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

Prishtina, on 13 August 2021
Ref. no.:AGJ 1829//21

This translation is unofficial and serves for informational purposes only.

JUDGMENT

in

Case no. KI01/20

Applicant

Momir Marinković

Constitutional review of Judgment AC-I-17-0074-A123 of the Appellate Panel of the Special Chamber of the Supreme Court on Privatization Agency of Kosovo Related Matters, of 8 October 2019

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

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

Applicant

1. The Referral was submitted by Momir Marinković, from the Municipality of Shtërpce (hereinafter: the Applicant).

Challenged decision

2. The Applicant challenges Judgment [AC-I-17-0074-A123] of 8 October 2019 of the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo Related Matters (hereinafter: the Appellate Panel of the SCSC) in conjunction with Judgment [C-II-12-0023] of 31 January 2017 of the Specialized Panel of the SCSC.

3. The Applicant was served with the Judgment of the Appellate Panel of the SCSC on 29 October 2019.

Subject matter

4. The subject matter is the constitutional review of the challenged Judgment, which allegedly violates the Applicant's fundamental rights and freedoms guaranteed by (i) 31 [Right to Fair and Impartial Trial] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution) in conjunction with Article 6 [Right to a fair trial] on the European Convention on Human Rights (hereinafter: the ECHR); (ii) Article 24 [Equality Before the Law] of the Constitution in conjunction with Article 14 (Prohibition of discrimination) of the ECHR and Article 1 (General prohibition of discrimination) of Protocol No. 12 of the ECHR; and (iii) Article 49 [Right to Work and Exercise Profession] of the Constitution.

5. The Applicant also requests the Constitutional Court of the Republic of Kosovo (hereinafter: the Court) to impose interim measure.

Legal basis

6. 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 (hereinafter: the Rules of Procedure).

Proceedings before the Court

7. On 10 January 2020, the Court received the Referral submitted by the Applicant by mail service.

8. On 14 January 2020, the President of the Court appointed Judge Gresa Caka-Nimani as Judge Rapporteur and the Review Panel composed of Judges: Bajram Ljatifi (Presiding), Safet Hoxha and Radomir Laban.

9. On 7 February 2020, the Court (i) notified the Applicant about the registration of the Referral and requested him to submit a copy of the appeal submitted to the Appellate Panel of the SCSC; (ii) sent a copy of the Referral to the SCSC, also requesting that it submit a copy of the judgments of the Specialized and

Appellate Panel in Albanian and Serbian to the Court; and (iii) submitted a copy of the referral to the Privatization Agency of Kosovo (hereinafter: PAK).

10. On 11 February 2020, the SCSC submitted the copies of the requested judgments to the Court.

11. On 27 February 2020, the Applicant submitted the document requested by the Court.

12. On 17 May 2021, pursuant to paragraph 5 of Article 114 [Composition and Mandate of the Constitutional Court] of the Constitution and Rule 12 (Election of President and Deputy President) of the Rules of Procedure, Judge Gresa Caka-Nimani was elected President of the Constitutional Court. Based on paragraph 4 of Rule 12 of the Rules of Procedure and Decision KK-SP.71-2/21 of the Court of 17 May 2021, it was determined that Judge Gresa Caka-Nimani will take over the duty of the President of the Court after the end of the mandate of the current President of the Court Arta Rama-Hajrizi, on 26 June 2021.

13. On 25 May 2021, based on item 1.1 of paragraph 1 of Article 9 (Prior termination of the mandate) of the Law and Rule 7 (Resignation of Judges) of the Rules of Procedure, Judge Bekim Sejdiu resigned as a judge before the Constitutional Court.

14. On 8 June 2021, the President of the Court Arta Rama-Hajrizi, by Decision no. KI01/20, appointed Judge Selvete Gërxhaliu-Krasniqi as Judge Rapporteur replacing Judge Gresa Caka-Nimani.

15. On 26 June 2021, pursuant to paragraph (4) of Rule 12 of the Rules of Procedure and Decision KK-SP 71-2/21 of the Court, Judge Gresa Caka-Nimani took over the duty of the President of the Court, while based on item 1.1 of paragraph 1 of Article 8 (Termination of mandate) of the Law, President Arta Rama-Hajrizi ended the mandate of the President and Judge of the Constitutional Court.

16. On 29 July 2021, the Review Panel considered the report of the Judge Rapporteur, and by majority of votes recommended to the Court the admissibility of the Referral.

17. On the same date, the Court (i) by a majority found the Referral is admissible; and (ii) by a majority found that Judgment [AC-I-17-0074-A123] of 8 October 2019 of the SCSC Appellate Panel is not in compliance with Article 31 [Right to Fair and Impartial Trial] of the Constitution in conjunction with Article 6 (Right to a fair trial) of the ECHR.

Summary of facts

18. Based on the case file, it results that the Applicant is a former employee of the Socially Owned Enterprise SOE "SHARR" Hani i Elezit (hereinafter: SOE "SHARR"), which at the time of its commercialization by the United Nations Mission in Kosovo (hereinafter: UNMIK), on 13 June 2000, consisted of 4

(four) companies, namely: (i) the new company "Lepenci" in Kaçanik; (ii) the new company "Silkapor" in Doganaj; (iii) the new company "Sharr Salonit" in Hani i Elezit; and (iv) the company "Sharr Cem" in Hani i Elezit, which during the period from 8 March 2004 to 9 December 2010, were subject to the privatization process by the PAK.

19. On 7, 8 and 9 June 2012, namely, the PAK published the Final List of employees entitled to benefit twenty percent (20%) of the proceeds from the privatization of the respective Socially Owned Enterprise (hereinafter: the Final List). As the deadline for submission of complaints to the SCSC against this Final List was set for 30 June 2012.

20. On 29 June 2012, the Applicant, as a result of his non-inclusion in the Final List, filed a complaint with the SCSC. Through his complaint, the Applicant requested his inclusion in the Final List, alleging that his employment relationship with the Socially Owned Enterprise commenced on 10 February 1992 until 31 May 1997, which continued after the process of reorganization of this Enterprise into the new Socially Owned Enterprise "Sharr Silkapor" on 1 June 1997 until March 1999.

21. On 27 July 2012, the PAK filed a response to the Applicant's complaint, proposing that his complaint be rejected as ungrounded. In its response, the PAK specified that (i) on the basis of the relevant employment booklet, its employment relationship with the Socially Owned Enterprise was terminated on 31 May 1997, and thereafter, the Applicant *"has not submitted relevant evidence to prove the continuity of the employment relationship"; and (ii)* the Applicant *"has not taken any legal action to extend employment after June of 1999"*.

22. On 31 January 2017, the Specialized Panel of the SCSC, deciding on all the complaints of the former employees of the Socially Owned Enterprise, by Judgment [C-II-12-0023], rejected the Applicant's appeal as ungrounded. By this Judgment, the Specialized Panel, referring to paragraph 11 of Article 68 (Complaints Related to a List of Eligible Employees) of the Annex to Law no. 04/L-033 on the Special Chamber of the Supreme Court of Kosovo on the Privatization Agency of Kosovo Related Matters (hereinafter: Annex to the Law on the SCSC), had specified that *"the Judgment was rendered without holding a public hearing, because the legal facts and arguments which have been provided are sufficient and clear. The Panel does not expect any other relevant information for review [...]"*. Whereas, in the part regarding the Applicant's complaint, reasoned that (i) the Applicant did not meet the criteria set out in paragraph 4 of Section 10 (Rights of Employees) of UNMIK Regulation 2003/13 on the Transformation of the Right of Use to Socially-Owned Immovable Property, as amended by UNMIK Regulation 2004/45 on Amending Regulation 2003/13 on Transformation of the Right of Use to Socially-Owned Immovable Property (hereinafter: UNMIK Regulation 2003/13 as amended by Regulation no. 2004/45) because at the time of the privatization of the Socially Owned Enterprise, he had not been registered as an employee of this Enterprise; (ii) on the basis of the copy of the work booklet submitted by the Applicant, it was not proved whether the work booklet *"is*

closed or open after 1997"; and (iii) the Applicant has not raised any allegations of discrimination.

23. On 10 March 2017, against the Judgment of the Specialized Panel of the SCSC, the Applicant filed an appeal with the Appellate Panel of the SCSC, alleging erroneous and incomplete determination of the factual situation and erroneous application of the substantive law. With regard to the first, the Applicant stated that (i) the finding of the Specialized Panel that in his case there is a lack of evidence of his employment relationship after 1 June 1997 is "*erroneous and contrary to the material evidence presented*" because based the submitted evidence it is confirmed that he started his employment on 10 February 1992, while it was terminated in March 1999 as a result of "*war circumstances, [...] and after the war due to security circumstances and discrimination, I was actually unable to perform my work and work duties [...]*"; (ii) his attached workbook as evidence confirms the fact that "*there is no termination of work experience after the date 01.06.1997*"; (iii) the statements of all employees of the said enterprise, as witnesses, could confirm the accuracy of its claims; and (iv) based on the evidence submitted, it is established that he meets the criteria set forth in paragraph 4 of Section 10 of UNMIK Regulation 2003/13 as amended by Regulation No. 2004/45. The Applicant stated that the Specialized Panel in violation of "*the principle of equal and fair trial*" has treated unequally "*employees of the non-Albanian community*", because "*one group of complaints of Serb employees to be approved on the basis of discrimination and the rest to be rejected due to the alleged absence of discrimination*". In this context, the Applicant also informed the Appellate Panel that he and several other former employees of the Socially Owned Enterprise had submitted their allegations of discrimination to the Ombudsperson Institution on 10 October 2001.

24. On 8 October 2019, the Appellate Panel by Judgment [AC-I-17-0074-A123], rejected the Applicant's appeal as ungrounded, confirming the Judgment of the Specialized Panel. By this Judgment, the Appellate Panel, referring to paragraph 1 of Article 64 [Oral Appellate Proceedings] of the Annex to the Law on the SCSC, specified that "*The Appellate Panel shall, on its own initiative or the written application*", while, in the relevant part with the Applicant's complaint, it reasoned that: (i) the Applicant did not provide sufficient evidence that at the time of the privatization of the Socially Owned Enterprise he was an employee of it; (ii) he did not complain to the Specialized Panel that he was a victim of discrimination as a reason for not continuing the employment relationship, while the claim that he was a victim of discrimination as a result of non-extension of the employment relationship was raised for the first time before the Appellate Panel; and (iii) the Applicant does not meet the requirerments of being on the payroll at the time of the privatization of the Socially Owned Enterprise as defined in paragraph 4 of Section 10 of UNMIK Regulation, in order to be granted the right to its inclusion in the Final List with the right to benefit in a part of 20% of the proceeds from the sale of the Socially Owned Enterprise.

Applicant's allegations

25. The Applicant alleges that the challenged Judgment of the Appellate Panel was rendered in violation of his fundamental rights and freedoms guaranteed by (i) Article 31 [Right to Fair and Impartial Trial] of the Constitution in conjunction with Article 6 (Right to a fair trial) of the ECHR; (ii) Article 24 [Equality Before the Law] of the Constitution in conjunction with Article 14 (Prohibition of discrimination) of the ECHR and Article 1 (General Prohibition of Discrimination) of Protocol no. 12 of the ECHR; and (iii) Article 49 [Right to Work and Exercise the Profession] of the Constitution.

26. With regard to the alleged violations of Article 31 of the Constitution in conjunction with Article 6 of the ECHR, the Applicant states that the challenged Judgment of the Appellate Panel was rendered in violation of the procedural guarantees for one (i) hearing; and (ii) a reasoned court decision.

27. With regard to the first case, namely the absence of a hearing, the Applicant states that one was not held either before the Specialized Panel or before the Appellate Panel, preventing the parties from presenting their evidence. regarding his employment relationship in the Socially Owned Enterprise. In this regard, the Applicant states, *inter alia*, that (i) pursuant to paragraph 1 of Article 64 [Oral Appellate Proceedings] of the Annex to the Law on the SCSC, the Appellate Panel was obliged to hold a public hearing and that such an obligation was based on this law, regardless of whether a request for a hearing has been filed or not, because failure to file a request for a hearing does not necessarily mean waiving the right to such a request; (ii) The Appellate Panel may be exempted of this obligation itself if *"there are exceptional circumstances which justify the absence of a hearing"*; and (iii) The Appellate Panel has prevented the parties from presenting their evidence because *"no regulation stipulates that the employment booklet is exclusively the only proof of the existence of the employment relationship"*, whereas this was the decisive evidence on the basis of which the Applicant's allegations were rejected as ungrounded, not being given the opportunity to present through the hearing other of his evidence, including witnesses, as set out in Article 36 (General Rules on Evidence) of the Annex to the Law on SCSC. In the context of this category of allegations, the Applicant refers to the case law of the European Court of Human Rights (hereinafter: ECHR) in the cases of *Exel v. Czech Republic* (Judgment of 5 July 2005) and *Gőç v. Turkey* (Judgment of 11 July 2002).

28. As to the second case, namely the lack of a reasoned court decision, the Applicant states that the challenged Judgment fails to show the party that she/he has been heard and also, in the absence of adequate reasoning, prevents the party from exercising legal remedies against him effectively, the guarantees, which according to the Applicant, embodied in the case law of the ECHR regarding the reasoning of the court decision. In this context, the Applicant refers to the case law of the ECtHR, namely cases *H v. Belgium* (Judgment of 30 November 1987) and *Hirvisaari v. Finland* (Judgment of 25 December 2001).

29. Also, in support of his allegations of a violation of Article 31 of the Constitution in conjunction with Article 6 of the ECHR, the Applicant also refers to the cases of the ECtHR, in the following cases: *Fredin v. Sweden* (no. 2) (Judgment of 23 February 1994); *Allan Jacobson v. Sweden* (no. 2), (Judgment of 19 February 1998); *Gőç v. Turkey* (Judgment of 11 July 2002); *Fischer v. Austria* (Judgment of 26 April 1995); *Salomonsson v. Sweden* (Judgment of 12 November 2002); *Dombo Beheer B.V. v. the Netherlands* (Judgment of 27 October 1993); *Golder v. United Kingdom*, (Judgment of 21 February 1975); *Stanev v. Bulgaria* (Judgment of 17 January 2012); *Ashingdane v. The United Kingdom* (Judgment of 28 May 1985) *Fayed v. The United Kingdom* (Judgment of 21 September 1990); *Marković and Others v. Italy* (Judgment of 14 December 2006); *Airey v. Ireland* (Judgment of 9 October 1979); and *Pretto and Others v. Italy* (Judgment of 8 December 1983).

30. With regard to the alleged violations of Article 24 of the Constitution in conjunction with Article 14 of the ECHR and Article 1 of Protocol no. 12 of the ECHR, the Applicant states that he was treated unequally in relation to the other parties in the proceedings before the Specialized Panel and the Appellate Panel both in terms of the assessment of the facts and the interpretation of the law. According to the Applicant (i) the evidence submitted to the SCSC was not treated in the same way as other employees of Albanian origin, because in the case of the latter, "*register from workers' registers on the grounds that their work booklets had been destroyed* "and the "*Health Booklet and the Decision of the SOE*" were accepted as evidence to prove the employment relationship, as long as the same did not happen in his case. In the context of this allegation, the Applicant refers to the reasoning given in the Judgment [C-II.-12-0023] of 31 January 2017 of the Specialized Panel in relation to two former employees of the Socially Owned Enterprise, respectively the K.B,, number of case [C-0026] and S.B., with case number [C-0029]; and (ii) the SCSC, has decided in different ways based on identical evidence and allegations both in relation to the factual situation but also in relation to discrimination. In the context of this allegation, the Applicant refers to the reasoning of the challenged Judgment of the Appellate Panel of the SCSC in relation to the former employee of the Socially Owned Enterprise, D.V. with case number [C-0004]. Furthermore, in support of his allegations of violation of the abovementioned articles of the Constitution and the ECHR, the Applicant refers to the case law of the ECtHR, namely *Sejdić and Finci v. Bosnia and Herzegovina* (Judgment of 22 December 2009); *Timishev v. Russia* (Judgment of 13 December 2005); and *Zornić v. Bosnia and Herzegovina* (Judgment of 15 July 2014). The Applicant also alleges a violation of the Convention on the Elimination of All Forms of Racial Discrimination.

31. With regard to the alleged violations of Article 46 of the Constitution, the Applicant, in essence, raises allegations related to Article 49 of the Constitution. Regarding the latter, the Applicant states, *inter alia*, that (i) the employment relationship with the Socially Owned Enterprise was established on the basis of the provisions of the "Law on Associated Labor (Official Gazette no. 53/76)" and based on Article 219 of this Law, in case of termination of employment, it is necessary for the employee to be served with a written decision, a decision which has never been served on the Applicant; and (ii) that "*his employment relationship officially existed at the time of privatization, and that the*

employment book and the register of workers on behalf of the Applicant was not closed and was not delivered to the Applicant should never be disregarded". In this context, and finally, the Applicant also states that in his case the "Conventions of the International Labor Organization" have been violated.

32. Finally, the Applicant requests the Court to impose an interim measure, reasoning as follows: *"Considering the duration of this procedure before the PAK and the SCSC, the Constitutional Court should act with priority according to this request, namely to submit the proposal for imposing an interim measure"*.

33. Finally, the Applicant requests the Court (i) to approve his Referral as admissible; (ii) to find a violation of Article 24 of the Constitution in conjunction with Article 14 of the ECHR; Article 31 of the Constitution in conjunction with Article 6 of the ECHR; and Article 49 of the Constitution; and (iii) modify the challenged Judgment [AC-I-17-0074-A123] of 8 October 2019 of the Appellate Panel, "*confirming his right to benefit 20% of privatization proceeds*" or order the Appellate Panel "*to repeat the procedure*" at the Specialized Panel of the SCSC.

Relevant constitutional and legal provisions

Constitution of the Republic of Kosovo

Article 24
[Equality Before the Law]

1. All are equal before the law. Everyone enjoys the right to equal legal protection without discrimination.
2. No one shall be discriminated against on grounds of race, color, gender, language, religion, political or other opinion, national or social origin, relation to any community, property, economic and social condition, sexual orientation, birth, disability or other personal status.
3. Principles of equal legal protection shall not prevent the imposition of measures necessary to protect and advance the rights of individuals and groups who are in unequal positions. Such measures shall be applied only until the purposes for which they are imposed have been fulfilled.

Article 31
[Right to Fair and Impartial Trial]

1. Everyone shall be guaranteed equal protection of rights in the proceedings before courts, other state authorities and holders of public powers.
2. 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 49 [Right to Work and Exercise Profession]

1. The right to work is guaranteed.
2. Every person is free to choose his/her profession and occupation.

European Convention on Human Rights

Article 6
Right to a fair trial

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.
[...]

Article 14
Prohibition of discrimination

The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.
[...]

Protocol No. 12 of the European Convention on Human Rights

Article 1
General prohibition of discrimination

1. This Protocol shall enter into force on the first day of the month following the expiration of a period of two months after the date on which seven member States of the Council of Europe have expressed their consent to be bound by the Protocol in accordance with the provisions of Article 8.
2. No one shall be discriminated against by any public authority on any ground such as those mentioned in paragraph 1.

Annex of the Law No. 04/L-033 of the Special Chamber of the Supreme Court of Kosovo on Privatization Agency Matters – Rules of Procedure of the Special Chamber of the Supreme Court of Kosovo on Privatization Agency Matters

Article 36
General Rules on Evidence

[...]

3. A party alleging a fact or an event shall be given a reasonable opportunity to submit or produce material evidence in support of such allegation. If such party fails to submit or produce any such evidence, the party shall be determined to have not discharged its burden of proof with respect to that allegation.

Article 64
Oral Appellate Proceedings

1. *The Appellate Panel shall, on its own initiative or the written application of a party, decide to whether or not to hold on or more oral hearings on the concerned appeal. The Appellate Panel shall take into account any application for oral proceedings submitted by any of the parties setting forth its reasons for requesting oral proceedings. Such an application must be filed prior to the closing of written appellate procedures.*

[...]

Article 65
Submission of New Evidence

In exceptional circumstances and for good cause shown, the Appellate panel may permit a party to present to the Appellate Panel new evidence that was not available to the party during the evidentiary portion of the first instance proceedings. A written application for such permission must first be submitted to the Appellate Panel and served on the other parties not less than fifteen (15) days before the date of the hearing where such evidence is proposed to be presented. The Appellate Panel may authorize the presentation of such new evidence if it considers it to be in the interests of justice.

Article 68
Complaints Related to a List of Eligible Employees

1. The procedure for cases based on complaints falling within the scope of paragraph 1.6 of Article 4 of the Special Chamber Law shall, except as specifically provided in this Article 68, generally follow the other procedural rules set forth in this Annex, which the Special Chamber shall apply mutatis mutandis as the Special Chamber deems necessary and in the interest of justice.

2. Upon receiving a list of eligible employees pursuant to Section 10 UNMIK Regulation 2003/13, or any successor legislation governing the establishment of such a list, the Agency shall publish such list together with a notice to the public of the right of any person to file a complaint with the Agency within twenty (20) days after the date of publication requesting inclusion in such list and/or challenging the inclusion of one or more other persons in such list. The person filing any such request or

challenge shall include therein a statement of the facts and the legal arguments supporting such request or challenge; such person shall have the burden of proving all facts alleged in the request and/or challenge.
[...]
6. The Agency shall publish its final list of eligible employees established pursuant to paragraph 5 of this Article in conformity with Section 10.6 of UNMIK Regulation 2003/13, or any successor legislation governing the establishment of such list, together with a notice to the public of the right of any person to file a complaint with the Special Chamber within twenty (20) days after the date of publication challenging such list and/or the Agency's distribution of escrow funds to the persons identified therein. The complainant(s) filing any such complaint shall include therein a statement of the facts and the legal arguments supporting such complaint; the complainant(s) shall have the burden of proving all facts alleged in the complaint.
[...]
11. The concerned Specialized Panel, acting on its own initiative or pursuant to a written request of the complainant(s) or the Agency, may decide to hold one or more oral hearings on the matter. If an oral hearing is to be held, the Specialized Panel shall cause the Registrar to serve on the parties, at least five (5) days in advance of such hearing, a written notice of the time and date of such hearing.
[...]
14. The Appellate Panel shall dispose of all such appeals as a matter of urgency.

Law No. 06/L-086 on the Special Chamber of the Supreme Court of Kosovo on Privatization Agency Related Matters [published in the Official Gazette of the Republic of Kosovo on 27 June 2019]

Article 69
Oral Appellate Proceedings

1. The Appellate Panel shall, on its own initiative or the written application of a party, decide to whether or not to hold on one or more hearing sessions on the concerned appeal. The Appellate Panel shall take into account any application for oral proceedings submitted by any of the parties setting forth its reasons for requesting oral proceedings. Such an application shall be filed prior to the closing of written appellate procedures.
[...]

Regulation No. 2003/13 on the Transformation of the Right of Use to Socially Immovable Property

Article 10
Rights of Employees

[...]

10.4 For the purpose of this section an employee shall be considered as eligible, if such employee is registered as an employee with the Sociallyowned Enterprise at the time of privatisation or initiation of the liquidation. procedure and is established to have been on the payroll of the enterprise for not less than three years. This requirement shall not preclude employees, who claim that they would have been so registered and employed, had they not been subjected to discrimination, from submitting a complaint to the Special Chamber pursuant to subsection 10.6.
[...]

Regulation no. 2004/45 amending Regulation no. 2003/13 on the Transformation of the Right of Use to Socially-owned Immovable Property

Section 1
Amendments

As of the date of entry into force of the present Regulation,
[...]
B. Sections 10.1, 10.2 and 10.4 of UNMIK Regulation No. 2003/13 shall be amended to read:
[...]
10.4 For the purpose of this section an employee shall be considered as eligible, if such employee is registered as an employee with the Socially owned Enterprise at the time of privatisation or initiation of the liquidation procedure and is established to have been on the payroll of the enterprise for not less than three years. This requirement shall not preclude employees, who claim that they would have been so registered and employed, had they not been subjected to discrimination, from submitting a complaint to the Special Chamber pursuant to subsection 10.6.
[...]

Admissibility of the Referral

34. The Court first examines whether the Referrals have fulfilled the admissibility requirements established in the Constitution, and further specified in the Law and the Rules of Procedure.

35. 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 ofall legal remedies provided by law".

36. The Court further examines whether the Applicant has fulfilled the admissibility requirements as prescribed by the Law. In this regard, the Court refers to Article 47 [Individual Requests], Article 48 [Accuracy of the Referral] and Article 49 [Deadlines] of the Law, which establish:

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...".

37. With regard to the fulfillment of these requirements, the Court finds that the Applicant is an authorized party and challenges an act of public authority, namely Judgment [AC-I-17-0074-A123] of 8 October 2019 of the Appellate Panel in conjunction with Judgment [C-II-12-0023] of 31 January 2017 of the Specialized Panel of the SCSC, after having exhausted all legal remedies provided by law. The Applicant has also clarified the rights and freedoms he alleges to have been violated, in accordance with the requirements of Article 48 of the Law and has submitted the Referral in accordance with the deadlines set out in Article 49 of the Law.

38. The Court also finds that the Applicant's Referral also meets the admissibility criteria established in paragraph 1 of Rule 39 of the Rules of Procedure. The latter cannot be declared inadmissible on the basis of the requirements set out in paragraph (3) of Rule 39 of the Rules of Procedure. Furthermore, and finally, the Court considers that this Referral is not manifestly ill-founded as set out in paragraph (2) of Rule 39 of the Rules of Procedure and, consequently, it must be declared admissible and its merits examined.

Merits

39. The Court recalls that the circumstances of the present case relate to the privatization of the Socially Owned Enterprise SOE "SHARR" and the rights of the respective employees to be granted the status of employees with legitimate rights to participate in the twenty percent proceeds (20%) from this privatization, as defined in Article 68 of the Annex to the Law on SCSC and paragraph 4 of Article 10 of Regulation 2003/13. The Applicant is one of the former employees of the aforementioned enterprise, who was not included in the Final List published on 7, 8 and 9 June 2012. His appeal to the Specialized Panel was rejected as ungrounded. Before the Appellate Panel, the Applicant filed allegations related to the erroneous determination of facts and discrimination and the same were rejected as ungrounded at the level of the Appellate Panel. A hearing was not held at the Specialized Panel or the Appellate Panel. The first pointed out that *"The judgment was rendered without holding a public hearing, because the facts and legal arguments that have been provided are sufficiently clear. The Panel does not expect any other relevant information for review. [...] "*, while the second, had stated that *"the Appellate Panel decides to waive the oral part of the proceedings"*.

40. The Applicant challenges the findings of the Appellate Panel before the Court, alleging (i) a violation of Article 31 of the Constitution in conjunction with Article 6 of the ECHR due to the failure to hold a hearing and the lack of reasoning for the court decision; (ii) violation of Article 24 of the Constitution in conjunction with Article 14 of the ECHR and Article 1 of Protocol no. 12 of the ECHR due to unequal treatment; and (iii) violation of Article 49 of the Constitution. These categories of allegations will be examined by the Court on the basis of the case law of the Court and the ECtHR, in accordance with which, pursuant to Article 53 [Interpretation of Human Rights Provisions] of the Constitution, is obliged to interpret the fundamental rights and freedoms guaranteed by the Constitution.

41. In this regard, the Court will first examine the Applicant's allegations of a violation of Article 31 of the Constitution in conjunction with Article 6 of the ECHR due to the absence of a hearing before the SCSC. To this end, the Court will first (i) elaborate on the general principles regarding the right to a hearing as guaranteed by the aforementioned Articles of the Constitution and the ECHR; and then, (ii) apply the same to the circumstances of the case.

(i) General principles regarding the right to a hearing

42. The Court first notes that the case law of the ECtHR established the basic principles regarding the right to a hearing. Based on this case law, the Court has also established the relevant principles and exceptions, based on which the necessity of holding a hearing is assessed, depending on the circumstances of the respective cases. Recently, through a number of judgments, the Court has emphasized these principles, finding a violation of Article 31 of the Constitution in conjunction with Article 6 of the ECHR due to the lack of a hearing before the SCSC, namely before the Specialized Panel of the ECHR and the Appellate Panel, when determining the rights of employees of the former enterprise

"Agimi", after the privatization of the latter, to which cases Court will refer in the following as cases of the Court of the former enterprise "Agimi". (See 5 (five) judgments in the cases of the former enterprise "Agimi": KI145/19, KI146/19, KI147/19, KI149/19, KI150/19, KI151/19, KI152/19, KI153/19, KI154/19, KI155/19, KI156/19, KI157/19 and KI159/19, Applicants *Et-hem Bokshi and others*, Constitutional Review of the Judgment of the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo on the Privatization Agency of Kosovo Related Matters, AC-I-13-0181-A0008, of 29 August 2019, Judgment of 10 December 2020; KI160/19, KI161/19,KI162/19, KI164/19, KI165/19, KI166/19, KI167/19, KI168/19, KI169/19, KI170/19, KI171/19, KI172/19, KI173/19 and KI178/19, Applicant *Muhamet Këndusi and others*, Constitutional of review of the Judgment of the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo on the Privatization Agency of Kosovo Related Matters, AC-I-13-0181-A0008, of 29 August 2019, Judgment of 27 January 2021; KI181/19, KI182/19 and KI183/19, with Applicant *Fllanza Naka, Fatmire Lima and Leman Masar Zhubi*, Constitutional review of the Judgment of the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo on the Privatization Agency of Kosovo related Matters, AC-I-13-0181-A0008, of 29 August 2019; Judgment of 27 January 2021; KI220/19, KI221/19, KI223/19 and KI234/19, by Applicant *Sadete Koca Lila and others*, Constitutional review of the Judgment of the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo Related Matters, AC-I-13-0181-of 29 August 2019, Judgment, of 25 March 2021; and KI 186/19; KI187/19, KI200/19 and KI208/19, Applicant *Belkize Vula Shala and others*; Judgment, of 28 April 2021). The Court, during the elaboration of the elaborated principles confirmed through the above Judgments of the Court and the application of these in the circumstances of the present case will refer to its first Judgment in relation to the former enterprise Agimi, namely cases KI145/19, KI145/19, KI146/19, KI147/19, KI149/19, KI150/19, KI151/19, KI152/19, KI153/19, KI154/19, KI155/19, KI156/19, KI157/19 and KI159/19, Applicant *Et-hem Bokshi and others).*

43. The principles elaborated in the relevant case law of the ECtHR, but also in the above cases, namely the judgments of the Court in the cases of the former enterprise "Agimi", emphasize that the public nature of proceedings before judicial bodies referred to in Article 31 of the Constitution in conjunction with paragraph 1 of Article 6 of the ECHR, protects the litigants from the administration of justice in secret, in the absence of a public hearing. Publicity of court proceedings is also one of the main mechanisms through which trust in justice is maintained. Such a principle, moreover, contributes to the achievement of the goals of Article 31 of the Constitution and Article 6 of the ECHR, for a fair trial, the guarantee of which is one of the fundamental principles of any democratic society embodied in Constitution and ECHR (See the above cases of the Court in the case of the former enterprise Agimi KI145/19, KI145/19, KI146/19, KI147/19, KI149/19, KI150/19, KI151/19, KI152/19, KI153/19, KI154/19, KI155/19, KI156/19, KI157/19 ans KI159/19, Applicant *Et-hem Bokshi and others*, cited above, paragraph 47).

44. In principle, litigants are entitled to a public hearing, but such an obligation is not absolute. As relevant to the present circumstances, the case law of the Court

bases on the case law of the ECtHR has developed key principles concerning (i) the right to a hearing in the courts of first instance; (ii) the right to a hearing in the courts of second and third instance; (iii) the principles on the basis of which it should be determined whether a hearing is necessary; and (iv) whether the absence of the first instance hearing can be corrected through a higher instance hearing and the relevant criteria for making that assessment. However, in all circumstances, the absence of a hearing must be justified by the relevant court. (See the cases of the Court in the case of the former enterprise "Agimi", KI145/19, KI145/19, KI146/19, KI147/19, KI149/19, KI150/19, KI151/19, KI152/19, KI153/19, KI154/19, KI155/19, KI156/19, KI157/19 and KI159/19, Applicant *Et-hem Bokshi and others*, cited above, paragraph 48).

45. With regard to the first issue, namely the obligation to hold a hearing in the courts of first instance, the ECtHR has emphasized that in the proceedings before a sole and first instance court, the right to a hearing is guaranteed by paragraph 1 of Article 6 of the ECHR (See, *inter alia*, the ECtHR cases *Fredin v. Sweden* (no. 2), Judgment of 23 February 1994, paragraphs 21-22; *Allan Jacobsson v. Sweden* (no. 2), Judgment of 19 February 1998, paragraph 46; *Göç v. Turkey, Judgment of 11 July 2002, paragraph 47;* and *Selmani and Others v. the Former Yugoslav Republic of Macedonia,* Judgment of 9 February 2017, paragraphs 37-39, see also cases KI145/19, KI145/19, KI146/19, KI147/19, KI149/19, KI150/19, KI151/19, KI152/19, KI153/19, KI154/19, KI155/19, KI156/19, KI157/19 and KI159/19, Applicant *Et-hem Bokshi and others,* cited above, paragraph 49).

46. According to the case law of the ECtHR, exceptions to this general principle are cases in which "*there are extraordinary circumstances that would justify the absence of a hearing*" in the first and only instance. (See, in this regard, the cases of the ECtHR, *Hesse-Anger and Anger v. Germany*, Decision of 17 May 2001; and the *Mirovni Institute v. Slovenia*, Judgment of 13 March 2018, paragraph 36). The character of such extraordinary circumstances stems from the nature of the cases involved in a case, for example, the cases dealing exclusively with legal matters or are of a very technical nature (See the case of the ECtHR, *Koottummel v. Austria*, Judgment of 10 December 2009, paragraphs 19 and 20).

47. With regard to the second case, namely the obligation to hold a hearing in the courts of second or third instance, the case law of the ECtHR states that the absence of a hearing can be justified on the basis of the specific characteristics of the relevant case, provided that a hearing has been held in the first instance. (See, in this context, the case of the ECtHR, *Salomonsson v. Sweden*, Judgment of 12 November 2002, paragraph 36). Therefore, proceedings before the courts of appeal, which involve only matters of law and not matters of fact, may be considered to be in accordance with the guarantees embodied in Article 6 of the ECHR, even if in the second instance there has not been a hearing. (See the case of the ECtHR, *Miller v. Sweden*, Judgment of 8 February 2005, paragraph 30; and see also the cases of the Court, KI145/19, KI145/19, KI146/19, KI147/19, KI149/19, KI150/19, KI151/19, KI152/19, KI153/19, KI154/19, KI155/19, KI156/19, KI157/19 and KI159/19, Applicant *Et-hem Bokshi and others*, cited above, paragraph 50). Having said that, and in principle, the absence of a

hearing can only be justified through the "*existence of exceptional circumstances*", as defined through the case law of the ECtHR, otherwise it is guaranteed to the parties in at least one level of jurisdiction, based on Article 31 of the Constitution in conjunction with Article 6 of the ECHR.

48. With regard to the third issue, namely the principles on the basis of which it must be determined whether a hearing is necessary, the Court refers to the Judgment of 6 November 2018 of the ECtHR *Ramos Nunes de Carvalho and Sá v. Portugal*, in which the Grand Chamber of the ECtHR established the principles on the basis of which the necessity of a hearing should be assessed. According to this Judgment, a hearing is not necessary if the relevant case (i) involves merely legal matters of a limited nature (see, ECtHR cases *Allan Jacobsson v. Sweden* (no. 2), cited above, para 49; and *Valová, Slezák and Slezák v. Slovakia*, Judgment of June 2004, paragraphs 65-68) or does not involve any special complexity (see the case of the ECtHR, *Varela Assalino v. Portugal*, Decision of 25 April 2002); (ii) involves highly technical matters, which are better addressed in writing than through oral arguments in a hearing; and (iii) does not involve issues of credibility of the parties or disputed facts and the courts may decide fairly and reasonably on the basis of the parties' submissions and other written materials. (See the cases of the ECtHR, *Döry v. Sweden*, Judgment of 12 November 2002, paragraph 37; and *Saccoccia v. Austria*, Judgment of 18 December 2008, paragraph 73, see also the cases of the Court, KI145/19, KI145/19, KI146/19, KI147/19, KI149/19, KI150/19, KI151/19, KI152/19, KI153/19, KI154/19, KI155/19, KI156/19, KI157/19 and KI159/19, Applicant *Et-hem Bokshi and others*, cited above, paragraph 51).

49. On the contrary, based on the aforementioned Judgment, a hearing is necessary if the relevant case (i) involves the need to consider issues of law and fact, including cases in which it is necessary to assess whether the lower authorities have assessed the facts correctly (see, *inter alia*, the cases of the ECtHR, *Malhous v. Czech Republic*, Judgment of 12 July 2001, paragraph 60; and *Fischer v. Austria*, Judgment of 26 April 1995, paragraph 44); and (ii) requires the relevant court to gain a personal impression of the parties concerned, and to allow them the opportunity to clarify their personal situation, in person or through the relevant representative. Examples of this situation are cases where the court must hear evidence from the parties concerning personal suffering in order to determine the appropriate level of compensation (see ECtHR cases, *Göç v. Turkey*, cited above, paragraph 51; and *Lorenzetti v. Italy*, Judgment of 10 April 2012, paragraph 33) or must provide information about the character, conduct and dangerousness of a party (See the case of the ECtHR, *De Tommaso v. Italy*, Judgment of 23 February 2017, paragraph 167).

50. With regard to the fourth case, namely the possibility of a second-instance correction of the absence of a first-instance hearing and the respective criteria, the ECtHR through its case law has determined that in principle, such a correction depends on powers of the highest court. If the latter has full jurisdiction to examine the merits of the case at hand, including the assessment of the facts, then the correction of the absence of a hearing in the first instance may be made in the second instance (See the case of the ECtHR, *Ramos Nunes*

de Carvalho v. Portugal, cited above, paragraph 192 and references used therein).

51. The Court, referring consistently to the case law of the ECtHR and that of the Court, states that the fact that the parties did not request to hold a hearing does not mean that they waived their right to hold one. (See the cases of the Court, KI145/19, KI145/19, KI146/19, KI147/19, KI149/19, KI150/19, KI151/19, KI152/19, KI153/19, KI154/19, KI155/19, KI156/19, KI157/19 and KI159/19, Applicant *Et-hem Bokshi and others*, cited above, paragraph 54, for more on the waiver of the right to a hearing, see the ECHR Guide of 30 April 2020 on Article 6 of the ECHR, Right to a fair trial, Civil limb, IV. Procedural Criteria B. Public Hearing, paragraphs 401 and 402 and references used therein). Based on the case law of the ECtHR, such a case depends on the characteristics of domestic law and the circumstances of each case separately (See the case of the ECtHR, *Göç v. Turkey*, cited above, paragraph 48).

52. Finally, the Court summarizes the factual circumstances of the cases of the former enterprise "Agimi" [Judgment of the Court of 10 December 2020 in cases KI145/19, KI146/19, KI147/19, KI149/19, KI150/19, KI151/19, KI152/19, KI153/19, KI154/19, KI155/19, KI156/19, KI157/19 and KI159/19], as well as its findings, which have resulted in finding a violation of the right to fair and impartial trial, guaranteed by Article 31 of the Constitution, in conjunction with Article 6 of the ECHR, as a result of the absence of a hearing at the Appellate Panel of the SCSC. The circumstances of this above case were related to the privatization of Enterprise SOE "Agimi" in Gjakova and the respective rights of workers to be recognized the status of workers with legitimate rights to participate in the proceeds of twenty percent (20%) from this privatization, as defined in Article 68 (Complaints Related to a List of Eligible Employees) of the Annex to the Law on the Special Chamber of the Supreme Court and paragraph 4 of Article 10 of Regulation no. 2003/13 and amended by Regulation no. 2004/45. The Applicants were not included in the Temporary List of Employees with legitimate rights to participate in the proceeds of twenty percent (20%) from the privatization of SOE "Agimi". As a result of the rejection of their appeal by the Privatization Agency of Kosovo, the Applicants initiated a lawsuit with the Specialized Panel of the Special Chamber of the Supreme Court, challenging the Decision of the Privatization Agency of Kosovo. All Applicants requested that a hearing before the Specialized Panel. The Specialized Panel rejected the request for a hearing on the grounds that "*the facts and evidence submitted are sufficiently clear*", entitling the Applicants, with the exception of two, and finding that they were discriminated against, therefore they should be included in the Final List of the Privatization Agency of Kosovo. Acting on the basis of the appeal of the Privatization Agency of Kosovo against this Judgment, in August 2019, the Appellate Panel issued the challenged Judgment, by which it approved the appeal of the Privatization Agency of Kosovo and modified the Judgment of the Specialized Panel, removing from "*the list of beneficiaries 20% of the privatization process of SOE "Agimi" Gjakova*" all applicants. This Judgment was challenged by the Applicants before the Court, claiming, *inter alia*, that it was rendered contrary to Article 31 [Right to Fair and Impartial Trial] on the grounds that the Appellate Panel modified the Judgment of the Specialized Panel (i) without a hearing; (ii) without sufficient reasoning; (iii) in

an arbitrary interpretation of the law; and (iv) in violation of their right to a trial within a reasonable time.

53. In assessing the Applicants' allegations in these cases, the Court focused on those related to the absence of a hearing before the Special Chamber of the Supreme Court. The Court, after applying the abovementioned principles established through the case law of the ECtHR, found that the challenged Judgment, namely Judgment [AC-I-13-0181-A0008] of 29 August 2019 of the Appellate Panel of the Special Chamber of the Supreme Court, was rendered contrary to the guarantees embodied in Article 31 of the Constitution in conjunction with Article 6 of the European Convention on Human Rights, regarding the right to a hearing, *inter alia*, because (i) the fact that the Applicants have not requested a hearing before the Appellate Panel, does not imply their waiver of this right, nor does it exempt the Appellate Panel of the obligation to address on its own initiative the necessity of holding a hearing; (ii) the Applicants have been denied the right to a hearing at both levels of the Special Chamber of the Supreme Court; (iii) the Appellate Panel had not dealt with "*exclusively legal or highly technical matters*", the matters on the basis of which "*extraordinary circumstances that could justify the absence of a hearing*" could have existed; (iv) The Appellate Panel had, in fact, considered "*fact and law*" issues, which, in principle, require a hearing; and (v) the Appellate Panel did not justify the "*waiver of the oral hearing*". The Court also recalls that the same principles and findings were applied and decided in three other judgments in the cases of the former enterprise "Agimi" through which it found a violation of Article 31 of the Constitution, in conjunction with Article 6 of the ECHR as a result of the failure to hold a hearing at the level of the Appellate Panel.

(i) Application of the principles elaborated above to the circumstances of the present case

54. The Court first recalls that based on the case law of the ECtHR and that of the Court, Article 31 of the Constitution and Article 6 of the ECHR, in principle, guarantee that a hearing be held at least one level of decision-making. Such is, as elaborated above, in principle, (i) mandatory if the court of first instance has sole jurisdiction to decide matters of fact and law; (ii) not mandatory in the second instance if a hearing is held in the first instance, despite the fact that such a determination depends on the characteristics of the case at hand, for example, if the second instance decides on both fact and law; and (iii) mandatory in the second instance if one has not been held in the first instance, in cases where the second instance has full competence to assess the decision of the first instance, also with regard to the issues of fact and law. Exceptions to these cases, in principle, are made only if "*there are exceptional circumstances that would justify the absence of a hearing*", and which the ECtHR, as explained above, through its case law has defined as cases that deal exclusively with legal issues or are of a highly technical nature.

55. Based on the principles set out above, in the following the Court must first assess, in the circumstances of the present case, the fact that the Applicant did not request a hearing before the Specialized Panel and the Appellate Panel may

result in their finding that they have waived the right implicitly from a hearing. If the answer to this question turns out to be negative, then the Court, based on the case law of the ECtHR, must assess whether in the circumstances of the present case "*there are exceptional circumstances that would justify the absence of a hearing*" in the two instances of decision-making, mainly before the Specialized Panel and the Appellate Panel. The Court will also make this assessment based on the principles established by the Judgment of the Grand Chamber *Ramos Nunes de Carvalho and Sá v. Portugal,* as well as the case law of the Court itself in the cases of the former enterprise "Agimi".

a) If the Applicant has waived the right to a hearing

56. In this regard, the Court first recalls that through individual complaints filed with the Specialized Panel, all Applicants requested a hearing. The Court recalls that the Judgment of the Specialized Panel through which it was decided on the appeals of the former employees of the former Socially Owned Enterprise, who were not included in the Final List, stated that based on paragraph 11 of Article 68 of the Annex to the Law on the SCSC, a hearing was not necessary because "*the facts and evidence submitted are sufficiently clear*".

57. As already clarified, the Specialized Panel, by Judgment [C-II-12-0023], based on the facts and evidence submitted by the Applicant, rejected his appeal as ungrounded. The Court also recalls that the Applicant against the aforementioned Judgment of the Specialized Panel filed an appeal with the Appellate Panel. In his appeal, the Applicant alleged erroneous and incomplete determination of the factual situation and erroneous application of the law. With regard to the first, the Applicant stated that (i) the finding of the Specialized Panel that in his case there is no evidence of his employment relationship after 1 June 1997 is "*erroneous and contrary to the presented material evidence*" because based on the submitted evidence, it is confirmed that he started his employment relationship on 10 February 1992, while the latter was terminated in March 1999 as a result of "*the circumstances of the war, [...] and after the war due to the circumstances of security and discrimination, I was in fact unable to perform my work and work duties [...]*"; (ii) his employment booklet attached as evidence confirms the fact that "*there is no termination of work experience after 01.06.1997*"; (iii) the statements of all employees of the said enterprise, as witnesses, would confirm the accuracy of his claims; and (iv) on the basis of the evidence submitted, it is established that he meets the criteria set forth in paragraph 4 of Section 10 of UNMIK Regulation 2003/13, as amended by UNMIK Regulation 2004/45.

58. The Court notes that the Applicant by his appeal to the Appellate Panel did not expressly request a hearing. However, based on the content of his appeal, which is briefly reflected in a summarized manner in the challenged Judgment of the Appellate Panel, the Applicant specifies that "*the fact that he worked in the SOE even after 01 June 1997 can be clearly confirmed by the statement of all employees in the mentioned enterprise, namely by hearing them as witnesses and the decision on the establishment of the registration commission no. 725 of 23 December 1998 as well as the certificate dated 25 February 1999*". Based on the content of this specific allegation, raised in his appeal, filed with the

Appellate Panel, the Court notes that the Applicant in the reasoning of his allegation of erroneous and incomplete determination of the factual situation by the Specialized Panel specifies that the extension of his employment relationship even after 1 June 1997 can be proved by the statements of the former employees of the Enterprise after hearing them as witnesses.

59. In the following, the Court, based on the case file, and specifically on the content of the two judgments of the Specialized Panel and that of the Appellate Panel, cannot determine precisely whether the former employees of the former enterprise in the capacity of appellants in this proceedings, whose complaints were dealt with jointly by the Specialized Panel and that of the Appellate Panel to have filed such a request. In any case, the Court based on Judgment [C-II-12-0023] of the Specialized Panel and challenged Judgment [AC-I-17-0074-A123] of the Appellate Panel that these two instances had waived the holding a hearing with reference to Article 68, paragraph 11 and Article 64, paragraph 1 of the Annex to the Law on the SCSC. In this regard, the Court specifically reiterates that the Specialized Panel in its Judgment, namely in the part of the summary of facts and proceedings before this Panel specified that *"The judgment was rendered without holding a public hearing, because the facts and legal arguments which have been provided are sufficiently clear. The Panel does not expect any other relevant information for consideration. Article 68.11 of the Annex to the Law on the Special Chamber no. 04/L-033"*.

60. The Court also recalls that the Applicant in his Referral submitted to the Court alleges that (i) pursuant to Article 64 of the Annex to the Law on the SCSC, the Appellate Panel was obliged to hold a public hearing and that such an obligation it based on this law, regardless of whether a request for a hearing was filed or not, because failure to file a request for a hearing does not necessarily mean waiving the right to such a request; (ii) The Appellate Panel may have been exempted of this obligation only if "*there are exceptional circumstances which justify the absence of a hearing*"; and (iii) the Appellate Panel prevented the parties from presenting their evidence because "*no regulation stipulates that the employment booklet is exclusively the only evidence of the existence of the employment relationship*", while this was the decisive evidence based on which the allegations of the Applicant were rejected as ungrounded, by not being given the opportunity, as provided in Article 36 (General Rules on Evidence) of the Annex to the Law on SCSC, to present his other evidence through the hearing, such as witnesses. In the context of this category of allegations, the Court recalls that the Applicant referred to the cases of the ECtHR, namely case *Exel v. the Czech Republic* (Judgment of 5 July 2005); *Gőç v. Turkey*, (Judgment of 11 July 2002); *Fredin v. Sweden* (no. 2) (Judgment of 23 February 1994); *Allan Jacobson v. Sweden* (no. 2), (Judgment of 19 February 1998); *Fischer v. Austria* (Judgment of 26 April 1995); *Salomonsson v. Sweden* (Judgment of 12 November 2002).

61. In this context and as explained above based on the case law of the Court and of the ECtHR, the fact that the Applicant has not filed a request for a hearing before the Specialized Panel and expressly the same request was not filed in the the Appellate Panel does not necessarily mean that it has implicitly waived such

a request, and also the absence of this request does not necessarily exempt the relevant court, namely the SCSC, from the obligation to hold such a hearing.

62. More specifically, based on the case law of the ECtHR, in the circumstances of cases in which the parties have not requested a hearing, such as the Applicant's case, the ECtHR, *inter alia*, assesses whether the absence of such a request may be considered as an implied waiver of the respective Applicant from the right to a hearing. Having said that, the lack of a request for a hearing, based on the case law of the ECtHR, is never the only factor that determines the necessity of holding a hearing. In all cases, whether the absence of a request for a hearing exempts a court from the obligation to hold a hearing depends on (i) the specifics of the applicable law; and (ii) the circumstances of a case. (See ECtHR case *Göç v. Turkey*, cited above, 46). In the following, the Court will assess these two categories of cases.

63. First, with regard to the specifics of the applicable law, namely the Law and the Annex to the Law on the SCSC, the Court recalls that pursuant to Article 64 (Oral Appellate Proceedings) of the same law, "*The Appellate Panel shall, on its own initiative or the written application of a party, decide to whether or not to hold on or more oral hearings on the concerned appeal*", based on its initiative or even a written request from a party. Article 69 (Oral Appellate Proceedings) of Law no. 06/L-086 on the SCSC, has the same content. Based on these provisions, the court by the judgments in the cases of the former enterprise "Agimi", assessed that the holding of a hearing does not necessarily depend on the request of the party. Based on the applicable provisions, it is also the duty of the relevant Panel, based on its initiative, to assess whether the circumstances of a case require a hearing to be held. Furthermore, beyond the competencies of the Specialized Panel, based on Article 60 (Content of appeal) and Article 65 (Submission of New Evidence) of the Annex to the Law on the SCSC, the Appellate Panel has the competence to assess both issues of law and fact, and consequently, is equipped with full competence to assess how the lower authority, namely the Specialized Panel, has assessed the facts, namely the Specialized Panel. The Court notes that based on Article 64 of the Annex to the Law on SCSC and Article 69 of Law no. 06/L-086 on the SCSC, it is the obligation of the Appellate Panel, even on its own initiative, to assess whether the holding of a hearing is mandatory, and if not, to justify the non-holding of the latter (See in this context the cases of the Court in the cases of the former enterprise "Agimi": KI145/19, KI145/19, KI146/19, KI147/19, KI149/19, KI150/19, KI151/19, KI152/19, KI153/19, KI154/19, KI155/19, KI156/19, KI157/19 and KI159/19, *Et-hem Bokshi and others*, cited above, paragraph 61).

64. Secondly, with regard to the circumstances of a case, the Court recalls that the case law of the ECtHR states that the absence of a request for a hearing, and the assessment of whether this fact may result in the finding that the party concerned implicitly waived the right to a hearing, it should be assessed in the entirety of the specifics of a procedure, and not as a single argument, to determine whether or not the absence of a hearing has resulted in a violation of Article 6 of the ECHR (See the cases of the Court in the case of the former enterprise Agimi, KI145/19, KI145/19, KI146/19, KI147/19, KI149/19, KI150/19,

KI151/19, KI152/19, KI153/19, KI154/19, KI155/19, KI156/19, KI157/19 and KI159/19, Applicant *Et-hem Bokshi and others*, cited above, paragraph 62).

65. More specifically, in cases where a party concerned has not made a request for a hearing in any of the instances, similar to the Applicant's case, the ECtHR in case *Salomonsson v. Switzerland* (Judgment of 12 February 2003), in which the Applicant did not request a hearing in either of the instances, although the ECtHR found that the Applicant could be considered to have implicitly waived the right to a hearing (see paragraph 35 of the case of *Salomonsson v. Switzerland*), nevertheless found a violation of Article 6 of the ECHR due to the absence of a hearing, because it concluded that in the circumstances of the present case, there were no exceptional circumstances that would justify the absence of a hearing, especially given the fact that the appellate level also considered factual issues and not just the law. (See ECtHR case *Salomonsson v. Switzerland*, cited above, paragraphs 36-40).

66. On the other hand, in the case of *Goc v. Turkey*, the ECtHR also found a violation of Article 6 of the ECHR due to the absence of a hearing, rejecting the allegations of the Turkish Government that (i) the case was simple and that it could be dealt with promptly only on the basis of the case file, in particular because the respective complainant did not request the submission of any new evidence through the complaint; and that (ii) the Applicant did not request the holding of a hearing (For the facts of the case, see paragraphs 11 to 26 of the case of ECtHR *Goç v. Turkey*). In the examination of the respective case, and after assessing whether there were any exceptional circumstances that would justify the absence of a hearing, the ECtHR found a violation of paragraph 1 of Article 6 of the ECHR, stating, *inter alia*, that (i) despite the fact that the Applicant concerned did not request a hearing, it does not appear from the circumstances of the case that such a request would have any prospect of success; furthermore that (ii) it cannot be considered that the Applicant concerned has waived his right to a hearing by not seeking one before the Court of Appeals as the latter did not have full jurisdiction to determine the amount of compensation; (iii) the respective Applicant was not given the opportunity to be heard even before the lower instance and which had jurisdiction to assess both the facts and the law; and (iv) the substantive issue, in the circumstances of this case, was whether the Applicants concerned should be offered a hearing before a court which was responsible for establishing the facts of the case (for the reasoning of the case, see paragraphs 43 to 52 of case *Goç v. Turkey*).

67. Subsequently, referring to the factual and legal circumstances of the case *Gőç v. Turkey*, and comparing them with the factual and legal circumstances of the Applicant's case, the Court recalls that the Specialized Panel had waived the right to hold a hearing, on the grounds that the facts and arguments set out in writing were sufficiently clear for this Panel to consider and decide on the complaints of former employees of the former enterprise, including that of the Applicant. In the context of this finding of the Specialized Panel, including the similar finding of the Appellate Panel to waive the right from the hearing, as well as the fact that the Appellate Panel upheld the position of the Specialized Panel rejecting the Applicant's appeal against In the decision of the PAK, the

Court considers that even if the Applicant had filed such a request before the Appellate Panel, it would not have had a prospect of success.

68. The Court recalls that in the circumstances of the present case, (i) the Applicant was not given the opportunity to be heard before the Specialized Panel, with jurisdiction to assess the facts and the law; The Appellate Panel confirmed that the Specialized Panel had fully determined the factual situation and had correctly applied the applicable law.

69. In the following, the Court comparing the factual and legal circumstances of the cases of the former Enterprise "Agimi" (see specifically the cases of the Court in the case of the former enterprise Agimi, KI145/19, KI145/19, KI146/19, KI147/19, KI149/19, KI150/19, KI151/19, KI152/19, KI153/19, KI154/19, KI155/19, KI156/19, KI157/19 and KI159/19, Applicant *Et-hem Bokshi and others*, cited above) with the circumstances of the Applicant's case finds that the latter differ in the following aspects: (i) in contrast to the Applicant's case in the cases of the former Enterprise "Agimi" the Applicants in the Specialized Panel had requested that a hearing be held; (ii) The Specialized Panel, with the exception of two Applicants, approved the Applicants' appeal against the PAK Decision not to include them in the Final List, and decided that they should be included in the PAK Final List; (iii) The Appellate Panel approved the appeal of the PAK against the Judgment of the Specialized Panel and consequently modified the latter, rejecting the appeal of all the Applicants against the Decision of the PAK as ungrounded and removing them from the Final List of the PAK. Whereas in the Applicant's case, the Specialized Panel rejected the Applicant's appeal against the PAK Decision as ungrounded, and consequently the Appellate Panel also rejected the Applicant's appeal against the Judgment of the Specialized Panel, confirming the position and finding of the latter. Despite the fact that the Appellate Panel has confirmed the position and finding of the Specialized Panel, which the latter based on the determination of the factual situation and the application of the relevant law, the Court considers that the Appellate Panel to achieve such a finding has reviewed all the facts submitted through the Applicant's initial complaint to the Specialized Panel and responds to the PAK complaint.

70. Therefore, despite the above-mentioned differences of the Applicant's case with the Applicants case of the former Enterprise "Agimi", who requested a hearing before the Specialized Panel, the Court could not, however, find that the lack of expression of the Applicant to hold a hearing means that he has waived his right to hold a hearing, at least in one of the instances of the SCSC. Furthermore, the Court recalls that the Applicant as in his appeal submitted to the Appellate Panel stated that his employment relationship even after 1997 could be proved through the statements of all the employees in the said enterprise, who in the capacity of witnesses, could confirm the accuracy of the his claims. In this connection, the Court recalls that the Applicant in his Referral before the Court alleges that the Appellate Panel prevented the parties from presenting their evidence because *"no regulation stipulates that the employment booklet is exclusively the only proof of the existence of the employment relationship"*, while this was the decisive evidence on the basis of which the Applicant's allegations were rejected as unfounded, not being given the opportunity to

present through the hearing his other evidence, including witnesses, as defined in Article 36. Having said that, the Court cannot find that the Applicant's failure to request a hearing at the level of the Appellate Panel can be considered as his implied waiver of the right to a hearing, and in particular, not without assessing whether in the circumstances of the present case, "*there are exceptional circumstances that would justify the absence of a hearing*". This is because, in all the cases in which the ECtHR had reached such a finding, it had made it in connection with the fact that the circumstances of the cases were related to matters of an exclusively legal or technical nature, and consequently "*there were extraordinary circumstances that would justify the absence of a hearing*". Consequently, the Court must assess whether in the circumstances of the present case, "*there are exceptional circumstances that would justify the absence of a hearing*", namely whether the nature of the cases before the Appellate Panel can be classified as "*exclusively legal or of a highly technical nature*", based on the case law of the Court and the ECtHR.

a) Whether in the circumstances of the present case there are extraordinary circumstances which would justify the absence of a hearing

71. The Court recalls once again that based on the case law of the ECtHR, upheld by the case law of the Court itself, the parties are entitled to a hearing in at least one instance. This instance is mainly the first instance, and the one which has the jurisdiction to decide on both factual and legal issues (see Court cases concerning the former Enterprise Agimi, KI145/19, KI145/19, KI146/19, KI147/19, KI149/19, KI150/19, KI151/19, KI152/19, KI153/19, KI154/19, KI155/19, KI156/19, KI157/19 and KI159/19, Applicant *E'them Bokshi and others*, cited above, paragraph 69). In this context, regarding the obligation to hold a hearing in the courts of second or third instance, the case law of the ECtHR states that the absence of a hearing can be justified based on the specific characteristics of the relevant case, provided that a hearing be held in the first instance. In principle, if a hearing is held in the first instance, the proceedings before the courts of appeal, and which involve only matters of law, and not matters of fact, may be considered to be in accordance with the guarantees enshrined in Article 6 of the ECHR , even if in the second instance no hearing was held. Having said that, the exception to the right to a hearing are only those cases in which it is determined that "*there are extraordinary circumstances that would justify the absence of a hearing*". These circumstances, as explained above, the case law of the ECtHR has classified as cases which relate to "*exclusively legal or highly technical issues*". (See case *Schuler-Zgraggen v. Switzerland, cited above* and *Döry v. Sweden*, të cited above).

72. Similarly, the ECtHR operates also in those cases in which the issues before the relevant Court are exclusively legal, and do not involve an assessment of the disputed facts. (See ECtHR case *Saccoccia v. Austria,* cited above, paragraph 78).

73. On the contrary, in other cases in which the ECtHR found that the cases before the relevant courts involved both issues of fact and law, it did not find that there "*were exceptional circumstances that would justify the absence of a hearing*". For example, in the cases of *Malhous v. the Czech Republic* (Judgment of 12

July 2001), the ECtHR found a violation of Article 6 of the ECHR due to the absence of a hearing, as it determined that the cases complained of by the respective Applicant were not limited to the issues of law but also the fact, namely the assessment of whether the lower authority had assessed the facts correctly (See the case of the ECtHR *Malhous v. Czech Republic*, cited above, paragraph 60). Similarly, in the case of *Koottummel v. Austria* (Judgment of 10 December 2009), the ECtHR found a violation of Article 6 of the ECHR for absence of a hearing because it found that the cases before it could not qualify as matters of an exclusively legal nature, or of a technical nature, which could consist of exceptional circumstances which would justify the absence of a hearing (See the case of the ECtHR, *Koottummel v. Austria*, cited above, paragraphs 20 and 21).

74. Similarly, as in the circumstances of the cases cited above of the ECtHR *Malhous v. Czech Republic* and *Koottummel v. Austria*, the Court by applying this position of the ECtHR also in the circumstances of the present case considers that the Appellate Panel has jurisdiction over both fact and law issues. Based on paragraph 11 of Article 10 (Judgments, Decisions and Appeals) of Law no. 04/L-033 on the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo Related Matters (hereinafter: the Law on the SCSC) and paragraph 4 of Article 64 (Oral Appellate Proceedings) and Article 65 (Submission of New Evidence) of the Annex to the Law on the SCSC, the parties have, *inter alia*, the opportunity to raise complaints before the Appellate Panel regarding both matters of law and facts, including the opportunity of presenting new evidence.

75. The Court further notes that in accordance with Article 68 of the Annex to the Law on the SCSC, in the event of complaints concerning the list of employees with legitimate rights, the burden of proof falls on the Applicants before the Specialized Panel. Also, the burden of proof for the opponent of such a request falls on the responding party, namely the PAK, in the circumstances of the present case. Before the Appellate Panel, the burden of proof also falls on the appellant concerned. The circumstances of the present case are also, in essence, related to allegations of discrimination. This allegation was rejected by the Appellate Panel through its Judgment on the grounds that the Applicant did not raise it in the proceedings before the Specialized Panel. In case of allegations of discrimination, the burden of proof, based on Article 8 (Burden of proof) of the Anti- Discrimination Law, falls on the respondent, namely the PAK, and not the Applicant. (See, Court cases KI145/19, KI145/19, KI146/19, KI147/19, KI149/19, KI150/19, KI151/19, KI152/19, KI153/19, KI154/19, KI155/19, KI156/19, KI157/19 and KI159/19, cited above, paragraph 76).

76. In such circumstances, and applying the ECtHR position in cases *Malhous v. The Czech Republic* and *Koottummel v. Austria*, and in the case-law of the former enterprise "Agimi", the Court notes that: (i) the Appellate Panel has considered issues both of fact and law; (ii) and with regard to the facts, the burden of proof that they meet the criteria of paragraph 4 of Article 10 of UNMIK Regulation no. 2003/13, in principle falls on the Applicant. Therefore, the Court considers that it is indisputable that the issue under consideration before the Appellate Panel, is not (i) either an exclusively legal matter; and (ii)

nor of a technical nature. On the contrary, the case before the Appellate Panel contained important factual and legal issues. Consequently, the Court must find that in the circumstances of the present case, there are no circumstances which would justify the absence of a hearing.

77. In support of this finding, the Court recalls that the ECtHR Judgment *Ramos Nunes de Carvalho v. Portugal*, and to which it referred also in the cases of former enterprise "Agimi", specifically stated that a hearing was necessary in circumstances involving the need to consider matters of law and fact, including cases in which it is necessary to assess whether the lower authorities have assessed the facts correctly. This is especially true in circumstances in which a hearing has not been held even before the lower instance, as is the case in the circumstances of the present case.

78. Finally, the Court also notes the fact that the Appellate Panel did not justify its "*waiver of the hearing*", but merely referred to paragraph 1 of Article 69 of the Annex to Law 06/L-086 on the SCSC. The latter, as explained above, merely determines the competence of the Appellate Panel to decide on holding of a hearing on its own initiative or at the request of a party. The relevant judgment does not contain any additional explanation regarding the decision of the Appellate Panel to "*waive the hearing*". In this context, the Court notes that based on the case law of the ECtHR, in assessing allegations relating to the absence of a hearing, it should also be considered whether the refusal to hold such a hearing is justified.

79. Therefore, and in conclusion, the Court, considering that (i) the fact that the Applicant did not expressly request a hearing at the level of the Specialized Panel and the Appellate Panel, does not imply that the latter has implicitly waived this right, especially considering that the latter has filed an appeal before the Appellate Panel (ii) also that the absence of this request does not exempt the Appellate Panel from the obligation to assess the necessity of a hearing, furthermore on the fact that the Applicant in his complaint before this Panel had specified that his employment relationship in the enterprise after 1997 could be proved by the testimony of the former employees of this enterprise, as witnesses; (iii) that even if the Applicant had filed such a claim, it could have resulted in a lack of prospect of success; (iv) the cases before the Appellate Panel cannot be qualified either as exclusively legal matters or as matters of a technical nature, but rather as matters of fact and law, and their assessment, based on the case law of the Court and the ECtHR, entails the necessity of holding a hearing at least at one level of jurisdiction; and (v) the Appellate Panel did not justify the "*waiver of the hearing*", finds that in the present case there were no "*extraordinary circumstances to justify the absence of a hearing*", and consequently, the challenged Judgment of the Appellate Panel, namely Judgment [AC-I-17-0074-A123] of 8 October 2019 of the Appellate Panel, regarding the Applicant, was rendered contrary to the guarantees embodied in Article 31 of the Constitution in conjunction with Article 6 of the ECHR.

80. The Court further refers to the Applicant's allegation of a violation of Article 24 of the Constitution, in conjunction with Article 14 of the ECHR, and Article 1 of Protocol No. 1. 12 of the ECHR, in the context of which he alleges that he was

not treated equally in relation to three former employees of the Socially Owned Enterprise [K.B. with case number [C-0026] and S.B. with case number [C-0029] at the Specialized Panel and D.V. [with case number [C-0004] in the Specialized Panel and case number [A-001] in the Appellate Panel] based on the case file notes same in the case of the Applicant also the three former employees of the above-mentioned Social Enterprise, the Appellate Panel of the SCSC, through the challenged Judgment, rejected the appeal of these three former employees as ungrounded.

81. However, having regard to the fact that the Court has already found that the challenged Judgment of the Appellate Panel is not in accordance with Article 31 of the Constitution in conjunction with Article 6 of the ECHR, due to the absence of a hearing, considers that it is not necessary to consider the abovementioned allegation of a violation of Article 24 of the Constitution in conjunction with Article 14 of the ECHR, and Article 1 of Protocol no. 12 of the ECHR, as the latter can be addressed and reviewed by the Appellate Panel. Also in relation to the Applicant's other allegations regarding a violation of Article 31 of the Constitution in conjunction with Article 6 of the ECHR regarding the lack of reasoning of the court decision, as well as the allegation regarding a violation of Article 49 of the Constitution, the Court considers that these allegations of the Applicant should be reviewed by the Appellate Panel, in accordance with the findings of this Judgment. Furthermore, given that the Appellate Panel has full jurisdiction to review the challenged decisions of the Specialized Panel based on the applicable laws of the SCSC, it has the possibility of correction at the second instance of the absence of a hearing in the first instance.

82. The Court's finding of a violation of Article 31 of the Constitution in conjunction with Article 6 of the ECHR, in the circumstances of the present case, relates exclusively to the absence of a hearing, as explained in this Judgment, and does not in any way relate to nor does it prejudice the outcome of the merits of the case. (See similarly the cases of the Court, KI145/19, KI145/19, KI146/19, KI147/19, KI149/19, KI150/19, KI151/19, KI152/19, KI153/19, KI154/19, KI155/19, KI156/19, KI157/19 and KI159/19, Applicant *E'them Bokshi and others*, cited above, paragraph 83).

Request for interim measure

83. The Court recalls that the Applicant filed a request for imposition of an interim measure without specifying what procedure or action should be suspended through the imposition of an interim measure.

84. The Court has already held that the Applicant's Referral should be declared admissible and to hold that there has been a violation of Article 31 of the Constitution in conjunction with Article 6 of the ECHR, and consequently this decision renders further examination of the request for interim measure unnecessary. (See case of the Court KI207/19, Applicant *Social democratic NISMA, Alliance Kosova e Re and Justice Party,* Judgment of 10 December 2020, paragraph 237).

Conclusion

85. In the circumstances of this case, the Court assessed the Applicant's allegations regarding the absence of a hearing, a right guaranteed, according to the clarifications of this Judgment, by Article 31 of the Constitution in conjunction with Article 6 of the ECHR.

86. In assessing the relevant allegations, the Court has initially elaborated on the general principles deriving from its case-law and that of the ECtHR, regarding the right to a hearing, clarifying the circumstances in which such is necessary, based, *inter alia,* on 5 (five) its judgments in the cases of the former enterprise "Agimi", clarifying the circumstances in which one is necessary, based, *inter alia,* on the Judgment of the Grand Chamber of the ECtHR, *Ramos Nunes de Carvalho and Sá v. Portugal.* The Court has clarified, *inter alia*, that (i) the absence of a party's request for a hearing does not necessarily imply the waiver of such a right and that the assessment of the impact of the absence of such a request depends on the specifics of the law and the particular circumstances of a case; and (ii) in principle, the parties are entitled to a hearing at least at one level of jurisdiction, unless "*there are exceptional circumstances that would justify the absence of a hearing*", which based on the case law of the ECtHR in principle relate to cases in which "*exclusively legal or highly technical issues are examined*".

87. In the circumstances of the present case, the Court finds that (i) the fact that the Applicant has not requested a hearing before the Appellate Panel does not imply their waiver of this right nor does it absolve the Appellate Panel of the obligation to address on its own initiative the necessity of holding a hearing; (ii) the Appellate Panel did not deal with "*exclusively legal or highly technical matters*", matters on the basis of which "*exceptional circumstances that would justify the absence of a hearing*" could have existed, but on the contrary considered both the issues of fact and law; and (iii) the Appellate Panel did not justify the "*waiver of the oral hearing*". Taking into account these circumstances and other reasons given in this Judgment, the Court found that the challenged Judgment, namely Judgment [AC-I-17-0074-A123] of 8 October 2019 of the Appellate Panel, was rendered contrary to the guarantees embodied in Article 31 of the Constitution in conjunction with Article 6 of the ECHR, regarding the right to a hearing.

88. Finally, the Court also notes that (i) based on the applicable law on the SCSC, the Appellate Panel has full jurisdiction to review the decisions of the Specialized Panel and, consequently, based on the case law of the ECtHR, has the possibility of correcting the absence of a hearing at the level of the lower court, namely, the Specialized Panel; and (ii) it is not necessary to deal with the Applicant's other allegations with regard to the violation of Article 31 of the Constitution in conjunction with Article 6 of the ECHR with regard to the lack of reasoning of the court decision, as well as allegations of violation of Article 24 of the Constitution in conjunction with Article 14 of the ECHR, and Article 1 of Protocol no. 12 of the ECHR and Article 49 of the Constitution, because the latter must be considered by the Appellate Panel in accordance with the findings of this Judgment; and (iii) the finding of a violation of Article 31 of the

Constitution in conjunction with Article 6 of the ECHR, in the circumstances of the present case relates only to the procedural guarantees for a hearing and in no way prejudices the outcome of the merits of the case.

FOR THESE REASONS

The Constitutional Court, in accordance with Articles 113.1 and 113.7 of the Constitution, Articles 20, 27 and 47 of the Law and Rules 57 and 59 (1) (a) of the Rules of Procedure, in the session held on 29 July 2021, by majority of votes:

DECIDES

I. TO DECLARE the Referral admissible;

II. TO HOLD that regarding the Applicant there has been a violation of Article 31 [Right to Fair and Impartial Trial] of the Constitution of the Republic of Kosovo in conjunction with Article 6 (Right to a fair trial) of the European Convention on Human Rights;

III. TO DECLARE the Judgment [AC-I-17-0074-A123] of 8 October 2019 of the Appellate Panel of the Special Chamber of the Supreme Court regarding the Applicant invalid;

IV. TO REJECT the request for interim measure;

V. TO REMAND the case to the Appellate Panel of the Special Chamber of the Supreme Court for retrial, in accordance with the findings of this Judgment;

VI. TO ORDER the Appellate Panel of the Special Chamber of the Supreme Court 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 by 24 January 2022;

VII. TO NOTIFY this Judgment 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**

Selvete Gërxhaliu-Krasniqi Gresa Caka-Nimani

This translation is unofficial and serves for informational purposes only.