European Court of Human Right's Dynamic Interpretation in Albanian Case Law: Effects on Domestic Law and Human Rights

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Abstract

The European Court of Human Rights (ECtHR) interprets the European Convention on Human Rights (ECHR) as a living instrument, enabling Convention standards to evolve in response to changing social, political and legal conditions in European countries. Through a dynamic interpretative approach, complemented by evolutionary elements, the Court has progressively expanded the scope and protection of Convention rights. This article addresses the normative impact of the interpretative practice of the ECHR on Albanian legal system. It explores the extent to which the Court's jurisprudence has shaped substantive and procedural rights, focusing on the right to a fair trial, the right to property and the right to an effective remedy. Drawing on the case law of the ECtHR v. Albania, the study assesses how European human rights standards have been internalized through legislative reforms and constitutional adjudication, responding to the Court's evolving standards. Particular attention is paid to the interaction between judicial interpretation and legal reforms. The article concludes that dynamic interpretation constitutes a transformative legal mechanism, promoting the harmonization of Albanian law and judicial practice with European human rights standards.

Keywords: Human rights, Jurisprudence, European Convention on Human Rights, procedural innovation, Constitutional Court

1. Introduction

The European Convention on Human Rights (Council of Europe, 1950) is one of the most important regional human rights instruments that provides a foundational legal basis for safeguarding human rights and freedoms throughout Europe. Following its ratification in 1950, the Convention has significantly influenced the national legal systems and human rights practices of its member states. Central to this influence is the doctrine of dynamic and evolutive interpretation, which empowers the European Court of Human Rights to interpret the Convention flexibly, ensuring that it remains a living document rather than a static legal text (Sicilianos, 2020) (Bureš, 2019). It has been instrumental in broadening the scope of human rights protections (Chirdaris, 2018), impacting vital areas such as freedom of expression, privacy rights, non-discrimination, due process guarantees, and socio-economic rights (Volou, 2015). The basis of the principle is rooted in the idea of the Convention as a dynamic instrument, to be interpreted in light of present-day conditions (Tyrer v. United Kingdom,1978), where the protection of rights must be practical and effective, not theoretical and illusory (Aiery v. Ireland,1979).

It has had tangible effects on member states' legal systems, particularly those undergoing democratic transitions. This article examines the impact of the European Court of Human Rights dynamic interpretation on Albanian domestic legislation, through an analysis of selected case law concerning property rights, the right to a fair trial, and the right to an effective remedy. For each of these areas, illustrative judgments are examined to demonstrate how Strasbourg jurisprudence has influenced legislative and institutional developments at the national level.

The accession of the Republic of Albania to the Council of Europe in 1995 embraced the obligation to sign the ECHR and recognize the ECtHR's jurisdiction.

The Convention occupies a special position within the Albanian legal order. Pursuant to Article 116 of the Constitution of the Republic of Albania (Law No. 8417,1998), the Convention ranks immediately subordinate to the Constitution within the hierarchy of legal norms and takes precedence over any conflicting domestic laws, as further elaborated in Article 122, paragraph 2. Moreover, under Article 122/1, the Convention is implemented directly within the domestic legal system. Concerning the limitation of fundamental rights and freedoms, Article 17/2 of the Constitution grants the Convention constitutional status, stating: "These restrictions may not infringe the essence of freedoms and rights and, in no case, may exceed the limitations provided for in the European Convention on Human Rights."

Consequently, the standards and guarantees established by the Constitution and the ECtHR's jurisprudence cannot be overridden or disregarded by national legislation or judicial practice. The Court's jurisdiction, defined in Article 32 of the Convention, encompasses all issues regarding the interpretation and application of ECHR. These standards have been shaped through various interpretative techniques of the ECtHR, of which evolutive and dynamic interpretation represents a central approach.

The Albanian context, clearly reflects this approach in cases addressing critical legal issues. The ECtHR's judgments have often required significant legislative and institutional reforms to harmonize the domestic law with the evolving standards. Particular attention is paid to the interaction between judicial interpretation and legal reforms, analyzing how dynamic interpretation has shaped legislative change, judicial practice and the development of the human rights protection in Albania.

2. Materials and Methods

The article adopts a qualitative, doctrinal legal methodology, to examine dynamic interpretation, in the ECtHR's case law against Albania, integrating three components:

Legal Analysis: This component investigates the legal and jurisprudential basis of dynamic interpretation as developed in the practice of ECtHR. It focuses on Articles 32, 46, and 53 of the European Convention on Human Rights (ECHR), as well as pivotal ECtHR decisions to elucidate theoretical and practical implications.

Case Law: Drawing on the ECtHR's HUDOC database, the study conducts an in-depth analysis of selected judgments involving Albania. These cases are chosen based on their significance in illustrating the application of the "living instrument" doctrine and their tangible impact on Albanian legal reforms. Emphasis is placed on judgments delivered since Albania's accession to the Council of Europe in 1995, focusing on recent decisions that have prompted substantive legislative or institutional changes.

Doctrinal Research: The article incorporates relevant academic literature to situate Albania's legal developments within the framework of international human rights law and within the wider discourse on the transformative role of dynamic interpretation.

3. Literature Review

3.1 Interpretation of the European Convention on Human Rights: Evolutive and Dynamic Approaches and jurisprudential developments

From its early jurisprudence, notably in Tyrer v. the United Kingdom (ECtHR,1978), the ECtHR has affirmed that the Convention is not a stationary legal instrument, but a dynamic" living instrument" capable of adapting to changing societal condition. The Court has relied on dynamic interpretation as a cornerstone of its jurisprudence, despite the absence of an explicit basis in the text of the Convention. As Judge de Albuquerque has observed, the Court consistently engages in purposive (*pro persona*), objective, evolutive legal reasoning, committed to ensure *effet utile* (De Albuquerque, 2017), while rejecting literalist or originalist approaches that would constrain the Convention's transformative role (Letsas, 2012).

Building on this foundation, the Court has insisted that the Convention must be read as a constitutional instrument of European public order (Loizidou v. Turkey (Preliminary Objections),1995), one that evolves in light of present-day conditions to defend and promote the values of democracy, the rule of law, and human rights. Accordingly, it has maintained that rights under the Convention must remain "practical and effective, not theoretical and illusory" (Aiery v. Ireland,1979).

The doctrinal grounds of evolutive and dynamic interpretation are embedded in the Preamble of the Convention, which refers to the "maintenance and further realization of human rights and fundamental freedoms" (Tulkens, 2011). The notion of "maintenance" implies the Court's obligation to uphold the continuing efficacy of rights, while "further realization" intents to allow the Convention to develop in line with emerging legal and social norms.

This approach has been consistently endorsed by the Court' jurisprudence which has stressed that its interpretation must correspond with "the general spirit of the Convention, an instrument designed to maintain and promote the ideals and values of a democratic society (Soering v. United Kingdom,1989). Such values sustain the dynamic application of the Convention's provisions, preserving its relevance overtime.

Article 32 establishes the ECtHR's authority to interpret the Convention and Article 46 of the Convention reinforces this authority by imposing state compliance with the Court's decisions and judgments. Collectively, these provisions create a normative basis that supports evolutive/dynamic interpretation and obliges states to align their domestic laws accordingly.

In his separate opinion in Magyar Helsinki Bizottság v. Hungary (ECtHR, 2016), Judge de Albuquerque, outlined the practical significance of evolutive interpretation, in maintaining the Convention relevance and coherence. Accordingly, this method enables the Convention to respond to present day conditions without formal amendments, thereby preserving its legitimacy.

Moreover, evolutive interpretation has a protective role through the doctrine of non-regression, codified in Article 53 ECHR, which ensures that convention standards cannot be interpreted to reduce rights already granted by domestic and international law (Chirdaris,2018).

Chirdaris notes the provision prevents the reversal of recognized rights, allowing evolutive interpretation to facilitate both the expansion of rights and their established protection.

According to Bjorge (2017), Article 53, prioritizes whichever instrument grants broader rights. This approach reflects the Court's early stance, in Wemhoff v. Germany (EctHR,1968), emphasizing that

the Convention should be interpreted so as to give effect its purpose rather than through a restrictive reading that minimizes state obligations.

The Court's openness to external human rights instruments illustrates the rationale of evolutive and dynamic interpretation. In Demir and Baykara v. Turkey (ECtHR, 2008), the Court relied on other international treaties and national laws to develop its interpretation of the right to collective bargaining. Moreover, the Vienna Convention on the Law of Treaties (United Nations, 1969), establishes the principal framework for treaty interpretations, which encompasses evolutive approach as well.

Article 31(1) of the VCLT instructs that treaties should be interpreted in good faith in line with the ordinary meaning of their terms, in light of their object and purpose and context. Guder explains that, the evolutionary interpretation of treaties falls under the "umbrella of the VCLT" and is not a separate interpretive method but rather the natural consequence of applying these principles to ensure that treaties remain effective to contemporary conditions (Guder, 2022).

Since its establishment, the Court has associated the concept of evolutive interpretation with a consensus-based of the Convention's text, rooted in the domestic legal systems of the majority of member states and the shared heritage mentioned in the Preamble (De Albuquerque, 2017). In this context, consensus functions as a mean to uphold legal certainty and protects against judicial tension. Nevertheless, academic critiques highlight the uneven application of the consensus doctrine.

Dzehtsiarou highlights that consensus "enhances the acceptability of judicial outcomes" but also "increases the evidentiary burden on the Court to justify its decisions" (Dzehtsiarou, 2011).

Polgári (2018), for example, argues that the Court lacks a clear methodological framework for determining when and how consensus should guide its reasoning (Polgari, 2018).

The Court's use of consensus reveals a tension between two distinct approaches: conservative consensus and dynamic consensus.

Conservative consensus requires widespread agreement among member states based on existing laws and practices. It is commonly used to justify judicial restraint, by granting states a wide margin of appreciation which, can delay the progressive expansion of human rights development (Polgari, 2018). For instance, in early LGBT rights cases, the absence of a clear consensus led the Court to defer to national authorities.

Dynamic consensus shifts focus on emerging trends and evolving social or legal conditions, even before they become established. This method enables the Court to employ evolutive interpretation, promoting the ongoing realization of human rights (Polgari, 2018). In Christine Goodwin v. the United Kingdom (ECtHR, 2002), the Court demonstrated the role of dynamic consensus by relying on global human rights trends to promote transsexual rights, even in the absence of European consensus among member states.

Thus, whereas conservative consensus limits judicial activism and prioritizes state sovereignty, dynamic consensus enables the Court to align the Convention with contemporary societal standards and advance human rights protections.

Hence, European consensus aims to secure a uniform and evolving standard of human rights protection, guiding rather than replacing national courts within the Convention's shared constitutional framework (Polgari, 2018).

3.2 The distinction between evolutive and dynamic interpretation

The recognition of the Convention as a "living instrument," has prompted scholarly efforts to clarify the distinction between evolutive and dynamic interpretation. While these phrases are frequently used interchangeably in the Court's case law, for example, in Stafford v. the United Kingdom (ECtHR, 2002), the Court stressed the requirement of a "dynamic and evolutive approach" to avoid becoming a "bar to reform or improvement", doctrinal scholarship reveals significant conceptual discrepancies (Rosa, 2014).

The terminology, however, is frequently used imprecisely. In legal theory, the notions somewhat overlap, with small but significant differences. The term "evolutive" covers the situations where the

Court gives answers to new facts, issues resulting from societal changes, and issues that have never been considered before by the Court; whereas "dynamic" interpretation, refers primarily to the situation where the Court gives new answers to old facts (Helgesen, 2011).

Thus, evolutive interpretation reflects the Court's adaptation to new societal, ethical, or technological developments, while dynamic interpretation concerns the reapplication of established principles to novel factual scenarios, without necessarily implying broader societal change.

The distinction is important to understand the rationale underlying the Court's reasoning. Evolutive interpretation is invoked when the meaning of Convention provisions must be reassessed in light of emerging social, technological, or legal realities, such as, digital privacy and other issues not foreseen by the Convention drafters.

Scholarly analysis further elucidates the Court's approach, explaining how these interpretative methods facilitate both the evolution of rights and procedural innovations.

As Chirdaris argues, the ECtHR is entitled to broaden its interpretation, especially when a right has already entered an "evolutionary route" through prior case law. In such instances, even if the evolutive form of the right is recognized only by some Council of Europe member states, the Court may still adopt it. The author further argues that judicial activism, often viewed critically, is in reality embedded within the Court's interpretative function. It cannot be considered a separate method, rather, it is integral to the evolutionary development of rights as foreseen in the Convention's Preamble. In this light, so-called judicial activism may be understood as a form of creative interpretation, especially within the scope of Articles 8, 9, 10, and 12 of the Convention, where the Court has gained significant international recognition (Chirdaris, 2018).

Lawson (2020) has similarly observed that even procedural innovations, such as pilot judgments, illustrate the Court's evolutive capacity.

Where evolutive interpretation addresses emerging societal issues, dynamic interpretation demonstrates the Court's flexibility in applying established principles to new factual circumstances.

For example, in the case of Iliria S.R.L. v. Albania (ECtHR, 2024), the ECtHR utilized a dynamic interpretation of Article 6 § 1 of the Convention, asserting that the right to a fair trial includes the enforcement of arbitral awards, thus broadening procedural protections to this phase of legal proceedings. Furthermore, the Court applied Article 8 to the vetting process for judges and prosecutors in Albania. While Article 8 has conventionally been linked to the protection of private and family life, the ECtHR has recognized that dimensions such as professional career and reputation, which are essential to the contemporary notions of private life, also fall under its protective ambit due to the profound consequences they may have for individuals' professional careers and their dignity (Gashi and Gina v. Albania, 2023; Sevdari v. Albania, 2022). This illustrates the Court's capacity to update Convention provisions to expand the application of Convention articles. However, the majority of ECtHR cases against Albania regarding right to fair trial, right to effect remedies or property issues reflect dynamic interpretation, extending established legal principles to new factual circumstances. The developments regarding Albanian case law will be discussed in the next sections of this article.

The evolutive nature of the Convention demands that states remain vigilant to the Court's jurisprudential evolution, adjusting their national laws accordingly to prevent future violations (Bureš, 2019). Nonetheless, as Bjorge cautions, this interpretative flexibility must remain within the bounds of legality (Bjorge, 2017). Chirdaris concludes that the Court is not only entitled, but in some cases obliged to develop rights through broader interpretation, as long as such developments reflect a common standard among Contracting Parties. The Strasbourg judge, as the final interpreter, must operate within limitations: restrictive or regressive interpretations are prohibited, and rights must be safeguarded and progressively developed under a uniform system of protection (Chirdaris, 2018).

In conclusion, despite their differences, evolutive and dynamic interpretation both serve a common purpose, in reinforcing the Court's commitment to ensuring that Convention rights remain responsive to present-day conditions.

3.3 Procedural innovations in the ECtHR: The pilot judgment mechanism

While dynamic interpretation is frequently discussed in terms of the expansion of rights under the ECHR, it also extends to procedural innovations that reflect the Court's institutional adaptability. Mechanisms such as friendly settlements, unilateral declarations, and enhanced case-management strategies exemplify the Court's flexibility (Lawson, 2020).

Such procedural evolution, often grounded in European consensus, reinforces the Convention's character as a living instrument, enabling the Court to remain effective while respecting member states' sovereignty. It also illustrates that the Court's capacity to adapt is crucial not only for its effectiveness but for its continued legitimacy and survival (Sicilianos, 2020).

However, critical concerns have been raised, particularly regarding the democratic legitimacy and the state consent. De Londras and Dzehtsiarou note that innovations emerging in Strasbourg, especially those aimed at improving the Convention's functioning, have at times generated tensions with the contracting parties (De Londras & Dzehtsiarou, 2015). At the heart of this criticism is the claim that the Court, is exceeding the jurisdiction beyond the original consent of states and thus acting illegitimately (De Londras & Dzehtsiarou, 2015). To manage these tensions, the Court relies on careful docket management, awareness of the non-legal factors in politically contentious cases, and an emphasis on consensus-based interpretation. In this regard, Rosa (2014), identifies three persistent legitimacy concerns associated with evolutive interpretation: first, the risk of assuming a quasi-legislative role and bypassing the sovereign intent of member states; second, the potential weakening of legal certainty and predictability; and third, the possibility that excessive reliance on European consensus could reduce the Court to a mere rubber-stamping institution, undermining its role as an external guardian of rights.

Maintaining the equilibrium is vital to preserving the Court's legitimacy and to securing the continued effectiveness of the Convention as a living instrument.

Among the most significant is the adaptation of pilot judgments, developed to respond to structural issues behind repetitive cases. Through this procedure, the Court identifies systemic problems to contracting states, and urges states to provide effective remedies thereby preventing future litigation (Manushaqe Puto and Others v. Albania, 2012). For example, the pilot judgment procedure innovation exemplifies an evolutive understanding of Court's role (Greer & Wildhaber, 2012), allowing it to move beyond individual redress and to identify broader structural issues that require legislative or policy changes (Manushaqe Puto and Others v. Albania, 2012).

A striking example of the application of pilot judgment procedure is the case Manushaqe Puto and Others v. Albania (See §§104–105), which concerned the systemic deficiencies embedded in judicial practice and administrative structures, in the context of post-communist property restitution. While the court applied established procedural standards to a novel context, reflecting elements of dynamic interpretation, the judgment is primarily characterized by an evolutive approach at the level of Convention enforcement, particularly through the consolidation of this procedure.

This judgment underscored not only individual human rights violations but also persistent legal and administrative shortcomings, despite earlier rulings in Driza and Ramadhi (Driza v. Albania, 2007; Ramadhi and Others v. Albania, 2007). The Court shifted the focus from isolated individual violations to the broader structural deficiencies underlying them. It identified continious problems in Albania's compensation system, notably the absence of an effective and coherent compensation mechanism and frequent amendments to property legislation, at least seven between 2004 and 2010, which had generated legal uncertainty and inconsistent judicial practices. By highlighting the resulting surge in repetitive applications in Strasbourg, the Court framed the issue as one threating not only individual rights but also the effectiveness and integrity of the Convention system itself.

Under Article 46 of the Convention, the Court proposed a list of general measures for the State, including, without limitation, "the establishment of a coherent basis" for administrative decisions, including any modifications to be made by means of discretionary decisions, recognition of property rights of rights and provision of compensation; the notification of a "clear compensation scheme" including alternative forms of compensation as provided for by law and periodic review of payment modalities of financial compensation; transparent decision-making regarding the type and award of

compensation and the publication and improvement of assessment maps; the setting of realistic, statutory and binding time-limits for each step of the process; and the allocation of other human and material resources (Manushaqe Puto and Others v. Albania, 2012, §§110–116).

The domestic response to Manushaqe Puto and Others confirms the evolutive nature of the Court's approach, as the judgment led to broad legislative, administrative and constitutional adjustments rather than a redefinition of substantive property rights.

The adoption of Law No. 133/2015 by the Albanian Parliament marked a decisive reform of Albania's property restitution framework, establishing the Property Treatment Agency and the introduction of a new compensation methodology based on cadastral category value of the relevant property at the time of expropriation. The aim of the law was the recognition and compensation process for properties expropriated, nationalized or confiscated, whether under laws and by-laws, criminal court decisions or obtained by any other unjust means by the communist state since 29.11.1944 (Article 2/1). It regulated fair compensation, the execution of final compensation decisions, and the completion of the compensation process within the deadlines (Article 2/2). The Property Treatment Agency (PTA) was established, to oversee recognition of ownership, restitution or compensation and the execution of all adopted decisions within 10 years. The law introduced a new compensation scheme, basing financial compensation primarily on the cadastral value of property at the time of expropriation (Article 6/a), departing from the previous market value approaches.

Subsequent by-laws adopted by the Council of Ministers, standardized valuation methods and regulated compensation procedures. These reforms showed that the pilot judgment procedure acts as a catalyst for legislative changes, rather than e tool for expanding substantive rights.

The 2015 Property Law immediately faced constitutional challenges alleging violations of legal certainty and legitimate expectations due to the change in the compensation scheme, as well as claims that the law resulted in discrimination between former owners who expected to receive compensation and those who had already received compensation based on previous legislation that provided for compensation at market value.

In its decision no. 1/2017, the Constitutional Court of Albania recognized that articles 6 §§ 1 and 2 of the 2015 Property Act introduced a new compensation scheme, different from the previous legislation based on market value, which could potentially result in lower amounts. The Court emphasized that, although the new law created favorable expectations, no final scheme, guaranteeing specific sums, had previously existed, and therefore the new framework did not affect these expectations. Any reduction in compensation was considered "other interference" under Article 1 of Protocol no. 1, rather than formal expropriation and was thus constitutionally permissible (Constitutional Court of Albania, 2017, §67).

Conversely, the Court annulled Articles 6 §§ 3 and 5 of the 2015 Property Law, finding that they created a new form of expropriation through revaluation of already returned or compensated properties, violating the principle of legal certainty due to the lack of clarity and predictability (Constitutional Court of Albania,2017, §70).

Following this decision, the Council of Ministers amended key bylaws to align with Constitutional Court's guidance, Decision no. 222/2016 was amended by CMD no. 765/2017 to clarify the procedure for examining compensation claims, confirm the agency role in recognizing the right compensation, allow request for additional documents and require decisions based on available information when formal requirements were not met. Similarly, CMD no. 223/2016 was amended by CMD No. 766/2017 on 20 December 2017.

In its unifying decision no. 611/2018, the Supreme Court clarified jurisdictional and procedural rules under the 2015 Property Act (§ 74). It concluded that:

Courts of appeal in the property's location handle cases requesting recognition of ownership under article 29. Administrative Courts of Appeal handle cases requesting financial evaluation of final decisions and financial compensation under article 19(§ 70). Ongoing lawsuits filed before 23 February 2016 against the former Property Restitution and Treatment Agency, Property Restitution and Treatment Commission, decisions continue under civil courts of the first instance where the immovable property is located, following *perpetuatio iuridictionis* and *perpetuatio fori*, principles based on the law

at the time of filing (See § 107).

The 2015 Property Law was assessed by the ECtHR in its inadmissibility decision of 17 March 2020, in Beshiri and Others v. Albania. The Court considered that, the law was effective as a domestic legal remedy. It held that the methodology of referring to the cadastral category of the expropriated properties as a basis for financial valuation was not in itself arbitrary. To prevent excessive burdens on expropriated entities, the remedy is considered effective if the total amount of compensation, regardless its form, reaches at least 10% of the value that would have been obtained using the current cadastral entry as a reference (Beshiri and Others v. Albania,2020, §196).

In decision no. 4/2021, the Constitutional Court emphasized that the 10% threshold, recommended by the ECHR, constitutes the minimum of guarantees that the compensation scheme must ensure.

However, this does not prevent the legislator from making the necessary adjustments within its margin of appreciation, in accordance with Article 41 of the Constitution and relevant social, economic and political circumstances (Constitutional Court of Albania, 2017, § 69). Drawing on the ECtHR's position in Beshiri, the Court repealed Article 7, point 2, letters "a" and "b", of the Property Law as unconstitutional, noting that in cases where the cadastral category had changed, financial valuation fell below the minimum threshold of 10%. Consequently, the compensation in these cases constituted a "further interference" with the right to private property, particularly affecting entities whose cadastral category have changed over the years, violating the principle of legal certainty (Constitutional Court of Albania, 2017, § 84).

The constitutional litigation demonstrates the internalization of ECtHR standards in domestic practice. Relying on ECtHR case law, especially Beshiri and Others, the Constitutional Court tried to balance legal certainty and the State's margin of appreciation.

Following this, Law no. 133/2015 was amended through Law no. 77/2022, introducing among other reforms a minimum 10% threshold for compensation when cadastral category had changed. This reflects an ongoing dialogue between national authorities and the Strasbourg Court and illustrate evolutive interpretation in practice.

In 2023 the Muslim Community of Albania submitted an application to the Constitutional Court, which the latter, temporarily suspended the implementation of the law No.77/2022 and the Council of Ministers Decision No. 313/2023, on the ground that amendments violated the right to property and the principle of legal certainty by changing compensation calculation and indexing methods, worsening the legal position of the expropriated entities (Constitutional Court of Albania, 2024, §§21-23).

After the suspension, the Court (See §§66-68) concluded that the amendments do not violate the essence of the right to property, as expropriated owners continue to receive compensation with indexation and interest, although with a different mechanism than the previous one.

The Court (See §§67-68) further noted that the change in timing of indexation aims to increase the clarity and predictability of the law without causing a real deterioration of the legal position.

Regarding secondary legislation, the Court found that the Council of Ministers acted within the legal delegation, without violating the principle of the hierarchy of normative acts, since the regulations are of a technical and procedural nature. Accordingly, the request was dismissed and the suspension of law No. 77/2022 was lifted (See §§115-120). Subsequent legislative amendments included:

Law No. 111/2018, focusing on cadastral system reforms and improving the process of unfinished registration of properties (Albanian Assembly,2019);

Law No. 20/2020, addressing transitional property-related processes and aiming to resolve outstanding claims more efficiently (Albanian Assembly,2020);

Law No. 77/2022, which revised the 2015 Property Act to further streamline the compensation process (Albanian Assembly, 2022).

Overall, the Manushaqe Puto and Others case illustrates evolutive interpretation mainly at the level of enforcement. While existing legal standards were applied to a new context, the judgment's main contribution was to improve how the Convention is enforced. By addressing structural problems and prompting domestic reforms, the Court showed how the pilot judgment procedure helps secure effective protection of rights in cases of ongoing non-compliance.

4. Results and Discussion

4.1 Dynamic Interpretation in ECtHR case law: Expanding the Protective Scope of Convention rights beyond legal omission.

In Dauti v. Albania (ECtHR, 2009), the Strasbourg Court examined whether the applicant's right of access to a court, under Article 6§1 of the Convention had been violated after the applicant had challenged the decisions of the District Medical Examination Commission on Capacity for Work and on appeal by the Medical Examination Appeals Commission on Capacity for Work (Appeals Committee), following the rejection of his application for disability benefits, due to an accident at work. The applicant complained that these decisions were treated as final and were not subject to review by the national courts.

The Court recalled that, under Article 6 § 1, decisions of administrative authorities determining civil rights, must be subject to subsequent review by a judicial body, exercising full jurisdiction, unless the administrative body itself qualifies as an "independent and impartial tribunal" (Dauti v. Albania, 2009, §§47-50). It therefore examined whether the Appeals Commission satisfied these requirements.

Applying its established criteria, namely the manner of appointment, the duration of mandate, the guarantees against external pressure and the overall appearance of autonomy, the Court found that the Appeals Commission was composed only of doctors appointed by the Social Insurance Institute and approved by the Ministry of Health, without any members with legal or judicial qualifications, thus lacking the institutional independence. Furthermore, the relevant legal framework did not provide for rules on the mandate, dismissal, resignation, guarantees of irremovability or oath of the members, exposing them to external pressure and significantly undermining the appearance of the Commission's independence (See §§51-53). In the absence of judicial review and given the structural deficiencies of the Appeals Commission, the Court concluded that the applicant had been denied effective access to a court in violation of Article 6 § 1 of ECHR.

The impact of Dauti case went beyond the applicant's situation, giving rise to changes to the existing legal framework and reshaping of domestic practice.

Firstly, in response to this judgement, the Albanian Parliament adopted Law No. 10447, dated 14.07.2011, which amended Law No. 7703/1993 "On Social Security", with the aim of addressing the shortcomings identified by the European Court. The amendments consisted in regulating the composition of the Medical Examination Appeals Commission on Capacity for Work, providing for joint appointments between the Minister of Health, the Minister of Finance and the Minister of Labor and Social Affairs, as well as the inclusion of a member with a legal background appointed by decision of the Minister of Justice (Article 39/1). Special criteria for professionalism and integrity were also established (Article 39/2), a renewable four-year mandate was established (Article 39/3) and the obligation to take an oath was foreseen (Article 39/4).

Based on these legislative measures, the Committee of Ministers of the Council of Europe adopted Resolution CM/ResDH(2016)210(Council of Europe, 2016), concluding the execution of the Dauti v. Albania judgment and closing the international supervision of the case.

Although the judgment prompted legislative amendments that led to the formal closure of supervision by the Committee of Ministers of the Council of Europe, the general measures adopted did not fully satisfy the requirements of Article 6 of the Convention.

As a result, significant difficulties emerged in domestic judicial practice concerning whether national courts could directly apply the ECtHR judgment in the absence of explicit statutory guarantees, a question that later crystallized into jurisdictional conflict between the Constitutional Court and the Supreme Court.

In this context, in 2021, the Supreme Court, through the exercise of incidental control and through the interim decision of 12.10.2020, suspended the trial of the case by referring the case to the Constitutional Court raising, among other things, issues related to the compatibility of the new legislation with the ECHR. The constitutional issues that required an interpretation by the Constitutional Court were specifically related to the possibility of national courts to directly apply the

Constitution and the ECHR, avoiding the initiation of incidental constitutional control of the law by the Constitutional Court; the legal force of the conclusions of the Committee of Ministers of the Council of Europe on the execution of ECHR decisions; as well as the assessment of whether the 2011 amendments to Law No. 7703/1993 had respected the standards set out in the Dauti v. Albania case (Constitutional Court of Albania 2021,§22).

However, in decision no. 55, dated 31.03.2021, the Meeting of Judges of the Constitutional Court declined to refer the case for consideration in a plenary session, reasoning that the questions raised primarily involved statutory interpretation, a function that belongs to the Supreme Court (See §24).

Subsequently, the Supreme Court examined the binding force of the conclusions of the Committee of Ministers of the Council of Europe, emphasizing that, even after a resolution closing supervision was adopted, domestic measures had not effectively implemented the ECtHR's judgment (Supreme Court of Albania, 2021, §42).

The analysis emphasized that while the Committee of Ministers plays a key role in supervising the execution of ECtHR judgments, it does not possess judicial authority equivalent to that of the Court, constitutional courts, or national courts. It further stressed that ordinary courts cannot refuse to apply the Convention due to gaps or inconsistencies in domestic law. In the present case, the Appeal Commission was found not to meet the material criteria of a tribunal under Article 6 ECHR, treating its decisions as final unjustifiably denied access to court. Consequently, even after the 2011 amendments, Law No. 7703/1993 failed to satisfy both Convention standards and constitutional requirements for judicial independence and immovability. The exclusion of judicial oversight over Appeal Commission decisions thus violated the right of access to court, rendering these decisions legally unchallengeable administrative acts (See §§24-47; §148).

By relying on the direct applicability of the Convention and the binding force of ECtHR case law, despite the formal closure of supervision by the Committee of Ministers, the Supreme Court effectively extended the practical application of Article 6 within the domestic legal order. This approach illustrates how dynamic interpretation operates as a mechanism for internalizing ECtHR standards, ensuring their effectiveness even in situations of legislative ambiguity. Furthermore, it reflects an understanding of the Convention as a living instrument not only in terms of its substantive content but also with regard to the mechanisms through which it is enforced.

4.2 The expansion of the Individual Constitutional Complaint in light of the ECtHR jurisprudence: Dynamic interpretation and domestic application.

The ECtHR's case law against Albania has consistently identified structural deficiencies in domestic law, particularly the absence of an effective remedy within the meaning of Article 13 of the Convention, in conjunction with Article 6 §1. These deficiencies arise primarily from the limited the jurisdiction of the Constitutional Court, under Article 131/f of the 1998 Constitution, which restricted its review to alleged violations of the right to a fair trial, only after the exhaustion of all available legal remedies. In this context, the ECtHR considered the constitutional complaint to be an effective remedy only insofar as Article 6 issues were raised (Qufaj Co. sh.p.k. v. Albania, 2004, § 42; Balliu v. Albania,2004; Driza v. Albania,2007, § 49, Berhani v. Albania,2010).

As interpreted in practice, this provision limited individual access to the Constitutional Court to claims strictly related to procedural guarantees of fair trial. In a series of cases against Albania, the ECtHR found that individual constitutional complaints did not constitute an effective remedy for the protection of fundamental rights. Specifically, in cases concerning the excessive length of judicial proceedings, the non-enforcement of final judicial decisions, and the violation of property rights, the Court noted that the limited jurisdiction of the Constitutional Court and the largely declaratory nature of its decisions did not offer a real and effective solution for individuals (Gjonboçari and Others v. Albania,2007; Marini v.Albania,2007; Gjyli v.Albania,2009; Mishgjoni v.Albania,2010; Memishaj v.Albania,2014; Luli v.Albania,2015; Valio Shipping Company v. Albania, 2015).

The Court emphasized that, because the Constitutional Court lacked jurisdiction to award pecuniary or non-pecuniary damages, order the acceleration of proceedings, or to ensure the effective

enforcment of judicial decisions, the constitutional complaint did not meet the criteria of effectiveness required by Article 13 of the Convention (Gjyli v. Albania,2009, § 58), resulting in violations of the Convention and a high influx of Albanian cases before the ECtHR.

This approach was not isolated, but was consistently endorsed in the Analytical Document of the Justice System, in the opinions of the Venice Commission, and embedded in the objectives of the Constitutional Court reform outlined in the Strategy for the Reform of the Justice System (Albanian Assembly, 2015).

In this context, the Special Parliamentary Committee presented a proposal to expand the jurisdiction of the Constitutional Court by providing for individual appeals for all fundamental rights and freedoms guaranteed by the Constitution, beyond the right to a fair legal process (Albanian Assembly, 2015, p.7-9). The revision of Article 131, together with related provisions regulating legitimizing subjects and procedural rules, is intended to transform the constitutional complaint into a completely effective tool for the protection of human rights and freedoms (Albanian Assembly, 2015, p.7-9).

This provision, which approximates the jurisdiction of the ECHR, allows the final adjudication of complaints by individuals against any act of public authority or judicial decision that violates fundamental rights and freedoms, after the exhaustion of all effective legal remedies for the protection of these rights (Vorpsi et al.,2016), which in the text of the 1998 Constitution was limited to "the final adjudication of complaints of individuals for the violation of their constitutional rights to due process of law" (Venice Commission, 2015). The amendment aimed to transform the constitutional complaint into a truly effective remedy, not only for establishing a violation, but also for ensuring a concrete and useful protection for the individual. This development was reflected in Fullani v. Albania (ECtHR, 2022), where the Court found that the extension of the Constitutional Court's jurisdiction to individual complaints was introduced partly in response to previous ECtHR decisions, which had found that the Court functioned as an effective remedy only for complaints under Article 6 of the Convention, such as Balliu v. Albania (ECtHR, 2004), and Jakupi v. Albania (ECtHR, 2009). Based on this context, it is clear that, in theory, the constitutional complaint was fully available as a legal remedy. (Fullani v. Albania,2022, §69) However, the practical effectiveness of the constitutional complaint depends on the initiative of the individual. It falls to the injured party to test the system by submitting a complaint, thereby creating an opportunity for domestic courts to interpret and apply fundamental rights in practice (Fullani v. Albania,2022, §70). Following the 2016 amendment, the Constitutional Court began to engage with substantive rights more directly, issuing decisions that addressed fundamental constitutional rights. For instance, it accepted and examined complaints relating to the right to respect for one's home under Article 8, demonstrating that the complaints were examined on their merits and not simply dismissed on procedural grounds (Fullani v. Albania, 2022, §73). This practice was further confirmed by subsequent decisions, no. 7/2021 and 38/2021 which showed that the Constitutional Court was in fact receiving and examining complaints falling within the scope of Article 8 of the Convention and domestic constitutional provisions, indicating that the Court had moved towards functioning as a truly effective remedy in practice, both substantively and procedurally (Constitutional Court of Albania, 2021, §74).

The amendment of Article 131 of the Constitution reflects an approach in which Convention standards were not simply applied but integrated into the constitutional framework. It expanded judicial protection beyond fair trial guarantees to encompass all fundamental rights. By aligning the constitutional complaint with the requirements of Articles 6 and 13 of the Convention, the reform reflects an understanding of the Convention as a living instrument whose effectiveness depends on effective domestic remedies. The Constitutional Court's jurisprudence which increasingly engages with substantive constitutional rights, indicates that the reform produced practical consequences rather than declaratory. Collectively, these developments show that dynamic interpretation may operate beyond adjudication influencing the structure of constitutional review and reinforcing the effectiveness of the Convention through these national mechanisms.

5. Conclusions

The article has described and analyzed that the dynamic interpretation applied by ECtHR has had a concrete and transformative role in Albania's legal system. Interpreting the ECHR as a living instrument, the Court has adapted its provisions to contemporary social needs and emerging human rights standards. This approach has not only expanded the scope of protected rights but has also driven legislative and structural reforms within Albania.

The analysis of the Court's case law against Albania shows that dynamic interpretation has operated across substantive and procedural rights legal framework such as the right to a fair trial, property rights, and the right to an effective remedy. These interpretative developments have not remained confined to Strasbourg jurisprudence, but have prompted legislative reforms and have shaped judicial practice.

More important, the findings confirm that dynamic interpretation in the Albanian context has functioned as a mechanism the enforcement of rights.

The pilot judgment procedure, the amendment of Constitution regarding constitutional complaint and legal amendments illustrate the internalization of Convention standards within Albania's order and reflect an ongoing dialogue with ECtHR. In this process the Convention norms are progressively absorbed into domestic legal reasoning.

From this perspective, dynamic interpretation has not served only as a flexible legal method of interpretation but also as a means of integrating Albania into the broader European human rights system. It has strengthened the implementation of the constitutional guarantees and contributed to the development of a more right-focused domestic legal culture. Due to the binding authority, ECtHR judgments have reinforced individual rights protection and obliged Albanian authorities to undertake reforms in accordance with international standards.

Overall, the Albanian experience illustrates how dynamic interpretation can foster legal and institutional reforms. Hence, this approach serves as a tool for maintaining Convention's legitimacy ensuring that rights remain practical and effective within member states.

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