

A CONSTITUTIONAL CASE-LAW STUDY FROM JANUARY 2021 TO DECEMBER 2025 ON THE EU IMPACT ON THE ALBANIAN (PRIVATE) LAW: A BRIEF OVERVIEW WITH THE ITALIAN LEGAL SYSTEM

UNO STUDIO DELLA GIURISPRUDENZA COSTITUZIONALE DA GENNAIO 2021 A DICEMBRE 2025 SULL'IMPATTO DEL DIRITTO DELL'UNIONE EUROPEA NEL DIRITTO (PRIVATO) ALBANESE: BREVI OSSERVAZIONI IN PROSPETTIVA COMPARATA CON L'ORDINAMENTO ITALIANO

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Abstract: in November 2025, the EU opened all the negotiation chapters with Albania. In context of Albania's aim to join the EU, this paper focuses on the role of the Albanian Constitutional Court in applying EU law by analyzing all the decisions from January 2021 to December 2025, which corresponds to the re-start of the Albanian Constitutional Court. In addition, the research focusses on private law by giving a brief comparison with the Italian legal system. This contribution studies the jurisprudence of the Constitutional Court for two main reasons: first, the decisions of the Constitutional Court are binding for enforcement (Article 132(1) of the Albanian Constitution). Second, and more importantly, the Albanian constitution allows, under certain conditions, direct individual petitioning to the Constitutional Court (Article 131(1)(f) and Article 4(1)(i) of the Albanian Constitution).

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After investigating the case-law of the Albanian Constitutional Court after the Vetting Process, this paper highlights the importance of the EU law in Albania, a non-EU member.

Keywords: Albania – Case-law – Constitutional Court – Constitutional judges – EU law

Abstract: nel novembre 2025, l'Unione europea ha aperto tutti i capitoli negoziali con l'Albania. Nel contesto del percorso di adesione del Paese all'Unione europea, il presente contributo analizza il ruolo della Corte costituzionale albanese nell'applicazione del diritto dell'Unione europea, attraverso l'esame di tutte le decisioni adottate tra gennaio 2021 e dicembre 2025, periodo che coincide con la ripresa della piena operatività della Corte costituzionale a seguito del processo di vetting. Inoltre, la ricerca si concentra sul diritto privato, offrendo un breve confronto con l'ordinamento giuridico italiano. L'analisi della giurisprudenza della Corte costituzionale risponde a due principali esigenze. In primo luogo, le decisioni della Corte costituzionale sono vincolanti ai fini della loro esecuzione, ai sensi dell'articolo 132, comma 1, della Costituzione albanese. In secondo luogo, e soprattutto, la Costituzione albanese riconosce, a determinate condizioni, il diritto del singolo di adire direttamente la Corte costituzionale mediante ricorso individuale, ai sensi dell'articolo 131, comma 1, lettera f), e dell'articolo 134, comma 1, lettera i), della Costituzione. Attraverso l'esame della giurisprudenza costituzionale successiva al processo di vetting, il presente contributo mette in luce la crescente rilevanza del diritto dell'Unione europea nell'ordinamento giuridico albanese, evidenziando come esso costituisca un parametro interpretativo sempre più significativo anche in uno Stato che non è ancora membro dell'Unione europea.

Keywords: Albania – Giurisprudenza – Corte costituzionale – Giudici costituzionali – Diritto dell'Unione europea

1. Introduction

Albania is a small Western Balkan country that aims to join the EU. The Albanian EU integration includes several steps: among others, the engagement (1991-1999); Stabilization and Association Process (1999-2006); Stabilization and Association Agreement (SAA) (2006-2009); Reforms (2010-2013); EU Candidate Status (2014); Conditionality (2014-2020); Opening of accession negotiations (2020-2024); and the screening process. Thus, while, in June 2003, at the Thessaloniki meeting, Albania was identified as a potential candidate, in June 2014, the EU awarded Albania candidate status. Finally, in November 2025, the EU opened all the negotiation chapters¹.

¹ European Commission, 2025.

This paper investigates the constitutional judicial approach in Albania vis-a-vis EU law. While Albania is a candidate EU country, Article 70(1) SAA between Albania and the EU mandates that Albania align both current and future legislation with the EU *acquis communautaire*. In addition, in recent years, the EU has taken an active normative role in Western Balkans², and also in Albania. Indeed, the jurisprudence implies the significant impact of EU law in the Albanian private law, such as transformation of consumer law³, international succession law⁴, agricultural policy⁵, pharmaceutical policies⁶, competition law⁷, antitrust⁸.

The methods used for this research are critical legal reasoning, case-law analysis, and legal comparison. Focusing on the application of critical legal reasoning, for clarity purposes it shall be underlined that the Albanian academic scientific output is low compared to other countries⁹, ranking last in Europe¹⁰. Thus, this research also considers foreign doctrine based on the assumption on their similarities. For instance, Albania – as in the case of Spain and Germany – establishes an individual constitutional complain¹¹. In other words, after the final decision of the High Court, in the case of a violation of a fundamental constitutional right, applicants in Albania have the right to direct access to the Albanian Constitutional Court.

Regarding the case-law approach, it shall be highlighted that the decisions of the Constitutional Court are binding and directly enforceable (Article 132(1) of the Albanian Constitution). Indeed, the doctrine has shown the importance of the application of the European Convention on Human Rights (ECHR) and its jurisprudence by Albanian constitutional judges, in civil¹², criminal¹³ and administrative¹⁴ disputes. Furthermore, the doctrine has shown the importance of the case-law by ordinary judges also in various fields of private law, such as medical civil liability¹⁵, consumer law¹⁶, or application of human rights in civil disputes¹⁷.

In addition, the doctrine has shown that Italian legal system has influenced the Albanian legal system. Indeed, the doctrine has shown the impact of the Italian property

² M. Kmezic, 2016.

³ D. Veshi, 2025.

⁴ D. Veshi et al., 2024, 135.

⁵ A. Martinovska Stojcheska et al., 2024.

⁶ D. Roshi et al., 2021.

⁷ G. Skara, O. Muçollari, B. Hajdini, 2024, 64.

⁸ G. Skara, 2021, 326.

⁹ NHR, 2024.

¹⁰ Euronews Albania, 2023.

¹¹ E. Koka, L. Sheme, 2025, 186; D. Veshi, E. Koka, L. Sheme, 2025, 87–103.

¹² E. Koka, L. Sheme, 2025, 186.

¹³ D. Veshi, E. Koka, E. Pupe, 2025.

¹⁴ D. Veshi et al., 2026.

¹⁵ E. Shyle, D. Veshi, A. Morina, 2025, 236–254; E. Koka, D. Veshi, A. Morina, 2025, 146–161.

¹⁶ D. Veshi, 2025, 125–140; D. Veshi, 2025, 239–262.

¹⁷ D. Veshi, E. Koka, L. Sheme, 2025, 87–103.

law in the codification of the Albanian property law¹⁸. Furthermore, the legal scholarship has demonstrated that the Italian legal system should be considered as a model in the case of harmonization of the Albanian national law with the EU normative. Concrete examples of European harmonization with EU law, considering the Italian model, have been shown with regard to the Commission Recommendation of 7 December 1994 on the Transfer of Small- and Medium-Sized Enterprises¹⁹ as well as in the case of Directive 2014/24/EU, focusing on Building Information Modelling²⁰.

Based on this background, this research fills the gap in the national and international legal scholarship regarding the application of the *acquis communautaire* by Albanian constitutional jurisprudence by focusing on private law. While Albanian Constitutional judges apply ratified international law (Arts. 5, 116, and 122 Albanian Constitution), as is the case with the ECHR²¹, it is not answered in the current literature in what regard the Albanian constitutional jurisprudence considers the EU law, especially considering Albania is not yet part of the EU?

As a first sub-research question, considering that, although the EU is generally not competent in matters of private law, it has nevertheless exerted a significant influence on civil matters through the application of Articles 81(2), 114, and 115 TFEU, it is necessary to examine whether these cases concern private law relationships. As a second sub-research question, given that legal scholarship has demonstrated the influence of Italian private law on the Albanian codification process, it is important to assess whether this approach is comparable to that adopted within the Italian legal system. As a third sub-research question, it is necessary to examine whether the Albanian Constitutional judges also referred to the case-law of the Italian Constitutional Court.

This contribution has the following structure: Section II, after explaining the importance of EU accession in the Albanian constitutional background, identifies the cases in which the Albanian Constitutional judges have applied EU law from January 2021 to December 2025. After identifying the keywords, Section III studies the specific use of the *acquis communautaire* in the selected cases. In conclusions, the paper summarizes the findings by answering the research questions.

¹⁸ C. Venditti, D. Veshi, E. Koka, 2020, 329–352; C. Venditti, R. Picaro, D. Veshi, 2021.

¹⁹ E. Koka, D. Veshi, C. Venditti, F. Cekaj, 2024, 925–942; F. Cekaj et al., 2022, 621-638

²⁰ A. Gjeta et al., 2026; N. Llagami, C. Venditti, 2026

²¹ E. Koka, L. Sheme, 2025, 186; D. Veshi, E. Koka, E. Pupe, 2025.

2. The Correlation Between the Albanian Legal System and EU Legislation: A Constitutional Approach

This research identifies the application of the EU law by Albanian Constitutional Court from January 2021 until December 2025²² for three main reasons connected with each other. First, in 2006, Albania signed the SAA. It shall be noted that the SAA is a mixed agreement or associate agreement. According to Art. 215 TFEU, *the Union may conclude with one or more third countries or international organization agreements establishing an association involving reciprocal rights and obligations, common action, and special procedure*. As a mixed agreement, where the subject matter of the agreement falls within both EU competences and Member States' competences, there was a need for approval by the EU as well as ratification by EU Member States. The SAA entered into force in 2009.

Second, the draft constitutional reform of 2016, which the national Parliament did not approve, aimed to incorporate EU principles and norms as guiding pillars²³. For instance, the amendments emphasized the delegation of legislative powers to EU institutions (Articles 2(4) and 122(3)), designation of Albanian representation in the European Parliament (Article 64(4)), are in line with Article 14(2) TEU. The reform also proposed allowing Albania to submit legislative proposals to the EU (Article 80a), echoing Article 12(1)(a) TEU and Protocol No. 1 TFEU. Additionally, it suggested transferring monetary policy powers to the European Central Bank upon Eurozone accession (Article 161), as required by Articles 127(2), 128 TFEU, and Protocol No. 4.

Third, and more importantly, the constitutional reform of 2016 aimed to restore trust on the judiciary system. In other words, Albanian magistrates passed a Vetting process, which is the process of thoroughly evaluating the Albanian magistrate's integrity and suitability for a role, the Albanian Constitutional Court did not function from 2018 until 2021. Considering that the Vetting Process aimed to restore trust in the Albanian judiciary system²⁴, this study focuses only on the post-Vetting period.

The method employed for decision selection is a keyword filter - in each decision - the following words: European Union, EU, regulation, directive, recommendation, opinion, decision, EU Court of Justice (EUCJ), stabilization, and association agreement are checked.

Focusing on the relationship *acquis communautaire*, the role of the SAA is underlined. Thus, while SAA is potentially²⁵ an instrument for the EU accession of new

²² It shall be mentioned that the Albanian Constitutional Court and the High Court have already referred to EU legislation (D. Veshi, 2025, 367).

²³ Council of Europe, 2016.

²⁴ N. Kilic et al., 2026.

²⁵ Indeed, the Preamble of the SAA states: «RECALLING the European Union's readiness to integrate to the fullest possible extent Albania into the political and economic mainstream of Europe and its status as a potential candidate for European Union membership on the basis of the Treaty on European Union and fulfilment of the criteria defined by the European Council in June 1993, subject to the successful implementation of this Agreement, notably regarding regional cooperation» (European Union, 2006).

candidate countries, before this international agreement was called European Agreement²⁶. Article 70(1) SAA with Albania states *Albania shall endeavor to ensure that its existing laws and future legislation shall be gradually made compatible with the Community acquis. Albania shall ensure that existing and future legislation shall be properly implemented and enforced*. This is also the so-called harmonization clause, which obligates future EU countries to interpret national law according to the EU legislation, as in the case of the European Agreement²⁷.

According to the EU, provisions of the European Agreement are directly applicable when, *the provision contains a clear and precise obligation which is not subject, in its implementation or effects, to the adoption of any subsequent measure*²⁸. This approach has been taken constantly by the EUCJ, in several cases²⁹. Thus, this shows that, according to the EU, nationals of EU candidate countries can rely on the rules established on the European Agreements, now, SAA, in front of national courts, also even before these countries access the EU.

Focusing on the case of Albania, ratified international treaties – as it is the case of SAA – have a higher rank than domestic legislation (Art. 5, Art. 116(1)(b), and Art. 122(2) of the Albanian Constitution). Also, the Albanian Constitutional Court has underscored the importance of this norm that codifies the legal hierarchy³⁰. In addition, according to Art. 122(3) Constitution *the norms issued by an international organization have priority, in case of conflict, over the law of the country when the direct application of the norms issued by the organization is expressly contemplated in the agreement ratified by the Republic of Albania for participation therein*.

It shall be mentioned that Albania has made several legal changes to promote European integration. First, in 2004, in order to align the national legislation with the EU law, Law No. 9252 of 8 July 2004 *On the work of the Parliament in the process of Albania's integration into the European Union*³¹ established *ad hoc* rules for the Assembly's role in the European integration process. Second, for the first time, in 2004, the Ministry of European Integration became an independent ministry (Bylaw No. 580 of 10 September

²⁶ S. Blockmans, A. Lazowski, 2006, 3.

²⁷ M. Mataija, 2015, 11.

²⁸ Court of Justice of the European Union, 1987, «Case C-12/86, Meryem Demirel v Stadt Schwäbisch Gmünd», ECLI:EU:C:1987:400; Court of Justice of the European Union, 1999, «Case C-262/96, Sema Sürül v Bundesanstalt für Arbeit», ECLI:EU:C:1999:228.

²⁹ Among others, Case C-63/99, «The Queen and Secretary of State for the Home Department, ex parte Wiesław Głoszczuk and Elżbieta Głoszczuk», 2001; Case C-235/99, «The Queen and Secretary of State for the Home Department, ex parte Eleanora Ivanova Kondov», 2001; Case C-268/99, «Aldona Malgorzata Jany and Others v Staatssecretaris van Justitie», 2001; Case C-257/99, «The Queen and Secretary of State for the Home Department, ex parte Julius Barkoci and Marcel Malik», 2001.

³⁰ Albanian Constitutional Court, 2016; Albanian Constitutional Court, 2015; Albanian Constitutional Court, 2015; Albanian Constitutional Court, 2014.

³¹ For clarity purposes, Law No. 15 of 05 March 2015 has abrogated Law No. 9252 of 8 July 2004. In addition, Law no. 19 of 16 March 2023 and Law no. 77 of 4 December 2025 have modified Law No. 15 of 05 March 2015 by aiming to give further role to the Albanian Parliament for the alignment of the Albanian legislation with the EU law.

2004 *On the field of activity of the Ministry of European Integration*)³². Third, almost every year, there is a new National Plan for European Integration, which was previously called the National Plan for the Implementation of the Stabilization and Association Agreement. Currently, Bylaw no. 16 of 11 January 2024 establishes the National Plan for European Integration for the period 2024-2026.

Nevertheless, EU accession should be performed not only through harmonization of national legislation but also through judicial harmonization³³. In other words, harmonization can also come through national judges who apply EU legislation directly or interpret national legislation according to the view of the *acquis communautaire*. Thus, the penetration of the EU values, principles, and ideas is incorporated at the domestic levels of future EU countries³⁴.

According to this research, in 2021, out of 42 cases, the Albanian Constitutional Court cited the *acquis communautaire* in the three cases: Decisions no. 1 of 26 January 2021³⁵, no. 27 of 29 June 2021³⁶, no. 29 of 02 July 2021³⁷. This positive approach towards the supranational legal system continued also for the next years. In 2022, out of 43 decisions, in two cases, the Constitutional Court referred to the EU law: no. 30 of 02 November 2022³⁸, no. 37 of 01 December 2022³⁹.

Again, in 2023, the importance of *acquis communautaire* by the Albanian Constitutional Court was considered in four out of 70 decisions: Decisions no. 8 of 22 February 2023⁴⁰, no. 21 of 18 April 2023⁴¹, no. 36 of 16 June 2023⁴², no. 43 of 19 September 2023⁴³. Moreover, during 2024, the Albanian Constitutional Court considered the importance of the supranational legal system in two out of 86 decisions: Decision no. 3 of 30 January 2024⁴⁴, and no. 56 of 16 July 2024⁴⁵.

Last year, in 2025, out of 81 decisions, the Albanian Constitutional Court cited the *acquis communautaire* in the four cases: Decisions no. 8 of 21 February 2025⁴⁶; no 33 of 20 May 2025⁴⁷; no. 45 of 31 July 2025⁴⁸; no. 49 of 24 September 2025⁴⁹.

³² For clarity purposes, bylaw No. 81 of 09 February 2022 has incorporated the Ministry for Europe with the Ministry of Foreign Affairs.

³³ A. Albi, 2005, 52–56; Z. Kuhn, 2005, 55; M. Bobek, 2006, 265; Y. Goldammer, E. Matulionytė, 2007, 307.

³⁴ R. Ladrech, 1994, 69; T. Börzel, 1999, 573; M. Green Cowles, J. Caporaso, T. Risse, 2001.

³⁵ Council of Europe, 2000.

³⁶ European Union, «Directives for the Financing of Political Parties».

³⁷ The principles of the European Convention on the Intangible Cultural Heritage, approved in Paris in 2003, as well as the Stabilization Association Agreement (SAA) / article 7(3)

³⁸ Directive 2011/7/EU; SAA, Articles 6, 70, 76.

³⁹ Directive 2009/103/EC; Treaty on the Functioning of the European Union, Article 49.

⁴⁰ SAA, 2006.

⁴¹ SAA, Article 71.

⁴² SAA, Articles 1, 70, 74; European Union directives; Directive 2014/24/EU, Article 9.

⁴³ SAA, Article 70; European Union directives.

⁴⁴ EuroNatur Foundation, CEE Bankwatch Network, RiverWatch, Energy Community.

⁴⁵ SAA, Article 70; Directive 92/84/EEC; Directive 92/83/EEC.

⁴⁶ SAA, Articles 71, 74; Case C-78/76, «Steinike & Weinlig v Germany», 1977, para 21; Case C-290/83, «Commission v France», 1985, para 14; Joined Cases C-67/85, C-68/85, C-70/85, «Van der Kooy and Others v Commission», 1988, para 35; Case C-305/89, «Italy v Commission», 1991, para 13; Case C-482/99, «France

From these fifteen cases, only in three cases, the EU law was also mentioned by the dissenting judges. These decisions were: Decisions no. 29 of 02 July 2021, no. 56 of 16 July 2024, and no. 49 of 24 September 2025.

Therefore, the object of these decisions mainly concerns concessions and public contracts. As is well known, public contracts are also governed by several general principles of civil law. Although none of these decisions deals with civil law in the strict sense, some of them nevertheless concern private legal relationships. In particular, this is the case for Decision no. 30 of 02.11.2022 concerning default interest on consumer loans, and Decision no. 37 of 01.12.2022 concerning limitations on legal representation fees in insurance disputes.

Compared to the Italian legal system, this number appears relatively small. Indeed, Italian scholarship⁵⁰ has demonstrated that the Italian Constitutional Court has not merely taken EU law into consideration but has also directly applied it. This development is clearly linked to the case-law of the CJEU, particularly Case 26/62, *Van Gend en Loos judgment*, concerning the direct effect of EU law, and Case 6/64, *Costa v ENEL judgment*, concerning the supremacy of EU law. At the Italian national level, this evolution was progressively reflected in the jurisprudence of the Constitutional Court, especially in Decisions nos. 183/1973, 232/1975, and, most notably, Decision no. 170/1984.

To sum up, although Albania is not part of the EU, Albanian constitutional judges have applied EU law. It shall be mentioned that this is not uncommon for candidate EU countries; i.e. Poland⁵¹. However, when compared to the extensive reliance of the Italian Constitutional Court on EU law, this number appears relatively limited. Furthermore, although the majority of these cases concerned public contracts, other few cases addressed private legal relationships.

3. Application of the EU law by Albanian Constitutional Judges

The relationship between Albania's economic policies and its obligations under EU law continues to have a direct impact on the development of constitutional jurisprudence in the country, especially in the context of the SAA.

In 2021, two main decisions used the EU law: Decisions nos. 27 and 29. Both these decisions deal with the constitutionality of normative acts. However, in both these cases, the *acquis communautaire* was not applied as the main normative basis.

v Commission», 2002, para 37; Case C-41/90, «Höfner and Elser v Macrotron GmbH», 1991, para 21; Case C-374/17, 2018, para 44.

⁴⁷ Directive 2014/42/EU; Directive 2024/1260/EU.

⁴⁸ SAA, Article 108.

⁴⁹ Directive 2006/126/EC, Article 6(3).

⁵⁰ R. Mastroianni, 2009, 437–470; F. Polacchini, 2015, 159-188; A.-O. Cozzi, 2022, 606-626.

⁵¹ Polish Constitutional Court, 2004, para 10; A. Kustra-Rogatka, 2015, 193.

In its decision no. 27, of 29 June 2021, the Constitutional Court reviewed the constitutionality of the new formula for the distribution of public funds to political parties, assessing whether it violated the principles of equality in the electoral race and political pluralism. Although it did not declare the provision unconstitutional, the Court made a constitutional interpretation of the rule by highlighting the importance of alignment with the democratic principles of the EU and emphasized that national legislation should respect international best practices for proportional and non-discriminatory funding of political parties. In this context, the Court cited the EU recommendations and the Venice Commission Guidelines as authoritative sources for a democratic electoral system. Thus, the EU instruments were not used as a binding basis of the decision, but as supporting tools to orient the constitutional interpretation in line with EU democratic standards and to underline the need for supervision of the implementation of the formula.

In addition, in 2021, in decision no. 29, of 02 July 2021, the Constitutional Court examined the legality of the demolition and reconstruction of the National Theater, analyzing the compliance of this process with the Constitution and with Albania's commitments to the EU in the field of cultural heritage. It was identified a legal discrepancy between the decision of the Council of Ministers⁵² and the existing law «On Cultural Heritage», in the sense that the government bylaw avoided the procedures and guarantees provided by the law on the protection of objects of cultural value. This was considered problematic in terms of respecting the hierarchy of norms, as a by-law cannot change or abolish obligations provided by law. To support its analysis, the Court referred to the SAA, although this was used only as an accessory argument, rather than the main argument of the decision.

Quite interestingly, in this case the Albanian Constitutional judges also referred to the case-law of the Italian Constitutional Court. Indeed, according to the Italian Constitutional Court (Decision No. 9 of 21 January 2004), cultural works created over more than twenty-five centuries within the Italian territory must be regarded as forming an indivisible cultural whole, irrespective of the intrinsic value of each individual asset. Furthermore, although urban planning constitutes a fundamental public interest, priority must be accorded to assets possessing artistic, historical, documentary, and cultural significance (Italian Constitutional Court, Decision No. 232 of 24 June 2005).

In 2022, two main decisions used the EU law: Decisions nos. 30 and 37. Both these decisions deal with the constitutionality of normative acts. Again, in both cases the *acquis communautaire* were used on a normative basis and not just auxiliary references.

⁵² The Assembly, in its plenary session of 20 September 2018, by Decision No. 96/2018, decided: «The approval of Decree No. 10849, dated 27 July 2018, of the President of the Republic 'On the return of Law No. 37/2018'». In the same session, the Assembly also approved Law No. 37/2018, dated 20 September 2018, «On the determination of the special procedure for the negotiation and conclusion of the contract with the object 'Design and implementation of the urban project and the new building of the National Theater'» (Law No. 37/2018). The law was subsequently sent to the President for promulgation.

In particular, in decision no. 30 of 02 November 2022, the Constitutional Court declared unconstitutional a provision of the Code of Civil Procedure that allowed the application of high interest on consumer loans in case of delay, assessing that this violated consumer protection and contradicted Albania's obligations to the EU. The Court relied directly on Directive 2011/7/EU, which excludes consumer contracts from its scope, to argue that the same regime cannot be applied as for commercial relationships. While the Constitutional Court used the EU law as the main argument in this case, it also obliged the Albanian Assembly to amend the law within six months.

Always in 2022, in decision no. 37, of 01 December 2022, the Constitutional Court declared unconstitutional legal limitation of fees for legal representation in insurance matters. The Court referred to Directive 2009/103/EC, assessing that EU law does not provide for such restrictions and favors contractual freedom. Again, the EU law was used as the one of the arguments to assess the incompatibility of the national norm with EU obligations rather than the main legal instrument.

In 2023, four main decisions used the EU law: Decisions nos. 8, 21, 36 and 46. While the first three deal with the constitutionality of normative acts, the fourth deals with an individual constitutional complaint. Quite interestingly, differently from the previous two years, in all these cases, the *acquis communautaire* and the SAA were used on a normative basis and not just auxiliary references.

First, in decision no. 8 of 22 February 2023, the Constitutional Court treated the SAA as a legally binding instrument with direct effect, based on its ratification law. In other words, in this case the EU instruments were used as a main argument. Referring to Article 71(1) of the SAA, the Court emphasized that Albania has an obligation to ensure compliance of its laws with the EU *acquis*. In this context, it was clarified that any internal norm that conflicts with the provisions of the SAA must be interpreted in accordance with it or not apply at all. Furthermore, the Court relied on Article 101 of the TFEU, which prohibits agreements or practices that distort competition within the internal market, to assess whether Albanian legislation complies with EU competition law standards. In this way, EU law was used as a central normative basis in assessing the constitutional compliance of national law.

As in the decision no. 29, of 02 July 2021, also in this case, Albanian Constitutional judges referred to the case-law of the Italian Constitutional Court. In particular, based *also upon the case-law of the Italian Constitutional Court (see Decisions Nos. 270/1996, 171/2007, 128/2008, 22/2012, and 34/2013)*, the Court emphasized that the use of normative acts having the force of law (decree-laws), and consequently the assumption of legislative responsibility by the executive branch, cannot be justified merely by referring to the existence of conditions of urgency and necessity, nor can it be legitimized solely on the basis of the reasonableness of the new regulatory framework [authors' translation] (Albanian Constitutional Court, decision no. 8 of 22 February 2023, par. 38).

As in the previous decision, also in decision no. 21 of 18.04.2023, related to State interventions in the fuel market, the Court confirmed the direct effect of the SAA and its primacy over national law and to the importance of Article 101 TFEU to examine whether the interventions undermined competition, reiterating the need for compatibility with the EU *acquis*. Both decisions show that the Court has used EU instruments not only as theoretical support, but as a binding standard for the interpretation and application of national law, placing EU law at the center of judicial analysis and directly influencing Albania's legal approximation with the EU Union.

To continue, in decisions no. 36 of 16 June 2023 and no. 43 of 19 September 2023, the Constitutional Court dealt with issues related to compliance with EU standards in the field of public procurement and fair competition: the first on the award of a non-competitive contract within the framework of an international agreement, and the second on the right of a subcontractor to pay to a public authority in a procurement procedure. In both cases, the Constitutional Court analyzed whether the Albanian authorities had complied with the obligations deriving from SAA, in particular Article 70 (on competition and state aid) and Article 74 (on compliance with public procurement rules). Also, Article 9 of Directive 2014/24/EU, which requires open and transparent procedures in the award of public contracts and guarantees equal treatment for economic operators, was used in a substantial way in both decisions. As in the previous two cases, the *acquis communautaire* was used as a source of interpretation of the national law.

In Decision no. 43 of 19 September 2023, the dissenting judges, Ms. Marsida Xhaferllari and Ms. Fiona Papajorgji, referred to the agreement ratified by law between the Council of Ministers of the Republic of Albania and the Government of the Italian Republic concerning the financing of the programme, emphasizing that the agreement expressly determines the allocation of the financial resources necessary for the implementation of the programme between the Italian and Albanian parties.

In 2024, three main decisions used the EU law: Decisions nos. 3, 56 and 81. While the first two deal with the constitutionality of normative acts, the third deals with an individual constitutional complaint. In all these cases, the *acquis communautaire* was used as accessory argument.

First, in Decision no. 3, of 30 January 2024, the Constitutional Court reviewed the constitutionality of the law authorizing direct procurement for the construction of the Skavica hydropower plant, addressing whether this law complied with the Constitution and the obligations deriving from the SAA, as well as with the EU Union standards in the field of competition, public procurement and environmental protection. The applicants in this case relied on Article 7(3) of the SAA, which provides for the obligation for the gradual approximation of Albanian legislation with the *acquis communautaire*. In this context, they also brought as an argument a number of EU directives related to the field of environment and public procurement, including Directive 2004/35/EC on environmental liability, Directives 2001/42/EC and 2011/92/EU (amended by 2014/52/EU)

on environmental impact assessment and strategic environmental planning, as well as Directive 85/337/EEC on Environmental Impact Assessment. Quite interestingly, in this decision, constitutional judges reviewed the alignment of the national law with the *acquis communautaire* (TFEU, directives and recommendations), by underlying its complete alignment. In addition, Constitutional judges referred also to international law; in particular, to the Berne Convention for the Protection of Natural Flora and Fauna. However, although both the applicants and the judges have cited the *acquis communautaire* as well as SAA, none of them were used as a main argument for the assessing the constitutionality of the Albanian national law.

Second, in decision no. 56, of 16 July 2024, the Constitutional Court reviewed a tax reform that removed a lower tax rate on beer made by small breweries, establishing a uniform rate for all operators. Compliance of this measure with EU Directives 92/83/EEC and 92/84/EEC as well as with the SAA. The EU law provides for the possibility, but not the obligation, for countries to apply reduced rates to small producers was analyzed⁵³. In particular, the Constitutional Court states that *making legal changes contrary to these directives constitutes a violation of the SAA*⁵⁴ [authors' translation]. Thus, *the implementation of these directives constitutes direct implementation of Article 70 of the SAA*⁵⁵ [authors' translation].

Finally, last year, in 2025, the EU *acquis* as well as the case-law of the EUCJ has been used by the Albanian Constitutional Court in four decisions: Decisions nos. 8, 33, 45 and 49. While one dealt with individual constitutional complain, two dealt with the constitutionality of a normative act, and one with a constitutional request by a national judge. As can be seen, after the Vetting process, only in 2025, did the Constitutional Court used the case-law of the EUCJ.

In the first case, Decision no. 8 of 21 February 2025, concerning the constitutional review of a bylaw, the majority of the Constitutional Court relied on both EU case-law and the SAA. In particular, the Court referred to Article 71 SAA, which prohibits, *inter alia*, any form of State aid that distorts or threatens to distort competition by favoring certain undertakings. Against this background, the constitutional judges were required to determine the meaning of «State aid» and «entrepreneurship», expressly drawing on the interpretative criteria developed by the EUCJ. Notably, the Constitutional Court relied not only on EUCJ case-law defining these concepts⁵⁶, but also on decisions clarifying the

⁵³ Albanian Constitutional Court, 2024.

⁵⁴ Albanian Constitutional Court, 2024, para 6.4.5.

⁵⁵ *Ibidem*.

⁵⁶ Regarding the concept of State aid, the constitutional judges referred to the case-law of the Court of Justice of the European Union, including Case C-78/76, «Steinike & Weinlig v Germany», 1977, para 21; Case C-290/83, «Commission v France», 1985, para 14; Joined Cases C-67/85, C-68/85, C-70/85, «Van der Kooy and Others v Commission», 1988, para 35; Case C-305/89, «Italy v Commission», 1991, para 13; and Case C-482/99, «France v Commission», 2002, para 37. With regard to the concept of «undertaking» (sipërmarrje), the constitutional judges relied on Case C-41/90, «Höfner and Elser v Macrotron GmbH», 1991, para 21.

circumstances under which a measure does not qualify as State aid within the meaning of EU law⁵⁷.

Applying this framework to the case at hand, the Court held that the contested bylaw – granting an exemption to a strategic investor, organized as a public–private joint venture, from the obligation to pay the infrastructure tax and the contribution for social housing – was compatible with the Constitution. The Court emphasized that the State held approximately one third of the shares in the joint venture and would therefore directly benefit from the economic returns generated by the strategic investment project. These expected returns, which the relevant legislation expressly qualifies as obligations of the strategic investor, were considered sufficient to justify the exemption and to exclude the existence of unconstitutional State aid.

In the second case, Decision no. 33 of 20 May 2025, concerning an individual constitutional complaint in a criminal matter, the applicant relied on Directive 2014/42/EU, arguing that extended confiscation under EU law permits the tracing and confiscation of the proceeds of crime from third parties only where those parties acted in bad faith, whereas asset-related measures may not affect property acquired in good faith by third parties. The applicant further referred to the new EU Directive 2024/1260 of 24 April 2024 on asset recovery and confiscation, which expressly affirms the inviolability of the private property of third parties – such as interested persons, injured parties, or victims – who neither participated in the commission of criminal offences nor acquired the property in bad faith.

Nevertheless, the majority of the constitutional judges held that claims raised after the case had been admitted for examination in plenary session, introducing new grounds of complaint, cannot be considered. According to the Court, such claims must comply with the general requirements regarding form and submission deadlines and must first undergo the preliminary admissibility review. This principle reflects a constitutional standard consistently upheld by the Albanian Constitutional Court in prior decisions⁵⁸.

The third case, Decision no. 45 of 31 July 2025, is quite interesting: while the previous decisions considered the EU law as interpretative source of law, in this case, Constitutional judges carried out a particularly significant reconstruction of its previous case-law on the impact of EU law on the Albanian legal order. They concluded that the Constitutional Court has always underlined the importance of the EU primary sources. However, there remains a structural division within the Court regarding the legal classification and domestic effects of EU secondary legislation.

In this decision, the Constitutional Court referred to its past by highlighting the division within different case-law. On one side, in several decisions⁵⁹, the Constitutional Court has referred to EU law and the *acquis communautaire* without conducting a direct

⁵⁷ Case C-374/17, 2018, para 44.

⁵⁸ In particular, see Albanian Constitutional Court, Decisions No. 4 of 21 January 2025 and No. 21 of 22 April 2025.

⁵⁹ Albanian Constitutional Court, 2013, 2016, 2022.

compatibility review between domestic normative acts and EU legal acts. Rather, such references served a comparative constitutional function, aimed at interpreting and developing constitutional concepts in light of international and European standards, without elevating EU secondary law to a formal benchmark of constitutionality. By contrast, in other decisions⁶⁰, the Constitutional Court have emphasised the binding nature of the SAA, particularly its obligation to ensure the adoption of domestic legislation in conformity with the *acquis communautaire*. From this perspective, the SAA, forms an integral part of the domestic legal system and may operate as a relevant parameter in constitutional adjudication.

Against this background, the Court, in the present case, acknowledged that no qualified majority of five judges could be formed to proceed with the examination and adjudication of the claim concerning the alleged incompatibility of the amending law with the SAA, specifically with regard to its conformity with EU law.

In substantive terms, the majority of the Court underlined that the contested rule introduces new legal concepts whose concrete content and practical implications remain indeterminate in the absence of implementing bylaws. Until such secondary legislation is adopted, the Court considered itself unable to carry out a meaningful constitutional review, as the normative framework necessary to assess the law's constitutionality has not yet been fully defined.

In the fourth and final case of 2025, decision 49 of 24 September 2025, the Constitutional Court examined a constitutional referral submitted by a national judge concerning the alleged discriminatory nature of domestic legislation regulating driving licenses. The question focused on whether the law creates unjustified discrimination among citizens holding driving licenses by imposing additional requirements related to minimum driving experience. More specifically, the contested legislation requires a minimum driving period of three years with a category A license for the operation of motor vehicles with a power of up to 25 kW, or alternatively two years of holding a category B license where the specific power limit is set at 65 kW per tonne. The referring judge questioned whether these differentiated requirements result in unequal treatment among license holders.

In its reasoning, the Constitutional Court emphasized that Article 6(3) of Directive 2006/126/EC on driving licenses allows Member States to impose additional conditions for access to categories A and B. In this context, the Court carried out a comparative analysis of national driving codes in several EU Member States. It observed that certain countries, such as Spain, Austria, Germany, the Netherlands, and France, have introduced further requirements beyond those set out in the Directive, whereas others, notably Italy, have chosen not to do so. Nevertheless, in the concrete case, the majority of the Constitutional Court concluded that the introduction of additional requirements pursues

⁶⁰ Albanian Constitutional Court, 2014, 2022, 2023.

a legitimate public interest, namely road safety, and therefore does not amount to unconstitutional discrimination.

To sum up, the analysis of the Albanian Constitutional Court's jurisprudence from January 2021 to December 2025 showed a growing reliance on EU law, particularly the *acquis communautaire* and the SAA, either as a normative basis or as an auxiliary reference. In two cases — Decision no. 29 of 02 July 2021 and Decision no. 8 of 22 February 2023 — the Albanian Constitutional judges referred to the case-law of the Italian Constitutional Court. Furthermore, in another case, namely Decision No. 43 of 19.09.2023, two dissenting judges referred to the agreement ratified by law between the Council of Ministers of the Republic of Albania and the Government of the Italian Republic. Moreover, in Decision No. 49 of 24 September 2025, the Albanian Constitutional judges examined the manner in which the Italian legislature had implemented the relevant EU directive. The reference to Italian jurisprudence is not, however, innovative. Indeed, legal scholarship has already demonstrated that Albanian Constitutional judges have frequently referred not only to the case-law of the Italian Constitutional Court⁶¹, but also to the jurisprudence of the Italian Court of Cassation⁶².

4. Conclusions

The paper studied the Albanian constitutional jurisprudence for the application of the EU law from 1 January 2021 to 31 December 2025 with particular focus on the private law system and in light of the significant influence of Italian private law on the Albanian legal system.

In particular, in the last five years, our research identified fifteen different decisions from the Albanian Constitutional Court, which meet the EU law application criteria. This number is very low compared to the high number of yearly decisions. In particular, four out of 81 (4.9%), in 2025, three out of 86 (3.5%), in 2024, four out of 70 (5.7%), in 2023, two out of 43 (4.6%), in 2022, two out of 42 (4.8%), in 2021. So, the average of the reference to the EU law seems to be from 3.5%, in 2024, to 5.7%, in 2023. While in 2025, 2024 and 2021, the *acquis communautaire* was mainly used as accessory argument, in 2022 and 2023, the *acquis communautaire* was used as normative basis.

From all these fifteen cases that the EU law was referenced, only three dealt with individual constitutional complaints. Thus, although a high number of the constitutional case-law deals with individual constitutional complaints, the majority of the cases referring to the *acquis communautaire* dealt with the constitutionality of normative acts. Quite interestingly, one of these requests come from a national judge in 2025. Last, but not least, it should be underlined that Albanian constitutional judges have used *acquis*

⁶¹ E. Koka et al., 2025.

⁶² N. Llagami, C. Venditti, 2026

communautaire in different areas, such as public procurement and competition, environmental protection, consumer protection and taxation, or fundamental rights and democratic standards.

Focusing on the first sub-research question, namely whether the cases in which the Albanian Constitutional judges referred to EU law are related to private law, it should be noted that these cases concern primarily public procurement contracts, although fundamental principles of civil law are also applicable within the field of public contracts⁶³. Nevertheless, two cases specifically involve private legal relationships, namely those concerning default interest on consumer loans and limitations on legal representation fees in insurance disputes.

With regard to the second sub-research question, namely whether this approach is comparable to that adopted within the Italian legal system, Italian legal scholarship has demonstrated the significant role played by EU law and its application by the Italian Constitutional Court. By contrast, the number of cases in which the Albanian Constitutional Court has applied EU law remains rather limited, particularly when considering its use of EU law as an instrument for resolving concrete disputes.

Focusing on the third sub-research question, namely whether the Albanian Constitutional judges also referred to the case-law of the Italian Constitutional Court, this paper has shown that, in the cases in which Albanian Constitutional judges applied EU law, they referred twice to the case-law of the Italian Constitutional Court. Furthermore, in one case they referred to the agreement ratified by law between the Council of Ministers of the Republic of Albania and the Government of the Italian Republic, while in another case they examined the manner in which the Italian legislature had implemented the relevant EU directive.

To conclude, although references to the *acquis communautaire* have been relatively limited over the past five years, Albanian constitutional judges demonstrate a clear awareness of the full spectrum of EU normative law. As underlined in Decision no. 45 of 31 July 2025, while the Albanian Constitutional Court consistently acknowledges that the SAA enjoys a higher hierarchical value than national law, it does not provide a consistent stance with regard to EU secondary legislation. In other words, whereas certain strands of the case-law recognize EU secondary legislation as having primacy over the domestic legal order, other decisions reject such a direct and robust interpretation. In addition, some of these cases concern private legal relationships as well as public procurement contracts, in which fundamental principles of civil law are also applicable. Moreover, in several of these decisions, the Albanian Constitutional judges also referred to the case-law of the Italian Constitutional Court.

⁶³ A. Gjeta et al., 2026.

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