



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

Prishtina, on 29 April 2021
Ref. no.:AGJ1760/21

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JUDGMENT

in

Case No. KI20/21

Applicant

Violeta Todorović

**Constitutional review of Decision No. AC-I-16-0122 of the Appellate Panel
of the Special Chamber of the Supreme Court of Kosovo on the
Privatization Agency of Kosovo Related Matters of 1 October 2020**

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Arta Rama-Hajrizi, President
Bajram Ljatifi, Deputy President
Bekim Sejdiu, Judge
Selvete Gërxhaliu-Krasniqi, Judge
Gresa Caka-Nimani, Judge
Safet Hoxha, Judge
Radomir Laban, Judge
Remzije Istrefi-Peci, Judge, and
Nexhmi Rexhepi, Judge.

Applicant

1. The Referral is submitted by Violeta Todorović, from Graçanica, who is represented by Vlastimir Petrović, a lawyer from Graçanica (hereinafter: the Applicant).

Challenged decision

2. The Applicant challenges the Decision [No. AC-I-16-0122] of 1 October 2020 of the Appellate Panel of the Special Chamber of the Supreme Court on the Privatization Agency of Kosovo Related Matters (hereinafter: the Appellate Panel) in conjunction with the Judgment [No. AC-I-16-0122] of 4 October 2019 of the Appellate Panel.

Subject matter

3. The subject matter is the constitutional review of the challenged Decision, which allegedly violates the Applicant's rights guaranteed by Articles 24 [Equality Before the Law], 31 [Right to Fair and Impartial Trial], 32 [Right to Legal Remedies] and 54 [Judicial Protection of Rights] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution) and Articles 6 (Right to a fair trial) and 13 (Right to an effective remedy) of the European Convention on Human Rights (hereinafter: the ECHR).

Legal basis

4. The Referral is based on paragraphs 1 and 7 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution, Articles 22 [Processing Referrals] and 47 [Individual Requests] of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter: the Law) and Rule 32 [Filing of Referrals and Replies] of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

Proceedings before the Constitutional Court

5. On 26 January 2021, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 1 February 2021, the President of the Court appointed Judge Safet Hoxha as Judge Rapporteur and the Review Panel composed of Judges: Bajram Ljatifi, (Presiding), Remzije Istrefi-Peci and Nexhmi Rexhepi.
7. On 2 February 2021, the Court notified the Applicant and the Special Chamber of the Supreme Court of Kosovo on the Privatization Agency of Kosovo Related Matters (hereinafter: the SCSC) about the registration of the Referral.
8. On 23 February 2021, the Court notified the PAK about the registration of the Referral and notified the latter that it may submit comments, if any, regarding the Applicant's Referral.
9. On 23 February 2021, the Court requested from the SCSC the complete case file.
10. On 1 March 2021, the Court received the full case file from the SCSC.

11. On 13 April 2021, the Review Panel considered the report of the Judge Rapporteur and unanimously recommended to the Court the admissibility of the Referral.
12. On the same date, the Court voted, unanimously, that the Referral is admissible and that: *i*) there has been a violation of Article 31 [Right to Fair and Impartial Trial] of the Constitution and Article 6 [Right to a fair trial] of the European Convention on Human Rights; *ii*) declared invalid, in relation to the Applicant, the Decision [No. AC-I-16-0122] of 1 October 2020 of the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo on the Privatization Agency of Kosovo Related Matters, and Judgment [No. AC-I-16-0122] of 4 October 2019 of the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo; and *iii*) remanded the Decision [No. AC-I-16-0122] of 1 October 2020 of the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo on the Privatization Agency of Kosovo Related Matters, and Judgment [No. AC-I-16-0122] of 4 October 2019 of the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo, for reconsideration in accordance with the Judgment of this Court.

Summary of facts

13. From the facts of the case it results that the Applicant from 1990, was employed in the socially owned enterprise “Yumco” in Fushë-Kosovë (hereinafter: SOE “Yumco”).
14. On 16 November 2006, S.O.E. “Yumco” was privatized.
15. On 7, 8 and 9 November 2013, the Privatization Agency of Kosovo (hereinafter: PAK) published in the media the final list of employees with legitimate rights in S.O.E. “Yumco”. The Applicant was not included in this list.
16. On 29 November 2013, the Applicant filed a complaint with the SCSC regarding the final list of employees of S.O.E. “Yumco”, requesting that its name be included in the list of employees entitled to payment of 20% of income from S.O.E. “Yumco”.
17. On 24 May 2016, the Specialized Panel of the SCSC (hereinafter: the Specialized Panel) by Judgment [C-II-13-0444] rejected the Applicant’s appeal as ungrounded, as it concluded that she was employed in S.O.E. “Yumco” from 1 September 1990 until 1 November 1997, when the employment relationship with S.O.E. “Yumco” was terminated by Decision [M.202] of 1 November 1997. Therefore, the Specialized Panel reasoned that since the complainant had not submitted the booklet, the Specialized Panel was not able to fully determination of the factual situation, namely, whether the complainant was employed in S.O.E. “Yumco” after 1997.
18. On 15 June 2016, against the above-mentioned Judgment of the Specialized Panel, the Applicant filed an appeal with the Appellate Panel, alleging violation of the contested procedure, erroneous determination of the factual situation and violation of the substantive law. The Applicant alleged that she was part of the S.O.E. “Yumco” even after 1997, emphasizing that on 16 August 1998,

based on the change of status, was registered in the register of “*HK KP Yumco Vranje*”, under number [M. 18022], but despite the statutory changes made with the merger of the enterprises, the complainant continued to work in the same working place, in the same sewing machine on the premises of the “Yumco” factory building in Fushë Kosovë.

19. On 4 October 2019, the Appellate Panel, by Judgment [Ac-I-16-0122], dismissed the Applicant’s appeal as out of time. In this regard, the Appellate Panel reasoned that *“From the case file, namely, from the acknowledgment of receipt by which the challenged judgment was received, the Appellate Panel confirms the fact that the judgment [C-II-13-0444] of the SCSC was served on the appellant on 3 March 2016 and according to the legal remedy of the same decision, it is provided that an appeal can be filed within 21 days. In the present case, the appellant had the right to file an appeal until 24 March 2016, while the appeal was filed on 15 June 2016, which shows that it was filed out of the deadline set by law, therefore, the Appellate Panel, dismissed the appellant’s appeal as submitted after the deadline”*.
20. On 21 October 2019, the Applicant filed a request with the Appellate Panel to rectify the clear technical error of Judgment [Ac-I-16-0122] of the Appellate Panel of 4 October 2019, alleging that Judgment [C -II-13-0444] of the Specialized Panel, of 24 May 2016 was served on her on 3 June 2016, while the appeal against this Judgment was filed with the Appellate Panel on 15 June 2016, within a period of 21 days. Therefore, the Appellate Panel in the Judgment [Ac-I-16-0122] of 4 October 2019, has erroneously found that the Applicant was served with the Judgment [C-II-13-0444] of the Specialized Panel, on 3 March 2019 as in this date, the abovementioned Judgment of the Specialized Panel was not rendered. Therefore, she requested the Appellate Panel to correct this error and approve the request, as well as to be included in the list of beneficiaries of 20% from the privatization of the S.O.E. “Yumco”.
21. On 1 October 2020, the Appellate Panel by Decision [Ac-I-16-0122], dismissed the Applicant’s Referral as inadmissible. In this regard, the Appellate Panel reasoned in Judgment [AC-I-16- 0122] of 4 October 2019, it is stated that the date of service of the Judgment [C-II-13-0444] of the Specialized Panel on the Applicant is 3 March 2016. In this regard, the Appellate Panel, by Decision [Ac-I- 16-0122] of 1 October 2020, stated that this has been impossible since the Judgment of the Specialized Panel [C-II-13-0444] was rendered on 24 May 2016. Therefore, the Appellate Panel by Decision [Ac-I- 16-0122] of 1 October 2020, concludes that the Applicant’s statements that the Judgment of the Specialized Panel was received by the Applicant on 3 June 2016, are correct. But, nevertheless, the Appellate Panel by Decision [Ac-I- 16-0122] of 1 October 2020, stated that the Judgment of the Appellate Panel [AC-I-16-0122] of 4 October 2019, is final. Therefore, according to the case law of the SCSC, the decisions rendered by the Appellate Panel are final and cannot be reviewed by the Appellate Panel.

Applicant’s allegations

22. The Applicant alleges that the challenged decision violated her fundamental rights and freedoms guaranteed by Articles 24 [Equality Before the Law], 31

[Right to Fair and Impartial Trial], 32 [Right to Legal Remedies] and 54 [Judicial Protection of Rights] of the Constitution and Articles 6 (Right to a fair trial) and 13 (Right to an effective remedy) of the ECHR.

23. The Applicant alleges that as she was not satisfied with the Judgment of the Specialized Panel [C-II-13-0444] of 24 May 2016, “ *on 15 June 2016, filed a timely appeal with the Special Chamber of the Supreme Court - Appellate Panel to include her in the final list of employees of SOE “Yumko” to gain the right to a 20% share of the privatization. The Appellate Panel rendered Judgment [AC-I-16-0122] of 4 October 2019, by which in paragraph IV of the enacting clause of the Judgment, the appeal of Violeta Todorović (A0004) was rejected as out of time, until in the reasoning of the same judgment on page 12, it is stated that Violeta Todorović’s appeal is rejected as ungrounded*”.
24. As a consequence, the Applicant states that she filed “*the request for correction of the cardinal error in the final judgment C-II-13-0444 which Violeta Todorović received, as stated on 3 March 2016, which is impossible because the judgment was rendered on 24 May, 2016, namely 2 months later, namely it is illogical for the judgment to be first served and then rendered. This judgment was served on the the party on 3 June 2016*”. However, she states that the Appellate Panel, by the Decision of 1 October 2020, has rejected her request as inadmissible. Therefore, these actions according to the Applicant have violated the provisions of the contested procedure and the constitutional provisions of Articles 24, 31, 32 and 54 of the Constitution and Article 6 of the ECHR.
25. In this regard, the Applicant alleges that “*The lower courts, in their judgments, have not taken care ex officio in their obligations and duties, so it has come to a clear cardinal error when it has not assessed the appeal even though it has been clear that it does not [is] possible to file appeal against the judgment before the judgment itself has been rendered*”.
26. Therefore, the Applicant requests the Court to: (i) declare her Referral admissible; (ii) decide that there has been a violation of “*Article 24 which describes that everyone is equal before the law, Article 31 which describes that everyone has the right to a fair and impartial trial in a given period, Article 32 which describes the right to a legal remedy and Article 54, which describes the right to judicial protection, and (iii) declare invalid the Decision of the Special Chamber of the Supreme Court [AC-I-16-0122] of 1 October 2020, and remand the case for reconsideration to the SCSC.*

Admissibility of the Referral

27. The Court first examines whether the Referral has fulfilled the admissibility requirements established by the Constitution, foreseen by the Law and further specified by the Rules of Procedure.
28. In this respect, the Court refers to paragraphs 1 and 7 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution which establish:

“1. The Constitutional Court decides only on matters referred to the court in a legal manner by authorized parties.

[...]

7. Individuals are authorized to refer violations by public authorities of their individual rights and freedoms guaranteed by the Constitution, but only after exhaustion of all legal remedies provided by law”.

29. In addition, the Court also refers to the admissibility requirements as provided by the Law. In this regard, the Court first refers to Articles 47 [Individual Requests], 48 [Accuracy of the Referral] and 49 [Deadlines] of the Law, which stipulate:

Article 47
[Individual Requests]

“1. Every individual is entitled to request from the Constitutional Court legal protection when he considers that his/her individual rights and freedoms guaranteed by the Constitution are violated by a public authority.

2. The individual may submit the referral in question only after he/she has exhausted all the legal remedies provided by the law.”

Article 48
[Accuracy of the Referral]

“In his/her referral, the claimant should accurately clarify what rights and freedoms he/she claims to have been violated and what concrete act of public authority is subject to challenge”.

Article 49
[Deadlines]

“The referral should be submitted within a period of four (4) months. The deadline shall be counted from the day upon which the claimant has been served with a court decision [...]”.

30. With regard to the fulfillment of the admissibility criteria, as mentioned above, the Court finds that the Applicant is an authorized party, who challenges an act of public authority, namely Decision [No. AC-I-16-0122] of 1 October 2020 of the Appellate Panel, after having exhausted the legal remedies provided by law. The Applicant also clarified the fundamental rights and freedoms that he claims to have been violated, in accordance with Article 48 of the Law, and submitted the Referral within the time limit set out in Article 49 of the Law.
31. The Court also finds that the Applicant’s Referral meets the admissibility criteria set out in paragraph (1) of Rule 39 of the Rules of Procedure and that it cannot be declared inadmissible on the basis of the requirements set out in paragraph (3) of Rule 39 of the Rules of Procedure. The Court also notes that the Referral is not manifestly ill-founded on constitutional basis, as established in paragraph (2) of Rule 39 of the Rules of Procedure, therefore, it must be declared admissible and its merits must be considered.

Relevant legal provisions

Law No. 04/L-033 on the Special Chamber of the Supreme Court of Kosovo on Privatization Agency Related Matters

Article 10

Judgments, Decisions and Appeals

[...]

“6. A party shall have the right to appeal any Judgment or Decision of a single judge, sub-panel or specialized panel - or of a court having jurisdiction over a claim, matter, proceeding or case under paragraph 4. of Article 4 of the present law - to the appellate panel by submitting to the appellate panel and serving on the other parties its appeal within twenty-one (21) days. The appeal shall also be submitted to the court, specialized panel, sub-panel or judge that issued the concerned Decision or Judgment within such twenty-one (21) day period. The prescribed time limit shall begin to run at midnight on the day the single judge, sub-panel, specialized panel or court has provided the concerned Decision or Judgment to the parties in writing. The appellate panel shall reject the appeal if the party fails to file within the prescribed time period”.

Merits

32. The Court recalls that the Applicant from 1990 was employed in S.O.E. “Yumco”. After the latter was privatized, the PAK published in the media the final list of employees with legitimate rights in S.O.E. “Yumco” in which list, the Applicant was not included. Therefore, the Applicant filed a complaint with the SCSC regarding the final list of employees of S.O.E. “Yumco” requesting that her name be included in the list of employees entitled to payment of 20% of revenues. On 24 May 2016, the Specialized Panel by Judgment [C-II-13-0444] rejected the Applicant’s complaint as ungrounded, as it was concluded that she had been employed in S.O.E. “Yumco” from 1 September 1990 until 1 November 1997, when her employment relationship was terminated. On 15 June 2016, against the abovementioned Judgment of the Specialized Panel, the Applicant filed an appeal with the Appellate Panel, claiming that she was part of S.O.E. “Yumco” even after 1997. On 4 October 2019, the Appellate Panel by the Judgment [AC-I-16-0122], rejected the Applicant’s appeal as out of time, stating that Judgment the [C-II-13 -0444] of 24 May 2016, of the Specialized Panel received by the Applicant on 3 March 2016 and according to the legal remedy of the same Decision, it is provided that an appeal can be filed within 21 days. However, the complaint was filed on 15 June 2016, indicating that it was filed out of the deadline established by law.
33. On 21 October 2019, the Applicant, filed with the Appellate Panel, a request for correction of the clear technical error of Judgment [Ac-I-16-0122] of the Appellate Panel, of 4 October 2019, claiming that it rendered Judgment [C-II-13-0444] of the Specialized Panel of 24 May 2016 on 3 June 2016, while the appeal against this Judgment of the Appellate Panel on 15 June 2016, within a period of 21 days. On 1 October 2020, the Appellate Panel by Decision [Ac-I-16-0122], rejected the Applicant’s request as inadmissible, adding that the

Judgment of the Appellate Panel [AC-I-16-0122] of 4 October 2019, is final, although it was concluded that the Applicant's statements that the Judgment of the Specialized Panel was served on the Applicant, on 3 June 2016, were correct.

34. Therefore, the Applicant alleges before the Court that the Appellate Panel had a legal obligation to deal with the Applicant's appeal against the Judgment of the Specialized Panel as it was filed within the legal time limit, taking into account that the Judgment of the Specialized Panel was served on him on 3 June 2016, while the complaint was submitted on 15 June 2016, namely within the 21-day deadline set out by law. However, the Appellate Panel by Judgment [Ac-I-16-0122], rejected the Applicant's appeal as out of time and after the request for correction of a clear technical error of Judgment [Ac-I-16-0122] of the Appellate Panel, of 4 October 2019, the Appellate Panel by the Judgment [AC-I-16-0122] of 4 October 2019, although it was concluded that the Applicant's statements that the Judgment of the Specialized Panel was served on the Applicant on 3 June 2016, were correct, decided that it could not correct a final decision of the Appellate Panel. Such a position, in the opinion of the Applicant, is contrary to the obligations of the court that its case be reviewed on its merits by the Appellate Panel and thus led to the violation of Article 31 of the Constitution in conjunction with Article 6 of the ECHR.
35. The Court notes that based on the facts above and the allegations made by the Applicant, the substance of the Applicant's allegations is rightly related to the "access to court" as an integral part of the rights guaranteed by Article 31 [Right to Fair and Impartial Trial] of the Constitution in conjunction with Article 6 (Right to a fair trial) of the ECHR.
36. The Court refers to the relevant provisions of the Constitution and the ECHR:

Article 31 [Right to Fair and Impartial Trial]:

"Everyone shall be guaranteed equal protection of rights in the proceedings before courts, other state authorities and holders of public powers.

Everyone is entitled to a fair and impartial public hearing as to the determination of one's rights and obligations or as to any criminal charges within a reasonable time by an independent and impartial tribunal established by law".

Article 6 (Right to a fair trial) of the ECHR:

"1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion

of the court in special circumstances where publicity would prejudice the interests of justice”.

[...]

3. Everyone charged with a criminal offence has the following minimum rights:

[...]

(c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require”.

37. The Court also reiterates that in accordance with Article 53 [Interpretation of Human Rights Provisions] of the Constitution “*human rights and fundamental freedoms guaranteed by this Constitution shall be interpreted consistent with the court decisions of the European Court of Human Rights*”.
38. In this regard, the Court first notes that the case law of the ECtHR and of the Court has consistently considered that the fairness of the proceedings is assessed based on the proceedings as a whole (see case of the Court KI62/17, Applicant: *Emine Simnica*, Judgment of 29 May 2018; see also, ECtHR Judgment, *Barbera, Messeque and Jabardo v. Spain*, No. 146, paragraph 68). Therefore, in the procedure of assessing the grounds of the Applicant’s allegations, the Court will adhere to these principles.
39. Accordingly, the Court will consider the Applicant’s allegations regarding the right of “access to court” as one of the principles of a fair trial under Article 31 of the Constitution and Article 6 of the ECHR.

General principles regarding “access to the court”

40. First of all, the Court recalls that in the case KI62/17, cited above, and the ECtHR case *Golder v. United Kingdom*, they found that: “*the right of access constitutes an element which is inherent in the right stated by Article 6 para. 1. Article 6 para. 1 secures to everyone the right to have any claim relating to his civil rights and obligations brought before a court or tribunal. In this way the Article embodies the “right to a court”, of which the right of access, that is the right to institute proceedings before courts in civil matters, constitutes one aspect only*” (see cases of Court KI62/17, cited above, paragraph 50, and case K224/19, Applicant *Islam Krasniqi*, Judgment of 10 December 2020, paragraph 34. See also the case of the ECtHR *Golder v. the United Kingdom*, Judgment of 21 February, 1975, paragraphs 28-36).
41. The Court in this regard notes that “the right to a court”, as an integral part of the right to a fair and impartial trial, as guaranteed by Article 31 of the Constitution in conjunction with Article 6.1 of the ECHR, provides that all litigants should have an effective judicial remedy enabling them to assert their civil rights (see case K224/19, cited above, paragraph 35; see also, cases of the ECtHR, *Běleš and Others v. the Czech Republic*, Judgment of 12 November

2002, paragraph 49; and *Nait-Liman v. Switzerland*, Judgment of 15 March 2018, paragraph 112).

42. Furthermore, in case *Kreuz v. Poland*, the ECtHR stated that the right to a fair trial “secures to everyone the right to have any claim relating to his civil rights and obligations brought before a court or tribunal. In this way, that provision embodies the “right to a court”, the right of access, as a principle that makes in fact possible to benefit from the further guarantees laid down in paragraph 10 of Article 6. (see ECtHR judgment: *Kreuz v. Poland*, Application No. 2824/95 of 20 April 1998 paragraph 52).
43. Moreover, the ECHR does not aim at guaranteeing the rights that are “theoretical and false”, but the rights that are “practical and effective” (see case KI224/19, cited above, paragraph 39). Therefore, in accordance with the case law of the Court and that of the ECtHR, the right of access to a court means not only the right to initiate proceedings before a court, but, in order for the right of access to a court to be effective, the individual must also have a clear and real possibility of challenging the decision which violates his/her rights. In other words, the right of access to a court is not exhausted only in the right to institute proceedings before the court, but its meaning is much wider as it includes the right to “resolution” of the dispute by the competent court (see case KI62/17, cited above, paragraph 55).
44. The Court further states the right of access to a court is not absolute, but it can be subject to limitations, since by its very nature it calls for regulation by the state, which enjoys a certain margin of appreciation in this regard.
45. However, any limitations on the right of access to a court must not restrict or reduce a person’s access in such a way or to such an extent that the very essence of the “right to a court” is impaired. Such limitations will not be compatible if they do not pursue a legitimate aim or if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be achieved (see case of the Court KI62/17, cited above, paragraph 58, and the ECtHR cases: *Sotiris and Nikos Koutras, ATTEE v. Greece* (2000), paragraph 15; *Běleš and Others v. the Czech Republic*, Judgment of 12 November 2002, paragraph, 61).
46. Therefore, the Court considers that the limitations will not comply with the right to a fair trial, guaranteed by Article 31 of the Constitution and Article 6 of the ECHR if: a) they do not pursue a legitimate aim; and b) if there is not a reasonable relationship of proportionality between the means employed and the aim sought (see case of the Court KI62/17, cited above, paragraph 59).

Application of these principles and guarantees in the present case

47. The Court notes that the Applicant in the present case had access to the court, namely the Specialized Panel and the Appellate Panel, but only until the filing of an appeal against Judgment [C-II-13-0444] of the Specialized Panel, of 24 May 2016.

48. This is because the mere fact that the Applicant had the legal opportunity to submit this request to the Specialized Panel does not necessarily lead to the fulfillment of the right of access to a court deriving from Article 31 of the Constitution and Article 6 of the ECHR. Therefore, it remains to be determined whether the Decision [No. AC-I-16-0122] of 1 October 2020 of the Appellate Panel declaring the Applicant's appeal as out of time, in conjunction with Judgment [No. AC-I-16-0122] of 4 October 2019 of the Appellate Panel declaring the request for correction of the clear error of the Appellate Panel as inadmissible, effectively denied the Applicant "*the right of access to a court*" from the point of view of the principle of the rule of law in a democratic society, as well as the guarantees provided by Article 31 of the Constitution and Article 6 of the ECHR.
49. In this respect, the Court emphasizes that "the right to appeal" is not defined or implied in Article 6 of the ECHR, but if the appeal was allowed by law and if it was filed, and the court in that case, in this case the Appellate Panel, was informed about this, and it was called upon to determine the facts that are essential to the continuation of proceedings in a procedural aspect, then according to the ECtHR case law, the first paragraph of Article 6 of the ECHR is applicable (see ECtHR *Delcourt v. Belgium*, of 17 January 1970, Series A p. 11-14).
50. The Court notes that the main reason for the rejection of the Applicant's appeal by the Appellate Panel by Judgment [Ac-I-16-0122] of 24 May 2019, was because the latter had considered that the Applicant's appeal against the Judgment of the Specialized Panel was out of time.
51. In this regard, the Court notes that the Applicant's representative after receiving the Judgment [Ac-I-16-0122] of 24 May 2019 of the Appellate Panel, has submitted a request for correction of the error to the Appellate Panel, where facts and evidence were presented that she submitted her appeal within the deadline provided by law within 21 days of receiving the decision. However, the Appellate Panel by the Judgment [AC-I-16-0122] of 1 October 2020, even though it concluded that the Applicant's statements that the Judgment of the Specialized Panel was received by the Applicant on 3 June 2016, were correct, and that the appeal was filed within the legal time limit, the latter decided that it could not modify a final decision of the Appellate Panel.
52. However, the Court notes that, in response to the Applicant's request for correction of clear technical error regarding the deadline for filing an appeal against the Judgment of the Specialized Panel, the Appellate Panel in Decision [No. AC-I-16-0122] of 1 October 2020, stated:

"The Appellate Panel confirms that according to the acknowledgment of receipt, the date of receipt of the challenged judgment is 03.03.2016, it is certainly a technical error and the court has followed this error by calculating the deadline for appeal of 21 days from the previously mentioned day 03.03.2016 that the final dates would be as mentioned in the Judgment of the Appellate Panel of 4 October 2019. This has been impossible since the appealed Judgment C-II-13-0444 was rendered on 24 May 2016.

The Appellate Panel concludes that the Applicant's statements that the appealed Judgment was received on 3 June 2016, are correct.

But the judgment of the Appellate Panel AC-I-16-0122 of 4 October 2019 is final. Therefore, according to the case law of the SCSC, the judgments, the decision rendered by the Appellate Panel are final. Legal systems in general that refer to the principle of legal certainty also have this kind of approach.

[...]

Even the Constitutional Court of Kosovo, deciding on the assessment of the constitutionality of the Judgment of the SCSC, ASC-11-0056-A0001 of 7 June 2012, in case no. KI103/12, in point 23 of the resolution on inadmissibility received on 22 March 2013, arguing the point regarding the assessment of the admissibility of the referral filed before this court, clearly expresses its legal opinion. In this regard, the Court notes that in accordance with Article 113.7 of the Constitution and in accordance with Article 47.2 of the Law, the Applicant has exhausted all legal remedies provided by law.

[...]

Therefore, the court decisions of the Appellate Panel as the second instance of the Special Chamber of the Supreme Court, with any procedural provision of the LCP, cannot be reconsidered even by any Panel of the Supreme Court of Kosovo, since the final decision taken in the second instance by the Special Chamber as part of the Supreme Court is final and based on law, any other legal body, to conduct its further review.

The Appellate Panel notes that in the present case, AC-I-16-0122, has already been decided by the Appellate Panel by the judgment of 4 October 2019, which is final.

Therefore, any appeal filed against the final judgment of the Appellate Panel, as already decided by its case law (ASC-09-0106, ASC-11-0063, ASC-11-0107, AC-I – 12-0145), must be rejected as inadmissible.

The parties, except the Constitutional Court pursuant to Article 9.15 of the LCP, do not have at their disposal, as mentioned above, any legal remedy to challenge the final decision of the Appellate Panel. The provisions of the LCP as a special law have the advantage of implementation in the LCP, as a general procedural law”.

53. In this regard, the Court recalls that Law No. 04/L-033 on the Special Chamber of the Supreme Court of Kosovo on the Privatization Agency of Kosovo Related Matters (hereinafter: Law No. 04/L-033), Article 10, paragraph 6 (applicable at the time of filing a complaint) provides:

[...]

“6. A party shall have the right to appeal any Judgment or Decision of a single judge, sub-panel or specialized panel - or of a court having jurisdiction over a claim, matter, proceeding or case under paragraph 4. of Article 4 of the present law - to the appellate panel by submitting to the appellate panel and serving on the other parties its appeal within twenty-one (21) days. The appeal shall also be submitted to the court, specialized panel, sub-panel or judge that issued the concerned Decision or Judgment within such twenty-one (21) day period. The prescribed time limit shall begin to run at midnight on the day the single judge, sub-panel,

specialized panel or court has provided the concerned Decision or Judgment to the parties in writing. The appellate panel shall reject the appeal if the party fails to file within the prescribed time period”.

54. The Court considers that the procedural rules governing the steps to be taken in filing a complaint are intended to ensure the proper administration of justice. The parties to the proceedings must expect that the procedural rules will apply. Such procedural rules, or their application, should not prevent the person to whom they apply from the benefits of the legal remedy (see, *mutatis mutandis*, case of the ECtHR: *Sotiris and Nikos Koutras ATTEE v. Greece, Judgment of 16 November 2000*, paragraph 18). Furthermore, the Applicants cannot bear the responsibility and consequences for the errors that do not belong to them but to the relevant institutions.
55. In this regard, the Court notes that in Decision [No. AC-I-16-0122] of 1 October 2020, the Appellate Panel despite the fact that it found that the Applicant's allegations were correct, and consequently that her complaint was filed according to the deadlines set out in Article 10, paragraph 6 of Law No. 04/L-033, the latter rejected the Applicant's request for correction of the error of the Appellate Panel by the Judgment of 4 October 2019, considering her request as a request for reconsideration of the court decision.
56. Therefore, both decisions of the Appellate Panel resulted in the impossibility that the Applicant's appeal against the Judgment of the Specialized Panel be considered on merits. In this way, the Appellate Panel limited its two decisions to the Applicant's access to court.
57. The Court has clearly stated above that the right of access to the Court may be restricted if the restrictions *a)* pursue a legitimate aim; and *b)* whether there is a reasonable relationship of proportionality between the means employed and the aim pursued. However, the Court notes that, in the present case, such views of the Appellate Panel by Decision [No. AC-I-16-0122] of 1 October 2020 in conjunction with Judgment [No. AC-I-16-0122] of 4 October 2019 of the Appellate Panel, in relation to the Applicant could not lead to a legitimate aim that would allow the restriction of the right of access to a court. From this it also results that there is no relationship of proportionality between the means used by the Appellate Panel and the aim pursued, which would lead to the decisions of the Appellate Panel regarding the dispute, given that the Applicant had filed her appeal against the Judgment of the Specialized Panel, within the time limit provided by law. In this respect, by not addressing the Applicant's appeal against the Judgment of the Specialized Panel, which was filed within the legal deadline, the Appellate Panel violated the essence of her "right of access to court".
58. In this respect, the Court considers that it is the right of the Appellate Panel to render a decision in accordance with its jurisdiction, on approval or rejection of the Applicant's appeal, but only after her appeal against Judgment [C-II-13-0444] of the Specialized Panel is considered on merits, in accordance with the applicable provisions.

59. The Court therefore considers that in such circumstances, the Applicant has been deprived of her right of access to a court, as a principle of a fair and impartial trial in accordance with Article 31 of the Constitution and Article 6 of the ECHR.
60. Therefore, the Court finds that there has been a violation of Article 31.1 of the Constitution, in conjunction with Article 6.1 of the ECHR.
61. Given that the Court has found a violation of the right to a fair trial guaranteed by Article 31 of the Constitution and Article 6 of the ECHR, it does not consider it necessary to examine separately the allegations of violation of the rights guaranteed by Article 24, 32 and 54 of the Constitution.

FOR THESE REASONS

The Constitutional Court, in accordance with Article 113.7 of the Constitution, Articles 20 and 47 of the Law and Rule 59 (1) of the Rules of Procedure, in the session held on 13 April 2021, unanimously

DECIDES

- I. TO DECLARE the Referral admissible;
- II. TO HOLD that there has been a violation of Article 31 [Right to Fair and Impartial Trial] of the Constitution, and Article 6 [Right to a fair trial] of the European Convention on Human Rights;
- III. TO DECLARE invalid, in relation to the Applicant, the Decision [No. AC-I-16-0122] of 1 October 2020 of the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo on the Privatization Agency of Kosovo Related Matters, and Judgment [No. AC-I-16-0122] of 4 October 2019 of the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo.
- IV. TO REMAND Decision [No. AC-I-16-0122] of 1 October 2020 of the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo on the Privatization Agency of Kosovo Related Matters, and Judgment [No. AC-I-16-0122] of 4 October 2019 of the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo, for reconsideration in accordance with the Judgment of this Court;
- V. TO ORDER the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo to notify the Court, in accordance with Rule 66 (5) of the Rules of Procedure, about the measures taken to implement the Judgment of the Court, not later than 18 October 2021;
- VI. TO REMAIN seized of the matter pending compliance with that order;
- VII. TO NOTIFY this Decision to the Parties, and, in accordance with Article 20 (4) of the Law, to publish it in the Official Gazette;
- VIII. This Judgment is effective immediately.

Judge Rapporteur

President of the Constitutional Court

Safet Hoxha

Kopje e vertetuar
Overena kopija
Certified Copy

Arta Rama-Hajrizi

This translation is unofficial and serves for informational purposes only