



REPUBLIKA E KOSOVËS - РЕПУБЛИКА КОСОВО - REPUBLIC OF KOSOVO  
GJYKATA KUSHTETUESE  
УСТАВНИ СУД  
CONSTITUTIONAL COURT

Prishtina, on 24 September 2021  
Ref. No.: VMSP 1857/21

*This translation is unofficial and serves for informational purposes only.*

## **DECISION ON NON-ENFORCEMENT**

regarding

### **JUDGMENT**

of the

**Constitutional Court of the Republic of Kosovo**

**of 19 May 2016**

in

**Case No. KI132/15**

Applicant

**Deçani Monastery**

**Constitutional review of two Decisions of 12 June 2015, no. AC-I-13-0008  
and no. AC-I-13-0009 of the Appellate Panel of the Special Chamber of  
the Supreme Court of the Republic of Kosovo on Privatization Agency of  
Kosovo Related Matters**

### **THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO**

composed of:

Gresa Caka-Nimani, President  
Bajram Ljatifi, Deputy President  
Selvete Gërxhaliu-Krasniqi, Judge  
Safet Hoxha, Judge  
Radomir Laban, Judge  
Remzije Istrefi-Peci, Judge, and  
Nexhmi Rexhepi, Judge

## **Subject matter:**

1. Based on Article 116 [Legal Effect of Decisions] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), Article 19 (Taking of the decisions) of the Law no. 03/L-121 on the Constitutional Court (hereinafter: the Law) and Rule 66 (Enforcement of decisions) of the Rules of Procedure no. 01/2018 of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure), the subject matter of this Decision is (i) the assessment by the Constitutional Court of the Republic of Kosovo (hereinafter: the Court), pertaining to the enforcement of Judgment in case KI132/15, *applicant* Deçani Monastery, Judgment of 19 May 2016 (hereinafter: the Judgment of the Court in case KI132/15), by the responsible authorities of the Republic of Kosovo; and (ii) the decision-making of the Court with regard to the Decision on Non-Enforcement and the relevant Notification to the State Prosecutor, as set forth in paragraphs (6) and (7) of Rule 66 of the Rules of Procedure

## **Legal basis for issuing the Decision on Non-Enforcement and Notification to the State Prosecutor:**

2. The Court will initially cite, and then elaborate the legal basis for the issuance of this Decision on Non-Enforcement and the issuance of the Notification to the State Prosecutor pertaining to the Judgment of the Court in case KI132/15. In what follows, are the relevant provisions of the Constitution, the Law and the Rules of Procedure:

### **Constitution of the Republic of Kosovo**

#### Article 116 [Legal Effect of Decisions]

1. *Decisions of the Constitutional Court are binding on the judiciary and all persons and institutions of the Republic of Kosovo.*  
[...]

### **Law on the Constitutional Court**

#### Article 19 (Taking of the decisions)

1. *The Constitutional Court decides as a court panel consisting of all Constitutional Court judges that are present.*
2. *The Constitutional Court shall have a quorum if seven (7) judges are present.*
3. *The Constitutional Court decides with majority of votes of judges present and voting.*  
[...]

## Rules of Procedure

### Rule 66 (Enforcement of decisions)

*(1) The decisions of the Court are binding on the judiciary and all persons and institutions of the Republic of Kosovo.*

*(2) All constitutional organs as well as all courts and authorities are obligated to respect, to comply with and to enforce the decisions of the Court within their competences established by the Constitution and law.*

*(3) All natural and legal persons are obligated to respect and to comply with the decisions of the Court.*

*(4) The Court may specify in its decision the manner of and time-limit for the enforcement of the decision of the Court.*

*(5) The body under the obligation to enforce the decision of the Court shall submit information, if and as required by the decision, about the measures taken to enforce the decision of the Court.*

*(6) In the event of a failure to enforce a decision, or a delay in enforcement or in giving information to the Court about the measures taken, the Court may issue a ruling in which it shall establish that its decision has not been enforced. This ruling shall be published in the Official Gazette.*

*(7) The State Prosecutor shall be informed of all decision of the Court that have not been enforced.*

*(8) The Secretariat, under the supervision of the Judge who, in accordance with Rule 58, drafted the decision, shall follow up on the implementation of the decision and, if necessary, report back to the Court with recommendation for further legal proceedings to be taken.*

3. The above legal basis represents the constitutional and legal regulation based on which the Court is authorized to take action pertaining to the enforcement of its Judgments and the relevant measures in case of ascertainment of their non-enforcement.
4. In this respect, the Court states that based on Article 116 of the Constitution, its decisions are binding on the judiciary and all persons and institutions of the Republic of Kosovo. Moreover, based on the same article in conjunction with Rule 66 of the Rules of Procedure: (i) all constitutional organs as well as all courts and authorities are obligated to respect, to comply with and to enforce the decisions of the Court, within their competencies established by the Constitution and law; and (ii) all natural and legal persons are obligated to respect and to comply with the decisions of the Court.
5. The Court also states that pursuant to Rule 66 of the Rules of Procedure, the Court may specify in its decision: (i) the manner and the time-limit for the enforcement of a decision of the Court; (ii) the authority with the obligation to enforce the respective decision of the Court and to submit information, if and as required by the decision, about the measures taken to enforce the decision of the Court; (iii) in the event of a failure to enforce a decision, or a delay in enforcement or in giving information to the Court about the measures undertaken, the Court may issue a ruling in which it shall establish that its

decision has not been enforced. This ruling shall be published in the Official Gazette; and (iv) to inform the State Prosecutor of all decisions of the Court that have not been enforced.

6. On the basis of paragraph 8 of Rule 66 of the Rules of Procedure, the Court through its mechanisms, monitors the enforcement of its decisions and may undertake further legal action. The Court's assessment pertaining to the enforcement of its decisions is carried out periodically and in the event of determining that a decision has not been enforced, the Court issues a Decision on Non-Enforcement and notifies the State Prosecutor.
7. In this context, the Court has undertaken the measures set out in its Rules of Procedure with respect to the Judgments (i) KO01/09, of 18 March 2010, applicant *Qemail Kurtishi* (hereinafter: the Judgment of the Court KO01/09), by issuing the Order of 18 June 2010 and the Order of 21 June 2010<sup>1</sup>; (ii) KIo8/09 of 17 December 2010, applicant *The Independent Union of Workers of IMK Steel Factory in Ferizaj* (hereinafter: the Judgment of the Court KIo8/09), by issuing a Decision on Non-Execution and notifying the State Prosecutor<sup>2</sup>; (iii) KI112/12 of 5 July 2013, applicant *Adem Meta* (hereinafter: the Judgment of the Court KI112/12), by addressing a letter to the President of the Basic Court in Mitrovica and by notifying the State Prosecutor about the non-enforcement of this Judgment<sup>3</sup>; and (iv) KI187/13 of 1 April 2014, applicant *N. Jovanović* (hereinafter: the Judgment of the Court KI187/13), by issuing an "Updated Information" pertaining to Judgment KI187-13 as well as by notifying the State Prosecutor about the non-enforcement of Judgment KI187/13.<sup>4</sup>

### **Court's Judgment in Case KI132/15:**

8. In Court's Judgment KI132/15, the referral was submitted by the Deçani Monastery, which was represented in the proceedings before the Constitutional Court by Dragutin (Sava) Janjić, the Abbot of the Deçani Monastery.

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<sup>1</sup> See the Order in case KO01/09, of 7 June 2010, accessible via the following link: [https://gjk-ks.org/wp-content/uploads/vendimet/urdher\\_rasti\\_ko\\_01\\_09.pdf](https://gjk-ks.org/wp-content/uploads/vendimet/urdher_rasti_ko_01_09.pdf) and the Order in Case KO01/09, of 21 June 2010, accessible via the following link: [https://gjk-ks.org/wp-content/uploads/vendimet/urdher\\_rasti\\_ko\\_01\\_09.pdf](https://gjk-ks.org/wp-content/uploads/vendimet/urdher_rasti_ko_01_09.pdf)

<sup>2</sup> See the Decision on Non-Execution of Judgment in case KIo8/09 of 14 November 2012, accessible via link: [https://gjk-ks.org/wp-content/uploads/vendimet/gjk\\_ki\\_08\\_09\\_vmshp\\_shq.pdf](https://gjk-ks.org/wp-content/uploads/vendimet/gjk_ki_08_09_vmshp_shq.pdf), and the Notification to the Chief State Prosecutor for Failure to Execute the Judgment in case KIo8/09 of 28 May 2019, accessible via the link: [KI08-09 Njoftim-për-moszbatisim-të-Aktgjykimit-të-Gjykatës-Kushtetuese P.SH .pdf \(gjk-ks.org\)](https://gjk-ks.org/wp-content/uploads/vendimet/KIo8-09_Njoftim-per-moszbatisim-te-Aktgjykimit-te-Gjykatës-Kushtetuese_P.SH.pdf).

<sup>3</sup> See the letter "Notification regarding the non-enforcement of the Judgment of the Constitutional Court in case KI112/12" and the letter addressed to the President of the Basic Court in Mitrovica, of 17 April 2014, accessible via the following link: [https://gjk-ks.org/wp-content/uploads/2021/08/KI112-12\\_Njoftim-perkitazi-me-moszbatisim-e-Aktgjykimit\\_P.SH\\_SHQ.pdf](https://gjk-ks.org/wp-content/uploads/2021/08/KI112-12_Njoftim-perkitazi-me-moszbatisim-e-Aktgjykimit_P.SH_SHQ.pdf)

<sup>4</sup> See the "Updated Information regarding Judgment No. KI187-13" of 6 February 2015, accessible via the following link: [https://gjk-ks.org/wp-content/uploads/2021/08/informate\\_e\\_perditesuar\\_KI187\\_13\\_shq.pdf](https://gjk-ks.org/wp-content/uploads/2021/08/informate_e_perditesuar_KI187_13_shq.pdf) and the letter "Information on non-enforcement of Judgment KI187/13" of February 6, 2015, addressed to the Chief State Prosecutor, accessible via the following link: [https://gjk-ks.org/wp-content/uploads/2021/08/njoftimi\\_per\\_moszbatisim\\_e\\_aktgjykimit\\_KI187\\_13\\_shq.pdf](https://gjk-ks.org/wp-content/uploads/2021/08/njoftimi_per_moszbatisim_e_aktgjykimit_KI187_13_shq.pdf)



9. The applicant challenged two decisions of the Appellate Panel of the Special Chamber of the Supreme Court on Privatization Agency of Kosovo Related Matters (hereinafter: the Appellate Panel of the SCSC), respectively, Decisions [no. AC-I-13-0008] and [AC-I-13-0009] of 12 June 2015.
10. The applicant requested the constitutional review of the two above-mentioned decisions, alleging a violation of the fundamental rights and freedoms guaranteed by articles 24 [Equality before the Law]; 31 [Right to Fair and Impartial Trial]; 32 [Right to Legal Remedies]; 46 [Protection of Property]; 54 [Judicial Protection of Rights] of the Constitution and article 13 (Right to an effective remedy) of the European Convention on Human Rights (hereinafter: the ECHR). The applicant also requested the imposition of interim measure pending the final decision of the Constitutional Court.
11. On 12 November 2015, the Court approved the interim measure until 29 February 2016.<sup>5</sup> Whereas, on 10 February 2016, the Court approved the extension of the interim measure until 31 May 2016.<sup>6</sup>
12. On 19 May 2016, the Court decided (i) to declare the referral admissible; (ii) to hold that there has been a violation of article 31 of the Constitution in conjunction with article 6 of the ECHR; (iii) to hold that the two decisions of the Appellate Panel of the SCSC, of 12 June 2015, respectively [no. AC-I-13-0008 and no. AC-I-13-0009], are null and void; and (iv) to hold that the two decisions of the Specialized Property Panel of the SCSC of 27 December 2012, [no. SCC-08-0026 and no. SCC-08-0227], respectively, are final and binding and as such *res judicata*.<sup>7</sup>
13. The enacting clause of the Court's Judgment in case KI132/15, was voted as it follows:

*The Constitutional Court, pursuant to Articles 21.4 and 113.7 of the Constitution, Article 20 of the Law, and Rule 56 (a) of the Rules of Procedure, in the session held on 19 May 2015, by majority*

### **DECIDES**

- I. *TO DECLARE the Referral admissible;*
- II. *TO HOLD that there has been violation of Article 31 of the Constitution in conjunction with Article 6 of the European Convention on Human Rights;*
- III. *TO HOLD that it is not necessary to examine whether there has been a violation of Articles 24, 32, 46 and 54 of the Constitution, and of Article 13 of the European Convention on Human Rights;*
- IV. *TO HOLD that the two Decisions of the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo Related Matters of 12 June 2015, Nos. AC-I-13-0008 and AC-I-*

<sup>5</sup> See the first Decision of the Court approving the interim measures in case KI132/15.

<sup>6</sup> See the second Decision of the Court extending the interim measures in case KI132/15.

<sup>7</sup> For more details about the facts of the case, see paragraphs 20-46 of Judgment KI132/15; in relation to the allegations see paragraphs 47-52; in relation to the admissibility of the Referrals see paragraphs 53-68; whereas, in relation to the reasoning and merits of the case see paragraphs 69-94.

*13-0009, are null and void, and that the two Decisions of the Specialized Panel on Ownership of the Special Chamber of the Supreme Court on Privatization Agency of Kosovo Related Matters of 27 December 2012, No. SCC-08-0226 and No. SCC-08-0227, are final and binding, and as such are res judicata;*

V. *TO NOTIFY this Decision to the Parties;*

VI. *TO PUBLISH this Decision in the Official Gazette, in accordance with Article 20 (4) of the Law;*

VII. *This Decision is effective immediately.”*

14. On 20 May 2016, the Court notified the relevant parties about the issuance of the Judgment of the Court, as follows: (i) the SCSC; (ii) the Basic Court in Peja, Branch in Deçan; (iii) the Municipality of Deçan; (iv) the SOE Bletaria “Apiko” (hereinafter: Apiko); and (v) the SOE Hotel Tourist Enterprise “Iliria” (hereinafter: “Iliria”).

#### **Proceedings before the Court following the publication of the Judgment:**

15. As stated above, the Judgment of the Court in case KI132/15 was voted on 19 May 2016 and published on 20 May 2016.
16. Two (2) years after the issuance of the Judgment of the Court, respectively on 8 March 2018, the Deçani Monastery submitted a letter-request to the Court regarding the enforcement of the Judgment in case KI132/15, stating that it was not enforced “*due to the refusal of the Municipality of Deçan to implement this decision*”. Through the letter in question, the Deçani Monastery informed the Court that: (i) on 23 April 2017, it had requested the enforcement of the Judgment in case KI132/15 from the Cadastral Office of the Municipality of Deçan; (ii) on 26 May 2017, the Office of the Mayor of Deçan, had rejected the request of the Deçani Monastery; (iii) on 3 July 2017, it had filed a complaint with the Kosovo Cadastral Agency (hereinafter: the KCA); (iv) on 25 July 2017, the KCA requested additional documentation from the Deçani Monastery; and (v) on 2 August 2017, the Deçani Monastery had submitted the requested documents to the KCA. Based on the letter of the Deçani Monastery, KCA had not taken any action, and consequently, the applicant had requested from the Court to act pursuant to article 116 of the Constitution regarding the enforcement of its Judgment in case KI132/15.
17. On the basis of the documents submitted to the Court, the response of the Municipal Office of Deçan of 26 May 2017 addressed to the Monastery of Deçan, states, inter alia, that (i) “*on the occasion of the decision of the Special Chamber of the Supreme Court of Kosovo and the Decision of the Constitutional Court of Kosovo being issued, the Municipal Assembly of Deçan held an extraordinary session and took decisions whereby it opposes the enforcement of these decisions and it was explicitly stated that the Directorate for Cadastre in Deçan and the Kosovo Geodetic Agency should not implement the aforementioned decisions*”; (ii) “*immediately after receiving the aforementioned court decision of the Special Chamber of the Supreme Court, the Publicly Owned Enterprises “Iliria” and “Apiko” by a claim filed with the Basic Court in Peja – Branch in Deçan, have requested the annulment of all contracts on donation of lands for the Monastery. From that*

time up to the present day, the Court has not reviewed these claims”; (iii) “The PAK [Privatization Agency of Kosovo] by a claim has requested from the Special Chamber of the Supreme Court of Kosovo the annulment of all the above donation contracts and as of that time up to the present day the claim has not been reviewed” ; (iv) “in relation to these parcels we have also found the Decision of the Municipal Directorate of Geodesy in Deçan of 15.09.1992 bearing the number 07-952/624, whereby these parcels are returned to the ownership of the Municipality of Deçan by the OP “Visoki Deçani”. The Municipality has started the enforcement of this decision”; (v) “the law stipulates that the properties of the Publicly Owned Enterprises for which the liquidation procedure has been initiated may not change the owner until the liquidation is completed. Thus, the liquidation of the Public Enterprises “Iliria” and “Apiko” has been initiated on 22.02.2017”; and finally (vi) “taking into consideration the above circumstances, as a municipality we are not in position to make any decision”.

18. On 8 November 2018, the Court addressed the SCSC regarding the applicant's allegations that the Judgment of the Court was not enforced, also inquiring about the measures taken by the SCSC to enforce the Judgment in case KI132/15. Through this letter, the Court had requested to be notified within fifteen (15) days whether the respective Judgment had been enforced in its entirety. Moreover, the Court's letter also stated that (i) “there is no reason on the basis of which the non-enforcement of a final decision of the Constitutional Court could be justified”; (ii) “it is the responsibility of the responsible organs to find the most appropriate ways and means to enforce a decision of the Constitutional Court in which have been found violations of human rights and freedoms guaranteed by the Constitution and the European Convention on Human Rights”; and (iii) “in the absence of confirmation regarding the full implementation of the Judgment of the Court in case KI132/15, the Constitutional Court shall issue a Decision on Non-Enforcement, pursuant to point (6) of Rule 66 (Enforcement of decisions) of the Rules of Procedure which provides that in the event of non-enforcement of a decision or delay in providing information, the Constitutional Court may issue a ruling stating that a decision has not been enforced. Further, in accordance with point (7) of the same rule: The State Prosecutor shall be informed of all decision of the Court that have not been enforced”. Finally, the Court had stated that based on article 116 of the Constitution, decisions issued by the Constitutional Court are binding on the judiciary and all persons and institutions of the Republic of Kosovo and that “non-enforcement of decisions of the Constitutional Court constitutes a constitutional violation and is contrary to fundamental principles of the rule of law in a state governed by the rule of law and democracy”.
19. On 28 January 2019, the Court notified the applicant, namely the Deçani Monastery, that (i) the Court's Judgment in case KI132/15 was issued by the Court on 20 May 2016; (ii) it was published in the Official Gazette of the Republic of Kosovo; (iii) on 20 May 2016, “the Special Chamber of the Supreme Court of the Republic of Kosovo on Privatization Agency of Kosovo Related Matters, the Basic Court in Peja- Branch in Deçan, the Municipality of Deçan and the enterprises “Apiko” and “Illyria” were informed about the relevant Judgment; (iv) based on article 116 of the Constitution, the Judgment

in case KI132/15 creates obligations for all parties involved in the process; (v) the Court continuously monitors the enforcement of its decisions; and (vi) in relation to the Judgment in case KI132/15 and all its other decisions, it shall “take all available action under the Constitution, Law, and Rules of Procedure”.

20. On 21 November 2019, the SCSC submitted the response to the Court's letter for “final information regarding the enforcement of the Judgment in case KI132/15” of 8 November 2018. Through this response, the SCSC, inter alia, stated that (i) “The Special Chamber of the Supreme Court considers the same as you have ascertained in your Referral that the two Judgments of the Special Chamber, SCC-08-0226 and SCC-08-0227, are final, binding and eligible for enforcement”; (ii) “pursuant to Article 116.1 of the Constitution of the Republic of Kosovo, the decisions of the Constitutional Court are binding on the judiciary and all persons and institutions of the Republic of Kosovo”; but that (iii) the SCSC “has no legal authority given to it by law regarding to the enforcement of the final Judgment of the courts”; and (iv) moreover, “the Constitutional Court by Judgment KI132/15 has not given any task to the Special Chamber to be performed in the future”. Having emphasized the jurisdiction established by law and the fact that the SCSC “has no legal authority and cannot take any legal action in the enforcement of this Judgment”, the SCSC nevertheless stated that (i) “the Special Chamber of the Supreme Court informs that the Judgments of the Specialized Panel of the SCSC which were declared final and binding by the Judgment of the Constitutional Court KI132/15, in the absence of the request of the party, have not been endowed with the finality clause, to be eligible for enforcement of the Judgment of the Constitutional Court”; and (ii) “to date the Deçani Monastery, as a party to the proceedings, even though it has a legal and legitimate interest to have the Judgment of the Constitutional Court enforced, has not filed any request with the Special Chamber seeking to include the finality clause in the issued, final, Judgments. The SCSC will immediately endow these Judgments with the finality clause”. Finally, the SCSC also stated that (i) “on the basis of what is stated above, the Special Chamber is of the opinion that pursuant to Article 307.1 of the Law no.04/L-139 on the Enforcement Procedure, the party that won the court case has the legal authority to begin to take the necessary legal steps in order to enforce these final Judgments, by addressing an enforcement Court or the Cadastral Office in the Municipality where the property, subject matter of the Judgment, is situated, for having it registered in the cadastral register in its name”; and (ii) “moreover pursuant to Article 13.1 of the Law No.04/L-013 on Cadastre, the party that has such interest in the enforcement of the Judgment, must submit the application to the cadastral body in the respective municipality to initiate the procedure for registration of property rights in the cadastral register.”
21. On 3 August 2021, the Court, pursuant to Rule 66 of the Rules of Procedure, reassessed the status of enforcement of all its Judgments, together with the relevant letters received and sent by the Court after the issuance of these Judgments, in order to determine whether they had been enforced. Based on the letters sent by the Court, it resulted that the issuance of Decisions on Non-Enforcement had been announced in a number of cases, including case KI132/15, through the Court's letter addressed to the SCSC dated 21 November



2019. Despite this letter, in order for the Court to act only on the basis of updated information, it was decided that additional letters seeking additional/updated information shall be sent to the parties and relevant authorities in a number of cases, including the Court's Judgment KI132/15.

22. On 11 August 2021, in order to update the information regarding the enforcement of the relevant Judgment, the Court sent a letter (i) to the Applicant; and (ii) the KCA, taking into consideration the content of the response of the SCSC submitted to the Court on 21 November 2019 and the fact that, based on the case file, the applicant's complaint of 3 July 2017 submitted against the decision of the Office of the Mayor of Deçan, resulted to be under review before the KCA.
23. On 26 August 2021, the KCA submitted its response to the Court, stating, among others, that (i) on 20 November 2020, it received an additional complaint [no. 03/3539/20] filed by the Deçani Monastery; (ii) after reviewing the aforementioned complaint, it found that the Directorate for Cadastre and Geodesy of the Municipality of Deçan, has not acted in accordance with paragraph 3.5 of article 3 (Registration of Immovable Property Rights) of the Law no.2002/5 on the Establishment of the Immovable Property Rights Register, because "*it has made administrative silence in reviewing the request submitted by the representative of the Deçani Monastery*"; (iii) consequently, the KCA issued Decision [No. 03/3539/20] of 17 December 2020, through which it obliged the Directorate for Cadastre of the Municipality of Deçan to make a decision on the complaint of the Deçani Monastery; (iv) on 15 January 2021, the KCA addressed a request for information to the Directorate for Cadastre and Geodesy of the Municipality of Deçan pertaining to actions taken in relation to the aforementioned decision; (v) on 21 January 2021, the KCA was notified by the relevant municipality that it had filed a lawsuit against the KCA decision of 17 December 2020 to the Department for Administrative Matters of the Basic Court in Prishtina; (vi) on 18 February 2021, the Deçani Monastery filed another complaint with the KCA due to "*administrative silence*"; (vii) on 22 March 2021, the KCA received a request from the Mayor of Deçan Municipality, by which it was requested not to proceed with this case until the end of "*all negotiations that have begun with the Deçani Monastery, Government of Kosovo, Quint Ambassadors, OSCE and EU*" pertaining to the issue in question; (viii) after the abovementioned letter of the Mayor, the KCA did not undertake any other action; and (ix) after the receipt of the letter of the Court of 12 August 2021, on 16 August 2021, the KCA addressed a request for information regarding the enforcement of Judgment KI132/15 of the Court to the Mayor of Deçan Municipality and has not received a response.
24. On 30 August 2021, the Deçani Monastery submitted its response to the Court, explaining the developments that have taken place since the last correspondence with the Constitutional Court, enclosing the relevant documents, wherefrom it results that: (i) on 26 August 2020, the Deçani Monastery, once more submitted a request for registration of ownership according to Judgment KI132/15, to the Cadastral Office of the Municipality of Deçan; (ii) after not receiving a response to this request, on 12 October 2020, the Deçani Monastery submitted a request for reconsideration of the request at

the Cadastral Office of the Municipality of Deçan; (iii) on 20 November 2020, considering that it had not received a response from the relevant office of the Municipality of Deçan, the Deçani Monastery filed a complaint with the KCA due to the “*administrative silence*”; (iv) on 17 December 2020, the KCA through Decision [03/3539/20], requested from the Directorate for Cadastre and Geodesy in Deçan to decide on the request of the Deçani Monastery within a timeline of fifteen (15) days; (v) the Municipality of Deçan had not issued a decision according to the abovementioned Decision of the KCA, but on 21 January 2021, filed a lawsuit at the Department of Administrative Matters of the Basic Court in Prishtina, against the respective decision of the KCA, to which the Deçani Monastery responded on 24 March 2021; (vi) on 18 February 2021, the Deçani Monastery again filed a complaint with the KCA due to the “*administrative silence*” of the Municipality of Deçan, stating, inter alia, that based on article 13 (Administrative Conflict) of Law no.03/L-202 on Administrative Conflicts, an administrative conflict in this case is not permitted, moreover that, based on article 22 of the same law, the lawsuit does not suspend the enforcement of the relevant decision; and (vii) the Deçani Monastery has not received a response from the KCA despite the fact that based on article 116 of the Constitution, “*decisions of the Constitutional Court are binding on all persons and bodies in Kosovo*”. The Deçani Monastery also states that (i) “*The Municipal Assembly of Deçan held a session on 27.05.2019, in which it was again stated that the Judgment of the Constitutional Court is unfair and which the Municipality will not enforce, and that the execution of the Judgment would create huge obstacles among the citizens of the Municipality of Deçan, for the consequences of which the Municipality would not be able to respond*”; (ii) “*it is clear that the institutions at all levels simply refuse to enforce this decision, that is, they commit a conscious and deliberate obstruction of our rights*”; and (iii) “*please undertake everything you have at your disposal, so that our right to land, is finally registered in our name, five years after the Constitutional Court has issued Judgment KI132/15.*”

25. On 3 September 2021, the KCA submitted to the Court the response of the Municipality of Deçan regarding the “*case of the Deçani Monastery*” of 1 September 2021, by which the Mayor of Deçan Municipality stated, inter alia, that (i) “*The Municipality of Deçan has continuously expressed and declared its position for non-compliance with Judgment KI132/15 which has to do with the properties of Socially Owned Enterprises APIKO and ILIRIA, which with the abovementioned Judgment [...] were given (donated) to the Deçani Monastery*”; (ii) “*from 2017, we have tried to have an understanding and a harmonized solution with the Deçani Monastery to end all disputes with the Deçani Monastery*”; (iii) “*we inform you that the Municipality of Deçan has no reason and no obligation and does not take over the enforcement of this decision, until the discussions between the Municipality and the Monastery on the disputes created between us would be finally resolved*”; and (iv) “*until a final epilogue, we ask the KCA not to take any action regarding this process!*”

**Court's assessment regarding the enforcement of the Judgment in Case KI132/15:**

26. As explained above, by a letter of 8 November 2019 addressed to the SCSC, based on article 116 of the Constitution and rule 66 of the Rules of Procedure, the Court had announced the issuance of the Decision on Non-Enforcement and the Notification to the State Prosecutor about the Court's Case KI132/15, in the "*absence of confirmation on the full enforcement of the Judgment of the Court in case KI132/15*". However, in August 2021, the Court once again addressed the relevant parties in order to update the information before the Court regarding the enforcement of its Judgment.
27. On 22 September 2021, based on the assessment of all documents before it, as presented above, the Court unanimously found that its Judgment in case KI132/15 has not been implemented. This because, the authorities responsible for its implementation, even after five (5) years after the issuance of this Judgment, have not undertaken the necessary measures for its implementation, despite the fact that by the Judgment of the Court, the two Decisions of the Specialized Panel on Ownership of the SCSC, [no. SCC-08-0026] and [No.SCC-08-0227], of 27 December 2012, respectively, were declared final, binding and, as such, *res judicata*.
28. The Court has come to the above stated conclusion, based on the submissions reflected in this Decision on Non-Enforcement, namely: (i) the assertion of the SCSC that it has no jurisdiction to implement this Judgment of the Court, despite the fact that it states that the same must be enforced pursuant to article 116 of the Constitution; (ii) the position of the Municipality of Deçan, following the request of the Deçani Monastery of 2017 for the implementation of the Judgment of the Court, that "*on the occasion of the decision of the Special Chamber of the Supreme Court of Kosovo and the Decision of the Constitutional Court of Kosovo being issued, the Municipal Assembly of Deçan held an extraordinary session and took decisions whereby it opposes the enforcement of these decisions and it was explicitly stated that the Directorate for Cadastre in Deçan and the Kosovo Geodetic Agency should not enforce the aforementioned decisions*"; (iii) the position of the Municipality of Deçan based on the letter of 1 September 2021 addressed to the KCA, that the same "*has continuously expressed and declared its non-compliance with Judgment KI132/15 and consequently it has no reason and no obligation and does not take over the execution of this Judgment*"; and (iv) the fact that the KCA, despite the constant complaints of the Deçani Monastery, beyond the Decision [03/3539/20] of 17 December 2020 through which it obliged the Municipal Cadastral Office to issue a decision on this matter and the rejection of the same to act based on the decision of the KCA, has not undertaken any other steps, arguing that it had received a letter from the Mayor of Deçan Municipality, by which it was requested not to proceed with this case "*until the end of all negotiations that have begun regarding the disputed properties*".
29. The Court notes that after the issuance of its Judgment KI132/15 in 2016, a series of proceedings were conducted for more than five (5) years and which had the only effect of non-enforcement of a final Judgment in contradiction with article 116 of the Constitution.

30. The Court has acted in the same manner also in other previous cases that have been cited above, in which it had determined that contrary to article 116 of the Constitution, its decisions have not been implemented. Among others, in the letter addressed to the Acting Chief State Prosecutor, of 6 February 2015, regarding the Court's Judgment KI187/13, the Court, *inter alia*, stated that despite the fact that since the establishment of the Court *"almost 99% of the decisions of the Constitutional Court have been enforced"*, the Court *"being committed to follow the procedures of enforcement of its decisions up to the full realization of the applicants' rights arising from its decisions"*, identifies cases which have not yet been implemented by the respective authorities, also emphasizing that *"the state institutions that, based on their constitutional competencies and obligations, are obliged to ensure mechanisms to enforce its decisions, in full compliance with article 116.1 of the Constitution"*. Whereas, in the letter addressed to the Chief State Prosecutor of 28 May 2019, regarding the Court's Judgment KIO8/09 and the respective notification for the issuance of the Decision on Non-Execution, among others, stated that the *"non-enforcement of decisions of the Constitutional Court constitutes a constitutional violation and is contrary to fundamental principles of the rule of law in a state governed by the rule of law and democracy"*.
31. The Court also emphasizes that the case-law of the European Court of Human Rights (hereinafter: ECtHR), based on which, pursuant to article 53 [Interpretation of Human Rights Provisions] of the Constitution, the Court interprets fundamental rights and freedoms guaranteed by the Constitution, emphasizes that one of the fundamental aspects of the rule of law is the principle of legal certainty, which, among other things, requires that final judicial decisions be enforced and not questioned.<sup>8</sup> Furthermore, the case-law of the ECHR consistently reiterates that the right to a fair trial as guaranteed by article 6 (Right to a fair trial) of the ECHR and which is directly applicable to the legal order of the Republic of Kosovo based on article 22 [Direct Applicability of International Agreements and Instruments] of its Constitution, would be *"illusory"* if domestic legal systems would *"allow a final, binding judicial decision to remain inoperative to the detriment of one party"* and it would be *"inconceivable for article 6 to describe in detail the procedural guarantees afforded to litigants – proceedings that are fair, public and expeditious - without protecting the implementation of judicial decisions"*<sup>9</sup>. Such situations would be in clear violation of the principle of the rule of law which the Contracting States have undertaken to respect on the basis of the ECHR.
32. The Court furthermore recalls that the Constitution of the Republic of Kosovo in its article 3 [Equality before the Law] stipulates that the Republic of Kosovo is a multi-ethnic society, consisting of Albanians and other communities, governed democratically with full respect for the rule of law through its

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<sup>8</sup> See, *inter alia*, the cases of the ECtHR, *Guðmundur Andri Ástráðsson v. Iceland*, application no. 23674/18, Judgment of the Grand Chamber of the ECtHR of 1 December 2020, paragraph 238; *Brumărescu v. Romania*, application no. 28342/95, Judgment of the Grand Chamber of the ECtHR of 28 October 1999, paragraph 61; as well as, *Agrokompleks v. Ukraine*, application no. 23465/03, Judgment of the Grand Chamber of the ECtHR of 25 July 2013, paragraph 148.

<sup>9</sup> See, *inter alia*, the case of the ECtHR *Romashov v. Ukraine*, application.no. 67534/01, Judgment of the ECtHR of 24 July 2004, paragraph 42.



legislative, executive and judicial institutions. Furthermore, the Constitution, in article 7 [Values], also stipulates that the constitutional order of the Republic of Kosovo is based on the principles of freedom, peace, democracy, equality, respect for human rights and freedoms and the rule of law, non-discrimination, the right to property, the protection of environment, social justice, pluralism, separation of state power, and a market economy. The rule of law is also an element that reflects the joint European heritage as defined in the preamble of the ECHR and the Charter of Fundamental Rights of the European Union, and an essential objective reflected in the Statute of the Venice Commission.<sup>10</sup>

33. In view of the above principles, and based on the documents submitted to it, taking into account that the Court has found that the Court's Judgment KI132/15 has not been implemented by the responsible authorities of the Republic of Kosovo, pursuant to article 116 of the Constitution and rule 66 of the Rules of Procedure, the Court issues the present Decision on Non-Enforcement regarding the Judgment KI132/15. At the same time, the Court also notifies the State Prosecutor regarding the non-enforcement of its Judgment KI132/15.
34. Finally, it should be emphasized that beyond its conclusion on non-enforcement of a Judgment, through a Decision on Non-Enforcement and the respective Notification to the State Prosecutor, the Constitutional Court has no competence to assess the responsibility of the respective authority for the non-enforcement of a Court decision. The competence for such an assessment, thereafter belongs to the State Prosecutor, based on the Criminal Code and the Criminal Procedure Code of the Republic of Kosovo.

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<sup>10</sup> See, inter alia, (i) the ECHR Preamble; (ii) The Preamble of the Charter of Fundamental Rights of the European Union; and (iii) the Statute of the Venice Commission.

## FOR THESE REASONS

The Constitutional Court of the Republic of Kosovo, pursuant to article 116 of the Constitution of the Republic of Kosovo, article 19 of the Law on the Constitutional Court of the Republic of Kosovo and rule 66 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo, on 22 September 2021, unanimously:

### DECIDES

- I. TO HOLD that the Judgment of the Constitutional Court of the Republic of Kosovo in case KI132/15, with Applicant *Deçani Monastery*, of 19 May 2016 **has not been implemented** by the responsible authorities of the Republic of Kosovo;
- II. TO PUBLISH this Decision on Non-Enforcement regarding the Judgment of the Constitutional Court of the Republic of Kosovo in case KI132/15;
- III. TO COMMUNICATE this Decision on Non-Enforcement to the parties;
- IV. TO NOTIFY the State Prosecutor for the issuance of this Decision on Non-Enforcement;
- V. In accordance with article 20.4 of the Law and for the purposes of rule 66 (6) of the Rules of Procedure, this Decision shall be published in the Official Gazette of the Republic of Kosovo and on the official website of the Constitutional Court of the Republic of Kosovo.

### President of the Constitutional Court

Gresa Caka-Nimani



*This translation is unofficial and serves for informational purposes only.*