



REPUBLIKA E KOSOVËS - REPUBLIKA KOSOVO - REPUBLIC OF KOSOVO  
**GJYKATA KUSHTETUESE**  
**USTAVNI SUD**  
**CONSTITUTIONAL COURT**

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Prishtina, on 2 August 2022  
Ref. no. VMSP 2034/22

*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**

in

**case no. KI90/16**

Applicant

**Branislav Jokic**

**Constitutional review of non-enforcement of Decision KKPK/D/R/230/2014, of  
Kosovo Property Claims Commission, of 13 March 2014**

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

composed of:

Gresa Caka-Nimani, President  
Bajram Ljatifi, Deputy President  
Selvete Gërzhaliu-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 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: Rules of Procedure), the subject matter is: (i) the assessment of the Constitutional Court of the Republic of Kosovo (hereinafter: the Court), regarding the enforcement of the Judgment in case KI90/16, with the applicant *Branislav Jokic*, of 5 December 2017 (hereinafter: the Judgment of the Court in case KI90/16), by the responsible authorities of the Republic of Kosovo; and (ii) the decision-making of the Court regarding the Decision on Non-Enforcement and the relevant Notification for the State Prosecutor, as it is established in paragraphs (6) and (7) of rule 66 of the Rules of Procedure.

## **Legal basis for rendering the Decision on Non-Enforcement and the State Prosecutor's Notification:**

2. The Court will first cite, and then elaborate, the legal basis for rendering this Decision on Non-Enforcement and the issuance of the Notification to the State Prosecutor in relation to the Judgment of the Court in case KI90/16. In the following, the relevant provisions of 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. 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 shall be binding on the judiciary and all persons and institutions of the Republic of Kosovo.*

*(2) All constitutional bodies, courts and authorities shall be obliged to respect, comply with, and implement the decisions of the Court, within their competencies defined by the Constitution and law.*

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

*(4) The Court may specify in its decision the manner 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 certain decision or a delay in giving information to the Court on the measures taken to enforce it, the Court may render a Decision on non-enforcement, in which it shall establish that the respective decision has not been enforced. The decision on non-enforcement shall be taken by the majority of votes of judges and shall be published in the Official Gazette.*

*(7) The Court shall notify the State Prosecutor of all decisions of the Court that have not been enforced.*

*(8) The Court shall establish a working group, chaired by a judge and composed of judges, officers of the Secretariat and members of the Legal Unit, which shall continuously monitor and supervise the implementation of the Court's decisions. The working group shall recommend to the Court to undertake further actions in accordance with paragraphs (6) and (7) of this Rule, in case of non-enforcement of the Court's decisions by the obliged authorities and/or persons.*

3. The aforementioned legal basis represents the constitutional and legal regulation based on which the Court is authorized to take actions regarding the monitoring of enforcement of its judgments and the relevant measures in case of ascertaining their non-enforcement.
4. In this regard, the Court emphasizes 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. Furthermore, based on the same article of the Constitution in relation to rule 66 of the Rules of Procedure: (i) all constitutional bodies, as well as courts and authorities, are obliged to respect, comply with and implement the decisions of Court, within their competencies defined by the Constitution and by law; and (ii) all natural and legal persons are obliged to respect and comply with the decisions of the Court.
5. The Court also emphasizes that based on rule 66 of the Rues of Procedure, the Court can specify in its decision: (i) the manner and time limit for the implementation of the decision of the Court; (ii) the bodies obliged to implement the decision of the Court and submit the information, if requested and as requested by decision, about the measures taken for the implementation of the Court's decision; (iii) in case of non-implementation of one the decision, or the delay in providing information to the Court for measures undertaken, the Court may render a Decision, noting that its decision has not been implemented and to publish this position in the Official Gazette; and (iv) to notify the State Prosecutor about all decisions of the Court that are not implemented.
6. Based on paragraph (8) of rule 66 of the Rules of Procedure, the Court, through its mechanisms, monitors the enforcement of its decisions and may initiate further legal procedures. The assessment of the implementation of the Court's decisions is done periodically and in case of finding that a decision has not been enforced or of the delay in

providing information to the Court about the measures taken, the Court renders a Decision on Non-Execution and notifies the State Prosecutor.

7. In this context, the Court has undertaken the measures defined in its Rules of Procedure regarding the Judgments: (i) in case KO01/09, of 18 March 2010, with Applicant *Qemal Kurtishi* (hereinafter: Court case KO01/09), issuing the Order of 7 June 2010 and the Order of 21 June 2021<sup>1</sup>; (ii) in case KIO8/09, of 17 December 2010, with the applicant *The Independent Union of Workers of IMK Steel Factory*, in Ferizaj (hereinafter: Court case KIO8/09), issuing a Decision on Non-Enforcement and notifying the State Prosecutor<sup>2</sup>; (iii) in case KI112/12, of 5 July 2013, with the applicant *Adem Meta* (hereinafter: Court case KI112/12), addressing in writing the President of the Basic Court in Mitrovica and notifying the State Prosecutor of the non-enforcement of this Judgment;<sup>3</sup> (iv) in case KI187/13, of 1 April 2014, with the applicant *N. Jovanovic* (hereinafter: Court case KI187/13), issuing “*Updated Information*” regarding Judgment KI187/13 as well as notifying the State Prosecutor for the non-enforcement of Judgment KI187/13;<sup>4</sup> (v) in case KI56/09, of 22 September 2010, with the applicant *Fadil Hoxha and 59 others against the Municipal Assembly of Prizren* (hereinafter: Court case KI56/09), issuing a Decision on Non-Enforcement and notifying the Chief State Prosecutor about the issuance of the Decision in question;<sup>5</sup> and (vi) in case KI132/15, of 19 May 2016, with the applicant *The Monastery of Decani* (hereinafter: Court case KI132/15), issuing Decision on Non-Enforcement and notifying the Chief State Prosecutor for issuing the Decision in question.<sup>6</sup>

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- <sup>1</sup> See the Order in case KO01/09, of 7 June 2010, accessible in the following link: [https://gjk-ks.org/wp-content/uploads/vendimet/leter\\_drejtuar\\_krvetarit\\_te%20komunes\\_se\\_prizrenit.pdf](https://gjk-ks.org/wp-content/uploads/vendimet/leter_drejtuar_krvetarit_te%20komunes_se_prizrenit.pdf) and Order in case KO01/09, of 21 June 2010, accessible in 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 *Decision on Non-enforcement of Judgment in case KIO8/09*, of 14 November 2012, accessible in the following link: [https://gjk-ks.org/wp-content/uploads/vendimet/gjk\\_ki\\_08\\_09\\_vmshq.pdf](https://gjk-ks.org/wp-content/uploads/vendimet/gjk_ki_08_09_vmshq.pdf); and *Notification of the State Prosecutor on Non-enforcement of Judgment in case KIO8/09*, of 28 May 2019, accessible in the following link: [https://gjk-ks.org/wp-content/uploads/2021/08/KIO8-09\\_Njoftim-p%C3%ABr-moszbati-t%C3%AB-Aktgjkimit-t%C3%AB-Gjykat%C3%ABs-Kushtetuese\\_P.SH\\_.pdf](https://gjk-ks.org/wp-content/uploads/2021/08/KIO8-09_Njoftim-p%C3%ABr-moszbati-t%C3%AB-Aktgjkimit-t%C3%AB-Gjykat%C3%ABs-Kushtetuese_P.SH_.pdf).
- <sup>3</sup> the letter notification.mh 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 in the following link: [https://gjk-ks.org/wp-content/uploads/2021/08/KI112-12\\_Njoftim-perkitazi-me-moszbati-t%C3%AB-Aktgjkimit\\_P.SH\\_SHO.pdf](https://gjk-ks.org/wp-content/uploads/2021/08/KI112-12_Njoftim-perkitazi-me-moszbati-t%C3%AB-Aktgjkimit_P.SH_SHO.pdf).
- <sup>4</sup> See “*Updated Information regarding Judgment no. KI187-13*”, of 6 February 2015, accessible in the following link: [https://gjk-ks.org/wp-content/uploads/2021/08/informate\\_e\\_perditesuar\\_KI182\\_13\\_shq.pdf](https://gjk-ks.org/wp-content/uploads/2021/08/informate_e_perditesuar_KI182_13_shq.pdf) and letter “*Information on non-enforcement of Judgment KI187/13*”, of 6 February 2015 addressed to the Chief State Prosecutor, accessible in the following link: [https://gjk-ks.org/wp-content/uploads/2021/08/njoftimi\\_per\\_moszbati-t%C3%AB-Aktgjkimit\\_KI182\\_13\\_shq.pdf](https://gjk-ks.org/wp-content/uploads/2021/08/njoftimi_per_moszbati-t%C3%AB-Aktgjkimit_KI182_13_shq.pdf).
- <sup>5</sup> See *Decision on Non-Enforcement of Judgment in case KI56/09*, of 24 September 2021, accessible in the following link: [https://gjk-ks.org/wp-content/uploads/2021/09/ki56-09\\_VPM\\_shq.pdf](https://gjk-ks.org/wp-content/uploads/2021/09/ki56-09_VPM_shq.pdf); and *Information of the Chief State Prosecutor about Non-Enforcement of Judgment in case KI56/09*, of 24 September 2021, accessible in the following link: [https://gjk-ks.org/wp-content/uploads/2021/09/Informim-p%C3%ABr-mosp%C3%ABr-mbarim-t%C3%AB-Aktgjkimit\\_Aleksander-Lumezi\\_shq\\_.pdf](https://gjk-ks.org/wp-content/uploads/2021/09/Informim-p%C3%ABr-mosp%C3%ABr-mbarim-t%C3%AB-Aktgjkimit_Aleksander-Lumezi_shq_.pdf).
- <sup>6</sup> See *Decision on Non-enforcement of Judgment in case KI132/15*, of 24 September 2021, , accessible in the following link: [https://gjk-ks.org/wp-content/uploads/2021/09/ki132-15\\_VPM\\_shq.pdf](https://gjk-ks.org/wp-content/uploads/2021/09/ki132-15_VPM_shq.pdf) ; and *Information of the Chief State Prosecutor about Non-Enforcement of Judgment in case KI132/15*, of 24 September 2021, accessible in the following link: [https://gjk-ks.org/wp-content/uploads/2021/09/Informim-p%C3%ABr-mosp%C3%ABr-mbarim-t%C3%AB-Aktgjkimit\\_Aleksander-Lumezi\\_shq.pdf](https://gjk-ks.org/wp-content/uploads/2021/09/Informim-p%C3%ABr-mosp%C3%ABr-mbarim-t%C3%AB-Aktgjkimit_Aleksander-Lumezi_shq.pdf).

## **Judgment of the Court in case KI90/16**

8. In the case of Court KI90/16, the referral was submitted by *Branislav Jokic* (hereinafter: the applicant).
9. The applicant contested the non-enforcement of the Decision of the Kosovo Property Claims Commission [KKPK/D/R/230/2014], of 13 March 2014 (hereinafter: KPCC).
10. According to the facts of the case KI90/16, it turns out that the Municipality of Peja, by the Decision [no-463-449/97], of 26 May 1997, decided to recognize to the applicant the right of ownership in plot number 5351/7, on the surface area of 0.03,52 ha, CZ Peja.
11. By the group decision [KPCC/D/R/230/2014], of 13 March 2014, *the Kosovo Property Agency Commission* decided, among other things, that:

*“(a) The Applicant has proved that he is a property right holder Branislav Jokic, the owner of 1/1 of the property in question and was the owner of the demolished property on the day of the destruction of the residential property and the right to use the land on which he is located the latter, or he inherited the abovementioned ownership;*

*and ordered that:*

*b) Branislav Jokic exercises the right to possession of the said property;*

*c) The respondent, if any, and any other person occupying the property, vacate the property within 30 (thirty) days of the delivery of this order; and d) should the respondent or any other person occupying the property fail to comply with this order to vacate the claimed property within the time period stated, they shall be evicted from the property;*

*In addition, the Commission has issued a decision that:*

*a) In cases in which there is more than one owner to the claimed property, the above decision and order do not affect the rights of any respective co-owners.*

*b) The claim for compensation for damage or the loss of the right to use the claimed property.”*

12. On 14 May 2015, the Municipal Assembly of Peja, by Decision [no. 01-463-65203], declared its Decision [no. 463-499/97], of 26 May 1997, as an invalid act, according to which the disputed property was allocated to the applicant.
13. On 14 March 2016, KPCC, by the letter [Ref.00327/16], notified the applicant that it could not execute the Decision [KPCC/D/R/230/2014], of 13 March 2014, as a result of the Decision of the Municipal Assembly of Peja, of 14 May 2015.
14. The applicant, by the referral KI90/16, before the Court requested the constitutional review of the non-enforcement of the Decision [KPCC/D/R/230/2014], of 13 March 2014, of the KPCC, claiming a violation of the fundamental rights and freedoms guaranteed by Article 3 [Equality Before the Law], Article 31 [Right to Fair and Impartial Trial], Article 32 [Right to Legal Remedies], Article 46 [Protection of Property], Article 53 [Interpretation of Human Rights Provisions], and Article 54 [Judicial Protection of Rights] of the Constitution, in conjunction with Article 6, paragraph 1 (Right to a fair trial), Article 13 (Right to an effective remedy), Article 14 (Prohibition of discrimination), Article 1 of

Protocol no. 1 (Protection of property) of the European Convention on Human Rights (hereinafter: the ECHR).

15. On 5 December 2017, the Court decided to: (i) declare the referral admissible; (ii) to find a violation of the applicant's right, guaranteed by Article 31 of the Constitution in conjunction with Article 6.1 of the ECHR, Article 46 of the Constitution in conjunction with Article 1 of Protocol no. 1 of the ECHR, as well as Article 54 of the Constitution. In this conclusion, the Court came after finding that the non-enforcement of the final decision of the KPCC [no. KKPK/D/R/230/2014], of 13 March 2014, constituted a violation of Article 31 of the Constitution in conjunction with Article 6.1 of the ECHR. Further, the Court concluded that there has been a violation of Article 46 of the Constitution in conjunction with Article 1 of Protocol no. 1 of the ECHR, since as a result of the non-enforcement of the decision in question, the applicant was unjustly deprived of his property. Also, the Court found a violation of Article 54 of the Constitution and declared invalid Decision no. 01-463-65203, of 14 May 2015, of the Municipal Assembly of Peja.

16. The enacting clause of the Judgment of the Court in case KI90/16 was voted as follows:

*“The Constitutional Court, in accordance with Articles 113.7 of the Constitution, Articles 20 and 47 of the Law, and Rule 56 (1) of the Rules of Procedure, in the session held on 5 December 2017, unanimously:*

#### **DECIDES**

- 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 6.1 of the ECHR;*
  - III. TO HOLD that there has been a violation of Article 46 of the Constitution in conjunction with Article 1 of Protocol No. 1 of the ECHR;*
  - IV. TO HOLD that there has been a violation of Article 54 of the Constitution.*
  - V. TO DECLARE INVALID Decision No. 01-463-65203, of 14 May 2015 of the Municipal Assembly of Peja.*
  - VI. TO HOLD that Decision No. KKPK/D/R/230j2014 of Kosovo Property Claims Commission of 13 March 2014 should be enforced by the Kosovo Property Agency (KPA);*
  - VII. TO ORDER the Kosovo Property Agency (KPA), that in accordance with Rule 63 of the Rules of Procedure of the Court to submit information as soon as possible, but not later than 6 (six) months, to the Constitutional Court regarding the measures taken to implement the Judgment of this Court;*
  - VIII. TO NOTIFY this Decision to the parties;*
  - IX. TO PUBLISH this Decision in the Official Gazette, in accordance with Article 2004 of the Law;*
  - X. This decision is effective immediately*
17. On 21 December 2017, the Court notified the relevant parties about the issuance of the Court's Judgment KI90/16, as follows: (i) the applicant Mr. Branislav Jokic; (ii) KPCC of the KPA; as well as (iii) the Municipality of Peja.

#### **Proceedings before the Court after publication of Judgment in case KI90/16**

18. As stated above, the Court's Judgment in case KI90/16 was voted on 5 December 2017 and published on 21 December 2017.
19. On 20 June 2018, the Kosovo Property Comparison and Verification Agency of (hereinafter: KPCVA), notified the Court that it started the procedure for the implementation of the Judgment in case KI90/16, requesting the Municipality of Peja, through letter of 7 February 2008, to voluntarily vacate the property in question according to the Decision of the KPCC and remove the illegal structures. Since the Municipality of Peja had not vacated the property in question, the KPCVA issued "*the order for demolition in order to implement the decision [of the KPCC], through demolition if this legal remedy may be suitable.*"
20. On 4 March 2019, the Court received a letter from the applicant K190/16, requesting information regarding the actions taken by the authorities responsible for the enforcement of Judgment in case KI90/16.
21. On 18 October 2019, the Court addressed (i) the PAK; and (ii) the applicant, requesting information on whether the Judgment in case KI90/16 was fully implemented.
22. On 29 October 2019, the KPCVA, regarding the implementation of the Judgment in case KI90/16, notified the Court as follows: "*Regarding your request, please be informed that on 26/06/2019, the Agency implemented the decision of the commission no. KPCC/D/R/230/20 14, of 13 March 2014 and on 07/15/2019, Mr. Branislav Jokic has received the certificate for re-possession of the property. With this, the Agency's jurisdiction over this matter has ended.*"
23. On 11 August 2021, the Court addressed the applicant again, requesting him to inform the Court about the implementation of the Judgment KI90/16, attaching also the notification of the KPCVA, of 29 October 2019.
24. On 6 September 2021, the applicant, in his response to the Court, emphasized that "*In fact, the Municipality of Peja refuses to fully implement the obligations towards this case, in terms of the registration of the plot in the cadastral service in my name*". In this regard, he also attached the certificate for the cadastral unit in question, according to which the contested property was not registered in his name.
25. On 16 September 2021 or after more than three (3) years from the issuance of the Judgment in case KI90/16, the Court addressed the Municipality of Peja, with a request for information/confirmation regarding the implementation of the Judgment of the Constitutional Court of the Republic of Kosovo, in case KI90/16. Through this letter, the Court warned the Municipality of Peja that, based on Article 116 of the Constitution and Rule 66 of its Rules of Procedure, in the absence of confirmation of the full implementation of the relevant Judgment within the period of fifteen (15) days, the Court will undertake the measures established in its Rules of Procedure, including the Decision on Non-Enforcement and the Notification of the State Prosecutor. Finally, the Court emphasized that based on Article 116 of the Constitution, the decisions rendered by the Constitutional Court are binding on the judiciary and all persons and institutions of the Republic of Kosovo.
26. From the acknowledgment of receipt received through the mail services, it follows that the above-mentioned letter of the Court was received by the Municipality of Peja on 20

September 2021. However, despite the fact that the Court requested information/confirmation within a period of fifteen (15) days from of the receipt of the letter, until now, the Court has not received information/confirmation whether the Judgment in case KI90/16 has been fully implemented or not.

### **Court's assessment regarding the enforcement of Judgment in case KI90/16**

27. As explained above, through the letter addressed to the Municipality of Peja on 16 September 2021, based on Article 116 of the Constitution and Rule 66 of the Rules of Procedure, the Court warned of issuing the Decision on Non-Enforcement and notification of the State Prosecutor regarding the case of Court KI90/16, in the absence of confirmation of the full enforcement of the Court's Judgment.
28. On 18 July 2022, based on the assessment of all the documents before it, as presented above, the Court found that its judgment in case KI90/16 was not implemented. This is because, even after four (4) years this Judgment was rendered, its implementation has not been confirmed, despite the fact that by the Court's Judgment, the Decision [KKPK/D/R/230/2014] of the KPCCV was declared as final, binding and as such, *res judicata*.<sup>7</sup>
29. The aforementioned finding is based on the responses of the parties submitted to the Court, namely: (i) the applicant, who emphasized, among other things, that the Municipality of Peja has not taken the necessary actions to implement the Court's Judgment by rejecting the applicant to register the cadastral plot in his name; (ii) the KPCCV had emphasized that "*Mr. Branislav Jokic has accepted the certificate for the re-possession of the property. With this, the Agency's jurisdiction over this matter has ended*" as well as (iii) the lack of information/response from the Municipality of Peja regarding the full implementation of the Judgment in case KI90/16. The Court therefore notes that full non-implementation of the Court's Judgment in case KI90/16, has not been contested by the parties involved in this case due to the fact that the KPCCV emphasizes that the applicant has accepted the certificate for the re-possession of the property and its jurisdiction in this case ended there, while in relation to the case raised by the applicant for the registration in his name of the cadastral plot in the cadastral registers, the Municipality of Peja has not responded to the Court.
30. The Court acted in the same way in other cases cited above, in which it assessed that, contrary to Article 116 of the Constitution, its decisions were not implemented. In the letter addressed to acting Chief State Prosecutor, of 6 February 2015, regarding the case of the Court KI187/13, the Court, among other things, emphasized that despite the fact that since the establishment of the Court "*almost 99% of the decisions of the Constitutional Court have been implemented*", the Court "*being committed to follow up on the procedures for the execution of its decisions until Applicant's rights deriving from the Court's decision are fully exercised*", identifies the cases that have not yet been implemented by the relevant authorities, drawing attention to "*state institutions that, due to the competencies and constitutional obligations they have, provide mechanisms to implement its decisions, in full compliance with article 116.1 of the Constitution*".

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<sup>7</sup> A similar finding was made by the Court in paragraph 23 of the Decision on Non-Enforcement in case KO08/09, mentioned above; paragraph 27 of the *Decision on Non-Enforcement in case KI132/15*, mentioned above; as well as paragraph 27 of the Decision on Non-Non-Enforcement in case KI56/09, mentioned above



31. On the other hand, in the letter addressed to the Chief State Prosecutor, of 28 May 2019, regarding Court's case KI08/09 and the relevant notification for rendering the Decision on Non-Enforcement, among other things, the Court emphasized that "*the non-execution of the decisions of the Constitutional Court constitutes constitutional violation and is in conflict with the basic principles of the rule of law in a legal and democratic state*". The same principles were confirmed by the Court in the Decisions on Non-Enforcement of Judgments in cases KI56/09 and KI132/15, respectively.<sup>8</sup>
32. The Court also emphasizes that, based on the case law of the Court and the European Court of Human Rights (hereinafter: ECtHR), based on which, the Court according to Article 53 [Interpretation of Human Rights Provisions] of Constitution, interprets the fundamental rights and freedoms guaranteed by the Constitution, one of the fundamental aspects of the rule of law is the principle of legal certainty, which, among other things, requires that the final decisions of the courts must be implemented and not questioned.<sup>9</sup> Furthermore, the case law of the ECtHR, in a consistent manner establishes 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 in the legal order of the Republic of Kosovo based on Article 22 [Direct Applicability of International Agreements and Instruments] of the Constitution therein, would be "*illusory*" if the domestic legal systems would "*allow a final court decision to remain non-enforced to the detriment of a party*" and it would be "*unthinkable that Article 6 describes in detail the procedural guarantees of the parties - fair, public and fast procedures - without giving protection to the implementation of court decisions*".<sup>10</sup> Such situations would be in open contradiction with the principle of the rule of law which the contracting states have undertaken to respect based on the ECHR.<sup>11</sup>
33. The Court, moreover, recalls that the Constitution of the Republic of Kosovo in article 3 [Equality Before the Law] establishes that the Republic of Kosovo is a multi-ethnic society, consisting of Albanian and other communities, governed democratically with full respect for the rule of law through its legislative, executive and judicial institutions. Furthermore, the Constitution in Article 7 [Values], also establishes 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, property rights, environmental protection, social justice, pluralism, separation of state power and market economy. The rule of law is also an element that reflects common European heritage, as defined in the preamble of the ECHR and the Charter of Fundamental Rights

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<sup>8</sup> See the Decision on Non-Enforcement of the Court's Judgment in the case KI56/09, of 24 September 2021, paragraph 30, mentioned above; and the Decision on Non-Enforcement of the Judgment of the Court in case KI132/15, of 22 September 2021, paragraph 31, mentioned above.

<sup>9</sup> See, among others, ECtHR cases, *Guomundur Andri Astraosson v. Iceland*, application no. 23674/18, Judgment of the Grand Chamber of the ECtHR of 1 December 2020, paragraph 238; *Brumarescu 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 Grand Chamber of the ECtHR of 25 July 2013, paragraph 148

<sup>10</sup> See, among others, the ECtHR case *Romashov v. Ukraine*, application no. 67534/01, Judgment of ECtHR of 24 July 2004, paragraph 42.

<sup>11</sup> See the Decision on Non-Enforcement of the Court's Judgment in the case of KI6j09, of 24 September 2021, paragraph 29, mentioned above; and the Decision on Non-Enforcement of the Judgment of Court in case KI132/15, of 24 September 2021, paragraph 30, mentioned above.

of the European Union and essential objective reflected in the Statute of the Venice Commission.<sup>12</sup>

34. Taking into account the aforementioned principles and based on the documents submitted before it, the Court has concluded that the Court's Judgment in case KI90/16 has not been confirmed to be fully implemented by the responsible authorities of the Republic of Kosovo, in compliance with Article 116 of the Constitution and Rule 66 of the Rules of Procedure, the Court issues this Decision on Non-Enforcement in relation to the Court's case KI90/16. At the same time, the Court also notifies the State Prosecutor regarding non-implementation of its Judgment in case KI90/16.
35. Finally, it should be noted that beyond the finding of non-enforcement of Judgment, by the Decision on Non-Enforcement and the relevant Notification of the State Prosecutor, the Court has no competence to assess the responsibility for non-enforcement of a decision of the Court by the responsible authorities. Competence for such an assessment belongs to the State Prosecutor, based on the Criminal Code and the Criminal Procedure Code of the Republic of Kosovo.

### **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 18 July 2022, unanimously:

### **DECIDES**

- I. TO HOLD that the Judgment of the Constitutional Court of the Republic of Kosovo in case KI90/16, with Applicant *Branislav Jokic*, of 5 December 2017 **has not been enforced** 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 KI90/16;
- III. TO NOTIFY 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

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<sup>12</sup> See, among others: (i) Preamble of the ECHR; (ii) Preamble of the Charter of Fundamental Rights of the European Union; as well as (iii) the Statute of the Venice Commission.