10)

36. In the present case, it is undisputed that the individuals concerned in the main proceedings were 'staying illegally' in Italian territory for the purposes of Article 2(1) of Directive 2008/115. Accordingly, the Italian authorities were required to (i) issue a return decision pursuant to Article 6(1) thereof and (ii) follow the subsequent stages of the procedure laid down in Articles 7 to 11 of that directive. Those authorities could not alter or suspend that procedure, or render it partially or wholly inapplicable, (11) simply by transferring the persons concerned to detention facilities located outside Italian territory.

37. The same reasoning applies, *mutatis mutandis*, to Directive 2013/32. Articles 18 and 19 of the Charter of Fundamental Rights of the European Union ('the Charter') guarantee, in essence, the right of *every person* to apply for international protection where they fear persecution or serious harm in their country of origin. That right exists irrespective of the manner in which the person entered the territory of the Member State concerned (12) and regardless of whether their presence there is lawful. (13) The right to asylum encompasses – to use the terminology of Article 14(1) of the United Nations' Universal Declaration of Human Rights – the possibility both to *seek* protection and, where the relevant conditions are satisfied, to *enjoy* it.

38. That right constitutes a central component of a key EU policy. The Treaties and the EU legislature envisaged the establishment of a 'common policy on asylum, immigration and external border control' as a 'constituent part of the European Union's objective of establishing progressively an area of freedom, security and justice'. (14)

39. As recital 8 of Directive 2013/32 makes clear, that directive was adopted in the context of the European Council's adoption of the 'Stockholm Programme' in 2009. The objective of that programme was to establish 'a common area of protection and solidarity based on a common asylum procedure and a uniform status for those granted international protection based on *high protection standards and fair and effective procedures*'. It was considered that 'people in need of international protection *must be ensured access to legally safe and efficient asylum procedures*', and that 'individuals should be offered the *same level of treatment* as regards procedural arrangements and status determination, regardless of the Member State in which their application for international protection is lodged. The objective is that *similar cases should be treated alike* and result in the same outcome.' (15)

40. Against that background, the same logic as that set out above with regard to Directive 2008/115 must also apply to Directive 2013/32. The authorities of a Member State cannot undermine the application of the common rules on asylum procedures by transferring third-country nationals who have entered the European Union to facilities located outside their territory. Nor may they treat certain third-country nationals differently from others who are in a comparable situation, thereby potentially limiting or weakening their right to seek – and, where appropriate, enjoy – international protection through a fair and effective procedure.

41. Admittedly, at first sight, Directive 2013/32 might appear inapplicable to the main proceedings, since the individuals concerned lodged their applications for international protection only *after* being transferred to a facility located in Albanian territory. Article 3(1) of that directive provides that it applies ‘to all applications for international protection made in the territory, including at the border, in the territorial waters or in the transit zones of the Member States, and to the withdrawal of international protection’.

42. In my view, however, Article 3(1) of Directive 2013/32 cannot be interpreted strictly literally in a situation, such as that at issue in the main proceedings, in which the individuals concerned *were* initially present in the territory of the Member State and were subsequently *temporarily* transferred, by decision of the national authorities, to a location outside that territory. In such circumstances, the very act of the national authorities would hypothetically give rise to the inapplicability of Directive 2013/32. (16) That result would run counter to the directive’s objective to ‘guarantee effective access, namely access that is as *straightforward as possible*, to the procedure for granting international protection’, as the Court has emphasised in its case-law. (17)

43. In addition, that conclusion is not affected by the fact that the individuals concerned could, in theory, have submitted an application for international protection before their transfer. EU law requires Member States to provide or facilitate access to information and assistance for potential or actual applicants. (18) Those provisions – which are in line with international rules and standards (19) – reflect the recognition that applicants for international protection are often in a vulnerable position and must navigate complex legal procedures in unfamiliar circumstances. For that reason, Article 10(1) of Directive 2013/32 provides that Member States cannot reject or refuse to examine applications for international protection ‘on the sole ground that they have not been made as soon as possible’.

44. The fact that EU law might not, in principle, prevent Member States from exercising certain functions outside their territory for the purposes of border or return procedures – a point to which I will come back below – would, in any event, not imply that they are released from complying with their obligations under EU law. As I emphasised in my Opinion in *Danané and Others*, Member States enjoy a certain margin of discretion in determining which areas they regard as borders or transit zones for the purposes of those procedures. (20) That margin, however, is not unlimited and cannot be exercised in a manner that results in the circumvention of EU rules.

45. The fact that a Member State decides that certain activities, normally carried out *within* its territory, are to be carried out in areas located *outside* its borders over which it exercises some form of jurisdiction, does not relieve that Member State of its responsibility to ensure compliance with all the rules applicable to those activities. (21) On the contrary, it retains that responsibility, which necessarily includes ensuring compliance with the fundamental rights that those rules intend to protect. (22)

46. My understanding of the scope of application of Directive 2013/32 is not called into question by the wording of Article 3(2) thereof, according to which that directive 'shall not apply to requests for diplomatic or territorial asylum submitted to *representations of Member States*'. (23)

47. In my view, detention facilities such as those operated by the Italian authorities in the territory of Albania cannot be regarded as falling within the concept of 'representations of Member States' for the purposes of that provision. That expression must be understood as referring to bodies – such as embassies, consulates or permanent missions – established by one State (the sending State) within the territory of another (the host State) in order to conduct official relations, safeguard national interests and provide services to its nationals abroad. Their status, functions and accreditation are, moreover, governed by well-established rules of international law.(24) A facility such as the return centre in Gjadër manifestly does not display those characteristics. Nor do I discern any persuasive reason to interpret the derogation laid down in Article 3(2) of Directive 2013/32 broadly, so as to extend its scope to detention centres of that kind.

48. I therefore take the view that Directive 2008/115 and Directive 2013/32 apply – and apply in their entirety – to persons transferred to the detention facilities located in Albanian territory. That conclusion follows not only from the *renvois* contained in the national legislation at issue, but also directly from EU law.

49. Lastly, I would observe that the applicability of Directive 2013/32 in the present context also entails the applicability of the 'Dublin III Regulation'. (25) In particular, Articles 1 and 3 of that regulation must necessarily be interpreted consistently with the corresponding provisions of Directive 2013/32.

C. Preliminary remarks (II): some key aspects of the national legislation at issue

50. It is, to my mind, beyond dispute that, where Directive 2008/115 and Directive 2013/32 are applicable to individuals transferred to detention facilities situated in Albanian territory, the Charter is likewise engaged. Those individuals must, therefore, be in a position to rely, *vis-à-vis* the Italian authorities, on the fundamental rights guaranteed therein. The conclusion of a bilateral agreement with a third State cannot have the effect of relieving a Member State of its obligation to ensure compliance with those rights. (26)

51. In that context, there is particular importance attached, in situations involving deprivation of liberty, to Article 47 of the Charter, which enshrines the right to an effective remedy and to a fair trial. (27) It follows that the procedural avenues provided for under EU law, enabling the persons concerned to challenge before administrative bodies and/or judicial authorities acts adversely affecting them, remain fully applicable. Jurisdiction, in that regard, continues to lie with the competent Italian authorities, both administrative and judicial. For the sake of completeness, I would add that Italian courts also retain jurisdiction to hear actions for damages brought, on the basis of the principles governing State liability, by third-country nationals alleging breaches of rights conferred upon them by EU law. (28)

52. Furthermore, Article 20 of the Charter, which guarantees equality before the law, requires that individuals transferred to detention facilities located in Albania not, as a matter of law, be treated differently from those detained within Italian territory. (29)

53. In its written observations, the Italian Government submits that the place of detention does not affect either the legal status of the persons concerned or the scope of their rights. It further indicates that, under the applicable national legislation, transfers between a facility located in Italy and a facility situated in Albanian territory are treated, in legal terms, as equivalent to transfers between facilities situated exclusively within Italian territory.

54. Lastly, it appears from the relevant national provisions that a transfer to facilities located in Albania neither extends nor otherwise alters the *duration* of detention. (30) Upon termination of detention, the persons concerned are, as the case may be, either transferred back to Italy or directed to destinations permitted under the applicable Italian and EU rules; they are not, in principle, released in Albanian territory.

55. In the light of the foregoing, the national legislation at issue appears, *prima facie*, to comply with the key principles outlined above. Should that not be the case – which is a matter for the referring court to ascertain – the assessment of compatibility set out below would necessarily be different. It is therefore appropriate, at this stage, to turn to the specific issues raised by the two questions referred.

D. First question referred

56. By its first question, the referring court asks, in essence, whether the provisions of Directive 2008/115 preclude national legislation permitting the transfer of third-country nationals subject to return procedures to detention facilities located in the territory of a third State ('the temporary transfer'), where those facilities remain subject to Italian jurisdiction and the applicable Italian and EU rules continue to govern the procedures in question. (31)

57. I shall explain why, in my view, Directive 2008/115 does not, *in principle*, preclude such legislation (1), whilst emphasising that *certain conditions* must nevertheless be satisfied in order to ensure full compliance with that directive (2).

1. In principle, Directive 2008/115 does not preclude national legislation such as that at issue in the main proceedings

58. No provision of Directive 2008/115 expressly precludes Member States from operating detention facilities located outside their territory for the purpose of detaining individuals subject to return procedures.

59. In that regard, it is appropriate to examine, first, the provisions of Directive 2008/115 governing detention. Article 16 is of particular relevance, in so far as it lays down a number of requirements applicable to 'specialised detention facilities' – a concept which, although not defined in the directive, has been interpreted rather broadly by the Court. (32) None of those requirements, however, concerns the geographical *location* of such facilities. Nor can any limitation in that respect, whether express or implied, be inferred from the other provisions of the directive, which 'strictly circumscribe' the use of detention. (33) Those provisions relate, *inter alia*, to the purpose of detention, (34) its duration (35) and the conditions governing both its imposition (36) and its execution. (37) The same holds true with regard to the *transfer* of persons in detention between different detention facilities: no provision of Directive 2008/115 concerns, directly or indirectly, such an aspect.

60. It may be added, in that context, that a temporary transfer of the kind at issue cannot be regarded as a 'return' within the meaning of point 3 of Article 3 of Directive 2008/115. The person concerned is not sent back to his or her country of origin, a country of transit in accordance with readmission agreements or similar arrangements, (38) or another third country of his or her choosing. Nor does such a transfer bring the return procedure to an end; rather, it constitutes an intermediate step within an ongoing procedure.

61. For analogous reasons, such a transfer cannot be classified as a 'removal' within the meaning of point 5 of Article 3 of Directive 2008/115. By transferring the persons concerned to facilities located in Albania, the national authorities do not enforce the obligation to return. The removal, in execution of the return decision, will occur only at a later stage, subject to the fulfilment of the relevant conditions.

62. Nor can such a transfer be equated with a forced deportation or an unlawful removal of the kind examined by the Court in *Commission v Hungary (Reception of applicants for international protection)*. (39) The persons concerned cannot leave the detention centre and move freely in the territory of Albania. Upon release, they are either transferred back to Italy or directed to one of the destinations referred to in point 3 of Article 3 of Directive 2008/115. In addition, whilst detained at the return centre in Gjadër, the third-country nationals in question have the ability – as the present case demonstrates – to apply for international protection. (40)

63. As the Netherlands Government submits, it is far from evident that a situation such as that envisaged in the national legislation at issue was contemplated by the EU legislature at the time when Directive 2008/115 was adopted. The *travaux préparatoires* to which I had access, moreover, lend support to that view.

64. If that is so, one would have to conclude – in line with the well-known maxim '*ubi lex voluit dixit, ubi noluit tacuit*' (41) – that the matter escapes regulation at EU level and, accordingly, remains within the competence of the Member States. (42) That conclusion would, at first sight, sit comfortably with the Court's settled case-law, according to which, under the third paragraph of Article 288 TFEU, Member States retain discretion as to the choice of form and methods when transposing a directive. (43)

65. Indeed, as is apparent both from the wording of Directive 2008/115 (44) and from the Court's own case-law,(45) the Member States enjoy, in several respects, a margin of discretion in implementing the provisions of that instrument, having regard to the particular features of their domestic legal orders. A fortiori, that directive is not – as the Court has expressly held – 'designed to harmonise in their entirety the national rules on the stay of foreign nationals'. (46)

66. However, that margin of discretion is not without limits. The Court has repeatedly emphasised that, when exercising their discretion in areas not exhaustively harmonised, Member States must not compromise the effectiveness (*effet utile*) of the return procedures established by the directive, (47) nor may they undermine the rights and guarantees afforded to the persons concerned. (48) As recital 2 of Directive 2008/115 makes clear, the objective pursued by that instrument is to establish an effective removal and repatriation policy, based on common standards, ensuring that return is carried out in a humane manner and with full respect for fundamental rights and human dignity. (49)

67. Against that background, the decisive question becomes whether national legislation, such as that at issue in the main proceedings, is liable, in practice, either to impair the effectiveness of the return procedure or to jeopardise the protection of the rights and guarantees recognised to third-country nationals.

68. Before I examine those two aspects in more detail, a preliminary remark is in order. The national legislation at issue in the present proceedings implements an agreement between the Italian Republic and the Republic of Albania. It is not unimportant to point out, first, that Albania is a neighbouring country of Italy, as the borders of the two States are less than 100 km apart, and separated only by the Adriatic Sea. Second, Albania is a contracting party to the ECHR, and an official EU candidate country since 2014, with accession negotiations formally launched in July 2022.

69. The analysis which I will carry out below could be different if the agreement in question were to be concluded with a third State, which, because it would be located farther away than Albania, would mean that it would be unlikely that return procedures could be generally conducted in an effective manner. The same would be true of agreements entered into with countries that, because of their political situation and/or legal system, might not offer all the necessary guarantees that the third-country nationals detained therein would have their fundamental rights respected.

70. Turning now to the two aspects referred to in point 67 above, I must say, with regard to the first aspect, that I am not persuaded that the mere use of detention facilities located outside the territory of the Member State concerned is, in itself, capable of undermining the effectiveness of the return procedures laid down in Directive 2008/115.

71. In that regard, the Italian Government submits that the purpose of the national legislation at issue is to increase the overall capacity of facilities intended to accommodate third-country nationals subject to return procedures. From that perspective, such legislation would contribute positively to the sound management of migration flows – a task which, it argues, has become increasingly challenging in recent years, in light of the rise in irregular immigration. That government also refers, in that context, to recommendations addressed to the Italian authorities following the 2021 country-specific evaluation of the Schengen *acquis*, which called, inter alia, for improvements in infrastructure, services and living conditions in detention facilities (recommendation No 6), as well as for reception capacity to be aligned with actual needs (recommendation No 7).

72. There is nothing in the case file that appears to cast doubt on those submissions, which, moreover, find support in the observations submitted by the Polish Government.

73. The second aspect calls, however, for a more nuanced assessment. The absence of any apparent incompatibility in abstracto does not preclude the emergence of difficulties in practice. The compatibility of national legislation, such as that at issue in the main proceedings, with Directive 2008/115 may ultimately depend on the manner in which it is applied by the competent national authorities. Any assessment that remains confined to the letter of the law would therefore be incomplete. (50)

74. It is to that issue that I shall now turn.

2. Conditions to be satisfied for national legislation, such as that at issue in the main proceedings, to be compatible with Directive 2008/115

75. A number of provisions of Directive 2008/115, which enshrine rights and guarantees for the benefit of the third-country nationals subject to return procedures, call for particular attention in the present context.

76. At the outset, I observe that none of those provisions appears, in itself, to exclude the possibility that the persons concerned may be detained in facilities located outside the territory of the Member State responsible for the return procedure. That said, it seems equally clear that compliance with those provisions may, in such circumstances, require the adoption of specific measures by the Member State in question. Some of those measures may prove, one might reasonably assume, administratively burdensome or financially onerous. The possibility that, in relation to certain categories of persons – or even certain individuals, detention in such facilities may not be realistically feasible without giving rise to an infringement of one or more provisions of Directive 2008/115 cannot, therefore, be excluded.

77. The provisions of Directive 2008/115 at issue may, for the present purposes, be grouped into two categories, depending on their scope *ratione personae*.

78. The first category comprises provisions applicable to all persons subject to return procedures or, within that framework, to detention.

79. In the first place, Article 13(3) of Directive 2008/115 provides that any person subject to a return procedure must have ‘the possibility to obtain legal advice, representation and, where necessary, linguistic assistance’. In addition, Article 16(2) thereof stipulates that persons in detention ‘shall be allowed – on request – to establish in due time contact with legal representatives, family members and competent consular authorities’.

80. The mere fact that the third-country nationals concerned may be detained in facilities located outside the territory of the Member State does not, in itself, appear to constitute an insurmountable obstacle to compliance with those provisions. Nonetheless, practical difficulties may arise from the fact that such facilities may not be readily accessible to persons other than authorised staff, not only by reason of their geographical distance, but also because visits *in loco* entail the crossing of an international border. It follows that the competent authorities may need to put in place specific logistical arrangements in order to ensure that the requirements of Article 13(3) and Article 16(2) of Directive 2008/115 are fully respected. (51)

81. In the second place, the fourth subparagraph of Article 15(2) of Directive 2008/115 provides that ‘the third-country national concerned shall be released immediately if the detention is not lawful.’ Likewise, Article 15(4) of Directive 2008/115 states that ‘when it appears that a reasonable prospect of removal no longer exists ... detention ceases to be justified and the person concerned shall be released immediately.’

82. In the light of those provisions, the fact that the release of the persons concerned may necessitate their transfer back to the territory of the Member State – involving, for example, travel by air or sea of several hours – cannot be disregarded. To be clear, the term ‘immediately’ should not be construed in an excessively literal or rigid manner, as though it permitted only a negligible lapse of time between the

occurrence of the event triggering release and the actual release itself.⁽⁵²⁾ That said, it is equally beyond dispute that, in order to comply with Article 15(2) and (4) of Directive 2008/115, the competent authorities must be in a position to organise, within a short time frame, the transport necessary to give effect to that release.

83. The second category comprises provisions that apply specifically to certain categories of persons, such as minors and other vulnerable individuals (including, for example, persons in ill health or, where appropriate, the elderly).

84. In that respect, Article 5 of Directive 2008/115 provides, in general terms, that, 'when implementing this Directive, Member States shall take due account of: (a) the best interests of the child; (b) family life; [and] (c) the state of health of the third-country national concerned'. Additional provisions lay down some specific obligations in that regard.

85. Thus, Article 17(3) of Directive 2008/115 requires that 'minors in detention shall have the possibility to engage in leisure activities, including play and recreational activities appropriate to their age, and shall have, depending on the length of their stay, access to education.' Article 17(4) adds that 'unaccompanied minors shall as far as possible be provided with accommodation in institutions provided with personnel and facilities which take into account the needs of persons of their age.' Furthermore, Article 17(5) provides that 'the best interests of the child shall be a primary consideration in the context of the detention of minors pending removal.'⁽⁵³⁾

86. As regards other vulnerable persons, Article 16(3) of Directive 2008/115 requires Member States to pay 'particular attention' with regard to their detention conditions and to ensure 'emergency health care and essential treatment of illness'.

87. Those provisions appear to require Member States either to provide, within the detention facilities themselves, appropriate infrastructure – for example, for medical care or education – and to allow access to suitably qualified professionals, or to permit detained persons, where necessary, to leave the detention facilities temporarily in order to access such services elsewhere (for instance, in schools or hospitals).

88. Here, the geographical distance between facilities located in a third State and the territory of the Member State responsible for the return procedure, together with the practical constraints associated with transfers, may give rise to serious difficulties. In such circumstances, it is not inconceivable that the detention of vulnerable persons – such as minors, persons in ill health or, in certain cases, elderly individuals – in such facilities could, de facto, lead to infringements of the requirements of Directive 2008/115.⁽⁵⁴⁾ The assessment might, naturally, be different if *adequate* facilities and services are effectively available on site.

89. In the light of the foregoing, I propose that the Court answer the first question referred to the effect that the provisions of Directive 2008/115 do not, in principle, preclude national legislation permitting the transfer of third-country nationals subject to return procedures to detention facilities located in the territory of a third State, provided that those facilities remain subject to the jurisdiction of the Member State concerned and that the applicable national and EU legislation continues to govern the procedures in question. However, such legislation is compatible with EU law only in so far as it is applied in a manner which (i) ensures respect for the rights guaranteed to third-country nationals under Article 13(3) and Article

16(2) of Directive 2008/115; (ii) makes it possible to give effect, without undue delay, to the obligation of immediate release under Article 15(2) and (4) thereof; and (iii) guarantees compliance with the specific protections afforded to minors and other vulnerable persons under Article 16(3) and Article 17(3) and (4) thereof.

90. In the light of that proposed answer, it is also necessary to turn to the second question referred.

E. Second question referred

91. By its second question, the referring court asks, in essence, whether Article 9(1) of Directive 2013/32 must be interpreted as precluding national legislation which permits the detention of a third-country national subject to return procedures in facilities located in a third State, where that person has lodged an application for international protection while being held in those facilities.

92. In my view, Article 9(1) of Directive 2013/32 does not, as a matter of principle, preclude legislation of that kind. However, as is the case for Directive 2008/115, that conclusion holds true only provided that certain conditions are satisfied, ensuring full compliance with the scheme and objectives of Directive 2013/32.

1. In principle, Directive 2013/32 does not preclude national legislation such as that at issue in the main proceedings

93. Admittedly, a literal reading of Article 9(1) of Directive 2013/32 might suggest that, in a situation such as that at issue in the main proceedings, the national authorities are required to bring back into national territory third-country nationals who have applied for international protection whilst being detained abroad.

94. Indeed, Article 9(1) of Directive 2013/32 – which enshrines the ‘right to remain in the Member State pending the examination of the application’ – provides that the ‘applicants shall be allowed to remain in the Member State, for the sole purpose of the procedure, until the determining authority has made a decision in accordance with the procedures at first instance set out in Chapter III.’

95. However, such an interpretation cannot, in my view, be upheld if that provision is read in its proper context and in the light of its objective and purpose.

96. First, Article 9(1) of Directive 2013/32 must be read in conjunction with point (p) of Article 2 thereof, which defines the expression ‘remain in the Member State’ as meaning ‘to remain in the territory, *including at the border or in transit zones*, of the Member State in which the application for international protection has been made or is being examined’. (55)

97. That definition militates in favour of a broader reading of Article 9(1) of Directive 2013/32. It is true that point (p) of Article 2 thereof, notwithstanding a degree of ambiguity – partly reflected in certain language versions (56) – appears to refer to ‘transit zones’ situated within the territory of the Member State concerned.

98. However, several considerations point in a different direction. As I have explained above, first, neither EU law nor – to the best of my knowledge – international law requires Member States to carry out

border or return procedures exclusively within their territory. Second, both the Court of Justice and the European Court of Human Rights have endorsed a relatively broad notion of border and transit zones. Third, it is plausible that the EU legislature did not envisage situations such as that provided for in the national legislation at issue when adopting Directives 2008/115 and 2013/32. Fourth, and crucially, Member States cannot evade obligations under EU law by effectively 'relocating' detention facilities to third States.

99. In those circumstances, it appears both logical and necessary to interpret Article 9(1) of Directive 2013/32 as covering any border or transit zone falling under the jurisdiction of the Member State concerned, irrespective of its physical location.

100. That interpretation is, moreover, borne out by the rationale underlying that provision. As the Italian Government rightly observes, Article 9(1) of Directive 2013/32 seeks to ensure that an applicant for international protection is not removed before his or her application has been examined by the administration and, where appropriate, reviewed by a national court. Were it otherwise, the rights conferred on the applicants would, in many cases, be rendered ineffective.

101. That understanding also finds indirect support in the case-law of the Court. In *Slovakia and Hungary v Council*, (57) the question arose whether a specific passage of the *Handbook and guidelines on procedures and criteria for determining refugee status under the 1951 Convention and the 1967 Protocol relating to the status of refugees* (58) was to be understood as meaning that applicants for international protection must be allowed to remain in the Member State in which they have lodged their application, pending a decision by the competent authorities.

102. The Court observed, first, that the passage in question cannot be understood as implying that 'the Geneva Convention guarantees an applicant for international protection the *right to remain* in the State in which the application for protection was lodged while the application is pending'. It then clarified that that passage 'must be understood as a particular expression of the principle of non-refoulement, which *prohibits the expulsion* of an applicant for international protection to a third country as long as a decision has not been taken on his application'. (59)

103. The same logic applies, in my view, to Directive 2013/32. The requirement that applicants be allowed to '*remain* in the Member States' cannot be equated – in all circumstances – with a right to stay within, or be brought back to, the territory of that Member State. Such a reading would go beyond what is necessary to achieve the objective pursued by Article 9(1) of Directive 2013/32. It is, in that regard, telling that the last sentence of that provision states that 'that right to remain shall not constitute an entitlement to a residence permit.' In a situation such as that at issue in the main proceedings, where the provisions of Directive 2013/32 are fully applicable and where the national legislation does not appear to entail any risk of removal, that objective is preserved.

104. Accordingly, I conclude that Article 9(1) of Directive 2013/32 does not, in principle, preclude national legislation such as that at issue in the main proceedings.

2. Conditions to be satisfied for national legislation, such as that at issue in the main proceedings, to be compatible with Directive 2013/32

105. That said, I should add that the examination of the other provisions of Directive 2013/32 shows that – for the reasons already discussed above – the Member State concerned may be required to adopt certain organisational or logistical measures in order to ensure that the national legislation *is not applied* in a manner incompatible with EU law.

106. In particular, Article 8 ('Information and counselling in detention facilities and at border crossing points'), Article 12 ('Guarantees for applicants'), Article 20 ('Free legal assistance and representation in appeals procedures'), Article 22 ('Right to legal assistance and representation at all stages of the procedure'), Article 23 ('Scope of legal assistance and representation'), Article 24 ('Applicants in need of special procedural guarantees') and Article 25 ('Guarantees for unaccompanied minors') of Directive 2013/32 lay down a series of rights and guarantees for the benefit of all applicants, of those in detention, or of specific categories of applicants, such as minors and other vulnerable persons.

107. Those provisions are not merely intended to lay down the structure of a procedure that complies with Articles 18 and 19 of the Charter, on the one hand, and Article 47 thereof, on the other. They also give concrete expression to the values and principles enshrined, *inter alia*, in Article 6 ('Right to liberty and security'), Article 7 ('Respect for private and family life'), Article 21 ('Non-discrimination') and Article 24 ('The rights of the child') of the Charter.

108. It follows that national legislation, such as that at issue in the main proceedings, must not be applied in a manner liable to hinder the effective enjoyment of those rights or to undermine the protection afforded by those guarantees. As indicated above, this may require the adoption of appropriate practical arrangements. (60)

109. Furthermore, certain provisions of Directive 2013/32 require or allow applicants to appear, whether in person or remotely, before the competent administrative or judicial authorities. (61) If persons detained in facilities located in the territory of a third State were prevented from doing so – or from doing so *effectively* (62) – that would not only infringe the rights of those individuals, but would also compromise the effectiveness of the procedures established by Directive 2013/32. In such circumstances, arrangements that render that participation not only feasible but also not unduly burdensome or ineffective may be required in order to ensure compliance with Directive 2013/32.

110. Lastly, I would add, by way of a brief postscript, that Article 26(1) of Directive 2013/32 provides that 'Member States shall not hold a person in detention for the sole reason that he or she is an applicant. The grounds for and conditions of detention and the guarantees available to detained applicants shall be in accordance with Directive 2013/33/EU.' Article 26(2) of Directive 2013/32 further requires that 'where an applicant is held in detention, Member States shall ensure that there is a possibility of speedy judicial review in accordance with Directive [2013/33].' Those provisions thus establish a clear link between Directive 2013/32 and Directive 2013/33 as regards the detention of applicants. (63)

111. In the present case, the referring court has not raised any issue concerning Directive 2013/33 and, indeed, none of the interested parties which submitted observations has addressed that directive. Moreover, two separate requests for a preliminary ruling, lodged shortly after the present one, specifically invite the Court to examine the compatibility of national legislation, such as that at issue in the main proceedings, with the provisions of Directive 2013/33. (64) In those circumstances, it appears to me that

the latter cases – which the Court is examining concurrently – constitute the more appropriate framework in which any issues arising in that regard are to be addressed.

112. In the light of the above analysis, I am of the view that the Court should answer the second question referred to the effect that Article 9(1) of Directive 2013/32 does not, in principle, preclude national legislation allowing the detention of a third-country national subject to return procedures in facilities located in a third State, where that person has lodged an application for international protection while being held in those facilities. That is so, however, provided that the national legislation is applied in a manner which (i) respects the rights and guarantees afforded to applicants for international protection under Articles 8, 12, 20 and 22 to 25 of Directive 2013/32; (ii) enables those applicants to appear in person, where required or permitted, before the competent administrative or judicial authorities; and (iii) complies with the requirements laid down in Article 26(1) and (2) of Directive 2013/32.

V. Conclusion

113. Having regard to all the foregoing considerations, I propose that the Court answer the questions referred by the Corte suprema di cassazione (Supreme Court of Cassation, Italy) as follows:

- the provisions 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 returning illegally staying third-country nationals do not, in principle, preclude national legislation permitting the transfer of third-country nationals subject to return procedures to detention facilities located in the territory of a third State, provided that those facilities remain subject to the jurisdiction of the Member State concerned and that the applicable national and EU legislation continues to govern the procedures in question. However, such legislation is compatible with EU law only in so far as it is applied in a manner which (i) ensures respect for the rights guaranteed to third-country nationals under Article 13(3) and Article 16(2) of Directive 2008/115; (ii) permits their immediate release where the conditions set out in Article 15(2) and (4) of Directive 2008/115 are no longer met; and (iii) guarantees compliance with the specific protections afforded to minors and other vulnerable persons under Article 16(3) and Article 17(3) and (4) thereof;
- 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 does not, in principle, preclude national legislation allowing the detention of a third-country national subject to return procedures in facilities located in a third State, where that person has lodged an application for international protection while being held in those facilities. That is so, however, provided that the national legislation is applied in a manner which (i) respects the rights and guarantees afforded to applicants for international protection under Articles 8, 12, 20 and 22 to 25 of Directive 2013/32; (ii) enables those applicants to appear in person, where required or permitted, before the competent administrative or judicial authorities; and (iii) complies with the requirements laid down in Article 26(1) and (2) of Directive 2013/32.

i The name of the present case is a fictitious name. It does not correspond to the real name of any party to the proceedings.

2 Directive of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals (OJ 2008 L 348, p. 98). It may be useful to note, for the sake of completeness, that, on 11 March 2025, the European Commission presented a proposal for a regulation that would repeal Directive 2008/115 (Proposal for a regulation of the European Parliament and of the Council establishing a common system for the return of third-country nationals staying illegally in the Union, and repealing Directive 2008/115/EC of the European Parliament and the Council, Council Directive 2001/40/EC and Council Decision 2004/191/EC (COM(2025) 101 final)).

3 Directive of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (OJ 2013 L 180, p. 60). Directive 2013/32 has been repealed by Regulation (EU) 2024/1348 of the European Parliament and of the Council of 14 May 2024 establishing a common procedure for international protection in the Union (OJ L, 2024/1348). However, Regulation 2024/1348 will only become applicable from 12 June 2026.

4 The referring court also refers to other instruments of national law that are applicable in the case at hand, but whose significance in the assessment to be carried out by the Court in the present case appears more limited. The relevant provisions of national law will thereafter be collectively referred to as 'the national legislation at issue'.

5 Legge 21 febbraio 2024, n. 14, Ratifica ed esecuzione del Protocollo tra il Governo della Repubblica italiana e il Consiglio dei ministri della Repubblica di Albania per il rafforzamento della collaborazione in materia migratoria, fatto a Roma il 6 novembre 2023, nonché norme di coordinamento con l'ordinamento interno (Law No 14 - ratifying and executing the Protocol between the Government of the Italian Republic and the Council of Ministers of the Republic of Albania on the strengthening of cooperation in the field of migration, concluded in Rome on 6 November 2023, and provisions for coordination with domestic legislation) (GURI No 44 of 22 February 2024).

6 Emphasis added.

7 Emphasis added.

- 8 The Italian Government gave the example of legislation referring to the Italian territory that, for the purposes of Law No 14, should now be read as also encompassing territories falling within Italian jurisdiction.
- 9 See, for example, judgment of 17 October 2024, *Ararat* (C-156/23, EU:C:2024:892, paragraph 32 and the case-law cited). Emphasis added.
- 10 See judgment of 1 August 2025, *Al Hoceima and Boghni* (C-636/23 and C-637/23, EU:C:2025:603, paragraph 38 and the case-law cited). Emphasis added.
- 11 See, to that effect, judgment of 7 June 2016, *Affum* (C-47/15, EU:C:2016:408, paragraph 88).
- 12 See, to that effect, judgment of 14 May 2020, *Országos Idegenrendészeti Főigazgatóság Dél-alföldi Regionális Igazgatóság* (C-924/19 PPU and C-925/19 PPU, EU:C:2020:367, paragraph 165) ('the judgment in *FMS and Others*').
- 13 See judgment of 16 November 2021, *Commission v Hungary (Criminalisation of assistance to asylum seekers)* (C-821/19, EU:C:2021:930, paragraph 136).
- 14 See, to that effect, Articles 67 and 78 TFEU and recital 2 of Directive 2013/32.
- 15 Emphasis added.
- 16 See, to that effect and by analogy, judgment of 27 April 2023, *M.D. (Ban on entering Hungary)* (C-528/21, EU:C:2023:341, paragraphs 83 and 84).
- 17 Judgment of 25 June 2020, *Ministerio Fiscal (Authority likely to receive an application for international protection)* (C-36/20 PPU, EU:C:2020:495, paragraph 63). Emphasis added.

18 See, inter alia, recitals 22, 23, 25, 26 and 28 and Articles 12 and 19 to 25 of Directive 2013/32. See also judgment of 16 November 2021, *Commission v Hungary (Criminalisation of assistance to asylum seekers)* (C-821/19, EU:C:2021:930, paragraphs 80, 95, 96 and 119).

19 See, for example, United Nations High Commissioner for Refugees, *Procedural Standards for Refugee Status Determination under UNHCR's Mandate*, August 2020.

20 Joined Cases C-50/24 to C-56/24, EU:C:2025:493, points 42 to 46. It seems to me that that conclusion may also be inferred from the judgment in *FMS and Others*, paragraphs 215 to 248. See also, *mutatis mutandis*, European Court of Human Rights (ECtHR), judgment of 21 November 2019, *Ilias and Ahmed v. Hungary* (CE:ECHR:2019:1121JUD004728715, § 236). Interestingly, when asked at the hearing whether it is aware of any specific rules of international law on the concept of 'transit zones', the Commission answered in the negative.

21 For example, I would observe that none of the principles and none of the conditions governing States' responsibility for internationally wrongful acts under the 2001 United Nations' Draft Articles on Responsibility of States for Internationally Wrongful Acts, relate to the territory in which the wrongful act occurs.

22 In that context, it may be interesting to recall that, under Article 1 of the European Convention on Human Rights (ECHR), entitled 'Obligation to respect Human Rights', the Contracting Parties are required to 'secure to *everyone within their jurisdiction* the rights and freedoms' set out therein (emphasis added). As the ECtHR has consistently held, 'while a State's jurisdictional competence is primarily territorial, the concept of jurisdiction within the meaning of Article 1 of the Convention is not restricted to the national territory of the High Contracting Parties' (see, inter alia, judgment of 16 June 2015, *Chiragov and Others v. Armenia* (CE:ECHR:2015:0616JUD001321605, § 167). See also, *mutatis mutandis*, the decisions of the United States Supreme Court in which it decided, in essence, that the persons detained in the Guantanamo Bay detention camp (a military prison run by the United States army in Cuba) had a constitutional right to challenge their detention before United States courts, and that those courts had jurisdiction to hear cases filed on their behalf (see, in particular, *Rasul v. Bush* (542 U.S. 466 (2004)) and *Boumediene v. Bush* (553 U.S. 723 (2008))).

23 Emphasis added.

24 Such as the 1961 Vienna Convention on Diplomatic Relations (*United Nations Treaty Series*, Vol. 500, p. 95) and the 1963 Vienna Convention on Consular Relations (*United Nations Treaty Series*, Vol. 596, p. 261).

25 Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (OJ 2013 L 180, p. 31).

26 See, by analogy, ECtHR, 23 February 2012, *Hirsi Jamaa and Others v. Italy* (CE:ECHR:2012:0223JUD002776509, § 129).

27 See, in that regard, judgment of 8 November 2022, *Staatssecretaris van Justitie en Veiligheid (Ex officio review of detention)* (C-704/20 and C-39/21, EU:C:2022:858, paragraphs 81 to 87). See also the judgment in *FMS and Others*, paragraphs 289 and 290.

28 In that context, I should add that the Commission or other EU Member States could act before the Court of Justice of the European Union under Articles 258 to 260 TFEU, for instances of failure to comply with EU law that occur in relation to persons detained in the facilities located in Albanian territory.

29 See above, point 40 of the present Opinion. See also recital 21 of Directive 2008/115 concerning the principle of non-discrimination.

30 As set out in Article 15(5) and (6) of Directive 2008/115. As regards the importance of this aspect, see, by analogy, ECtHR, 21 November 2019, *Ilias and Ahmed v. Hungary* (CE:ECHR:2019:1121JUD004728715, § 227).

31 A brief observation concerning the reformulation of the first question appears warranted. As framed by the referring court, that question envisages situations in which detention is maintained notwithstanding 'the absence of any predetermined and identifiable prospect of return' of the persons concerned. That premiss is, at first sight, difficult to reconcile with the scheme of Article 15(4) of Directive 2008/115, according to which: 'When it appears that a reasonable prospect of removal no longer exists ... detention ceases to be justified and the person concerned shall be released immediately.' It follows that, in a situation such as that described by the referring court, detention would, in any event, have to come to an end, *irrespective* of whether the person concerned is held in a facility located in Italy or in Albania. In those circumstances, that element does not appear to have any bearing on the core issue raised by the first question. I shall therefore not take it into account in the analysis that follows.

32 See, in that regard, judgment of 10 March 2022, *Landkreis Gifhorn* (C-519/20, EU:C:2022:178, paragraphs 33 to 36).

33 See, to that effect, the judgment in *FMS and Others*, paragraph 274.

34 See, in particular, recital 16 and Article 16(1) of Directive 2008/115.

35 See, in particular, Article 15(4) to (6) of Directive 2008/115.

36 See, in particular, Article 15(2) of Directive 2008/115.

37 See, in particular, recital 17, Article 15(3) and Articles 16 and 17 of Directive 2008/115.

38 On this point, I am not persuaded by the argument advanced by the Netherlands Government that, by virtue of the Protocol, Albania could be regarded as a 'country of transit' within the meaning of point 3 of Article 3 of Directive 2008/115. Suffice it to observe that certain third-country nationals detained in the facilities located in Albania may ultimately not be 'returned' to a third country, but instead transferred back to Italy. In such circumstances, the classification of Albania as a 'country of transit' appears, at the very least, open to doubt. That said, the issue is not decisive for the purposes of the present case. Indeed, I concur with the Netherlands Government that Directive 2008/115 does not, in principle, preclude national legislation such as that at issue in the main proceedings.

39 Judgment of 17 December 2020 (C-808/18, EU:C:2020:1029, paragraph 255).

40 See *ibid.*, paragraphs 257 and 258.

41 Where the law wanted (to say something), it spoke, where it did not want to, it remained silent.

42 To that effect, see, for example, judgment of 2 September 2021, *État belge (Right of residence in the event of domestic violence)* (C-930/19, EU:C:2021:657, paragraph 76).

43 See, inter alia, judgment of 1 August 2025, *Alace and Canpelli* (C-758/24 and C-759/24, EU:C:2025:591, paragraph 61 and the case-law cited).

44 See, in particular, recitals 11, 12, 15 and 17 and Articles 7, 8, 12, 13 and 14 of Directive 2008/115.

45 See judgment of 5 June 2014, *Mahdi* (C-146/14 PPU, EU:C:2014:1320, paragraph 39). See also judgment of 5 November 2014, *Mukarubega* (C-166/13, EU:C:2014:2336, paragraphs 41 and 51).

46 See judgment of 6 December 2011, *Achughbabian* (C-329/11, EU:C:2011:807, paragraph 28).

47 See, to that effect, judgments of 28 April 2011, *El Dridi* (C-61/11 PPU, EU:C:2011:268, paragraphs 55 and 59); of 6 December 2012, *Sagor* (C-430/11, EU:C:2012:777, paragraphs 45 and 46); and of 7 June 2016, *Affum* (C-47/15, EU:C:2016:408, paragraphs 63 and 68).

48 See, inter alia, judgments of 18 December 2014, *Abdida* (C-562/13, EU:C:2014:2453, paragraphs 42 and 45), and of 17 December 2020, *Commission v Hungary (Reception of applicants for international protection)* (C-808/18, EU:C:2020:1029, paragraph 256).

49 As the Court has emphasised, for example, in the judgment of 28 April 2011, *El Dridi* (C-61/11 PPU, EU:C:2011:268, paragraph 31).

50 Similarly, and with further references, Opinion of Advocate General Wahl in *Austria v Germany* (C-591/17, EU:C:2019:99, point 104).

51 For example, in the present case I see that a specific provision of the Protocol, Article 9(2) thereof, ensures that *lawyers and their staff* may have access to the detention facilities. However, I wonder whether the Protocol should not include a similar provision with regard to the *family members* of the persons detained. I understand that, as the law stands, there are specific provisions both in Italian and in Albanian law on that matter. However, in the absence of any reference in the Protocol, there is no guarantee that the situation could not be unilaterally changed by the Albanian authorities.

52 Indeed, a number of administrative formalities should normally be completed before actual release. Generally on this matter, with further references, see Opinion of Advocate General Rantos in *Bouskoura* (C-387/24 PPU, EU:C:2024:703, points 68 and 69).

53 See also recital 22 of Directive 2008/115.

54 See, to that effect, by analogy, judgment of 18 December 2014, *Abdida* (C-562/13, EU:C:2014:2453, paragraph 49).

55 Emphasis added.

56 Cf., for example, the wording of point (p) of Article 2 of Directive 2013/32 in the English-, French- or Italian-language versions with that in the Greek- and Spanish-language versions.

57 Judgment of 6 September 2017 (C-643/15 and C-647/15, EU:C:2017:631, paragraph 316).

58 Published by the United Nations High Commissioner for Refugees in May 1992.

59 Judgment of 6 September 2017, *Slovakia and Hungary v Council* (C-643/15 and C-647/15, EU:C:2017:631, paragraphs 340 and 341). Emphasis added.

60 See, in particular, Article 23(2), Article 24(3) and Article 25(3) of Directive 2013/32.

61 Namely, Article 13(2)(a), Article 14, Article 23(4) and Article 25(1) of Directive 2013/32.

62 See, specifically, Article 15(3) and Article 16 of Directive 2013/32. Let us imagine, hypothetically, that the third-country national is required to appear in person before an administrative or judicial authority and could only do so after a long and exhausting journey.

63 Directive of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (OJ 2013 L 180, p. 96) ('the Reception Conditions Directive').

64 See Joined Cases C-706/25, *Comeri*, and C-707/25, *Sidilli*.