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Non-implementation of Constitutional Court decisions



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ABOUT KLI
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List of abbreviations

PAK – Privatisation Agency of Kosovo
KPA – Kosovo Property Agency
CCJE – Consultative Council of European Judges
ECtHR – European Court of Human Rights
KLI – Kosovo Law Institute
ECHR – European Convention on Human Rights

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1. Executive summary

Decisions of the Constitutional Court are final and binding on all institutions and persons in the Republic of Kosovo. However, practice has shown that a Constitutional Court decision does not always result in implementation. In certain cases, citizens have won their cases before the Constitutional Court but have continued to wait for years for the decision to be implemented. In other cases, public institutions have failed to take the action required by the Court.

This problem extends beyond the case of any particular individual. If an institution can choose whether or not to implement a Constitutional Court decision, the authority of the Constitution itself is called into question. Decisions of this Court are not recommendations, just as decisions of the ordinary courts are not recommendations. These decisions definitively establish what the Constitution requires, and institutions have no discretion to disregard the obligations arising from them.

The analysis of the cases examined in this report shows that non-implementation is not merely a theoretical problem. In some cases, the Constitutional Court has established that its judgments have not been implemented and has also notified the State Prosecutor. In other cases, implementation has been delayed or the obligations established by the Court have not been fully discharged. The consequences are borne by citizens and by the constitutional order itself. This weakens legal certainty, institutional accountability and confidence that a final decision will have practical effect.

The problem is compounded by an ambiguity in criminal legislation. The Criminal Code penalises the non-execution of court decisions but does not expressly mention the non-implementation of Constitutional Court decisions. Since the Constitutional Court has a distinct status and is not part of the ordinary court system, this creates uncertainty concerning the criminal liability of persons who intentionally refuse to implement its decisions.

The citizens' legislative initiative to amend and supplement the Criminal Code seeks to address precisely this gap. Its purpose is not to turn every delay in implementing a decision into a criminal offence. There may be cases in which implementation requires time or preparatory action, or where objective impossibility exists. Criminal liability should be confined to cases in which the responsible person has the legal obligation, competence and actual ability to implement the decision but intentionally fails to do so without lawful justification.

International standards do not require the criminalisation of every instance of non-implementation. They require effective mechanisms and accountability appropriate to the circumstances, including disciplinary, civil or criminal measures. Criminal law must remain a last resort and be used only where necessary and proportionate.

The proposal of this report is therefore straightforward. Constitutional Court decisions must be implemented, and intentional and unjustified refusal to implement them must entail clearly defined legal liability.

2. Purpose and rationale of the legislative initiative

The citizens' legislative initiative to amend and supplement the Criminal Code seeks to establish criminal liability for the intentional non-implementation of Constitutional Court decisions by those responsible for their implementation. The need for this intervention stems from the importance of these decisions to the functioning of the constitutional order and the democratic operation of constitutional institutions. Constitutional Court decisions are final and binding, and their implementation cannot depend on the will of the institution or person to whom they are addressed.

States with functioning democracies and stable governance have moved beyond the threat of criminal punishment as a means of securing the implementation of constitutional court decisions. In most consolidated democracies, the President, Prime Minister, Parliament and other public institutions respect the authority of the Constitutional Court, developing a political culture in which its decisions are implemented.

In Kosovo, a culture of respect for Constitutional Court decisions has not developed since the declaration of independence. Particularly in recent years, political majorities taking power through elections have set limits to their power that extend beyond the Constitution and constitutional jurisprudence. Democracy functions only when election winners accept that even power obtained through democratic elections has limits. When this good faith is lost, the state is compelled to begin writing into the Criminal Code what, in a consolidated democracy, should not need to be written.

The criminal legislation in force does not expressly address the non-implementation of Constitutional Court decisions. Article 394 of the Criminal Code establishes criminal liability for the non-execution of court decisions but does not encompass decisions of the Constitutional Court, which is not part of the ordinary court system. In this respect, there is a gap in the existing criminal law framework, as it does not expressly establish criminal liability for responsible persons who intentionally refuse or fail to implement Constitutional Court decisions.

The initiative does not seek to penalise every delay or objective difficulty in implementation. Criminal liability is intended for cases in which non-implementation is intentional and unjustified, and the responsible person has the legal obligation, competence and actual ability to implement the decision. Liability would thus be individualised and applied only where there is refusal or deliberate evasion of a constitutional obligation.

In essence, the initiative does not seek criminal punishment as an end in itself, but to guarantee the effective implementation of Constitutional Court decisions and protect their authority. Clearly defining criminal liability is intended to prevent situations in which the implementation of a constitutional decision is treated as a matter of institutional choice. The proposed amendment therefore seeks to strengthen constitutional supremacy, the rule of law, institutional accountability and legal certainty.

2.1. The right to a citizens' legislative initiative

Citizens' right to initiate legislation is directly guaranteed by the Constitution of the Republic of Kosovo. Article 79 provides that, alongside the President, Government and members of the Assembly, at least ten thousand citizens may also initiate proposals for legislation, in the manner prescribed by law.

This right is given effect by the Law on Legislative Initiatives[1], which establishes the rules and procedures for its exercise. Under Article 5 of this Law, at least 10,000 citizens eligible to vote may undertake a legislative initiative, enabling citizens to propose amendments or supplements to legislation directly through a legally prescribed procedure.

Article 70 of the Rules of Procedure of the Assembly of the Republic of Kosovo[2] also recognises the right of at least 10,000 citizens to submit a draft law to the Assembly. The citizens' legislative initiative to amend and supplement the Criminal Code therefore rests on a clear constitutional, legal and procedural basis through which citizens participate directly in the legislative process.

2.2. Purpose of the document and the problem to be addressed

This document analyses the non-implementation of Constitutional Court decisions and the need to establish a clear mechanism of criminal liability for cases in which responsible persons intentionally fail to implement them. To this end, it examines the existing legal framework, the record of implementation of Constitutional Court decisions and the reasons justifying amendments and supplements to the Criminal Code.

The problem to be addressed is that, despite the final and binding nature of Constitutional Court decisions, instances of non-implementation or considerable delays in implementation have been identified in practice. The absence of effective consequences for those responsible risks making compliance with Constitutional Court decisions dependent on institutional will rather than the constitutional obligation to implement them.

At the same time, the Criminal Code penalises the non-execution of court decisions but does not expressly establish criminal liability for the non-implementation of Constitutional Court decisions. This is particularly relevant given the Constitutional Court's distinct constitutional status outside the ordinary court system. Consequently, existing legislation does not establish criminal liability for cases in which responsible persons intentionally refuse or fail to implement Constitutional Court decisions.

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[1] Law No. 04/L-025 on Legislative Initiatives, Articles 1, 2 and 5, Official Gazette of the Republic of Kosovo, No. 23, 26 October 2011.

[2] Assembly of the Republic of Kosovo, Rules of Procedure of the Assembly of the Republic of Kosovo, Article 70, paragraph 1, subparagraph 1.4.

The document seeks to substantiate the need to address this issue through a clear and foreseeable criminal provision. Criminal liability is not intended for every delay or objective impossibility in implementation, but for intentional and unjustified non-implementation where the responsible person has the legal obligation, competence and actual ability to implement the decision. This is intended to strengthen the effective implementation of Constitutional Court decisions and, through them, respect for the Constitution and the rule of law.

3. Legal force of Constitutional Court decisions and consequences of non-implementation

The legal force of Constitutional Court decisions derives directly from the Constitution of the Republic of Kosovo. Article 116 establishes that Constitutional Court decisions are binding on the judiciary and all persons and institutions of the Republic of Kosovo. The Constitution also provides that Court decisions are published in the Official Gazette, while the repeal of a law, act or action takes effect on the date of publication of the decision, unless the Court determines otherwise.

The Law on the Constitutional Court further specifies the legal effect of decisions. Under Article 20, Court decisions must be in writing and reasoned, are served on the parties ex officio and are published in the Official Gazette. A decision enters into force on the date of publication unless the Constitutional Court determines otherwise. These provisions make clear that implementing Constitutional Court decisions is a legal obligation, rather than a matter of choice for institutions or responsible persons.

Non-implementation of Constitutional Court decisions undermines the Court's authority, constitutional supremacy, the rule of law and legal certainty. However, the existing criminal law framework does not expressly establish criminal liability for the intentional non-implementation of these decisions. The legislative initiative therefore seeks to ensure that clearly defined criminal liability attaches to cases in which a responsible person, despite having the obligation and ability to implement a decision, intentionally fails to do so without justifiable grounds.

3.1. The Constitutional Court's role in the constitutional order

The Constitutional Court plays a central role in protecting the constitutional order of the Republic of Kosovo. Under Article 112 of the Constitution[3], it is the final authority for interpreting the Constitution and assessing the compatibility of laws with the Constitution, and is fully independent in performing its responsibilities.[1] Through this competence, the Court guarantees the supremacy of the Constitution over other legal acts and exercises final review

[3] Constitution of the Republic of Kosovo, paragraphs 1 and 2.

of their constitutionality. As a result of this constitutional position, its decisions constitute the final institutional and legal determination of the constitutional matters submitted for its review.

However, the Court's role as the final authority does not mean that it alone interprets the Constitution. Public institutions interpret and apply the Constitution in the day-to-day exercise of their powers. The distinction is that the Constitutional Court has the final institutional say on the meaning and application of the Constitution when a constitutional matter is brought before it. The interpretation given by the Court in a final decision therefore cannot be replaced or reviewed by another state institution.

In a democratic constitutional order, the Constitutional Court's role extends beyond resolving a specific legal dispute. It safeguards the limits on the exercise of power, ensuring that no institution or political majority exercises public authority beyond the limits established by the Constitution. In this sense, the Court's authority is one of the mechanisms through which constitutional supremacy is transformed from a formal principle into a real constraint on power. Compliance with its decisions therefore concerns not only the authority of the Court as an institution, but respect for the constitutional order itself and the principle that all public power derives from the Constitution and is exercised within its limits.

3.2. The binding nature of decisions under the Constitution

The binding nature of Constitutional Court decisions derives directly from the Constitution. Through its decisions, the Court provides the final interpretation of constitutional norms and determines how public institutions must understand and apply them. In this sense, Constitutional Court judgments are equivalent in legal force to the constitutional norm, since their content determines the final and binding meaning of the Constitution in the matter under review.

This legal effect means that institutions have no discretion to decide whether or not to fulfil the obligations arising from a Constitutional Court judgment. When the Court finds a constitutional violation and imposes a specific obligation on an institution, inaction or refusal to fulfil that obligation constitutes not merely a failure to implement a judicial decision, but a breach of the constitutional obligation itself. The binding nature of judgments is therefore part of the operation of the principle of constitutional supremacy.

Accordingly, respect for the Constitution and the implementation of Constitutional Court judgments are inseparable. If an institution could refuse to implement the final interpretation of the Constitution without consequences, constitutional supremacy itself would lose its practical effect. It is precisely for this reason that intentional non-implementation of Constitutional Court judgments must be understood not only as disregard for the Court's authority, but as an infringement of the constitutional order it is mandated to protect.

3.3. The existing criminal law framework and the legislative gap

Article 394 of Criminal Code No. 06/L-074 of the Republic of Kosovo criminalises the non-execution of judicial decisions as a distinct criminal offence. Under this Article:

> 1. An official person or responsible person who refuses to execute a final order, decision or judgment of any court of the Republic of Kosovo, or who fails to execute a decision within the statutory time limit or the time limit set by the decision, shall be punished by a fine or imprisonment of up to two (2) years.
> 2. Where the criminal offence under paragraph 1 of this Article causes a serious violation of human rights or substantial material damage, the perpetrator shall be punished by imprisonment of six (6) months to five (5) years.
> 3. Where the perpetrator of the criminal offence under paragraph 1 of this Article executes the final court decision, prosecution shall not be initiated.

Although, in defining the elements of the offence, this Article refers to "any court of the Republic of Kosovo", that phrase does not encompass judgments of the Constitutional Court of the Republic of Kosovo. Although the Constitutional Court bears the name "Court", it is not, in fact, an ordinary court.

This distinction is particularly clear in Article 4 of the Constitution of the Republic of Kosovo, which defines the form of government and the separation of powers. Paragraph 5 states that "The judicial power is unique, independent and is exercised by courts". This paragraph does not include the Constitutional Court, which is addressed in the following paragraph: "The Constitutional Court is an independent organ for the protection of constitutionality and makes the final interpretation of the Constitution". The ordinary courts are governed by Law No. 06/L-054 on Courts, whereas the Constitutional Court is governed by Law No. 03/L-121 on the Constitutional Court.

Thus, this criminal provision encompasses all judicial decisions of the ordinary judiciary, but the gap lies in its failure to cover Constitutional Court judgments.

4. Non-implementation of Constitutional Court decisions in Kosovo

The findings examined identify 10 cases in which the implementation of Constitutional Court judgments has involved problems, delays or institutional inaction. These cases differ in nature and concern property rights, employment relations and salaries, the right to a fair trial and effective judicial protection, citizens' participation in decision-making, the rights of non-majority communities, and the constitutional functioning of the Assembly.

The institutions subject to these obligations include the Government, the Assembly of Kosovo, the ordinary courts, the Privatisation Agency of Kosovo/Kosovo Property Agency and municipalities. In the case concerning the constitution of the Assembly, obligations were also addressed directly to members of the Assembly and the Chair of the Constitutive Session.

Particularly concerning is the fact that implementation problems are not confined to an isolated institution or period, but extend across years and different levels of government. In some cases, the Court has also issued Resolutions on Non-Implementation, while in others it has notified the State Prosecutor.

4.4.1 K186/18 – Slavica Dordevic

Case KI86/18 was initiated by Slavica Đorđević, who challenged ordinary court decisions concerning the enforcement of a final decision restoring possession of a property in Prizren. On 3 February 2021, the Constitutional Court found violations of her constitutional rights and established that the 2005 decision of the Housing and Property Claims Commission and the 2011 judgment of the Municipal Court in Prizren were final decisions that the responsible public authorities were required to enforce.[4] The Court ordered the Basic Court in Prizren to notify it of the implementation measures taken by 3 May 2021.

However, implementation of the judgment was not confirmed. Following repeated requests for information and after more than two years had elapsed, on 13 February 2024 the Constitutional Court unanimously found that judgment KI86/18 had not been implemented. It therefore issued a Resolution on Non-Implementation[5], ordered its publication and decided to notify the State Prosecutor of the failure to implement the decision.[6]

4.4.2 KI08/09 – Independent Trade Union of the Employees of the IMK Steel Factory in Ferizaj

Case KI08/09 was initiated by the Independent Trade Union of the Employees of the IMK Steel Factory in Ferizaj concerning the non-implementation of a 2002 judgment of the Municipal Court in Ferizaj, which had recognised employment rights and compensation for unpaid salaries for 572 employees. On 17 December 2010, the Constitutional Court found a violation of the right to a fair and effective trial, holding that a final judicial decision could not remain unimplemented.[7] It established that the final decision of the Municipal Court had to be enforced by the competent bodies, particularly the Government of Kosovo and the Privatisation Agency of Kosovo (PAK).

However, the judgment was not implemented. Following requests for information addressed to the responsible institutions and the absence of enforcement, on 18 October 2012 the

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[4] Constitutional Court of the Republic of Kosovo, Judgment in case KI86/18, Slavica Đorđević, 3 February 2021, (last accessed 31 August 2026: https://api.webgjk-ks.org/Custom/ki-_86_18_agj_shq.pdf)

[5] Constitutional Court of the Republic of Kosovo, Resolution on Non-Implementation in case KI86/18, Slavica Đorđević, 13 February 2024, (last accessed 31 August 2026: https://api.webgjk-ks.org/Custom/ki_86_18_vmsp_shq.pdf).

[6] Constitutional Court of the Republic of Kosovo, Notification to the Chief State Prosecutor concerning non-implementation of the judgment in case KI86/18, Slavica Đorđević, 8 March 2024, (last accessed 31 August 2026: https://api.webgjk-ks.org/Custom/ki_86_18_vmsp_shq.pdf)

[7] Constitutional Court of the Republic of Kosovo, Judgment in case KI08/09, Independent Trade Union of the Employees of the IMK Steel Factory in Ferizaj, 17 December 2010, (last accessed 31 August 2026: https://api.webgjk-ks.org/Custom/gjk_ki_08_09_shq.pdf)

Constitutional Court issued a Decision on Non-Implementation[8], finding that the Government and PAK had failed to enforce the judgment. Non-implementation continued in subsequent years and, on 28 May 2019, the Court notified the Chief State Prosecutor, emphasising that non-execution of its decisions constituted a constitutional violation and requesting the necessary action within the Prosecutor's powers.[9]

4.4.3 KI90/16 – Branislav Jokić

Case KI90/16 was initiated by Branislav Jokić because of the failure to implement a 2014 decision of the Kosovo Property Claims Commission recognising his right to possession of a property in Peja. On 5 December 2017, the Constitutional Court found that failure to implement this final decision had violated the right to a fair trial, the right to property and the judicial protection of rights.[10] The Court declared invalid the decision of the Municipal Assembly of Peja that had interfered with the property right and established that the Commission's decision had to be enforced, requesting notification within six months of the measures taken to implement the judgment.

Although repossession of the property was confirmed in 2019, Jokić informed the Court that the Municipality of Peja had not fully implemented the judgment because the property had not been registered in his name in the cadastre. Following requests addressed to the Municipality and the absence of confirmation of full implementation, on 18 July 2022 the Constitutional Court unanimously found that, even after four years, the judgment had not been fully implemented and issued a Resolution on Non-Implementation.[11] The Court also notified the State Prosecutor, emphasising that further action fell to the Prosecutor's Office in accordance with its statutory powers.[12]

4.4.4 KI112/12 – Adem Meta

Case KI112/12 was initiated by Adem Meta, who sought to exercise his right to reinstatement at work and secure implementation of the Independent Oversight Board's decision after the ordinary courts had refused to enforce the part concerning his reinstatement. On 5 July 2013, the Constitutional Court found violations of Articles 31, 32 and 54 of the Constitution, in

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[8] Constitutional Court of the Republic of Kosovo, Decision on Non-Implementation in case KI08/09, Independent Trade Union of the Employees of the IMK Steel Factory in Ferizaj, 14 November 2012, (last accessed 31 August 2026: https://api.webgjk-ks.org/Custom/gjk_ki_08_09_vmsp_shq.pdf)

[9] Constitutional Court of the Republic of Kosovo, Notification to the Chief State Prosecutor concerning non-implementation of the judgment in case KI08/09, 28 May 2019, (last accessed 31 August 2026: https://gjk-ks.org/wp-content/uploads/2021/08/KI08-09_Njoftim-p%C3%ABr-moszbatim-t%C3%AB-Aktgjykimit-t%C3%AB-Gjykat%C3%ABs-Kushtetuese_P.SH_.pdf).

[10] Official Gazette of the Republic of Kosovo, Judgment in case KI90/16, Branislav Jokić, 5 December 2017, published on 28 December 2017, (last accessed 31 August 2026: https://gzk.rks-gov.net/ActDetail.aspx?ActID=15773).

[11] Constitutional Court of the Republic of Kosovo, Resolution on Non-Implementation in case KI90/16, Branislav Jokić, 18 July 2022, (last accessed 31 August 2026: https://api.webgjk-ks.org/Custom/ki_90_16_vmsp_shq.pdf)

[12] Constitutional Court of the Republic of Kosovo, Notification to the Chief State Prosecutor concerning non-implementation of the judgment in case KI90/16, Branislav Jokić, 2 August 2022, (last accessed 31 August 2026: https://api.webgjk-ks.org/Custom/KI90_16_Njoftimi-p%C3%ABr-Kryeprokurorin_shq.pdf).

conjunction with Articles 6 and 13 of the ECHR.[13] It remitted the decision of the District Court in Mitrovica for reconsideration and ordered the Basic Court in Mitrovica, Skenderaj Branch, to reconsider the matter in accordance with the judgment and notify the Constitutional Court of the implementation measures taken.

In this case, the Constitutional Court did not issue a separate Resolution on Non-Implementation. However, having received no response from the Basic Court in Mitrovica concerning the steps taken to implement the judgment, on 17 April 2014 it requested that court's President to provide information on implementation within 15 days. On the same day, the Constitutional Court also notified the Chief State Prosecutor[14] of the non-implementation of judgment KI112/12, forwarding the letter addressed to the Basic Court.

4.4.5 KI187/13 – N. Jovanovic

Case KI187/13 was initiated by N. Jovanović because of the failure to implement final decisions recognising her ownership of a property in Prishtina and ordering the person occupying it to vacate it. On 1 April 2014, the Constitutional Court found violations of Articles 31, 46 and 54 of the Constitution, in conjunction with Article 6.1 of the ECHR and Article 1 of Protocol No. 1 to the ECHR.[15] The Court ordered the Kosovo Property Agency (KPA) to enforce the Kosovo Property Claims Commission's decision of 22 June 2011 and to inform the Court within three months of the measures taken.

However, the judgment was not implemented within the deadline, and KPA argued that a lack of financial resources prevented the demolition of illegal structures on the property. On 6 February 2015, the Court found no indication that the judgment had been enforced and notified the Acting Chief State Prosecutor of the non-implementation of judgment KI187/13. In its notification, the Court emphasised that refusal to implement its decisions constituted a violation of Article 116 of the Constitution and also referred to the criminal provision then in force on the non-execution of judicial decisions, inviting the State Prosecutor to take appropriate action against those responsible for non-implementation.[16]

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[13] Constitutional Court of the Republic of Kosovo, Judgment in case KI112/12, Adem Meta, 5 July 2013, (last accessed 31 August 2026: https://api.webgjk-ks.org/Custom/KI112-12_Aktgjykim_SHQ.pdf).
[14] Constitutional Court of the Republic of Kosovo, Notification concerning non-implementation of the judgment in case KI112/12, Adem Meta, 17 April 2014, (last accessed 31 August 2026: https://api.webgjk-ks.org/Custom/KI112-12_Njoftim-perkitazi-me-moszbatimin-e-Aktgjykimit_P.SH_SHQ.pdf).
[15] Constitutional Court of the Republic of Kosovo, Judgment in case KI187/13, N. Jovanović, 16 April 2014, (last accessed 31 August 2026: https://api.webgjk-ks.org/Custom/gjkk_ki_187_13_shq.pdf).
[16] Constitutional Court of the Republic of Kosovo, Information to the Acting Chief State Prosecutor concerning non-implementation of the judgment in case KI187/13, N. Jovanović, 6 February 2015, (last accessed 31 August 2026: https://api.webgjk-ks.org/Custom/njoftimi_p%C3%ABr_moszbatimin_e_aktgjykimit_KI187_13_shq.pdf).

4.4.6 KI56/09 – Fadil Hoxha and others

Case KI56/09 was initiated by Fadil Hoxha and 59 other residents of Prizren, who challenged the decision of the Municipal Assembly of Prizren to amend the Urban Plan for the Jaglenica neighbourhood, now Dardania. On 22 September 2010, the Constitutional Court found a violation of Article 52(2) of the Constitution[17] because the amendment had been adopted without public discussion or any other form of public participation, denying residents the opportunity to be heard on a matter affecting their living environment. The Court requested the Municipal Assembly of Prizren to notify it within six months of the measures taken to implement the judgment.

However, although the Municipality had halted construction on the disputed building, the judgment was not fully implemented. After more than ten years and repeated requests for information, on 22 September 2021 the Constitutional Court unanimously found that judgment KI56/09 had not been implemented, as the responsible authorities had failed to take the necessary measures for its full implementation.[18] The Court therefore issued a Resolution on Non-Implementation and decided to notify the State Prosecutor.[19]

4.4.7 - KO 01/09 - Qemajl Kurtishi

Case KO01/09 was initiated by Qemajl Kurtishi, in his capacity as Deputy Chairperson for Communities of the Municipal Assembly of Prizren, who challenged Article 7 of the Statute of the Municipality of Prizren concerning the municipal emblem. On 18 March 2010, the Constitutional Court found that the rights of non-majority communities to preserve, maintain and promote their identity had been violated and that Article 7 of the Statute was incompatible with the Constitution, particularly Articles 3, 7.1, 58 and 59.[20] The Court ordered the Municipality of Prizren, within three months of service of the judgment, to amend the Statute and emblem to bring them into conformity with the Constitution and ensure that non-majority communities were not excluded.

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[17] Constitutional Court of the Republic of Kosovo, Judgment in case KI56/09, Fadil Hoxha and 59 Others v. the Municipal Assembly of Prizren, 22 December 2010, (last accessed 31 August 2026: https://api.webgjk-ks.org/Custom/gjk_56_09_shq.pdf).

[18] . Constitutional Court of the Republic of Kosovo, Resolution on Non-Implementation in case KI56/09, Fadil Hoxha and 59 others, 24 September 2021, (last accessed 31 August 2026: https://api.webgjk-ks.org/Custom/ki56-09_VPM_shq.pdf).

[19] Constitutional Court of the Republic of Kosovo, Information to the Chief State Prosecutor concerning non-implementation of the judgment in case KI56/09, Fadil Hoxha and 59 others, 24 September 2021, (last accessed 31 August 2026: https://api.webgjk-ks.org/Custom/Informim-p%C3%ABr-mosp%C3%ABrmbarim-t%C3%AB-Aktgjykimit_Aleksander-Lumezi_shq.pdf).

[20] Constitutional Court of the Republic of Kosovo, Judgment in case KO01/09, Qemajl Kurtishi and the Municipal Assembly of Prizren, 18 March 2010, (last accessed 31 August 2026: https://api.webgjk-ks.org/Custom/ko_01_09_vendimi_al.pdf).

Before this deadline expired, the Court reminded the Municipality that the deadline for amending the Statute and emblem was 18 June 2010[21] and requested information on the steps taken. The Municipality of Prizren acknowledged its responsibility for implementation and requested an additional 60 days, reporting that it had taken preparatory measures. Taking this request and the reported efforts into account, on 18 June 2010 the Court extended the deadline by a further three months and requested another progress update from the Municipality.[22]

4.4.8 KO79/23 – Law on Salaries

Case KO79/23 was initiated by the Ombudsperson, who requested a constitutional review of provisions of Law No. 08/L-196 on Salaries in the Public Sector. The contested issues included halving the work experience increment for the first fifteen years, from 0.5% to 0.25% for each full year of service. The Constitutional Court found that this reduction restricted fundamental rights and freedoms without pursuing a legitimate aim and that paragraph 6 of Article 6 of the Law was incompatible with the right to property guaranteed by the Constitution and the ECHR. Rather than repealing the provision immediately, the Court ordered the Assembly of Kosovo to amend and supplement it in accordance with the Constitution and the judgment within six months of the judgment's entry into force. The judgment entered into force on 1 February 2024, meaning that the Assembly's deadline expired on 1 August 2024.[23]

However, this obligation was not fulfilled within the deadline set by the Constitutional Court, and the work experience increment provision was not amended as ordered. Consequently, public officials continued to be affected by the halving of the increment for the first fifteen years of work experience, an effect that the Court itself had found the Law had produced since its entry into force. Unlike the other cases examined in this chapter, at this stage the Constitutional Court has neither issued a Resolution on Non-Implementation in KO79/23 nor notified the State Prosecutor of its non-implementation. This case therefore concerns a constitutional obligation for which the deadline established in the judgment has expired, but without a subsequent formal finding of non-implementation by the Court.

4.4.9 KO124/25 – Constitution of the Assembly and actions of the Chair of the Constitutive Session

In case KO124/25, the Constitutional Court initially found that the Constitutive Session of the Assembly, which began on 15 April 2025, had not been completed and ordered members of the

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[21] Constitutional Court of the Republic of Kosovo, Letter to the Mayor of Prizren concerning implementation of the judgment in case KO01/09, Qemajl Kurtishi and the Municipal Assembly of Prizren, (last accessed 31 August 2026: https://api.webgjk-ks.org/Custom/leter_drejtuar_kryetarit_te%20_komunes_se_prizrenit.pdf).
[22] Constitutional Court of the Republic of Kosovo, Order in case KO01/09, Qemajl Kurtishi and the Municipal Assembly of Prizren, 21 June 2010, (last accessed 31 August 2026: https://api.webgjk-ks.org/Custom/urdher_rasti_ko_01_09.pdf).
[23] Constitutional Court of the Republic of Kosovo, Judgment in case KO79/23, Ombudsperson, Constitutional review of Law No. 08/L-196 on Salaries in the Public Sector, 23 January 2024, (last accessed 31 August 2026: https://api.webgjk-ks.org/Custom/ko_79_23_agj_shq.pdf).

Assembly to complete its constitution within thirty days by electing the President and Deputy Presidents of the Assembly.[24] Following non-implementation of this judgment, on 7 August 2025 the Court found that members of the Assembly had not implemented the judgment of 26 June 2025 and that the Chair of the Constitutive Session had also failed to act in accordance with it, holding that his actions were contrary to Article 116.1 of the Constitution. The Court therefore expressly ordered the Chair to proceed with item 3 of the agenda of the Constitutive Session and invite the representative of the largest parliamentary group to nominate a candidate for President of the Assembly, to be put to an open vote. The Court also ordered that the procedure then continue with the election of the President and Deputy Presidents of the Assembly.

KLI's assessment is that the actions of Chair Avni Dehari following the judgment of 7 August 2025 were incompatible with the obligation established by the Constitutional Court. Instead of continuing the procedure in accordance with the agenda and requesting the largest parliamentary group to nominate a candidate for President of the Assembly, the Chair adjourned the session after Lëvizja Vetëvendosje requested additional time to reach a political agreement. According to KLI, such a request did not release the Chair from his obligation to continue the constitutional procedure expressly prescribed by the Court. Furthermore, the failure to resume the session after 8 August[25] to proceed with the election of the President and subsequently the Deputy Presidents constitutes, according to this assessment, inaction contrary to the Constitutional Court's specific order. However, for this phase of inaction, the Constitutional Court has not yet issued a Resolution on Non-Implementation or notified the State Prosecutor.

5. Consequences of non-implementation of Constitutional Court judgments

Failure to implement a Constitutional Court decision goes beyond non-compliance with what was ordered in a particular case. Given the Court's position as guarantor of the Constitution and the judgments it delivers, the consequences extend to the functioning of the constitutional order, legal certainty, citizens' trust and institutional accountability. The Venice Commission requires decisions on the merits of constitutional courts to be binding on all public authorities and implemented in good faith, while non-implementation constitutes a violation of constitutional supremacy.[26]

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[24] Constitutional Court of the Republic of Kosovo, Judgment in case KO124/25, Time Kadrijaj and 10 (ten) other members of the Assembly of the Republic of Kosovo, 7 August 2025, (last accessed 31 August 2026: https://api.webgjk-ks.org/Custom/4f2913a0-7463-4b56-968d-350b54a65097.pdf).
[25] Assembly of the Republic of Kosovo, Calendar of activities – Continuation of the Constitutive Session, 8 August 2026, agenda: "Election of the President of the Assembly" and "Election of the Deputy Presidents of the Assembly", (last accessed 31 August 2026: https://www.kuvendikosoves.org/shq/kalendari/).
[26] European Commission for Democracy through Law (Venice Commission), The *Updated Rule of Law Checklist, C*DL-AD(2025)002 (Strasbourg, 16 December 2025), para. 149, p. 51.

5.1. The constitutional order

The Venice Commission considers the non-implementation of constitutional court decisions a violation of constitutional supremacy.[27] The CCJE describes the effective enforcement of a binding judicial decision as a fundamental element of the rule of law.[28] Although the CCJE formulates this standard for judicial decisions in general, it is used here by analogy for Constitutional Court judgments. From this perspective, the Constitutional Court determines the limits within which power may be exercised, while other institutions are obliged to respect them. When the institution concerned decides for itself whether and when to implement a decision, the final say on the Constitution's practical meaning shifts from the Court to the institution obliged to implement its judgment. This damages the separation of powers and the system of checks and balances. In the context of the cases examined in this document, repeated non-implementation risks turning obedience to the Constitution from a legal obligation into an institutional choice. The principal consequence is therefore not merely the failure to give effect to a decision, but the weakening of the Constitution's authority and of the Constitutional Court's role as its guarantor.

5.2. Legal certainty

The European Court of Human Rights has emphasised that the right of access to a court would be illusory if a final, binding decision could remain inoperative. In Okyay and Others v. Turkey, the ECtHR linked the evasion of enforcement to the rule of law.[29] Hornsby and Okyay do not concern constitutional judgments, but their standard is used here by analogy. For constitutional decisions, this consequence is even broader. Non-implementation creates two parallel realities: the legal rule definitively established by the Court and institutional practice that continues as though that rule did not exist. In such circumstances, citizens and institutions cannot foresee whether legal consequences will depend on the Court's decision or on the will of the body required to implement it. In Kosovo, this undermines the final and binding character of these decisions, creates unequal treatment between those for whom judgments are implemented and those for whom they are not, and subjects the realisation of rights to political or institutional will.

5.3. Citizens' trust

The CCJE regards effective enforcement of a binding judicial decision as a prerequisite for maintaining public confidence in the authority of the judiciary.[30] Since this opinion concerns judicial decisions in general, it is applied here by analogy to Constitutional Court judgments. Recommendation Rec(2003)16 requires administrative authorities to implement judicial

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[27] Ibid.
[28] Consultative Council of European Judges (CCJE), Opi*nion No. 13 (2010) on the Role of Judges in the Enforcement of Judicial Decisions,* CCJE(2010)2 Final, para. 7 and conclusion A, p. 3 and 8.
[29] European Court of Human Rights, Hornsby *v. Greece, no. 183*57/91, judgment of 19 March 1997, para. 40, https://hudoc.echr.coe.int/eng?i=001-58020; European Court of Human Rights, Okyay *and Others v. Turkey, no. 36*220/97, judgment of 12 July 2005, para. 72–74, https://hudoc.echr.coe.int/eng?i=001-69672.
[30] CCJE, *Opinion No. 13 (2010*), preamble.

decisions within a reasonable time and effective procedures to be available in cases of non-implementation, including injunctions and coercive fines. It also provides for the liability of the authority and the possibility of individual disciplinary, civil or criminal liability for responsible officials who refuse or neglect implementation.[31] The Recommendation concerns administrative and judicial decisions in administrative law, although these standards may also be applied by analogy to Constitutional Court decisions.

A procedure and a decision that produce no result make legal protection merely formal, leaving citizens with no reason to believe that legal remedies will actually change the actions of public institutions. An experimental study shows that citizens' support for COVID-19 policies decreases when a court questions their constitutionality, while the extent of this effect depends on citizens' trust in the court.[32] In Kosovo, repeated non-implementation risks creating a perception that constitutional decisions have effect only when they align with the interests of the institution concerned. This damages confidence not only in the Constitutional Court, but also in the legal order and the equality of institutions and citizens before the Constitution.

5.4. Institutional accountability

Recommendation Rec(2003)16 provides for administrative authorities to implement judicial decisions within a reasonable time and for the possibility of disciplinary, civil or criminal liability for responsible officials who refuse or neglect implementation. The CCJE, for its part, refers to judicial orders, indirect coercive measures and regular collection and reporting of enforcement data.[33] Since these sources concern administrative and judicial decisions in general, they are used here by analogy as guidance for constitutional judgments. In the absence of clear accountability, obligations may be dispersed among institutions and officials to such an extent that no one bears actual responsibility. The cases examined in this document show that the absence of effective consequences may risk normalising institutional inaction in implementing Constitutional Court judgments. However, liability must be individualised: it may attach only to an official who has a clear legal obligation, competence and actual ability to implement the decision and who intentionally refuses or fails to act without objective justification.

6. International standards and comparative practice

6.1. International standards

The sources cited below do not have the same scope. In these passages, the Venice Commission and the CCJE address the enforcement of judicial decisions in general, but these may also be

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[31] Committee of Ministers of the Council of Europe, Recommendation Rec(2003)16 on the execution of administrative and judicial decisions in the field of administrative law, adopted on 9 September 2003, appendix, II.1(a)–(c).
[32] See further: Jerg Gutmann, Roee Sarel and Stefan Voigt, "Measuring Constitutional Loyalty," P*ublic Choice* 205 (2025).
[33] Committee of Ministers of the Council of Europe, Recommendation Rec(2003)16, appendix, II.1(a)–(c); CCJE, *Opinion No. 13 (2010)*, para. 18–23.

considered by analogy in the context of implementing Constitutional Court judgments. The Venice Commission includes among the elements of the rule of law the existence of an independent judiciary whose decisions are effectively enforced.[34] The CCJE describes effective enforcement of a binding decision as a fundamental element of the rule of law and a prerequisite for public confidence in the authority of the judiciary.[35]

This obligation carries even greater weight for Constitutional Court decisions. While an ordinary court decision resolves a particular dispute, a constitutional decision simultaneously protects constitutional supremacy, the limits of institutional power and the functioning of checks and balances. The Venice Commission emphasises that Constitutional Court decisions on the merits must be binding on all public authorities and implemented in good faith. Non-implementation constitutes a violation of constitutional supremacy. The Checklist uses as an assessment criterion whether Parliament and the executive take account of Constitutional Court decisions and reasoning and address, within a reasonable time, the legislative or regulatory gaps identified by the Court.[36]

Implementation is therefore part of legal certainty, rather than a technical matter that begins only after the court has completed its work. Citizens must be able to rely on a decision's final and practical effect, while institutions cannot treat it as a recommendation. The European Court of Human Rights has also established that execution of a judgment is an integral part of the "trial" for the purposes of Article 6 of the Convention.[37] Hornsby concerns an ordinary court decision; its standard is used here by analogy and solely for the principle of the effectiveness of a decision. The CCJE emphasises that a non-judicial authority cannot alter the content of a binding decision. A stay is possible only through another judicial decision, while postponement is permissible only on grounds prescribed by law and subject to judicial assessment.[38] Since the opinion refers to judicial decisions in general, this standard clearly also applies to Constitutional Court decisions.

However, the Council of Europe's guidance does not reduce the securing of enforcement to a single measure. It describes a system in which the authority and procedure for enforcement are specified, implementation is prompt and effective, and the necessary resources are provided. The measures mentioned include implementation within a reasonable time; a prescribed procedure and, where delay may cause irreversible harm, an expedited procedure; judicial orders and coercive fines; judicial review; compensation and interest; and collection and reporting of enforcement data.[39] All sources used in this paragraph concern the enforcement of

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[34] European Commission for Democracy through Law (Venice Commission), The *Updated Rule of Law Checklist, C*DL-AD(2025)002 (Strasbourg, 16 December 2025), para. 12.
[35] Consultative Council of European Judges (CCJE), Opi*nion No. 13 (2010) on the Role of Judges in the Enforcement of Judicial Decisions,* CCJE(2010)2 Final, para. 7,.
[36] Venice Commission, The *Updated Rule of Law Checklist, c*riterion G.4 and para. 149.
[37] European Court of Human Rights, Hornsb*y v. Greece, no. 1*8357/91, judgment of 19 March 1997, para. 40.
[38] CCJE, *Opinion No. 13 (2010),* para. 12–13.
[39] Council of Europe, T*he Administration and You: A Handbook (*Strasbourg: Council of Europe, 2018), Principle 21, p. 55–56; Committee of Ministers, Recommendation Rec(2003)16 on the execution of administrative and judicial decisions in the field of administrative law, adopted on 9 September 2003, appendix, II.1(a)–(c) and II.2(a)–(d), https://search.coe.int/cm?i=09000016805df14f; CCJE, Opinion No. 13 (2010), para. 16–23 and 34–36, https://rm.coe.int/168046914c.

judicial or administrative decisions in general; they are used here only by analogy as institutional guidance for constitutional judgments. Recommendation Rec(2003)16, the Council of Europe Handbook and the CCJE also mention enforcement procedures against public authorities and the possibility of individual disciplinary, civil or criminal liability for officials to whom refusal or delayed implementation is attributable.[40]

It is precisely here that a distinction must be drawn between the obligation to secure implementation and an obligation to criminalise every instance of non-implementation. The standards cited primarily concern enforcement of judicial decisions in general, including decisions against public institutions. They establish no general rule that every delay or failure must constitute a criminal offence, nor do they necessarily require a separate offence concerning Constitutional Court decisions. Even where criminal liability is mentioned, it appears alongside disciplinary and civil liability as one of the means available to a state, depending on the nature, seriousness and causes of non-implementation. In a state governed by the rule of law, the starting point must be voluntary and ex officio implementation by public authorities. According to the CCJE, the very notion that a state body might refuse to obey a judicial decision undermines the principle of the supremacy of law.[41] Since the relevant CCJE paragraphs concern judicial decisions against public bodies in general, the principle of ex officio implementation is used here by analogy for constitutional judgments.

The use of criminal law must therefore remain exceptional. Jareborg treats necessity and less intrusive alternatives as relevant arguments for criminalisation, but distinguishes the ultima ratio principle from subsidiarity and questions the independent normative function of its conventional formulation.[42] The European Commission document describes criminal law as a last resort and requires consideration, before criminalisation, of whether administrative or civil measures can adequately achieve the objective; it also requires necessity, proportionality and a clear definition of criminal conduct.[43] The mere fact that conduct is institutionally unacceptable does not in itself suffice to make it a criminal offence; this is the conclusion of the present paper.

Under normal circumstances, a state should not need to use criminal punishment to persuade its own institutions to comply with the Constitution, including, in this instance, Constitutional Court judgments. However, the cases examined above show that non-implementation of Constitutional Court decisions in Kosovo can no longer be regarded merely as an isolated incident. The recurrence of cases, the duration of non-implementation and the absence of effective consequences provide grounds for concluding that existing mechanisms have been

[40] Council of Europe, The *Administration and You: A Handbook, P*rinciple 21, p. 55–56; Committee of Ministers, Recommendation Rec(2003)16, appendix, II.1(b)–(c); CCJE, Opinion No. 13 (2010), para. 31–34.
[41] CCJE, *Opinion No. 13 (2010),* para. 31–36, p. 5.
[42] See further: Nils Jareborg, "Criminalization as Last Resort (Ultima Ratio)," Oh*io State Journal of Criminal Law* 2 (2005): 521–534.
[43] European Commission, *Towards an EU Criminal Policy: Ensuring the Effective Implementation of EU Policies through Criminal Law,* COM(2011) 573 final (Brussels, 20 September 2011), p. 6–7.

insufficient. In this context, criminal intervention is, regrettably, justified as a last resort rather than an ordinary solution.

Such intervention must be narrowly defined and accompanied by clear safeguards. It must not encompass objective impossibility of implementation, a genuine need for preparatory measures, reasonable uncertainty about the method of execution or delay justified by the particular circumstances. Criminal liability must attach only to intentional and unjustified refusal or inaction by an identifiable official who has a clear legal obligation, competence and actual ability to implement the decision. International standards therefore neither impose nor exclude criminalisation: they require effective implementation of constitutional decisions and allow the state to choose a more stringent response when other measures have failed, provided that legality, necessity and proportionality are respected. The cases examined above show that, in Kosovo, the conditions have already been met for choosing such a measure to implement Constitutional Court judgments by criminalising their non-implementation.

6.2. European practice

Naglieri's comparative study examines the enforcement of constitutional court decisions in Austria, Germany, Spain and Italy. The analysis considers legislation and judicial interpretation, the concept of enforcement, the types of decisions that may be enforced, the body vested with enforcement powers and the scope of the constitutional court's powers, using these elements to systematise models of constitutional enforcement.[44] The study does not construct a typology of criminal offences for non-implementation; it therefore does not support a conclusion that criminalisation is absent in all the jurisdictions examined. As a conclusion of this paper, rather than a claim by the cited author, the models discussed below show that specific criminalisation does not emerge as a common mechanism.

In Germany, Federal Constitutional Court decisions bind constitutional bodies, courts and all public authorities. The Court may also determine who must execute a decision and how.[45] In Austria, the Constitution directly regulates enforcement: certain decisions are enforced by the ordinary courts, while enforcement of other decisions falls to the Federal President through federal or Land bodies.[46] In France, Constitutional Council decisions are final and binding on public powers and all administrative and judicial authorities.[47] The comparative analysis thus shows that these systems rely on the conviction that a constitutional decision must be implemented as a direct consequence of the constitutional order, without the need for a prior threat of criminal punishment against a public official.

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[44]See further: Giuseppe Naglieri, "La ejecución de las resoluciones de los tribunales constitucionales. Sujetos, formas, modelos y categorías en el Derecho comparado," T*eoría y Realidad Constitucional,* no. 53 (2024): 595–640.
[45]Germany, Act on the Federal Constitutional Court (Bundesverfassungsgerichtsgesetz), §§ 31(1) and 35, version updated to 22 December 2025, https://www.gesetze-im-internet.de/englisch_bverfgg/.
[46]Austria, Bundes-Verfassungsgesetz, Article 146.
[47]France, Constitution du 4 octobre 1958, Article 62.

Spain offers a stronger model of institutional enforcement. The Constitutional Court may determine the responsible body and enforcement measures, request urgent assistance from public authorities, impose coercive fines, temporarily suspend responsible officials and order substitute enforcement. As only one of the possible measures, the Court may refer the matter to the competent body for assessment of criminal liability.[48] Thus, even in a system providing for strong measures, a criminal response is not the first mechanism, but a supplementary option once non-implementation has been established.

The European Commission's 2024 Rule of Law Report examines all 27 Member States across four areas, including justice systems and institutional checks and balances; the horizontal report does not identify systematic non-enforcement of constitutional court decisions as a common cross-cutting problem.[49] This finding is limited to the issues identified by the horizontal report: it does not prove the absence of individual cases or problems in specific country chapters. Assessing whether the phenomenon reaches a structural level in a particular state requires specific national sources.

This situation is also linked to constitutional culture. Respect for the Constitution depends not only on the existence of sanctions, but also on the institutional environment and public actors' conviction that the Constitution and Constitutional Court judgments are binding. Constitutional culture does not replace the law, but explains why, in certain states, decisions are implemented without the need to activate criminal liability.

6.3. Regional practice

A different situation exists in the countries of the region. Their approaches vary, but in some the legislature has considered it necessary expressly to criminalise the non-implementation of constitutional court decisions. This is particularly relevant to Kosovo because it illustrates the difference between a general provision on the non-implementation of judicial decisions and a provision expressly encompassing a Constitutional Court decision without leaving room for analogy.

North Macedonia provides the closest model. Article 112(3) of the Constitution establishes that Constitutional Court decisions are final and enforceable. Article 377(2) of the Criminal Code provides for a fine or imprisonment of up to three years for an official or responsible person who refuses to execute a final and enforceable judicial decision that they are obliged to execute. Paragraph 3 separately regulates refusal to execute a Constitutional Court decision and provides for imprisonment of one to five years. Paragraph 4 of the consolidated text published on WIPO Lex provides that, where the offence causes a more serious violation of another person's rights or substantial property damage, the penalty for offences under paragraphs 1 and

[48]Spain, Ley Orgánica 2/1979, de 3 de octubre, del Tribunal Constitucional, Articles 87 and 92, consolidated text, https://www.boe.es/buscar/act.php?id=BOE-A-1979-23709.
[49]European Commission, 2024 Rule of Law Report, horizontal report and chapters on the 27 Member States, 24 July 2024.

2 is imprisonment of one to five years, while the penalty for the offence under paragraph 3 is imprisonment of one to ten years.[50]

The significance of this wording is that Macedonian legislation has not left the inclusion of the Constitutional Court to the general concept of a "court", a distinction also evident in Kosovo's constitutional system and discussed in earlier chapters. Instead, it distinguishes an ordinary court decision from a Constitutional Court decision. This provision has also been applied in practice.

In Albania, Article 132 of the Constitution establishes that Constitutional Court decisions are final and binding for implementation. Article 320 of the Criminal Code penalises the concealment, disposal, consumption, damage or destruction of objects subject to a judicial decision, or other actions intended to prevent its execution; Article 320/a penalises the failure, without justified grounds, of the employee entrusted with execution to execute a criminal or civil decision.[51] These provisions do not expressly mention the Constitutional Court.

Bosnia and Herzegovina has adopted explicit and stringent regulation. Article 239 of the Criminal Code penalises an official or responsible person who fails to implement or execute, or obstructs implementation of, a final and binding Constitutional Court decision, including interim measures. The prescribed penalty is imprisonment of six months to five years, alongside disqualification from office and other legal consequences.[52]

In conclusion, comparative practice presents three models. Consolidated European democracies rely primarily on the binding force of decisions and institutional enforcement mechanisms. Albania has general provisions concerning judicial decisions without expressly mentioning the Constitutional Court. North Macedonia and Bosnia and Herzegovina have expressly criminalised non-implementation of constitutional decisions. For Kosovo, the argument should not be that criminalisation constitutes a European standard. It does not constitute such a standard. The argument is that, where ordinary mechanisms and a culture of respect for the Constitution have failed to ensure implementation, countries in the region have also used criminal liability as an exceptional measure.

7. The need to amend the Criminal Code

In a functioning constitutional order, the implementation of Constitutional Court judgments should follow naturally from the binding force of the Constitution. Public institutions should not need the threat of criminal punishment to implement the decisions of the body responsible for the final interpretation of the Constitution. International standards therefore do not present

[50]Constitution of the Republic of North Macedonia, Article 112(3); Criminal Code of the Republic of North Macedonia, Article 377(2)–(4).
[51]Constitution of the Republic of Albania, Article 132, https://president.al/wp-content/uploads/2023/09/Kushtetuta-e-Republikes-se-Shqiperise.pdf; Criminal Code of the Republic of Albania, Articles 320 and 320/a, text also updated by Law No. 8/2026 of 28 January 2026, https://qbz.gov.al/share/_YCvl02dROybrYpg2hNERg.
[52]Bosnia and Herzegovina, Criminal Code, Article 239(1), (4) and (5), amendment promulgated by the High Representative's decision of 1 July 2023 and in force from 2 July 2023, Office of the High Representative, "Decision Enacting the Law on Amendments to the Criminal Code of Bosnia and Herzegovina.

criminalisation as the ordinary mechanism for securing implementation. They proceed from implementation in good faith, constitutional culture and functioning institutional, disciplinary, administrative and civil mechanisms. Criminal law remains a last resort, and its use must be justified only where other means have proved insufficient.

However, this principle cannot be separated from the specific situation in a state. The cases examined in this document show that, in Kosovo, non-implementation of Constitutional Court judgments has not remained an isolated case or an incidental delay. The recurrence of cases, the duration of non-implementation and the absence of effective consequences show that constitutional binding force alone has not always sufficed to secure implementation. In these circumstances, relying solely on an expectation that institutions will develop the necessary constitutional culture on their own does not adequately address a problem already evident in practice.

The Criminal Code penalises failure to execute a final order, decision or judgment of any court of the Republic of Kosovo. This provision covers ordinary court decisions but does not clearly encompass the Constitutional Court. Under the Constitution, the Constitutional Court is not part of the unified judicial power, but an independent body protecting constitutionality and providing the final interpretation of the Constitution. The general concept of a "court" in a criminal provision therefore cannot automatically be extended to it. Such an interpretation would be particularly problematic given the principle of legality, the requirement to define a criminal offence clearly and the prohibition of analogy to the detriment of the defendant.

The need to amend the Criminal Code thus does not arise from the absence of a general provision on the non-execution of judicial decisions. It arises from a specific legislative gap concerning Constitutional Court judgments. Express reference to these judgments would remove the present ambiguity, make liability foreseeable and avoid making a criminal case dependent on an expansive interpretation of the concept of a "court". The amendment would thus serve both to protect the Constitutional Court's authority and to uphold criminal law safeguards.

The proposed intervention must be limited. Its purpose is not to treat every delay, uncertainty or difficulty in implementation as a criminal offence. Liability may attach only to an official or responsible person who has a clear legal obligation, competence and actual ability to implement a decision, but intentionally and without objective grounds refuses or fails to take the necessary action. Objective impossibility, a genuine need for preparatory measures, lack of competence and reasonable delay must fall outside the scope of criminalisation. Liability must also be individualised and cannot be attributed in the abstract.

In this sense, amending the Criminal Code should not be understood as replacing constitutional culture, political accountability or institutional enforcement mechanisms. It should operate as a supplementary safeguard for the most serious cases, where refusal is intentional and other means have proved ineffective. The very existence of the provision is intended primarily to prevent non-compliance and encourage voluntary implementation, rather than increase criminal proceedings.

Ultimately, in Kosovo's circumstances, maintaining the status quo does not provide sufficient assurance that Constitutional Court judgments will be implemented in every case. The cases identified in this document provide sufficient grounds for a clearer legal response. Supplementing the Criminal Code by expressly encompassing intentional and unjustified non-implementation of Constitutional Court judgments therefore emerges as a necessary and exceptional measure to protect constitutional supremacy, legal certainty and institutional accountability.

8. Expected impacts

The impacts of the proposal must be assessed realistically and in relation to the subsidiary nature of criminal law. The purpose of the intervention is not to make criminal prosecution the principal basis for implementing Constitutional Court decisions. Rather, the intended effect is for clearly defined liability to deter intentional refusal and encourage voluntary and timely implementation. Success will therefore be measured by a reduction in non-implementation, rather than by the number of criminal proceedings.

8.1. Impacts on the rule of law

The European Commission document treats criminal law as a last resort and requires necessity, proportionality, consideration of administrative or civil measures, and a clear definition of prohibited conduct.[53] Here, the value protected is the effective implementation of the Constitution and Constitutional Court decisions. A provision confined to intentional and unjustified refusal would convey that institutions have no discretion to choose whether to obey the Constitution. This is expected to strengthen the rule of law by attaching real legal consequences to the exercise of public power. However, the effect could be reversed if the provision is broadly formulated or selectively applied. A positive impact therefore depends on precise definition, independent application and full respect for legality and proportionality.

8.2. Impacts on institutional functioning

Recommendation Rec(2003)16 and the CCJE require or recommend, within their respective scopes, identification of the responsible authority and procedure, implementation within a reasonable time, orders and coercive measures, and enforcement data and reporting.[54] These sources concern administrative and judicial decisions in general; in this paragraph, they are used by analogy solely as institutional guidance for constitutional judgments. The institutional impact of the proposed amendment should therefore extend beyond criminal proceedings themselves. A precise obligation is expected to encourage institutions, immediately upon receiving a decision, to identify the responsible unit and official, the necessary measures, the

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[53] European Commission, *Towards an EU Criminal Policy: Ensuring the Effective Implementation of EU Policies through Criminal Law,* COM(2011) 573 final (Brussels, 20 September 2011), p. 6–7;
[54] Committee of Ministers of the Council of Europe, Recommendation Rec(2003)16 on the execution of administrative and judicial decisions in the field of administrative law, adopted on 9 September 2003, appendix, II.1(a)–(c); Consultative Council of European Judges (CCJE), *Opinion No. 13 (2010) on the Role of Judges in the Enforcement of Judicial Decisions,* CCJE(2010)2 Final, para. 16 and 18–23.

deadline and reporting arrangements. This may improve coordination and reduce the possibility of responsibility being shifted from one body to another. At the same time, the provision must avoid defensive administration and fear of liability for every delay. Refusal must therefore be clearly distinguished from reasonable preparatory action, lack of competence and objective impossibility. Criminal intervention must be a supplementary component of a broader institutional enforcement mechanism.

8.3. Impacts on implementation of the Constitution

The Venice Commission requires constitutional court decisions on the merits to bind all public authorities, be implemented in good faith and not be neutralised through the adoption of acts with identical content.[55] In Kosovo, the Criminal Code penalises the non-execution of decisions of "any court of the Republic of Kosovo" but does not expressly mention the Constitutional Court. Given its distinct position outside the ordinary court system, including it through expansive interpretation would be problematic. The Code itself requires a precise definition of criminal offences and prohibits interpretation by analogy, while the ECtHR requires criminal provisions to be accessible and foreseeable and prohibits expansive interpretation, including analogy, to the detriment of the accused.[56] Express reference to Constitutional Court decisions would resolve this ambiguity and make criminal liability foreseeable. The expected effect is to deter refusal and attempts to circumvent a decision, limiting liability to the binding consequence clearly identifiable from the operative part of the judgment and elaborated in its reasoning.

8.4. Impacts on citizens' trust

The CCJE links effective enforcement of binding decisions to public confidence in the authority of the judiciary. Since the opinion concerns judicial decisions in general, this standard is used here by analogy for constitutional judgments.[57] A mechanism securing equal accountability and actual implementation may strengthen the conviction that Constitutional Court decisions are not statements without consequences and that no institution is above the Constitution. However, criminalisation alone does not create this trust. Selective, delayed or politicised proceedings could deepen mistrust. A positive impact must therefore be supported by public reporting on the effectiveness of implementation, delays and their causes, and methods of enforcement.[58] Prosecuting authorities must also give reasons for their decisions. Trust will grow above all when citizens see decisions being implemented, while criminal sanctions remain a supplementary safeguard for cases of intentional refusal.

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[55] European Commission for Democracy through Law (Venice Commission), The *Updated Rule of Law Checklist, CD*L-AD(2025)002 (Strasbourg, 16 December 2025), para. 149, p. 51, https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD%282025%29002-e.
[56] Criminal Code No. 06/L-074 of the Republic of Kosovo (consolidated), Official Gazette of the Republic of Kosovo, published on 6 February 2026, Articles 2(3); European Court of Human Rig*hts, Kokkinakis v. Greece*, no. 14307/88, judgment of 25 May 1993, para. 52.
[57] CCJE, *Opinion No. 13 (2010),* para. 7, p. 3;
[58] CCJE, *Opinion No. 13 (20*10), para. 22–23, p. 4,. The CCJE recommends including enforcement data in public information and regular reporting on enforcement effectiveness, delays and their causes, and enforcement methods.

