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THE APPLICATION OF HUMAN RIGHTS BY JUDGES IN CIVIL CASES: THE CASE OF ALBANIA

SUMMARY: 1. Introduction. – 2. Identification of Civil Cases Dealing with Human Rights. – 3. Examination of Civil Cases in Correlation with Human Rights. – 4. Conclusions.

1. *Introduction*

In 2016, the Albanian Parliament passed a constitutional reform that introduced (Article 131(1)(f) or Article 134 (1)(g) Albanian Constitution) and increased the role of the Supreme Court (Art. 141(1) Albanian Constitution).¹

This paper focuses on the application of human rights by Albanian judges in civil legal decisions. For clarification purposes, in Albania, the civil code of 1994 covers five main areas: 1. Legal Transaction; 2. Property; 3. Inheritance; 4. General Part of Contracts; and 5. Specific Contracts. In other words, the branch of private law is broad and includes family or labour laws. Also, in these areas, Albanian judges have applied human rights. However, this paper narrows its research only to the cases covered by the Albanian Civil Code of 1994 since other

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Division of the work: D. Veshi: Introduction; E. Koka: Identification of Civil Cases Dealing with Human Rights; L. Sheme: Examination of Civil Cases in Correlation with Human Rights and Conclusions.

¹ A. ANASTASI, *The Albanian Justice Reform in the Framework of the European Integration Process*, in *Euro-Balkan Law and Economics Review*, 2021, p. 1 s.

areas of law (for instance, family or labour laws) are covered by *ad hoc* Codes (i.e. Labour Code of 1995 or Family Code of 2003).

Albania's case was chosen because the country had a totalitarian regime for almost half a century. It should be mentioned that during this period, human rights were frequently violated.² Moreover, this contribution unveils the judicial approach for three main reasons. First, judges interpret the Albanian Constitution, which includes fundamental human rights, as well as civil law, if the case deals with civil issues. Art. 141(1) Albanian Constitution states «The Supreme Court shall decide cases relating to the meaning and application of the law in order to ensure the unification or evolution in the judicial practice, in accordance with the law». The interpretation of the law is fundamental, to such an extent that Art. 34(2)(a), Law No. 98/2016 of 6.10.2016 “For the organization and functioning of the judicial power in the Republic of Albania”, has established an *ad hoc* unit in the Supreme Court, which exercises advisory and auxiliary activities in the decision-making process of the Supreme Court, including the interpretation of the provisions applicable to the cases under trial.

Second, judicial interpretation by the Supreme Court provides consistency and stability. While in common-law systems, this is established through *stare decisis*, in civil-law systems, the application of the doctrine of *jurisprudence constante*,³ also in Albania,⁴ has increased. However, it shall be immediately mentioned here that Art. 32, Law No. 96/2016 of 6.10.2016 “On the Status of Judges and Prosecutors in the Republic of Albania,” which is part of the Albanian Constitutional reform of 2016,⁵ states that the Joint Chambers of the Supreme Court are entitled to decide to change the preceding judicial practice.

Third, judges can drive the evolution of the law through their decisions faster than the promulgation of a law. In other words, the law's promulgation is slower than society's transformation. Therefore, judges have substituted the national legislature by ruling in single cases. This has resulted in a positive outcome since the judicial system resides outside of the world of politics and culture.⁶ So, judges can adapt to the new culture quicker than legislators.

This paper does not endeavor to provide an exhaustive doctrinal analysis of the principal controversies surrounding the Albanian Civil Code or the international norms enshrined in the European Convention on Human Rights (ECHR). Instead, it seeks to address a fundamental question: to what extent do Albanian judges apply international human rights principles in civil disputes? Specifically, the study explores which provisions of the ECHR and jurisprudence of the European Court of Human Rights (ECtHR) are most frequently invoked by Albanian national judges and examines the ways in which these legal frameworks have been utilized to resolve civil disputes.

While this contribution does not delve deeply into the substantive interpretation of specific disputes or international rules as applied to specific disputes, it serves as a critical academic foundation for future research. By presenting empirical data on the interplay

² F. ABRAHAMS, *Human rights in post-communist Albania*, in *Human Rights Watch*, 1996, p. 1 s.; M. GIBNEY, *Prosecuting human rights violations from a previous regime: the east European experience*, in *East European Quarterly*, 1997, p. 93.

³ J. DENNIS, *The John Tucker Jr. Lecture in Civil Law: Interpretation and application of the civil code and the evaluation of judicial precedent* in *Louisiana Law Review*, 1993, p. 54 s.

⁴ D. VESHI, E. BOZHEKU, A. CASTALDO, *Reckless Medication (or Medical Negligence) in Albania: A Criminal Case Law Study*, in *Federalismi.it*, 2024, pp. 279-297.

⁵ A. ANASTASI, *Reforming the justice system in the Western Balkans. Constitutional concerns and guarantees*, SSRN, 2018.

⁶ J. D. RENDTORFF, *Basic ethical principles in European bioethics and biolaw: autonomy, dignity, integrity and vulnerability—towards a foundation of bioethics and biolaw*, in *Medicine, health care and philosophy*, 2022, p. 235 s.

between human rights and civil disputes within the Albanian legal system, this paper highlights the practical application of the ECHR and ECtHR case law in shaping civil adjudication in Albania.

The innovative part of this paper stands in the correlation of human rights with civil disputes. Thus, the paper underlines the blurry distinction between public law and civil law. In addition, considering that the present paper considers the ECHR and ECtHR's case law, it shows the importance of international human rights law in the Albanian legal system through a judiciary application. This is also based on Art. 5, Art. 116(1)(b), and Art. 122(2) of the Albanian Constitution, which establish that international treaties ratified by the Albanian Parliament are mandatory and have a higher rank than domestic legislation.

This research is divided as follows: Sect. 2 identifies the cases where Albanian judges have applied or referred to human rights in relation to civil law issues. From among different international treaties, the paper only considers the application of the ECHR and ECtHR's case law because the ECHR has been signed by 47 States that are members of the Council of Europe. In addition, the ECHR establishes a right to file an individual application before the ECtHR (Art. 34 ECHR), subject to the criteria established under Art. 35 ECHR. Thus, in the case of a violation of human rights, an international judge will apply them against the Albanian State. In addition, Sec. III reviews concrete cases where Albanian judges have referred to human rights in interpreting national law in civil matters. In conclusion, this research emphasizes the application of human rights by Albanian judges in civil matters by underlying that there is no division between public law and civil law as concerns the application of human rights rules.

2. Identification of Civil Cases Dealing with Human Rights

This paper proposes to consider the application of human rights by the Albanian Constitutional Court and Supreme Court for two main reasons.

First, according to Article 1(1) Protocol No. 16 ECHR, ratified by Albania pursuant to Law No. 48/2015 of 7.05.2015, «the highest courts and tribunals of a High Contracting Party may request the Court to give advisory opinions on questions of principle relating to the interpretation or application of the rights and freedoms defined in the Convention or the protocols thereto». This proves that human rights are used not only by the Constitutional Court but also by the Supreme Court.

Second, the Albanian Constitution recognizes, in the case of a violation of human rights, a constitutional complaint (Article 131(1)(f) or Article 134 (1)(g) Albanian Constitution). Thus, while in other countries (i.e., Italy: Article 134 Constitution, France: Article 56-63 Constitution, or Portugal: Article 229 Constitution),⁷ citizens do not have direct access to the national Constitutional Courts, Albania recognizes a constitutional complaint, which is also similar to what has been established in Germany (Article 93(1)(4a) German Basic Law), or Spain (Article 161(b) Constitution). The common historical background between these countries is that all these countries had a totalitarian regime, either communist,

⁷ It should be mentioned that Article 161(b) Spanish Constitution recognizes a constitutional complaint to its citizens. It should be noted that from 1939 to 1975, Spain was ruled by the dictatorship of Francisco Franco Bahamonde, and the current Constitution was published in 1978.

Nazism, or the Franco regime. These countries seem to have decided to react to their past totalitarian regimes by codifying direct access to the Constitutional Court by individual citizens. Thus, constitutional complaints can be made about all the decisions of the Supreme Court that violate human rights. Within the decisions of the Constitutional Court, the paper examines only the constitutional complaints dealing with civil law issues.

The research includes only the individual constitutional complaints dealing with civil law issues in the last three years. It considers the application of the ECHR articles as well as its case law. In addition, the statistics aim to show their application. It should be mentioned that ECHR articles cover several aspects of human rights. Thus, the statistics mentioning the cases where the ECHR articles have been included without citing the ECtHR case law has two primary goals. First, Albanian judges have applied the ECHR articles to justify their decisions by directly interpreting these articles. Second, this helps the readers to comprehend Sect III of this paper better, where the goal is to uncover how these articles have been used to decide the case.

Within the constitutional complaints adjudicated by the Albanian Constitutional Court across the first semester of 2024, the full year of 2023, and 2022, co-ownership issues constitute a notable portion of the cases. Specifically, in the first half of 2024, 4 out of 11 individual complaints⁸ (or 36.4%) pertained to co-ownership. In 2023, co-ownership issues appeared in 3 out of 20 complaints⁹ (15%), and in 2022, they were present in 2 out of 11 complaints¹⁰ (18.2%). Overall, across these three years, co-ownership accounts for 9 out of 42 total individual complaints, representing approximately 21.4% of the Court's casework in this area. This frequent appearance underscores the ongoing complexities in the Albanian legal framework concerning co-ownership arrangements, especially among agricultural families and other multiple-stakeholder situations. The focal points in these cases revolve around intra-co-owner disputes, contractual disagreements regarding the utilization of shared property, and administrative or procedural delays impeding the recognition and registration of co-ownership rights. The prevalence of these issues reveals ongoing challenges in managing and protecting property rights within co-owned arrangements, especially in family and agricultural contexts, and underscores the Court's role in ensuring fair administration of co-owned assets.

A further relevant issue relates to *servitudes* or rights *in rem* concerning alien property, which involve the legal entitlements of one party to use or manage another's property. This category, part of the broader *iura in re aliena*, also appears regularly across the three-year span. In 2024, 1 out of 11 complaints¹¹ (9.1%) concerned *servitudes*; in 2023, there were 2 out of 20 complaints¹² (10%); and in 2022, 1 out of 11 complaints¹³ (9.1%) involved *iura in re aliena*.

⁸ Albanian Constitutional Court's individual constitutional complaints addressing civil law issues related to co-ownership in the first semester of 2024: Decisions no. 9 of 27.02.2024; no. 15 of 08.03.2024; no. 36 of 30.04.2024; and no. 50 of 20.06.2024.

⁹ Albanian Constitutional Court's individual constitutional complaints addressing civil law issues related to co-ownership in 2023: Decisions no. 28 of 18.05.2023; no. 31 of 29.05.2023; and no. 42 of 19.09.2023.

¹⁰ Albanian Constitutional Court's individual constitutional complaints addressing civil law issues related to co-ownership in 2022: Decisions no. 24 of 11.10.2022; and no. 31 of 03.11.2022.

¹¹ Albanian Constitutional Court's individual constitutional complaints addressing civil law issues related to servitudes in the first semester of 2024: Decision no. 34 of 24.04.2024.

¹² Albanian Constitutional Court's individual constitutional complaints addressing civil law issues related to servitudes in 2023: Decisions no. 9 of 23.02.2023; and no. 23 of 25.04.2023.

¹³ Albanian Constitutional Court's individual constitutional complaints addressing civil law issues related to servitudes in 2022: Decision no. 31 of 03.11.2022.

Altogether, *servitudes* appear in 4 of the 42 cases (9.5%). These cases commonly involve disputes over recalculations of tax assessments or retirement benefits associated with property, as well as the rights related to public assets being managed by private entities. This steady presence of *servitudes* suggests the Court's role in arbitrating the rights associated with third-party usage of property and upholding the balance between public and private property interests, ensuring adherence to principles under Article 1 of Protocol No. 1 of the European Convention on Human Rights.

Regarding *usufructus*, cases arose exclusively in 2024, where 3 out of 11 complaints¹⁴ (27.3%) focused on issues regarding usufruct. This high percentage for 2024 highlights a potential increase in disputes concerning the right to use and benefit from property owned by another, especially in cases where private parties manage public assets. These complaints emphasize the need for judicial protection of usufructuary rights, focusing on disputes regarding the legal conditions under which management rights over public assets may be granted to private entities, potentially impacting the usufructuary's prerogatives. These cases point to growing complexities as Albania navigates arrangements in which private entities assume management roles over public properties while protecting the usufructuary's legal rights.

Expropriation cases are the most frequent among individual constitutional complaints, with 4 complaints in 2024¹⁵ (36.4%), 14 complaints in 2023¹⁶ (70%), and 9 complaints in 2022¹⁷ (81.8%), leading to a total of 27 expropriation-related complaints out of the 42 cases (64.3%). These cases frequently raise concerns over the adequacy of compensation provided, procedural fairness, and challenges to the legitimacy of expropriations for public purposes. Common subtopics within expropriation cases include administrative delays in compensation, perceived inadequacies in property valuation, and challenges to the equitable application of compensation laws. These cases frequently invoke Article 6 (right to a fair trial) and Article 1 of Protocol No. 1 (protection of property) under the European Convention on Human Rights, reflecting the Court's mandate to enforce equitable and timely compensation procedures as per international legal standards. The high frequency of expropriation cases underscores a recurring legal and social challenge in ensuring fair treatment of property owners subject to expropriation.

Last, in contract law, there was a single constitutional complaint¹⁸ in 2023, accounting for 5% of cases for that year. This complaint involved allegations that a breach of contract

¹⁴ Albanian Constitutional Court's individual constitutional complaints addressing civil law issues related to usufruct in the first semester of 2024: Decisions no. 34 of 24.04.2024; no. 41 of 29.05.2024; and no. 45 of 11.06.2024.

¹⁵ Albanian Constitutional Court's individual constitutional complaints addressing civil law issues related to expropriation in the first semester of 2024: Decisions no. 33 of 23.04.2024; no. 44 of 24.04.2024; no. 51 of 20.06.2024; and no. 53 of 08.07.2024.

¹⁶ Albanian Constitutional Court's individual constitutional complaints addressing civil law issues related to expropriation in 2023: Decisions no. 3 of 07.02.2023; no. 6 of 16.02.2023; no. 14 of 21.03.2023, no. 16 of 23.03.2023; no. 20 of 05.04.2023; no. 22 of 25.04.2023; no. 25 of 11.05.2023; no. 33 of 30.05.2023; no. 40 of 14.09.2023; no. 44 of 26.09.2023; no. 46 of 03.10.2023; no. 50 of 18.10.2023; no. 53 of 31.10.2023; and no. 57 of 09.11.2023.

¹⁷ Albanian Constitutional Court's individual constitutional complaints addressing civil law issues related to expropriation in 2022: Decisions no. 2 of 17.02.2022; no. 3 of 17.02.2022; no. 11 of 21.04.2022; no. 22 of 29.09.2022; no. 29 of 01.11.2022; no. 33 of 14.11.2022; no. 40 of 22.12.2022; no. 41 of 22.12.2022; and no. 43 of 27.12.2022.

¹⁸ Albanian Constitutional Court's individual constitutional complaints addressing civil law issues related to contract law in 2023: Decision no. 43 of 19.09.2023.

encroached on property rights, illustrating the Court's oversight in ensuring contractual obligations are respected within a constitutional and property rights framework. Although contract law cases are rare in this context, this case highlights how the Court assesses contractual disputes that intersect with property rights under a constitutional framework, particularly in instances where a breach of contract may impact property entitlements, thereby safeguarding these rights under both national law and international human rights standards.

The Albanian Constitutional Court has addressed intricate property disputes involving usufruct, servitude, and co-ownership rights, where the interplay of these legal interests presents unique challenges. In one individual complaint of the first semester of 2024¹⁹ involving *usufructus* and *servitutes*, the Court has examined the delegation of management rights over public assets to private entities, scrutinizing the extent to which such transfers may impact the rights of usufructuaries and servitude holders. These deliberations often engage Article 6(1) of the ECHR and draw on precedent-setting judgments, reinforcing the importance of protecting established property interests against potential overreach in public-private arrangements. Similarly, in one complaint in which matters of co-ownership intertwined with *servitutes*, the Court has balanced inheritance rights within co-owned property against servitude duties that grant access and use rights to third parties.²⁰ By affirming both co-ownership and servitude rights within a unified legal framework, the Court underscores its dedication to safeguarding individual property entitlements and enforcing servitude obligations, ensuring that Albanian property law adheres to both national standards and the principles of the ECHR. This approach illustrates the Court's nuanced handling of property rights, where the intersection of usufruct, co-ownership, and servitude interests necessitates careful judicial protection to maintain equitable property relations.

In conclusion, the Albanian Constitutional Court's handling of individual constitutional complaints reflects a persistent focus on property rights and procedural justice in property-related disputes. The prevalence of expropriation cases, followed by co-ownership and servitude issues, underscores the Court's critical role in enforcing fair property rights practices. This trend also reveals the ongoing need for judicial scrutiny to ensure compliance with the European Convention on Human Rights, particularly in protecting citizens' rights to property and fair compensation in the face of state or third-party intervention.

Dealing now with the application of international human rights by the Albanian Constitutional Court in civil matters, in the first semester of 2024, while 47 out of 55 decisions dealt with individual constitutional complaints,²¹ only 11 dealt with individual constitutional complaints dealing with civil law issues. Of 11 individual constitutional complaints dealing with civil law issues, in 4, constitutional judges applied the ECHR; in 2, constitutional judges referred to the ECtHR's case law; and in 1, constitutional judges referred both to the ECHR and the ECtHR's case law. From among 11 individual

¹⁹ Albanian Constitutional Court's individual constitutional complaints addressing civil law issues related to usufruct and servitude: Decision no. 34 of 24.04.2024.

²⁰ Albanian Constitutional Court's individual constitutional complaints addressing civil law issues related to co-ownership and servitude: Decision no. 31 of 03.11.2022.

²¹ In the first semester of 2024, the cases dealing with individual constitutional complaints are: Decisions no. 9 of 27.02.2024; no. 15 of 08.03.2024; no. 33 of 23.04.2024; no. 34 of 24.04.2024, no. 36 of 30.04.2024; no. 41 of 29.05.2024; no. 43 of 04.06.2024; no. 44 of 04.06.2024; no. 45 of 11.06.2024; no. 50 of 20.06.2024; no. 51 of 20.06.2024; and no. 53 of 08.07.2024.

constitutional complaints dealing with civil law issues, the decision with the highest number of ECHR's articles cited, excluding multiple citations of the same article, is decision no. 51 of 20.06.2024²² while the decision with the highest number of ECtHR's cases cited, excluding multiple citations of the same case, is decision no. 33 of 23.04.2024.²³ In addition, in 2023, while 61 out of 70 decisions dealt with individual constitutional complaints,²⁴ only 20 dealt with individual constitutional complaints dealing with civil law issues. Of 20 individual constitutional complaints dealing with civil law issues, in 16 cases, the constitutional judges applied the ECHR; in 10 cases, the Constitutional Court referred to the ECtHR's case law; and in 10 cases, the constitutional judges referred both to the ECHR and the ECtHR's case law. In 2023, the decision with the highest number of ECHR's articles cited, excluding multiple citations of the same article, is decision no. 42 of 19.09.2023,²⁵ while the decisions with the highest number of references to ECtHR's case law, excluding multiple citations of the same case, are decision no. 33 of 30.05.2023 and decision no. 53 of 31.10.2023.²⁶ Moreover, in 2022, while 31 out of 43 decisions dealt with individual constitutional complaints,²⁷ only 11 dealt with individual constitutional complaints dealing with civil law issues. Of 11 individual constitutional complaints dealing with civil law issues, in 8, the constitutional judges applied the ECHR, in 6, the Constitutional Court referred to the ECtHR's case law, and in 6, the constitutional judges referred to both the ECHR and the ECtHR's case law. Of 11 individual constitutional complaints dealing with civil law issues, the decision with the highest number of ECHR's articles cited, excluding multiple citations of the same article, is decision no. 33 of 14.11.2022,²⁸ while the decision with the highest

²² The ECHR's articles cited are Articles 2, 6, 8 and 13.

²³ The ECtHR's cases referred to are *Mutu and Pechstein v. Switzerland*, of October 2, 2018, § 96, *ibid* §§ 121-123; *Apollo Engineering Limited v. the United Kingdom (dec.)*, of July 2, 2019, § 38; *Suda v. the Czech Republic*, of October 28, 2010, § 48; *Cudak v. Lithuania*, of March 23, 2010, § 59; *Beg S.p.a v. Italy*, dated 20.05.2021, § 127.

²⁴ In 2023, the cases dealing with individual constitutional complaints are: Decisions no. 3 of 07.02.2023; no. 6 of 16.02.2023; no. 9 of 23.02.2023; no. 14 of 21.03.2023; no. 16 of 23.03.2023; no. 20 of 05.04.2023; no. 22 of 25.04.2023; no. 23 of 25.04.2023; no. 25 of 11.05.2023; no. 28 of 18.05.2023; no. 31 of 29.05.2023; no. 33 of 30.05.2023; no. 37 of 07.07.2023; no. 40 of 14.09.2023; no. 42 of 19.09.2023; no. 43 of 19.09.2023; no. 44 of 26.09.2023; no. 46 of 03.10.2023; no. 50 of 18.10.2023; no. 53 of 31.10.2023; and no. 57 of 09.11.2023.

²⁵ The ECHR's articles cited are Articles 1, 6 and 13.

²⁶ The ECtHR's cases referred to are: *Vigani v. Albania*, of November 22, 2022; *Fullani v. Albania*, of September 20, 2022; *Kasmi v. Albania*, of June 23, 2020; *Sharxhi and Others v. Albania*, of January 11, 2018; *Ramadhi and Others v. Albania*, of November 13, 2007; *Pincová and Pinc v. the Czech Republic*, of November 5, 2002; *Holy Monasteries v. Greece*, of December 9, 1994, § 71; *James and Others v. the United Kingdom*, of February 21, 1986, § 54; *Lithgow and Others v. the United Kingdom*, of July 8, 1986, § 18.122; *Tunaitis v. Lithuania*, of November 24, 2015, § 41; *Jahn and Others v. Germany*, of June 30, 2005, § 95; *Jahn and others v. Germany* of 30.06.2005, § 95; *Sporrong and Lönnroth v. Sweden*, September 23, 1982, § 61; *Kasmi v. Albania*, no. 1175/06, of June 23, 2020, § 70; *Manushaqe Puto and Others v. Albania*, of July 31, 2012, § 168; *Ramadhi and Others v. Albania*, no. 38222/02, of November 13, 2007, §§ 36 and 77; *Gustafsson v. Sweden [GC]*, April 25, 1996, § 60; *Skowroński v. Poland*, June 28, 2001; *Kranz v. Poland*, September 10, 2002; *Eskelinen v. Finland*, February 3, 2004; *Tormala v. Finland*, March 16, 2004; *Rustavi 2 Broadcasting Company Ltd and Others v. Georgia*, July 18, 2019, § 310; *Kuchař and Štis v. Czech Republic*, October 21, 1998; *Kotov v. Russia [GC]*, April 3, 2012, § 117.

²⁷ In 2022, the cases dealing with individual constitutional complaints are: Decisions no. 2 of 17.02.2022; no. 3 of 17.02.2022; no. 11 of 21.04.2022; no. 22 of 29.09.2022; no. 24 of 11.10.2022; no. 29 of 01.11.2022; no. 31 of 03.11.2022; no. 33 of 14.11.2022; no. 40 of 22.12.2022; no. 41 of 22.12.2022; and no. 43 of 27.12.2022.

²⁸ The ECHR's articles are Articles 6, 13 and 53, article 1 of Protocol no. 1.

number of references to ECtHR's case law, excluding multiple citations of the same case, is decision no. 3 of 17.02.2022.²⁹

In the recent years, the Albanian legislator has also underlined the role of case law. Indeed, one of the cases of judicial review by the Supreme Court is *when the appealed decision is different from the judicial practice of the Civil Chamber or the recognized practice of the Joint Chambers of the Supreme Court* (Art. 472(1)(b) Code of Civil Procedure, CCP). In addition, Art. 481(8) CCP regulating the cases of judgment on the unification or change of judicial practice, modified several times – by the Constitutional Court (decision no. 46/1999 dated 28.6.1999) as well as by the legislator (law no. 8812, dated 17.5.2001, amended by Law No. 44/2021, dated 23.3.2021) – states that the *decision of the Civil Chamber and the Joint Chambers is binding on the courts in the trial of similar cases*. Moreover, Art. 482/a CCP – added in 2021 (Law No. 44/2021, dated 23.3.2021) – underlines that the Supreme Court will decide in a public hearing when the case presents importance for the unification or development of judicial practice (Art. 482/a(1)(a) CCP). Furthermore, in order to publicize the new judicial practice, the reforms of 2017 (Law No. 8812 of 17.5.2001 and Law No. 38/2017 of 30.3.2017), and 2021 (Law No. 44/2021 of 23.3.2021), have underlined that when the Supreme Court – the Joint Chambers or the Civil Chamber – modifies its practice, the decision shall be published in the *Official Gazette* (Art. 485(2), CCP, and Art. 19(3), Law No. 8588 of 15.03.2000 “On the Organization and Functioning of the Supreme Court of the Republic of Albania”). Last but not least, Art. 493(4) CCP states that the guidelines given by the Supreme Court are mandatory in the case of re-examination by lower courts. The main difference between the *stare decisis* rule and Art. 493(4) CCP is that in the case of Art. 493(4) CCP, the guidelines of the Supreme Court are mandatory within the same proceeding (nomophylactic function of the Supreme Court),³⁰ while pursuant to the *stare decisis* rule, the guiding principles set out by the Supreme Court are mandatory also for similar cases.

While in the case of *stare decisis*, judges shall follow the previous case-law, the doctrine of *jurisprudence constante* allows judges to justify their decisions accordingly with the past case law trends.³¹ It might be seen that the Albanian legislator has gone beyond codifying the doctrine of *jurisprudence constante* by getting closer to the doctrine of *stare decisis* for two main reasons. First, Article 481(8) CCP states that decisions of the Supreme Court – not only of the Joint Chambers, but also of the Civil Chamber – are mandatory for all courts called to decide on similar cases. In other words, Article 481(8) CCP does not limit the mandatory application of judgments of the Supreme Court only to decisions coming from the Joint Chambers or to constant (uniform) decisions, as established in the case of reasons for appeal (Art. 472(1)(b) CCP) or cases of public hearings (Art. 482/a(1)(a) CCP). Second, in general, dissenting judges in *civil-law* countries are not allowed to attach their dissenting opinions to

²⁹ The ECtHR's case law used are: *Bara and Kola v. Albania*, dated October 12, 2021, § 63; *Boddaert v. Belgium*, dated October 12, 1992, § 39; *Guincho v. Portugal*, dated July 10, 1984, § 40; *Zimmermann and Steiner v. Switzerland*, dated July 13, 1983, § 29; *Qufaj v. Albania*, dated September 18, 2004; *Süßmann k. Germany*, dated 16.09.1996, § 61; *Buchholz v. Germany*, 6 May 1981, § 51; *Frydlender k. of France [GC]*, dated 27.06.2000, § 43; *Xero Flor v. Poland sp. z o.o. v. Poland*, decision dated May 7, 2021; *Buchholz v. Germany*, 6 May 1981, § 5.

³⁰ G. LEO, *La funzione nomofilattica della Corte di cassazione tra sviluppi interpretativi e recenti riforme*, in *Quaderni del Corso di Dottorato in Diritto*, 2021, p. 49 s.

³¹ J. DENNIS, *The John Tucker Jr. Lecture in Civil Law: Interpretation and application of the civil code and the evaluation of judicial precedent*, in *Louisiana Law Review*, 1993, p. 1 s.

majority decisions.³² On the contrary, in Albania, similarly to the common-law system, dissenting opinions of Supreme Court judges are published alongside the majority opinion (Article 142(2), Albanian Constitution, and Article 19(2), Law No. 8588 of 15.03.2000).

However, these new reforms should be interpreted in the spirit of the *civil law* tradition as well as of Article 142(2) of the Albanian Constitution. Thus, in Albania, the legislator has codified the doctrine of *jurisprudence constante*, intending to pursue legal certainty and reduce the number of decisions being appealed. Indeed, one of the criteria judges are evaluated for is their ability to use the relevant case law.³³ The importance of *jurisprudence constante* has also been underlined by the doctrine in other civil-law countries,³⁴ even though it is not codified in the national legislations, such as Germany,³⁵ or Italy.³⁶

Thus, this paper considers only the cases of practice modification by the Supreme Court's Civil Chamber. For clarity purposes, it is fundamental to inform readers that the cases from the Court of First Instance or Courts of Appeal in Albania are not publicly available. In other words, in Albania, there is no general database for research on case law. While the database for case law for each Court is not functioning, the new database of the Albanian Supreme Court is facing challenges in research through keywords.

Moreover, in civil cases, there are, in addition to decisions not disposing of the substance of the case, although the case is dismissed, and final decisions (decisions that end the civil judicial process by solving the case on the merits), there are also interlocutory decisions, which are handed down by the court to respond to requests and ensure the development of the trial. According to Arts. 125, 315, 470, and 471 CCP, interlocutory decisions can be appealed if the Code explicitly establishes an appeal instrument. After the reform of Law No. 98/2016 (modified with Law No. 46/2021), the Supreme Court is composed of 3 judges (for all appeals in civil matters), also called the Civil Chamber, 5 judges (for the unification of the practice, i.e., meaning when different lower Courts make dissimilar interpretations for identical issues) also known as the Joint Civil Chamber, and with 19 judges (for the modification of the previous practice) also known as the Joint Chambers. Thus, for the unification of the practice, a Joint Civil Chamber of 5 judges is needed, while in the case of modification of the previous practice, there is the need to call the Joint Chambers with 19 judges.

It is important to mention that also the Albanian Supreme Court's Joint Civil Chamber (Modification of the Practice) has adjudicated a range of civil law issues through interlocutory and final decisions from 2022 to 2024, covering topics such as co-ownership, expropriation, and contract law. These cases reflect the Court's dedication to maintaining fair processes and protecting property and contractual rights within the Albanian legal system.

In the first semester of 2024, the Albanian Supreme Court's Joint Civil Chamber addressed one decision involving contract law, specifically focusing on a dispute over the

³² V. FON, F. PARISI, *Judicial precedents in civil law systems: A dynamic analysis*, in *International Review of Law and Economics*, 2006, p. 519 s.

³³ National Council of Judges, Decision No. 3, dated 16.01.2023 about the Ethical and Professional Evaluation of the Judge {...} for the Year 2021, 2023, available online: <https://klgj.al/wp-content/uploads/2023/01/VENDIM-NR.3-DATË-16.01.2023-PËR-VLERËSIMIN-ETIK-DHE-PROFESIONAL-TË-GJYQTARIT-...-PËR-VITIN-2021-1.pdf> (accessed on July 1st, 2024).

³⁴ V. FON, F. PARISI, *Judicial precedents*, *op. cit.*, p. 519 s.

³⁵ J. DAINOW, *The role of judicial decisions and doctrine in civil law and in mixed jurisdictions*, in *The American Journal of Comparative Law*, 1974, p. 113 s.

³⁶ R. RORDORF, *Stare decisis: osservazioni sul valore del precedente giudiziario nell'ordinamento italiano*, in *Il Foro Italiano*, 2006, p. 279 s.

validity of an electricity bill.³⁷ This decision represents approximately 10% of the reviewed 2024 cases and highlights the Court's role in overseeing the fairness and legality of service-related charges and billing practices. Although no specific human rights conventions or broader frameworks were cited, the Court's review likely centered on principles of contract law, consumer protection, and the legal standards governing public utility services in Albania.

In the interlocutory decisions category, the Court addressed cases requiring preliminary judgments, often focused on protecting interim rights. Notable among these was a 2023 co-ownership case, concerning the authorization to sell immovable property on behalf of minors, representing 50% of the interlocutory cases that year, where the Court temporarily reviewed control over property involving vulnerable individuals.³⁸ This decision underscores the Court's role in ensuring procedural safeguards before a final determination.

In contract law, an interlocutory case in 2022 dealt with loan guarantee issues.³⁹ Here, the Court's preliminary review focused on each party's obligations within the contractual arrangement, ensuring that essential rights were protected pending a final ruling. Another interlocutory case in 2022, involving expropriation, dealt with the return and compensation for property.⁴⁰ Together, these cases account for 100% of the interlocutory cases in 2022 and demonstrate the Court's commitment to procedural fairness, balancing interim protections with final legal resolutions. These interlocutory cases demonstrate the Court's commitment to procedural fairness, balancing interim protections with final legal resolutions.

In *final* decisions, the Court has issued comprehensive rulings on co-ownership, contract law, and property rights matters. Co-ownership cases were frequent, with one case each year from 2022 to 2023.⁴¹ In 2022, a case focused on interpreting co-ownership agreements, specifically addressing issues within shared property arrangements.⁴² The Court's ruling clarified the obligations between co-owners, ensuring fair management of jointly held property. A 2023 co-ownership case involved financial disputes among co-owners, underscoring the Court's focus on resolving complex ownership conflicts by emphasizing fair financial management and contractual integrity.⁴³

In contract law, the final cases included one case in 2022,⁴⁴ addressing debt recovery and enforcement of contractual obligations. In this decision, which represents 10% of the final cases that year, the Judges dealt specifically with debt recovery, where the Court emphasized the importance of fair enforcement processes.

³⁷ Albanian Supreme Court, Joint Civil Chamber (Modification of the Practice) addressing service issues in 2024: Interlocutory Decisions no: 11243-01311-2016 of 31.01.2024.

³⁸ Albanian Supreme Court, Joint Civil Chamber (Modification of the Practice) addressing co-ownership issues in 2023: Interlocutory Decision no. 11249-00663-00-2023 of 22.12.2023.

³⁹ Albanian Supreme Court, Joint Civil Chamber (Modification of the Practice) addressing contract law issues in 2022: Interlocutory Decision no. 11243-00639-00-2013 of 16.11.2022.

⁴⁰ Albanian Supreme Court, Joint Civil Chamber (Modification of the Practice) addressing expropriation issues in 2022: Interlocutory Decision no. 11243-00907-00-2015 of 18.11.2022.

⁴¹ Albanian Supreme Court, Joint Civil Chamber (Modification of the Practice) addressing co-ownership issues in 2023: Final Decision no. Decision no. 106 of 02.03.2023 and Final Decision no. Decision no. 393 of 26.10.2022.

⁴² Albanian Supreme Court, Joint Civil Chamber (Modification of the Practice) addressing co-ownership issues in 2022: Final Decision no. 393 of 26.10.2022.

⁴³ Albanian Supreme Court, Joint Civil Chamber (Modification of the Practice) addressing co-ownership issues in 2023: Final Decision no. 106 of 02.03.2023.

⁴⁴ Albanian Supreme Court, Joint Civil Chamber (Modification of the Practice) addressing contract law issues in 2022: Final Decision no. 392 of 26.10.2022.

Across both interlocutory and final decisions, the Albanian Supreme Court has demonstrated its dedication to upholding fair process in civil law cases. In interlocutory decisions, the Court provided interim protections for property and contractual rights, ensuring a fair approach before final judgments. In its final rulings, particularly in co-ownership and contract law, the Court clarified legal obligations and reinforced fair treatment within Albania's civil law system, emphasizing a balanced approach to both procedural and substantive justice in property and contract disputes.

Dealing now with the application of international human rights law by Albanian judges of the Supreme Court in civil matters, in the first semester of 2024, 1 out of 5 decisions dealt with civil matters. However, that decision did not mention either the ECHR or the ECtHR's case law. In addition, in 2023, while 2 out of 21 decisions, dealt with civil matters, in one decision, the judges of the Joint Civil Chamber referred both to the ECHR and the ECtHR's case law. In this decision, the Supreme Court referred to Art. 6 ECHR as well as to three different cases decided by the ECtHR. Moreover, in 2022, while 4 out of 20 decisions dealt with civil matters, in 2, civil judges referred both to the ECHR and the ECtHR's case law. Of 4 legal decisions modifying the Albanian civil law practice in 2022, the decision with the highest number of ECHR's articles cited, excluding multiple citations of the same article, is decision no. 393 of 26.10.2022,⁴⁵ while the decision with the highest ECtHR's case law cited, excluding multiple citations of the same case, is decision no. 393 of 26.10.2022.⁴⁶

To sum up, the Supreme and Constitutional courts apply human rights in civil cases. While the Constitutional Court uses the ECHR and the ECtHR in their daily jobs, this Section also showed that the Supreme Court applies them; at least, in their final decisions for the unification or modification of the judicial practice.

3. *Examination of Civil Cases in Correlation with Human Rights*

This Section studies the application of human rights by Albanian judges dealing with civil issues. In concrete, the five main civil issues where judges have also considered human rights are the following: 1. Co-ownership, 2. *Servitudes* (as part of *iura in re aliena*, which is part of rights *in rem* in more general terms) or rights on alien property, 3. Usufruct, 4. Expropriation, and 5. Contract Law.

The first topic dealing with the application of human rights by Albanian judges dealing with civil issues is co-ownership.⁴⁷ In recent years, Albanian judges, particularly the Constitutional Court, have increasingly integrated human rights principles into their civil law rulings, particularly in co-ownership disputes. These cases often involve multiple parties claiming rights over shared property and require careful consideration of both national law

⁴⁵ The ECHR's articles cited are: Article 1 of Protocol no.1 and Article 6 ECHR.

⁴⁶ The ECtHR's cases referred to are: *Zięrzyński v. Poland*, no. 34049/96, § 63, ECHR 2001-VI; *Iatridis v. Greece [GC]*, no. 31107/96, § 54, ECHR 1999-II; *Kopecký v. Slovakia [GC]*, §§ 49-50; *Centro Europa 7 S.R.L. and di Stefano v. Italy [GC]*, § 173; *Saghinadze and others v. Georgia*, § 103; *Bélané Nagy v. Hungary [GC]*, § 75; "Chapman v United Kingdom" ECtHR decision, dated 18.01.2001; "Lupaş and Others v. Romania", ap. nos. 1434/02, 35370/02 and 1385/03, paragraph 67, ECHR 2006 XV; *Mariyka Popova and Asen Popov v. Bulgaria*", request no. 11260/10, section 5 of the ECHR, decision no. 11.04.2019, paragraph 40.

⁴⁷ Albanian Constitutional Court, decisions no. 15 of 08.03.2024; no. 15 of 08.03.2024; no. 51 of 20.06.2024; no. 28 of 18.05.2023; no. 31 of 29.05.2023; no. 42 of 19.09.2023; and no. 31 of 03.11.2022.

and international human rights standards.⁴⁸ Below is a summary of key decisions related to co-ownership, focusing on how the ECHR and the ECtHR's case law have been applied.

Within co-ownership, several aspects – such as the right to a fair trial,⁴⁹ protection of co-owners' legal rights,⁵⁰ right of way through the shared asset towards another asset,⁵¹ absence of recognition of the right to co-ownership in a rural area,⁵² right to fair process,⁵³ or right to registration,⁵⁴ – have been analyzed. First, the right to a fair trial, established in Art. 6 ECHR (Right to a fair trial), also includes the right to reform the previous decisions (*reformatio in peius*).⁵⁵ Second, Art. 1 of Protocol No. 1 (Protection of property) ECHR and legal certainty, as part of Art. 6 ECHR, are also applied in the case of co-ownership.⁵⁶ In concrete terms, the right to register the co-ownership is part of Art. 1 of Protocol No. 1 ECHR. In addition, previous decisions *in iudicatum* recognizing the property right to co-owners shall be considered by other courts.⁵⁷ Moreover, the right to a fair trial and equal treatment of co-owners, as part of Art. 6 ECHR, means that each co-owner has the right of way through the shared asset towards another asset.⁵⁸ Third, in the case of co-ownership, also Arts. 8, and 13 ECHR will be applied.⁵⁹ In addition, the application of Art. 8 (Right to respect for private and family life) and Art. 13 (Right to an effective remedy) means that any limitations or restrictions on the right to co-ownership, as a manner of enjoyment of the property right, shall be justified and proportionate as well as in line with ECtHR case law.⁶⁰

Albanian judges have increasingly addressed *servitudes* or rights on alien property in their rulings, applying national legal principles in alignment with international human rights standards, particularly those of the ECHR. These rulings underscore the need for legal formalization, clarity, and procedural fairness in adjudicating *servitudes* or rights on alien property. As part of applying Art. 6 ECHR, the owners enjoying a right on alien property have the right to access justice without any procedural mismanagement,⁶¹ as well as legal certainty by protecting the interests of all parties.⁶² Always related to Art. 6 ECHR, Albanian judges⁶³ applied ECtHR's case law⁶⁴ to emphasize that all parties must have procedural

⁴⁸ *Ibid.*

⁴⁹ Albanian Constitutional Court, Decision no. 28 of 18.05.2023.

⁵⁰ Albanian Constitutional Court, Decision no. 22 of 20.01.2022.

⁵¹ Albanian Constitutional Court, Decision no. 31 of 03.11.2022.

⁵² Albanian Constitutional Court, Decisions no. 32, of 03.11.2022; and no. 10, of 12.04.2022.

⁵³ Albanian Constitutional Court, Decision no. 42 of 19.09.2023.

⁵⁴ Albanian Constitutional Court, Decision no. 65 of 30.11.2023.

⁵⁵ Albanian Constitutional Court, Decision no. 28 of 18.05.2023.

⁵⁶ Albanian Constitutional Court, Decision no. 22 of 20.01.2022.

⁵⁷ Albanian Constitutional Court, Decision no. 22 of 20.01.2022.

⁵⁸ Albanian Constitutional Court, Decision no. 31 of 03.11.2022.

⁵⁹ Albanian Constitutional Court, Decisions no. 9 of 27.02.2024; no. 42 of 19.09.2023; no. 30 of 29.05.2023; no. 32 of 03.11.2022; no. 10 of 12.04.2022.

⁶⁰ ECtHR jurisprudence: *Kozacıoğlu v. Turkey*, February 19, 2009, § 54, and *Kristiana LTD v. Lithuania*, February 6, 2008, § 104; *Ruspoli Morenes v. Spain*, November 28, 2001, § 39.

⁶¹ Albanian Constitutional Court, Decisions no. 19 of 01.04.2021; no. 3 of 23.02.2016; no. 52 of 14.11.2014; no. 5 of 22.02.2022; no. 22 of 29.04.2021; and no. 3 of 23.02.2016.

⁶² Albanian Constitutional Court, Decision no. 31, of 03.11.2022.

⁶³ Albanian Constitutional Court, Decision no. 9 of 23.02.2023.

⁶⁴ ECtHR case law: *East West Alliance Limited v. Ukraine*, § 167; *Ünspeđ Paket Servisi SaN. Ve TiC. A.Ş. v. Bulgaria*, § 37; *Vistiņš and Perepjolkins v. Latvia [GC]*, § 96; *Lekić v. Slovenia [GC]*, § 95; *Capital Bank AD v. Bulgaria*, § 134; *Stolyarova v. Russia*, § 43; *Valico S.r.l. v. Italy (dec.)*, application no. 70074/01; see also *Phillips v. the United Kingdom*, application no. 41087/98, § 50, ECHR 2001-VII; *Valico S.r.l. k. Italy (dec.)*, application no. 70074/01.

protections when property rights, or other rights *in rem*, including rights on alien property, are at stake.⁶⁵ The focus on fairness and access to justice aligns with broader rights *in rem* cases, ensuring that rights on alien property are adjudicated under fair legal standards and by national and international law. In other words, the Court ensures that similar rights are clearly defined, protected, and adjudicated fairly, without infringing on the property rights of others. These decisions establish crucial precedents for the law concerning rights on alien property in Albania, providing a foundation for legal clarity and fairness in future property and co-ownership disputes.

Focusing on the third topic, three cases where Albanian judges used human rights in civil decisions relate to usufruct,⁶⁶ the right to use and enjoy an asset without interfering in the property rights inherent thereto. The disputes related to the correct balance between the rights of usufructuary (the person entitled with the *iura in re aliena* of *ususfructus*) and owner's rights⁶⁷ or the protection of the rights of usufructuary in the case of privatization,⁶⁸ which was typical in the post-communist regime in Albania. While Art. 1 of Protocol No. 1 of the ECHR was used to narrow the rights of the usufructuary compared to the broader ownership rights, Art. 6 ECHR was used to guarantee a right to a fair trial, also to usufructuary,⁶⁹ or to underline the importance of legal certainty, also in the case of usufruct,⁷⁰ as well as to require a correct evaluation of rights of usufructuary to the owners' rights, in the case of privatization.⁷¹

The fourth topic dealing with the application of human rights by Albanian judges in civil issues is expropriation.⁷² Albanian judges have used Art. 6 of the ECHR and Art. 1 of Protocol No. 1 ECHR to protect the property rights of expropriated owners. Based on Art. 6 ECHR, judges highlighted the need for transparency in property registration processes and demonstrated that arbitrary administrative actions must not infringe upon property rights.⁷³ In addition, procedural fairness in the expropriation process is fundamental.⁷⁴ Thus, procedural delays⁷⁵ or delays in legal proceedings⁷⁶ violate Art. 6 ECHR, and national courts

⁶⁵ Albanian Constitutional Court, Decision no. 9 of 23.02.2023.

⁶⁶ Albanian Constitutional Court, Decision no. 34 of 24.04.2024; no. 41 of 29.05.2024; and no. 45 of 11.06.2024.

⁶⁷ Albanian Constitutional Court, Decision no. 34 of 24.04.2024, and no. 45 of 11.06.2024.

⁶⁸ Albanian Constitutional Court, Decision no. 41 of 29.05.2024.

⁶⁹ Albanian Constitutional Court, Decision no. 44 of 26.09.2023.

⁷⁰ Albanian Constitutional Court, Decision no. 34 of 24.04.2024.

⁷¹ Albanian Constitutional Court, Decision no. 41 of 29.05.2024.

⁷² Albanian Constitutional Court, Decisions no. 44 of 04.06.2024; no. 50 of 20.06.2024; no. 51 of 20.06.2024; no. 53 of 08.07.2024; no. 3 of 07.02.2023; no. 6 of 16.02.2023; no. 14 of 21.03.2023; no. 16 of 23.03.2023; no. 20 of 05.04.2023; no. 22 of 25.04.2023; no. 25 of 11.05.2023; no. 28 of 18.05.2023; no. 31 of 29.05.2023; no. 33 of 30.05.2023; no. 40 of 14.09.2023; no. 43 of 19.09.2023; no. 44 of 26.09.2023; no. 46 of 03.10.2023; no. 50 of 18.10.2023; no. 53 of 31.10.2023; no. 57 of 09.11.2023; no. 2 of 17.02.2022; no. 3 of 17.02.2022; no. 11 of 21.04.2022; no. 22 of 29.09.2022; no. 24 of 11.10.2022; no. 33 of 14.11.2022; no. 41 of 22.12.2022; and no. 43 of 27.12.2022.

⁷³ Albanian Constitutional Court, Decision no. 51 of 20.06.2024, pg. 10, para. 18: "...The good administration of justice begins with ensuring that an individual has access to a court to provide him with all aspects of a judicial hearing. This right of the individual includes not only the right to initiate a process, but also the right to have, by the court, a final solution to the case, since access to the court must be substantive and not merely formal".

⁷⁴ Albanian Constitutional Court, Decision no. 43 of 27.12.2022.

⁷⁵ Albanian Constitutional Court, Decisions no. 22 of 25.04.2023; and no. 33 of 30.05.2023.

⁷⁶ Albanian Constitutional Court, Decision no. 3 of 17.02.2022.

shall consider the ECtHR's case law.⁷⁷ In other words, Albanian judges have emphasized procedural fairness, the right to property, and the principle of *res judicata*, ensuring the decisions conformed with ECtHR standards on fairness and legal certainty.⁷⁸

Focusing on the application of Art. 1 of Protocol No. 1 ECHR, first of all, there is a need for a "fair compensation"⁷⁹ and State interference with property rights must be lawful and serve a legitimate public aim.⁸⁰ In addition, delayed compensation can deprive individuals of the full use of their compensation, thereby undermining their property rights.⁸¹ Also, timely compensation is critical to maintaining the balance between public and private interests, ensuring that property owners do not suffer prolonged financial uncertainty due to State actions.⁸² Moreover, expropriation shall meet the tests of necessity and proportionality, as required by the ECtHR standards.⁸³ Indeed, the Court also highlighted the precise paragraphs where the ECtHR expropriation standards have been established.⁸⁴ Additionally, the ECtHR case law has been used to underline the proportionality of national law requiring private developers to contribute 3% of their constructed area to the public housing fund. Although this is a restriction of property rights, judges concluded that this restriction is proportionate and justified by the legitimate aim of addressing social housing needs.⁸⁵ Furthermore, in the case of expropriation, a legitimate public interest must justify State interference with property rights and include compensation commensurate with the property's value.⁸⁶ Thus, improper classification and failure to use the land for public purposes raised concerns about the legitimacy of the compensation process, in terms of a violation of Art. 1, Protocol 1, ECHR.⁸⁷ Additionally, a long-term lease without adequate compensation constitutes a *de facto* expropriation and unlawful interference with property rights.⁸⁸ Last but not least, incorrect registration of an immovable property that will be expropriated violates the claimants' right to peaceful enjoyment of their possessions, as the State's administrative errors deprived them of their property.⁸⁹

Moreover, sometimes, it is challenging to neatly distinguish claims based on Art. 6 ECHR rather than Art. 1, Protocol 1, ECHR, since they are strongly connected in the case of expropriation. For instance, based on these articles, the court highlighted the State's obligation to provide just compensation reflecting the actual market value of the

⁷⁷ *Vigani v. Albania*, of November 22, 2022; *Fullani v. Albania*, of September 20, 2022; *Kasmi v. Albania*, of June 23, 2020; *Sharxhi and Others v. Albania*, of January 11, 2018; *Ramadhi and Others v. Albania*, of November 13, 2007; *Pincová and Pinc v. the Czech Republic*, of November 5, 2002; *Holy Monasteries v. Greece*, of December 9, 1994, § 71; *James and Others v. the United Kingdom*, of February 21, 1986, § 54; *Lithgow and Others v. the United Kingdom*, of July 8, 1986, § 18.122; *Tunaitis v. Lithuania*, of November 24, 2015, § 41; *Jahn and Others v. Germany*, of June 30, 2005, § 95; *Jahn and others v. Germany* of 30.06.2005, § 95.

⁷⁸ Albanian Constitutional Court, Decisions no. 11 of 21.04.2022.

⁷⁹ Albanian Constitutional Court, Decisions no. 22 of 25.04.2023; and no. 33 of 30.05.2023.

⁸⁰ Albanian Constitutional Court, Decisions no. 33 of 14.11.2022; and no. 22 of 29.09.2022.

⁸¹ Albanian Constitutional Court, Decision no. 3 of 07.02.2023.

⁸² Albanian Constitutional Court, Decision no. 20 of 05.04.2023.

⁸³ Albanian Constitutional Court, Decision no. 43 of 27.12.2022.

⁸⁴ *Beshiri and Others*, §§ 215-219; *Anheuser-Busch Inc. v. Portugal*, dated January 11, 2007, § 83; *Kuznetsov and Others v. Russia*, dated January 11, 2007, §§ 70, 74, and 84; *Beshiri and Others v. Albania*, dated March 17, 2020, § 196; and the same case, §§ 197-199.

⁸⁵ Albanian Constitutional Court, Decision no. 53 of 08.07.2024.

⁸⁶ Albanian Constitutional Court, Decision no. 46 of 03.10.2023.

⁸⁷ Albanian Constitutional Court, Decision no. 50 of 18.10.2023.

⁸⁸ Albanian Constitutional Court, Decision no. 53 of 31.10.2023.

⁸⁹ Albanian Constitutional Court, Decision no. 57 of 09.11.2023.

expropriated property.⁹⁰ The Court also reiterated the importance of fair compensation and proportionate interference with property rights.⁹¹ Moreover, in the case of the legitimacy of ownership claims over expropriated land, the claimant's right to be heard was compromised when the Supreme Court re-evaluated evidence without proper notice or opportunity for defense.⁹²

In addition, sometimes, in the case of expropriation, Art. 6 and Art. 13 ECHR are interconnected. In other words, excessive delays in compensation cases violate the claimant's right to a fair trial and effective legal recourse.⁹³ These delays undermine justice and weaken the claimants' ability to access their property rights. In these cases, the court also relied on ECtHR case law, which stresses that such delays and ineffective remedies counter European standards of justice.⁹⁴

The last topic relates to issues within contract law. Albanian judges have used Art. 6 ECHR and its case law,⁹⁵ in order to ensure procedural fairness, including the right to be heard, proper notification, and an impartial tribunal in a dispute over the execution of a loan agreement and the guarantor's responsibilities.⁹⁶ Again, Art. 6 ECHR and the relevant ECtHR case law⁹⁷ have been used to assess whether the enforcement procedures and judicial process meet fairness standards, including the right to be heard and a reasoned decision, also in a case dealing with enforcement of a credit contract. In addition, Art. 6 ECHR and the relevant ECtHR case law⁹⁸ have been applied to ensure procedural fairness in interpreting the contract and determining property rights in a renting contract. In addition, unpaid contractual obligations violate property rights under Art.1 of Protocol No. 1 ECHR.⁹⁹

To sum up, Albanian judges have applied human rights to different topics and subtopics related to civil matters. The majority of the cases examined here come from the Constitutional Court.

⁹⁰ Albanian Constitutional Court, Decisions no. 2 of 17.02.2022.

⁹¹ Albanian Constitutional Court, Decision no. 40 of 22.12.2022.

⁹² Albanian Constitutional Court, Decisions no. 40 of 14.09.2023; no. 31 of 29.05.2023; and no. 6 of 16.02.2023.

⁹³ Albanian Constitutional Court, Decision no. 25 of 11.05.2023.

⁹⁴ ECtHR case law: Beshiri v. Albania, of March 17, 2020; Frydlender v. France [GC], of June 27, 2000, § 43; Süßmann v. Germany, of September 16, 1996, § 61; Boddaert v. Belgium, of October 12, 1992, § 39; Süßmann k. Germany, of 16.09.1996, § 61; Frydlender v. of France [GC], dated 27.06.2000, § 43.

⁹⁵ ECtHR case law: Chapman v United Kingdom; Lupaş and Others v. Romania, ap. nos. 1434/02, 35370/02 and 1385/03, paragraph 67, ECHR 2006 XV; Mariyka Popova and Asen Popov v. Bulgaria”, Request no. 11260/10, Section 5 of the ECtHR, Decision no. 11.04.2019, paragraph 40.

⁹⁶ Albanian Supreme Court, Decision no. 106 of 02.03.2023.

⁹⁷ ECtHR case law: Chapman v United Kingdom” ECtHR decision dated 18.01.2001; “Lupaş and Others v. Romania”, app. nos. 1434/02, 35370/02 and 1385/03, paragraph 67, ECHR 2006 XV; “Mariyka Popova and Asen Popov v. Bulgaria”, request no. 11260/10, section 5 of the ECHR, decision no. 11.04.2019, paragraph 40; “Burdov v. Russia”, request 59498/00, paragraph 34, section III, CJEU. 2002; “Lyubov Stetsenko v. Russia”, request 26216/07, decision dt. 17.04.2014, paragraph 80 etc.; Qufaj v. ALBANIA.

⁹⁸ Zięrzyński v. Poland, no. 34049/96, § 63, ECHR 2001-VI; Iatridis v. Greece [GC], no. 31107/96, § 54, ECHR 1999-II; Kopecký v. Slovakia [GC], §§ 49-50; Centro Europa 7 S.R.L. and di Stefano v. Italy [GC], § 173; Saghinadze and others v. Georgia, § 103; Béláné Nagy v. Hungary [GC], § 75; “Chapman v United Kingdom” ECtHR decision, dated 18.01.2001; “Lupaş and Others v. Romania”, ap. nos. 1434/02, 35370/02 and 1385/03, paragraph 67, ECHR 2006 XV; Mariyka Popova and Asen Popov v. Bulgaria”, request no. 11260/10, section 5 of the ECHR, decision no. 11.04.2019, paragraph 40.

⁹⁹ Albanian Constitutional Court, Decision no. 43 of 19.09.2023.

4. Conclusion

This paper studied Albanian judges' application of human rights in civil matters. It should be underlined that the decisions reviewed here come from the Supreme Court, Joint Civil Chamber and the Constitutional Court since, in Albania, a constitutional complaint has been established in the case of constitutional rights violation. So, in simple words, the cases considered are all decisions concerning the unification or modification of the civil judicial practice as well as all the decisions related to individual constitutional complaints for case law coming from the Supreme Court, Civil Chamber.

Following the 2016 constitutional reform, Art. 141(1) of the Albanian Constitution upholds the doctrine of *jurisprudence constante*. It shall be clarified that although the reading of the recent reforms of the Albanian Code of Civil Procedure might include codifying the principle of *stare decisis*, these reforms should be interpreted according to the main principles of civil law countries.

This paper showed that judges have used human rights codified in ECHR norms and the ECtHR's case law in civil cases. This was demonstrated in both the case law of the Constitutional Court (dealing with civil cases due to individual constitutional complaints) and the Supreme Court's Joint Civil Chamber (unification or modification of the judiciary practice). The main topics related to the application of human rights were: 1. Co-ownership, 2. *Servitudes* or rights on alien property, 3. Usufruct, 4. Expropriation and 5. Contract Law. Albanian judges used Arts. 6, 8, and 13 ECHR as well as Art. 1 Protocol No. 1 of the ECHR and the ECtHR's case law.

However, the two main articles used by Albanian judges in civil disputes are Art. 6 ECHR and Art. 1 of Protocol No. 1 of the ECHR. The application of Art. 6 ECHR includes – among others – the right to reform the previous decisions (*reformatio in peius*),¹⁰⁰ the right to access justice without any procedural mismanagement,¹⁰¹ as well as legal certainty by protecting the interests of all parties,¹⁰² the right to ensure procedural fairness, including the right to be heard, proper notification, and an impartial tribunal in a dispute,¹⁰³ the right for transparency in property registration processes,¹⁰⁴ or procedural fairness in the expropriation process,¹⁰⁵ as well as the right of each co-owner to pass through the shared asset towards another asset,¹⁰⁶ which deals with the interpretation of substantive rules rather than proceeding rules. Art. 1 of Protocol No. 1 of the ECHR has been primarily used in cases of expropriation. It includes – among others – the right to a “fair compensation”¹⁰⁷ that meets the tests of necessity and proportionality,¹⁰⁸ the right to a lawful and serves a legitimate public

¹⁰⁰ Albanian Constitutional Court, Decision no. 28 of 18.05.2023.

¹⁰¹ Albanian Constitutional Court, Decisions no. 19 of 01.04.2021; no. 3 of 23.02.2016; no. 52 of 14.11.2014; no. 5 dated 22.02.2022; no. 22 of 29.04.2021; no. 3 of 23.02.2016.

¹⁰² Albanian Constitutional Court, Decision no. 31 of 03.11.2022.

¹⁰³ Albanian Supreme Court, Decision no. 106 of 02.03.2023.

¹⁰⁴ Albanian Constitutional Court, Decision no. 51 of 20.06.2024.

¹⁰⁵ Albanian Constitutional Court, Decision no. 43 of 27.12.2022.

¹⁰⁶ Albanian Constitutional Court, Decision no. 31 of 03.11.2022.

¹⁰⁷ Albanian Constitutional Court, Decisions no. 22 of 25.04.2023; and no. 33 of 30.05.2023.

¹⁰⁸ Albanian Constitutional Court, Decision no. 43 of 27.12.2022.

aim,¹⁰⁹ and timely compensation.¹¹⁰ However, sometimes, it is challenging to neatly distinguish claims based on Art. 6 ECHR rather than Art. 1, Protocol 1 ECHR.¹¹¹

To conclude, this paper showed that Albanian judges are aware of the role of the ECHR and of the ECtHR's case law also in civil disputes, thereby meaning cases concerning matters dealt with in the Albanian civil code, as specified at the beginning of our enquiry. Indeed, the majority of the decisions for the period January 2022 to June 2024 by both the Albanian Constitutional Court (dealing with civil cases due to individual constitutional complaints) and the Supreme Court, Civil Chamber (dealing with the unification or modification of civil judiciary practice), showed that judges referred at least to the relevant ECHR norms, or to the ECtHR's case law. Thus, in other words, this research underlined the broad extent of the application of human rights in civil legal decisions.

¹⁰⁹ Albanian Constitutional Court, Decisions no. 33 of 14.11.2022; and no. 22 of 29.09.2022.

¹¹⁰ Albanian Constitutional Court, Decisions no. 3 of 07.02.2023; and no. 20 of 05.04.2023.

¹¹¹ Albanian Constitutional Court, Decisions no. 40 of 14.09.2023; no. 31 of 29.05.2023; no. 6 of 16.02.2023; no. 40 of 22.12.2022; and no. 2 of 17.02.2022.