



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

Prishtina, on 8 March 2024
Ref. no. VMSP 2410/24

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 3 February 2021

in

case no. KI86/18

Applicant

Slavica Đorđević

**Constitutional review of Decision CA. no. 2093/2017, of the Court of Appeals, of 29
January 2018**

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
Nexhmi Rexhepi, Judge, and
Enver Peci, 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 60 (Enforcement of Decisions) of the Rules of Procedure no. 01/2023 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 KI86/18 of 3 February 2021, with the applicant *Slavica Đorđević*, (hereinafter: the Judgment of the Court in case KI86/18), 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 60 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 KI86/18. 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 60 (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.

(9) The Judge Rapporteur on the referral for which the working group recommends the Court to take further actions in accordance with paragraph (8) of this Rule or the judge presiding over the working group shall draft the text of the draft Decision on non-enforcement mutatis mutandis to Rule 58 (Drafting the Text of the Decision).

(10) The Decision on non-enforcement shall be signed by the President on behalf of the Court.

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 conjunction with rule 60 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 60 of the Rules 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-enforcement of one decision, or the delay in providing information to the Court for measures taken, the Court may render a Decision, noting that its decision has not been enforced and to publish this position in the Official Gazette; and (iv) to notify the State Prosecutor about all decisions of the Court that have not been enforced.

6. Based on paragraph (8) of rule 60 of the Rules of Procedure, the Court, establishes a working group, which recommends to the Court to take further actions, in case of non-enforcement of the Court's decisions by the authorities and/or the obliged persons. 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-Enforcement and notifies the State Prosecutor.
7. In this context, the Court has taken 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 2021¹; (ii) in case KI08/09, of 17 December 2010, with the applicant *The Independent Union of Workers of IMK Steel Factory*, in Ferizaj (hereinafter: Court's case KI08/09), issuing a Decision on Non-Enforcement and notifying the State Prosecutor²; (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;³ (iv) in case KI187/13, of 1 April 2014, with the applicant *N. Jovanovic* (hereinafter: Court's 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;⁴ (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's case KI56/09), issuing a Decision on Non-Enforcement and notifying the Chief State Prosecutor about the issuance of the Decision in question;⁵ (vi) in case KI132/15, of 19 May 2016, with the applicant *The Monastery of Decani* (hereinafter: Court's case KI132/15), issuing Decision on Non-

¹ See the Order in case KO01/09, of 7 June 2010, accessible in the following link: <https://gjk-ks.org/wp-content/uploads/vendimet/leterdrejtuarkrvetaritte%20komunesseprizrenit.pdf> and Order in case KO01/09, of 21 June 2010, accessible in the following link: <https://gjk-ks.org/wp-content/uploads/vendimet/urdherrastikoo109.pdf>.

² See Decision on Non-enforcement of Judgment in case KI08/09, of 14 November 2012, accessible in the following link: <https://gjk-ks.org/wp-content/uploads/vendimet/gjkkio8ogvmspshq.pdf>; and Notification of the State Prosecutor on Non-enforcement of Judgment in case KI08/09, of 28 May 2019, accessible in the following link: <https://gjk-ks.org/wp-content/uploads/2021/08/KI08-09Nioftim-p%C3%ABr-moszbatiim-t%C3%AB-Aktgjykimit-t%C3%AB-Gjvkat%C3%ABs-KushtetueseP.SH.pdf>.

³ See the letter notification letter 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/KI112-12Nioftim-perkitazi-me-moszbatiim-e-AktgjykimitP.SHSHO.pdf>.

⁴ 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/informatee_perditesuarKI182_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_moszbatiim_e_aktgjykimit_KI187_13_shq.pdf.

⁵ 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/ki56-09VPMshq.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%ABrmarim-t%C3%AB-AktgjykimitAleksander-Lumezishq._pdf.

Enforcement and notifying the Chief State Prosecutor for issuing the Decision in question; and (vii) case KI90/16, of 5 December 2017, applicant *Branislav Jokić* (hereinafter: Court's case KI90/16) issuing a Decision on Non-Enforcement and notifying the Chief State Prosecutor about the issuance of the Decision in question.⁶

Judgment of the Court in case KI86/18

8. In the case of Court KI86/18, the referral was submitted by *Slavica Đorđević* (hereinafter: the applicant).
9. The applicant contested the constitutionality of the Decision [CA. no. 2093/2017], of 29 January 2018 of the Court of Appeals.
10. According to the facts of the case KI86/18, it turns out that through the Decision of the Housing and Property Claims Commission of 30 April 2005 (hereinafter: HPCC), it was confirmed that the applicant: (i) enjoys the right to use construction plot no. 65 C, part of cadastral plot no. 7140/1, on a surface area of 180 m² (hereinafter: contested property); and that (ii) the property in question must be returned to her in possession within a period of thirty (30) days from the finality of the HPCC Decision. This Decision of the HPCC was also upheld by the Appellate Panel of the HPCC.
11. Given that the property in question had not been vacated by the person who had usurped it, the applicant had turned to the Municipal Court in Prizren with a request that the subject property be returned to her for repossession. The Municipal Court in Prizren, by the Judgment [P. no. 462/10] of 21 December 2011, approved the request, ordering the respondent B.M. to vacate the occupied property and return it to its previous condition, removing all the works he has done on the property in question. The aforementioned judgment was upheld by the District Court by Judgment [Ac. no. 114/12] of 19 May 2012 and by the Supreme Court by Judgment [Rev. no. 247/2012] of 9 July 2013.
12. After the completion of the aforementioned proceedings for confirmation of ownership before the regular courts, the applicant submitted a request for enforcement of the Judgment [P. no. 462/10] of 21 December 2011 of the Basic Court in Prizren, a request that was approved by (i) the Basic Court in Prizren (hereinafter: the Basic Court) by the Decision [I. no. 1241/12] of 5 February 2013; and (ii) the Court of Appeals by the Decision [CA. no. 3817/2013] of 8 April 2013.
13. Regarding the enforcement of the Judgment [P. no. 462/10] of the Municipal Court, a construction company was assigned, which had determined an amount of 19,495.42 euro for the demolition of the floors that B.M. had constructed on the applicant's property, since the latter, according to the decisions of the regular courts, had been usurped in 1999. The applicant requested to be exempted from the payment of the enforcement costs, citing her severe financial situation and inability to pay in the amount of 19,495.42 euro. The Basic Court requested a legal opinion from the Supreme Court on how to act in the situation when the debtor does not pay the expenses, while the creditor does not have

⁶ See *Decision on Non-enforcement of Judgment in case KI90/16*, of 18 July 2022, accessible in the following link: https://gjk-ks.org/wp-content/uploads/2022/08/ki_90_16_vmosp_shq.pdf; and *Information of the Chief State Prosecutor about Non-Enforcement of Judgment in case KI90/16*, of 18 July 2022, accessible in the following link: <https://gjk-ks.org/decision/informim-per-mosperbarim-te-aktgijkimit-ne-rastin-ki90-16/>.

the financial ability to pay them. The Supreme Court, referring to Article 13 (The costs of enforcement) of Law no. 04/L-139 on the Enforcement Procedure (hereinafter: LEP), emphasized that the costs of the procedure related to the determination and commission of the enforcement are paid by the creditor in advance, respectively the applicant in the present case.

14. On 27 February 2017, the Basic Court, by Decision [I. no. 1241/12], based also on the legal opinion of the Supreme Court, obliges the applicant to pay the enforcement costs in advance, emphasizing that if the latter does not pay, then the Basic Court will suspend the procedure in this case. This Decision of the Basic Court was upheld by the Court of Appeals by the Decision [CA. no. 2093/2017] of 29 January 2018.
15. The applicant, through case KI86/18, turned to the Constitutional Court, contesting the last two decisions, namely that of the Basic Court [I. no. 1241/12] of 27 February 2017, and of the Court of Appeals [CA. no. 2093/2017] of 29 January 2018, related to the suspension of the enforcement procedure, claiming that the regular courts violated her rights guaranteed by Article 22 [Direct Applicability of International Agreements and Instruments]; Article 24 [Equality Before the Law]; Article 31 [Right to Fair and Impartial Trial]; Article 32 [Right to Legal Remedies]; Article 46 [Protection of Property] of the Constitution; as well as with the relevant articles of the ECHR, namely Article 6.1 (Right to a fair trial); Article 13 (Right to an effective remedy); Article 1 of Protocol no. 1 (Protection of property) of the ECHR; article 14 (Prohibition of discrimination), as well as with the relevant articles of the UDHR, respectively articles 2, 8, 10 and 17.
16. On 3 February 2021, the Court decided that: (i) the referral is admissible; (ii) Decision [CA.no.2093/2017] of 29 January 2018 of the Court of Appeals and Decision [I. no. 1241/12] of 27 February 2017 of the Basic Court, are not in compliance with articles 31, 32 and 54 of the Constitution in conjunction with Article 6.1 and 13 of the ECHR, as well as Article 46 of the Constitution in conjunction with Article 1 of Protocol no. 1 of the ECHR; and that (iii) the Decision of the HPCC, of 30 April 2005 and the Judgment [P. no. 462/10] of 21 December 2011 of the Municipal Court in Prizren, are final decisions and as such must be enforced by responsible public authorities.
17. The enacting clause of the Judgment of the Court in case KI86/18 was voted as follows:

“In accordance with Articles 113.7 and 116.1 of the Constitution, Article 20 of the Law, and Rule 59 (1) (a) of the Rules of Procedure in the session held on 3 February 2021, unanimously:

DECIDES

- I. TO DECLARE the Referral admissible;*
- II. TO HOLD that there has been a violation of Article 31, 32 and 54 of the Constitution, in conjunction with Article 6.1 and 13 of the ECHR;*
- III. TO HOLD that there has been a violation of Article 46 of the Constitution, in conjunction with Article 1 of the Protocol NO.1 of the ECHR;*

- IV. *TO HOLD that the Decision of HPCC, of 30 April 2005 and Judgment P. no. 462/10 of the Municipal Court of Prizren, of 21 December 2011, are final decisions and as such must be enforced by the responsible public authorities;*
- V. *TO REPEAL the Decision [CA.no.2093/2017J of the Court of Appeals, of 29 January 2018, and the Decision [l. no. 1241/12J of the Basic Court in Prizren, of 27 February 2017;*
- VI. *TO ORDER the Basic Court in Prizren, that in accordance with Rule 66 of the Rules of Procedure of the Court, to notify the Constitutional Court, as soon as possible, but not later than 3 (three) months, namely until 3 May 2021, on the measures taken to implement the Judgment of this Court;*
- VII. *TO NOTIFY this Decision to the parties;*
- VIII. *TO PUBLISH this Decision in the Official Gazette, in accordance with Article 20.4 of the Law;*
- IX. *This decision is effective immediately*

18. On 11 March 2021, the Court notified the relevant parties about the issuance of the Court's Judgment KI86/18, as follows: (i) the applicant; (ii) B.G., as a party to the proceedings before the regular courts; and (iii) the Court of Appeals. Whereas, on 1 April 2021, the Court (iv) for the issuance of the Court's Judgment KI86/18 also notified the Basic Court.

Proceedings before the Court after publication of Judgment in case KI86/18

19. As stated above, the Court's Judgment in case KI86/18 was voted on 3 February 2021 and published on 11 March 2021. The Basic Court was ordered to notify the Court by 3 May 2021 regarding the measures taken to implement the Judgment of this Court.
20. On 18 May 2021, the applicant addressed the Court with two documents submitted via e-mail, titled "*urgency*", in which case she states in the first that "*according to the information of the Constitutional Court of Kosovo, on 06.04.2021 through the post office of Kosovo OFFICIAL JUDGMENT KI86/18 of 03.02.2021 according to case CN.462/10 of 21.12.2011 was sent to the address of the Basic Court in Prizren. The Basic Court has confirmed the receipt of the judgment in question and returned the official acknowledgment of receipt to the Constitutional Court of Kosovo on 07.04.2021.*" While in the second letter, requesting "*the acknowledgment of receipt signed by the Basic Court in Prizren on 06.04.*" and adding, among other things, that "*according to the claim of the Basic Court in Prizren that the execution of Judgment KI86/18 of the Constitutional Court of the Republic of Kosovo, of 03.02.2021, cannot be executed without the original document [...]*".
21. Further and through the letter of 21 May 2021, the applicant addressed the Court emphasizing that "*The Basic Court in Prizren has already been served with the urgency to act in accordance with your judgment KI. no. 86/18, of 26 March 2021, but the Basic Court in Prizren has not taken any legal action in accordance with this.*" The applicant had also attached the "*submission of the enforcement creditor-urgency*" addressed to the "*Basic Court of Prizren for the Judge in charge of the case and the President of the Court*" of 22 March 2021.

22. By the letter of 1 March 2022, the applicant again informed the Court that the Judgment in the case KI86/18 has not been implemented, requesting the Court to take *“the necessary actions for the implementation of the judgment, and all this in terms of protection of the legal and constitutional order as well as the protection of her fundamental human rights”*.
23. On 22 June 2022, the Court addressed the Basic Court requesting that within fifteen (15) days notify the Court regarding the measures taken regarding the implementation of the Judgment in the case KI86/18, namely if it was fully implemented . The Court had not received information from the Basic Court regarding the implementation of the aforementioned Judgment of the Court.
24. On 8 June 2023, given that the Court, even after one year from the request dated 22 June 2022, still had not received the information requested regarding the implementation of the above-mentioned Judgment, it requested once again from the Basic Court that within the deadline of (7) seven days, from the day of receipt of the letter, submit the information on the actions taken for the implementation of Judgment KI86/18. The Court also notified the Basic Court that after the expiration of this period of seven (7) days, it may render a Decision on Non-Enforcement, in accordance with point (6) of rule 66 (Enforcement of Decisions) of the Rules of Procedure no. 01/2018 [applicable at that time], according to which it is provided that in the event of a failure to enforce a certain decision or a delay in giving information, the Constitutional Court *“may render a Decision on non-enforcement, in which it shall establish that the respective decision has not been enforced”*, and that in accordance with point (7) of the same rule: *“The Court shall notify the State Prosecutor of all decisions of the Court that have not been enforced”*. The same letter was sent for notification to the Chairman of the Kosovo Judicial Council of as well as to the applicant.
25. Through the letter of 15 June 2023, the applicant emphasizes again that despite the fact that many urgencies have been submitted to the Basic Court, Judgment KI86/18 has not yet been enforced.
26. On 19 June 2023, the Court received a letter from the Basic Court regarding the steps taken for the implementation of the Judgment in the case KI86/18 and attaching several documents from which it turns out that after the issuance of the Court’s Judgment, regarding the case of the applicant, three (3) proceedings were conducted, as follows.
 - (a) On 19 May 2022, the debtor F.M. submitted an objection to the applicant’s proposal for the enforcement of the final Judgment of the Municipal Court in Prizren [C. no. 462/10] of 21 December 2011, emphasizing that the latter is not enforceable, because the applicant does not have active legitimacy. On 1 November 2022, the Basic Court, by the Decision [CP. no. 1513/21], dismissed the objection of F.M. as impermissible, since this case was decided by preliminary decisions. Against the aforementioned Decision of the Basic Court F.M. filed an appeal with the Court of Appeals.
 - (b) On 20 May 2022, the Basic Court held a session regarding the implementation of the Court’s Judgment in case KI86/18, approving *“the proposal of the parties that this enforcement case be sent to the mediation procedure, for the possibility of reaching an agreement”*. After the mediation sessions had been scheduled and

postponed several times, in the session of 12 August 2022, it was determined that the parties did not reach an agreement, therefore, on 16 August 2022, the case was remanded to the Basic Court.

(c) On 27 September 2022, the applicant submitted a proposal to the Basic Court for the imposition of a security measure, requesting that the debtor F.M. be prohibited “*from using, possessing, performing construction works and other works*” on the disputed property. On 12 October 2022, the Basic Court by its Decision [CP. no. 1513/21] rejected the applicant’s proposal for imposing the security measure as impermissible, on the grounds that: “*[...] for the same case, and with the same subject of the request, the court has decided by its Decision E. no. 1241/12 of 05.09.2016, and has imposed the security measure against the enforcement debtor [F.M] from Prizren and that the aforementioned decision is still in force.*”

27. On 18 October 2023, the applicant informed the Court that Court’s Judgment KI86/18 had not yet been implemented by the Basic Court. On the other hand, the case related to the aforementioned proceedings initiated by F.M., namely the appeal to the Court of Appeals against the Decision [CP. no. 1513/21] of 1 November 2022, through which it was emphasized that the Decision [C. no. 462/10] of 21 December 2011 of the Municipal Court in Prizren, was a final and enforceable decision, is still pending review. According to her, several times the President of the Court of Appeals was requested that the case be resolved urgently, but without success. She also requested the Court to order the Court of Appeals to resolve her case without delay.
28. On 2 September 2019, the applicant also filed a lawsuit against the respondent, namely the interested party F.M., [B.M.’s son] with the Basic Court for compensation of damage in the amount of 334,250 (three hundred and thirty-four thousand) euro, as a result of the usurpation of the disputed property, proposing the imposition of the security measure. In this regard, the regular courts have rendered a number of procedural decisions related to the non-payment of the court fee, and as a result, her lawsuit was considered withdrawn. The final decision in these proceedings is that of the Supreme Court, namely the Judgment [Rev. no. 170/2021] of 19 October 2021, and which on 16 June 2022, was contested before the Constitutional Court, in the case registered as KI84/22.

Court’s assessment regarding the enforcement of Judgment in case KI86/18

29. As explained above, through the letter addressed to the Basic Court, based on article 116 of the Constitution and rule 66 of the Rules of Procedure no. 01/2018 [applicable at that time], the Court notified about rendering the Decision on Non-Enforcement and notification of the State Prosecutor regarding the case of Court KI86/18, in the absence of confirmation of the full enforcement of the Court’s Judgment.
30. On 13 February 2024, based on the assessment of all the documents before it, as presented above, and after the recommendation of the Court’s Working Group to take further actions in case KI86/18, in accordance with paragraph (6) and (7) of rule 60 of the Rules of Procedure, the Court unanimously found that its Judgment in case KI86/18, has not been enforced. This is because, even after more than two (2) years from rendering this Judgment, its implementation has not been confirmed, despite the fact that the Court had concluded that the Decision of the HPCC of 30 April 2005 and Judgment [P. no.

462/10] of 21 December 2011 of the Municipal Court in Prizren upheld by the District Court through Judgment [Ac. no. 114/12] of 19 May 2012 and by the Supreme Court through Judgment [Rev. no. 247/2012] of 9 July 2013, are final decisions and as such must be enforced by the responsible public authorities.

31. The aforementioned finding is based on the responses of the parties submitted to the Court, namely: (i) the applicant, who through several letters addressed to the Court has emphasized, among other things, that the Basic Court has not taken the necessary actions to implement the Court's Judgment in case KI86/18; and (ii) the Basic Court has notified the Court of some procedural actions taken in relation to the case in question but has not confirmed the implementation of the Court's Judgment in case KI86/18, namely the enforcement of the Decision of the HPCC of 30 April 2005 and Judgment [P. no. 462/10] of 21 December 2011 of the Municipal Court in Prizren,
32. 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 have not been enforced. 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 the applicants' 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*".
33. On the other hand, in the letter addressed to the Chief State Prosecutor, of 28 May 2019, regarding Court's case KIO8/09 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 contrary to 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, KI132/15 and KI90/16, respectively.⁷
34. The Court also emphasizes that, based on the case law of the Court and of 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.⁸ 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,

⁷ 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.

⁸ 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

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*”.⁹ 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.¹⁰

35. 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 of the European Union and essential objective reflected in the Statute of the Venice Commission.¹¹
36. 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 KI86/18 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 renders this Decision on Non-Enforcement in relation to the Court’s case KI86/18. At the same time, the Court also notifies the State Prosecutor regarding non-implementation of its Judgment in case KI86/18.
37. The Court also clarifies that the proceedings stemming from the lawsuit for compensation of damage filed on 2 September 2019 with the Basic Court in Prizren and which are contested before the Court in case KI84/22, are not directly related to the implementation of the Judgment of the Court in case KI86/18 and consequently, the finding of the Court that its Judgment in case KI86/18 has not been enforced, does not prejudice the decision-making of the Court in case KI84/22.
38. 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.

⁹ See, among others, the ECtHR case *Romashov v. Ukraine*, application no. 67534/01, Judgment of ECtHR of 24 July 2004, paragraph 42.

¹⁰ See the Decision on Non-Enforcement of the Court’s Judgment in case KI56/09, 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; and *Decision on Non-Enforcement of Judgment in case KI90/16* of 18 July 2022, paragraph 32, mentioned above.

¹¹ 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.

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 60 of the Rules of Procedure no. 01/2023 of the Constitutional Court of the Republic of Kosovo, on 13 February 2024, unanimously:

DECIDES

- I. TO HOLD that the Judgment of the Constitutional Court of the Republic of Kosovo in case KI86/18, with Applicant *Slavica Dordević* 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 KI86/18;
- 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 60 (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.