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Human Rights in Albania: Protection under the European Convention on Human Rights**,***

ABSTRACT: The paper sheds light on some of the current challenges of human rights protection in Albania, through a historical overview of the constitutional framework of such protection, the place of international law in the national system, in particular the European Convention on Human Rights and the findings of the European Court of Human Rights. It shows that, whereas the constitutional and legal framework aligns with the standards of protection of human rights enshrined in the Convention, the findings of the Court in the last two decades indicate continuous challenges yet to be addressed in relation to several rights and freedoms, especially those concerning the guarantees related to fair trial, lengthy court proceedings, property rights, and effective remedies.

KEYWORDS: human rights, international law, constitutional court, European Convention on Human Rights, European Court of Human Rights.

1. Introduction

Albania has transitioned from a totalitarian regime to a democratic one, founded on the principles of the rule of law and protection of human rights and freedoms. Human rights form one of the fundamental pillars of the Albanian Constitution, supported also by important commitments at the international level, through adherence to human rights treaties. However, the journey of transitioning to international standards of human rights protection is a complex one, conditioned by specific historical, political, social, and legal processes. This paper aims to shed light on some of the current challenges of human rights protection in Albania, through a

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historical overview of the constitutional framework of such protection, the place of international law in the national system, in particular the European Convention on Human Rights (ECHR) and the findings of the European Court of Human Rights (ECtHR). It shows that, whereas the legal framework generally aligns with the international standards, in particular those related to the ECHR, the findings of the ECtHR in the last two decades indicate continuous challenges yet to be addressed in relation to several rights and freedoms included in the ECHR, and the need for additional implementation mechanisms.

To this end, the first section of the paper provides a short overview of the place of human rights during the communist regime, the repressive ideology of the regime, and its consequences for human rights, as well as a description of the new framework following the change of the regime, up to the current constitutional provisions in force. The subsequent section focuses on the status of international law in the internal legal system, based on a normative and case law overview, identifying advantages of the new constitutional provisions, but also challenges, regarding the place of the ECHR and EU law compared to domestic law. The last section delves into judgments of the ECtHR *versus* Albania in the last two decades, providing insights into *some* of the court's main findings on the standards of human rights protection in Albania, including those related to the recent constitutional justice reform. As it is difficult to cover the case law of the ECtHR in relation to all complaints submitted to the court against Albania, this last part focuses on cases indicating a pattern of violation, leading also to *pilot* and *quasi pilot* judgements.

2. Brief historical background

Albania endured a harsh communist dictatorship and remained isolated for almost 5 decades. In 1946, following general elections, the legislative assembly in Albania adopted the Statute of the People's Republic of Albania, where the power came "from the people" and belonged "to the people."[1] However, according to the historian Hoxha, the 1946 constitutional framework, followed by amendments in 1950, described the establishment of a democratic government based on free elections and

[1] Hoxha, 2021. The text of the Statute of People's Republic of Albania, [Online]. Available at: https://www.crteducazione.org/wp-content/uploads/2025/02/STATUTI-I-ASAMBLESE-KUSHTETONJE%C2%A6eSE-1946.pdf (Accessed: 09 October 2025).

recognised the freedoms of conscience and belief, expression, and organisation, including the establishment of different political parties and other freedoms.[2] The constitutional provisions of 1950 established "the state of workers and peasant workers."[3] They also guaranteed the right to private property and private initiatives in the economy.[4] Interestingly, the word "socialist" was used only twice in the entire text of the Constitution, namely, in article 11, related to agriculture and in article 12, to state a working principle.[5] However, in practice, such guarantees were short-lived.[6] A new Constitution, adopted in 1976, proclaimed Albania as a People's Socialist Republic, a state of the "dictatorship of the proletariat," which enshrined and protected the interests of all employees.[7] It proclaimed the governance of the country through "its own forces" and the development of external relations based on the "principles of Marxism-Leninism and proletarian internationalisation."[8] At the political level, the entire system operated on the principle of centralised power.[9] The foreign policy was characterised by a total isolation from the rest of the world as a "potential danger" to the country's independence.[10]

The word "freedom" was not used anywhere in the entire text of the Constitution of 1976. There were a few provisions proclaiming individual rights, but they were not respected in practice. According to article 39 of the Constitution of 1976, the rights were inseparable from the fulfilment of duties, and could not be exercised contrary to the socialist order; the exercise of the rights and duties of individuals was to be based on the harmony between the interests of the individual and those of the socialist

[2] Ibid.

[3] Albanian Constitution 1950, Art. 2., [Online]. Available at: https://shtetiweb.org/2013/10/08/kushtetuta-e-republikes-popullore-te-shqiperise-1950/ (Accessed: 09 October 2025).

[4] Ibid. Arts. 11., 14-22.

[5] Art. 12: The state supports the socialist development of agriculture by organizing state agricultural enterprises, machine and tractor stations, and by assisting agricultural cooperatives and other forms of association of working peasants established on a voluntary basis. Art. 13: In the People's Republic of Albania, the socialist principle applies: "From each according to his ability, to each according to his work."

[6] Hoxha, 2021; Zickel and Iwaskiw, 1994, pp. 171-172.

[7] Albanian Constitution 1976, Arts. 2-3.

[8] Ibid. Arts. 14-15.

[9] Ibid. Art. 11.

[10] Zickel and Iwaskiw, 1994. For more, in general, see the chapter on human rights during communism in Alimehmeti, 2002.

society, giving, however, priority to the latter.[11] In other words, observance and development of the rights of individuals followed and served the strengthening of the socialist regime. The free legal profession and the Ministry of Justice were abrogated as "unnecessary," based on the argument that the court and the prosecution office served as guarantors of the rights of the accused in the legal process.[12] The freedoms of conscience and expression of religion were banned.[13] Individuals accused of committing the crime of "agitation and propaganda" were often denied the right to due process and, in some cases, executed without a court order.[14]

According to the Constitution of 1976, the judicial system consisted of the People's Courts as the bodies that carry out the administration of justice. The High Court directed the activity of the lower courts, guided however by the ideology of the regime.[15] According to article 78, the Presidium of the People's Assembly controlled the implementation of laws and decisions of the People's Assembly as well as the High Court, the Prosecutor General, and other state bodies, a clear example of the centralisation and unification of the three powers. Additionally, the Presidium of the People's Assembly was vested with the power to interpret the laws and present them for approval to the Assembly.[16] Judges of the People's courts were elected by the people and the such courts had the duty "to protect the socialist legal order,' and "educate the working masses in the spirit of respecting and implementing socialist legality, relying on their active participation."[17]

Towards the end of 1980s, following the wave of democratic changes in the regimes of the countries of Eastern Europe, the government led by the successor of the dictator Hoxha, made efforts to adapt to such changes and ease their impact inside the country. It applied to join the Conference on Security and Cooperation in Europe and introduced a few measures aimed at the acknowledgement of the rights and freedoms of individuals.[18] Following massive protests calling for the establishment of a democratic regime,

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[11] Albanian Constitution 1976, Art. 39.
[12] Human Rights Watch, 1996, p. 11. Tartale and Tartale, 2011, p. 42.
[13] Albanian Constitution 1976, Art. 37.
[14] Qendra Shqiptare për Mbrojtjen e të Drejtave të Njeriut, 1997; 1996. Federal Research Division of the Library of Congress, 1992.
[15] Gjykata e Lartë - "Historiku", [Online]. Available at: https://gjykataelarte.gov.al/en/gjykata/historiku (Accessed: 10 October 2025).
[16] Albanian Constitution 1976, Art. 78.
[17] Ibid, Art. 101.
[18] News from Helsinki Watch, 1991; Human Rights Watch, 1992.

general elections were held in February 1991, leading to the formalisation of a multiparty regime. Soon, the Assembly adopted Law No. 7491, dated 29.04.1991, "For the Main Constitutional Provisions," abrogating the Constitution of 1976 and sanctioning the system of parliamentary democracy.[19] The new constitutional framework recognised human rights as one of the fundamental principles of the new democratic system. Article 4 of the Law regulated the state's responsibility to guarantee the fundamental rights and freedoms of people and national minorities. Apart from these general stipulations, the Law did not include provisions on human rights and freedoms. The gap was addressed two years later with another Constitutional Law, providing a detailed catalogue of human rights.[20] A third Constitutional Law, adopted in 1992, established the Constitutional Court with the exclusive jurisdiction to review the constitutionality of legal norms and make the final interpretation of constitutional provisions.[21] Additionally, several important laws paved the way for the transition to the free market economy and private ownership, such as the Law on Commercial Companies in 1992, the Law on Foreign Investments in 1992, the Civil Code in 1994 and the Civil Procedure Code in 1996, the Criminal Code and the Criminal Procedure Code in 1995, as well as other laws related to the mechanisms for restitution of properties to former owners.

In 1995, Albania was accepted as a full member of the Council of Europe. In 1996, Albania ratified the European Convention for the Protection of Fundamental Human Rights and Freedoms and some of its Protocols (ECHR). The ratification of the human rights instruments in the framework of the Council of Europe and the United Nations paved the way to the adoption of a new Constitution in 1998, through a nationwide referendum. The catalogue of human rights included in the Constitution of 1998 is modelled upon the text of the ECHR. However, it also includes additional rights and freedoms, categorised into "Personal rights and freedoms," "Political rights and freedoms," and "Economic, social and cultural rights and freedoms."[22] Between 1998 and 2015, the Constitution of

[19] Law no. 7491, dated 29.04.1991, "For the Main Constitutional Provisions," Arts. 1-3.
[20] Law no.7692, dated 31.3.1993, "For an addition in the Law no.7491, dated 29.4.1991, 'For the main constitutional provisions.'"
[21] Law 7561 dated 29.04.1992, "On some amendments and additions in the Law no. 7491, dated 29.04.1991, 'For the main constitutional provisions.'"
[22] Constitution of the Republic of Albania, 1998. A consolidated version of the Constitution can be online available at:

1998 was amended 4 times, namely in 2007 (a change in the composition of local elected bodies); 2008 (electoral system changed from a majoritarian to a proportional formula, introduction of a mechanism of confidence voting strengthening the position of the Prime Minister, and new rules on the voting of the Head of State); 2012 (new rules of immunity for members of parliament and judges), and 2015 (mandatory assets and other integrity related declarations for elected officials).[23] The amendments of 2015 also included limitations on the rights to vote and to be elected for those sentenced to imprisonment for a crime. Such changes provided the basis for the adoption of a law restricting the right to vote of those convicted for a series of serious offences. The restrictions also apply to those already serving a sentence before the entry into force of the law.[24] The attempt by the Albanian Helsinki Committee to have the restrictions declared unconstitutional was unsuccessful. The ECtHR reviewed the restrictions in *Myslihaka and others v. Albania* and concluded that the restrictions were within the margin of appreciation of Albania, and therefore found no violation of article 3 of Protocol 1 of the ECHR.[25]

A major constitutional reform took place in 2016, foreseeing a new architecture of the judiciary. The main objectives of the reform included the strengthening of the judiciary's independence from the other two branches of power and the restoration of public confidence in the administration of justice. The reform established new bodies overseeing the career of judges and prosecutors, namely the High Judicial Council and High Prosecution Council.[26] Their new composition does not include members from the other two branches of power, foreseeing the membership of judges, prosecutors,

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https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF(2016)064-e (Accessed: 11 October 2025).

[23] Law no. 9675, dated 13.1.2007, "On some amendments to Law No. 8417, dated 21.10.1998, 'Constitution of the Republic of Albania.'" Law no 9904, dated 21.4.2008, "On some amendments to Law No. 8417, dated 21.10.1998, 'Constitution of the Republic of Albania'", *as amended*. Law no. 88/2012, dated 18.09.2012, "On some amendments to Law No. 8417, dated 21.10.1998, 'Constitution of the Republic of Albania'", *as amended*. Law no.137/2015, dated 17.12.2015, "On some amendments and additions to Law No. 8417, dated 21.10.1998. 'Constitution of the Republic of Albania'", *as amended*.

[24] Law no. 138/2015 "On guaranteeing the integrity of persons who are elected, appointed or exercise public functions." Decision of the Constitutional Court no. 43, dated 05.06.2017.

[25] Decision of the Constitutional Court no. 43, dated 05.06.2017. *Myslihaka and others v. Albania*, App. Nos. 68958/17 and 5 others, 24 October 2023.

[26] Arts. 147, 149 of the Constitution, 1998, *as amended*.

academics, advocates, and civil society representatives instead. The reform introduced new rules concerning the election of judges of the Constitution Court and the High Court, including the organisation of a new inspectorate for judges and prosecutors.[27] Most importantly, the new constitutional amendments foresee the assessment of judges, prosecutors and other legal officers of all instances, through the extraordinary constitutional mechanism of Transitional Qualification Assessment, shortly referred to as the 'vetting' procedure. Two ad hoc bodies, namely, the Evaluation Commission and the Appeal Chamber, perform an evaluation of judges, prosecutors, and related legal officers based on their assets, professional abilities and background (professional ethics). The procedure also includes the establishment of an International Monitoring Operation (IMO), led by the European Commission, to support the re-evaluation process by monitoring and overseeing the entire process of the re-evaluation.[28] According to the new constitutional provisions, the IMO observers are entitled to file findings and opinions with the Commission and the Appeal Chamber and contribute to the background assessment. In those findings, the International Observers may request that the Commission or the Appeal Chamber take evidence or may present evidence obtained from state bodies, foreign entities, or private persons, in accordance with the law. [29] The process has produced important results, with almost half of the number of judges, prosecutors and other related legal officers being removed from their positions.[30] A package of new laws was adopted, based on the new constitutional framework, including amendments to the Law on the Organisation and Functioning of the Constitutional Court. According to the amended article 71/c of the Law, proceedings before the Constitutional Court may be reopened if an international court with binding jurisdiction over the Republic of Albania finds that an individual's fundamental rights or freedoms have been violated "owing to a [prior] decision of the Constitutional Court."[31]

The following section focuses on the place of international law in the internal legal system and the force of norms issued by international

[27] Ibid. Art. 147/d.
[28] Ibid, Art. 179/b.
[29] Constitution 1998, *as amended*, Annex for the Transitional Qualification Assessment, Art. B.
[30] Šemic, 2022.
[31] Law no. 8577, dated 10.2.2000, "On the Organization and Functioning of the Constitutional Court," *as amended*.

organisations, based on the constitutional provisions in force. Understanding such a relationship is important to reflect on the effectiveness of human rights protection, especially the commitments under the ECHR and related challenges.

3. The place of international agreements in the constitutional framework in force

The Constitution of 1998 set the foundations of a unified system of national and international law, particularly in the area of human rights. The international norms are directly applicable and are superior to the domestic ones, including the Constitution in one specific case. According to article 116 of the Constitution, ratified international agreements form part of the internal legal system and are directly implemented (except when implementation requires specific regulation).[32] Furthermore, article 17 of the Constitution limits the application of restrictions to the rights and freedoms foreseen in the Constitution to those provided in the European Convention on Human Rights.[33] As widely accepted in scholarship, the specific reference of the Constitution to the ECHR places the latter in the rank of the Constitution, an interpretation supported also by the Constitutional Court.[34] According to the court, "The legislator cannot impose limitations that exceed those provided for by the ECHR, but it is not prevented from expanding the scope of rights and freedoms through legislation and giving a greater dimension to the realisation of the protection of the individuals."[35]

According to article 122 of the Constitution, a ratified international agreement takes precedence over the *laws of the country* that conflict with it, whereas the norms issued by an international organisation have

[32] Ibid. Art. 122.

[33] Art. 17 of the Constitution provides the following:
1. The limitation of the rights and freedoms provided for in this Constitution may be established only by law for a public interest or for the protection of the rights of others. A limitation shall be in proportion with the situation that has dictated it. 2. These limitations may not infringe the essence of the rights and freedoms and in no case may exceed the limitations provided for in the European Convention on Human Rights.

[34] Omari and Anastasi, 2010, p. 59; Berberi, 2014, p. 41; Ministry of Justice and Euralius, 2021.

[35] Decision of the Constitutional Court no. 9, dated 23.03.2010. Decision of the Constitutional Court no. 24, dated 13.06.2007.

precedence over the *country's law*, when the agreement ratified by the Republic of Albania for participation in that organisation expressly provides for the direct application of the norms issued by it. In the Albanian version, the two expressions do not have the same meaning. According to the scholar Anastasi, the difference between *laws* ("ligje" in Albanian) and the *country's law* ("e drejta") concerns the understanding of the latter to include all legal provisions in force in a country, i.e. also the Constitution.[36] The difference in the wording clearly serves the objective of removing any barriers for the EU accession; upon acceptance of Albania, the EU legislation would supersede conflicting domestic norms, including the Constitution, and no additional constitutional adjustments are needed.

At the same time, article 5 of the Constitution foresees the binding force of international law over Albania. The provision triggered a debate, initially among scholars, as to its relationship with articles 116 and 122 of the Constitution, which make reference only to ratified international agreements.[37] Eventually, a case concerning the application of the provisions of an agreement not ratified by Albania involved both the High Court and the Constitutional Court in the determination of the relationship between the articles. Both courts supported the reading of article 5 of the Constitution independently from the other articles, maintaining the position that Albania is bound not only by the provisions of ratified instruments, but also by general principles of international law, such as *jus cogens* and other fundamental norms.[38]

Generally, in its case law, the Constitutional Court has supported the supremacy of the norms of international law over domestic rules. The court considers the hierarchy of the normative sources included in article 116 of the Constitution to have established the supremacy of international treaties over domestic laws. In the court's words:

> The Constitution has chosen the monistic concept in the relationship between national and international law. In other words, the constitutional provisions have defined a hierarchy of

[36] Anastasi, 2007.

[37] The Constitutional Court had previously supported the reading of article 5 together with articles 116 and 122 of the Constitution. For more on the cases and the approaches in scholarship and courts, see Alimehmeti and Caka, 2015.

[38] Unifying Decision of the High Court of Albania, no.1, dated 30.1.2003. Decision of the Constitutional Court of Albania, no. 13, dated 12.7.2004.

> legal norms, mandatory for implementation by courts and other bodies, according to which international agreements ratified by law become part of the domestic legal order and have precedence over ordinary laws.[39]

However, the support of such a national identity applies almost exclusively to the ECHR, in the cases of human rights complaints, where the Constitutional Court (and the High Court) distinctively makes use of the case law of the ECtHR. In 2006, Albania signed the Stabilisation and Association Agreement (SAA) with the European Community; it received the candidate status in 2014, followed by the opening of negotiations and review of the *acquis* chapters. The position of the Constitutional Court on the status of the SAA, compared to other treaties and domestic laws, is rather blurry and recently openly inconsistent. In a few cases, initially, the Constitutional Court interpreted the SAA as imposing specific legal obligations, whereas recently it has taken a new position referring to it as a framework instrument with no legal obligations.

The first clear position of the Constitutional Court on the status of the SAA dates back to 2009. In reviewing a Decision of the Council of Ministers, challenged in court for restricting the economic freedoms, the Constitutional Court considered whether the restriction of the economic freedoms was also in accordance with the SAA. It maintained, *inter alia*, that article 33 of the SAA prevented the imposition of new quantitative restrictions on imports or exports from its date of entry into force, concluding that the Decision violated the principles enshrined in articles 11 and 118 of the Constitution and article 33 of the SAA.[40] Thus, the Constitutional Court read the SAA as comprising legal obligations and superseding the force of domestic laws. In the following years, the court considered the binding force not only of the SAA but also of the case law of the CJEU. Thus, in its decision no. 14 of 2014, related to competition rules, the Constitutional Court considered, "as in previous judgments," useful to refer to the SAA and the case law of the European Court of Justice, regarding the application of the competition rules.[41] Moreover, in a few other cases, the Constitutional Court has considered Directives of the EU as having binding force over the domestic legislation. In a case in 2010, the

[39] Decision of the Constitutional Court no. 36, dated 16.06.2023, para. 30.
[40] Decision of the Constitutional Court no. 24, dated 24.07.2009.
[41] Decision of the Constitutional Court no. 14, dated 21.03.2014, para. 31.

court reviewed the compatibility of the provisions of a domestic law with the requirements of Directive 2006/43/EC, concluding on the compatibility of the law with the Directive.[42]

However, recently, in a much-debated decision, adopted in 2022, the Constitutional Court moved away from such views. The court defined the SAA as a "framework agreement," serving only to guide the processes of the approximation of the legislation:

> […] The Court notes that the SAA is a framework agreement for relations between the Republic of Albania, on the one hand, and the EU and its Member States, on the other. This agreement was ratified by Law No. 9590, dated 27.07.2006 and entered into force on 1 April 2009, after its ratification by all EU Member States. It aims to support Albania in strengthening democracy and the rule of law, to contribute to political, economic and social stability in Albania and in the region, to approximate Albanian legislation to Community law and to support Albania in completing the transition towards a functioning market economy. In this way, the SAA is an agreement, which has created a process of association of the parties in function of the stabilisation and preparation of the Republic of Albania for eventual membership in the EU.[43]

In the court's view, one of the measures adopted in the framework of the SAA was the approximation with the EU law of the respective national piece of legislation, whose constitutionality had not been challenged in the court.[44] The court rejected the claim of violation of the hierarchy of norms, included in articles 116 and 122 of the Constitution, 'as long as the cause of its violation is presented as non-compliance with the obligations of the MSA.'[45]

The new reasoning of the court poses several questions as to the nature of the responsibilities of the parties under a "framework agreement," the difference with other international treaties and the openly avoided question of consistency of the positions of the court. The definition of the

[42] Decision of the Constitutional Court no. 3, dated 05.02.2010.
[43] Decision of the Constitutional Court no.30, dated 02.11.2022, para. 71.
[44] Ibid, para. 76. See also Decision of the Constitutional Court no. 48, dated 15.11.2013.
[45] Ibid, para. 78.

SAA as a framework agreement is novel to the case law of the court, deserving clear arguments, at least to the understanding of the legal obligations that derive from such an instrument and its standing in the hierarchy of domestic legal norms. The terminology contributes to a perception that the SAA contains no legal obligations, at least not until Albania becomes a full member of the EU. This is especially important considering that consumer rights, invoked in the case, form part of the EU primary legislation, included in the constitutional norms of the Union. Additionally, the court missed the opportunity to evaluate the application of article 5 of the Constitution in the case, in view of its previous precedents recognising the interest of article 5 with principles of international law. In fact, the case signalled another departure from the previous positions of the Constitutional Court as the court read article 5 in conjunction with articles 116 and 122 of the Constitution, reducing its scope of application to the ratified agreements only. The following excerpt from the text of paragraph 73 of the case illustrates it:

> The Constitution, *in its articles 5, 116 and 122, provides that the Republic of Albania applies the international law binding on it, by listing ratified international agreements, which are part of the internal legal system*, in the hierarchy of normative acts that have force before laws..." (italics added).[46]

It remains to be seen whether the Constitutional Court will revert to its previous views regarding the role and place of the SAA and EU law in the domestic normative system, especially considering Albania's candidate country status, and the strong will on both sides to accelerate the process of full accession.[47] In fact, several articles of the SAA, such as articles 70, 71 and 126, contain specific obligations to be observed in the areas of competition and state aid, but also requirements concerning implementation and enforcement of existing and future legislation harmonised with the EU acquis. Such responsibilities rest with all court instances. In practice, except for the Constitutional Court and occasionally the High Court, judges of the other courts rarely make use of the EU acquis or international law in general. There is a stronger attention to the ECtHR case law, especially in the findings against Albania, but generally, the preparation remains limited

[46] Ibid, para 73.
[47] Delegation of the European Union to Albania, 2025.

for various reasons. These could include the insufficient focus of legal curricula and professional trainings, a lack of interest in developing expertise in international legal issues, but also the limited sources of information in Albanian on the jurisprudence of international bodies of human rights.[48]

4. ECtHR's judgements versus Albania

Complaints concerning the right to a fair trial, property rights and lack of effective remedies represent the largest number of applications submitted to the ECtHR against Albania.[49] The first judgment of the ECtHR delivered against Albania is *Qufaj Co. v. Albania*, decided in 2004.[50] The applicant (a company) complained against the negligence of state authorities to execute a court decision invalidating the guarantees for a fair trial. Additionally, the applicant claimed a violation of article 13 of the ECHR in relation to the refusal of the Constitutional Court to consider the non-execution of the court decision as part of its reviewing jurisdiction. The ECtHR supported the claims of the applicant, maintaining that "the execution of a judgment given by a court must be considered as an integral part of 'due process' within the meaning of Article 6" and "state authorities cannot cite a lack of funds as a justification for not honouring a financial obligation arising from a judgment judicial."[51] Furthermore, the ECtHR considered the Constitutional Court competent to examine the request of the company regarding the non-execution of a final decision, as part of the requirements of a due legal process, concluding that there had been a violation of article 6 of the ECHR for the non-execution of final court decisions. Subsequently, the Constitutional Court reviewed its approach regarding complaints against the non-execution of final court decisions.

Complaints regarding the recognition of property rights of former owners, deprived of their properties during the communist era, increased significantly during the past two decades. Such complaints include also the

[48] Caka and Merkuri, 2021, p. 26. For more on the place and status of the international agreements in the internal legal order, see Alimehmeti and Caka, 2015.
[49] European Court of Human Rights. Violations by article and by States, [Online]. Available at: www.echr.coe.int/documents/d/echr/Stats_violation_1959_2022_ENG (Accessed: 13 October 2025).
[50] *Qufaj Co. Sh.p.k. v. Albania*, App. No. 54268/00, 18 November 2004.
[51] Ibid, para 38.

non-execution of final court decisions recognising property rights. Thus, the lack of effective restitution mechanisms, manifested especially in relation to non-execution of final judicial or administrative final decisions led to numerous judgments of the ECtHR against Albania, finding violations of articles 6, 13 and article 1/prot.1, such as in *Caush Driza, Rramadhi, Driza, Vrioni, Gjyli, Gjonbocari* and more.[52] The property-related cases indicated a widespread problem affecting a large group of individuals. The repetitive findings of the ECtHR and the non implementation of its continuous judgements of property rights violations paved the way to a *pilot judgement* in 2012 in the case of *Manushaqe Puto*.[53] In this case, 20 applicants complained that despite their inherited title to plots of land having been recognised by the authorities, final administrative decisions awarding them compensation in lieu of restitution had never been enforced, and there were no effective remedies to address the non-enforcement. Noting that the complaints reflected a widespread problem in Albania affecting a large number of people, the ECtHR decided to apply the pilot-judgment procedure. It supported the claims of applicants regarding the violation of article 6/ 1, article 1 of Protocol No. 1 and article 13 of the ECHR for the lack of an effective domestic remedy to redress the prolonged non-enforcement of the decisions awarding them compensation *in lieu.* Additionally, it held that Albania had to take general measures in order to effectively secure the right to compensation within 18 months.[54] The case triggered the adoption of a new law on the treatment of the property and the transformation of the Property Restitution Agency.

At the same time, in addition to property rights, an increasingly high number of complaints submitted to the ECtHR concerns the lack of effective remedies for unreasonable delays within judicial proceedings.[55] The

[52] *Driza v. Albania*, App. No. 33771/02, 13 November 2007; *Caush Driza v. Albania*, App. No. 10810/05, 15 March 2011; *Ramadhi and others v. Albania*, App. No. 38222/02, 13 November 2007; *Vrioni and others v. Albania*, App. No. 2141/03, 24 March 2009; *Gyli v. Albania*, App. No. 32907/07, 29 September 2009; *Gjonbocari v. Albania*, App. No. 10508/02, 23 October 2007.

[53] *Manushaqe Puto and others v. Albania*, App. Nos. 604/07, 34770/09, 43628/07 et al., 31 July 2012.

[54] Ibid, paras. 110-121.

[55] *Ramadhi and others v. Albania*, see note 52, *Gyli v. Albania*, see note 52, *Gjonbocari v. Albania*, see note 52; *Marini v. Albania*, App. No. 3738/02, 18 December 2007; *Beshiri and Others v. Albania*, App. No. 7352/03, 22 August 2006*; Mishgjoni v. Albania,* App. No. 18381/05, 07 December 2010.

situation deteriorated further in the case of *Luli and others*, where the ECtHR issued a *quasi-pilot* decision regarding the lack of effective remedies in Albania for unreasonable lengths of judicial processes. The court urged Albania to introduce a domestic remedy to address the length of proceedings, indicating potential models to follow.[56] In response to the findings of the ECtHR, an acceleratory and compensatory remedy was introduced in the Albanian Civil Procedure Code.[57] A new Chapter X, on mechanisms to address the duration of judicial processes in the first and second court instances, was added in the Code. According to its provisions, parties can request a determination of violations of the requirement of "reasonable time" and ask for expedited proceedings. If a violation is found, the court is authorised to mandate procedural measures within a specified time frame, and this decision is final.[58] In *Bara and Kola v. Albania*, the ECtHR provides an evaluation of the overall effectiveness of this newly introduced remedy.

However, the problem with the effectiveness of remedies concerning court proceedings persisted, leading to further judgments against Albania. In *Sharxhi and others v. Albania*, the applicants, owners of flats in a demolished residential and commercial property, complained about the seizure, expropriation and the subsequent demolition of their properties within a period of one month in 2013.[59] This occurred despite a court order suspending all actions on the property. The ECtHR found again a violation of article 13 of the ECHR regarding the lack of effective remedies concerning the non-observance of the interim measure, in addition to the violation of the right to a fair trial, the right to private and family life and property rights under article 1 of Protocol no. 1.

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[56] *Luli and others v. Albania*, App. Nos. 64480/09 64482/09 12874/10, 01 April 2014.

[57] Civil Procedure Code, 1995, as amended, Chapter X. Articles 399/1 of the Chapter provides the following:

1. In the competence of courts, according to the instances of adjudication specified in this Chapter, shall be included the adjudication of requests for due compensation to the person, who has suffered a pecuniary or non-pecuniary damage due to the unreasonable length of a case, as per the definition of Article 6/1 of the European Convention "On Protection of Human Rights and Fundamental Freedoms".

2. Provisions of this chapter define the evaluation of reasonable duration of a process, as well as the due compensation, when unreasonable delays have been determined in investigation procedures, trial of cases, as well as in the procedures of execution of decisions.

[58] Ibid, Art. 399/8§1.

[59] *Sharxhi and others v. Albania*, App. No. 10613/16, 11 January 2018.

Lack of effective remedies was part of the findings of the ECtHR in *Marini v. Albania* too, but here the court dealt with a specific and complex issue related to the powers of the Constitutional Court in Albania, namely its voting rules and reasoning of the decisions.[60] In this case, the applicant claimed a violation of article 6 of the ECHR concerning the rejection of his appeal by the Constitutional Court due to the lack of majority votes, in accordance with article 133/ 2 of the Constitution (the Constitutional Court includes 9 judges). Furthermore, according to article 74 of the Law on the Functioning and Organisation of the Constitutional Court (CCOA), in the case of a tied vote, the appeal is rejected without prejudice. Three judges of the Constitutional Court supported the applicant's claims, criticising the lower courts for violating the applicant's right to a fair trial. In contrast, the majority of the Constitutional Court did not present reasons for overturning the case or the details of how the remaining four judges voted. The ECtHR found a violation of the applicant's right of access to the court, arguing that the Constitutional Court's failure to reach a majority left the applicant without a final decision on his case and had accordingly restricted the essence of his right of access to a court. In an *obiter dictum*, the ECtHR observed the following concerning the particular regulation in Albania concerning the voting rules:

> In contrast to other legal systems, which either preclude a tied vote or provide different alternatives to enable a final decision to be reached in the event of such a vote, in the Albanian legal system a tied vote in the Constitutional Court results in a decision which does not formally determine the issue under appeal. Moreover, no reasons are given for dismissing the appeal in such an eventuality other than that the vote was tied. Having regard to its above considerations, the Court can only conclude that the tied vote arrangements foreseen in section 74 of the CCOA [the Constitutional Court Organisation Act] do not serve the interests of legal certainty and are capable of depriving an applicant of an effective right to have his constitutional appeal finally determined.[61]

[60] *Marini v. Albania*, see note 55.
[61] Ibid, para 123.

The court concluded with the finding of a violation of the right to access to court, due to the Constitutional Court's failure to take a decision on his constitutional complaint, and other rights under article 6, as well as the lack of an effective remedy for the length of the proceedings. Recently, the ECtHR considered the same issue of the failure of the Constitutional Court to take a decision in *Meli and Swinkels Family Brewers* v. *Albania*.[62] This time, the ECtHR did not consider the failure to form a majority as a violation of the right of access to the courts. The ECtHR examined the requirement of the CCOA for a majority of five judges, in order for applications not to be dismissed with the effect of *res judicata*. According to the ECtHR, this provision could complicate access to justice, particularly in the Albanian legal system, where a quorum of six judges and the five votes required to find a constitutional violation could lead to the dismissal of applications even if the majority favours the applicant. In the court's view, "this issue could become more acute in circumstances where the Constitutional Court might operate for extended periods of time without a full bench, as was previously the case in Albania following the 2016 reforms of the justice system and the delays in filling vacancies on its bench. In such scenarios, individuals seeking redress for alleged violations of their constitutional rights might face particularly difficult odds in reaching the required five-judge majority in their favour and reversing the presumption of constitutionality; for example, a five-out-of-six majority would be needed to prevail in a formation with the minimum quorum of six judges."[63]

Surprisingly, the ECtHR did not delve further into the issue of whether the failure to reach a majority left the applicant without a final decision on his case, attributing the responsibility for exposing the shortcomings of the rule of the majority to the applicants; according to the court, they did not put forward any explicit arguments along these lines.[64] The ECtHR was satisfied that article 74 of the CCOA was repealed and that there is now clarity on the outcome of appeals that do not reach a majority of five votes, namely, such appeals are deemed to be definitively rejected. In the applicants' case, a majority of the Constitutional Court voted in favour of dismissing their complaints, while one complaint resulted in a tied vote.

[62] *Meli and Swinkels Family Brewers N.V. v. Albania,* App. Nos. 41373/21 and 48801/21, 16 July 2024.
[63] Ibid, para. 65.
[64] Ibid, para. 66.

Thus, the ECtHR concluded that the legal framework in the country was sufficiently clear on the outcome of such appeals, and therefore, the applicants had not been deprived of the right of access to a court. At the same time, the ECtHR focused on the reasons provided by the "effective majority (that is, the judges who voted to dismiss the complaints)" and the "effective minority (the judges who voted in favour of upholding the complaints)."[65] It maintained that the respective decisions were limited to the results of the voting and did not include the reasons as to the merits of the case.

Thus, differently from the approach in *Marini*, where the lack of reasoning of the judgment was considered under the right of access to court's claim, the ECtHR considered the lack of substantive reasons as affecting the legal certainty, violating the right to a reasoned judgment. It concluded that the applicants had not been provided with the relevant legal grounds for the dismissal of their claims in violation of article 6/1 of the ECHR.[66] The non-addressing of the issue is somewhat disappointing, considering the frequency of the failure of the Constitutional Court to reach a majority and the consequences of the judicial reform, including the slow process of appointing new judges and the prolonged judicial processes.[67]

The lack of effective remedies in relation to articles 6 and 8 of the ECHR has also been claimed by judges and prosecutors, removed from their positions as a result of the vetting process described above. The first complaint on the vetting procedure examined by the ECtHR involved the dismissal of *Xhoxhaj*, a judge of the Constitutional Court, removed from office at the end of the vetting procedure.[68] The appellate instance for the vetting procedure reviewed her complaint and upheld the decision of dismissal from office. It also maintained that a public hearing for her appeal was not necessary. She complained to the ECtHR that her rights to a fair trial, private life and effective remedies had been violated. The ECtHR did not find any violations. According to the court, the vetting bodies had been independent and impartial, the procedures had been regular, the examination of the appeal in a public hearing had not been necessary, and the principle of

[65] Ibid, para. 71.
[66] Ibid, para. 76.
[67] See the Constitutional Court's decision no. 25, dated 10.05.2021, decision no. 12, dated 09.03.2021, decision no. 39, dated 15.12.2022, decision no. 67, dated 03.10.2024, decision no. 1, dated 07.01.2025. See also European Commission (2024) Rule of Law Report, p. 9.
[68] *Xhoxhaj v. Albania*, App. No. 15227/19, 09 February 2021.

legal certainty had not been violated. Moreover, the court found that there had been no violation of Article 8, as the dismissal from office had been proportionate, and the permanent legal ban on re-entering the justice system serves to guarantee the integrity of the magistrate's office and public trust in the justice system.

In contrast, the case of *Besnik Cani v. Albania* highlighted a different aspect of the vetting process.[69] In the case, a former prosecutor, dismissed in 2020, raised concerns about the appointment of one of the judges to the Special Appeal Chamber in violation of the eligibility rules. The ECtHR supported his arguments, maintaining that the authorities should have ensured that all judges appointed to the SAC complied with the appointment rules for their position. The domestic institutions had not examined the claims presented by the applicants concerning the ineligibility of the member appointed to the SA. Consequently, the ECtHR concluded that there had been a violation of the applicant's right to "a tribunal established by law". Given that finding, the Court also considered article 46 of the ECHR related to the implementation of the ECtHR's decision, maintaining that the most appropriate redress for the violation of the applicant's rights would be to reopen the proceedings, should the applicant request the reopening and re-examine the case in a manner that complies with the requirements of Article 6/1 of the Convention. Subsequently, in the case of *Sevdari v. Albania*, related to another prosecutor removed based on the vetting procedure, the ECtHR found a violation of Article 8 with regard to her dismissal.[70] The ECtHR considered the removal disproportional to the vetting bodies' findings, primarily related to the inability to prove that her husband had paid tax on his income earned abroad. According to the ECtHR, the amounts on which tax had not been shown to have been paid was relatively small and there was no indication of bad faith in her declarations during the vetting process. A less severe form of sanction could have been applied. The ECtHR invoked again article 46 of the ECHR, recommending that the proceedings for the applicant be reopened as an appropriate form of redress.[71] The applicant was successful in reopening the proceedings before the appellate instance of the vetting process, which reinstated her in the previous position as prosecutor, becoming the first and only case of reinstatement in the previous position, as a result of an

[69] *Besnik Cani v. Albania*, App. No.37474/20, 04 October 2022.
[70] *Sevdari v. Albania*, App. No. 40662/19, 13 December 2022.
[71] Ibid, paras 142-145.

ECtHR's judgement. The lack of effective remedies in relation to claims presented under article 8 of the ECHR was invoked by the applicants in *Xhoxhaj v. Albania* and *Nikehasani v. Albania*, too, but their complaints were dismissed as unsubstantiated.[72]

Overall, while the vetting process has served as an extraordinary mechanism to reform and increase the integrity of the judiciary, the reviewed cases illustrate the remaining challenges and the importance of fair trial rights and judicial procedures for the subjects of the process. Moreover, the vetting process has significantly impacted the length of judicial proceedings. Unreasonable delays of the judicial processes in Albania are alarmingly increasing, with the average length of a process amounting to a decade.[73] Recently, in *Bara and Kola v. Albania*, the ECtHR evaluated the effectiveness of post-reform mechanisms introduced to expedite the judicial processes. The ECtHR was satisfied that the criteria for evaluating the 'reasonable time' align with its established case law, including such factors as the complexity of the case, the conduct of the parties, and what is at stake for the claimant.[74] The ECtHR advised the domestic courts to assess the entire duration of the proceedings, not just the point when a request is made, and to set reasonable deadlines for these procedural measures to ensure the remedy is effective.[75] As concerns the length of the proceedings, the ECtHR did not support the government's arguments attributing the delays to the justice reform and the vetting process. The ECtHR noted that the High Court had already accumulated a backlog of 16,777 cases before the start of the vetting process. As noted by the ECtHR, delays in the processes before the High Court had been identified in several decisions of the Constitutional Court.[76] In principle, the ECtHR supported the new post-reform 'acceleration' procedures, considering them "likely to be effective in addressing delays in proceedings." However, in the circumstances of the case (related to the first applicant), the ECtHR maintained that "the acceleratory remedy did not serve the purpose of speeding up the

[72] *Xhoxhaj v. Albania*, see note 68; *Meli and Swinkels Family Brewers N.V. v. Albania,* see note 62, paras. 145-147; *Nikehasani v. Albania*, 58997/18, 13 December 2022, paras. 131-136.

[73] European Network of National Human Rights Institutions, 2023, p. 24. *Iliria S.R.L.v. Albania*, App. No. 1011/09, 05 March 2024, a case involving international arbitration, the ECtHR did not justify the duration of 17 years and nine months of the legal proceedings.

[74] *Bara v. Albania*, App. No. 43391/18 17766/19, 12 October 2021, para. 106.

[75] Ibid, para. 108.

[76] Ibid, paras. 69, 95.

proceedings before the High Court or preventing them from becoming unreasonably long."[77] It concluded that there had been a violation of article 6 of the ECHR concerning the length of the process and article 13 concerning the lack of remedies to address the unreasonable length.

On the other hand, property restitution-related complaints continue to represent a large part of the complaints submitted to the ECtHR against Albania. Recently, the Court issued two judgments highlighting the continuous challenges yet to be addressed concerning the recognition of property rights restitution mechanisms in Albania.[78] On a final note, the low number of fully executed judgments of the ECtHR in the cases against Albania further indicates the pressing need for effective policies and instruments to address the identified deficiencies.[79]

5. Conclusions

While the constitutional and legal framework aligns with the standards of protection of human rights enshrined in the ECHR, there remain significant challenges concerning their enjoyment in practice. International law has a privileged status in the internal legal system, but in practice the reliance and preparation of courts to apply it remain limited. Judgments of the ECtHR identify remaining challenges in the Albanian human rights legal framework, especially concerning the enjoyment of the guarantees related to fair trial, effective remedies in relation to lengthy proceedings and property rights. In particular, the length of court proceedings has become an acute systemic deficiency, affecting not only the parties to a case but also the judiciary and society, with the far-reaching consequence of undermining public confidence in the judiciary. It remains to be seen whether – or when – the new mechanisms introduced by the justice reform will ultimately address such challenges.

[77] Ibid.
[78] *Rama v. Albania*, App. No. 17758/06, 12 December 2024; *Gabaj v. Albania*, App. No. 33369/17, 17 December 2024.
[79] Council of Europe, Department for the Execution of Judgments of the European Court of Human Rights, [Online]. Available at: https://www.coe.int/sq/web/execution/closed-cases (Accessed: 19 October 2025).

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