Prishtina, ----------2021
Ref.No:

JUDGMENT

in

Case No. KI120/19

Applicant

Mursel Gashi

Request for constitutional review of Decision AC-I-17-0568 of the Appellate Panel of the Special Chamber of the Supreme Court on Privatization Agency of Kosovo Related Matters, of 14 March 2019

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 Mursel Gashi from Prishtina (hereinafter: the Applicant). The Applicant is represented by Visar Vehapi, a lawyer from Prishtina.

Challenged decision

2. The Applicant challenges the Decision AC-I-17-0568 of the Appellate Panel of the Special Chamber of the Supreme Court on Privatization Agency of Kosovo Related Matters (hereinafter: the Appellate Panel of the SCSC), of 14 March 2019.

3. The challenged Decision AC-I-17-0568 of the Appellate Panel of the SCSC was served on the Applicant on 19 March 2019.

Subject matter

4. The subject matter of the Referral is the constitutional review of the challenged decision of the Appellate Panel of the SCSC which allegedly violates the Applicant's rights and freedoms guaranteed by Article 31 [Right to Fair and Impartial Trial], Article 46 [Protection of Property] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), as well as Article 6 (Right to a fair trial), Article 1 of Protocol No. 1 (Protection of Property) of the European Convention on Human Rights (hereinafter: the ECHR), and Articles 8, 14 and 17 of the Universal Declaration of Human Rights.

Legal basis

5. The Referral is based on paragraphs 1 and 7 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution, Articles 22 [Processing Referrals], 47 [Individual Requests], 48[Accuracy of the Referral), and 49 [Deadlines] of the Law on the Constitutional Court of the Republic of Kosovo No. 03/L-121 (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 Constitutional Court

6. On 17 July 2019, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

7. On 18 July 2019, the President of the Court appointed Judge Nexhmi Rexhepi as Judge Rapporteur and the Review Panel composed of Judges: Arta Rama-Hajrizi (presiding), Bekim Sejdiu and Selvete Gërxhaliu-Krasniqi (members).

8. On 1 August 2019, the Court notified the Applicant and the the Appellate Panel of the SCSC about the registration of the Referral.

9. On 5 December 2019, the Court sent an additional letter to the Applicant's lawyer requesting additional documentation, as well as the proof on the date/time when the challenged Decision AC-I-17-0568 of the Appellate Panel of the SCSC was served on the Applicant, or his representative.

10. On 9 December 2019, the Applicant's lawyer submitted to the court the requested additional documentation, as well as the proof of service of the challenged decision.

11. On 26 November 2020, the Court requested from the SCSC to be provided with the complete case file.

12. On 1 December 2020, the SCSC submitted the original file to the Court.

13. On 17 May 2021, on the basis of paragraph 5 of Article 114 [Composition and Mandate of the Constitutional Court] of the Constitution and Rule 12 (Election of the President and Deputy-President) of the Rules of Procedure, Judge Gresa Caka-Nimani was elected President of the Court Constitutional. Pursuant to paragraph 4 of Rule 12 of the Rules of Procedure and Decision of the Court, it was determined that Judge Gresa Caka-Nimani, shall assume the duty of the President of the Court after the conclusion of the mandate of the current President of the Court Arta Rama-Hajrizi, on 25 June 2021.

14. On 25 May 2021, based on point 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 submitted his resignation from the position of a judge at the Constitutional Court.

15. On 27 May 2021, the President of the Court Arta Rama-Hajrizi, by Decision KSH 120/19, appointed Judge Safet Hoxha as a member of the Review Panel instead of Judge Bekim Sejdiu.

16. On 26 June 2021, based on paragraph 4 of Rule 12 of the Rules of Procedure and the Decision of the Court no. KK-SP 71-2/21, Judge Gresa Caka-Nimani assumed the duty of the President of the Court, while based on point 1.1 of paragraph 1 of Article 8 (Termination of mandate) of the Law, President Arta Rama-Hajrizi concluded the mandate of the President and judge of the Constitutional Court.

17. On 6 October 2021, the Review Panel considered the report of the Judge Rapporteur and requested the supplementation of the report.

18. On 25 November 2021, the Review Panel considered the report of the Judge Rapporteur and, by a majority vote, made a recommendation to the Court on the admissibility of the Referral.

Summary of facts

19. On 23 July 1971, the Applicant entered into a written contract on sale and purchase with the owner-seller L.N. from Matiqan, for the purchase of four (4) parcels, which were marked as:
Parcel no. 2/257/28, at the location called „Gavrilova Njiva“, 5th class, covering an area of 1.56.00 ha,
Parcel no. 2/257/37, at the location called „Vasina Njiva“, 5th class, with a surface of 1.05.00 ha,
Parcel no. 2/257/40, at the location called „Slanishte“, 5th class, with a surface of 0.41.00 ha,
Parcel no. 2/257/43, at the location called „Slanishte“, 5th class, with a surface of 1.03.00 ha.

All parcels were registered according to the possession list no. 45, Cadastral Zone of Matiqan.

20. According to the statements of the Applicant, after 1999, there was made a change in the way of marking and recording parcels in the Kosovo Cadastral System, and cosequently the parcels in question were marked as no. 588/1, no. 598, no. 601 and no. 604.

21. At the same time, in the Municipal Court in Prishtina, the family S. initiated the contested procedure against the Socially-Owned Enterprise KBI(Agroindustrial Combine)--Kosova-Export from Fushë Kosovë. In that statement of claim, the family S. requested from the Socially-Owned Enterprise KBI (Agroindustrial Combine)-Kosova Export to allocate to them two parcels as a form of compensation for their two parcels that could not be returned to them because they were already allocated to third parties.

22. On 20 February 2007, the Municipal Court in Prishtina approved the statement of claim of the family S. as founded, and rendered the Decision C.no.645/04. By this decision, the Municipal Court allocated cadastral parcel no.588 and cadastral parcel no.598 to the family S., as a form of compensation for their two parcels. In the meantime, the decision C.no. 645/04 of the Municipal Court became final, and consqeuently parcels no. 588 and no. 598 were registered in the Cadastre as property of the family S.

23. On 26 February 2007, the Applicant filed a statement of claim with the Municipal Court in Prishtina seeking confirmation of his property right over the parcels in question. In the statement of claim, the Applicant stated the fact *"that as the new owner he entered into possession of the property on the day of purchase, but he failed to have the property registered in his name in the Cadastral Directorate in Prishtina, due to political circumstances at that period of time"*.

24. On 2 March 2007, the Applicant submitted a proposal to the Municipal Court in Prishtina requesting from the court to impose interim measures on cadastral parcels no. 588/1, no. 598, no. 601 and no. 604, in order to prevent the alienation or legal burden on the parcels in question.

25. On 16 April 2007, the Municipal Court issued the Decision E. no.317/07, whereby it imposed the security measure over cadastral parcels no. 588/1, no. 598, no.601 and no.604. By this decision, the court imposed a prohibition on encumbrance, mortgaging and the sale of the parcels in question, by emphasizing that this measure is valid until the conclusion of the contested procedure C. No. 414/07 before the Municipal Court.

Proceedings before the Basic Court regarding the claimant's statement of claim for confirmation of the property right over the parcels in question

26. On the basis of the case file, and according to the Decision of the Municipal Court in Prishtina (Case C. No.414/07) during July 2007, the geodetic expert A.A. gave his conclusion and written opinion regarding the determination of

the Applicant's ownership. The expert of the geodetic profession A.A., in his conclusion emphasized that on the basis of valid documentation available to the Directorate for Cadastre and Geodesy in Pristina, for the Zone of Matiqan *"cadastral parcels no. 588/1, plan and sketch 3/43, location called "Gavrilove njive", land culture- arable land of the 5th class, with a surface of = 01.56.45 ha, then cadastral parcel no. 598, plan and sketch 3/17, location called "Vasina njiva", land culture- arable land of the 5th class, with a surface of = 01.04.98ha, cadastral parcel no. 601, plan and sketch 4/11, location called "Slanishete", land culture –arable land of the 5th class, with a surface of = 01.30.70ha, rural land, type of ownership "social ownership", are registered to: PIK(Agroindustrial Combine) "Kosova Export" based in Fushë Kosovë, specifically on the basis of aerial photography from 1972, which came into effect in 1980.*

Prior to this measurement coming into effect, a cadastral description, where detailed plans and sketches were not available, was in force in the Cadastral Zone of Matiqan; hence the parcels were calculated in an approximate manner [...]

The expert A.A., by referring to the old numbers of cadastral parcels (see the numbers in paragraph 13 above), emphasized that: *"it is difficult to determine exactly whether these parcels are the subject of this case, but there are some characteristic elements that correspond to the aerial photography".*

27. On 17 September 2010, the Municipal Court in Prishtina held a session according to the Applicant's statement of claim for confirmation of the property right over the property that has been the subject of the contract on sale and purchase of 1971. The trial session was also attended by the representative of the Privatization Agency of Kosovo (hereinafter: the PAK), who challenged the jurisdiction of the Basic Court to deal with the property in question, given that it is registered as a socially owned property and as such it is under its administration.

28. On 29 December 2010, the Basic Court issued the Decision C.no.414/07 whereby it declared itself incompetent in the proceedings in question, while it instructed the Applicant to pursue his clam at the Special Chamber of the Supreme Court of Kosovo as the competent court to deal with matters relating to the Privatization Agency of Kosovo.

Proceedings before the Special Chamber of the Supreme Court on Privatization Agency of Kosovo Related Matters in connection with the Applicant's claim for confirmation of property rights over the parcels in question

29. On 4 March 2011, the Applicant filed a claim with the Special Chamber of the Supreme Court of Kosovo, requesting confirmation of ownership over the: **I.** Cadastral parcel no. 588/1, at the location called "Gavrilove Njive", land culture – arable land of the 5th class, with a surface of 1.56.45 ha; **II.** Cadastral parcel no. 598, at the location called "Vasina njiva", land culture- arable land of the 5th class, with a surface of 1.04.98 ha; **III.** Cadastral parcel no. 601, at the location called "Slanishte", land culture – arable land of the 5th class, with a surface of 0.41.66 ha; as well as **IV.** Cadastral parcel no. 604, at the location called "Slanishte", land culture- arable land of the 5th class, with a surface of

1.30.70 ha, registered in the possession list no.389, Cadastral Zone of Matiqan. In his claim, the Applicant has emphasized that he has paid the purchase price in the presence of two witnesses, and ever since he has been in possession and has used the immovable property without any hindrance. He pointed out that he could not perform the transfer due to the high tax at the time, and claims that the said immovable property was registered in the name of PIK (Agroindustrial Combine) "Kosova Export" without legal basis.

30. On 17 November 2011, the Special Chamber of the Supreme Court on Privatization Agency of Kosovo Related Matters (hereinafter: the "SCSC") issued the Decision SCC-11-0085, on the continuation of the court proceedings. Accordingly, the SCSC forwarded the Applicant's statement of claim to the PAK as the respondent, by giving it a deadline of 30 days to respond to the claim.

31. On 12 December 2011, the PAK sent its response to the Applicant's claim, wherein it denied the Applicant's property rights over the parcels in question, by claiming, inter alia, that "*such an agreement has not been legalized in court and therefore does not meet legal requirements and cannot be accepted as evidence"*. In its letter, the PAK also emphasized that *"regardless of the circumstances in which the respondent became the owner, be it without a legal basis, the PAK supports its defence by referring to the legal provisions of Article 268 of the Law on Associated Labour, which explicitly states that if the immovable property was transferred into social ownership without legal basis, its recovery may be requested within a period of 5 years, from the day of learning about it, but no later than within 10 years"*. The PAK also stated that the ownership over the social property cannot be acquired on the basis of the postulate of adverse possession.

32. On 9 January 2013, the judge of the Specialized Panel of the Special Chamber of the Supreme Court on Privatization Agency of Kosovo Related Matters (hereinafter: the Specialized Panel of the SCSC) issued the order SCC-11-0085, whereby the response of the respondent PAK, of 12 December 2011, was forwarded to the Applicant, by giving him a deadline of 15 days to respond to it.

33. On 24 January 2013, the Applicant sent a reply to the Specialized Panel of the SCSC, by stating the same arguments which he had stated in his statement of claim.

34. On 5 December 2014, the Applicant submitted to the SCSC a new specified statement of claim wherein he stated that *"Based on the Judgment P.no. 645/04, of 20 February 2007, two cadastral parcels were taken from him and given to Serbs (family S.) as compensation, specifically parcel no.588/1, at the location called "Gavrilova njiva", land culture- arable land of the 5th class, with a surface of 1.56.45 ha, and parcel no. 598, at the location called "Vasina njiva", land culture- arable land of the 5th class, with a surface of 1.04.98 ha, which means that the claimant was damaged in a total surface of 2.61.43 ha due to the former Municipal Court in Prishtina having not been aware, and issuing a belated decision on security measure and now due to the delay in the proceedings in this matter caused by the SCSC"*.

35. Accordingly, in the specified statement of claim, the Applicant requests from the Specialized Panel of the SCSC to:

i) „Accept the claimant's statement of claim and confirm that he is the owner of cadastral parcels no. 601, at the location called "Njelmesina", land culture-arable land of the 5th class, with a surface of 0.41.66 ha and no. 604, a place called "Njelmesina", land culture- arable land of the 5th class, with a surface of 1.03.70 ha, which are recorded in the possession list no. 398, CZ of Matiqan.

ii) To oblige the respondent PIK (Agroindustrial Combine) "Kosova Export" from Fushë Kosovë, by a judgment, to provide to the Applicant as compensation for cadastral parcels: no.588/1, at the location called "Gavrilova njiva", land culture-arable land of the 5th class, with a surfaceof 1.56.45 ha, no. 598, at the location called "Vasina njiva" , land culture-arable land of the 5th class, with a surface of 1.04.98 ha, total surface of 2.61.43 ha, which have been given to third parties in unlawful manner by the judgment of the Municipal Court in Prishtina, P.no.645/04, of 20 February 2007 , the below listed parcels:

No. 523, plan 3, sketch 7, at the location called "Urtina", land culture-pasture of the 3rd class, with a surface of 0.38.09 ha
No. 524, plan 3, sketch 7, at the location called "Urtina D. Potok", land culture-arable land of the 7th class, with a surface of 0.62.98 ha
No. 525, plan 3, sketch 7, at the location called "Urtina D. Potok", land culture-pastue of the 2nd class, with a surface of 0.10.03 ha
No. 526, plan 3, sketch 7, at the location called "Urtina D. Potok", land culture-arable land of the 6th class, with a surface of 0.21.96 ha,
No. 536, plan 3, sketch 7, at the location called "Urtina Vina Lojze", land culture- pasture of the 3rd class, with a surface of 1.06.44 ha,
No. 552/2, plan 3, sketch 9, at the location called "Urtina Veternik", land culture-arable land of the 7th class, with a surface of 0.57.60 ha, which are located in the Cadastral Zone of Qagllavica, and are recorded in the possession list no. 222".

36. On 27 July 2017, the Specialized Panel of the SCSC held a hearing session in which the Applicant stated, inter alia, that *"[...] we did not request the acquisition of property rights through adverse possession, because for this someone else should have had the ownership, in this case PIK (Agroindustrial Combine) [...]. We wanted to confirm the fact that the property was registered by chance to PIK (Agroindustrial Combine), where the claimant has bought this property, paid the contract price and has been in possession of it for several decades.* On the other hand, in the same session, it emphasized that it disputes the claim in its entirety because (i) the Respondent PIK *(Agroindustrial Combine)* "Kosova Export" has never entered into a civil-legal relationship with the Applicant; (ii) the property of PIK *(Agroindustrial Combine)* "Kosova Export" was not transferred by chance, and this is based on the conclusions of the expert A.A., given in the case CNR. 414/07, where it was concluded that the property has been registered in the name of PIK *(Agroindustrial Combine)* "Kosova Export" since 1972; and (iii) the

Applicant's contract has not been concluded before the Court, and therefore cannot produce legal effect.

37. On 22 August 2017, the Specialized Panel of the SCSC issued the Judgment SCC-11-0085, whereby it dismissed the Applicant's statement of claim as unfounded. The reasoning of the judgment reads:

> *„The claimant bases his property claim on a single purchase through a contract on sale and purchase of 1971. It is not disputable that this contract does not correspond to the formal requirements. The claimant has no other evidence to support his property claim. Given the fact that the Applicant has no other basis on which he can base his property claim over the property, the claim is unfounded. At no time has he been the owner of the land in question. Therefore, his argument that the respondent was registered as the owner in arbitrary manner is irrelevant in the present case".*

38. On 15 September 2017, the Applicant filed an apepal with the Appellate Panel of the SCSC claiming that "*the court failed to determine the factual situation correctly, that he has used the said property without hindrance since 1971, and that after 1999 he has learned that the property was in the ownership of the Socially-Owned Enterprise, and that in 2007 he had filed a claim with the Municipal Court in Prishtina requesting the return of the property.*"

39. On 2 November 2017, the Appellate Panel of the SCSC rendered the Judgment AC-I-17-0568, whereby:

> under **point I**, it accepted the Applicant's appeal as founded,
> under **point II**, modified the Judgment SCC-11-0085 of the Specialized Panel, of 22 August 2017,
> under **point III**, upheld the Applicant's claim as founded, and
> under **point IV**, it determined that the claimant is the owner in connection with the cadastral parcels no. 2/257/28, at the location called "Gavrilova njiva", land culture- arable land of the 5th class, with a surface of 1.56.00 ha, no. 2/257/37 at the location called "Vasina njiva", land culture-arable land of the 5th class, with a surface of 1.05.00 ha, no. 2/257/40 at the location called "Slanishte", land culture- arable land of the 5th class, with a surface of 0.41.00 ha, and no. 2/257/43, at the location called "Slanishte", land culture- arable land of the 5th class, with a surface of 1.03.00 ha, which are recorded in the possession list no. 45, CZ of Matiqan.

40. In the reasoning of Judgment AC-I-17-0568, the Appellate Panel of the SCSC has stated,

> *„The Appellate Panel notes that the claimant supports his property rights with the Contract on sale and purchase of immovable property concluded on 23.07. 1971, between him and the natural person L (Ç) N from Matiqan.The contract on sale and purchase concerns the disputable parcels. The respondent does not object the existence of this written contract and does not question the allegation of the claimant that*

immediately after the contract was signed, the property in question was handed over to him and that he has owned it ever since.

It is true that the contract in question was not confirmed in the competent court. But this was not a legal condition at the time of its conclusion. At that time, a contract on sale and purchase in connection with the disputable parcel was signed and the land was handed over to the claimant, a necessary legal requirement for acquiring the ownership of immovable property *through a legal transaction, was approved by the Law on Transactions with Real Estate and Buildings (Official Gazette SFRY No. 43/65). In relation to the transactions between citizens, the law stipulates only one requirement: The contract must be in writing (Article 9 of the relevant Law).*

The missing registration of the immovable property transaction did not prevent the transfer of property rights in 1971, since the registration was not an integral element of the real estate property rights transaction until the Law on Basic Property Relations (Official Gazette of the SFRY No. 6/80) entered into force on 1 September 1980 ".

In the mentioned case, it remains for the defendant to provide sufficient facts that would show a valid exchange of property rights [...]. The respondent ... should know on what grounds it has obtained the said right [...]

Applicant's request for rectification of the Judgment AC-I-17-0568 of the Appellate Panel of the SCSC, of 2 November 2017

41. On 4 December 2017, the Applicant's lawyer filed a submission with the SCSC for rectification of the Judgment AC-I-17-0568 of the Appellate Panel of the SCSC, of 2 November 2017, requesting,

a) to make the correction of the Judgment AC-I-17-0568 of the Appellate Panel of the SCSC regarding the number of the following cadastral parcels: for the cadastral parcel no.2/257/37, at the location called "Vasina njiva", land culture-arable land of the 5th class, with a surface of 1.05.00 ha, requests correction as cadastral parcel no.**604**, at the location called "Njelmesina", land culture-arable land, with surface of 1.03.70 ha, recorded according to the possession list no. 389, CZ of Matiqan, while for the cadastral parcel no.2/257/40, at the location called "Slanishte", land culture-arable land of the 5th class , with a surface of of 0.41.00 ha, requests correction as cadastral parcel no.**601**, at the location called "Njelmesina", land culture-arable land of the 5th class, with a surface of 0.41.66 ha, recorded according to the possession list no. 389, CZ of Matiqan.

b) that the Appellate Panel of the SCSC issue a supplemental judgment, whereby the respondent would be obliged to provide to the Applicant, in the name of compensation for cadastral parcels no.**588/1**, at the location called "Gavrlova Njiva", land culture-arable land of the 5th class, with a surface of 1.56.45 ha, and cadastral parcel no. **598**, at the location called "Vasina njiva", land culture-arable land of the 5th class, with a surface of

1.04.98 ha, in the total surface of 2.61.43 ha, which were by the judgment of the Municipal Court in Prishtina P.no.645/04, of 20 February 2007, given to third parties (family S.) the following parcels:

- No. **523**, plan 3, sketch 7, at the location called “Utrina”, land culture-pasture of the 3rd class, with a surface of 0.38.09 ha
- No. **524**, plan 3, sketch 7, at the location called “Utrina D. Potok”, land culture-arable land of the 7th class, with a surface of 0.62.98 ha
- No. **525**, plan 3, sketch 7, at the location called “Urtina D. Potok”, land culture-pastue of the 2nd class, with a surface of 0.10.03 ha
No. **526**, plan 3, sketch 7, at the location called "Utrina D. Potok", land culture-arable land of the 6th class, with a surface of 0.21.96 ha,
No. **536**, plan 3, sketch 7, at the location called “Utrina Vina Lojze”, land culture- pasture of the 3rd class, with a surface of 1.06.44 ha,
No. **552/2**, plan 3, sketch 9, at the location called “Utrina Veternik”, land culture-arable land of the 7th class, with a surface of 0.57.60 ha, which are located in the cadastral zone of Qagllavica, and are recorded in the possession list no. 222.

42. On 13 December 2017, the Appellate Panel issued an order to the Applicant's lawyer requesting that within five (5) days from the date of receipt of the order, he submit to the court the cadastral documents including cadastral history in order to establish the allegations made in the submission submitted on 7 December 2017, in connection with the change of the numbers of the cadastral parcels in question, listed under point IV of the Judgment AC-I-17-0568 of the Appellate Panel, of 2 November 2017.

43. On 21 December 2017, the Applicant's lawyer submitted a request to the Municipality of Prishtina – Directorate of Cadastre, requesting that a document with data be issued to him, pursuant to the order of the SCSC, of 13 December 2017.

44. On 26 December 2017, the Applicant's lawyer submitted the submission to the Appellate Panel of the SCSC informing it that he had requested the information from the Cadastral Administration of the Municipality of Prishtina according to the court order, but that he had not received any response.

45. On 16 January 2018, the Appellate Panel of the SCSC issued the Decision AC-I-17-0568, whereby the Applicant's submission for correction and supplementation of the Judgment AC-I-17-0568 of the Appellate Panel of the SCSC, of 2 November In 2017, was rejected it as unacceptable, by stating:

„Pursuant to Article 49 of the Annex to the Law on SCSC, corrections of administrative errors at the request of a party shall be made within 2 weeks after the delivery of the judgment, while pursuant to Article 50 of the Annex to the LAW on SCSC, at the request of a party, the judgment is supplemented within 15 days of receipt of the judgment. In this concrete case the Judgment AC-I-17-0568 of the Appellate Panel, of 02.11.2017, was received by the claimant on 17.11.2017, whereas the deadline for correction and supplementation was until 4 December 2017. The Appellate Panel notes that the claimant's lawyer has filed the submission

for correction and supplementation of the Judgment of the Appellate Panel on 5 December 2017, namely, one day late…"

46. On 23 January 2018, the Applicant's lawyer filed another submission with the SCSC requesting the annulment of the Decision ACP I-17-0568 of the Appellate Panel of the SCSC, of 16 January 2018. At the same time, he requested that the proceedings be repeated in connection with the request of 4 December 2017, concerning the correction and supplementation of the Judgment AC-I-17-0568 of the Appellate Panel of the SCSC, of 2 November 2017, because his submission for correction and supplementation of the judgment of the Appellate Panel was sent by post on 4 December 2017, on the basis of which it can be concluded that it was filed within the deadline.

47. The Court finds that in the time period from 2 February 2018 to 14 March 2019, the Appellate Panel of the SCSC has undertaken a number of procedural actions in order to determine and identify the disputable parcels, all in order to decide on the Applicant's request for correction of Judgment AC-I-17-0568 of the Appellate Panel of the SCSC, of 2 November 2017, concerning the numbers of cadastral parcels and the issue of possible compensation.

48. On 2 February 2018, the Appellate Panel of the SCSC issued an order to the Directorate of Cadastre in Prishtina requesting that it send to the court within 5 days the history of cadastral parcels 2/25728, 2/257/37, 2/257/40 and 2/257/43, registered according to the possession list no.45, issued by the Directorate of Cadastre on 21 July 1969.

49. On the basis of the case file it results that the Directorate of Cadastre in Prishtina did not respond within the envisaged time limit.

50. In this respect, on 22 February 2018, the Appellate Panel of the SCSC issued a new order to the Directorate of Cadastre in Prishtina, requesting that it clarify to the court within 5 days whether the cadastral parcel no. 2/257/43 is the same as parcel with no. 604, and whether the parcel no. 2/257/40 is the same as parcel with no.604, as claimed by the claimant, as well as to clarify in whose name are the new cadastral parcels no. 604 and no. 601 recorded in the cadastral registers.

51. On the same day, the Appellate Panel of the SCSC issued an order to the PAK requesting the PAK provide its comments on the Applicant's submission of 4 December 2017, regarding the correction of the Judgment AC-I-17-0568 of the Appellate Panel of the SCSC, of 2 November 2017, as well as regarding the claimant's submission filed with the SCSC on 23 January 2018, seeking the annulment of the Decision AC-I-17-0568 of the the Appellate Panel, of 16 January 2018.

52. On 2 March 2018, the Kosovo Cadastral Agency replied to the Appellate Panel of the SCSC, stating that they have data for the time period from 1983 to 1988, but not from the earlier period. The numbers of the cadastral units of the cadastre are not the same as cadastral numbers that exist today in the cadastral operate and for the verification and comparison of numbers one should possess cadastral documents until 1983, which the Cadastral Agency of Kosovo

does not possess. Further, the Cadastral Agency in its response stated that it was impossible to determine whether we are talkin about the same property with unit numbers listed in the order of the Appellate Panel of the SCSC, and that the parcels no.601/0 and 604/0, CZ of Matiqan, are in the ownership of the SOE PIK(Agroindustrial Combine) "Kosova Export", D.P.S. Kosovo Export.

53. On the same day, the PAK filed a submission with the Appellate Panel of the SCSC, claiming that there were no elements for technical corrections of the Judgment AC-I-17-0568 as claimed by the Applicant. The PAK also claims that parcels no. 601 and 604, recorded in the possession list no. 389, CZ of Matiqan, were not even considered by the judgment of the the Appellate Panel. Further, the PAK claimed that the claimant's proposal for rendering a supplemental judgment obliging the PAK to compensate cadastral parcels no. 588/1 and 598 with other indicated cadastral parcels, which the Applicant has indicated in his submission, is not allowed on the basis of the Law on SCSC. In the submission, the PAK also states that the the Appellate Panel of the SCSC by Decision AC-I-17-0568 of 16 January 2018 has rejected the Applicant's submission - proposal for correction and supprlementation of the Judgment, therefore this issue was decided by a final decision, and is considered a judged matter.

54. On 7 March 2018, the Applicant's lawyer filed a new submission with the Appellate Panel of the SCSC, stating, inter alia, that he *had hired a licensed geodesy expert for cadastral surveying services, and that according to his expertise the parcel as per the descriptive cadastre 2/257/40 is the same as the cadastral parcel as per the land cadastre no. 601, while the cadastral parcel no. 2/257/43 as per the descriptive cadastre is the same as the cadastral parcel as per the land cadastre no.604, which means that we are dealing with the the same immovable property*.

55. Further as regards the parcel no. 2/257/28 as per the descriptive cadastre, the Applicant's lawyer claims that according to the land cadastre it is the same as the cadastral parcel, which bears the number 588/1, while the parcel as per the descriptive cadastre 2/257/37 is the same as the cadastral parcel as per the land cadastre no.598. These are the parcels that were given to the family S., and for which they request other parcels and rendering of a new judgment.

56. On 29 March 2018, the judge in charge of the case submitted a request to the Ministry of Justice of the Republic of Kosovo, which was addressed to the Ministry of Justice of the Republic of Serbia, in order to provide relevant cadastral information for the possession list no.45, issued on 21.07.1969, in connection with the following cadastral parcels: parcel no. 2/257/43, at the location called "Vasina Njiva", land culture- arable land, with a surface of 1.03.00 ha and parcel no. 2/257/40 at the location called "Slanishte", land culture- arable land, with a surface of 0.41.00 ha, Cadastral Zone of Matiqan.

57. On 30 November 2018, the Republic Geodetic Authority of the Republic of Serbia sent a response to the Appellate Panel of the SCSC. In the submission, the Geodetic Authority of the Republic of Serbia, stated that after a full search of data of the Cadastral Municipality of Matiqan, parcels no. 2/257/43 and no. 2/257/40, which were registered in the name of the holder N. Č. L., following

a new measurement of the parclers bear the numbers 601 and 604 and are registered in the registration list 389. In addition, the Geodetic Authority of the Republic of Serbia states that the branch of the archives of the Republic of Serbia in Belgrade - Pristina Branch, neither upon a physical search by hand, nor even during scanning and digitilization for Kosovo, found any of the requested documentation.

58. On 20 December 2018, the Appellate Panel of the SCSC issued the Decision AC-I-17-0568, appointing a geodesy expert, Sh.P., from Prishtina to perform the requested expertise.

59. On 21 December 2018, the Appellate Panel of the SCSC issued an order to the PAK and the Applicant requesting their comments, if any, in relation to the submission of the Republic Geodetic Authority of the Republic of Serbia.

60. On 28 December 2018, the PAK submitted its response wherein it stated, *"that it is not clear why such a submission was submitted for a matter that has now already been closed."*

61. The Applicant did not respond to the order of the Appellate Panel of the SCSC, of 21 December 2018.

62. On 23 January 2019, the PAK submitted another submission to the Appellate Panel of the SCSC, requesting from it not to take any procedural action in this case after that the Judgment AC-I-17-0568 of the Appellate Panel, of 02 November 2017, has became final, and it took the form of a judged matter (res judicata).

63. On 24 January 2019, the Appellate Panel of the SCSC sent the submission of the PAK, of 23 January 2019 to the Applicant, giving him 7 days to respond to it.

64. Acting within the legal deadline, the Applicant's lawyer responded to the PAK's comments, by stating that the Decision AC-I-17-0568 of the Appellate Panel of the SCSC, of 16 January 2018, could not be *res judicata*, as it had to do with an ommission of the court, which as such is also annulled. As to the property in question, the Applicant states that it was specified by the claimant's submission, of 5 December 2014.

65. On 4 March 2019, the geodetic expert appointed by order of the Appellate Panel of the SCSC submitted a report on the geodetic expertise in relation to the parcels in question. In this report, the geodetic expert concludes that on 26 January 2019, he has beein in the field [...] and that according to the valid documentation in his possession obtained from the Directorate of Cadastre, the disputable parcels no. 601-0 and no. 604.0, are recorded as socially owned property of PIK (Agroindustrial Combine) "Kosova Export", having its headquarters in Fushë Kosovë on the basis of the aerial photography from 1972, which came into effect on 31.12.1980. [...] this report, it is stated that the parcel no.601-0 acording to the descriptivee cadastre is the same with the parcel number no. 2/257/40, while the parcel no. 604-0 according to the descriptive cadastre is the same with the cadastral parcel no. 2/257/43.

66. On 5 March 2019, the Appellate Panel of the SCSC issued an order to the Applicant and the PAK, by giving them the opportunity to submit their comments regarding the expert report, within 7 days.

67. On 12 March 2019, the claimant's lawyer filed a submission with the Appellate Panel of the SCSC, stating that he has no objections regarding the expertise of the geodetic experts in the part that was the subject of the expertise in relation to parcels no.601 and no.604, but has objections in relation to the fact that the Appellate Panel of the SCSC has fully approved the Applicant's statement of claim, so that the request for correction of the Judgment has to do also with other cadastral parcels no. 523, no. 524, no. 526 and no. 552/2.

68. On 13 March 2019, the PAK sent a submission to the Appellate Panel of the SCSC, stating: [ ] to identify one parcel of the descriptive cadastre and to have it compared with the number of the parcel in the measurement cadastre, the expert should have had two studies, described and measurements (stereo photogrammetric aerial image). In this submission, the PAK proposes to the court not to take as a basis such a conclusion of experts and proposes a super expertise where the objections of the PAK and the clarification of the case as a whole would be taken into account.

69. On 14 March 2019, the Appellate Panel of the SCSC issued the Decision AC-I-17-0568, whereby it decided that:

I. Claimant's request of 23 January 2018 seeking the annulment of the Decision AC-I-17-0568 of the Appellate Panel, of 16 January 2018, is founded.
II. The Decision AC-I-17-0568 of the Appellate Panel of the SCSC, of 16 January 2018, is annulled.
III. Claimant's request for correction of the Judgment AC-I-17-0568 of the Appellate Panel, of 2 November 2017 in relation to the numbers of the parcels indicated under point IV of the enacting clause of this judgment, is approved.
IV. The number of parcels under point IV of the enacting clause of the Judgment AC-I-17-0568 of the Appellate Panel, of 2 November 2017, are corrected as follows: for the cadastral parcel 27257/43, the correct number should be no.604, at the location called "Njelmesina", land culture- arable land of the 5th class V, with a surface of 1.03.00 ha, recorded according to the possession list no. 389, CZ of Matiqan; while for the parcel no. 2/257/40, the correct number must be no. 601, at the location called "Njelmesina", land culture- arable land of the 5th class, with a surface of 0.41.00 ha, recorded according to the possession list no. 389, CZ of Matiqan. The remaining part of point IV of the enacting clause remains unchanged.
V. Claimant's request in the submission filed with the SCSC on 4 December 2017 concerning the issuance of a supplemental judgment and recognition of property rights for the following parcels: no. 523, at the location called "Utrina", with a surface of 0.32.09 ha, no. 524, at the location called "Utrina D. Potok", with a surface of 0.62.98 ha, no.

525, at the location called "Utrina D. Potok", with a surface of 0.10.03 ha, no. 526, at the location called "Utrina D. Potok", with a surface of 0.21.96 ha, no. 536, at the location called "Utrina Vina Lozje", with a surface of 1.06.44 ha, no. 552/2, at the location called "Utrina Veternik" with a surface of 0.57.60 ha, which are located in the Cadastral Zone Qagllavica, recorded in the possession list 222, which the claimant requests to be given to him as compensation instead of parcel no. 2/257/28, which as claimed by him according to the cadastre in force bears the no. 588/1, at the location called "Gavrilova Njiva", with a surface of 1.56.45 ha, and cadastral parcel no. 2/257/37 which as claimed by him according to the cadastre in force bears the no. 598, at the location called "Vasina Njiva", with a surface of 1.04.98 ha, is dismissed as unacceptable.

70. As regards to the **point I, and point II** of the enacting clause of the Decision AC-I-17-0568, on the annulment of the Decision AC-I-17-0568 the Appellate Panel, of 16 January 2018, the Appellate Panel of the SCSC stated:

"The Appellate Panel of the SCSC concluded that the Applicant's allegation that he has submitted his request for correction and supplementation of the Judgment of the Appellate Panel on 04.12.2017 is founded, as this allegation is confirmed by the acknowledgment of receipt of mail, which bears a stamp with the same date. Moreover, the Appellate Panel also notes that the claimant has sent his submission for correction and supplementation of the judgmentt by mail, as the case file contains the envelope of this delivery, which bears the stamp of the post office with date 04.12.2017, a fact which the Appellate Panel failed to notice when it rendered the Decision AC-I-17-0568, of 16 January 2018."

71. As regards to the **point III and IV** of the enacting clause of the Decision AC-I-17-0568, on the correction and supplementation of the Judgment AC-I-17-0568 of the Appellate Panel, of 2 November 2017, concerning the numbers of the said parcels, the Appellate Panel of the SCSC concluded:

"The Appellate Panel of the SCSC has also considered the allegations of the claimant made in his last submission, which was submitted to the SCSC on 12 March 2019, and did not accept those allegations as founded. The Appellate Panel made the correction of the number of parcels 2/257/43 and 2/257/40 which were the subject of the contract on sale and purchase from 1971, on which the Judgment AC-I-17-0568 of the Appellate Panel, of 02.11.2017, is based. While for the other two parcels 2/257/28 and 2/257/37, which were the subject of the contract on sale and purchase from 1971, the claimant himself in his submission for correction and supplementation of the judgment, which was submitted to the SCSC on 4 December 2017, has claimed that on the basis of the Judgment C.no. 645/04 of the Municipal Court in Prishtina, of 20 February 2007, these two parcels stand in the name of private persons and instead of these two parcels he has asked for compensation with other parcels, the request for supplementation of the judgment of 02.11.2017, based on the reasons that follow, is rejected as inadmissible."

72. As regards the **point V** of the enacting clause of the Decision AC-I-17-0568, on the request for issuing a supplemental judgment, whereby to the Applicant would be allocated the parcels no. 552/2, no. 523, no. 524, no. 525, no. 526, no. 536, as a type of compensation for two cadastral parcels no. 588/1 and no. 598, which according to him, were taken from him in unlawful manner by the Judgment P.no.645/04 of the Municipal Court in Prishtina, of 20 February 2007 , the Appellate Panel of the SCSC concluded:

> *"The Appellate Panel of the SCSC notes that it has addressed the Applicant's allegations filed in the appeal of 18 September 2017 according to the Judgment SCC-11-0085 of the Specialized Panel of 22.08.2017, therefore, in connection with his appeal, it has now provided certain decisions in the enacting clause of the Judgment AC-I-17-0568 of the Court of Appeals, of 02.11.2017.*
> *Therefore, the Appellate Panel considers that there is no unresolved issue; hence it does not consider that there are legal bases for rendering a supplemental judgment, at this stage of proceedings, in order to resolve the claimant's requests for compensation with other parcels indicated in the submission of 4 December 2017.*
> *Moreover, pursuant to Article 10.14 of the Law on SCSC, the judgments of the Appellate Panel are final, and may not be subject to extraordinary legal remedies.*
> *The claimant's submission of 4 December 2017 concerning the issuance of a supplemental judgment, at this stage of the procedure, cannot be treated as a request for repetititon of proceedings in the sense of Article 232 of the LCP.*
> *Hence, for these reasons, the claimant's request for rendering a supplemental judgment and obliging the respondent to compensate the claimant for the lost parcels with the above indicated parcels must be rejected as inadmissible."*

Applicant's allegations

73. The Applicant alleges that the decisions of the regular courts have violated his rights and freedoms guaranteed by Article 31 [Right to Fair and Impartial Trial], Article 46 [Protection of Property] of the Constitution, and Article 6 (Right to a fair Trial), Article 1 of Protocol 1 (Protection of property) of the ECHR, as well as Articles 8, 14 and 17 of the Universal Declaration of Human Rights.

74. The Court notes that the Applicant raises allegations which concern **i)** the court proceedings conducted with regard to the request for the imposition of the security measure on the property in question by the Municipal Court, and **ii)** the court proceedings resolving the subject matter related to the disputable property.

75. As regards the court proceedings concerning the imposition of the security measure, the Applicant alleges that his rights under Article 46 of the Constitution and Article 1 of Protocol No. 1 of the ECHR have been violated, *"because despite the fact that the Municipal Court on 20 February 2007 has imposed the security measure, prohibition of alienation of the parcels in question, the said measure was not respected by the Municipal authorities of Prishtina, namely the Cadastre, and thus the Applicant was not provided with legal certainty, because the goal of the security measure is to preserve the unchanged state of the immovable property until the statement of claim is decided based on the merits."*

76. In the context of what is stated above, the Applicant adds that the Municipal Court has issued the Decision C.no. 645/04 whereby it allocated two cadastral parcels no. 588 and no. 598, over which he has had the right of ownership, to the family S. Such actions, according to the Applicant, "*violate his property rights guaranteed by Article 46 of the Constitution of the Republic of Kosovo, as well as by Article 1 of Protocol 1 of the European Convention, and Article 17 of the Universal Declaration of Human Rights."*

77. As regards the court proceedings in which the courts had ruled on property rights over the property in question, the Applicant alleges, *"that his rights to a reasoned court decision guaranteed by Article 31 of the Constitution and Article 6 of the ECHR have been violated"*, by stating as arguments for that violation "*On 5 December 2014, he had submitted to the SCSC, a specified statement of claim, whereby he requested that instead of the two cadastral parcels allocated to the family S., he be allocated 6 other parcels as a form of compensation. However, that specified statement of claim was rejected by the Specialized Panel of the SCSC as unfounded by Judgment SCC-II-0085, of 22 August 2017, while it did not deal with this specified statement of claim."*

78. In this respect, the Applicant adds that *"The fundamental principle of civil proceedings is the principle of accessibility of claims and in the spirit of this fundamental principle, Article 2 of the Law on Contested Procedure simply defines that in the proceedings the courts may decide within the limits of the claims filed by litigants. The courts may not decide out of the subject matter of the claim submitted by the parties or recognize other or different rights out*

of its accessibility and outside the subject matter of the claim filed by the party and which was the subject of the claim, which the courts did not do."

79. Further, the Applicant states that *"The Appellate Panel of the SCSC, when deciding upon his appeal, has rendered the Judgment AC-I-17-0568, of 2 November 2017, under* ***point III*** *of which it has decided that the Applicant's claim is founded, therefore, from the fact that the claim was approved in its entirety as founded, it is clear and understandable what was approved from the statement of claim, which means the entirety of the specified statement of claim along with the submission of 05.12.2014, based on on which it can be concluded that the Judgment AC-I-17-0568 of the Appeallate Panel of the SCSC, of 2 November 2017, has become final and definitive, therefore as such it is a RES JUDICATA matter".*

80. The Applicant also states that the Appellate Panel of the SCSC under **point IV** of the Judgment AC-I-17-0568, of 2 November 2017, has made a technical error in relation to the number of cadastral parcels, which as such can not be enforceable. In this respect, pursuant to Articles 162 and 165 of the Law on Contested Procedure of Kosovo No.03/L-006, submitted a new request seeking the correction of the technical error, as well as the issuance of a new judgment in relation to the specified request of 5 December 2014.

81. The Appellate Panel os the SCSC, according to the Applicant, acting upon the request for correction of the technical error and rendering a new Judgment, *"continued to conduct legal proceeding as if this claim was a new claim, and began to present evidence and determine expertises as if this issue was a new subject matter of the dispute, instead of treating the matter as RES JUDICATA."*

82. The Applicant considers that the Appellate Panel of the SCSC should have only reviewed the enacting clause of point IV of the Judgment AC-I-17-0568, and have it compiled in accordance with the subject matter of the claim, as provided by the provisions of the Law of Contested Procedure.

83. Further, the Applicant considers that the Decision AC-I-17-0568 of the Appellate Panel of the SCSC approving the request for correction is unconstitutional, because under point III of the enacting clause of the decision, it decided to approve his request for correction of the Judgment AC-I-17-0568 of the Appellate Panel of the SCSC, of 2 November 2017, concerning the correction of the numbers of cadastral parcel. However, at the same point, it decided to approve the correction for only two parcels, namely for parcel number 604 and parcel number 601, while the other part of point IV of the enacting clause of the judgment of 2 November 2017 was left unchanged. Furthermore under point V of the enacting clause of the decision of 14 March 2019, the Appellate Panel of the SCSC completely rejected the alternative request for rendering a supplemental judgment, without providing any reason.

84. The Applicant states that *"it is clear that the Decision AC-I-17-0568 of the Appellate Panel of the SCSC, of 14 March 2019 contains several shortcomings regarding the reasoning which is not sufficiently expressed and elaborated, thus violating Article 31 of the Constitution and Article 6 of the ECHR (see,*

the case KI120/10, judgment of 8 March 2013, and KI71/12, judgment of 7 December 2012).”

85. In conclusion, the Applicant considers that, on the basis of the above arguments, the Decision AC-I-17-0568 of the Appellate Panel of the SCSC, of 14 March 2019 is in contradiction with Article 31 of the Constitution and Article 6 of the ECHR, because it violates the RES JUDICATA principle.

86. The Applicant addresses the court with the request,

i) “the Court to find a violation of the RES JUDICATA principle, as well as a violation of Articles 31 and 46 of the Constitution, Articles 8 and 17 of the Universal Declaration of Human Rights and Articles 6 and 1 of Protocol No. 1 of the ECHR.

ii) To declare partially invalid point IV of the enacting clause of the Decision AC-I-17-0568 of the Appellate Panel of the SCSC, of 14 March 2019, specifically the part of point IV of the enacting clause which remains unchanged (without changing the part of point IV of the enacting clause whereby the cadastral parcels no.604 and 601 were corrected as a gained right), and declare invalid point V of the enacting clause of the above-mentioned decisions, and return the unchanged part of the enacting clause IV of the decision and point V of the above-mentioned enacting clause, to the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo.”

Relevant Constitutional and Legal Provisions

Constitution of the Republic of Kosovo

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 46 [Protection of Property]

1. The right to own property is guaranteed.

2. Use of property is regulated by law in accordance with the public interest.

3. No one shall be arbitrarily deprived of property. The Republic of Kosovo or a public authority of the Republic of Kosovo may expropriate property if such expropriation is authorized by law, is necessary or appropriate to the achievement of a public purpose or the promotion of the public interest, and is followed by the provision of immediate and adequate compensation to the person or persons whose property has been expropriated.

4. Disputes arising from an act of the Republic of Kosovo or a public authority of the Republic of Kosovo that is alleged to constitute an expropriation shall be settled by a competent court.

5. Intellectual property is protected by law.

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 1 of Protocol 1 (Protection of property)

"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

LAW No. 03/L-006 on Contested Procedure

Supplemental Verdict,
Article 162

"162.1 If the court hasn't decided over all requests that should have been included in the verdict, or when only one part of the requests was not included than the party can suggest its supplementation through a

proposal in a period of fifteen (15) days since the day of the verdict was issued.
162.2 If the party doesn't propose its appending it will be considered that the charges were withdrawn for the part which was not included in the decision issued.
162.3 A proposal coming later or with no basis for supplementing the decision will be dropped, respectively rejected by the court without setting a hearing.

Article 163

163.1 When the court ascertains that proposal to supplement the decision has grounds, it sets a session for main hearing of the case, aiming at issuing a decision for the part of the request that hasn't been resolved (a supplemental decision).
163.2Supplemental decision can be issued without reopening of the main hearing, if this decision is issued by the same judge who issued the first decision but only after it is ascertained that the request proposing the supplement is examined enough.
163.3 If the proposal for supplementing the decision is related to the expenditures of the procedure, the verdict over the proposal is issued by the court without setting a court session.

Article 164

164.1 In cases where except proposal for supplementing the decision there is an appeal against it, the appeal is not sent to the court of the second instance until there is a decision on the supplement proposal and until the deadline for addressing it isn't due.
164.2 If there is a complaint against the verdict for supplementing a decision, this complaint together with first decision will be sent to the court of second instance.
164.3 In case the decision is attacked by a complaint only because the court hasn't used it for all requests of parties that are subject of the court process, the complaint will be regarded as a proposal for issuing a supplemental decision.

Correction of the decision
Article 165
165.1 Mistakes on the names and numbers as well as other written and calculating mistakes, absence in a aspect of ways of decision and discrepancies of copies with the original are corrected by the court in every time.
165.2 The correction of mistakes is dome through a special verdict written in the form of the original verdict while the parties receive copies of such verdict.
165.3 If there are discrepancies between original and the copy of a restrained verdict in a sense of decision per request, the parties receive the corrected copy of the decision by showing that this copy replaces the previous copy of the decision. In this case the deadline for complaint

against the corrected part of the decision starts from the moment of issuance of the corrected copy of the decision.
165.4 The correction of the decision is decided by the court without hearing of parties.

LAW NO.06/L-086 ON THE SPECIAL CHAMBER OF THE SUPREME COURT ON PRIVATIZATION AGENCY OF KOSOVO RELATED MATTERS

Article 55
Rectification of the judgment

In case of errors in names and numbers, as well as other errors in writing and calculation, missing in the aspect of the form of judgement and non-compliance of the copy with the original of the judgement, the Special Chamber shall, upon its own initiative or upon the request by the parties, rectify the judgement in any time. In case of the rectification of the judgement, the single judge, respectively the panel, shall apply the provisions of the Law on Contested Procedure mutatis mutandis.

Article 56
Omissions

1. If the Special Chamber omits to give a decision on a specific part of a claim or on costs, any party may, within fifteen (15) days of service of the judgment, apply to the Special Chamber to supplement its judgment.
2. The application for a supplement to the judgment shall be served on the opposing parties, and the Single Judge or Presiding Judge shall prescribe a period within which the parties may file opposing arguments in writing, if any. After the expiry of the prescribed period, the Special Chamber shall decide on the application."

Assessment of the admissibility of Referral

87. Having in mind that the Applicant challenges **i)** the court proceedings conducted regarding the request for the imposition of the security measure, and **ii)** the court proceedings resolving the subject matter related to the dispute concerning the property in question, the Court should determine whether all admissibility requirements established in the Constitution, the Law, and further specified in the Rules of Procedure, are met.

88. 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".

89. The Court further examines whether the Applicant has fulfilled the admissibility criteria, as provided by Law. In this respect, the Court refers to Articles 47 [Individual Requests], 48 [Accuracy of the Referral] and 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..."

90. As to the fulfillment of other admissibility requirements which concern i) the proceedings conducted regarding the request for imposing the security measure, the Court emphasizes that the Applicant is an authorized party who is challenging an act of a public authority, namely the Decision E.no. 317/07 of the Municipal Court, of 16 April 2007. Accordingly, the Court should determine whether the Applicant's Referral was submitted in accordance with the aforementioned Article 49 of the Law, as well as Rule 39 (Admissibility Criteria), paragraph 1. c) of the Rules of Procedure, which states:

1. *The Court may consider a referral as admissible if:*

   (c) the referral is filed within four (4) months from the date on which the decision on the last effective remedy was served on the Applicant.

91. In this respect, as regards the allegations concerning the proceedings related to the imposition of the security measure, the Court first finds that these allegations relate to the proceedings before the Municipal Court in 2007. The Court also finds that this part of the court proceedings was concluded on 29 December 2010, when the Basic Court issued the Decision C.no.414/07, declaring itself incompetent in the case in question, and referred the Applicant to the Special Chamber of the Supreme Court of Kosovo as the competent court to deal with matters concerning the Privatization Agency of Kosovo. Thus, all

legal actions taken by the Municipal Court according to this request and claim have formally-legally ceased to exist.

92. Accordingly, considering the date of conclusion of this court procedure, that is 29 December 2010, and the date on which this Referral was submitted to the Court, which is 17 July 2019, the Court concludes that all these allegations are out of the legal deadline of 4 months as provided for by Article 49 of the Law and Rule 39 1.c) of the Rules of Procedure.

93. The Court recalls that the objective of the 4 (four) month legal deadline, under Article 49 of the Law and Rule 36 (1) (c) of the Rules of Procedure is to promote legal certainty by ensuring that cases raising constitutional issues are dealt with within a reasonable time and that the past decisions are not continually open to challenge (See the case, *O'Loughlin and Others v. the United Kingdom*, Application no. 23274/04, ECtHR, Decision of 25 August 2005, see also: the case No.KI140/13, *Ramadan Cakiqi*, Resolution on Inadmissibility, of 17 March 2014, paragraph 24).

94. As regards the fulfillment of other admissibility requirements which concern **ii)** the court proceedings resolving the subject matter related of the dispute over the property in question, the Court emphasizes that the Applicant is an authorized party challenging an act of a public authority, namely the Decision AC-I-17-0568 of the Appellate Panel of the SCSC, of March 14, 2019, after having exhausted all legal remedies provided by law. The Applicant has also specified the fundamental rights and freedoms which he claims to have been violated, pursuant to the requirements of Article 48 and has submitted the Referral in accordance with Article 49 of the Law.

95. The Court further ascertains that the Applicant's Referral meets the admissibility requirements set out in paragraph (1) of Rule 39 of the Rules of Procedure and cannot be declared inadmissible on the basis of the requirements established in paragraph (3) of Rule 39. The Court also points out that the Referral is not manifestly ill-founded on constitutional basis, as provided in paragraph (2) of Rule 39, and must therefore be declared admissible and have its merits examined.

Merits

96. The Court recalls that the circumstances of this case relate to the determination of the property right over a property, namely over the four parcels in question no.2/257/28, no.2/257/37, no.2/257/40 and no.2/257/43, which the Applicant has bought on 23 July 1971, for which he had concluded a contract on sale and purchase with the seller. In order to realize the property right over the said parcels, the Applicant had submitted two requests in 2007, namely: a) a statement of claim for recognition of the property right over the property in question, and b) a request for the imposition of the security measure on the said property.

97. However, having in mind that the court has concluded that the part of the Referral relates to **i)** the proceedings conducted regarding the request for the imposition of the security measure does not meet the admissibility

requirements pursuant to Article 49 of the Law and Rule 39 (1) (c) of the Rules of Procedure, it concludes that in the following it shall deal exclusively with the merits which concern **ii)** the court proceedings in which the property rights over the property in question were determined.

Merits in relation to ii) the court proceedings in which the property rights of the claimant over the property in question were determined.

98. As regards the merits in relation to the court proceedings in which the property rights over the property in question were determined, the Court notes that the jurisdiction to decide the said legal dispute on 17 September 2010 was transferred from the Municipal Court to the SCSC. On 4 March 2011, the Applicant filed a claim with the SCSC, seeking confirmation of ownership of the property in question. During the proceedings before the SCSC, on 5 December 2014, the Applicant filed a supplemented and specified statement of claim whereby he requested that instead of the two parcels already allocated to the family S., he be allocated 6 other parcels, with numbers and in the surface as indicated by him that in the specified statement of claim.

99. The Specialized Panel of the SCSC rendered the Judgment SCC-11-0085, rejecting the Applicant's claim in relation to the confirmation of the right over the said property, of 4 March 2011. In the appeal proceedings, the Appellate Panel of the SCSC rendered the Judgment CI-17-0568, whereby it i) accepted the Applicant's appeal, ii) annulled the Judgment SCC-11-0085 of the Specialized Panel, iii) accepted the Applicant's statement of claim as founded, and iv) determined that the Applicant is the owner in connection with the cadastral parcels no.2/257/28, no.2/257/37, no.2/257/40, no.2/257/43, which are recorded in the possession list no. 45, CZ of Matiqan.

100. It is exactly this fact that was problematic for the Applicant, because the Appellate Panel of the SCSC, under point IV) of the enacting clause of the Judgment CI-17-0568, recognized the property right over 4 parcels, which are registered under the old cadastral system, which in fact and in reality could not be registered as such in the current Cadastre records as Applicant’s property.

101. Having in mind this fact, on 4 December 2017, the Applicant submitted two requests to the Appellate Panel of the SCSC,

a) a request for technical correction of the numbers for the two parcels in question, in order to obtain a decision listing the parcels in the manner and under the numbers of the Kosovo cadastral record system, on the basis of which he could be registered as the owner,
b) a request for a supplemental judgment, on the basis of which he would be allocated 6 other parcels as compensation, in accordance with the specified request of 5 December 2014.

102. Taking into consideration the merits of the Applicant's Referral, the Appellate Panel of the SCSC, on 14 March 2019, rendered the Decision AC-I-17-0568 whereby it, i) approved the Applicant's request for correction of the Judgment AC-I- 17-0568 of the Appellate Panel of the SCSC , ii) approved the request for

correction of the numbers of two cadastral parcels in such a way that, cadastral parcel no.2/257/43, becomes parcel no. 604, while parcel no. 2/257/40, becomes parcel no. 601.

103. As regards the request for a supplemental judgment, whereby the Applicant would be allocated the parcels no. 552/2, no. 523, no. 524, no. 525, no. 526, no. 536, as a type of compensation for the two cadastral parcels no. 588/1 and no. 598, which according to him, were taken from him in unlawful manner by the Decision P.no.645/04 of the Municipal Court, of 20 February 2007, the Appellate Panel of the SCSC concluded that this request is to be rejected, because the matter *"in respect of this request has been resolved by the Judgment AC-I-17-0568 the Appellate Panel of the SCSC, of 02.11.2017."*

104. As a matter of fact, the Applicant is facing the situation when,

i) he has the final Judgment AC-I-17-0568, of the the Appellate Panel, of 2 November 2017, whereby he was recognized his property right over four parcels no. 2/257/28, no. 2/257/37, no. 2/257/40, no. 2/257/43, which were the subject of the contract from 1971, and which as such cannot be enforced,
ii) on 14 March 14, 2019, the Appellate Panel of the SCSC issued a new Decision AC-I-17-0568, whereby it made a technical correction, for two parcels, no.2/257/43 and no.2/257/40, which have gotten new numbers (no. 588, and no. 598), which enabled him to be registered as the owner in the property cadastre, and
iii) by the same Decision AC-I-17-0568, the Appellate Panel of the SCSC, decided to reject as inadmissible the request for compensation for the other two parcels 2/257/28 and 2/257/37 on the grounds that the *Juddgment AC I-17-0568, of the Appellate Panel of the SCSC, of 2 November 2017, provides certain solutions regarding this matter.*

Allegations in relation to the court proceedings in which the courts have decided on the Applicant's property rights over the property in question

105. Having in mind the Applicant's allegations regarding non-reasoned court decisions, as well as the specifics of the decisions of the Appellate Panel of the SCSC (judgments and decisions) in which, according to the Applicant's allegation, it did not specifically address all important elements of the petitum of the statement of claim, the Court considers that there is a need for this part of the Applicant's allegations to be examined on the basis of the case law of the European Court of Human Rights (hereinafter: ECtHR), according to which, pursuant to Article 53 [Interpretation of Human Rights Provisions] of the Constitution, the Court is obliged to interpret fundamental rights and freedoms guaranteed by the Constitution. Accordingly, and in the following, the Court will consider the Applicant's allegations regarding the absence of a reasoned judgment and in doing so the Court will first (i) elaborate on general principles; and then (ii) apply the same to the circumstances of this case.

106. The Court finds that the part of the court proceedings in which the Applicant's property rights were determined consisted of the main court procedure in which the Appellate Panel of the SCSC rendered the Judgment CI-17-0568, as well as the proceedings relating to the request for correction of the Judgment, in which the Appellate Panel of the SCSC issued the Decision CI-17-0568. For the Applicant is problematic, precisely, the relationship between the enacting clause and the reasoning of these two court decisions, which according to him are not in accordance with the principles and do not meet the principles and criteria related to reasoned court decisions, thus violating his rights from Article 31 of the Constitution in conjunction with Article 6 of the ECHR, as well as Article 46 of the Constitution in conjunction with Article 1 of Protocol No. 1 of the ECHR.

107. With that in mind, the Court will consider below the Applicant's allegations, by taking into account both its case-law and that of the ECtHR with respect to non-reasoned court decisions.

(i) General principles regarding the right to a reasoned court decision

108. As regards the right to a reasoned judicial decision guaranteed by Article 31 of the Constitution in conjunction with Article 6 of the ECHR, the Court first emphasizes that it already has a consolidated case-law. This case law is based upon the case law of the ECtHR, including, but not limited to, the cases of *Hadjianastassiou v. Greece*, judgment of 16 December 1992; *Van de Hurk v. the Netherlands*, Judgment of 19 April 1994; *Hiro Balani v. Spain*, Judgment of 9 December 1994; *Higgins and Others v. France*, Judgment of 19 February 1998; *Garcia Ruiz v. Spain*, Judgment of 21 January 1999; *Hirvisaari v. Finland*, Judgment of 27 September 2001; *Suominen v. Finland*, Judgment of 1 July 2003; *Buzescu v. Romania*, Judgment of 24 May 2005; *Pronina v. Ukraine*, Judgment of 18 July 2006; and *Tatishvili v. Russia*, Judgment of 22 February 2007. In addition, the basic principles regarding the right to a reasoned court decision have also been elaborated in the cases of this Court, including, but not limited to KI22/16, with Applicant: *Naser Husaj*, Judgment of 9 June 2017; KI97/16, with Applicant: "*IKK Classic*", Judgment of 9 January 2018; KI143/16, with Applicant: *Muharrem Blaku and others*, Resolution on Inadmissibility of 13 June 2018; KI24/17, with Applicant: *Bedri Salihu*, Judgment of 27 May 2019; and KI35/18, with Applicant *"Bayerische Versicherungsverbrand"*, cited above, and KI227/19 , Applicant *N.T. "Spahia Petrol"*, cited above, paragraph 45).

109. In principle, based the case law of the ECtHR, the guarantees embodied in Article 6 of the ECHR include the obligation for the courts to provide sufficient reasons for their decisions (see: ECtHR case, *H. v. Belgium*, Judgment of 30 November 1987, paragraph 53; also, for more details on the right to a reasoned judgment, see the ECtHR Guide to Article 6 of the ECHR of 30 April 2020, The Right to a fair trial (civil limb), IV.Procedural Requirements, 7. Reasons for Judgments, paragraphs 369 to 380 and references used therein). A reasoned decision shows the parties that their case has indeed been heard, and consequently contributes to a greater admissibility of the decisions (see the ECtHR case *Magnin v. France*, Judgment of 10 May 2012, paragraph 29). This case law also stipulates that

despite the fact that a court has a certain discretion regarding the selection of arguments and evidence, it is obliged to justify its activities and decision-making by giving the relevant reasons (see the ECtHR cases: *Suominen v. Finland*, cited above, para. 36; and *Carmel Saliba v. Malta*, Judgment of 24 April 2017, paragraph 73, and see also the case KI227/19, with Applicant: *N.T. "Spahia Petrol"*, cited above, paragraph 46). In addition, decisions must be reasoned in such a way as to enable the parties to effectively exercise any existing right of appeal (see: ECtHR Hiroisaari v. Finland, cited above, paragraph 30).

110. Having said that, Article 6 of the ECHR obliges courts to give reasons for their decisions, but this does not mean that a detailed response is required for each argument (see the ECtHR cases *Van de Hurk v. The Netherlands*, cited above, paragraph 61; *Garcia Ruiz v. Spain*, cited above, paragraph 26; *Jahnke and Lenoble v. France*, Decision of 29 August 2000; and *Perez v. France*, Judgment of 12 February 2004, paragraph 81; see also the case of Court KI227/19, with Applicant *N.T. "Spahia Petrol"*, cited above, paragraph 47. The extent to which this obligation applies may vary depending on the nature of the decision and should be determined in the light of the circumstances of each case (see the ECtHR cases: *Ruiz Torija v. Spain*, Judgment of 9 December 1994, paragraph 29; and *Hiro Balani v. Spain*, cited above, paragraph 27; and see also the case of Court KI227/19, with Applicant *N.T. "Spahia Petrol"*, cited above, paragraph 47. An appellate court, for example, may, in principle, reject an appeal by upholding the reasons for the lower court's decision, however even such a decision must contain sufficient reasoning to show that the relevant court has not upheld the findings reached by a lower court without sufficient consideration (see, *inter alia*, the ECtHR case, *Tatishvili v. Russia*, cited above, paragraph 62; and see also the case of Court, KI227/19, with Applicant *N.T. "Spahia Petrol"*, cited above, paragraph 47).

111. However, based on the case law of the ECtHR, courts are required to consider and provide specific and clear answers regarding (i) the substantive allegations and arguments of the party (see the ECtHR cases, *Buzescu v. Romania*, cited above, paragraph 67; and *Donadze v. Georgia*, Judgment of 3 March 2006, paragraph 35); (ii) the allegations and arguments which are decisive for the outcome of the proceedings (see the ECtHR cases: *Ruiz Torija v. Spain*, cited above, paragraph 30; and *Hiro Balani v. Spain*, cited above, paragraph 28); or (iii) the allegations concerning the rights and freedoms guaranteed by the Constitution and the ECHR (see the ECtHR case, Wagner *and JMWL v. Luxembourg*, Judgment of 28 June 2007, paragraph 96 and the references used therein; see also the case of Court, KI227/19, with Applicant *N.T. "Spahia Petrol"*, cited above, paragraph 48).

(ii) Application of these principles to the circumstances of this case

112. The Court first recalls that the Applicant, having in mind that the relevant jurisdiction to decide on his claim was transferred to the SCSC, on 4 March 2011 filed a claim with the SCSC, seeking confirmation of ownership over four cadastral parcels. On 5 December 2014, the Applicant also filed a specified statement of claim with the SCSC in order to realize his rights under the contract on sale and purchase of 1971.

113. Based on the case file, the Court finds that the Appellate Panel of the SCSC in the present case has rendered two decisions, namely the Judgment C-I-17-0568, as well as the Decision C-I-17-0568 on the technical correction of the said Judgment.

114. Accordingly, the Court considers that there are two court decisions before it, by the analysis of which it is to determine whether they meet the standards of a reasoned court decision, namely whether they reflect the Applicant's statement of claim, respectively its petitum, and consequently whether they are sufficiently reasoned as established in the general principles of the case law of the Court and the ECtHR, which are elaborated above.

115. The Court finds that the petitum of the Applicant's statement of claim of 4 March 2011 was confirmation of ownership over the 4 parcels which were marked as **I.** Cadastral parcel no. 588/1, at the location called "Gavrilova Njiva", with culture- arable land after the 5th, and a surface of 1.56.45 ha; **II.** Cadastral parcel no. 598, at the location called "Vasina njiva", with culture-arable land of the 5th class, and a surface of 1.04.98 ha; **III.** Cadastral parcel no. 601, at the location "Slanishte", with culture- arable land of the 5th class, and a surface of 0.41.66 ha; as well as **IV.** Cadastral parcel no. 604, at the location called "Slanishte", with culture-arable land of the 5th class, and a surface of 1.30.70 ha, registered according to the possession list no.389, Cadastral Zone of Matiqan.

116. The Court also notes that on 5 December 2014, the Applicant supplemented his petitum with a specified statement of claim, wherein he pointed out that the land parcels 1 no. 2/257/28, 2. 2/257/37, 3. no.2/257/40, 4. no. 2/257/43, have gotten new numbers as follows: 1. no. 581/1, 2. no. 598, 3. no.601, 4 no. 604. In this respect he to be established that he is the owner of the land parcels: 1. no. 602, 2. no. 604. In addition, the KBI (Agroindustrial Combine) "Kosova Export" to be obliged that in the name of compensation of land parcels: 1. no. 588, 2. no. 598, which were allocated to the family S., allocate to him 6 other cadastral parcels, specifically, land parcels: 523, 524, 525, 526, 536, 552/2, with the same surface as those two parcels that were allocated to the family S.

117. In this regard, the Court notes that the petitum of the claim before the Appeals Chamber of the SCSC was the recognition of the right of ownership over the two parcels 1 no. 602, no. 604, as well as the issue of possible compensation for two plots that were awarded to the family S by the decision of the Municipal Court from 2007.

118. The Court recalls that the courts are obliged to decide on the subject matters, namely the petitum of the statement of claim in accordance with the claims of the parties, by taking care at all times to keep their jurisdiction within those limits. Such a legal solution is envisaged by Article 2 of the Law No. 03/L-006, on Contested Procedure , which reads,

> *"Article 2*
> *2.1 The court of the contentious procedure decided within the limits of claims submitted by litigants."*

119. Returning to the present case, the Court finds that on 2 November 2017, the Appellate Panel of the SCSC issued the Judgment AC-I-17-0568, whereby it decided that the Applicant's claim was founded, while under point IV of the enacting clause of the judgment concluded that; "*the claimant is the owner in connection with the cadastral parcels number 2/257/28, at the location called "Gavrilova njiva", land culture- arable land of the 5th class, with a surface of 1.56.00 ha, number 2/257/37 at the location called "Vasina njiva", land culture-arable land of the 5th class, with a surface of 1.905.00 ha, number 2/257/40 at the location called "Slanishte", land culture- arable land of the 5th class, with a surface of 0.41.00 ha, and number 2/257/43, at the location called "Slanishte", land culture- arable land of the 5th class, with a surface of 1.03.00 ha, which are recorded in the possession list no. 45, Cadastral Zone of Matiqan ".*

120. The Court, having considered the petitum of the Applicant's claim, as well as the Judgment AC-I-17-0568 of the Appellate Panel of the SCSC, finds that there is a discrepancy. More specifically, the Court finds that the Applicant filed a statement of claim stating the numbers of cadastral parcels as registered in the current cadastral system, while the Appellate Panel of the SCSC issued a judgment whereby it recognized the Applicant's ownership over 4 parcels, by indicating the numbers of cadastral parcels in the manner and by numbers as they were marked in the contract on sale and purchase of 1971.

121. Accordingly, the Court does not dispute the fact that by Judgment AC-I-17-0568 of the Appellate Panel of the SCSC that the Applicant has been recognized certain rights over the 4 parcels in question. Likewise, for the Court is not disputable the fact that the Judgment AC-I-17-0568 of the Appellate Panel of the SCSC is in itself unenforceable, bearing in mind that the Judgment lists cadastral parcels from the contract on sale and purchase of 1971, which as such cannot be registered in the existing cadastre of property records, due to changes that have occurred in the meantime related to the method of marking and recording parcels.

122. Further, the Court also finds that the Judgment AC-I-17-0568 of the Appellate Panel of the SCSC, of 2 November 2017, does not address the Applicant's petitum on the specified claim of 5 December 2014, in which, we recall that the Applicant has sought compensation for two parcels allocated to the family S. by a decision of the Municipal Court.

123. Following the further course of the procedural way of this case, the Court finds that on 5 February 2019 the Applicant filed two requests with the Appellate Panel of the SCSC against the Judgment AC-I-17-0568 of the Appellate Panel Chamber. One request concerned the correction of the judgment, namely the correction of point IV of the enacting clause of the Judgment AC-I-17-0568. By his second request, the Applicant requested from the Appellate Panel of the SCSC to issue a supplemental judgment regarding the compensation, as specified in the request of 5 December 2014.

124. The Court finds that the Appellate Panel of the SCSC, on 14 March 2019, rendered a new decision AC-I-17-0568, accepting the Applicant's request for

correction of point IV of the enacting clause of the Judgment AC-I-17-0568, of 02. November 2017, concerning the cadastral numbers of the two parcels, by stating *"for the cadastral parcel 27257/43, the correct number should be no.604, at the location called "Njelmesina", land culture- arable land of the 5th class V, with a surface of 1.03.00 ha, recorded according to the possession list no. 389, CZ of Matiqan; while for the parcel no. 2/257/40, the correct number must be no. 601, at the location called "Njelmesina", land culture- arable land of the 5th class, with a surface of 0.41.00 ha, recorded according to the possession list no. 389, CZ of Matiqan."*

125. However, the Court finds that the Appellate Panel of the SCSC has rejected as unfounded the Applicant's request for a supplemental judgment whereby the Applicant would be allocated the parcels no. 552/2, no. 523, Br. 524 Br. 525 Br. 526, Br. 536, as a type of compensation for the two cadastral parcels no. 588/1 and no. 598, which according to him, were unlawfully taken from him by the Decision P.no. 645/04 of the Municipal Court, of 20 February 2007. The Appellate Panel of the SCSC, under point V of the enacting clause of the decision rejected as unfounded by stating, " *the Appellate Panel of the SCSC concluded that it has now provided certain decisions in connection to his appeal in the enacting clause of the Judgment AC-I-17-0568 of the Court of Appeals, of 02.11.2017 ."*

126. Having in mind suchlike decision of the Appeals Chamber in the request for correction of the Judgment, the Court gets the impression that only one part of the reasoning lacks the clarity, especially with regard to decisive facts that would contribute to the Applicant to understand the essence of his rights.

127. More precisely, the Court does not find the part of the Decision AC-I-17-0568 concerning the correction of the judgment of 2 November 2017, in relation to the point IV of the enacting clause to be problematic, because thereby the two parcels are marked in the way as prescribed by the current system of marking cadastral parcels, which provides the possibility for the Applicant to realize his property rights over two out of the four parcels by having them registered in the cadastre, the parcels which were allocated to him by the Judgment of the Appellate Panel of the SCSC, of 2 December 2017.

128. However, the Court had itself had great difficulties in understanding the essence and the logic of the explanation of point V of the enacting clause of the decision of the Appellate Panel of the SCSC, of 14 March 2019, due to the fact that the Appellate Panel of the SCSC, rejects the request for a supplemental judgment in relation to the compensation for the reason that the Appellate Panel of the SCSC, by a judgment of 2 December 2017, has already offered a solution for the property in question as indicated in the judgment. However, the Court has in fact found that the Judgment AC-I-17-0568, of 2 November 2017, is entirely unenforceable given that the judgment has indicated parcels with non-existent cadastral numbers which do not correspond to the current cadastral system.

129. The Court is of the opinion that the Appellate Panel of the SCSC, in one part of its decision, of 14 March 2019, has missed the opportunity to clearly explain the important issues raised by the Applicant in the request for technical

correction of Judgment AC-I-17-0568, of 2. November 2017, by creating a situation where the judgment itself cannot be enforceable in a formalistic sense.

130. What the Court can agree with, is that one part of the Judgment AC-I-17-0568, of 2 November 2017, became final, specifically following the issuance of the Decision AC-I-17-0568, of March 14, 2019, which gives to the judgment of 2 November 2017 a finality character, but only in the part concerning the correction of cadastral parcel no. 27257/43, which became the parcel no. 604, and the parcel no. 2/257/40, which upon the correction became the parcel no. 601, whereby the Applicant became the owner in the legal sense.

131. However, as regards the issue in connection with the parcel no. 2/257/28, and parcel no. 2/257/37, over which the Applicant was recognized the right of property by Judgment AC-I-17-0568, of 2 November 2017, as well as the issue of possible compensation, the Court is of the opinion that in order to determine the full scope of the right, the competent court should be given the opportunity to pronounce itself in that respect by considering all the circumstances that were created following the decision on the correction AC-I-17-0568, of March 14, 2019. The Court also adds that it is not in the interest of the parties to the proceedings or of the competent courts to render decisions that cannot have a legal effect on the outcome of the proceedings, and thus be unenforceable in the aspect of the rights and obligations of the parties.

132. Accordingly, the Court is of the opinion that the decision of 14 March 2019 on correction of the judgment of 2 November 2017 does not contain the necessary explanation whereby the issue of the Applicant's property rights in relation to two cadastral parcels or a possible compensation, would be clarified. More specifically, with such reasoning in the judgment and decision, the Appellate Panel of the SCSC raises reasonable doubts of the Applicant to ask questions, what is the status of the two parcels allocated to him by the Judgment, of 2 November 2017, namely whether he has the rights granted by the Judgment, and if so, how should he realize them, and if not, why does he not have them or, whether he has the right to compensation in a way as requested by him in the specified claim of 5 December 2014.

133. Without prejudice to the outcome of the proceedings before the Appellate Panel concerning the said property rights over the two parcels no. 2/257/28, and No. 2/257/37, and without elaborating on other appellate allegations of the Applicant, the Court considers that the decision of the Appellate Panel of the SCSC on the correction, of 14 March 2019 should be annulled, specifically only in the part of point V of the enacting clause of the decision rejecting the request for the issuance of a supplemental judgment. That this part of point V of the decision be remanded to the Appellate Panel of the SCSC, which will logically and validly explain and reason the Applicant's request, both in terms of the two parcels in question and the right to compensation pursuant to the petitum of the statement of claim, in a manner and to the extent which will meet the requirements of a reasoned court decision in accordance with the standards and principles of the Constitutional Court and the ECtHR.

134. The Court, based on its case law and the case law of the ECtHR, reiterates that Article 31 of the Constitution in conjunction with Article 6 of the ECHR, in terms of a reasoned judgment, obliges the courts to reason the (i) substantive claims and arguments of the party; (ii) claims and arguments that may be decisive for the outcome of the proceedings; or (iii) claims relating to the rights and freedoms guaranteed by the Constitution.

135. In the circumstances of the present case, the Applicant's allegations regarding the possible violation of constitutional rights guaranteed by Article 31 of the Constitution and Article 6 of the ECHR, with regard to a non-reasoned judgment, are substantive allegations of the Applicant and as such burden the relevant court, in this case the Appellate Panel of the SCSC, with the obligation to reason important issues relating to the property rights.

136. The Court also notes that when assessing a decision of a lower court, the higher court is also obliged to assess the Applicant's allegations, and not just to assess whether the lower court has correctly assessed the relevant appeal before it. Moreover, the Court also notes that the primary purpose of a reasoned court decision is to show the parties that their case has indeed been heard, thus resulting in a greater admissibility of court decisions. In this respect, it is not necessarily relevant whether the claims of the parties are meritorious for a case pending before a court. Depending on the nature of the case before it, the relevant court is obliged to address at least those allegations which are essential or decisive for the merits of a case.

137. The silence of the courts regarding the relevant allegations of the respective Applicants has been specifically examined through the case law of the ECtHR. For example, in the following cases: *Ruiz Torija v. Spain,* cited above, and *Hiro Balani v. Spain,* cited above, the ECtHR, beyond the general principles regarding the right to a reasoned judicial decision, also addressed the circumstances in which the relevant courts had remained silent on the arguments, which the ECtHR deemed essential. In both cases, the ECtHR considered whether the silence of the relevant court could reasonably be interpreted as an implicit rejection of the parties' arguments. (See: the ECtHR case, *Hiro Balani v. Spain,* cited above, paragraph 28). However, in the absence of a proper reasoning, the ECtHR stated that it was impossible to ascertain whether the respective courts had simply neglected to deal with the respective claims or implied their rejection and, if that was its purpose, what were its reasons for such an approach. (See: the ECtHR cases: *Hiro Balani v. Spain,* cited above, paragraph 28; and *Ruiz Torija v. Spain,* cited above, paragraphs 29 and 30). In both cases, the ECHR found a violation of Article 6 of the ECHR.

138. In the circumstances of the present case, taking into consideration the fact that the Appellate Panel of the SCSC failed to address and reason the substantive allegations of the Applicant in the judgment as well as in the decision, which the Applicant has constantly raised in the statement of claim, the specified statement of claim and in the request seeking technical correction of the judgment, of 2 November 2017, creates ambiguities regarding the outcome of the statement of claim for recognition of property rights. Such court decisions may not be compatible with the standards of a reasoned court decision, as

provided by Article 31 of the Constitution in conjunction with Article 6 of the ECHR and the relevant case law of the Court and the ECtHR.

139. Therefore, having regard to the above observations and the procedure as a whole, the Court considers that a part of the reasoning under point V of the enacting clause of the Decision AC-I-17-0568 of the Appellate Panel of the SCSC, of 14 March 2019, concerning the issue of compensation , and a part of the Decision AC-I-17-0568 of the Appellate Panel of the SCSC, of 2 November 2017 also concerning the issue of compensation, were rendered in violation of the Applicant's right to a reasoned court decision, as an integral part of the right to a fair and impartial trial guaranteed by Article 31 of the Constitution in conjunction with Article 6 of the ECHR.

140. Finally, the Court also notes that, it has already found that a part of the decision and a part of the judgment of the Appellate Panel of the SCSC is not in accordance with Article 31 of the Constitution in conjunction with Article 6 of the ECHR, due to the lack of reasoning, it considers it unnecessary to examine other allegations of the Applicant. The Applicant's respective allegations must be considered by the Appellate Panel of the SCSC during the revision of a part of the Decision and a part of the Judgment regarding the issue of compensation for the two parcels no. 2/257/28, and no. 2/257/37. In this connection, the Court also points out that its 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 lack of reasoning of the court decision, as explained in this judgment, and in no way does it relate to or prejudice the outcome of the case merits.

Conclusions

141. The Court has examined all the allegations of the Applicant, by applying in this assessment the case law of the Court and the ECtHR regarding the lack of a reasoned court decision, a guarantee which is provided for by Article 31 of the Constitution and Article 6 of the ECHR.

142. In this assessment, the Court found that, in rendering the Judgment AC-I-17-0568, of 2 November 2017, as well as the Decision AC-I-17-0568, of 14 March 2019, the Appellate Panel of SCSC has failed to explain in detail the substantive allegations of the Applicant which directly relate to the issue and outcome of the proceedings concerning the issue of **i)** the statement of claim regarding the property in questions as a whole, but only in a part, **ii)** the issue of possible compensation as an alternative request.

143. The Court, based on the case law of the ECtHR, has emphasized, inter alia, the fact that the courts are obliged to reason the claims of the parties which are substantial or may determine the merits of a case. In the circumstances of the present case, the Court, on the basis of all explanations given in this judgment, considers that this is not the case.

144. Accordingly, the Court finds that a part of the above-mentioned Judgment AC-I-17-0568 of the Appellate Panel of the SCSC and a part of the Decision AC-I-17-0568 of the Appellate Panel of the SCSC are not in accordance with the guarantees embodied in Article 31 of the Constitution in conjunction with Article 6 of the ECHR, due to the lack of a reasoned court decision and that consequently, must be declared void and remanded for reconsideration purposes to the Appellate Panel of the SCSC in the manner and in a part, as set out in the present judgment.

FOR THESE REASONS

The Constitutional Court, in accordance with Article 21.4 and 113.7 of the Constitution, Articles 20 and 47 of the Law and Rule 59 (1) (a) of the Rules of Procedure, in the session held on 25 November 2021 :

DECIDES

I. TO DECLARE unanimously the Referral admissible;

II. TO FIND that there has been a violation of Article 31 [Right to Fair and Impartial Trial] of the Constitution and Article 6 [Right to a fair trial] of the European Convention on Human Rights;

III. TO DECLARE void, by majority vote, point V of the enacting clause of the Decision AC-I-17-0568 of the Appellate Panel of the SCSC, of 14 March 2019;

IV. TO REMAND, by majority vote, the Decision AC-I-17-0568 of the Appellate Panel of the SCSC, of 14 March 2019, for reconsideration purposes in respect of point V of the enacting clause, in accordance with the judgment of this Court;

V. TO ORDER the Appellate Panel of the SCSC to notify the Constitutional Court, pursuant to Rule 66 (5) of the Rules of Procedure, as soon as possible, and no later than within 6 (six) months, namely on 25 May 2022, about the measures taken to implement the judgment of this Court;

VI. TO REMAIN seized of this matter, pending compliance with this order;

VII. TO NOTIFY this Judgment to the parties and, in accordance with Article 20.4 of the Law, to have it published in the Official Gazette;

VIII. This Judgment is effective immediately.

Judge Rapporteur	**President of the Constitutional Court**
Nexhmi Rexhepi	Gresa Caka-Nimani