Prishtina, on 2021
Ref. no.:

RESOLUTION ON INADMISSIBILITY

in

Case No. KI114/20

Applicant

Aziz Sefedini

Constitutional review of non-enforcement: a) of Judgment C1. No. 190/07 of the Basic Court in Prishtina of 19 October 2010, and, b) of Judgment C1. No. 686/2009, of the Basic Court in Prishtina of 17 November 2011

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

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

Applicant

1. The Referral was submitted by Aziz Sefedini, from Prishtina (hereinafter: the Applicant).

Challenged decision

2. The Applicant challenges the non-enforcement of two final judgments of the Basic Court in Prishtina (hereinafter: the Basic Court), namely: a) Judgment C1. No. 190/07 of the Basic Court of 19 October 2010 and, b) Judgment C1. No. 686/2009 of the Basic Court of 17 November 2011.

Subject matter

3. The subject matter is the constitutional review of the non-enforcement procedure of two judgments of the Basic Court, which according to the Applicant's allegations have violated his rights guaranteed by Article 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] 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 Court

5. On 20 July 2020, the Constitutional Court (hereinafter: the Court) received the Applicant's Referral.

6. On 21 July 2020, the President of the Court appointed Judge Bekim Sejdiu as Judge Rapporteur and the Review Panel composed of Judges: Gresa Caka-Nimani (Presiding), Bajram Ljatifi and Safet Hoxha.

7. On 24 August 2020, the Court notified the Applicant about the registration of the Referral.

8. On 1 February 2021, the Applicant sent an urgency to the Court requesting that the Court renders a decision on his Referral as soon as possible, citing his serious health condition.

9. On 4 February 2021, the Court notified the Special Chamber of the Supreme Court on Privatization Agency of Kosovo Related Matters (hereinafter: the Special Chamber of the Supreme Court) about the registration of the Referral. In addition, the Court requested from the Special Chamber of the Supreme Court: *a) specific information regarding the Applicant's case, and, b) to submit to the Court all relevant decisions regarding the proceedings conducted by the Applicant before the Special Chamber*.

10. On the same date, the Court also sent a letter to the Applicant requesting additional information regarding his Referral.
11. On 8 February 2021, the Special Chamber of the Supreme Court sent its replies as well as the requested decisions.

12. On 18 February 2021, the Applicant also sent his responses to the Court's request.

13. On 28 April 2021, the Court notified the Privatization Agency about the registration of the Referral and also requested information regarding the Applicant's proceedings conducted before it.

14. On 11 May 2021, the Applicant sent the urgency to the Court requesting that his referral be resolved as soon as possible due to his serious health condition.

15. 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 of the Court, 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 25 June 2021.

16. On 19 May 2021, the Privatization Agency sent its responses to the Court's request.

17. 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.

18. On 27 May 2021, the President of the Court, Arta Rama-Hajrizi, by Decision No. KI48/21, appointed Judge Radomir Laban as Judge Rapporteur replacing Judge Bekim Sejdiu following his resignation.

19. On 15 June 2021, the Court sent a new letter to the Special Chamber of the Supreme Court for further clarifications and information.

20. 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.

21. On 1 July 2021, the Special Chamber of the Supreme Court sent clarifications and information regarding the Court's letter of 10 June 2021.

22. On 6 July 2021, the Court sent a new letter to the Special Chamber of the Supreme Court to obtain other necessary documents and judgments.

23. On 8 July 2021, the Court received the requested documents and judgments from the Special Chamber of the Supreme Court by electronic mail.

24. On 14 July 2021, the Court sent a new letter to the Special Chamber of the Supreme Court requesting that the Special Chamber regularly notifies the Court about all proceedings taken in connection with the Applicant's Referral, as well about all decisions of the panels of the Special Chamber taken in the meantime. in connection with the present Referral.

25. On 15 July 2021, the Special Chamber of the Supreme Court sent a reply via electronic mail to the Court's letter of 14 July 2021.

26. On 20 October 2021, the Review Panel considered the report of the Judge Rapporteur, and with majority of votes made a recommendation to the Court on the inadmissibility of the Referral.

Summary of facts

27. Based on the case file, the Court notes that the essence of the Applicant's Referral referrs to two court (contested) proceedings initiated by the Applicant regarding,

    i) annulment of the decision on termination of employment relationship and payment of unpaid monthly personal income for the period from 17 July 1991 to 16 June 1999, where "SOE Auto Prishtina" also appears as responding party",
    and
    ii) unpaid personal income for the period from 10 October 1999 to 31 December 2003, whereby the Socially-Owned Enterprise „Auto Prishtina" (hereinafter: „SOE Auto Prishtina") appears as respondent.

28. In view of this, the Court will further present separately in the report the court proceedings conducted by the Applicant before the Basic Courts in the procedure of deciding on statements of claims, as well as the court proceedings initiated by him for the purpose of enforcement of judgments, both before the Privatization Agency and before the Special Chamber of the Supreme Court.

First court proceedings of the Applicant, regarding the statement of claim for annulment of the decision on termination of employment relationship with "SOE Auto-Prishtina" and the payment of unpaid monthly personal income for the period from 17 July 1991 to 16 June 1999

29. On an unspecified date, the Applicant filed the statement of claim with the Basic Court against the abovementioned *"SOE "Auto-Prishtina"*, in which it requested the annulment of the decision on termination of employment relationship and payment of unpaid salaries by "SOE", for the period from 17 July 1991 to 16 June 1999.

30. On 17 November 2011, the Basic Court held a main hearing session which was not attended by the respondent *SOE "Auto-Prishtina"*, despite the fact, as stated in the reasoning of the Basic Court, *„that it was summoned in the proper*

manner in terms of Article 423.4 of the Law on Contested Procedure (hereinafter: LCP) by the court.“

31. On the same date, the Basic Court, by Judgment C1. No. 686/2009, by which: I. approved the statement of claim of the Applicant as grounded, II. annulled as unlawful decision of the respondent *SOE “Auto-Prishtina”* 02-414 of 17 July 1991, which terminated the employment relationship of the Applicant, III. Obliged the respondent *SOE “Auto-Prishtina”* to compensate the Applicant for unpaid monthly salaries during the time he was dismissed from employment relationship, namely from 17 July 1991 to 16 May 1999, in the amount of 29,556.08 euro with legal interest of 3.5% starting from 01 October 2006.

32. The reasoning of Judgment C1. No. 686/2009 of the Basic Court states:

> *„The respondent by decision no. 02-414 of 17 July 1991 terminated his employment relationship with the claimant because he voluntarily terminated his job and voluntarily left his working place […]*
>
> *In the present case, the challenged decision, which terminated his employment relationship with the respondent was unlawful […]*
>
> *The court found that the claimant had not committed a serious work misconduct on the day he left the working place, the claimant* (Applicant) *had a certificate from a doctor that he was incapable for that working day when he got out during working hours, but the aim was to terminate the employment relationship of the claimant on the basis of legal provisions that were in force, which were discriminatory and contrary to the provisions of the Regulation of the respondent and the Law on Fundamental Rights from Employment, Article 59 […]“*

33. As to the amount of monetary compensation awarded to the Applicant, the reasoning of the judgment of the Basic Court reads*:*

> *„[…] as a result of termination of employment relationship, the court, at the suggestion of the authorized claimant, ordered a financial expertise performed by an authorized expert in this field Sh.B from Prishtina of 02.10.2006, which determines that the amount of salaries for the job position of material accountant with the respondent, for the disputed time, namely from 17.07.1991. until 16.06.1999, is in the amount of 29,556.08 euro, including interest”.*

34. From the case file, the Court finds that the respondent *“SOE Auto Prishtina”* did not file appeal with the District Court against Judgment C1. No. 686/2009, of the Municipal Court, therefore, it has become final.

Enforcement proceedings of Judgment C1. No. 686/2009 of the Basic Court, against *“SOE Auto Prishtina”*, represented by the Privatization Agency

35. The Applicant, through an authorized representative, initiated the procedure of enforcement of Judgment C1. No. 686/2009 of the Basic Court of 17 November 2011, against *“SOE Auto Prishtina”* represented by the Privatization Agency.

36. On 31 December 2012, the Basic Court rendered Decision E. No. 2394/12, which allows the enforcement of Judgment C1. No. 686/2009, of the Basic Court of 17 November 2011.

37. The case file shows that on 29 July 2014, the Privatization Agency published a notice in the daily newspapers "*Kosova Sot"* and "*Tribuna"*, as well as on the official website of the Privatization Agency, stating *„that the liquidation procedure of "SOE Auto Prishtina" has commenced and that the deadlines for submitting requests for claims related to liquidation are until 11 September 2014"*. The Privatization Agency published the same notice on 8 August 2014.

38. On 19 October 2014, the Applicant submitted to the Privatization Agency, as a representative of *"SOE Auto Prishtina"* a request for payment of *"Claims for unpaid salaries"* pursuant to Judgment C1. No. 686/2009 of the Basic Court.

39. On 18 May 2015, the Privatization Agency rendered Decision PRN126-0242, regarding the request for enforcement of Judgment C1. No. 686/2009, in which it stated: *"request claiming compensation for unpaid salaries in the amount of 29,556.08 euro for the period from 17.07.1991 until 16.06.1999. with legal interest of 3.5% until the final payment and costs of the procedure in the amount of 632.00 euro, is rejected as invalid, due to the fact that the request was submitted on 19.09.2014, which is after the deadline for submission of requests. The deadline for submitting requests was 11 September 2014@.*

40. For such reasoning of Decision PRN126-0242, the Privatization Agency stated:

> *"[...] that the applicant has submitted a statement along with the accompanying documentation stating that the reason for submitting the request after the deadline is that he has been having serious health problems lately [...]*
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> *The Liquidation Administration, after reviewing the medical reports submitted by the Applicant, first determines that the Applicant does not at any time diagnose any disease that would completely prevent the latter from submitting the request within the deadlines.*
>
> *In addition, these reports cannot be considered a convincing justification because the reporting dates differ from the reports issued in May 2014, when the SOE was not yet in liquidation until the last report submitted here, dated 26.08.2014. From this date until 11 September 2014, which was the deadline for submitting the request for liquidation, the applicant had another 16 days to submit the request within the set deadlines..*
>
> *On the other hand, the Applicant's explanation that he should have been personally informed by the Kosovo Privatization Agency is also unconvincing. This is because the liquidation authority considers that it has taken all necessary steps to inform potential stakeholders, including the applicant.*

Article 35.3 of the Annex to Law no. 04/L-034 provides: "If the alleged creditor or interest holder provides compelling justification for late filing, the Liquidation Authority may in its sole discretion accept a Proof of Claim or Interest submitted after the Claims Submission Deadline, if the proof of Claim or Interest is filed not later than thirty (30) days after the Claims Submission Deadline".

41. On 12 June 2015, the Applicant sent to the Special Chamber of the Supreme Court a request for reconsideration of Decision PRN126-0243, of the Privatization Agency of 18 May 2015.

42. On 6 October 2015, the Privatization Agency sent to the Special Chamber of the Supreme Court *„Request for legal instruction",* where it requested *„that the Special Chamber issue instructions as to whether the executive court or the Private Enforcement Agent, as well as the banking institutions in Kosovo, have the legal right to make payments of trust funds as regards Socially Owned Enterprises in liquidation by PAK."*

43. On 15 October 2015, at the request of the Privatization Agency, the Special Chamber of the Supreme Court issued Instruction C-IV-15-1607, which states:

„I. From the day of submitting the notification of the Liquidation Decision until the end of the Liquidation, any court, administrative or arbitration proceedings against the company and its assets subject to the Liquidation Decision, including enforcement proceedings of final decisions regarding monetary claims, shall be SUSPENDED.

II. Suspension of proceedings shall not apply in cases provided for in paragraph 3 of Article 10 of the Annex to the Law (No. 04 L-034) on PAK

III. Suspended proceedings may be allowed to continue only by the adoption of a request by the Special Chamber."

44. The Special Chamber of the Supreme Court explained its position as follows:

„[...] the Chamber finds that the proper interpretation of these provisions means, in the case of judicial, administrative and arbitration proceedings, but also enforcement proceedings, which are directed against companies and their property that are the subject of the liquidation decision, these proceedings are suspended from the date of notification until the end of the liquidation procedure.

The implementation of this law is binding not only on PAK and the courts but also on all other institutions, including banks as well as private executors.

When receiving such proposals against SOEs that are in liquidation in the cases attached to the request, PAK is obliged to react within the legal powers and competencies it has.

The Law on PAK is a special law (Lex Specales) that is implemented in such cases and excludes the implementation of all other general laws (Article 31, paragraph 1 of this law).“

45. On 23 October 2015, the Privatization Agency, following the issuance of Instruction C-IV-15-1607 of Special Chamber of the Supreme Court, sent a submission to the Basic Court requesting to suspend the enforcement of Judgment C1. No. 686/2009 , stating *„that the enforcement debtor SOE "Auto-Prishtina" in Prishtina is a socially-owned enterprise and is in the process of liquidation, which is why the Special Chamber of the Supreme Court of Kosovo issued Instruction no. C-IV-15-1607 of 15 October 2015, stating that: “From the date of submission of the liquidation decision until the end of the liquidation, any court, administrative or arbitration proceedings are SUSPENDED, and they are initiated against the company and its property which is the subject of the liquidation decision, including final decisions of the enforcement proceedings relating to monetary claims” and that the taking of enforcement actions over trust funds would constitute a violation of the legal provisions in force”.*

46. The Court could not find in the case file whether the Basic Court acted upon the request of the Privatization Agency to suspend the enforcement of Judgment C1. No. 686/2009.

47. On 16 October 2017, the Privatization Agency submitted to the Special Chamber of the Supreme Court an objection to the Applicant’s request for review of Decision PRN126-0242, of the Privatization Agency of 18 May 2015, stating *„that the deadline for submitting requests in the liquidation procedure was 11.09.2014, while the claimant filed the request on 19.09.2014, thus the request was unspecified. In this regard, the decision of the Liquidation Authority was fair and based on law […]“.*

48. On 9 March 2021, the Special Chamber of the SCSC issued Judgment C-II-15-0310-C0001, whereby, the Applicant’s request to reconsider the decision of the Privatization Agency PRN126-0242, of 18 May 2015, rejected as ungrounded.

49. In the reasoning of the judgment, the Special Panel of the SCSC stated:

„[…] The Applicant submitted the request to the Liquidation Authority on 19.09.2014, where he requested compensation in the amount of 29,556.08 euro, on behalf of unpaid salaries, relating to the period from 17.07.1991 to 16.06.1999. This request was submitted out of the legal deadline for submitting the request, however, the claiming party stated that he submitted the request after the deadline because he had health problems..

Article 35.3 of the Annex to Law No. 04/L-034 stipulates that if the alleged creditor or interest holder provides compelling justification for late filing, the Liquidation Authority may in its sole discretion accept a Proof of Claim or Interest submitted after the Claims Submission Deadline, if the proof of Claim or Interest is filed not later than thirty (30) days after the claims submission deadline. In this case, the applicant submitted a request for compensation of salaries after the deadline for submitting the request,

together with several medical evidence, and stated that he could not submit the request on time due to health problems. The liquidation authority considered the request submitted by him and determined that the submitted reasons are not the basis for approving the request submitted by Aziz Sefedini, therefore, it rejected the request for salary compensation because it was submitted outside the deadline for submitting the request".

50. On 12 April 2021, the Applicant filed an appeal with the Appellate Panel of the SCSC against Judgment C-II-15-0310-C0001 of the Special Chamber of the SCSC, alleging violations of procedural provisions, erroneous determination of factual situation and erroneous application of substantive law.

51. The Court finds that the proceedings concerning the Applicant's appeal are still pending before the SCSC Appellate Panel.

52. The Court explains that such a conclusion was reached on the basis of a letter from the Special Chamber of the Supreme Court of 15 July 2021, resulting from a reply to a letter sent by the Court to the Special Chamber of the Supreme Court on 14 July 2021.

53. In a letter of 15 July 2021, the Special Chamber of the Supreme Court stated *„that the Applicant filed an appeal with the Appellate Panel against Judgment C-II-15-0310, of 09.03.2021, which is registered with the SCSC AC-I-21-0232-A0001. The case under number AC-I-21-0232-A0001, was subject to a lot on 12.05.2021 and was sent to the judge and the case will be handled as a priority of the SCSC".*

The second court proceedings of the Applicant, regarding the statement of claim for payment of unpaid monthly personal income for the period from 10 October 1999 until 31 December 2003

54. On an unspecified date, the Applicant filed a statement of claim with the Basic Court against "*SOE Auto Prishtina"*, requesting payment of unpaid personal income, for the period from 10 October 1999 to 31 December 2003.

55. On 19 October 2010, the Basic Court held a main hearing which was not attended by the respondent "*SOE Auto Prishtina"*, despite the fact, as stated in the reasoning of the Basic Court, *„that it was duly summoned by the court, but that it did not respond to the summons, nor did it justify its absence, thus holding the main hearing in its absence"*.

56. On the same date, the Basic Court, by Judgment C1. No. 190/07 approved the statement of claim of the Applicant and determined that the Applicant is in employment relationship with the respondent "*SOE Auto Prishtina"*. At the same time, the Basic Court ordered the respondent "*SOE Auto Prishtina"* to pay the Applicant an amount of money in the amount of 35,726.16 euro on behalf of unpaid personal income for the responding period from 10 October 1999 to 31 December 2003.

57. The reasoning of Judgment C1. No. 190/07 of the Basic Court states:

„It is not disputed between the parties that the claimant (the Applicant) *established an employment relationship with the respondent from 1983 on the duties and tasks of the director until 1991, […]*

It is also not disputed between the parties that the claimant immediately after the war applied for a job with the respondent and started a job, which means that he must be considered to be in a relationship with the respondent. This court finds that the parties do not dispute the fact that the claimant was not issued any written decision on termination of employment relationship and also no disciplinary proceedings was conducted, but it was ordered by the director - administrator, S.Z., that he no longer has to go to work and that he he is not the employee of the respondent without any explanation.

According to Article 175 of the Law on Associated Labor applicable in Kosovo, the employee must be served with a written decision on employment relationship with the employer, which must also contain the reasons for his decision and must contain instructions on the right to object to that decision".

58. As to the amount of monetary compensation awarded to the Applicant, the reasoning of the Basic Court states:

„According to the expertise of the financial expert Sh.B., it follows that the liabilities in the name of personal income and interest for the period from 18.10.1999 until 31.12.2003 of the respondent to the claimant, is a total of 35,725.16 euro".

59. From the case file, the Court finds that the respondent "*SOE Auto Prishtina"*, did not file appeal with the District Court against Judgment Court C1. No. 190/07 of the Municipal, whereby it became final.

Enforcement proceedings of Judgment C1. No. 190/07 of the Basic Court against "*SOE Auto Prishtina"*, represented by the Privatization Agency

60. The Applicant, through an authorized representative, initiated the enforcement proceedings of Judgment C1. No. 190/07 of the Basic Court of 19 October 2010, against "*SOE Auto Prishtina"*, represented by the Privatization Agency.

61. On 26 February 2013, the Basic Court rendered Decision E. No. 791/12, which allowed the enforcement of Judgment C1. No. 190/07, of 19 October 2010.

62. The case file shows that on 29 July 2014, the Privatization Agency published a notice in the daily newspapers "*Kosova Sot"* and "*Tribuna"*, as well as on the official website of the Privatization Agency, stating *„that the liquidation procedure of "SOE Auto Prishtina" has commenced and that the deadlines for submitting requests for claims related to liquidation are until 11 September 2014"*. The Privatization Agency published the same notice on 8 August 2014.

63. On 19 October 2014, the Applicant submitted to the Privatization Agency, as a representative of *"SOE Auto Prishtina"* a request for payment of *"Claims for unpaid salaries"* pursuant to Judgment C1. No. 190/07 of the Basic Court.

64. On 18 May 2015, the Privatization Agency rendered Decision PRN126-0243, regarding the request for enforcement of Judgment C1. No. 190/07, regarding the payment of unpaid salaries in the amount of 35,725.16 euro, for the period from 18 October 1999 to 31 December 2003, as well as the costs of proceedings in the amount of 969.20 euro, is rejected as invalid with explanation: *" The Applicant's request was rejected because it was submitted on 19 September 2014, which is after the deadline for submission of requests. The deadline for submitting requests was 11.09.2014".*

65. For such a position in the decision PRN126-0243, the Privatization Agency stated the following arguments:

> *"[...] that the applicant has submitted a statement along with the accompanying documentation stating that the reason for submitting the request after the deadline is that he has been having serious health problems lately [...]*
>
> *The Liquidation Administration, after reviewing the medical reports submitted by the Applicant, first determines that the Applicant does not at any time diagnose any disease that would completely prevent the latter from submitting the request within the deadlines.*
>
> *In addition, these reports cannot be considered a convincing justification because the reporting dates differ from the reports issued in May 2014, when the SOE was not yet in liquidation until the last report submitted here, dated 26.08.2014. From this date until 11 September 2014, which was the deadline for submitting the request for liquidation, the applicant had another 16 days to submit the request within the set deadlines..*
>
> *On the other hand, the Applicant's explanation that he should have been personally informed by the Kosovo Privatization Agency is also unconvincing. This is because the liquidation authority considers that it has taken all necessary steps to inform potential stakeholders, including the applicant.*
>
> *Article 35.3 of the Annex to Law no. 04/L-034 provides: "If the alleged creditor or interest holder provides compelling justification for late filing, the Liquidation Authority may in its sole discretion accept a Proof of Claim or Interest submitted after the Claims Submission Deadline, if the proof of Claim or Interest is filed not later than thirty (30) days after the Claims Submission Deadline".*

66. On 12 June 2015, the Applicant sent to the Special Chamber of the Supreme Court on Privatization Agency of Kosovo Related Matters (hereinafter: the Special Chamber) a request for reconsideration of Decision PRN126-0243 of the Privatization Agency of 18 May 2015.

67. On 6 October 2015, the Privatization Agency sent to the Special Chamber of the Supreme Court *„Request for legal instruction“,* whereby it requested *„that the Special Chamber issues instructions as to whether the executive court or the Private Enforcement Agent, as well as the banking institutions in Kosovo, have the legal right to make payments of trust funds as regards Socially Owned Enterprises in liquidation by PAK”.*

68. On 15 October 2015, at the request of the Privatization Agency, the Special Chamber of the Supreme Court issued Instruction C-IV-15-1607, which states:

> *„I. From the day of submitting the notification of the Liquidation Decision until the end of the Liquidation, any court, administrative or arbitration proceedings against the company and its assets subject to the Liquidation Decision, including enforcement proceedings of final decisions regarding monetary claims, shall be SUSPENDED.*
>
> *II. Suspension of proceedings shall not apply in cases provided for in paragraph 3 of Article 10 of the Annex to the Law (No. 04 L-034) on PAK*
>
> *III. Suspended proceedings may be allowed to continue only by the adoption of a request by the Special Chamber”.*

69. The Special Chamber of the Supreme Court explained its position as follows:

> *„[…] the Chamber finds that the proper interpretation of these provisions means, in the case of judicial, administrative and arbitration proceedings, but also enforcement proceedings, which are directed against companies and their property that are the subject of the liquidation decision, these proceedings are suspended from the date of notification until the end of the liquidation procedure.*
>
> *The implementation of this law is binding not only on PAK and the courts but also on all other institutions, including banks as well as private executors.*
>
> *When receiving such proposals against SOEs that are in liquidation in the cases attached to the request, PAK is obliged to react within the legal powers and competencies it has.*
>
> *The Law on PAK is a special law (Lex Specialis) that is implemented in such cases and excludes the implementation of all other general laws (Article 31, paragraph 1 of this law)”.*

70. On 23 October 2015, the Privatization Agency, following the issuance of Instruction C-IV-15-1607 of Special Chamber of the Supreme Court, sent a submission to the Basic Court requesting to suspend the enforcement of Judgment C1. No. 190/07, stating *„that the enforcement debtor SOE "Auto-Prishtina" in Prishtina is a socially-owned enterprise and is in the process of liquidation, which is why the Special Chamber of the Supreme Court of Kosovo issued Instruction no. C-IV-15-1607 of 15 October 2015, stating that: “From the date of submission of the liquidation decision until the end of the liquidation,*

any court, administrative or arbitration proceedings are SUSPENDED, and they are initiated against the company and its property which is the subject of the liquidation decision, including final decisions of the enforcement proceedings relating to monetary claims" and that the taking of enforcement actions over trust funds would constitute a violation of the legal provisions in force".

71. On 16 October 2017, the Privatization Agency submitted to the Special Chamber of the Supreme Court an objection to the Applicant's request for review of Decision PRN126-0243, of the Privatization Agency of 18 May 2015, stating *„that the deadline for submitting requests in the liquidation procedure was 11.09.2014, while the claimant filed the request on 19.09.2014, thus the request was unspecified. In this regard, the decision of the Liquidation Authority was fair and based on law […]".*

72. On 14 March 2018, the Specialized Panel of the SCSC rendered Judgment C-IV-15-1027, by which it I. approved as grounded the Applicant's request for review of Decision PRN126-0243 of the Privatization Agency of 18 May 2015, regarding the enforcement of Judgment C1. No. 686/2009 as grounded, II. annulled Decision PRN126-243 of 18 May 2018, and III. obliged the Liquidation Authority of the Privatization Agency *„„to pay on behalf of compensation for unpaid salaries for the period from 18.10.1999 to 31.12.2003, to pay the claimant the amount of 35,725.16 euro, as well as the costs of proceedings in the amount of 969.20 euro".*

73. In its reasoning, the Special Panel of the SCSC stated *„that in this case there is no dispute over claims for unpaid salaries in the liquidation proceedings, as this issue was considered in another court proceeding initiated in 2001 and resulted in the final Judgment of the Municipal Court in Prishtina on 19 October 2010, which approved the request of the claimant for unpaid salaries by the SOE in the amount of 35,725.16 euro.*
[ ]
The Specialized Panel found that PAK has not fulfilled its obligation to the Applicant, therefore it cannot claim that the Applicant missed the deadline for submitting the request.

74. On 26 March 2018, the Privatization Agency filed an appeal with the Appellate Panel of the Special Chamber of the Supreme Court on Privatization Agency of Kosovo Related Matters (hereinafter: SCSC Appellate Panel) against Judgment C-IV-15-1027 of the SCSC Specialized Panel. In the appeal, the Privatization Agency stated, "*that the argument that the request was submitted after a certain deadline is sufficient to reject the applicant's appeal as ungrounded and to support the decision of the Liquidation Authority. The Privatization Agency also adds that the Specialized panel of the SCSC, in many cases of its jurisprudence, stressed the importance of respecting the deadline for submitting requests to the Liquidation Authority, referring to some cases, so this Judgment is contrary to the case law".*

75. On 28 March 2018, the Basic Court adopted the request of the Privatization Agency of 23 October 2015 to suspend the enforcement of Judgment C1. No. 190/07. Also, the Basic Court rendered Conclusion E. No. 2394/12, in which it

„I. Suspends the proceedings in this matter of enforcement until the liquidation proceedings against the enforcement debtor SOE "Auto-Prishtina" are completed:. II. The procedure will continue in this matter, after the notification that the liquidation procedure against the enforcement debtor SOE "Auto-Pristina" is completed. III. The enforcement creditor undertakes to inform the court in writing that the liquidation procedure against the enforcement debtor has been completed, so that the court continues with the enforcement".

76. In the reasoning of Conclusion E. No. 2394/12 of the Basic Court is stated:

> *„[...] after the assessment of the submission of 28.10.2015, other documents in the case file and on the basis of the above, came to the conclusion that the proceedings in this enforcement matter should be suspended until the completion of the liquidation proceedings against the enforcement debtor..."*

77. On 5 December 2019, the Appellate Panel of the SCSC rendered Judgment AC-I-18-0184, whereby in Item I. rejected the appeal of the Privatization Agency as ungrounded, upheld Judgment C-IV-15-1027 of the Specialized Panel of the SCSC, in item II. of the enacting clause of Judgment C-IV-15-1027, the Appellate Panel of the SCSC added the text, where at the end of the sentence, the text of the following content is added ex officio: *„according to the priorities established by law in the liquidation procedure".*

78. In the reasoning of Judgment AC-I-18-0184, the Appellate Panel of the SCSC stated:

> *„The Appellate Panel finds the conclusion of the Specialized Panel of the SCSC given in the appealed Judgment that the duty of the PAK, in accordance with Article 7.4 of the Annex to the Law on PAK, to notify the claimant regarding the liquidation notice, and the deadline for submitting the claim based on the published notice, in the liquidation procedure, in particular when the PAK already knew that the claimant had a final Judgment on his claim filed earlier against the SOE. Therefore, it can be concluded that the Agency did not fulfill the legal obligation it already had towards the claimant after the publication of the notice for submission of the claims.*
>
> *The Appellate Panel further notes that the claimant has proved with evidence that he had and still has health problems, so in such circumstances his submission to the Liquidation Authority with a few days delay is not a valid and legitimate reason for rejecting the request due to the deadline. The own failure of PAK to inform the claimant about the possibility of submitting a request cannot be covered by the allegation that the claimant did not meet the deadline, when he already knew that the claimant had a legitimate request for salary based on a final judgment, which is binding and must be enforced.*
>
> *The Appellate Panel, in Judgment C-IV-15-1027 of the Specialized Panel of the SCSC, of 14 March 2018, in item II of the enacting clause, after the end*

of the sentence of this item, ex officio added a sentence with the following text: "according to priorities defined by law in the liquidation procedure".

Applicant's allegations

79. The Applicant alleges that the courts by non-enforcement of final judgments violated his rights guaranteed by Article 31 [Right to Fair and Impartial Trial] of the Constitution, as well as Article 6 (Right to a fair trial) of the ECHR.

80. In support of these allegations, the Applicant adds that besides the "*existence of res judicata judgments, only the enforcement was stopped by unlawful actions, which is contrary to the Constitution of the country"*.

81. In the context of the above, the Applicant adds *„that his right to fair and effective trial guaranteed by the Constitution and the ECHR has been violated due to non-enforcement of res judicata judgments for a long period of time, although the competent court was notified about the Applicant's very serious health condition"*.

82. Accordingly, the Applicant considers that *„It is unacceptable and unlawful for the competent court, in this case the Basic Court in Prishtina, to prolong the enforcement of the case in the dispute, although, as it can be seen from the attached files, the same court previously allowed the enforcement"*.

83. Finally, the Applicant requests the Court to *„i) assess the constitutionality of non-enforcement of a case in dispute for a longer period of time, ii) that the court concludes that the right to a fair and effective trial guaranteed by the Constitution has been violated, iii) that the Court must act in accordance with the Constitution of the country and allows the enforcement of the case in dispute"*.

Admissibility of the Referral

84. The Court first examines whether the admissibility requirements established by the Constitution, foreseen by Law and further specified in the Rules of Procedure have been met.

85. 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".*

86. In addition, the Court also refers to the admissibility requirements as prescribed by the Law. In this regard, the Court first refers to Articles 48 [Accuracy of the Referral] and 49 [Deadlines] of the Law, which establish:

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 [...]".

87. As to the fulfillment of these criteria, the Court finds that the Applicant is an authorized party, who is challenging the non-enforcement of the two-final judgments of the Basic Court, namely: a) Judgment C1. No. 190/07, of 19 October 2010 and, b) Judgment C1. No. 686/2009, of 17 November 2011. The Applicant has also specified the rights and freedoms for which he claims to have been violated, pursuant to the requirements of Article 48 of the Law, and has submitted the Referral in accordance with the deadline set out in Article 49 of the Law.

88. In the context of the assessment of the admissibility of the referral, namely, the assessment of whether the Referral is manifestly ill-founded on constitutional basis, the Court will first recall the merits of the case that this referral entails and the relevant claims of the Applicant, in the assessment of which the Court will apply the standards of the case law of the ECtHR, in accordance with which, pursuant to Article 53 [Interpretation of Human Rights Provisions] of the Constitution, it is obliged to interpret the fundamental rights and freedoms guaranteed by the Constitution.

89. Returning to the very essence of the Applicant's allegations, bearing in mind that these are two contested proceedings, which have the same esence, but different procedural paths, as well as different outcomes in the current circumstances defining them and different court judgments, the Court will assess individually the admissibility requirements, whether the Applicant has met the requirement of exhaustion of legal remedies in relation to both contested proceedings. Finally, the Court will particularly assess the Applicant's allegations of non-enforcement of *"res judicata judgments for a longer period of time "*.

(i) in relation to the court proceedings regarding the enforcement of final Judgment C1. No. 686/2009 of the Basic Court, which arose as a result of the court proceedings initiated by the Applicant with the statement of claim for annulment of the decision on termination of employment relationship with "SOE "Auto-Prishtina" and the payment of unpaid monthly income for the period from 17 July 1991 to 16 June 1999

90. In relation to the court proceedings concerning the enforcement of final Judgment C1. No. 686/2009 of the Basic Court, the Court on the basis of the

general principles relating to the exhaustion of legal remedies, as elaborated in the case law of the ECtHR and of the Court, will first assess whether the Applicant has exhausted all legal remedies provided by law. The same principles are also elaborated in a certain number of cases of the Court, including but not limited to the cases of the Court, KI108/18, Applicant *Blerta Morina*, Resolution on Inadmissibility, of 30 September 2019; KI147/18, Applicant *Artan Hadri*, Resolution on Inadmissibility, of 11 October 2019; KI211/19, Applicants *Hashim Gashi, Selajdin Isufi, B.K., H.Z., M.H., R.S., R.E., S.O., S.H., H.I., N.S., S.l., and S.R*, Resolution on Inadmissibility, of 11 November 2020; KI43/20, Applicant *Fitore Sadikaj*, Resolution on Inadmissibility, of 31 August 2020; and KI42/20, Applicant *Armend Hamiti*, Resolution on Inadmissibility, of 31 August 2020.

91. With regard to these contested proceedings, the Court first refers to the admissibility requirements, as laid down in the Law. In this regard, the Court first refers to Article 47 (Individual Requests) of the Law, which stipulates:

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".

92. In addition, the Court refers to Rule 39 (1) (b) and (2) of the Rules of Procedure, which establishes:

(1) "The Court may consider a referral as admissible if:

[...]

(*b) all effective remedies that are available under the law against the judgment or decision challenged have been exhausted,*

93. The Court further finds that in the proceedings of enforcement of final Judgment C1. No. 686/2009 of the Basic Court, the Applicant initiated enforcement proceedings before the competent authority, namely the Privatization Agency of Kosovo, which by Decision PRN126-0242 challenged the enforcement of Judgment C1. No. 686/2009, considering that the Applicant initiated the procedure of its enforcement out of time. In order to exercise his rights under the final judgments, the Applicant submitted a request for review of Decision PRN126-0242 of the Privatization Agency of Kosovo before the Special Chamber of the Supreme Court, as a competent court instance with exclusive jurisdiction to deal with decisions of the Privatization Agency of Kosovo.

94. The Court finds that the Specialized Panel of the SCSC, as the first instance of the Special Chamber of the Supreme Court, on 9 March 2021, rendered Judgment C-II-15-0310-C0001, whereby it rejected as ungrounded the request

of the Applicant to reconsider Decision PRN126-0242 of the Privatization Agency of Kosovo.

95. As to the Applicant's further procedural path, the Court must recall here that in order to collect all documents and court decisions on 14 July 2021, it sent an additional letter to the Special Chamber of the Supreme Court, to which the latter responded on 15 July 2021. The Court recalls that in the response of the Special Chamber of the Supreme Court of 15 July 2021, it decisively reads:

> *„[...] the Applicant filed an appeal with the Appellate Panel against Judgment C-II-15-0310, of 09.03.2021, which is registered with the SCSC AC-I-21-0232-A0001. The case under number AC-I-21-0232-A0001, was subject to a lot on 12.05.2021 and was sent to the judge and the case will be handled as a priority of the SCSC ".*

96. Based on the response of the Special Chamber of the Supreme Court, the Court can only conclude that the Applicant's proceedings regarding the enforcement of Judgment C1. No. 686/2009 of the Basic Court of 17 November 2011 are pending before the SCSC Appellate Panel for a decision. The Court wishes in particular to state the conclusion of the Special Chamber of the Supreme Court from the response of 15 July 2021, which states "*that the case will be treated as a priority by the Special Chamber of the Supreme Court*", and the Court has no reason to doubt that this will not be the case.

97. Based on the above, the Court concludes that the Applicant's request regarding non-enforcement of Judgment C1. No. 686/2009 of the Basic Court, which arose as a result of court proceedings initiated by the Applicant by the statement of claim for annulment of the decision on termination of employment relationship with "*SOE "Auto-Prishtina*", and the payment of unpaid monthly income for the period from 17 July 1991 to 16 June 1999, is premature.

98. The Court recalls that the rule for exhaustion of legal remedies under Article 113.7 of the Constitution, Article 47 of the Law and Rule 39 (1) (b) of the Rules of Procedure, obliges those who wish to bring their case before the Constitutional Court, that they must first use the effective legal remedies available to them in accordance with law, against a challenged judgment or decision.

99. In that way, the regular courts must be afforded the opportunity to correct their errors through a regular judicial proceeding before the case arrives to the Constitutional Court. The rule is based on the assumption, reflected in Article 32 of the Constitution and Article 13 of ECHR, that under the domestic legislation there are available legal remedies to be used before the regular courts in respect of an alleged breach, regardless whether or not the provisions of the ECHR are incorporated in national law (see, *inter alia,* case *Aksoy v. Turkey,* Judgment of 18 December 1996, paragraph 51, Judgment of ECtHR of 18 December 1996).

100. The principle is that that the protection mechanism established by the Constitutional Court is subsidiary to the regular system of judiciary

safeguarding human rights (see, *inter alia, Handyside v. United Kingdom,* paragraph 48, ECtHR Judgment of 7 December 1976).

101. Under Article 113.7 of the Constitution, the Applicant should have a regular way to the legal remedies which are available and sufficient to ensure the possibility to put right the alleged violation. The existence of such legal remedies must be sufficiently certain, not only in theory but also in practice, and if this is not so, those legal remedies will lack the requisite accessibility and effectiveness (see, *inter alia*, case *Vernillo v. France* paragraph 27, ECtHR Judgment of 20 February 1991, and *Dalia v. France*, paragraph 38, ECtHR Judgment of 19 February 1998). The Court emphasizes that this conclusion of the court regarding this court proceeding regarding the enforcement of Judgment C1. No. 686/2009 of the Basic Court does not prevent the Applicant from submitting again the constitutional request in the future within the legal deadline of 4 (four) months from the date he receives the decision of the Appellate Panel of the SCSC. This decision of the Court found that for the time being the Applicant's Referral is premature, because the current laws provide effective legal remedies by which the Applicant can seek protection of his legal and constitutional rights.

102. Therefore, the Court concludes that the part of the Referral concerning the proceedings initiated by the Applicant for the enforcement of final Judgment C1. No. 686/2009 of the Basic Court, which arose as a result of the court proceedings initiated by the Applicant by statement of claim for annulment of the decision on termination of employment relationship with "*SOE "Auto-Prishtina*", and the payment of unpaid monthly salaries for the period from 17 July 1991 to 16 June 1999, inadmissible, on constitutional basis, as prescribed by Article 113.7 of the Constitution, provided for in Article 47 of the Law and further specified in Rule 39 (1) (b) of the Rules of Procedure.

(ii) in relation to the court proceedings regarding the enforcement of final Judgment C1. No. 190/07 of the Basic Court, which arose as a result of the court proceedings initiated by the Applicant with the statement of claim for payment of unpaid monthly personal income for the period from 10 October1999 to 31 December 2003

103. The Court recalls that the Applicant initiated contested proceedings before the Basic Court in order to exercise his rights to the payment of personal income for the period from 10 October 1999 to 31 December 2003. The Court finds that the Basic Court approved the Applicant's request and on 19 October 2010, rendered Judgment C1. No. 190/7, which became final, bearing in mind that the respondent did not file an appeal with the District Court.

104. The Court further finds that in the enforcement proceedings of final Judgment C1. No. 190/7 of the Basic Court, the Applicant also initiated enforcement proceedings before the competent authority, namely the Privatization Agency of Kosovo, which, by Decision PRN126-0243, challenged the enforceability of Judgment C1. No. 190/7, considering that the Applicant initiated the enforcement procedure untimely. In order to exercise his rights under the final judgment, the Applicant submitted a request for review of Decision PRN126-0243 of the Privatization Agency of Kosovo to the Special Chamber of the

Supreme Court, as a competent court instance with exclusive jurisdiction to deal with decisions of the Privatization Agency of Kosovo.

105. The Court finds that the Specialized Panel of the SCSC, as the first instance panel of the Specialized Panel of the Supreme Court, rendered Judgment C-IV-15-1027 on 14 March 2018, by which in item I. approved the Applicant's request for reconsideration of Decision PRN126- 0243 of the Privatization Agency of 18 May 2015, in item II. annulled Decision PRN126-243 of 18 May 2018, and in item III. obliged the Liquidation Authority of the Privatization Agency, *„that on behalf of compensation for unpaid salaries for the period from 18 October 1999 to 31 December 2003, to pay the claimant the amount of 35,725.16 euro, as well as the costs of proceedings in the amount of 969.20 euro"*.

106. The Court further finds that the dissatisfied party, in this case the Privatization Agency, filed appeal with the SCSC Appellate Panel against Judgment C-IV-15-1027 of the SCSC Specialized Panel, which the Appellate Panel on 5 December 2019 by Judgment AC-I-18-0184, rejected as ungrounded, by which the Applicant has exhausted all legal remedies in the enforcement proceedings of final Judgment C1. No. 190/7 of the Basic Court.

107. Having this in mind, the Court will further consider and analyze the Applicant's allegations of violation of Article 31 of the Constitution and Article 6 of the ECHR, regarding the non-enforcement of final Judgment C1. No. 190/7, of the Basic Court, which arose as a result of the court proceedings initiated by the Applicant with a statement of claim for payment of unpaid monthly salaries for the period from 10 October 1999 to 31 December 2003.

108. Returning to the present case, the Court recalls that the Applicant's main allegation regarding the Referral relates to the fact that he has a final judgment of the Basic Court of 19 October 2010, which is also *res judicata*, and which he cannot enforce for a "*long period of time*".

109. Bringing the Applicant's allegations in connection with the facts of the present Referral, the Court recalls that Article 6 of the ECHR, in its relevant part, reads as follows,

> *„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…."*

110. From the above, it is evident that the requirement for the application of Article 31 of the Constitution and Article 6 of the ECHR, in the case in question were determined *„civil rights and obligations"*. Therefore, in this case, the question arises as to whether in the Applicant's case his *"civil rights and obligations*" were determined and, accordingly, Articles 31 of the Constitution and 6 of the ECHR are applicable.

111. In this regard, the Court recalls the case law of the ECtHR, which provides for Article 6 paragraph 1 in its "civil" limb to be applicable, there must be a "dispute" (*in French „contestation").* Secondly, there must be a "dispute" regarding a

"right" which can be said, at least on arguable grounds, to be recognized under domestic law, irrespective of whether it is protected under the Convention. The dispute must be genuine and serious; it may relate not only to the actual existence of a right but also to its scope and the manner of its exercise, Finally, the result of the proceedings must be directly decisive for the "civil" right in question, because mere tenuous connections or remote consequences not being sufficient to bring Article 6 paragraph 1 into play (see ECtHR cases *Denisov v. Ukraine*, paragraph 44; *Regner v. Czech Republic*, paragraph 99; *Károly Nagy v. Hungary*, paragraph 60; *Naït-Liman v. Switzerland* paragraph 106, *Benthem v. The Netherlands*, no. 8848/80, dated 23 October 1985).

112. Accordingly, the Court finds that the Applicant has conducted two disputes of civil nature, one of which concerns the definition of his civil rights. That dispute ended by final judgment C1. No. 190/07 of the Basic Court, which is in favor of the Applicant, thus defining his civil rights.

113. The second dispute was initiated by the Applicant before the Special Chamber of the Supreme Court for the purpose of realization, namely the execution of civil rights which he obtained by final judgment C1. No. 190/07 of the Basic Court. This dispute ended by final judgment AC-I-18-0184 of the Appellate Panel of the SCSC, which became enforceable, and thus specified, ***a)*** *the Applicant's civil rights to be enforced, and* ***b)*** *the authority which is competent to exercise the Applicant's acquired civil rights.*

114. Accordingly, it is not disputed for the Court that the Applicant has a final and enforceable judgment, which the Privatization Agency, as the competent authority, should enforce, "*according to the priorities defined by law in liquidation proceedings"*, as determined by Judgment AC-I-18-0184 of the Appellate Panel of the SCSC, thus concluding that the matter was resolved in favor of the Applicant.

115. Bearing in mind that the Court has just found that the Applicant's subject matter has been resolved, it recalls the ECtHR's case law, which it applies in cases where it concludes that "*the matter has been resolved*". In the present case, the Court refers to the judgment of the ECtHR in the case *Konstantin Markin v. Russia*, where in paragraph 87 it states: *"The Court reiterates that, under Article 37 paragraph 1 (b) of the Convention, it may "at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to the conclusion that ...the matter has been resolved..". To be able to conclude that this provision applies to the instant case, the Court must answer two questions in turn: firstly, it must ask whether the circumstances complained of by the applicant still obtain and, secondly, whether the effects of a possible violation of the Convention on account of those circumstances have also been redressed* (see ECtHR judgments *Konstantin Markin v. Russia* application no. 30078/06 of 22 March 2012, paragraph 87, *Keftailova v. Latvia* (deletion) [GC] no. 59643/00 paragraph 48, 7 December *2007)."*

116. However, in the context of the above-mentioned case law of the ECtHR, the Court notes that such a decision can be taken by the Court only if it has previously answered two questions, which are *i) whether the circumstances in respect of which the Applicant filed the claim still exist, and ii) whether the*

effects of a possible violation of the ECHR on account of those circumstances have been redressed.

117. Referring to the first principle of the ECtHR case law regarding the issue of *i) whether the circumstances in which the Applicant filed the claim still exist*, the Court recalls that the essence of the Applicant's Referral was a violation of Article 31 of the Constitution in conjunction with Article 6 of the ECHR, due to the fact that he could not enforce the judgment of the Basic Court, which has become final. However, the Court, analyzing this part of the allegations, concluded that the judgment of the Basic Court became enforceable in entirety only after issuance of Judgment AC-I-18-0184 of the Appellate Panel of the SCSC in the enforcement proceedings, whereby defining the rights to be exercised and the competent authority, which following a certain dynamic, must also enforce it. Therefore, it can be concluded that the circumstances related to the initiation of the appealing allegation of non-enforcement of the judgment in the given circumstances have ceased to exist, bearing in mind that all obstacles to its enforcement have been removed, thus enabling the Applicant to exercise his rights defined by it.

118. As to the answer to the second question *(ii) whether the effects of a possible violation of the ECHR on account of those circumstances were redressed*, the Court can only find in the circumstances of the present case that the effects of a possible violation of the Convention have been remedied by the fact that the Appellate Panel of the SCSC, by rendering Judgment AC-I-18-0184, changed the circumstances and enabled a final judgment to be enforceable.

119. It is evident from the above that the Court answered both questions, and the answers which unequivocally lead to the conclusion that this is *a resolved matter*, and thus, in the Court's view, all requirements have been met for it to refer both to ECtHR case law and to Rule 35 (Withdrawal, Dismissal and Rejection of Referrals) of the Rules of Procedure, which stipulates:

> *„(4) The Court may dismiss a referral when the Court determines that a claim is no longer an active controversy, does not present a justiciable case, and there are no special human rights issues present in the case (...)".*

120. The Court considers that the Applicant's Referral in the current circumstances is without subject matter, given that Judgment AC-I-18-0184 of the SCSC Appellate Panel, resolves his legal status in its enforcement form in entirety.

121. Therefore, the Court finds that the Applicant's issue was decided in his favor and there is no longer unresolved dispute, and accordingly, the subject matter does no longer present a case or controversy before the Court (see: *A.Y. vs. Slovakia*, ECHR decision, paragraph 49, No. 37146/12 of 24 March 2016, see also, case: KI143/15, Applicant: *Donika Kadaj-Bujupi*, the Constitutional Court, Decision to Dismiss the Referral of 26 February 2016).

Conclusion

122. Therefore, the Court concludes,

i) that the part of the Referral regarding the proceedings initiated by the Applicant by the request for enforcement of final Judgment C1. No. 686/2009 of the Basic Court is inadmissible on the grounds of non-exhaustion of legal remedies, as established in Article 113.7 of the Constitution, foreseen by Article 47 of the Law and further specified by Rule 39 (1) (b) of the Rules of Procedure,

ii) that the part of the Referral for the enforcement of final Judgment C1. No. 190/07 of the Basic Court is without subject matter, and as such, this part of the Referral is dismissed, in accordance with Rule 35 (4) of the Rules of Procedure, because all decisions of regular courts are in favor of the Applicant and recognize his right which the Applicant claims to have been violated.

FOR THESE REASONS

The Constitutional Court of Kosovo, in accordance with Article 113.1 and 7 of the Constitution, Articles 20 and 47 of the Law and Rules 35 (4) and 39 (1) (b) and (2) of the Rules of Procedure, in its session held on 20 October 2021, by majority of votes

DECIDES

I. TO DECLARE the Referral inadmissible;

II. TO NOTIFY this Decision to the Parties;

III. TO PUBLISH this Decision in the Official Gazette, in accordance with Article 20.4 of the Law; and

IV. This Decision is effective immediately.

Judge Rapporteur	**President of the Constitutional Court**
Radomir Laban	Gresa Caka Nimani