



## Research Article

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### Ensuring the right to adequate housing through interference on property rights: The case of Albania

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#### Abstract

With the fall of the communist dictatorship, Albania, like all countries of South Eastern Europe, started a new path towards democracy and market economy. During Albania’s transition period, the goal was to reform the ownership system and establish private property rights through a legal process. This objective was based on the principles and values of the new democratic state. Legal reforms were implemented in land privatization, housing, and state asset privatization to achieve this goal.

Since the inception of democracy, numerous individuals have settled in urban areas of the country, occupying both public and private lands and constructing settlements without the authorization of public authorities. The rise and spread of this phenomenon infringed on the principle of the rule of law and the protection of private property. Since numerous informal buildings were constructed on privately owned land, the Albanian authorities faced a significant dilemma: *Is the legalization of buildings built without permission which also infringes ownership rights justified? Therefore, is it permissible to infringe on private property rights in favor of individuals who have illegally constructed and own informal buildings?* This paper aims to answer these questions through a thorough analysis of legal documents of international law and the ECHR case law.

**Keywords:** Right to housing, Property Rights, Legalization, Informal Settlements, ECHR.

#### 1. Introduction

One of the most pressing issues faced by Albanian society in recent decades was the rise and spread of informal buildings. These settlements have not been built only upon public lands, but also on private ones, leading to increased social tension and hindering the country’s economic and social development. The paper seeks to analyze whether state intervention to protect the rights of informal building holders on privately owned land is justified. The manuscript is organized in five sections. The first section examines the causes that have led to the phenomenon of informal

settlements in Albania. The second section reviews the status of the right to adequate housing in the legal documents of the United Nations, while the third one explores this right in the legal documents of the Council of Europe and the ECHR case law. The final section addresses the concept of the right to housing in Community Law and the impact of EU institutions on the reform for the legalization, urbanization, and integration of informal settlements.

### **1.1 Methodology**

This study conducts a legal theoretical analysis of the scope of the right to adequate housing according to international law, focusing mainly on the European Court of Human Rights case law. Relying on analytic and comparative scientific methods, the paper evaluates whether illegal buildings on privately owned land can be legally protected as part of housing public policy.

## **2. The Factors of the Illegal Building Phenomenon in Albania**

After the fall of the communist dictatorship, Albania, along with other countries in South Eastern Europe, began its transition towards establishing a democratic society and market economy (Miço, 2023). This transformation aimed to be achieved through a comprehensive constitutional and legal process, with the primary objective of reforming the ownership system and establishing private property rights, among other goals. Therefore, to accomplish this objective, based on the principles and values of the new democratic state, a set of legal reforms were undertaken in the fields of land privatization, housing, and state asset privatization.<sup>1</sup> The rise and spread of this phenomenon infringed on the principle of the rule of law and the protection of private property acquired with a series of laws.<sup>2</sup>

The paper examines the reasons that support the legalization of informal settlements in Albania, investigating the factors that have contributed to the emergence and spread of informal construction. Initially, during the radical transformation of the economic and legal system, the democratic state did not focus on public policies regarding internal migration. In the pre-democratic era, strict state control over the migration of people was a crucial aspect of the planned economy. This economy facilitated an artificial and inefficient distribution of the population. With the rise of democracy and a new economic system, the government was no longer responsible for providing individuals with jobs and housing. Under the free market policy, the population's demand for more resources, goods, and services led to a migration towards urban areas. During this period failure to address the issue of illegal construction was often justified by citizens' right to free movement (De Waal, 2004). The free movement of people in search of work, better conditions, and improved living standards was

<sup>1</sup> Article 2 of the law no.7491/1991 "On main constitutional provisions", is sanctioned: "... justice and social support are basic principles that state must ensure their respect and protection".

<sup>2</sup> A series of laws aimed at the desocialization of the state economy and the transfer of it towards the private subjects. Law no.7501/1991, Law no.7512/1991, Law no.7652/1992, Law no.7693/1993, Law no.7698/1993, etc.

considered a fundamental human right.<sup>3</sup> Despite housing privatization and special housing programs,<sup>4</sup> the implemented policies were insufficient to meet citizens' demands. Law No. 8030, dated 15.11.1995 "On the state contribution for homeless families," not only failed to address the issue of people who remained homeless due to the implementation of Law No. 7652/1992, but it also excluded many families in need. As a result, the implementation of suitable free market-oriented mechanisms to support vulnerable groups was too slow.

The existing legal framework for planning, management, and control of the territory, along with the new law passed in 1993,<sup>5</sup> failed to address the economic and social needs of the population for housing and socio-economic activities. In cases where city regulatory plans were absent or did not align with socio-economic needs, informal construction ensued. Additionally, slow progress in privatization reforms contributed to the emergence and spread of illegal construction in Albania. This phenomenon arose at the beginning of democratic developments when the established institutional mechanisms designed to issue and register property rights did not provide timely issuance of property titles and accurate identification of property boundaries. Another aspect that contributed to the spread of this phenomenon was the legal vacuum in criminal law during this period, as it did not qualify as a criminal offense.<sup>6</sup> Until 2008, the Criminal Code considered only land invasion as a criminal offense and did not classify illegal construction as a criminal offense. Instead, illegal construction was categorized as an administrative violation. Another significant factor contributing to the proliferation of this phenomenon in Albania was the 1997 riots. During this period, the state authorities didn't fulfill their constitutional obligations, especially to protect private property rights. As a result, there was a significant migration of people towards urban areas in search of improved public services and better living opportunities. This led to a rise in informal buildings and was characterized by social conflicts, poverty, social exclusion, and property rights violations.

These buildings were constructed illegally, violating ownership rights and territorial planning regulations. The authorities were uncertain about how to handle these cases. Deciding the future of informal settlements was closely tied to the potential impact on the residents' private and family lives, their living conditions, and the social tensions that could arise from the decision-making process. These arguments are embedded in several human rights guaranteed in international legal documents and ratified by the Albanian state. Therefore, the main question was: What is the best solution for

<sup>3</sup> Law no.7491/1991 "On main constitutional provisions", and the actual constitution holds the same stand. Concretely speaking article 38, point 1 of the constitution sanctions: "Everybody has the right to choose his place of residence as well as move freely in every part of the territory."

<sup>4</sup> Law no. 8030, dated 15.11.1995 "On the state's contribution to homeless families", published in Official Gazette no. 24, p 1084.

<sup>5</sup> Law no.7693, dated 06.04.1993 "On territorial planning" and Law no.8405, dated 17.09.1998 "On territorial planning".

<sup>6</sup> Article 200 of the Criminal Code sanctions: "The invasion of the land constitutes a criminal offense and is punishable by fine or imprisonment up to two years.", Article 5, Section 14 of the law no.7752, dated 28.03.1993 states: "The arbitrary occupation of the construction site will be fined up to 100,000 ALL and accompanied with the demolition of the building and return of the land to its former conditions by the offender expenses".

this issue while balancing the right to adequate housing with protection of property rights? To answer this question, we need to analyze the legal status of the right to adequate housing in international law, the state's obligations in fulfilling this right as outlined in international documents, and the causes when the need for housing rights protection has exceeded legal guarantees of ownership rights, as defined in Art. 1 of the Prot. 1. This analysis will primarily focus on the case law of the European Court of Human Rights (ECHR).

### **3. The right to adequate housing in UN Law**

The right to adequate housing was first recognized as part of the Universal Charter of the United Nations. Article 25 (1) of this declaration sanctioned the right of every person to an adequate standard of living, including housing, for health and well-being. Two decades later, adequate housing became a fundamental right in the International Covenant on Economic, Social, and Cultural Rights. Article 11(1) of the Convention imposes the obligation that Member States recognize that every person has the right to an adequate standard of living for themselves and their family.<sup>7</sup> The right to adequate housing, as outlined in the ICESCR and the UN Committee on Economic, Social, and Cultural Rights documents,<sup>8</sup> is widely accepted as an important legal source for this right.<sup>9</sup> The CESCR stated that, like all social and economic rights, member states must take economic and technical measures to gradually fulfill the rights outlined in the Convention, individually or with international assistance and cooperation, to the maximum of their resources. This includes the adoption of legislative measures. The CESCR has identified four levels of state obligations concerning the right to adequate housing, which specifically include: respect, protection, promotion, and fulfillment of this right. First, the state has the negative obligation not to apply legal measures, policies, or practices that worsen the existing housing situation. Therefore, states should refrain from policies or practices of arbitrary or forced eviction of people from their homes. Secondly, the state should play an active role in preventing violations of the right to housing. To achieve this goal, the state must provide legal remedies in cases of violation of this right by property owners, developers, or other social actors. The state should address and ensure the right to housing through policies, laws, and practical measures that help eliminate homelessness. Fulfilling this obligation involves engaging with all stakeholders to develop a strategic document and implementing economic redistribution policies, providing public housing, and housing subsidies, and monitoring rent levels.<sup>10</sup>

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<sup>7</sup> This convention was ratified in Albania with law no.7511, dated 08.08.1991.

<sup>8</sup> As the monitoring mechanism of these rights by the member states.

<sup>9</sup> UN Committee on Economic, Social and Cultural Rights: General Comment 4. The right to adequate housing (Article 11 (1), of 1991 (United Nations: Document E/ E/1992/23). General Comment 7. The right to adequate housing forced evictions (Article 11.1 of the Covenant), of 1997 (United Nations: Document E/1998/22, annex IV).

<sup>10</sup> UN Committee on Economic and Cultural Rights: General Comments.

The ICESCR elaborates on what constitutes adequate housing. Firstly, adequate housing includes legal security of tenure and the availability of services, facilities, and infrastructure. These elements imply access to natural and common resources, safe drinking water, electricity, health services, food storage tools, and waste disposal facilities. Secondly, adequate housing also includes economic sustainability and habitability. Affordable housing requires that costs be kept at a level that does not affect the basic needs of families and individuals in need. The concept of habitability refers to the safety requirements of housing and the protection of residents from threats to their health caused by weather or structural risks. The ICESCR confirms that special attention should be paid to the needs of vulnerable social groups, such as the elderly, children, disabled persons, victims of natural disasters, and other groups. Finally, particular care should be given to the cultural relevance in the field of housing, as it relates to the expression of cultural identity and diversity of housing.

#### **4. Right to Housing in the European Convention of Human Rights**

The European Convention on Human Rights, as a regional legal document promoting a wide range of basic rights, includes, among others, the right to respect for home under Article 8 (1). This article recognizes every person's right to respect for their private and family life, home, and correspondence. Article 8 aims to protect four areas of personal autonomy, which are closely interrelated and interact with each other. The ECHR argued in its case law that the right to respect for home is protected by Article 8 and Art. 1 of Prot. 1. The main goal of this provision is to respect the existing right to housing, while those that do not formally constitute "houses" do not enjoy protection under this article (Koh, 2009). However, to determine the nature of this right, we need to clarify the concept of "home" according to the jurisprudence of the ECHR.

##### ***4.1 The Concept of "Home" according to ECHR Case Law***

The European Court of Human Rights (ECHR) has argued the concept of "home" is autonomous and does not depend on the qualification made by domestic law. According to the Court, home" is a broad term given that "domicile" has a wide connotation. In *Gillow vs. United Kingdom*, while evaluating the right to adequate housing of the defendant, the ECHR focused on the "home" definition. In this case, the Court analyzed whether the applicant had a "sufficient and continuous connection" to his residence or his alleged house. The Court acknowledged that the sufficiency of this connection might be reduced by the long period of absence in that house or the creation of another one, or strengthened by long periods of residence, ownership rights on the building, the presence of personal belongings, the intention to take permanent residence and emotional ties (Buyse, 2006). The continuity of the relationship has no impact if the inability to enjoy the right to housing is caused by the state.

The Court confirmed the same approach in the cases of *Oneryeldiz v. Turkey* and

Jordanova and Others v. Bulgaria, declaring that “since the applicants and their families had been living in makeshift homes for many years, they had established a sufficient and sustainable connection, returning those settlements to their homes, regardless of whether they were occupied legally or illegally. If the applicants were evicted from their residences, their private and family life, and home would be adversely affected”. In *Moreno Gomez v. Spain*, ECHR analyzed the concept of home regarding privacy. The court announced that the “home will usually be the place, the physically defined area, where private and family life develops. The individual has a right to respect for his home, meaning not just the right to the actual physical place, but also to the quiet enjoyment of that area”. Based on this definition, in determining whether or not a settlement is considered home, it is not the form, but the function that the settlement performs instead (Balliu and Xhixho, 2024).

The court has argued that this concept includes existing homes,<sup>11</sup> land,<sup>12</sup> but not the area where the person and his family lived and had roots, in conditions where they no longer live in that place. The concept of home, according to the ECHR, means not only traditional dwellings but also, among others, caravans and non-fixed residences, second homes, vacation homes, and commercial premises in the absence of a clear distinction between one’s office and private residence or between activities private and business, offices of a registered company or other business buildings. Other examples are the occupation of a settlement, if this has lasted for significant periods and on an annual basis, a room occupied by a former tenant, and the garage or garden as part of a rented property. The Court has admitted that the legality of residence is not decisive in defining the notion of “home”. This is because for the Court the situation of the applicant is more important than the property’s legal status (Buyse, 2006). In conclusion, we can say that the ECHR has accepted that illegal constructions on occupied land that serves the applicant as settlement qualify as possessions and therefore as “home”. The Court has stated that there is a significant overlap between the concept of “home” under Article 8 of the ECHR and “property” under Article 1 of the Additional Protocol. The house may be found to exist even if the applicant does not enjoy any right or interest in ownership right.<sup>13</sup> This is because the notion of property includes that range of rights that specify the legal relationship of persons with their possessions, regardless of whether they are relations such as ownership, but also on the relations of obligation. Consequently, a broad interpretation of the property right extends effects on the person’s place of settlement, and the most frequent ECHR jurisprudence is not only the protection of tenants but also of the persons living for a long time in illegal constructions.<sup>14</sup> From this point of view, we deduce an overlap between the right to housing and the right to property concerning immovable property. Regardless of the connection between these two rights, we cannot discuss the unification, because they have not been used cumulatively. Their specific nature is dedicated to classification, respectively as a civil (private) and social

<sup>11</sup> Case of *Loizidou v. Turkey*, 18 December 1996. Reports 1996-VI.

<sup>12</sup> Case of *Buckley v United Kingdom*.

<sup>13</sup> Case of *Prokopovich v. Russia* appl. no 58255/00, par. 35-39, verd i 18 Nov. 2004, and Case of *Khamidov v Russia* appl. no. 72118/01. Judgment of 15 Nov. 2007.

<sup>14</sup> See Case of *Oneryeldiz v Turkey* and *Yordanova and Others v Bulgaria*.

right (Adams, 2009). As will be analyzed below, the ECHR caselaw proves that the right to housing is not only a right of a social nature, but it includes important civil aspects in its foundation. The Court has admitted that the housing policies in the member countries of the Council of Europe have a “quasi-civilian” character, closely related to Article 1 of the Additional Protocol of the Convention. Therefore, in most cases, the interference with the right to housing led to property rights violations according to Article 1 of the Additional Protocol.

#### ***4.2 Positive Obligations under Article 8 and Art. 1 of the Additional Protocol of the ECHR***

The ECHR has argued that Article 8 of the European Convention, in no way covers the individuals or their collective requirements to have adequate housing guaranteed by the state in all circumstances. In the case *Chapman v. Great Britain*, the Court stated: “Article 8 of the Convention does not recognize the right of every person to be offered a home by the state. Even the ECHR case law has recognized that there is no such right. While it is an undeniable desire for every human being to have a place where he or she can live in dignity and where they can be contacted, there are unfortunately many people without a home in the Member States. Whether the state provides funds to provide each person with a house is a decision of a political and not a legal nature”.<sup>15</sup> Regarding this issue, the Court has declared that despite the great evolution in international law to the content of Article 8 (2) of the Convention, it should not be interpreted as imposing on member states such a broad positive obligation on general social policies.

The court has confirmed that Article 8, together with Article 1 of the additional protocol imposes positive obligations on member states, both in terms of protection of persons from arbitrary interventions in their homes and of housing policies that must be carried out by public authorities, in special cases. As a result, the ECHR has limited its jurisdiction to only focusing on issues or technical aspects such as interference with the right to housing and gaining this right (Sarigiannidis and Pervou, 2013). In *Marzari v. Italy*, the applicant, a physically disabled person, complained that the local authorities had failed to provide suitable housing. Local authorities had offered an apartment to rent, he claimed that the previous apartment, from which he had been evicted, was no longer appropriate for his living conditions as a disabled person. The Court emphasized that even though Article 8 does not guarantee the right to have the housing issue resolved by the state authorities, the refusal of the authorities to provide support to such a person suffering from a difficult illness could exist in some circumstances, because of the impact that the refusal to fulfill it has on his private and individual life (Miha, 2023). The Court emphasized that the main purpose of Article 8 is to protect the individual from arbitrary intervention by public authorities. According to the Court, this provision does not oblige the state to refrain from such intervention, in addition to this negative obligation, the state may have positive obligations regarding the respect of the right to private life and housing. From the Court’s viewpoint, a state has obligations of this type if there is a direct

<sup>15</sup> Case of *Chapman v. United Kingdom*, appl. no. 27238/95, Judgment of 18 January 2001.

and immediate connection between the measures requested by the applicant and the latter's private life. However, in this case, the Court found out that the authorities had not only been granting the applicant a flat for rent but had undertaken to reconstruct it according to his needs. Therefore, the Court rejected the claim, arguing that Article 8 does not impose any positive obligation on the authorities like providing the applicant with a specific flat.

The Court has interpreted the right to respect for a home in the framework of the right to a peaceful enjoyment of the property in the case *James and others v. UK*.<sup>16</sup> The court held that modern societies consider housing a primary social need, whose regulation can not be entirely left up to the free market. The margin of appreciation enjoyed by a Member State to generate legislation aiming for greater social justice in the area of housing is quite extensive, even when such legislation interferes with the contractual relations existing between private parties, even though it does not bring any direct benefit to the state or the community at all.<sup>17</sup> In subsequent cases, the ECHR has declared that a state with inefficient housing policies ought to reconsider them within a certain time limit.<sup>18</sup> In *Scollo v. Italy*, the ECHR asserted that homelessness was a global concern. Interpreting the right to respect for home, ECHR expressed the positive obligation attributed to member states to carry out effective housing policies, under Article 1 of the Prot. 1.<sup>19</sup> The Court concluded that the lack of a housing policy constituted also a violation of property rights. Given this fact, the court did not allow changes in the rent contractual relationship and stopped the forced eviction of the tenants.

#### **4.3 Ensuring Housing Rights through Interference in Ownership Rights**

There are several case laws where the ECHR has admitted that the need for housing rights protection has exceeded legal guarantees of ownership rights, as defined in Art. 1 of the Prot. 1. In these cases, the Court has demonstrated "social sensitivity" by protecting the right to housing of vulnerable groups, tenants, or illegal builders against state or private owners. Art. 1 of the Prot.1 allows member states to establish such laws as they consider necessary to protect the public interest in general or that of specific social categories, not only to regulate the use of the property but also to deprive the rightful owners in cases where there is public interest, provided by the law and by the general principles of international law. The Court in its case law has specified that states may interfere with the right to property to improve their housing policies to have society in general or specific social groups benefit from it. According to the Court, one of the basic functions of a democratic legislature is to eradicate social injustice. Moreover, modern societies consider housing issues a primary social need, whose regulation can not be left entirely in the hands of the free market. The margin

<sup>16</sup> Case of James and Other v United Kingdom, 1986.

<sup>17</sup> In this case, the court declared that the legislation's purpose to address lease aspects or elements was legitimate for the same reasons.

<sup>18</sup> Case Olaru and Others v. Moldova, 2009.

<sup>19</sup> Case Scollo v. Italy, 1995.



of appreciation enjoyed by the state is so broad that it includes undertaking legal measures aimed at achieving greater social justice in the housing field, no matter the fact that this legislation interferes with the contractual rights between private parties and even though the state or society, in general, does not have any broad interest.<sup>20</sup> The main question in this context is to what extent Member States may interfere with the property rights to improve housing policy to have society in general or specific social groups benefit from it. In the Court's assessment, states enjoy a considerable margin of appreciation in determining housing policies. In several cases, the Court has expressed that in areas such as housing, which plays an important role in the economic and social policy in modern societies, the Court respects the solution given by the legislator, to the extent the latter is consistent with the public interest for as long as this approach is not considered manifestly unfounded. The Court has made such an affirmation in the cases where the conflict lay between owners and tenants, also between owners and illegal builders.<sup>21</sup> Despite the protection of property rights goal, as a fundamental human right, under special circumstances, the court was forced to resolve the conflict in favor of the tenants or the land squatters. The need for the right to housing protection through keeping renting prices at reasonable levels and preventing the eviction of tenants from the house was analyzed by the Court in several cases. The second paragraph of Art. 1 of Prot.1 of the Convention allows Member States to design and enforce laws to control the regime of the use of property even by interfering with contractual relations protecting the general interest of society or particular social groups. The main argument used by the Court to support the category of the tenants was that "*the establishment of control over rents aimed the fair distribution of housing resources in a country where the land available for construction did not meet the needs of the population, did not provide for the social protection of tenants, could not prevent turning to homeless of a wide category of people, and could not ensure protection of the dignity of the poor tenants*".<sup>22</sup> In the case, *Velosa Barreto v. Portugal*, the Court denied the applicant the right to use his inherited house, given that the tenants who lived there for several years had been in great need.<sup>23</sup> Another case in which the Court admitted the priority of the right to housing versus the property right was *Spadea and Scalobrinio v. Italy*.<sup>24</sup> This was the first, in a series of cases estimated by the Court regarding Italy's long tradition of legislative intervention in residential rent prices. The methods used by the Italian legislation were: a) the increase of the lease prices, b) the postponement by the law of the lease contractual relationship, c) the postponement of the payment deadlines, or d) the prohibition of the act of the eviction of the tenants.

According to the Court, the destruction of the "settlements" which have been tolerated for a long time by the state authorities, constitutes a violation that falls within the focus of Article 8 (2) of the Convention. In *Akdivar and others v. Turkey*, the

<sup>20</sup> Case James and Others v. United Kingdom, ph. 47.

<sup>21</sup> Case Radanovic v. Croatia.

<sup>22</sup> Case Hutten-Czapska v Poland, apl. no.35014/97, verd. 19 June 2006, parag. 178.

<sup>23</sup> Case Velosa Barreto vs. Portugal, parag. 64.

<sup>24</sup> Case Spadeo and Scalobrinio vs. Italy, verd 28 september 1995.

court found out that the security forces were responsible for burning down the homes of the applicants and the act of setting fire forced the applicants to leave the village and move elsewhere. In this case, the Court articulated that there was no doubt that the burning down of settlements was deliberate applicants and constituted a serious interference with the right to respect for their family life and their home under Article 8 of the Convention, as well as simultaneously comprising an interference on private property rights under Art. 1 of Prot. 1.<sup>25</sup> The Court has found a similar violation of these rights in several other cases against Turkey. In *Allard v. Sweden*, public authorities demolished the applicant's house because it was built without legal permission and also without the consent of the other joint owners of the land.<sup>26</sup> In this case, the Court acknowledged that the state may require that a house built illegally be demolished, although this action provides no apparent benefit to the community. The Court found that the main benefit of the community was to maintain the functioning system of co-ownership. However, the Court argued that in those particular circumstances, the state can and should choose less repressive measures, which may interfere less directly with the housing rights of the individuals. Therefore, it was concluded that the applicant was homeless, and the authorities failed to strike a fair balance between the interests of the applicant and those of other co-owners.

In its case law, the Court has declared that the construction of informal buildings in violation of the internal urban plans, when tolerated by state authorities, might lead to property interests that are sufficient and constitute a substantial interest within the notion of "property" within the meaning of the rule outlined in the first sentence of Article 1 of Prot.1.<sup>27</sup> In several cases, the court has defended the right to housing of the vulnerable categories, especially of the ethnic Roma population. In *Moldovan and others v. Romania*,<sup>28</sup> the court noticed serious ongoing violations of Article 8 of the Convention. The Court concluded that "... it was clear from the evidence presented by the complainants and by the verdicts of the domestic court that police authorities were involved in burning down the houses of the Roma community. Having been forced to leave the village and their homes, the applicants were forced to live in appalling and inadequate conditions, moving constantly towards different extremely overcrowded locations. Given the direct consequences of the actions of the police authorities on the rights of the applicants, the Court found that the authorities were responsible for the subsequent living conditions of the applicants. There was no doubt that the issue of the living conditions of the applicants fell within the scope of their right to respect for private and family life, as well as the right to respect for their homes. Therefore, the Court concluded that Article 8 was applicable in these circumstances".

In *Yordanova and Others against Bulgaria*, the Court took a stand against the actions of the municipality of Sofia to remove the informal Roma settlements known as "Batalova Vodenitsa". The Court articulated that since the applicants had lived with their families for many years in the makeshift homes, those settlements turned into

<sup>25</sup> Case *Akdivar and Others vs. Turkey*, verd. 16 september 1996, paragraph 88.

<sup>26</sup> Case *Allard vs. Sweden*, apl. no. 35179/97, verd. 24 June 2003.

<sup>27</sup> Case *Oneryeldiz vs Turkey*, case *Yordanova and Others vs Bulgaria*.

<sup>28</sup> Case *Moldovan and Others vs Romania*, verd. 12 July 2005.

their homes, regardless of whether they had been legally or illegally occupied. If applicants had been evicted from their settlements and the community, their home, private, and family life would have been adversely affected. The Court considered that it was legitimate for the authorities to act to evict the applicants who had occupied municipal land illegally. However, for several decades in a row, authorities had tolerated the establishment of the illegal Roma settlements in “Batalova Vodenitsa”. This action allowed applicants to establish a strong link with their settlement and create a community life there. According to the court, even though the state had no obligation based on the Convention to provide housing for the applicants, this obligation may derive from Article 8 of the Convention in certain cases, like individuals who constitute vulnerable groups and are in difficult conditions. In this case, the Court identified some of the alternative measures for solving the problem of people who had built illegally and that the government had failed, like the legalization of housing, the construction of the public sewerage network and water supply, or assisting in finding alternative housing if the eviction was necessary.

Undoubtedly, the need to protect the right to housing, in special cases, may require carrying out expropriation procedures for the private owners. The Court has repeatedly emphasized that the concept of public interest is necessarily extensive. In *Edwards v. Malta*, the Court stated: “Issues such as housing, which modern societies consider a primary social need because play a central role in the economic policies might often require intervention from the state. As a result, the choice of the measures to ensure the fulfillment of the housing needs and the proper time of their application necessarily involves consideration of complex social, economic, and political issues”. Because of the wide margin of appreciation that the legislator enjoys in implementing the social and economic policies, the Court on numerous occasions has declared that it will respect the solution of the legislator about what is of public interest unless it is openly without a reasonable basis.<sup>29</sup> Therefore, while determining a solution to the conflict of interest between rightful owners and the holders of the informal and illegal buildings tolerated for many years the Albanian state has a wide margin of appreciation (Velaers , 2007). A similar situation was posed to the Croatian legislator who tried to strike a balance between the rights of legitimate owners and those of the temporary land invaders, who were refugees or displaced persons.<sup>30</sup> To the Court’s assessment, this issue was a very socially sensitive one, because Croatian authorities on the one hand had the obligation to guarantee property to the rightful owners, and on the other hand they had to respect the right to housing as a social right of the refugees, both of which considered as vulnerable categories. The Court admitted that the Croatian state enjoyed a wide margin of appreciation for regulating this relationship. However, the state exercising its margin of appreciation cannot impose different standards from the ones prescribed by the Convention.<sup>31</sup> In balancing the rights of the landowners

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<sup>29</sup> Case *Immobiliare Saffi vs. Italy*, apl. nr. 22774/93, par. 49, 1999-V, mutatis mutandis, *Broniowski vs. Poland*, par. 149.

<sup>30</sup> Case *Radanovic vs Croatia* , verd. 21 December 2006, parag.49.

<sup>31</sup> Case *Broniowski vs Poland*, apl. nr.31443/96, paragraph 182.

with the interests of the land settlers, the state should consider the social problems, social tensions, and concerns for the public order that the deportation of vulnerable groups or persons with social needs would bring about.

## **5. Right to Home in EU Law**

The European Union has a significant impact from the political, economic, and social points of view on the right to adequate housing in the European region. This influence has grown with globalization, which has led to the free movement of capital and enterprise, resulting in changes in urban structures due to mass migration within and outside Europe. Until 2010, housing was not considered within the EU's scope of competence and was viewed as a national matter. Gradually, it was identified that the housing issue had complex links with various EU policies, such as building standards, energy conservation, competition, consumption policies, financial policies, social inclusion, social and economic rights, statistics, structural funds, etc.

The housing issue held significant importance and was therefore a requirement even for EU membership by aspiring European countries. With the increasing immigration to EU countries, internal migration, and the rising need for housing due to the large number of homeless families in Europe, strengthening housing rights remains of paramount importance. The Treaty of Lisbon, specifically the Charter of Fundamental Human Rights, is the most significant legal document committing EU member states to combat social exclusion and poverty. It recognizes and respects the right to social and housing assistance for those who do not have sufficient resources to ensure their existence.<sup>32</sup> To achieve this goal, states should address housing issues for vulnerable social groups through specific legislation, and take effective measures to ensure the implementation.

### ***5.1 Vienna Declaration, a Promoter in Legalizing Informal Buildings in Albania***

The Vienna Declaration on Informal Settlements in South Eastern Europe in October 2004 marked a significant turning point for the legalization and integration of informal settlements. The Declaration was an outcome of the collaboration between the EU,<sup>33</sup> the United Nations,<sup>34</sup> and the Eastern European countries. It aimed to provide legal solutions to the issue of illegal construction. The Declaration highlights the significant threats that illegal buildings pose to the country's economic and social development. According to this act, "Illegal buildings are human settlements, which for various reasons do not meet the legal requirements related to their construction without respecting the rights of ownership over land, the rights of transfer, or have violated the construction and urban planning rules. These constructions exist in these countries and are a serious threat to economic development, despite the peculiarities that arise in each country.

The commitments outlined in the Vienna Declaration were specific representations

<sup>32</sup> Article 4, point 3 of the European Charter of Human Rights and Fundamental Freedoms.

<sup>33</sup> In the framework of the Stabilization Pact.

<sup>34</sup> In the framework of the Habitat program.

of the principles and values that define the European community, as outlined in the European Charter of Fundamental Human Rights and Freedoms. These commitments first and foremost demonstrated respect for Article 34, paragraph 1 of the Treaty on the European Union, which advocates for the fight against social exclusion and poverty. It recognizes and respects the right to social and housing assistance for all those who do not have enough resources to support themselves. The Treaty requires Member States to achieve these objectives through Community law, national laws, and practices. The Eastern European states believe that social inequality in housing and unequal opportunities for specific social groups who have built illegal buildings are obstacles to economic, social, and urban development. Therefore, the right to housing and housing policies should be viewed from a broader perspective than just their legal and constitutional meanings,<sup>35</sup> due to the complex relationship between housing and other aspects of human life. The signatory states of the Vienna Declaration have decided that legal protection of informal settlements should be considered a unique housing policy, necessary to establish social equality and to improve the living standards for vulnerable groups.

Furthermore, respect for the right to housing should be seen as closely connected with Article 17 which sanctions the protection of ownership rights. The commitments made by the signatory states to the Vienna Declaration were a concrete expression of the principle of good governance, as one of the basic principles of the rule of law. This is particularly important when implementing obligations enshrined in many international legal documents, which consider them to be maximally effective. This, in turn, provides opportunities for citizens to have adequate housing and ensures that the living conditions of the residents continue to improve.<sup>36</sup> The signatory states of the Vienna Declaration identified a crucial element: the inclusion of informal builders in the social and economic life. This was considered a key step for the country's development and integration into the EU.<sup>37</sup> By taking this step, the states expressed full willingness to respect the European value of inclusion and the fight against poverty, to put an end to territorial arbitrariness, and to reclaim the rule of law.

The Vienna Declaration addressed the need for a comprehensive reform to give a legal solution to informal buildings and provide citizens with adequate housing. The declaration also urges Southeastern European countries to respect the right to property guaranteed by Article 17 of the ECHR. This issue requires careful consideration by the legislators of countries where informal settlements have been established on private properties. Balancing the interests of informal builders with the protection of the private property of the rightful owners through appropriate legal measures that comply with internationally accepted standards, national laws, and practices is crucial.

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<sup>35</sup> The right to housing is included in the chapter of the state social objectives (almost in most European countries), where the state has the obligation through housing programs as detailed in the law (in Albania housing policy is explicitly regulated in Law no. 9232/2004) to support the vulnerable categories and the poor.

<sup>36</sup> Vienna Declaration on Informal Buildings, point V, p.1.

<sup>37</sup> Vienna Declaration on Informal Buildings, point 6, p. 2.

## 6. Conclusions

During the transitional period in Albania, economic, social, and political developments led to a significant migration of the population to urban areas. This resulted in the construction of residential structures without proper land ownership and urban planning. The spread of informal settlements was directly attributed to the inactivity of state institutions, impacting public and private property rights. After years of failing to deal with the infringement of property rights and illegal activity in the territorial development, Albanian authorities were confronted with the dilemma of whether or not to legalize the informal settlements based on international law.<sup>38</sup>

International law, European law, and ECHR case law have been important sources in justifying the legalization of informal buildings in Albania. These acts make it clear that in the Albanian context, the need to protect the housing rights of persons who have violated property rights and territory development rules exceeds the need for property protection. According to these acts, recognizing that housing for the population is a primary social need in modern and democratic societies, and must be protected. Protecting the social demands of the informal settlement builders is in line with the principle of providing social support to ensure prosperity for those in need. Therefore, the effects of legalization reform should be:

- a) integrate into society a great community of residents who have been building without permits, providing them with the opportunity for adequate housing;
- b) stop illegal buildings in the future;
- c) stabilize the legal regime of property rights over land and ensure the stability of socio-economic relations, avoiding social conflict between private individuals;
- d) protect, legalize, and put into civilian circulation the capital invested in the construction field;

All of these factors fall within the scope of public interest, which the state is responsible for addressing through legislation. This justifies the need for legislation regarding the legalization, urbanization, and integration of illegal constructions. Therefore, the purpose of the legalization law, as stated in Article 41 of the Constitution of the Republic of Albania and Article 1 of Protocol 1 of the ECHR, justifies the interference with the right of ownership over the land of its rightful owners.

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<sup>38</sup> Vienna Declaration on Informal Buildings, point 5, p. 2.

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