

The Development of Constitutional Review Systems in Europe and the Albanian Context

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doi: <https://doi.org/10.37745/gjplr.2013/vol13n15773>

Published March 03, 2025

Citation: Llagami N. (2025) The Development of Constitutional Review Systems in Europe and the Albanian Context, *Global Journal of Politics and Law Research*, Vol.13, No.1, pp.57-73

Abstract: *Constitutional review systems are crucial to the promotion of the rule of law, the strengthening of constitutional principles, and the protection of fundamental human rights. These systems, which originated in the early 20th century, have undergone substantial evolution. In Europe, diverse legal frameworks, political structures, and governance models developed, while mechanisms to uphold constitutional integrity and safeguard democratic values became more and more a necessity. The concept of judicial review, first developed in the United States, provided an influential model for European countries, many of which adapted this system into their own constitutional review frameworks. Central to this evolution was the Kelsenian model, which proposed a centralized system with specialized constitutional courts holding exclusive jurisdiction over constitutional matters.*

Keywords: development, constitutional review systems, Europe, Albanian

INTRODUCTION

Constitutional review systems are crucial to the promotion of the rule of law, the strengthening of constitutional principles, and the protection of fundamental human rights. These systems, which originated in the early 20th century, have undergone substantial evolution. In Europe, diverse legal frameworks, political structures, and governance models developed, while mechanisms to uphold constitutional integrity and safeguard democratic values became more and more a necessity. The concept of judicial review, first developed in the United States, provided an influential model for European countries, many of which adapted this system into their own constitutional review frameworks. Central to this evolution was the Kelsenian model, which proposed a centralized system with specialized constitutional courts holding exclusive jurisdiction over constitutional matters.

The Kelsenian model was particularly suited to address the distinctive challenges facing European legal systems, especially in dealing with the aftermath of authoritarian regimes and political fragmentation. In adopting this model, numerous European nations sought to create a

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comprehensive mechanism for preventing unconstitutional actions and ensuring that laws aligned with constitutional principles. However, while the Kelsenian approach has been widely adopted, it has further developed. The dynamics of European integration, democratic consolidation, and shifting societal values have prompted several significant revisions to this model.

The consolidation of the EU authority has introduced new specifics for the traditional Kelsenian system of the national legal structure. As the EU has developed into a large supranational entity, its legal authority has posed challenges to the hierarchical structure inherent in the Kelsenian model. This has led to necessary adaptations in constitutional law, particularly in how EU law is incorporated into national legal systems. These changes require a careful balance between maintaining national constitutional identities and fulfilling obligations arising from EU membership. Additionally, the interaction between constitutional and ordinary courts has become increasingly prominent, as judicial review and constitutional interpretation often overlap in the context of EU law.

Constitutional courts, therefore, perform functions that extend beyond traditional judicial review. In developed legal systems, their roles include not only the protection of constitutional principles but also the protection of human rights, the conduct of elections, and the regulation of the lawmaking process. This expanded competence reflects the broader responsibilities that constitutional courts now hold in safeguarding democratic governance and upholding the rule of law in an increasingly interconnected and complex legal framework and case law.

Albania, as a transitional democracy in consolidation and an EU candidate country, presents another perspective for examining the development and implementation of its constitutional review system. The Albanian Constitutional Court operates within a framework that integrates both domestic legal principles and influences from European legal norms. The Albanian Constitution, particularly in Articles 124, 131, and 134, clearly defines the Court's comprehensive authority, providing individuals with direct access to constitutional rulings and enabling the review of all laws and individual actions. This broad scope of authority allows the Court to effectively address several different constitutional issues, fostering the protection of fundamental rights and the promotion of democratic governance. The Court's jurisprudence reflects an evolving balance between national legal principles and the standards set by the European Convention on Human Rights (ECHR) and the precedents of the European Court of Human Rights (ECtHR), as evidenced in its case law.

This study contributes to the broader discourse on the evolution of European constitutional review systems through a comparative assessment of the Kelsenian model with the complex interplay of national and supranational laws, particularly in the context of multilevel constitutionalism. In doing so, it provides an in-depth analysis of Albania's constitutional framework, and the application of the constitutional review. Through a comprehensive analysis of Albania's legal

Publication of the European Centre for Research Training and Development –UK practices within the broader European context, this research highlights the ongoing influence of European integration and the relation between national sovereignty and supranational obligations.

By examining these issues, the paper makes a significant contribution to scholarly discussions on the role of constitutional review in Europe, with particular emphasis on Albania's evolving legal system. It highlights the importance of ensuring legal certainty, protecting fundamental rights, and fostering democratic governance.

The evolution of constitutional review systems in Europe

Following World War I, Europe witnessed the emergence of constitutional review systems, which were characterized by the establishment of specialized courts granted with substantial review authorities. This model was widely adopted throughout Europe after World War II¹, influencing the evolution of legal systems across the continent. In contrast to the U.S. system, the Kelsenian model offers a more abstract approach to constitutional review, along with stricter rules of participation, which are considerably narrower in scope². The period following 1989 witnessed a significant expansion of constitutional courts in Central and Eastern Europe, further consolidating the Kelsenian framework within these regions.³

European integration, however, has presented substantial challenges to key elements of the Kelsenian model, particularly in relation to the hierarchical structure of legal systems and the primacy of national constitutions.⁴ Several factors, such as strong legal traditions and histories marked by authoritarianism and political fragmentation⁵, play a significant role in shaping the choice of constitutional review models. These factors highlight the complexity and diversity of constitutional practices across different European contexts.

Recent developments suggest that European constitutional review systems are undergoing continuous evolution⁶. A notable example is France's introduction of preliminary questions to the Constitutional Council in 2008, which represents a meaningful shift in constitutional review practices. Furthermore, in many European countries, substantial constitutional protections are

¹ Öhlinger, T. (2003). The Genesis of the Austrian Model of Constitutional Review of Legislation. *Ratio Juris*, 16, 206-222.

² Sheive, S. W. (1995). *Central and Eastern European constitutional courts and the antimajoritarian objection to judicial review*. Law & Policy International Business, 26.

³ Sheive, S.W. (1995). Central and Eastern Europe Constitutional Courts and the Antimajoritarian Objection to Judicial Review. *Law and policy in international business*, 26, 1201.

⁴ Sheive, S.W. (1995). Central and Eastern Europe Constitutional Courts and the Antimajoritarian Objection to Judicial Review. *Law and policy in international business*, 26, 1201.

⁵ Castillo Ortiz, P.J. (2020). Constitutional Review in the Member States of the EU-28: A Political Analysis of Institutional Choices. *Wiley-Blackwell: Journal of Law & Society*.

⁶ Kustra-Rogatka, A. (2019). Constitutional review in EU Member States in the light of the evolution of constitutional judiciary in Europe. *Studia Iuridica Toruniensia*.

Publication of the European Centre for Research Training and Development –UK significantly influenced by non-judicial actors⁷⁸, highlighting the relationship between judicial and political forces in the development of constitutional law.

Different members of the European Union employ different constitutional review systems, each of which has evolved considerably over time. While many countries uphold the principle of parliamentary sovereignty, others have established highly specialized constitutional courts that operate within broad review systems⁹¹⁰. Although the Kelsenian model remains influential across Europe, its scope and powers have been adapted to be in line with the unique legal and political contexts of different countries¹¹.

Several processes within European integration have meaningfully challenged long-standing assumptions about constitutional review, particularly concerning the hierarchical structure of legal systems and the authority of national constitutions¹². Notably, some countries, including Germany, allow for limited diffuse constitutional review under specific circumstances¹³. Poland's constitutional crisis has further contributed to the expansion of diffuse constitutional review, with increasing engagement of the lower courts¹⁴.

Key factors driving the adoption of constitutional courts across Europe include a strong legal education system, significant involvement of judges in policymaking, and the strong protection of individual rights¹⁵. The interaction between national courts and European institutions adds a layer of complexity to constitutional review systems¹⁶, reflecting the dynamic development of constitutional law in the context of European integration.

⁷ Visser, M. (2013). Constitutional Review in Europe: A Comparative Analysis.

⁸ Ziller, J.P. (2015). Who should uphold the constitution? An answer from comparative law. *European Constitutional Law Review*, 11, 617 - 619.

⁹ Castillo Ortiz, P.J. (2020). Constitutional Review in the Member States of the EU-28: A Political Analysis of Institutional Choices. *Wiley-Blackwell: Journal of Law & Society*.

¹⁰ Comella, V.F. (2004). The European model of constitutional review of legislation: Toward decentralization? *International Journal of Constitutional Law*, 2, 461-491.

¹¹ Kustra-Rogatka, A. (2019). Constitutional review in EU Member States in the light of the evolution of constitutional judiciary in Europe. *Studia Iuridica Toruniensia*.

¹² Kustra-Rogatka, A. (2019). Constitutional review in EU Member States in the light of the evolution of constitutional judiciary in Europe. *Studia Iuridica Toruniensia*.

¹³ Möschel, M. (2020). Diffuse Constitutionality Review in Germany.

¹⁴ Radziejewicz, P. (2022). Judicial Change to the Law-in-Action of Constitutional Review of Statutes in Poland. *Utrecht Law Review*.

¹⁵ Andrade, D., & Fernandes, G.A. (2001). Comparative Constitutional Law: Judicial Review. *University of Pennsylvania Journal of Constitutional Law*, 3, 977.

¹⁶ Visser, M. (2013). Constitutional Review in Europe: A Comparative Analysis.

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Developed EU countries¹⁷ have experienced important growth in their constitutional justice systems, with constitutional courts now holding more power and taking on more responsibilities than customary judicial review. Some of these courts now adjudicate on many human rights issues and some political party activities; including on elections validity. Different member states have established constitutional limitations to the supremacy of EU law, making the interplay between EU law and national constitutional law a principal area of academic inquiry¹⁸. Constitutional courts in Central and Eastern Europe have considerably influenced the process of democratic transitions. EU integration process has been endorsed from several of these courts^{19,20}. European law has been meaningfully constitutionalized in many areas, including contract law, where fundamental rights have substantially influenced private law adjudication²¹. Constitutional courts have considerably changed parliamentary governance. The customary separation of powers has been considerably weakened and this large shift has greatly broadened the judiciary's role in the creation of laws^{22,23}.

Research by Van der Schyff²⁴ and de Poorter in 2013 shows the Dutch constitution prevents courts from reviewing parliamentary laws for constitutional compliance. This prohibition, based on the principle of legislative supremacy, is viewed as an important element of the Dutch constitutional tradition²⁵. By means of strict judicial review, courts possess the meaningful authority to assess laws for alignment with international treaties, thereby substantially integrating these treaties into the nation's fundamental constitutional framework²⁶. Several important recent developments have stimulated wide-ranging debates regarding the judiciary's adoption of constitutional review, with some proposals suggesting amendments²⁷ to the Constitution²⁸. The Dutch Council of State plays

¹⁷ Kustra-Rogatka, A. (2019, October 07). The Kelsenian model of constitutional review in times of European integration – Reconsidering the basic features. *International and Comparative Law Review*, 19(1).

¹⁸ Sarrión, J. (2014). Constitutional limits to European integration in the New Member States after the biggest enlargement. *Economics and Business Review*.

¹⁹ Morawa, A.H. (2010). Constitutional Evolution in Central and Eastern Europe: Expansion and Integration in the EU.

²⁰ Piqani, D. (2007). Constitutional Courts in Central and Eastern Europe and their Attitude towards European Integration.

²¹ Ciacchi, A.C. (2006). The Constitutionalization of European Contract Law: Judicial Convergence and Social Justice.

²² Sweet, A.S. (2002). Constitutional Courts and Parliamentary Democracy. *West European Politics*, 25, 100 - 77.

²³ Storskrubb, E., & Ziller, J.P. (2007). Access to Justice in European Comparative Law.

²⁴ Van der Schyff, G. (2010). Constitutional Review by the Judiciary in the Netherlands: A Bridge Too Far? *German Law Journal*, 11, 275 - 290.

²⁵ Poorter, J.C. (2013). Constitutional Review in the Netherlands: A Joint Responsibility. *Utrecht law review*, 9, 89-105.

²⁶ Besselink, L.F. (2011). Constitutional Adjudication in the Era of Globalization: The Netherlands in Comparative Perspective. *European Public Law*.

²⁷ Adams, M., & Schyff, G.V. (2006). Constitutional review by the judiciary in the Netherlands: A matter of politics, democracy or compensating strategy? *European Journal of Political Economy*.

²⁸ van der Schyff, G. (2020). The Prohibition on Constitutional Review by the Judiciary in the Netherlands in Critical Perspective: The Case and Roadmap for Reform. *German Law Journal*, 21, 884 - 903.

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 an analytically important role in constitutional review²⁹. Many scholars argue this point. The prohibition on constitutional review is unjustifiable and large reform is needed in this regard³⁰. The Urgenda case pointed out several specifics of multilevel constitutionalism within the Netherlands, as well as it depicted the important challenges posed in such a system³¹.

Germany's constitutional review has changed since its beginning, becoming a foundation of the nation's democracy. The Federal Constitutional Court (FCC)³² substantially interprets the basic law, protects many human rights and guarantees the constitutionality of several laws³³. The FCC's authority exceeds that of the U.S. Supreme Court, as it can rule on hypothetical constitutional issues³⁴. Germany's legal system is known for its centralized constitutional review, but ordinary courts sometimes conduct diffuse review³⁵. An independent judiciary needs strong public support to have sufficient authority. German³⁶ constitutional law, particularly about EU law, now prominently includes constitutional identity and ultra vires review³⁷. Germany's post-war economic success has been considerably helped by the Federal Constitutional Court's large role in preserving social and political stability³⁸, pointing out the importance of strong constitutional review in democratic systems.

The European Court of Human Rights has transitioned from guaranteeing individual justice to promoting constitutional justice, employing outside resources and a flexible interpretive method create a stronger system of rights protections.³⁹ The Court uses several interpretive approaches to improve current standards⁴⁰. These approaches include consensus, efficiency and judicial activism. The United Kingdom, France and Germany each have a national supreme court, and these courts are important parts of their respective judicial systems. These courts have adopted the concept of evolutive interpretation⁴¹ and this is applicable for all of them. Constitutional courts in several EU

²⁹ Poorter, J.C. (2013). Constitutional Review in the Netherlands: A Joint Responsibility. *Utrecht law review*, 9, 89-105.

³⁰ van der Schyff, G. (2020). The Prohibition on Constitutional Review by the Judiciary in the Netherlands in Critical Perspective: The Case and Roadmap for Reform. *German Law Journal*, 21, 884 - 903.

³¹ van der Schyff, G. (2020). The Prohibition on Constitutional Review by the Judiciary in the Netherlands in Critical Perspective: The Case and Roadmap for Reform. *German Law Journal*, 21, 884 - 903.

³² Kommers, D.P. (2006). The Politics of Constitutional Review in Germany. *Perspectives on Politics*, 4, 413 - 414

³³ Aung, N.N. (2022). The Basis of Constitutional Adjudication in Germany. *Fiat Justisia: Jurnal Ilmu Hukum*.

³⁴ Kommers, D.P. (2006). The Politics of Constitutional Review in Germany. *Perspectives on Politics*, 4, 413 - 414.

³⁵ Möschel, M. (2020). Diffuse Constitutionality Review in Germany.

³⁶ Vanberg, G. (2004). The politics of constitutional review in Germany.

³⁷ Simon, S.A. (2021). Constitutional Identity and Ultra Vires Review in Germany.

³⁸ Kommers, D.P. (2001). An Introduction to the Federal Constitutional Court. *German Law Journal*, 2.

³⁹ Farahat, A. (2015). Enhancing Constitutional Justice by Using External References: The European Court of Human Rights' Reasoning on the Protection against Expulsion. *Leiden Journal of International Law*, 28, 303 - 322.

⁴⁰ Karvatska, S., Blikhar, M., & Huralenko, N. (2021). Evolutionary trends in the interpretation of the European Court of Human Rights under the European Convention on Human Rights.

⁴¹ Bjorge, E. (2011). National supreme courts and the development of ECHR rights. *International Journal of Constitutional Law*, 9, 5-31.

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member states have expanded their roles and this expansion extends beyond customary judicial review⁴². The EU's governance and integration have been considerably shaped by the European Court of Justice⁴³. The European Court of Human Rights is reassessing its ties to national governments. This important re-evaluation focuses on its analytically important function of providing a large amount of interpretive guidance⁴⁴. The important constitutionalizing of EU law substantially effects European policy and it also deeply affects national policymaking. The Court's decisions are still influenced by the practices of member states⁴⁵.

Many countries now have systems for directly petitioning constitutional courts, providing stronger protection of fundamental rights. This important trend aims to definitively resolve a large number of human rights issues domestically⁴⁶, thereby greatly reducing the number of cases submitted to the European Court of Human Rights⁴⁷. Many studies analyze multiple methods of constitutional review, including specialized courts, judicial review and parliamentary sovereignty⁴⁸. Legal traditions, authoritarian backgrounds and political fragmentation significantly influence these choices. Constitutional courts are important for safeguarding constitutional principles, assessing EU policies and preserving⁴⁹ national⁵⁰ identities⁵¹. National constitutional courts along with the European Court of Justice are increasingly viewed as participating in constructive dialogue, in contrast to conflict⁵². These courts⁵³ have wide-ranging interactions with many legislatures, general courts and European institutions⁵⁴. Several research show the growth of constitutional adjudication throughout several European nations, as well as on the goals of this expansion and

⁴² Kustra-Rogatka, A. (2019). Constitutional review in EU Member States in the light of the evolution of constitutional judiciary in Europe. *Studia Iuridica Toruniensia*.

⁴³ Stone Sweet, A. (2010). *The European Court of Justice and the judicialization of EU governance*. *Living Reviews in EU Governance*. Available at SSRN: <https://ssrn.com/abstract=1583345>

⁴⁴ Arnardóttir, O.M. (2017). The Brighton Aftermath and the Changing Role of the European Court of Human Rights. *Journal of International Dispute Settlement*, 9, 223-239.

⁴⁵ Blauberger, M., & Schmidt, S.K. (2017). The European Court of Justice and its political impact. *West European Politics*, 40, 907 - 918.

⁴⁶ Gentili, G. (2012). A Comparison of European Systems of Direct Access to Constitutional Judges: Exploring Advantages for the Italian Constitutional Court.

⁴⁷ Schnutz, R.D. (2015). Improving Human Rights Protection on the national and the European Level. *Revista de Drept Constituțional*.

⁴⁸ Castillo Ortiz, P.J. (2020). Constitutional Review in the Member States of the EU-28: A Political Analysis of Institutional Choices. *Wiley-Blackwell: Journal of Law & Society*.

⁴⁹ Fontanelli, F. (2010). How Interpretation Techniques Can Shape the Relationship Between Constitutional Courts and the European Union. *King's Law Journal*, 21, 371 - 392.

⁵⁰ Huber, P., Grabenwarter, C., Knez, R., & Ziemele, I. (2021). The Role of the Constitutional Courts in the European Judicial Network. *European Public Law*.

⁵¹ Visser, M. (2013). Constitutional Review in Europe: A Comparative Analysis.

⁵² Claes, M., Visser, M., Popelier, P., & Heyning, C.V. (2012). Constitutional conversations in Europe - Actors, topics and procedures.

⁵³ Visser, M. (2013). Constitutional Review in Europe: A Comparative Analysis.

⁵⁴ Martinico, G., & Pollicino, O. (2012). The Interaction between Europe's Legal Systems.

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 the accessibility of many constitutional courts⁵⁵. Some studies address the conclusions on how non-judicial actors uphold constitutional principles and some others identify the challenges⁵⁶ of guaranteeing nationwide and EU-wide access to justice⁵⁷.

The European Court of Human Rights usually rejects cases brought by third parties, insisting that applicants directly suffered the alleged human rights violations⁵⁸. Before 2012, a number of countries, including Hungary, allowed their citizens to initiate constitutional review⁵⁹. Hungary completely abolished *actio popularis*. This meaningful change coincided with the establishment of a strong system of constitutional complaints, intended to carefully balance individual rights protection and constitutional review⁶⁰. *Actio popularis* is an effective legal tool. It can target meaningful structural discrimination, especially in public education⁶¹. The European Court of Justice precisely selects the level of specificity in its rulings when examining member state actions⁶². Some international courts may permit *actio popularis* based on fundamental rules protecting collective interests, although several judicial considerations could restrict its application. Europe's increase in constitutional adjudication has led to multiple constitutional review models. Each model has special goals and access procedures^{63,64}.

Albania context

This section explores the role of ordinary courts in the constitutional review process, particularly focusing on their authority to challenge the constitutionality of legal norms. These institutions serve as key players in facilitating both direct and indirect access to constitutional justice, allowing individuals to file constitutional complaints. Below, a distinction is made between two types of constitutional complaints: normative and full constitutional complaints, while emphasizing the critical function of constitutional courts in ensuring the protection of fundamental rights. By examining Albania's constitutional framework, particularly Articles 131, 134, and 124, it

⁵⁵ Visser, M. (2013). Constitutional Review in Europe: A Comparative Analysis.

⁵⁶ Storskrubb, E., & Ziller, J.P. (2007). Access to Justice in European Comparative Law.

⁵⁷ Ziller, J.P. (2015). Who should uphold the constitution? An answer from comparative law. *European Constitutional Law Review*, 11, 617 - 619.

⁵⁸ Pavoni, R. (2013). Public Interest Environmental Litigation and the European Court of Human Rights: No Love at First Sight.

⁵⁹ Gárdos-Orosz, F. (2012). The Hungarian constitutional court in transition — from *actio popularis* to constitutional complaint. *Acta Juridica Hungarica*, 53, 302-315.

⁶⁰ Spuller, G. (2014). Transformation of the Hungarian Constitutional Court: Tradition, Revolution, and (European) Prospects. *German Law Journal*, 15, 637 - 692.

⁶¹ Farkas, L. (2010). Limited Enforcement Possibilities under European Anti-Discrimination Legislation — A Case Study of Procedural Novelty: *Actio Popularis* Action in Hungary. *Erasmus Law Review*.

⁶² Tridimas, T. (2011). Constitutional review of member state action: The virtues and vices of an incomplete jurisdiction. *International Journal of Constitutional Law*, 9, 737-756.

⁶³ Tridimas, T. (2011). Constitutional review of member state action: The virtues and vices of an incomplete jurisdiction. *International Journal of Constitutional Law*, 9, 737-756.

⁶⁴ Visser, M. (2013). Constitutional Review in Europe: A Comparative Analysis.

Publication of the European Centre for Research Training and Development –UK highlights the significant mechanisms through which individuals and governmental bodies can challenge laws and judicial decisions that infringe upon constitutional rights. Moreover, the paper addresses how the Constitutional Court, particularly in Albania, interprets and applies these provisions, balancing its dual role as a guardian of constitutional values and a progressive interpreter of rights in line with European Court of Human Rights standards. The analysis of the Court's jurisdiction, procedural requirements, and the impact of judicial reforms highlights its essential role in safeguarding constitutional justice through a rigorous and coherent approach to reviewing individual and governmental actions.

Ordinary courts and ombudsman institutions are the most common state bodies entitled to challenge the constitutionality of a norm on their own initiative or at the request of individuals. Through indirect individual access, individuals can file constitutional complaints, which are of two types: normative constitutional complaints and full constitutional complaints. The first addresses only normative acts, while the second includes individual acts and any associated normative acts. Many countries allow applicants to petition a constitutional court for review of laws affecting their cases, either individually or generally via an *actio popularis*⁶⁵. Many of the reviewed countries use a hybrid system of direct and indirect methods to access constitutional justice. Direct access enables easy petitions to a constitutional court, unlike indirect access, which requires state bodies to initially submit issues. Independent constitutional courts offer important mechanisms for individuals and governmental entities to seek strict judicial review of actions to guarantee strict constitutional compliance. Albania's constitution gives individuals a mechanism to protect their fundamental rights by filing individual complaints⁶⁶. This mechanism allows several individuals to challenge at least one act of public authority or judicial decisions that violate some of their constitutional rights, provided that they have exhausted all effective legal remedies. The scope of this jurisdiction is significantly expanded by Article 134, which clearly empowers individuals to initiate constitutional adjudications, thus offering a direct opportunity for the defense of constitutional right. The Constitutional Court's interpretation of this right creates a fundamental element of the constitutional framework, thereby converting several abstract rights into specific protections.

Article 124⁶⁷ of the Constitution grants the Constitutional Court a specific interpretative power. This power guarantees at least a minimal level of coherence and uniformity throughout the entire

⁶⁵ European Commission for Democracy Through Law (Venice Commission). (2021). *Revised report on individual access to constitutional justice* (Opinion No. 1004/2020, CDL-AD(2021)001, p. 12). Adopted at the 125th online plenary session, 11–12 December 2020.

⁶⁶ Article 131, paragraph 1(f), of the Albanian Constitution stipulates: "The Constitutional Court decides on the final adjudication of individual complaints against any act of public authority or judicial decision that infringes the fundamental rights and freedoms guaranteed by the Constitution, after the exhaustion of all effective legal remedies for the protection of these rights, except where otherwise provided by the Constitution."

⁶⁷ Article 124, point 1, of the Albanian Constitution stipulates: "The Constitutional Court adjudicates constitutional disputes and provides the final interpretation of the Constitution".

Publication of the European Centre for Research Training and Development –UK constitutional framework. The constitutional reform in July 2016 firmly highlights the fundamental principle that constitutional provisions ought not to be understood in apart; rather, they should be understood in full alignment with other legal standards to prevent significant contradictions. In this interpretative process, the Court's role has been created as that of a “progressive-evolutionary” institution, adjusting its jurisprudence with an important number of European Court of Human Rights standards, as well as a “protective-conservative” body, charged with the preservation of several fundamental values enshrined within the constitution⁶⁸. The Court's acceptance of individual complaints depends on four important, correlated criteria: legitimacy *ratione personae*, which necessitates that the applicant demonstrate a direct and large interest in the claimed violation; exhaustion of effective legal remedies; legitimacy *ratione temporis*, mandating that the complaint be filed within four months from the violation's discovery; as well as legitimacy *ratione materiae*, restricting complaints to matters involving fundamental constitutional rights.

The Constitutional Court has greatly contributed to the integration of at least several key aspects of ECtHR jurisprudence into the nation's constitutional law. Subsequent to the ECtHR jurisprudence⁶⁹, the Court⁷⁰ explicitly recognized the analytically important execution of judicial decisions within a reasonable timeframe as a fundamental component of the right to a fair trial guaranteed by Article 42 of the Constitution and Article 6⁷¹ of the ECHR. Considering the latest jurisprudence, the Court's jurisdiction expanded to include several individual claims concerning meaningful delaying judicial processes. Constitutional oversight considerably exceeds judicial rulings; it includes legislative and normative actions, provided that those actions demonstrably meet the criterion of direct applicability. The Constitutional Court has held that legislation substantially affecting individual rights, without requiring additional regulatory measures, clearly falls within its authority⁷².

The Court's jurisdiction has been considerably affected by judicial reform, especially with regard to disciplinary issues. The Albanian Constitutional Court aligns its jurisprudence with European Court of Human Rights standards, further extending constitutional protection beyond the protections guaranteed under the European Convention on Human Rights. This action presents its dual function: it acts as a guardian of constitutional values, as well as a progressive interpreter of

⁶⁸ European Commission for Democracy Through Law (Venice Commission). (2021). *Revised report on individual access to constitutional justice* (Opinion No. 1004/2020, CDL-AD(2021)001, p. 12). Adopted at the 125th online plenary session, 11–12 December 2020.

⁶⁹ European Court of Human Rights. (2004). *Case of Qufaj Co. Sh.p.k. v. Albania* (Application No. 54268/00) [Judgment]. Strasbourg. Retrieved from <https://hudoc.echr.coe.int/>

⁷⁰ Decision no. 6, dated 31 March 2006, of the Constitutional Court.

⁷¹ Decision no. 44, dated 26 September 2023 of the Constitutional Court.

⁷² In addition, it is important to mention the Court's greatly proactive role as a “negative legislator,” clearly identifying important legislative gaps and mandating necessary corrective action, as outlined in decision no. 38, dated 09.12.2022 of the Constitutional Court.

Publication of the European Centre for Research Training and Development –UK rights. This balance maintains a strong constitutional justice system that is both adaptive and grounded in the core principles of the constitutional framework.

A constitutional complaint acts as an important instrument for safeguarding constitutional justice, providing direct access to the Constitutional Court and thereby guaranteeing the continued protection of fundamental rights and freedoms enshrined in the Constitution. The Court holds the final authority to resolve cases involving important violations by governmental entities or courts, as explained in Articles 131/1(f) and 134 of the Constitution, but only after a thorough and complete exploration of all other available legal remedies. The profound importance and meaningful effect necessitate a thorough examination of its legal boundaries, the admissibility of evidence, as well how it relates to the constitution.

The Constitutional Court's authority to adjudicate many individual cases stems solely from its constitutional power and this power is explicitly defined in Article 124. This provision defines the Court's important role in guaranteeing constitutional justice; it fulfills this by interpreting and applying all constitutional standards definitively. Articles 131 and 134 detail the Court's jurisdictional boundaries, explicitly specifying both the acceptable subject matter of its rulings and the precisely defined eligible parties who may bring cases before it. The Court can rule on individual complaints asserting that government actions or court rulings violate constitutional rights, as enshrined in Article 131/1(f). Article 131 explicitly lists several meaningful actions under this court's jurisdiction; nonetheless, its broad scope of competencies includes additional matters grounded in constitutional principles. The Court is now positioned to adopt a more expansive interpretation of laws.

The Constitutional Court argues that the various sections of the Constitution should be interpreted as a whole to achieve a coherent understanding. Several rulings, hold significant importance and clearly highlight the Court's notably consistent methodology⁷³ in addressing potential conflicts among legal statutes. Using abstract constitutional principles, the Court creates specific safeguards changing them as social values change.

The criteria set forth in Constitution's Articles 131/1(f) and 134/1(i), along with Article 71 of the Law no. 8577, dated 10.02.2000, "On the organization and functioning of the Constitutional Court of the Republic of Albania," as amended, must all be satisfied before individual constitutional complaints can be accepted. Several important conditions determine admissibility. All applicants must exhaust all available legal options before filing a complaint with the Constitutional Court; this is a singular prerequisite. In order to initiate legal proceedings, applicants must show personal possession of the constitutional right they claim was violated. Applicants must possess a profound and extensive personal interest, along with active engagement in the issue at hand. In order to meet

⁷³ See Decisions no. 4, dated 08.02.2023 and no. 38, dated 09.12.2022 of the Constitutional Court.

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the eligibility criteria, the applicant need to show how the action or decision specifically violated their rights.

All complaints must be filed within a period of four months following the discovery of each alleged violation. This is in accordance with the legal principle of legitimacy *ratione temporis*. This temporal limitation guarantees the timeliness of a large quantity of constitutional ruling and maintains a meaningful degree of important legal certainty. The Constitutional Court solely and definitively adjudicates cases concerning the analytically important fundamental rights and freedoms enshrined in the Constitution; the presented issue must demonstrably and completely fall within its jurisdiction. The Supreme Court rigorously safeguards fundamental rights explicitly guaranteed by the Constitution, guaranteeing that these rights remain protected and not violated. It upholds constitutional justice without assessing if lower courts' factual findings or legal decisions are correct. Failure to satisfy all stipulated criteria will result in the immediate dismissal of the complaint⁷⁴. This shows the Court's dedication to impartial and efficient constitutional review by using strict admissibility rules.

The amendments of the law on constitutional court have strengthened⁷⁵ the justification requirements for suspension orders, mandating more thorough explanations of both the underlying rationale and the anticipated consequences. The Constitutional Courts' final decisions inconsistently addressed whether suspensions should continue, or end and this inconsistency remained even when suspensions were granted. The law on Constitutional Court requires the Constitutional Courts final decision to explicitly address the continued suspension; this is necessary for a complete decision. The law governing the organization and functioning of the Constitutional Court explicitly mandates that every decision to impose or reject a suspension measure must be accompanied by comprehensive serving as a significant additional safeguard and guarantee consistent application of suspension measures and clear application in the constitutional review process⁷⁶.

The Constitutional Court's decisions have been important in creating the fundamental principles of constitutional enforcement. In 2006, the Court recognized important aspects of the right to a fair trial. The European Court of Human Rights's 2004 decision in *Qufaj v. Albania* shows that Article 42 of the Constitution and Article 6 of the European Convention on Human Rights demand that the court accelerate and fully execute the court judgments.

⁷⁴ Decision no. 34, dated 12 June 2023, of the Constitutional Court.

⁷⁵ Article 45 of the Law no. 99/2016. *On additions and amendments to law No. 8577, dated 10.02.2000, "On the organization and functioning of the Constitutional Court."*

⁷⁶ Vorpsi, A., & Bergmann, J. (2017). *Individual constitutional complaint: The German experience and the Albanian perspective. Practical manual.* Stuttgart/Tirana.

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The Court's decision was an important turning point, greatly expanding its power to handle cases involving prolonged delays in the execution of court rulings. Recent rulings⁷⁷ expand on the Court's jurisdiction to review the constitution, emphasizing its exclusive power to interpret constitutional law and protect fundamental rights. Following the European Court of Human Rights and other countries' constitutional practices, the Court changes constitutional protections to reflect social changes. Courts' rulings, legislative enactments and governmental regulations which directly impact on fundamental freedoms and rights comprise judicial review. Challenges to major court rulings are possible if there are several reliable claims of meaningful constitutional rights violations, but only after the person challenging the ruling has exhausted all available legal options. The law on the organization and functioning of the constitutional court, explicitly states that the admissibility of all laws and regulations depends on satisfying each and every requirement of a strict standard of direct applicability. The applicant must show the law's compliance with the Constitution's intent without further rules.

The Constitutional Court carefully examined temporary court decisions, showing its concern for balancing judicial independence with effective constitutional oversight. Rarely, the Court has considerably expanded its power to issue provisional rulings. These rulings depend on meeting strict requirements, such as a clear effect on the alleged wrongdoing and a large degree of independence from the main issues of the case. In its careful review of individual complaints, the Constitutional Court consistently applies the important principle of subsidiarity. This guarantees that the Court's constitutional review entirely complements, rather than replaces, all ordinary courts. This principle is shown in several Court decisions. These decisions require the interpretation and application of many laws, and a conventional judiciary typically adjudicates these laws. The Court intervenes only if a law violates constitutional rights⁷⁸.

The Constitutional Court expressly refrains from reviewing factual determinations and does not override trial courts. The function of this role is to ensure that the legal proceedings conform to the principles established by the Constitution. This guarantees a certain level of conformity to the fundamental law. It intervenes solely to address significant issues related to due process or fundamental rights that regular courts are unable to resolve. This approach completely preserves the fundamental division of jurisdiction between all constitutional and all ordinary courts; this also considerably safeguards the integrity of both judicial systems. Ordinary courts may serve as filters for preliminary requests to constitutional courts⁷⁹. Specific regulations exist concerning the admissibility of questions. These filters for preliminary requests are acceptable since ordinary courts entitled to initiate preliminary question proceedings may be expected to formulate a valid

⁷⁷ Decision no. 12, dated 15 March 2023 of the Constitutional Court.

⁷⁸ Decision no. 31, dated 04.10.2021 of the Constitutional Court

⁷⁹ The Constitutional Court. (2024). *Guide to the jurisprudence of the Constitutional Court regarding individual constitutional complaints, 1998–2023*. April 2024.

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question when the outcome of their decision depends on the constitutionality of a legal provision that must be applied in the case⁸⁰.

To conclude, the Albanian Constitutional Court has made an extraordinary contribution in promoting and protecting constitutional rights, providing both direct and indirect access to justice through normative and full constitutional complaints. By incorporating European Court of Human Rights standards, it enhances its ability to protect fundamental rights while ensuring legal access for individuals and governmental bodies to challenge unconstitutional laws and decisions. A key feature of Albania's system is the Constitutional Court's dual role as both a progressive interpreter of rights and a protector of constitutional values. Its expanded jurisdiction, especially in addressing judicial delays, aligns with international human rights norms and reflects a more adaptable approach to constitutional law. The Court emphasizes the subsidiarity principle, ensuring that ordinary courts address constitutional issues before they reach the Constitutional Court. Its strict admissibility criteriam such as the exhaustion of legal remedies and timely complaints, help maintain procedural rigor and efficiency in constitutional review.

Overall, the Albanian example highlights the integration of European jurisprudence into national law, offering a model that balances judicial independence with constitutional oversight. This approach provides a flexible, yet stable, framework for protecting fundamental rights while maintaining effective constitutional justice.

CONCLUSIONS

In conclusion, this research provides a comprehensive analysis of the evolution of European constitutional review systems, with a particular focus on Albania's experience. It highlights how Albania's constitutional framework has adapted to the dynamic interplay of legal, political, and social dynamics, especially as the country pursues democratic consolidation and European integration. The study emphasizes the crucial role of the Albanian Constitutional Court in balancing national legal principles with international obligations, particularly those of the European Union and the European Convention on Human Rights.

The research highlights the challenges Albania faces in fully aligning its legal system with European standards, particularly in terms of court backlogs and equal access to justice. This paper also makes a significant contribution by examining the dual role of the Albanian Constitutional Court: protecting constitutional integrity while adapting constitutional rights to evolving social realities. This function is especially important in a developing democracy like Albania, where the evolution and advancement of judicial independence are ongoing processes.

⁸⁰ Opinion No. 1004 / 2020 CDL-AD(2021)001 Or. Engl. EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW (VENICE COMMISSION) REVISED REPORT ON INDIVIDUAL ACCESS TO CONSTITUTIONAL JUSTICE Adopted by the Venice Commission on 11 December 2020 at its 125th online Plenary Session (11-12 December 2020)

The Court's role in safeguarding constitutional principles and interpreting fundamental rights underscores its importance in the country's evolving legal and political landscape. Furthermore, the study affirms that constitutional review is an important and adaptable mechanism for protecting rights and strengthening democracy, particularly in countries undergoing significant political and legal transitions like Albania.

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