



# diritto & religioni

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con nota di

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ANDREA MICCICHÈ

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# *Right to Property of the Religious Entities in Albania in the Second Half of XX<sup>th</sup> century: from Banning it to the Right to Restitution and Compensation*

## *Il diritto di proprietà degli enti religiosi in Albania nella seconda metà del XX secolo: dal divieto assoluto al diritto alla restituzione e al risarcimento*

DENARD VESHI, CARLO VENDITTI, RAFFAELE PICARO, KRISTEL HAXHIA<sup>1\*</sup>

### ABSTRACT

*The right to property and the right to freedom of religion are fundamental human rights. During the second half of the XX<sup>th</sup> century, Albania passed from banning the right to religion to codifying the right to restitution or compensation to religious entities. Nevertheless, the absence of controls over the privatization process gave a negative effect: the property of several religious entities, as other Albanian citizens, was not restituted by codifying a right to compensation.*

### KEYWORDS

*Albania; private property of religious entities; right to freedom of religion*

### RIASSUNTO

*Il diritto di proprietà e il diritto di professare liberamente la propria fede religiosa sono diritti umani fondamentali. Nella seconda metà del XX secolo, l'Albania è passata dal divieto assoluto del diritto di professare liberamente la propria fede religiosa alla codificazione del diritto alla restituzione o al risarcimento degli enti religiosi. Tuttavia, l'assenza di controlli sul processo di privatizzazione ha avuto un effetto negativo: la proprietà di diversi enti religiosi, come di altri cittadini albanesi, non è stata restituita agli enti religiosi codificando così un diritto al risarcimento.*

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PAROLE CHIAVE

*Albania; proprietà privata degli enti religiosi; diritto di libertà religiosa*

TABLE OF CONTENTS: *1. Introduction – 2. Albanian Communist Approach to the Right to Property of Religious Entities: from the Control of 1949 to the Religious Ban of 1967 – 3. Albanian Post-Communist Approach to the Right to Property of Religious Entities: from the Constitutional Codification to the Restitution and Compensation – 4. Conclusion*

## 1. Introduction

The right to property and the right to freedom of religion are two fundamental human rights, which are protected by the international, supranational, and national legal systems. According to the Albanian Constitution, Albania is a secular State (Article 10) and the freedom of religion is guaranteed (Article 24). Additionally, the right to private property is a constitutional right (Article 41) and it is equally protected by law as public property (Article 11(2)). At the EU level, since the 1970s, the so-called “Europe with a Human Face”<sup>2</sup> took place. However, the EU Charter Fundamental Human Rights, which recognizes both the right to freedom of religion (Article 10) and the right to property (Article 17), become legally binding only in 2009<sup>3</sup>. At the international level, Article 9 and Article 1 Protocol 1 of the European Convention on Human Rights recognize respectively the right to freedom of religion and the property right.

This brief study shows that the right to restitution of property and compensation of religious entities is one of the main problems in Albania. It considers the importance of the restitution and compensation of the religious entities as a fundamental instrument to give the possibility to religious entities function through their funds. The research also considers international jurisprudence since in several court decisions, the Albanian Constitutional Court has referred to the practice of the European Court of Human Rights (ECtHR)<sup>4</sup>.

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<sup>2</sup> ARMIN VON BOGDANDY, *European Union as a Human Rights Organization-Human Rights and the Core of the European Union*, in *The Common Market Law Review*, 37, 2000, p. 1307.

<sup>3</sup> Article 6 TEU: «The Union recognizes the rights, freedoms and principles set out in the Charter of Fundamental Rights of the European Union of 7 December 2000, as adapted at Strasbourg, on 12 December 2007, which shall have the same legal value as the Treaties».

<sup>4</sup> During 2022, in the 43 decisions, only 8 decisions (nos. 8, 16, 18, 19, 24, 35, 37 and 42) did not make any reference, by the Court reasoning, to either the ECHR or to its jurisprudence. On the contrary, the other 7 decisions (nos. 10, 11, 20, 21, 22, 36 and 40) considered the importance of the international norms, ECHR, but did not refer to its jurisprudence. In addition, only 3 decisions, deci-

After World War II (WWII), in 1949, the Communist regime established collectivization and nationalization, and later in 1967, it banned the freedom of religion.<sup>5</sup> In the 1990s, the right to freedom of religion and the right to private property was re-established. However, the absence of control over privatization led to several problems<sup>6</sup>. The right to restitution and compensation of the religious entities in Albania is important for two main reasons. First, the right to property in Albania is a problem that has received international attention. In other words, since 2014 and in response to the large number of cases dealing with property deriving from systemic problems in Albania, the ECtHR has developed a pilot-judgment procedure (*Case of Manushaqe Puto and Others v. Albania* (Applications Nos. 604/07, 43628/07, 46684/07 and 34770/09)). Second, the right to restitution and compensation of the religious entities in East Europe has received international attention as well. Although Albania is not a common-law country, the jurisprudence of the ECtHR, is fundamental and judges, also constitutional judges, applied it<sup>7</sup>.

To our knowledge, the review of the national and international literature on the post-communist transformation of property in Albania published in international peer-review journals indexed in Scopus led that only one legal scientific paper focused on the transformation of the right to private property<sup>8</sup>. However, the research did not find any English legal scientific paper focusing on the right to restitution and compensation of religious entities in Albania by underlying the importance of the ECtHR's jurisprudence.

By applying critical legal reasoning, case-law study, and legal comparison, this short research shows the importance of restitution or compensation of immovable goods to religious entities in Albania.

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sions no. 9, 34 and 43, included the importance of the ECtHR's decisions, but did not include any reference to the rules established in ECHR. Thus, during 2022, 15 decisions out of 43 decisions refer to the ECHR's norms as well as the ECtHR's jurisprudence.

<sup>5</sup> STARK DRAPER, *The conceptualization of an Albanian nation*, in *Ethnic and Racial Studies*, 20, 1997, pp. 123-144.

<sup>6</sup> CARLO VENDITTI, DENARD VESHI, ENKELEIDA KOKA, *The Transformation of Right to Property in the Post-Communist Period in Albania. The Impact of the Italian Civil Code in the Ways of Acquisition of Ownership in the Albanian Civil Code of 1994*, in *Osservatorio del diritto civile e commerciale*, 9, 2020, pp. 329-352.

<sup>7</sup> Cf. note 3.

<sup>8</sup> CARLO VENDITTI, DENARD VESHI, ENKELEIDA KOKA, *The Transformation of Right to Property*, cit.

## 2. *Albanian Communist Approach to the Right to Property of Religious Entities: from the Control of 1949 to the Religious Ban of 1967*

This Section briefly reviews the Albanian communist approach to the right to property of religious entities. In more concrete terms, it shortly analyses the law of 1949 establishing the supremacy of the State towards religious communities. Additionally, the Section informs the readers with the religious ban of 1967.

Based on the Kelsen legal pyramid<sup>9</sup>, Albanian laws shall be coherent with constitutional norms. Nevertheless, while the 1946 constitution recognized not only private property (Article 9) but also the right to freedom of religion (Article 13)<sup>10</sup>, the State Committee of Cults, established in 1929 by Zogu I<sup>11</sup>, after WWII, stopped functioning. Also, while the 1946 constitution was not abrogated, and the right to freedom of religion was considered a constitutional right, several laws narrowed it. In more concrete terms, the law of 1949<sup>12</sup> underlined the supremacy of the State towards religious communities.

The premises of the Albanian Decree-Law no. 743 of 26 November 1949 “On Religious Entities” were coherent with the Constitutional protection of the freedom of religion<sup>13</sup>. Nevertheless, the State’s control over religion was extremely high since the State aimed to control the legality of their internal regulation of religious entities with the Albanian public order, legislation, and customs. From a legal proceeding approach, the Law of 1949 gave religious entities a period of 90 days to submit the required documents. Since this was a short term, several religious entities could not submit their regulation by allowing the Council of Ministers to decide if they should close it or write their internal regulation in the name of the religious entities<sup>14</sup>.

The religious communities that could submit the requested documents faced other difficulties. The foreign influence was eliminated: students that should have gone abroad to study religion (Article 17(3)) or the relation with foreign entities (Article 25) needed the approval of the Council of Ministers; foreign religious entities that do not have their own headquarter in Albania are

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<sup>9</sup> HANS KELSEN, *Pure theory of law*, California, Univ. of California Press, 1967.

<sup>10</sup> Albanian Constitution of 14 March 1946, AQSh, F. Kryeministria, nr. 490, viti 1946, d. 51, fl. 5.

<sup>11</sup> Dekret-Ligji i 16 Korrikut 1929, Për formimin e bashkësive fetare.

<sup>12</sup> Decree-Law for Religious Communities (dekret-ligji për komunitetet fetare), AQSh, F. PPSH, nr. 14, viti 1949, d. 65, fl. 12.

<sup>13</sup> GIOVANNI CIMBALO, *Pluralizmi i besimit dhe komunitetet fetare në Shqipëri*, Naimi, Tiranë, 2013.

<sup>14</sup> OWEN PEARSON, *Albania as Dictatorship and Democracy. From isolation to Kosovo War 1946-1998*, London, I.B. Tauris, 2006, pp. 387-388.

closed (Article 26); and no religious entities that have their own headquarter in Albania can accept gifts or donation from aboard (Article 27).

Without control over the internal organization that needed the approval of the Council of Ministers and without funds or relations with foreign entities, the Albanian Government could easily control the religious doctrine. But, the Communist regime went further. In February 1967, to increase the Marxist-Leninist doctrine<sup>15</sup>, after the protest of the youth organization of the high school “Naim Frashëri” in Durrës, Enver Hoxha, the Albanian dictator from 1944 to 1985, wrote a letter to the local communities of the Labour Party. In this letter, Mr. Hoxha highlighted the importance to fight religious ideology. Thus, in 1967, two important pieces of legislation compose the so-called Albanian religion ban: first, the decree-law no. 4263 “On Religious Entities” of 11 April 1967 established the nationalization of religious entities<sup>16</sup>. Religious’ goods were nationalized, changed into magazines or offices, and sometimes destroyed. Indeed, more than 2169 religious buildings were destroyed or changed their purpose.<sup>17</sup> Second, the decree-law no. 4337 of 13 November 1967 “On the abrogation of some decrees” abrogated all the previous legislation that recognized religious freedom and by proclaiming Albania as the first atheist country in the world<sup>18</sup> and religious members that opposed the new situation were killed<sup>19</sup>. As a result, Albania became the first atheist country in the world<sup>20</sup>. From a legal approach, the religious ban had a constitutional codification also with article 37 of the constitution of 1976. Moreover, the criminal code of 1977 considered criminal offenses in several events related to the exercise of the right to freedom of religion.

To sum up, the Communist regime had a negative approach toward religion. The Law of 1949 established high control and eliminated all foreign donations or relations. In addition, in 1967, the nationalization of religious goods as well as the religious ban were established.

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<sup>15</sup> AZEM QAZIMI, *Procesi i asgjësimit të fesë në komunizëm, Instituti i Studimeve të Krimeve dhe pasojave të Komunizmit*, Instituti i Studimeve të Krimeve dhe pasojave të Komunizmit, Tirana, 2012, p. 108.

<sup>16</sup> AZEM QAZIMI, *Procesi i asgjësimit*, cit., p. 110.

<sup>17</sup> *Journal Nëntori*, Tiranë, shtator 1967.

<sup>18</sup> AZEM QAZIMI, *op. ult. cit.*; ID., *Komunitetet fetare në Shqipërinë Komuniste, Instituti i Studimeve të Krimeve dhe pasojave të Komunizmit*, Instituti i Studimeve të Krimeve dhe pasojave të Komunizmit, Tirana, 2014, pp. 155-156.

<sup>19</sup> AT ZEF PELLUMBI, *Rrno për me tregue*, Shtëpia Botuese 55, Tiranë, 2006.

<sup>20</sup> BERNHARD TONNES, *Albania: An atheist state*, in *Religion in Communist Lands*, 3, 1975, pp. 4-7; LEDERER GYÖRGY, *Islam in Albania*, in *Central Asian Survey*, 13, 1994, pp. 331-359.

### 3. *Albanian Post-Communist Approach to the Right to Property of Religious Entities: from the Constitutional Codification to the Restitution and Compensation*

This Section studies the transformation of private property in the post-communist regime by focusing on the importance of privatization over restitution. In addition, it considers the jurisprudence of the ECtHR as a key organ to resolving the problems related to the right to private property. Last, but not least, it examines the role of the State Committee of Cults, as a public organ that should establish effective communication between State institutions and religious entities.

At the end of 1990, the Albanian Government recognized political pluralism. As a result, the right to freedom of religion and the right to private property was considered constitutional rights (Articles 7 and 10 Law “On the Main Constitutional Provisions”, No.7491 of 29.4.1991). The post-communist transformation of the property was based on two different legal instruments: restitution and privatization<sup>21</sup>. However, the Albanian Government did not decide to reconstitute the land to the original owners of the pre-communist time for three main reasons: economic, political, and efficiency<sup>22</sup>. In addition, since there was a lack of legislation, several religious entities were registered as NGOs, by applying the Communist Law No. 2362, dated 16 November 1956, “On social organizations that do not pursue economic goals”, which was never abrogated<sup>23</sup>.

In 1998, the current Constitution was promulgated. This Constitution is different from the previous Constitutions since it promotes human dignity. Although the Constitution recognizes that the State does not have an official religion, this approach is different from the Albanian Constitution of 1976 which prohibited the right to freedom of religion<sup>24</sup>. This means that all religions are equal in front of the State<sup>25</sup>. To have active communication with the various religious entities, bylaw no. 459 of 23.09.1999 re-established the State

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<sup>21</sup> LIVIU DAMȘA, *The transformation of property regimes and transitional justice in Central Eastern Europe: In search of a theory*, Springer International Publishing, New York, 2017.

<sup>22</sup> CARLO VENDITTI, DENARD VESHI, ENKELEJDA KOKA, *op. cit.*

<sup>23</sup> GIOVANNI CIMBALO, *op. cit.*.

<sup>24</sup> W. COLE DURHAM, *Feja, demokracia dhe politika e fazës kalimtare: rëndësia e rregullave ndërkombëtare që administrojnë lirinë e fesë dhe të besimit në një botë pluraliste*, in AA. VV., *Fetë dhe Qytetërimet në Mijëvjeçarin e ri: Rasti i Shqipërisë-Konferencë Ndërkombëtare, 14-15 Nëntor 2003*, Qendra Shqiptare për të Drejtat e Njeriut, Tirana, 2004.

<sup>25</sup> SOKOL HAZIZAJ, *Korniza ligjore e çështjeve fetare në shoqërimin shqiptar*, in AA. VV. *Fetë dhe Qytetërimet në Mijëvjeçarin e ri*, cit., Tirana, 2004.

Committee of Cults<sup>26</sup>.

With the help of this Committee, Albania has negotiated and ratified international treaties with all the main religious communities (Muslims<sup>27</sup>, Bektashis<sup>28</sup>, Orthodox<sup>29</sup>, and Catholic<sup>30</sup>). Among others, the right to private property for religious entities constitutes an important part of them. Additionally, it shall also be stated that also religious entities, as other Albanian citizens, during the first years of transition built several cults without having a permit to build. However, currently, the State has legalized this situation.

While several religious cults today have been legalized, the restitution and compensation of the religious entities are still one of the main issues that the Albanian legislator shall deal with. This might be for three main reasons: two general and one specific. First, as stated above, privatization was prioritized compared to restitution. Second, the privatization system did not also have an agency dealing with the monitoring of it<sup>31</sup>. Third, while the internal organization of religious entities could have been done through the No. 2362, dated 16 November 1956, "On social organizations that do not pursue economic goals", the State Committee of Cults was re-established only in 1999 and in general it had a passive role.

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<sup>26</sup> The State Committee of Cults was also established in 1929 and suppressed during the Communist regime.

<sup>27</sup> Law No. 10 056, of 22.1.2009 «On the Ratification of the "Agreement between the Council of Ministers of the Republic of Albania and the Muslim Community of Albania on the Regulation of Mutual Relations"» (Ligj Nr.10 056, dt 22.1.2009 "Për Ratifikimin e "Marrëveshjes ndërmjet Këshillit Të Ministrave Të Republikës Së Shqipërisë dhe Komunitetit Mysliman të Shqipërisë Për Rregullimin e Marrëdhënieve të Ndërsjella"), online: <https://www.infocip.org/all/?p=6048>.

<sup>28</sup> Law No. 10 058, 22.1.2009, «On the Ratification of the "Agreement between the Council of Ministers of the Republic of Albania and the Bektashi World Headquarters for the Regulation of Mutual Relations"» (Ligj Nr.10 058, 22.1.2009, Për Ratifikimin e "Marrëveshjes ndërmjet Këshillit të Ministrave të Republikës së Shqipërisë dhe Kryegjyshitës Botërore Bektashiane për Rregullimin e Marrëdhënieve Të Ndërsjella), online: <http://licodu.cois.it/?p=116>.

<sup>29</sup> Law No.10 057, dated 22.1.2009 «On the Ratification of the "Agreement between the Council of Ministers of the Republic of Albania and the Autocephalous Orthodox Church of Albania on the Regulation of Mutual Relations"», (Ligji NR.10 057, datë 22.1.2009 Për Ratifikimin e "Marrëveshjes ndërmjet Këshillit të Ministrave të Republikës së Shqipërisë dhe Kishës Ortodokse Autoqefale të Shqipërisë për Rregullimin e Marrëdhënieve të Ndërsjella"), online: [https://orthodoxalbania.org/2020/2015/03/25/marreveshjes-ndermjet-keshillit-te-ministrave-te-republikes-se-shqiperise-dhe-kishes-ortodokse-autoqefale-te-shqiperise-per-rregullimin-e-ma-rredhenieve-te-ndersjella/#lightbox\[gallery3503\]/0](https://orthodoxalbania.org/2020/2015/03/25/marreveshjes-ndermjet-keshillit-te-ministrave-te-republikes-se-shqiperise-dhe-kishes-ortodokse-autoqefale-te-shqiperise-per-rregullimin-e-ma-rredhenieve-te-ndersjella/#lightbox[gallery3503]/0).

<sup>30</sup> Law of 23.03.2002 "Agreement between the Holy See and the Republic of Albania on the regulation of mutual relations" (ligji 23 mars 2002 "Marrëveshja ndërmjet Selisë së Shenjtë dhe Republikës së Shqipërisë për rregullimin e marrëdhënieve reciproke"), online: <https://animalsise.com/kujttojtohet-pervjetori-i-marreveshjes-ndermjet-selise-se-shenjte-dhe-republikes-se-shqiperise-per-rregullimin-e-marredhenieve-reciprokel/>.

<sup>31</sup> PAUL H. RUBIN, *Growing a legal system in the post-communist economies*, in *Cornell International Law Journal*, 27, 1994, p. 1.

First, in the first part of the democratic transition, privatization was given priority. Although the regime changed, former communist managers could still use their powers to take advantage. Moreover, they had also the advantage that they knew the communist regime better than international scholars that come to help the democratization of private property<sup>32</sup>. Second, Law no. 7501 of 19 July 1991 “On the Land,” which prioritizes privatization rather than restitution, did not establish a monitoring mechanism for the privatization<sup>33</sup>.

Third, the interest of private property for religious entities should have been protected by their religious entities as well as by the State. Religious entities should have applied the law of 1956, which was written in a different socio-economic background. That created several difficulties for them. On the other side, although the State Committee of Cults started its implementation only in 1999, the agreements with religious communities were codified only during the new millennium. Furthermore, only in 2009 (Law no. 10140 of 15 May 2009), the State has recognized religious entities’ right to access public funds. Moreover, only in 2020, through a funded project, there will be a digital map of religious properties<sup>34</sup>.

Since 13 July 1995, Albania is part of the Council of Europe. Moreover, since 1996, Albania has ratified the ECHR. Therefore, Albanian judges shall also consider the norms established in the ECHR as well as the ECtHR’s jurisprudence (Article 116 Albanian Constitution). Article 9 and Article 1 Protocol 1 European Convention on Human Rights recognizes respectively the right to freedom of religion and property right. Nevertheless, these rights are not absolute. While property can be deprived in the case of expropriation (general public interest subject to the conditions provided for by law and by the general principles of international law), Article 9(2) allows limiting the right to freedom of religion in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others. Nevertheless, such limitations are prescribed by law and are legal only if they are necessary for a democratic society.

Article 9 Albanian Constitution includes not only negative obligation, which means the protection of the right to religion without interfering in the personal sphere, but, also includes positive obligations, which means that in the case of protection of public security, order or health, the State shall border the right to religion. In other words, Article 9 ECHR protects the plura-

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<sup>32</sup> DAVID HARVEY, *A Brief History of Neoliberalism*, OUP, Oxford, 2005.

<sup>33</sup> CARLO VENDITTI, DENARD VESHI, ENKELEJDA KOKA, *op. cit.*

<sup>34</sup> Komiteti Shtetëror për Kultet, Projekti: Evidencimi i objekteve të Kultit, online: <https://kshk.gov.al/veprimtaria/projekte/evidencimi-i-objekteve-te-kultit/>.



lity of religions, which also includes cases of citizens that are atheists. It is interesting to notice that the right to freedom of religion is also established towards legal persons, such as NGOs, (*Cha'are Shalom Ve Tsedek v. France* (Application no. 27417/95); *Leela Förderkreis e.V. and Others v. Germany* (application No. 58911/00)). In addition, although the term religion is defined neither by the ECHR nor by the ECtHR, the protection of the right to freedom of religion has been applied in different cases: such as opposition to military service (*Bayatyan v. Armenia* (Application no. 23459/03)); opposition to abortion (*Knudsen v. Norway* (application no. 11045/84)), medical conscientious objection (*Nyysönen v. Finland* (application no. 30406/96)); opposition to homosexual marriage (*Eweida and others. v. the United Kingdom* (Applications nos. 48420/10, 59842/10, 51671/10 and 36516/10).

The transition of property and in particular the absence of an authority regulating privatization raised several legal issues. After sanctioning Albania in several case-law, the ECtHR developed a pilot-judgment procedure (*Case of Manushaqe Puto and Others v. Albania* (Applications Nos. 604/07, 43628/07, 46684/07 and 34770/09)). As it is well known, the pilot-judgment procedure has effects beyond the particular case to cover all similar cases raising the same issue. Moreover, the ECtHR gave clear indications to the Albanian Government as to how it can eliminate this dysfunction by stimulating a domestic remedy capable of dealing with similar cases<sup>35</sup>.

As a result of this decision, the Albanian Parliament approved the Law no. 133/2015 “On Property Treatment and Completion of the Property Compensation Process”, which was considered aligned with the ECHR (*Agim Beshiri against Albania and 11 other applications* (application no. 29026/06)). Nevertheless, surprisingly, in this decision, the Court considered nationalization as an “unlawful expropriation”, rather than as an “unjust deprivation of property”. Thus, while in the case of expropriation there was the need for compensation equal to the market value, in the case of unjust deprivation of property, the corresponding prize can be much lower; in other words, the prize could also be 10% of the market value. Additionally, Albanian authorities can apply as a reference the cadastral category, criteria that were always rejected by the ECtHR, which is much lower than the previous case-law of the ECtHR.

Focusing on the right to property of religious entities, one of the most important decisions regarding the right to property of religious entities by the ECtHR is the case of *Eparhija Budimljansko-Nikšićka and Others v. Montenegro* (application no. 26501/05). The ECtHR did not consider the merit of the

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<sup>35</sup> EUROPEAN COURT ON HUMAN RIGHTS, *The Pilot-Judgment Procedure*, online: [https://www.echr.coe.int/documents/pilot\\_judgment\\_procedure\\_eng.pdf](https://www.echr.coe.int/documents/pilot_judgment_procedure_eng.pdf).



case since key provisions of the law on which they relied had been declared unconstitutional before they filed their request. Although these rulings do not deal with Albania and they are legally binding only for the countries part of the decisions (i.e. Montenegro), still these decisions are important for judges. For instance, in 2022, in only 5 rulings, the Albanian Constitutional Court did not mention either the ECHR or the ECtHR's case-law<sup>36</sup>.

Therefore, on one side, the ECtHR has approved the new mechanism of Albanian law no. 133/2015, on the other, the Court has also underlined the right to property of religious entities. Again, according to the ECtHR, the possibility to separate the right to compensation to religious entities from other persons, is not considered discrimination. Thus, while the Albanian State can use a lower price for the compensation of Albanian citizens, in the case of compensation of religious entities, the State can also apply a different approach; i.e. market value. This approach aims to balance two different constitutional rights: the right to property of religious entities, which needs compensation as one of the main incomes for their functioning, and the constitutional financial balancing. After the negative impact that Covid19 and later the Russian invasion have had not only on the European economy but also on the Albanian budget, financial balancing is fundamental. Since 2012, the Albanian public debt is higher than 60% of the GDP<sup>37</sup>, allowed by Article 1 of the Maastricht Treaty of 1992. In 2021, the Albanian public debt is 78.6% of the national GDP<sup>38</sup>.

Based on this international background, the Albanian State has communicated – through the State Committee of Cults – with all the religious entities. According to the agreement between the Agency for Legalization, Urbanization, and Integration of Informal Areas and Buildings (ALUIZNI) and the State Committee of Cults, if the religious entities have built on the property of third parties, the object will be legalized for free. On the contrary, if private owners have built on their property, ALUIZNI will not accept their applications for legalization. However, if the third parties have built on the property of religious entities which are not used for religious purposes, these buildings will be legalized through a bylaw and the State will compensate the religious entities. But, although Article 4 Law no. 133/2015 has not excluded from the application of this scheme the cases of ownerships of religious entities, ac-

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<sup>36</sup> See note no. 3

<sup>37</sup> Treaty on European Union, online: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:11992M/TXT>.

<sup>38</sup> Instat, Statistikat Financiare, online: <http://www.instat.gov.al/all/temat/ekonomi-dhe-financë/statistikat-financiare/#tab1>.

According to the ECtHR, in the case of properties owned by religious entities another approach can be taken. This interpretation can also be justified by the fact that national legislation shall be coherent not only with the Albanian constitution but also with all international treaties ratified by Albania (Article 116 Albanian Constitution), as is the case of international agreements that rule the relationships between Albania and the four different religious entities.

To sum up, focusing on the property right, in the first part of the 1990s, privatization rather than restitution was prioritized. The absence of control led to several legal uncertainties. After several amendments and court cases, in 2020, the ECtHR decided that the calculation scheme established in Law no. 133/2015 does not violate the ECHR. Narrowing the focus to the right to property of religious entities, it should be stated that immovable goods of religious entities in Albania are an important asset for the implementation of the right to freedom of religion. In other words, for private citizens, the State can apply the scheme established in Law no. 133/2015, for religious entities, although this law does not recognize an exception for them (Article 4 Law no. 133 of 2015), the State can pay to religious entities the market value. Thus, the State Committee of Cults has a fundamental role in proposing this approach.

#### *4. Conclusion*

This brief study considered the right to property of religious entities by focusing on legal analysis. While the right to freedom of religion and property right was protected during the first part of the XX<sup>th</sup> century, during the Communist period, the approach was different: from total control in 1949 to the religious ban of 1967. However, the democratic regime has established the importance of the protection of the right to freedom of religion and property right. Nevertheless, the absence of control of privatization during the first part of the 1990s has caused several problems; also for religious entities. According to the ECtHR jurisprudence, religious entities could also be compensated according to the market value. To promote this approach, the State Committee of Cults should take an active role.