Constitutional Environmental Rights: Albania and Italy in Comparative Perspective

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Abstract

The relationship between formal constitutional recognition and effective implementation remains contested and empirically underexplored, particularly in post-communist legal systems and EU candidate states. While existing comparative environmental law scholarship addresses either single jurisdictions or broad regional surveys, the specific normative-institutional comparison between Albania and Italy two Adriatic neighbours at different stages of EU integration remains unexplored. This gap is particularly significant given Albania's EU accession process under Chapter 27 of the acquis communautaire and Italy's landmark 2022 constitutional reform. This article presents a systematic comparative legal analysis of constitutional environmental rights in Albania (Articles 56 and 59, Constitution of the Republic of Albania, 1998) and Italy (Articles 9 and 41, as amended by Constitutional Law No. 1/2022, 2022). Employing a twelve-dimensional analytical matrix developed through a modified functionalist approach (Zweigert & Kötz, 1998) the study integrates formal-normative, institutional, and outcome-oriented dimensions weighted by their relevance to rights effectiveness. On a weighted scale of 10, Albania scores 5.60 and Italy 8.18, yielding a mean gap of 2.58 points. The most pronounced divergences concern jurisprudential development (−4.5), institutional capacity (−3.5), and judicial access (−3.0). Critically, the smallest gap (−1.0) appears at the level of formal constitutional recognition, establishing that Albania's implementation deficit is structural rather than textual a pattern the article conceptualizes as an "implementation gap" within the literature on aspirational constitutionalism. A four-phase Normative Convergence Model (2025–2035) and five priority reform pillars are proposed for Albania, with implications for both comparative environmental constitutionalism theory and EU accession policy.

Keywords: ***environmental constitutionalism; constitutional environmental rights; comparative law; Albania; Italy; EU accession; implementation gap; normative convergence; Chapter 27***

1. Introduction

The constitutional recognition of environmental rights constitutes one of the most important innovations in twentieth-century public law. From the first environmental provisions introduced in Portugal (1976) and Spain (1978) to the recent Italian constitutional reform of 2022 (Articles 9 and 41), environmental constitutionalism has evolved from a marginal field to a rights paradigm that now confronts legal systems with a fundamental practical challenge: translating constitutional

recognition into measurable environmental protection. Central to this challenge is the so-called "implementation gap" the structural distance between the formal enshrinement of environmental rights and their effective exercise in practice.

Albania and Italy constitute a particularly instructive comparative pair for several reasons. First, they share geographical proximity, separated by the Adriatic Sea, and jointly steward a common marine ecosystem. Second, Albania's 1998 Constitution guarantees in Article 56 the right to be informed about the status of the environment and its protection, and additionally sets out, in Article 59 as a state social objective, "*a healthy and ecologically adequate environment for the present and future generations,"* placing it among the earliest post-communist constitutions to address environmental protection at the constitutional level, albeit through a hybrid rights/objective structure. Third, Italy's legal system embodies a mature environmental constitutional tradition, culminating in the 2022 reform of Articles 9 and 41, which incorporated biodiversity protection and intergenerational equity at the constitutional level. Fourth, Albania's ongoing EU accession process with Chapter 27 negotiations on the environmental acquis underway makes the Italian constitutional model a practical reference framework for reform.

Despite this comparative potential, very few studies have addressed the convergence of Albanian and Italian environmental law. The majority of existing scholarship is devoted to a single country (Gallo, 2018; Ramajoli, 2021; Sadushi, 2019) or to broader regional surveys (Eliantonio et al., 2022; Pavoni, 2023). The specific normative-institutional comparison developed in this article is, to the authors' knowledge, unprecedented. The paper accordingly proposes to fill this gap through a twelve-dimensional comparative matrix that analyses formal, functional, and outcome-oriented dimensions of environmental law in both countries.

The central research question addressed is: what is the nature, extent, and causal structure of the normative-institutional gap in environmental rights protection between Albania and Italy, and what reform strategies would enable Albania to align with EU environmental standards? Three hypotheses are examined: (H1) Albania's constitutional foundation for environmental rights is formally comparable to Italy's pre-2022 position, but is characterised by significantly weaker implementation capacity; (H2) the primary determinants of the gap are institutional and judicial rather than normative-textual; (H3) EU accession dynamics represent the most effective exogenous convergence mechanism available to Albania.

2. Theoretical Framework and Methodology

2.1 Environmental Constitutionalism: Conceptual Foundations

Environmental constitutionalism the study of the intersection between environmental protection and constitutional law has developed into a recognized subfield of comparative constitutional law (Boyd, 2012; May & Daly, 2015; Daly & May, 2020). The field can be approached from three distinct analytical levels: the formal dimension (whether environmental rights are explicitly or implicitly recognized by a constitution); the institutional dimension (whether constitutional and statutory structures support or impede environmental protection); and the outcome-oriented dimension (whether environmental quality and rule-of-law standards are substantively satisfactory).

Two competing conceptual models shape scholarly debates within environmental constitutionalism. The anthropocentric model grounds environmental protection in human rights the right to health, life, and dignity treating nature instrumentally as a precondition for human flourishing. The ecocentric model, by contrast, recognises intrinsic value in nature independently of its utility for human beings. Article 59 of the Albanian Constitution exemplifies the anthropocentric model: it sets, as a state social objective, "a healthy and ecologically adequate environment for the present and future generations," while Article 56 confers on individuals an anthropocentric right to be informed about the state of the environment rather than a substantive right to environmental quality itself. Italy's 2022 reform of Article 9, which extends constitutional protection to "the environment, biodiversity and ecosystems also in the interest of future generations," reflects an ecocentric shift of considerable doctrinal significance.

It should be noted that some comparative constitutional researchers have questioned whether formal constitutional environmental provisions reliably produce improved environmental outcomes (Neumayer, 2002; Chilton & Versteeg, 2015). This sceptical literature identifies a pattern in which rights are formally inscribed but systematically underenforced a condition associated with what Gargarella (2013) terms "aspirational constitutionalism." The present study takes these critiques seriously and addresses them explicitly through its twelve-dimensional matrix, which measures not only textual recognition but institutional capacity and substantive environmental outcomes.

This article adopts a "modified functionalist" approach, as developed by Zweigert and Kötz (1998:52), focusing on the social role assigned to environmental norms within each legal system. The analysis supplements constitutional text

examination with historical and institutional analysis, rejecting both pure formalism and pure empiricism in favour of a multi-criteria framework sensitive to the complex interaction of constitutional structure, rule of law, and institutional capacity.

2.2 Analytical Framework: The Twelve-Dimension Comparative Matrix

The comparative matrix employed in this study comprises twelve analytical dimensions structured in three categories, presented in the same order and under the same labels used in Table 1 below. The first category, formal-normative dimensions, encompasses five indicators: (1) constitutional recognition and hierarchical position of environmental rights; (2) primary sectoral legislation; (3) enforcement mechanisms; (4) judicial access standards; (5) institutional capacity and resources. The second category, institutional and procedural dimensions, consists of four indicators: (6) international integration; (7) jurisprudential development; (8) precautionary principle codification and application; (9) public participation mechanisms. The third category, outcome and resourcing dimensions, contains three indicators: (10) environmental financing; (11) data transparency; (12) legal innovation.

For each of the twelve dimensions, scores were assigned on a 10-point scale based on verifiable data drawn from international sources, including Eurostat (2023), the Yale Environmental Performance Index (Yale Center for Environmental Law & Policy, 2022), the European Environment Agency (EEA, 2023), national judicial statistics, and primary legislative texts. Dimensional weights were determined through a systematic review of the environmental constitutionalism literature, prioritising those dimensions most closely associated with the effective exercise of environmental rights. Specifically, jurisprudential development and institutional capacity were each assigned a weight of 9% on the basis of their mediating role between formal rights recognition and substantive implementation a weighting consistent with the literature on environmental governance effectiveness (Boyd, 2012; May & Daly, 2015). All scoring was conducted by the author and cross-checked against independent assessments from the European Commission's Albania Progress Report (2023). The resulting scores are presented transparently in Table 1 to enable critical scrutiny and adaptation by future researchers.

It should be acknowledged that the individual dimension scores in Table 1 (for example, the half-point distinctions between 5.0, 5.5, and 6.0) reflect a qualitative, expert-judgment assessment rather than a fully algorithmic scoring procedure; no formula converts a given quantity of monitoring stations, judicial decisions, or budget allocations into a specific decimal score. The scores should accordingly be read as ordinal indicators of relative standing supported by the qualitative and quantitative evidence discussed throughout Sections 3–6, rather than as cardinal measurements with independent metric significance. Future replications of the matrix would benefit from a pre-registered scoring rubric specifying, for each dimension, the evidentiary thresholds corresponding to each score band.

A further methodological caution concerns the many absolute figures reported in Sections 4–6 (staffing levels, monitoring stations, laboratories, budgets, litigation volumes) to characterise Italian and Albanian institutional capacity. Italy and Albania differ substantially in population, territorial size, administrative structure, and economic scale, so raw ratios between the two countries (for example, the staff or budget ratios reported in Table 4) should be interpreted as indicative of the general order of magnitude of the capacity gap rather than as precise measures of relative institutional adequacy. Per-capita or per-territory normalized indicators, where available, would provide a more meaningful basis for cross-country comparison and are recommended for future iterations of this research.

Table 1. Multi-Criteria Comparative Matrix: Albania–Italy Environmental Rights Protection

Dimension	Weight	Measurement Instrument	Albania	Italy	Gap
1. Constitutional recognition	12%	Textual analysis + hierarchical position	7.5/10	8.5/10	−1.0
2. Primary sectoral legislation	10%	Normative inventory + coherence	6.0/10	8.0/10	−2.0
3. Enforcement mechanisms	10%	Institutional effectiveness	5.5/10	7.5/10	−2.0
4. Judicial access standards	9%	Standing rules + procedural costs	5.0/10	8.0/10	−3.0
5. Institutional capacity	9%	Human/financial/technical resources	5.0/10	8.5/10	−3.5
6. International integration	8%	Treaty ratifications + implementation	6.5/10	9.0/10	−2.5

Dimension	Weight	Measurement Instrument	Albania	Italy	Gap
7. Jurisprudential development	9%	Volume + doctrinal depth	4.5/10	9.0/10	−4.5
8. Precautionary principle	8%	Codification + judicial application	6.0/10	8.5/10	−2.5
9. Public participation	8%	Procedural mechanisms + effectiveness	5.5/10	7.5/10	−2.0
10. Environmental financing	7%	% GDP + efficiency	4.0/10	7.0/10	−3.0
11. Data transparency	5%	Platform accessibility + coverage	5.5/10	8.5/10	−3.0
12. Legal innovation	5%	New mechanisms + adaptability	5.0/10	8.0/10	−3.0
WEIGHTED TOTAL	**100%**	Weighted average	**5.60/10**	**8.18/10**	**−2.58**

Source: Authors' construction based on Eurostat (2023); Yale Center for Environmental Law & Policy (2022); EEA (2023); national judicial statistics; European Commission (2023). Scores represent the author's assessment following the methodology described in Section 2.2, cross-checked against EC Progress Report indicators.

The aggregate results reveal that Italy outperforms Albania by 2.58 weighted points across the twelve dimensions. The largest individual gaps arise in jurisprudential development (−4.5 points), institutional capacity (−3.5 points), and judicial access (−3.0 points). Conversely, the smallest gap appears in constitutional recognition (−1.0 point). This distributional pattern provides the first empirical basis for the article's core argument: Albania's environmental rights deficit is not primarily a textual deficiency but an implementation-level structural failure a condition consonant with the "aspirational constitutionalism" identified by Gargarella (2013) and the sceptical findings of Chilton and Versteeg (2015) regarding constitutional environmental provisions in developing legal systems.

3. Constitutional Foundations: Text, Doctrine, and Reform

3.1 Albania: Articles 56 and 59 and the Anthropocentric Model

The Constitution of the Republic of Albania (1998), adopted following the political and institutional crisis of 1997, addresses environmental protection through two distinct provisions located in different chapters of Part Two (The Fundamental Human Rights and Freedoms). Article 56, placed in Chapter IV (Economic, Social and Cultural Rights and Freedoms), provides: "*Everyone has the right to be informed about the status of the environment and its protection*." Article 59, placed in Chapter V (Social Objectives), provides that the state aims, within its constitutional powers and the means at its disposal, to secure "*a healthy and ecologically adequate environment for the present and future generations*." The two provisions are complementary but doctrinally distinct: Article 56 establishes an individually enforceable procedural right to environmental information, while Article 59 articulates a substantive environmental aim addressed to the state rather than a directly justiciable individual right.

Three structural limitations remain apparent when Articles 56 and 59 are examined in the light of contemporary European constitutional standards. First, biodiversity and ecosystem protection are entirely absent from both provisions, despite their growing constitutional recognition across EU member states. Second, and most consequentially from a rights-enforcement perspective, the substantive environmental aim contained in Article 59 sits not among the enforceable rights of Chapter IV but within Chapter V (Social Objectives), a category that Article 59 itself places beyond direct judicial claim, subject only to such conditions as ordinary law may separately establish. Article 56, by contrast, is directly enforceable, but its guarantee is confined to environmental information rather than to environmental quality as such. Third, although Article 59 already refers to future generations, this aspirational commitment has not been matched by any comparable elaboration of intergenerational equity, biodiversity, or ecosystem protection among the directly justiciable rights of Chapter IV, leaving Albania's enforceable environmental protection considerably narrower than its constitutional text as a whole might suggest.

The jurisprudential development of Albania's constitutional environmental provisions by the Constitutional Court has been limited. The most notable decision Constitutional Court Decision No. 8/2010 (Albanian Constitutional Court, 2010) addressed the constitutionality of awarding a concession for hydropower plant construction in a protected area.

While the decision found a procedural violation connected to the information rights protected under Article 56, it offered no substantive constitutional doctrine elaborating the environmental aim set out in Article 59. Articles 56 and 59 accordingly remain what may be termed "dormant" provisions: formally enshrined but substantially undeveloped by constitutional case law.

3.2 Italy: From Implicit Protection to Explicit Constitutionalization (1948–2022)

Italy's engagement with environmental constitutionalism extends over more than seven decades, progressing from implicit derivation to explicit constitutional enshrinement. The Constitution of 1948 contained no dedicated environmental provision; early judicial protection derived from Article 9 (protection of landscape and cultural heritage) and Article 41 (limitation of economic freedom in the interests of social utility and human dignity). The Constitutional Court first recognised a unitary constitutional environmental value in Decision No. 247/1974 (Italian Constitutional Court, 1974), subsequently consolidating this doctrine through Decisions No. 210/1987 (Italian Constitutional Court, 1987), No. 1031/1988, and No. 407/2002 (Italian Constitutional Court, 2002) establishing a substantial body of environmental constitutional jurisprudence in the absence of any explicit environmental clause.

The 2022 constitutional reform (Constitutional Law No. 1/2022) marked a decisive structural shift. Article 9 was amended to provide that the Republic "protects the environment, biodiversity and ecosystems also in the interest of future generations"; Article 41 was modified to prohibit economic activities conducted "in a manner that damages health or the environment." Approved unanimously by Parliament, this reform represents the most significant constitutional change in the Italian environmental law order since 1948. It simultaneously elevates environmental protection to the status of a fundamental constitutional principle, introduces explicit ecocentric elements through biodiversity and ecosystem protection, and constitutionalises intergenerational equity.

Table 2. Comparative Constitutional Text Analysis: Albania Articles 56 & 59 vs. Italy Articles 9 & 41 (post-2022)

Dimension	Albania (Arts. 56 & 59, 1998)	Italy (Arts. 9 & 41, post-2022)	Assessment
Rights-holder	Art. 56: universal ("everyone") individual right; Art. 59: state objective, no individual right-holder	"The Republic" duty-based, increasingly ecocentric	IT: structural duty model, ecocentric; AL: hybrid individual information right (Art. 56) plus non-justiciable state objective (Art. 59)
Environmental object	Art. 56: environmental information; Art. 59: "healthy, ecologically adequate environment" (state objective)	"Environment, biodiversity and ecosystems"	IT: more specific and comprehensive scope
Future generations	Explicit in Art. 59 (as a non-justiciable state objective)	Explicit ("also in the interest of future generations")	AL: textually present (Art. 59) but not directly justiciable; IT: explicit and enforceable
Economic limit	Art. 59 (state objective) indirect, non-justiciable	Art. 41: direct limit on economic activity by environment	IT: integrates environment-economy tension constitutionally
Hierarchical position	Art. 56: Ch. IV (Economic, Social & Cultural Rights); Art. 59: Ch. V (Social Objectives non-justiciable)	Ch. I: Fundamental Principles (superior rank)	IT: uniformly justiciable at the highest constitutional rank; AL: bifurcated enforceable information right, non-justiciable substantive aim
Judicial mechanism	Constitutional Court + administrative courts	Constitutional Court + referral system + EU Charter enforcement	IT: multiple reinforcing mechanisms
Biodiversity	Absent	Explicit constitutional level protection	Constitutional reform needed in Albania
EU integration	Arts. 116–122 (treaties)	Art. 117: EU law has direct constitutional effect	IT: deeper constitutional–EU integration

Source: Constitutional texts of Albania (1998) and Italy (1948, as amended 2022); authors' comparative analysis. AL = Albania; IT = Italy.

The comparative analysis in Table 2 reveals that the constitutional gap between Albania and Italy has widened as a result of the 2022 Italian reform. Albania's Article 56 text remains anthropocentric and confined to environmental information, and while Article 59 does reference future generations, it does so only as a non-justiciable state objective rather than as an enforceable right; neither provision references biodiversity or ecosystems. Italy's post-reform framework incorporates each of these elements while simultaneously raising the hierarchical constitutional position of environmental protection to the level of fundamental principles. The practical implications of this widening textual gap are addressed in Section 7.

4. Legislative Architecture: Comparative Normative Frameworks

4.1 Italy's Environmental Code: The Consolidation Model

Italy's Legislative Decree No. 152/2006 (Codice dell'Ambiente) represents the culmination of four decades of legislative consolidation in environmental law. Comprising 318 articles across six thematic parts, the Code addresses environmental impact assessment (VIA/VAS), water resources protection, soil and groundwater protection, waste management, air quality, and environmental damage liability. It constitutes one of the most comprehensive environmental codes in Europe, integrating the full body of applicable EU environmental directives into a coherent national framework.

Particularly significant for purposes of comparison is the Code's environmental damage liability mechanism (Articles 299–318). Aligned with the "polluter pays" principle and the EU Environmental Liability Directive (2004/35/EC), this mechanism establishes a detailed liability regime requiring operators conducting risk-generating activities to notify competent authorities, adopt preventive measures, and restore any environmental damage caused. Where responsible parties cannot be identified or are insolvent, a Restoration Fund capitalized by environmental sanctions enables public remediation. This liability architecture represents a qualitative distinction from Albania's current framework that has direct implications for rights effectiveness.

4.2 Albania's Fragmented Legislative Framework

Albania's environmental legislation currently comprises approximately 159 separate legal acts, including primary laws, Council of Ministers decisions, ministerial decrees, and technical specifications, none of which are consolidated in a single comprehensive instrument. The foundational text, Environmental Protection Law No. 8934/2002, is complemented by sector-specific legislation on water (Law 111/2012), waste (Law 10428/2011), biodiversity (Law 9587/2006), environmental impact assessment (Law 10440/2011), and access to environmental information (Law 119/2014).

The transposition of EU environmental directives into Albanian law presents significant challenges. While approximately 62% of the EU environmental acquis has been formally transposed, the quality of transposition measured in terms of completeness, technical accuracy, and procedural soundness remains low. Key deficiencies include the absence of full transposition of the Environmental Liability Directive, insufficient water quality monitoring infrastructure, no operational emissions trading mechanism, and only partial implementation of Industrial Emissions Directive standards. These gaps have direct consequences for the Chapter 27 accession negotiations currently underway.

Table 3. Legislative Architecture Comparison: Key Indicators

Legislative Indicator	Italy	Albania	EU Standard	Gap (AL/EU)
Consolidation instrument	D.Lgs. 152/2006 – 318 articles, 6 parts	~159 fragmented acts	Coherent transposition required	Critical structural gap
VIA/VAS procedural depth	45-day public consultation; mandatory scoping; online platform	30-day consultation; scoping discretionary	Dir. 2011/92/EU; 2001/42/EC	Procedural gap
Env. damage liability mechanism	Operational – Arts. 299–318; Restoration Fund	Rudimentary – Art. 10 L.8934/2002	Dir. 2004/35/EC mandatory	High Fund inoperational
Emissions trading coverage	Full EU ETS participation since 2005	Outside EU ETS	Reg. 2003/87/EC (mandatory on accession)	Pre-accession alignment needed
EIA procedures/year	~2,800 national + regional	~85 national	Proportionate to development activity	Ratio 33:1 selectivity concern

Legislative Indicator	Italy	Albania	EU Standard	Gap (AL/EU)
EU acquis transposition rate	>98% (as member state)	~62% (candidate)	100% required for accession	~38% gap to full accession
Environmental damage fund	Operational ~€200M/yr from sanctions	Non-operational	Polluter pays principle	Institutional priority
Coastal zone legislation	L.979/1982; 300m building prohibition	L.9244/2004; 100m zone (poorly enforced)	Marine Strategy Dir. 2008/56/EC	Enforcement gap

Source: National legislative texts; European Commission (2023) Albania Progress Report; EEA (2023); authors' legal analysis. EIA = Environmental Impact Assessment; ETS = Emissions Trading System.

5. Institutional Capacity: The Implementation Infrastructure

5.1 Italy's Multi-Level Environmental Governance

Italy's environmental institutional architecture operates across three interconnected levels. At the national level, the Institute for Environmental Protection and Research (ISPRA) is responsible for national environmental monitoring, scientific advice, and policy support. ISPRA employs approximately 1,300 staff, operates on an annual budget exceeding €100 million, and manages the National Environmental Information System (SINAnet), integrating data from approximately 1,200 air quality monitoring stations and over 3,500 water monitoring points. At the regional level, 22 Regional Environmental Protection Agencies (ARPA/APPA) conduct territorial monitoring and enforcement, deploying approximately 8,500 staff and 680 accredited laboratories. At the local level, municipalities maintain environmental officers integrated within their administrative structures.

This three-tier system is additionally supported by daily satellite data from the EU's Copernicus earth observation system and by an annual environmental reporting cycle that ensures public transparency and enables judicial use of environmental data. The total annual budget allocated to environmental agency operations amounts to approximately €800 million a figure that reflects a sustained political commitment to environmental governance extending over several decades.

5.2 Albania's Centralised and Under-Resourced System

Albania's environmental institutional framework relies primarily on two bodies: the Ministry of Tourism and Environment (responsible for policy formulation and regulation) and the National Agency for Protected Areas (AKZM), supported by an Environmental Inspectorate with limited resources and autonomy. The total number of professionals engaged in environmental monitoring and control amounts to approximately 320, operating across 12 accredited laboratories and supported by approximately 45 air quality monitoring stations. In the absence of a single consolidated Albanian institutional statistical publication comparable to ISPRA's annual reporting, these figures represent the authors' estimate compiled from Ministry of Tourism and Environment materials and should be treated as approximate pending independent verification against future official disaggregated statistics.

Public expenditure on the dedicated environmental monitoring and control institutions in Albania amounts to approximately €12 million annually, compared to Italy's ISPRA/ARPA operating budget of approximately €800 million. The commonly cited figures of 0.8% and 1.9% of GDP for Albania and Italy respectively refer to total national environmental protection expenditure under the Eurostat/COFOG classification (encompassing public and private expenditure across all sectors), which is a substantially broader aggregate than, and should not be numerically equated with, the narrower institutional operating budgets of €12 million and €800 million; these two metrics are reported separately in this article and neither should be read as a direct percentage-of-GDP equivalent of the other. The institutional disparity between the two countries is nonetheless reflected in the metrics presented in Table 4: the monitoring staff ratio stands at 35:1; the annual agency budget ratio at 67:1; and the water monitoring point ratio at 19:1. Given the substantial differences in population, territory, and economic scale between the two countries, these absolute ratios should be read as indicative of the order of magnitude of the capacity gap rather than as precise measures of relative institutional adequacy; per-capita or per-GDP normalized indicators would offer a more robust basis for comparison in future research. This is not merely a quantitative difference. It reflects a fundamentally different conception of the state's role in environmental governance. Italy has systematically developed an "environmental state" characterised

by continuous monitoring, proactive enforcement, and science-based regulation; Albania's environmental institutions remain largely confined to a reactive, formalistic regulatory function.

Table 4. Institutional Capacity Comparison: Key Metrics

Institutional Metric	Italy	Albania	Ratio IT/AL	Policy Implication
Environmental monitoring staff	~11,200 (ISPRA + ARPA)	~320 (estimated)	35:1	Critical capacity gap
Air quality monitoring stations	~1,200	~45	26:1	Data coverage inadequate
Water quality monitoring points	~3,500	~180	19:1	EU WFD compliance risk
Accredited environmental laboratories	~680	~12	57:1	Limited analytical capacity
Environmental inspectors	~4,800	~140	34:1	Enforcement gap
Annual environmental agency budget	~€800M	~€12M	67:1	Structural underfunding
National digital env. databases	12 (SINAnet + ARPA)	3 (partial coverage)	4:1	Monitoring infrastructure deficit
Annual environmental reports	Annual (ISPRA report)	Biennial/irregular	—	Transparency limitation
Environmental NGOs registered	~3,200	~85	38:1	Civil society capacity gap
NGO annual litigation (environmental)	~8,500 cases/yr	~45 cases/yr	189:1	Judicial enforcement gap

Source: ISPRA (2024); Albanian Ministry of Environment (2023); EEA (2023); authors' estimates based on most recently available data (2022–2023).

6. Jurisprudential Development: Courts as Environmental Actors

6.1 Italy's Constitutional Court: Doctrinal Construction (1974–2024)

The Italian Constitutional Court (Corte Costituzionale) has played a constitutive role in the development of environmental law, constructing a comprehensive doctrinal framework over seven decades from the relatively general provisions of the 1948 Constitution. Four distinct phases of constitutional environmental doctrine can be identified: recognition of environmental values as foundational constitutional values (1974–1986); adjudication of federal-regional jurisdictional conflicts in environmental matters (1986–2002); elaboration of precautionary and prevention principles (2002–2022); and the emergence of climate constitutionalism (since 2022).

The landmark case in this doctrinal evolution is Judgment No. 85/2013 (ILVA di Taranto), which arose from the criminal seizure of Italy's largest steel plant employing 12,000 workers and generating significant dioxin emissions and a subsequent legislative intervention authorizing resumed production pending environmental remediation. The Court upheld the constitutionality of the legislation subject to conditions, introducing the concept of "dynamic constitutional balancing" (bilanciamento dinamico). This doctrine holds that no single constitutional value whether environmental protection, public health, employment, or economic development enjoys absolute priority. Instead, all relevant values implicated by a legislative measure must be weighed proportionally, with each assigned an irreducible minimum core. The doctrine has subsequently shaped administrative decision-making and lower court adjudication across Italian environmental law.

6.2 ECHR Jurisprudence: The Strasbourg Contribution

The European Court of Human Rights has developed a substantial body of environmental jurisprudence through the evolutionary interpretation of Articles 2 (right to life), 8 (right to respect for private and family life), and 6 (right to a fair trial) of the European Convention a body of law applicable to both Albania and Italy as contracting parties. In Guerra v. Italy (ECtHR, 1998), the Court found a violation of Article 8 arising from the failure to provide applicants with information concerning industrial risks posed by a neighbouring chemical plant. In Cordella v. Italy (ECtHR, 2019), the Court found that systemic state failure to protect residents from chronic industrial pollution at the ILVA plant constituted a violation of Article 8. Most significantly, in Verein KlimaSeniorinnen Schweiz v. Switzerland (ECtHR, 2024), the Court recognized Article 8 positive obligations requiring states to adopt adequate measures to address climate change (Lim & Taebi, 2023).

The *KlimaSeniorinnen* judgment carries important implications for both countries. In Italy, it reinforces the climate commitments implicit in the 2022 constitutional reform. In Albania, it imposes justiciable obligations under Article 8 ECHR regardless of the content of national constitutional law, creating what may be termed "convergence from above" a mechanism by which international human rights standards produce legal convergence independently of domestic legislative action.

Table 5. Key Environmental Jurisprudence: Constitutional and ECHR Cases

Case	Court	Year	Doctrine Established	Relevance
Decision No. 247/1976	Italian Constitutional Court	1976	Environment as a constitutional value (unitary)	Doctrinal foundation of Italian environmental law
Decision No. 210/1987	Italian Constitutional Court	1987	Environment as 'absolute value' (valore assoluto)	Sets priority over economic interests
Decision No. 407/2002	Italian Constitutional Court	2002	State's exclusive competence environmental minimum standards	Federal architecture uniform floors
Judgment No. 85/2013 (ILVA)	Italian Constitutional Court	2013	Dynamic constitutional balancing no absolute hierarchy	Paradigm case: health/work/environment
Guerra v. Italy	ECtHR	1998	Art. 8: State must inform citizens of industrial risk	Access to environmental information
Cordella v. Italy	ECtHR	2019	Systemic failure to protect from ILVA pollution = Art. 8 violation	State's positive environmental obligations
Decision No. 8/2010	Albanian Constitutional Court	2010	Procedural env. rights in hydropower concessions	Limited no substantive env. doctrine
KlimaSeniorinnen v. Switzerland	ECtHR	2024	Art. 8: positive obligation for adequate climate action	Applicable to both Albania and Italy

Source: Official court decisions; Boyle (2012); Pedersen (2022); Pavoni (2023); authors' analysis.

7. Findings: The Implementation Gap and the Convergence Model

7.1 Hypothesis Testing

H1 Albania's constitutional basis is comparable but implementation capacity diverges sharply

The empirical data confirm H1. The smallest dimensional gap in the matrix concerns constitutional recognition (−1.0), reflecting the fact that Articles 56 and 59 of the Albanian Constitution together provide a formally sound textual foundation one that, prior to the 2022 Italian reform, was in certain respects comparable to the Italian constitutional text, notwithstanding the non-justiciable character of Article 59's substantive environmental aim. However, the aggregate implementation gap of −2.58 points, driven by jurisprudential (−4.5) and institutional (−3.5) deficits, confirms that Albania's constitutional provisions operate as aspirational norms rather than effective legal guarantees. This finding is consistent with the sceptical literature on constitutional environmental rights (Chilton & Versteeg, 2015) and demonstrates that formal constitutional recognition, while necessary, is structurally insufficient for effective rights implementation in the Albanian context.

H2 Institutional and judicial factors are the primary determinants of the gap

H2 is confirmed, but requires qualification. The jurisprudential gap (−4.5) and institutional capacity gap (−3.5) are the two largest dimensional disparities. These deficits are, moreover, structurally interdependent: judicial underdevelopment reflects insufficient judicial training, limited forensic environmental expertise, and weak civil society capacity to initiate strategic litigation. This self-reinforcing dynamic in which institutional weakness suppresses judicial development, which in turn limits the incentive to invest in institutional capacity is characteristic of post-communist legal systems navigating aspirational constitutionalism.

H3 EU accession dynamics represent the most effective convergence mechanism

H3 is confirmed with an important qualification. EU accession through mandatory Chapter 27 transposition requirements, IPA pre-accession funding conditionality, and the prospect of direct applicability of EU environmental law, including the European Climate Law (Regulation (EU) 2021/1119, 2021), creates the most powerful structural incentive for convergence available to Albania. However, the Italian trajectory demonstrates that legal convergence is necessary but not sufficient for substantive implementation convergence. Albania must avoid the risk of nominal transposition a pattern in which directives are formally incorporated but substantively underenforced by ensuring that legislative reform is accompanied by commensurate investment in institutional capacity and judicial development.

7.2 The Normative Convergence Model

Building on the empirical findings, the article proposes a four-phase Normative Convergence Model calibrated to Albania's starting position (5.60/10), Italy's historical trajectory (achieving approximately 8.0/10 by 2006), and the accelerating convergence potential of the EU accession process. The model is set out in Table 6. The phase target scores, staffing levels, monitoring infrastructure, and financial estimates presented below are normative policy scenarios derived from the Italian comparator and EU accession benchmarks; they are illustrative projections intended to inform policy design rather than evidence-based forecasts, and their empirical basis would need to be substantiated through detailed costing studies before being treated as implementation commitments.

Table 6. Normative Convergence Model: Albania 2025–2035

Phase	Period	Target Score	Key Interventions	Reference Model
Phase I: Consolidation	**2025–2027**	**6.5/10**	Environmental Code; Restoration Fund; Independent Agency; Judicial Access Law	Italy D.Lgs. 152/2006 + Law 349/1986
Phase II: Capacity	**2027–2029**	**7.0/10**	ARPA-equivalent network; 500 monitoring stations; 100 trained environmental judges; NGO standing	Italy's ARPA system + Legambiente standing
Phase III: Integration	**2029–2031**	**7.5/10**	Constitutional amendment; EU ETS alignment; Climate Law; Green Deal sectoral alignment	Italy's 2022 constitutional reform + EU Climate Law
Phase IV: Convergence	**2031–2035**	**8.0/10**	Full EU accession; acquis enforcement; regional environmental leadership	Italy's current standard (8.18/10)

Source: Authors' convergence model based on comparative findings and EC accession benchmarks. Score targets calibrated to the twelve-dimensional matrix in Table 1.

7.3 Five Priority Reform Pillars

The convergence model identifies five highest-priority reform pillars for Albania:

Pillar 1: Environmental Code

Albania's 159 fragmented environmental legal acts must be consolidated into a single Environmental Code modelled on Italy's D.Lgs. 152/2006. The Code should incorporate comprehensive VIA/VAS procedures (including mandatory scoping, 45-day public consultation with online publication of environmental reports), an operational environmental damage liability mechanism, and a Restoration Fund capitalised by enforcement sanctions. Implementation is estimated to require 3–5 years and approximately €1.5–2 million in technical assistance (2025–2028).

Pillar 2: Independent Environmental Agency (AKMI+)

An institutionally independent, adequately resourced national environmental agency should be established on the model of Italy's ISPRA. By 2030, the agency should comprise at least 500 staff, 100 monitoring stations, and 10 regionally accredited laboratories with the capacity to publish annual environmental status reports and impose administrative sanctions autonomously. Estimated annual operating cost: €10–15 million.

Pillar 3: Judicial Access Reform

A dedicated Environmental Judicial Access Law should confer automatic standing on registered environmental NGOs, reduce procedural costs for environmental litigation, establish mandatory specialist training for environmental

judges (targeting 200 trained judges by 2028), and introduce expedited provisional measures for environmental emergency situations. Technical assistance requirement: approximately €0.5 million.

Pillar 4: Economic Instruments

An environmental damage Restoration Fund with initial capitalisation of €5–10 million (derived from pollution penalties) should be established, accompanied by an ecological fiscal reform incorporating carbon taxation, environment-related charges, and green public procurement criteria. These instruments are intended to shift Albanian environmental governance from a purely compliance-based to a market-reinforced model.

Pillar 5: Constitutional Amendment

Articles 56 and 59 should be reformed jointly: Article 59's environmental objective should be elevated into a directly justiciable right incorporating biodiversity and ecosystem protection, and Article 56 should be broadened beyond environmental information to encompass substantive environmental quality, modelled on Italy's amended Articles 9 and 41. Consideration should also be given to relocating the substantive environmental guarantee from Chapter V (Social Objectives) to Chapter IV or Chapter II of the Constitution, thereby removing the express bar on direct judicial claim and expanding available judicial remedies.

8. Discussion

8.1 Theoretical Contributions

This article makes three contributions to comparative environmental constitutionalism. First, it introduces "implementation gap" as a distinct structural analytical category, distinguishing it from the "rights gap" (absence of formal rights recognition) and the "enforcement gap" (selective application of existing rights). The implementation gap characterized by formal rights recognition combined with systematic institutional under delivery provides an analytically precise account of post-communist environmental constitutional development and offers a framework applicable beyond the Albania–Italy dyad.

Second, the article presents a twelve-dimensional analytical matrix that integrates formal-normative, institutional, and outcome-oriented dimensions within a single weighted framework. By making the weighting system explicit and transparent, the matrix enables replication, critical scrutiny, and adaptation to other jurisdictional pairs. It responds directly to the methodological critique of Chilton and Versteeg (2015) by moving beyond binary constitutional text analysis to multidimensional measurement of rights effectiveness.

Third, the Normative Convergence Model articulates a theoretically grounded account of how candidate states adjust their legal systems toward EU standards through the accession process. The model distinguishes between a phase of formal-normative transposition (characterised by rapid legislative convergence) and a subsequent phase of substantive implementation convergence (characterised by slower, institution-dependent progress). This distinction has predictive implications: formal compliance with Chapter 27 requirements will likely precede effective environmental rights implementation by a significant temporal lag a pattern documented in the Italian post-1986 experience and likely to recur in the Albanian trajectory.

8.2 Engagement with Sceptical Literature

The findings of this article engage directly with the sceptical scholarship on constitutional environmental rights. Neumayer (2002) and Chilton and Versteeg (2015) have documented those constitutional environmental provisions frequently fail to produce measurable improvements in environmental outcomes, particularly in states with weak institutional capacity. The Albanian case is consistent with this sceptical finding: Articles 56 and 59 have been formally in force since 1998 but have generated negligible jurisprudential development and limited institutional investment, a condition reinforced by Article 59's express exclusion from direct judicial claim. However, the present study's comparative perspective suggests an important qualification: the absence of environmental constitutional provisions does not improve outcomes. Italy's constitutional experience demonstrates that, over a sufficiently long time horizon and with adequate institutional investment, constitutional environmental provisions can anchor a progressive elaboration of rights doctrine that ultimately generates substantive environmental protection. The challenge for Albania is not whether to constitutionalise environmental rights that decision has already been made but how to build the institutional and judicial architecture needed to make those rights effective.

8.3 Limitations

This study is subject to several limitations. The twelve-dimensional matrix relies on expert scoring that, while cross-checked against international indicators, retains an element of subjective judgment, and the precise numerical scores reported in Table 1 should be read as ordinal rather than cardinal measures for the reasons discussed in Section 2.2. Several institutional figures for Albania (staffing, laboratories, monitoring stations, and financing) are the authors' estimates rather than figures drawn from a single official consolidated source, and absolute Albania–Italy comparisons in Tables 3 and 4 are sensitive to the two countries' differing population and economic scale; normalized indicators were not available for all dimensions but would strengthen future iterations of the matrix. Albanian judicial statistics on environmental cases are incomplete, requiring estimation in several dimensions. The study is dyadic and cannot capture the full diversity of environmental constitutional experience across EU member states or Western Balkan candidate states. Future research incorporating multi-country panel data and longitudinal environmental performance indicators would enable more refined convergence projections.

9. Conclusions

This article has presented a systematic comparative analysis of constitutional environmental rights in Albania and Italy across twelve analytical dimensions, identifying a mean normative-institutional gap of 2.58 weighted points. Three principal conclusions follow from the analysis.

First, Albania's environmental rights deficit is primarily institutional rather than constitutional. Articles 56 and 59 of the Albanian Constitution together provide a formally adequate and, in certain respects, comparatively progressive textual foundation for environmental protection. The gap arises not from the absence of constitutional recognition but from the absence of the institutional, judicial, and civil society architecture needed to translate that recognition into effective protection, a difficulty compounded by Article 59's express placement outside the category of directly justiciable rights. Albania exemplifies the condition of aspirational constitutionalism: constitutional provisions that articulate transformative ambitions without yet generating the systemic conditions for their realization.

Second, jurisprudential development is the single largest contributor to the Albania-Italy gap (−4.5 points). This finding underscores that the elaboration of constitutional environmental doctrine through judicial decision-making the process by which constitutional text is converted into operational legal norms is not a secondary consequence of legislative and institutional reform but an independent and essential pillar of environmental rights effectiveness. Albania's near-absence of environmental constitutional jurisprudence is a structural problem that cannot be resolved by legislative reform alone; it requires investment in judicial training, expansion of NGO standing, and reduction of procedural barriers to environmental litigation.

Third, EU accession represents the most powerful exogenous convergence mechanism available to Albania, but carries the systemic risk of nominal transposition without substantive implementation. The Italian precedent demonstrates that it took two decades to translate foundational environmental legislation (Law 349/1986) into codified, systematically enforced environmental protection (D.Lgs. 152/2006). Albania faces this challenge within a compressed timeframe of approximately ten years, under the additional pressure of accelerating climate change (see Verschuuren, 2022) and ongoing Chapter 27 accession negotiations. The five-pillar reform model proposed in this article offers a phased, evidence-based pathway for meeting that challenge one that treats the constitutionalisation of environmental rights not as a destination, but as the beginning of the sustained institutional commitment required to make those rights real.

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The authors retain full responsibility for the content of the manuscript, including its scientific accuracy, originality, and integrity. The use of AI-assisted tools was intended solely to support the presentation of the authors' work and did not replace their intellectual contribution, scientific judgment, or responsibility for the final version of the manuscript.

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