REPUBLIKA E KOSOVËS - REPUBLIKA KOSOVO - REPUBLIC OF KOSOVO
GJYKATA KUSHTETUESE
USTAVNI SUD
CONSTITUTIONAL COURT

Prishtina, on 23 March 2023
Ref. no.:AGJ 2140/23

This translation is unofficial and serves for informational purposes only.

JUDGMENT

in

Case No. KI108/22

Applicant

"Metalinvest J.S.C."

Constitutional review of Judgment [AC–I–19–0213] of the Appellate Panel of the Special Chamber of the Supreme Court on Privatization Agency of Kosovo Related Matters, of 16 March 2022

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

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

Applicant

1. The Referral was submitted by "Metalinvest J.S.C." from Smederevo, Republic of Serbia (hereinafter: the Applicant). The Applicant is represented by Visar Ostrozubi, a lawyer from Prizren.

Challenged decision

2. The Applicant challenges the constitutionality of Judgment [AC-I-19-0213] of 16 March 2022 of the Appellate Panel of the Special Chamber of the Supreme Court on Privatization Agency of Kosovo Related Matters (hereinafter: the SCSC Appellate Panel) in conjunction with Judgment [C-IV-14-5731] of 21 November 2019 of the Specialized Panel of the Special Chamber of the Supreme Court on Privatization Agency of Kosovo Related Matters (hereinafter: the SCSC Specialized Panel).

3. The challenged judgment [AC-I-19-0213] of the SCSC Appellate Panel was served on the Applicant's representative on 25 March 2022.

Subject matter

4. The subject matter of this Referral is the constitutional review of the challenged judgments, which allegedly violated the Applicant's rights and fundamental freedoms guaranteed by Article 24 [Equality Before the Law], Article 31 [Right to Fair and Impartial Trial] paragraphs 1 and 2, Article 54 [Judicial Protection of Rights], Article 102 [General Principles of the Judicial System] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), and Article 6 (Right to a fair trial) of the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter: the ECHR).

Legal basis

5. The Referral is based on paragraph 4 of Article 21 [General Principles], paragraphs 1 and 7 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution, Articles 22 [Processing Referrals] and 47 [Individual Requests] of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter: the Law) and Rule 32 [Filing of Referrals and Replies] of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

Proceedings before the Constitutional Court

6. On 22 July 2022, the Applicant's representative sent the Referral via mail to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court). The Court received and registered the Referral submitted on 26 July 2022.

7. On 29 July 2022, the Court notified the representative of the Applicant about the registration of the Referral and asked him to submit to the Court the power of attorney for representation. On the same day, a copy of the Referral was sent to the SCSC Appellate Panel.

8. On 2 August 2022, the President of the Court, by Decision [GJR. KI108/22], appointed judge Remzije Istrefi-Peci Judge Rapporteur and the Review Panel composed of judges: Selvete Gërxaliu-Krasniqi (Presiding), Safet Hoxha and Radomir Laban (members).

9. On 15 August 2022, the Applicant's representative submitted to the Court the power of attorney for representation.

10. On 12 October 2022, the Court sent a letter to the Special Chamber of the Supreme Court, whereby requested that it submit to the Court the evidence as to when the challenged Judgment was served on the Applicant's representative or the Applicant.

11. On the same day, the Special Chamber of the Supreme Court sent via e-mail the acknowledgment of receipt, based on which it can be concluded that the challenged Judgment of the Appellate Panel of SPSC was served on the Applicant's representative on 25 March 2022.

12. When analysing the Referral, the Court noted that the representative of the Applicant did not submit to the Court all the pages of the challenged Judgment and therefore, on 19 October 2022, the Court sent a letter to the Applicant's representative whereby requested that the challenged Judgment be submitted to the Court in its entirety.

13. On 31 October 2022, the Applicant's representative submitted to the Court the requested pages of the challenged Judgment.

14. On 16 December 2022, Judge Enver Peci took the oath before the President of the Republic of Kosovo, on which occasion began his mandate at the Court.

15. On 25 January 2023, the Review Panel reviewed the report of the Judge Rapporteur and by majority recommended to the Court the admissibility of the Referral.

16. In accordance with Rule 62 (Concurring Opinions) of the Rules of Procedure, Judge Radomir Laban has prepared a concurring opinion which will be published together this Judgment.

Summary of facts

17. Based on the case-file results that the Applicant is a company which had business of Ferronikeli company since 1997. This business cooperation meant that the Applicant delivered its products that were necessary for the business of the Ferronikeli company. During the period of business cooperation, the Applicant delivered to the Ferronikeli company products in the amount of 1,506,463.00 the then Yugoslavian dinars.

18. On 16 December 1997, the Applicant and Ferronikeli company signed a minutes of the meeting whereby Ferronikeli company assumes the financial obligation it has towards the Applicant in the name of the debt.

19. According to the applicant, in the capacity of the claimant, on 26 November 1998, he filed via mail a claim to the District Economic Court in Prishtina, against the defendant company Ferronikeli for payment of debt.

20. In the case-file submitted with the Referral, the Court did not find the Decision of the District Economic Court regarding the alleged claim of the Applicant of 26 November 1998. The only thing that the Court found in relation to this claim is the postal certificate dated 26 November 1998, on which appears: "recipient District Economic Court in Prishtina", which certifies that the Applicant had sent the claim by mail to the District Economic Court in Prishtina.

21. On 12 May 2006, based on a reliable debt acceptance document signed on 16 December 1997 with Ferronikeli company, the Applicant submitted to the District Court in Prishtina an enforcement proposal against Ferronikeli company in the name of debt collection in the amount of 1,506,463.00 Yugoslav dinars, or according to the assessment of the financial expert of 2006, in the amount of 271,456 euros.

22. On 16 June 2006, the Kosovo Trust Agency (hereinafter: KTA), published the Notice of Liquidation of Ferronikeli company, emphasizing that "*all interested parties have a deadline until 26 September 2006 to submit their credit claims to the Liquidation Authority".*

23. On 11 August 2006, the Applicant submitted its credit claim to the Liquidation Authority of the PAK, against Ferronikeli company.

24. On 14 November 2006, the District Court in Prishtina issued the Ruling [I. nr. 209/2006], whereby the proceedings related to the Applicant's legal case was terminated, with the following reasoning:

> *"The Kosovo Trust Agency notified the Court with a letter that in terms of Article 39.6 of the UNMIK Regulation on Business Organizations No. 2001/6, against debtor Ferronikeli J.S.C. from Gllogoc, on 4 July 2006, the bankruptcy procedure was initiated by the Kosovo Trust Agency, and proposed to the Court that, in terms of Article 9.3 of the Regulation on the Kosovo Trust Agency, to terminate the proceedings related to this legal matter.*
>
> *The Court, based on the decision of the Kosovo Trust Agency, whereby hich the bankruptcy procedure was initiated against Ferronikeli J.S.C., from Gllogoc, and based on the request for termination of the proceedings, in accordance with article 212 par. 1 points 4 and 6 of the LCP, and in conjunction with Article 14 of the LEP, terminated the enforcement procedure related to this legal matter".*

25. On 3 July 2014, the Liquidation Authority of PAK issued the Decision [PRNO52-002], whereby it rejected the Applicant's credit claim submitted in the name of debt collection by Ferronikeli company as INVALID, with the reasoning that:

> *"Based on the documentation attached to the claim, namely the invoices, all of 1997, the Liquidation Authority has not been provided with a detailed statement of the debt or any other evidence of the payments made by the SOE in relation to the aforementioned documents .*
>
> *However, based on Article 6, Paragraph 2, Subparagraph 1 of the Annex of Law No. 04/L-034 on the Kosovo Privatization Agency, the Liquidation Authority found that this submission is invalid.*
>
> *Article 36.2 of the Annex of Law No. 04/L-034 on the Kosovo Privatization Agency provides: "... the following shall constitute good and sufficient legal grounds under the present law for rejecting a Claim or an alleged equity*
>
> *or ownership interest: ... the Claim or allegation is time-barred by applicable time limitations".*

Article 374 of the Law on Contracts and Torts, published in the Official Gazette of the SFRY with reference no. 29/1978, applicable to Section 1 of UNMIK Regulation 1999/24, provides that "Mutual contractual claims of legal persons (corporate bodies) in the sphere of sale of goods and services, as well as claims relating to reimbursement of expenses made in connection

to such contracts, shall expire due to the statute of limitations after a three-year period". Based on the above-mentioned provisions, the claim must be filed with a court or a competent authority within three years from the moment when the SOE is alleged to have failed to fulfill its obligations towards the Applicant arising from the service contract, which is three years from January 2007, when the Applicant is alleged to have not received any compensation for its services provided to the SOE.

There is no evidence with the Liquidation Authority that the Applicant has submitted a claim to any court or other competent authority to terminate the statute of limitation period. Therefore, this Liquidation Authority concludes that the Claim is time-barred and as such invalid".

26. On 4 July 2014, the Applicant's representative submitted an appeal to the SCSC Specialised Panel against the Decision [PRNO52-0022] of the PAK Liquidation Authority.

27. On 21 November 2019, the SCSC Specialised Panel rendered the Judgment [C-IV-14-5731], whereby it rejected the claim of the Applicant's representative as ungrounded.

28. In the reasoning of the Judgment [C-IV-14-5731], the SCSC Specialised Panel, *inter alia*, stated:

"The decision is issued without holding a hearing because the facts and evidence in the case file are quite clear, therefore the individual judge does not expect there will be more information and arguments in the hearing in the sense of Article 72 paragraph 11 of the Law on SCSC (No. 06/L-086).

The time limit for which the Claimant requested the debt expired on 31 December 2000. The Claim was submitted on 21 October 2006 to the Liquidation Authority of PAK.

The Claimant had never requested previously this debt from the Defendant with a lawsuit submitted to any court or other competent body.

The deadline for submitting the Claim related to the debt compensation began to run on 31 December 1997.

According to Article 374 of the Law on Contracts and Torts no. 29/1978, which was applicable at that time, provides that, "Mutual contractual claims of legal persons (corporate bodies) in the sphere of sale of goods and services, as well as claims relating to reimbursement of expenses made in connection to such contracts, shall expire due to the statute of limitations after a three-year period".

Based on the evidence submitted by the Claimant, the court considered that no procedure has been initiated before any court or other competent body to claim the alleged debt.

Therefore, the Court came to the conclusion that the claim in question is rejected in its entirety as unfounded since it is time-barred. The statute of limitation was not interrupted and the claimant did not submit any evidence in this regard.

Taking into account the statute of limitation, the Court was obliged to reject the claim in its entirety as stated in the acting clause".

29. The Applicant's representative filed an appeal with the SCSC Appellate Panel against the Judgment [C-IV-14-5731] of the SCSC Specialised Panel, stating that:

"The court, as a decisive fact that it was obliged to justify is the fact whether the Claimant has undertaken any legal action to request the obligation, which would be a fact for the interruption of the statute of limitation of the claim. The court did not justify the fact that at the time of the commercial relations between the litigants there was a war in Kosovo, a notorious fact that must be proven with relevant evidence and which is a reason for the delay of the statute of limitation. Apart from it, the court did not justify the fact of submitting the claim to the Economic District Court in Prishtina by the Claimant on 26.11.1998, proceeded in this Court with the postal receipt dated 26.11.1998, which is a circumstance for the interruption of the statute of limitation period".

"In the case of rejection of the statement of the claim, the court did not hold a court session to hear the claims of the parties or even providing evidence that would affect the proper decision-making regarding the claimant's statement of the claim. The court, by not scheduling a main trial, has violated the fundamental principle of the right of the party to be heard in a court proceeding related to its claims (Article 5 of LCP), while by denying this right, it has also violated the human rights related to the right to have its case heard fairly, publicly and within a reasonable time limit (Article 6 of the European Convention on Human Rights)".

"The court has erroneously applied the substantive law, namely Article 388, which provides that the statute of limitation is interrupted upon filing of a lawsuit and with any other action taken by the creditor against the debtor before the court or other competent body in order to determine, secure or realize the claim. In the present case, the claimant submitted the lawsuit to the Economic District Court in Prishtina on 26.11.1998, which was not considered by the court when rendering this Judgment. Based on the above, the Court precluded the party to realize a lawful right through fundamental violations of the procedural provisions, erroneous and incomplete verification of the factual situation and erroneous application of the substantive law".

"The claimant's attorney proposed to the Appellate Panel of the Special Chamber of the Supreme Court in Prishtina, to hold a court hearing in order to have a fair determination of the factual situation, when reviewing the appeal in terms of Article 190 para. 4 of the LEP".

30. On 16 March 2022, the a SCSC Appellate Panel rendered the Judgment [AC-I-19-0213], whereby it rejected the appeal of the Applicant's representative as ungrounded, upholding in its entirety the Judgment [C-IV-14-5731] of the SCSC Specialised Panel.

31. The SCSC Appellate Panel in its Judgment [AC-I-19-0213] had reasoned as follows:

"Based on Article 374 of the Law on Contracts and Torts, in force at the time of the creation of the obligations, mutual claims between legal persons arising from the contracts concluded between them shall expire due to the statute of limitations in the term of 3 years.

Based on Article 387 of the Law on Contracts and Torts, running of the limitation period shall be interrupted when a debtor acknowledges the debt.

In this case, the debt claimed by the appellant is based on several invoices issued from 1 January 1997 to 31 December 1997 which exist in the case file. The statute of limitations of the obligations of the defendant SOE to pay the debt based on the invoices issued has passed on 1 January 2001.

The appellant claimed that the acknowledgment of the debt in 2006 for payment of the invoices issued in the above-mentioned period, as well as the claim filed with the SCSC in 2006 or before AL, interrupted the statute of limitations. However, it still did not manage to interrupt the statute of limitations, because it claims to have filed this claim in 2006, which is still more than 3 years, as required by law for the statute of limitations.

The Appellant had addressed to the Liquidation Authority even later, namely on 21 October 2006, that the statute of limitations of the claim is indisputable.

Consequently, it can be concluded that the appellant's claim was submitted after the legal deadline, therefore it is time-barred in the sense of Article 374 of the Law on Contracts and Torts.

Based on Article 387 of the Law on Contracts and Torts, it is clear that the defendant has not given any written statement about acknowledging the debt, or has not taken any other indirect action for acknowledgment of the debt, defined by the provision mentioned by law, therefore, in the case of this appellant, there is no interruption of the statute of limitations.

Based on Article 374 of the LCT, the appellant had 3 years to claim the debt of the SOE to the SCSC, but it has failed to submit a timely claim to the SCSC.

For these reasons, the Appellate Panel considers the Judgment of the first instance of the SCSC as correct when it rejected the complaint against the decision of the Liquidation Authority rejected as unfounded.

For these reasons, also the Appellate Panel considers that the appellant's appeal must be rejected as unfounded, while the appealed Judgment must be upheld as fair and based on the law".

Applicant's allegations

32. The Court recalls that the Applicant alleges that its right guaranteed by Article 24 [Equality Before the Law], Article 31 [Right to Fair and Impartial Trial], paragraphs 1 and 2, Article 54 [Equality Before the Law] and Article 102 [General Principles of the Judicial System] of the Constitution, and Article 6 (Right to a fair trial) of the ECHR, have been violated.

33. In support of these claims, the applicant adds that:

> *"The Special Chamber of the Supreme Court of the Republic of Kosovo, by its decision C-IV-14-5731, dated 21.11.2019, whereby the claim of the Appellant "Metalinvest" L.L.C. was rejected on the grounds that the claim has become time-barred, and Decision AC-I-19-0213 of the Appellate Panel of the Special Chamber of the Supreme Court, dated 16.04.2022, inn addition to legal violations of the LCT described above, also violates the principles of Constitution of the Republic of Kosovo, namely Article 24, Article 31 paragraph 1 and 2, Article 54 and Article 102 of the Constitution of the Republic of Kosovo.*
>
> *This allegation is based on the fact that the Special Chamber of the Supreme Court, by not assessing the facts of the case in a fair and complete manner, treats the parties in a judicial process in an unfair and discriminatory manner".*

34. The Applicant further alleges that, "*In violation of Article 31 paragraph 1 and 2 of the Constitution of the Republic of Kosovo, the Special Chamber of the Supreme Court, by its Decision C-IV-14-5731, dated 21.11.2019, and Decision AC-I-19-0213 of the Appellate Panel of the Special Chamber of Supreme Court, dated 16.04.2022, did not provide to the parties in the proceedings a judicial procedure by which the rights of the parties would be protected by not setting a hearing at all and by deciding on the basis of an assessment of evidence out of court session. Denying the parties to give their statements in a court proceeding is a violation of human rights for a fair process by making it impossible for the parties to declare or supplement any evidence whereby the claimed right would be argued. This way of deciding is also in violation of Article 6 of the European Convention on Human Rights, and these allegations were also presented in the appeal, while the Appellate Panel of the Special Chamber of the Supreme Court did not assess nor justify these allegations of the parties to the procedure. The Special Chamber of the Supreme Court has denied the party a statement in a court proceeding by not holding a court hearing for the statement related to the evidence and allegations of the parties.*
>
> *The legal actions of the Special Chamber of the Supreme Court of the Republic of Kosovo in such judicial proceedings are also contrary to Article 102 of the Constitution of the Republic of Kosovo, by not allowing equal access of the parties to an impartial, independent, fair and lawful judicial procedure.*

35. The Applicant addressed to the Court a request: "*to annul the Judgment [C-IV-14-5731] of the Special Chamber of the Supreme Court of Kosovo, dated 21 November 2019, and the Judgment [AC-I-19-0213] of the Panel of the Special Chamber of the Supreme Court of Kosovo, dated 16.03.2022, as an unlawful decisions and remand the case for retrial to the Special Chamber of the Supreme Court of Kosovo*".

Relevant constitutional and legal provisions

Constitution of the Republic of Kosovo

Article 24
[Equality Before the Law]

1. *All are equal before the law. Everyone enjoys the right to equal legal protection without discrimination.*

2. *No one shall be discriminated against on grounds of race, color, gender, language, religion, political or other opinion, national or social origin, relation to any community, property, economic and social condition, sexual orientation, birth, disability or other personal status.*

3. *Principles of equal legal protection shall not prevent the imposition of measures necessary to protect and advance the rights of individuals and groups who are in unequal positions. Such measures shall be applied only until the purposes for which they are imposed have been fulfilled.*

Article 31
[Right to Fair and Impartial trial]

1. *Everyone shall be guaranteed equal protection of rights in the proceedings before courts, other state authorities and holders of public powers.*
2. *Everyone is entitled to a fair and impartial public hearing as to the determination of one's rights and obligations or as to any criminal charges within a reasonable time by an independent and impartial tribunal established by law.*

[…]

Article 54
[Judicial Protection of Rights]

"Everyone enjoys the right of judicial protection if any right guaranteed by this Constitution or by law has been violated or denied and has the right to an effective legal remedy if found that such right has been violated."

Article 102
Article 102 [General Principles of the Judicial System]

"1. Judicial power in the Republic of Kosovo is exercised by the courts.
2. The judicial power is unique, independent, fair, apolitical and impartial and ensures equal access to the courts.
3. Courts shall adjudicate based on the Constitution and the law.
4. Judges shall be independent and impartial in exercising their functions.
5. The right to appeal a judicial decision is guaranteed unless otherwise provided by law. The right to extraordinary legal remedies is regulated by law. The law may allow the right to refer a case directly to the Supreme Court, in which case there would be no right of appeal".

European Convention on Human Rights

Article 6
(Right to a due process)

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. […]

Law No. 04/L033 on the Special Chamber of the Supreme Court of Kosovo on Privatization Agency Related Matters

Article 10
Judgments, Decisions and Appeals

[…]
11. When the appellate panel has accepted and is deciding on an appeal, the following rules shall be strictly observed:
11.1. the appellate panel shall not modify, annul, reverse or otherwise change, in any manner, any finding of fact made by a court, specialized panel, sub-panel or single judge unless the appellate panel determines that such finding of fact is clearly erroneous. A finding of fact shall not be determined to be clearly erroneous if such finding of fact is supported by any reasonable interpretation of the record of the trial proceedings and the evidence submitted during such proceedings; and
11.2. the appellate panel shall conduct a de novo review of each issue of law raised by the appellant or a respondent in their written submissions.
[…]

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

Rules of Procedure of the Special Chamber of the Supreme Court on Privatization Agency of Kosovo Related Matters

Article 36
General Rules on Evidence

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

Article 64
Oral Appellate Proceedings

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

Article 65
Submission of New Evidence

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

Law no. 06/L-086 on the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo Related Matters

Article 69
Oral Appellate Proceedings

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

Law No. 03/L-006 on Contested Procedure

"[…]
190.4 The court of second instance can determine evaluation of the case when it estimates that for a rightful factual state is to be determined and all or partial proofs administered in the court of first instance should be considered.

Admissibility of the Referral

36. The Court first examines whether the Referral has fulfilled the admissibility criteria, defined by the Constitution, provided by Law and further specified by the Rules of Procedure.

37. 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."

38. The Court also refers to paragraph 4 of Article 21 [General Principles] of the Constitution, which stipulates: "Fundamental rights and freedoms set forth in the Constitution are also valid for legal persons to the extent applicable".

39. In this regard, the Court notes that the Applicant has the right to file a constitutional complaint, referring to alleged violations of its fundamental rights and freedoms applicable both to individuals and to legal persons (see the case of the Court No. KI41/09, Applicant: *AAB-RIINVEST University LLC*, Resolution on Inadmissibility of 3 February 2010, paragraph *14)*.

40. The Court also refers to the admissibility criteria, as further specified in the Law. In this regard, the Court first refers to Articles 47 (Individual Requests), 48 (Accuracy of the Referral) and 49 (Deadlines) of the Law, which stipulate:

Article 47
(Individual Requests)

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

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

Article 48
(Accuracy of the Referral)

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

Article 49
(Deadlines)

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

41. As to the fulfillment of these criteria, the Court initially states that the Applicant is an authorized party and challenges an act of a public authority, namely Judgment [AC-I-19-0213] of 16 March 2022 of the SCSC Appellate Panel, having exhausted all legal remedies provided by law. The Applicant also clarified the fundamental rights and freedoms which have allegedly been violated in accordance with Article 48 of the Law and submitted the Referral in accordance with the deadlines set forth in Article 49 of the Law and Rule 39 (1) (c) of the Rules of Procedure.

42. The Court also finds that the Applicant's Referral meets the admissibility criteria set out in paragraph (1) of Rule 39 (Admissibility Criteria) of the Rules of Procedure. The same cannot be declared inadmissible on the basis of the conditions set out in paragraph (3) of Rule 39 of the Rules of Procedure. Furthermore, the Court considers that this Referral is

not manifestly ill-founded as set out in paragraph (2) of Rule 39 of the Rules of Procedure and, consequently, it must be declared admissible and its merits examined.

Merits of the Referral

43. The Court recalls that the Applicant is a company which during 1997 had business cooperation with the "Ferronikeli" company. This business cooperation included the obligation of the Applicant to deliver to the "Ferronikeli" company its products that were necessary to conduct its economic activity without hindrances. Precisely during 1997, the "Ferronikeli" company, according to the documents in the case files, ordered from the Applicant a certain amount of its products, which the Applicant delivered the same year as it can be seen also on the basis of the handover receipt that is found in the case files. With the handover receipt in question is confirmed that the Applicant had delivered to the "Ferronikeli" company the contracted amount of its products for a monetary amount of 1,506,463.00 then Yugoslavian dinars, which, according to the financial expertise made at the request of the Applicant, amounts to 271,456.00 euros. However, as stated in the Applicant's allegations, the "Ferronikeli" company had not paid the money for the delivered products within the deadline.

44. As the "Ferronikeli" company did not meet its obligations to the Applicant, it resulted in the Applicant seeking compensation of his rights in the court proceedings initiated by filing a lawsuit with the District Commercial Court in Prishtina. As it can be ascertained on the basis of the case files, the Applicant initiated the claim on 26 November 1998, using the right to send letters to the court through the postal service. However, it remained unknown to the Court whether the District Commercial Court in Prishtina had taken procedural actions for the purpose of proceeding and deciding on the Applicant's statement of claim of 1998, on the grounds that no institution nor the regular courts dealt with this case in the proceedings initiated by the Applicant, and consequently provided no any reasoning regarding those proceedings. The Applicant, on 12 May 2006, continued the legal proceedings with the purpose of realizing its creditor claims by submitting a proposal for enforcement in the District Court of Prishtina against the "Ferronikeli" company, proceedings which were terminated by Decision [I. No. 209/2006] by the District Court according to the PAK's objection, due to the fact that the "Ferronikeli" company had entered the privatization process. Given this new circumstance, the Applicant submitted a request to the PAK Liquidation Authority regarding its claim, which was rejected by the PAK Liquidation Authority. The Applicant, using legal remedies, filed a complaint with the Specialized Panel of SCSC against the Decision of the PAK Liquidation Authority, which was rejected by the latter without scheduling a hearing session, *"considering that the claim was time-barred"*. The Applicant filed an appeal with the SCSC Appellate Panel, in which, among other things, it stated as a basis the following facts: "*that the Specialized Panel of SCSC did not take into consideration that the statute of limitations was interrupted with the filing of the claim in 1998"* and "*that the Specialized Panel of SCSC did not hold a hearing session*". The SCSC Appellate Panel rendered a Decision rejecting the Applicant's appeal.

45. The very fact that the SCSC Specialised Panel and the SCSC Appellate Panel, among others, have not heard the litigants and have not justified the essential facts, which, according to the Applicant, "*are of great importance for the conclusion of the contested procedure regarding the outcome of its claim",* constitutes the grounds of the Applicant's claims that its constitutional rights, guaranteed by Article 24 [Equality before the Law], Article 31 [Right to Fair and Impartial Trial], paragraphs 1 and 2, Article 54 [Judicial Protection of

Rights] and Article 102 [General Principles of the Judicial System] of the Constitution, as well as Article 6 (Right to a fair trial) of the ECHR, have been violated.

46. Given the substance of the Applicant's allegations raised, the Court stresses that it shall review them based on the ECtHR case law, in harmony with which, based on Article 53 [Interpretation of Human Rights Provisions] of the Constitution, it is obliged to interpret the fundamental rights and freedoms guaranteed by the Constitution.

47. The Court shall, in this regard, review the Applicant's allegations of infringement of Article 31 of the Constitution in conjunction with Article 6 of the ECHR due to the absence of a hearing session on the Applicant's substantive allegations, both at the level of the SCSC Specialized Panel and at the level of the SCSC Appellate Panel, and consequently, the Court shall in the following (i) elaborate the general principles regarding the right to a hearing session as guaranteed by the aforementioned Articles of the Constitution and the ECHR, and then (ii) apply the same in the circumstances of the present case.

(i) General principles regarding the right to a hearing session

48. The Court initially points out that the ECtHR case law has established the basic principles regarding the right to a hearing. Based on this judicial practice, the Court has also established the relevant principles and exceptions, based on which the necessity of holding a hearing is assessed, depending on the circumstances of the respective cases. Recently, by a number of judgments, the Court found a violation of Article 31 of the Constitution in conjunction with Article 6 of the ECHR due to the lack of a hearing before the SCSC, namely in the Specialized Panel and the SCSC Appellate Panel, on the occasion of the determination of the rights of workers of the former enterprise "Agimi" after its privatization, to which cases the Court will further refer to as Court cases related to the former enterprise "Agimi" (see, five (5) judgments in the cases of the former enterprise "Agimi": KI145/19, KI146/19, KI147/19, KI149/19, KI150/19, KI151/19, KI152/19, KI153/19, KI154/19, KI155/19, KI156/19, KI157/19 and KI159/19 with Applicant *Et-hem Bokshi and others*, Constitutional review of Judgment of the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo Related Matters, AC-I-13-0181-A0008, of 29 August 2019, Judgment of 10 December 2020; KI160/19, KI161/19, KI162/19, KI164/19, KI165/19, KI166/19, KI167/19, KI168/19, KI169/19, KI170/19, KI171/19, KI172/19, KI173/19 and KI178/19 with Applicant *Muhamet Këndusi and others*, Constitutional review of Judgment of the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo Related Matters, AC-I-13-0181-A0008, of 29 August 2019, Judgment of 27 January 2021; KI181/19, KI182/19 and KI183/19, with Applicant *Fllanza Naka, Fatmire Lima and Leman Masar Zhubi*, Constitutional review of the Judgment of the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo Related Matters, AC-I-13-0181-A0008, of 29 August 2019, Judgment of 27 January 2021; and KI220/19, KI221/19, KI223/19 and KI234/19 with Applicant *Sadete Koca Lila and others*, Constitutional review of the Judgment of the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo Related Matters, AC-I-13-0181-A0008, of 29 August 2019, Judgment of 25 March 2021; and KI186/19; KI187/19, KI200/19 and KI208/19, with Applicant *Belkize Vula Shala and others*, Judgment of 28 April 2021). The Court, when examining the elaborated principles, confirmed through the aforementioned judgments of the Court and their application in the circumstances of the present case shall refer to its first Judgment regarding the former enterprise "Agimi", namely the cases KI145/19, KI145/19, KI146/19, KI147/19, KI149/19, KI150/19, KI151/19, KI152/19, KI153/19,

KI154/19, KI155/19, KI156/19, KI157/19 and KI159/19, Applicant *Et-hem Bokshi and others*.

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

50. In principle, litigants are entitled to a public hearing, but such an obligation is not absolute. Insofar as is relevant to the present circumstances, the ECtHR case law has developed the main principles relating to (i) the right to a hearing in the courts of first instance; (ii) the right to a hearing in the courts of second and third instance; (iii) the principles on the grounds of which it must be determined whether a hearing is necessary; and (iv) whether the absence of a hearing in the first instance can be corrected through a hearing at a higher level and the relevant criteria for making such an assessment. However, in all circumstances, the absence of a hearing should be justified by the relevant court (see the Court cases related to the former enterprise "Agimi", KI145/19, KI145/19, KI146/19, KI147/19, KI149/19, KI150/19, KI151/19, KI152/19, KI153/19, KI154/19, KI155/19, KI156/19, KI157/19 and KI159/19, Applicant *Et-hem Bokshi and others*, cited above, paragraph 48).

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

52. However, also according to ECtHR case law, there are exceptions to this general principle, and those are the cases in which "*there are exceptional circumstances that would justify the absence of a hearing*" in the first and single instance (see, in this respect, the ECtHR cases *Hesse-Anger and Anger v. Germany*, Decision of 17 May 2001; and *Mirovni Inštitut v Slovenia*, Judgment of 13 March 2018, paragraph 36). The character of such exceptional circumstances arises from the nature of the cases raised in a case, for example, cases which relate exclusively to legal matters or are of a highly technical nature (see, ECtHR case, *Koottummel v Austria*, Judgment of 10 December 2009, paragraphs 19 and 20).

53. With regard to the second issue, namely the obligation to hold a hearing in the second or third instance courts, the ECtHR case law states that the absence of a hearing can be justified on the basis of the particular characteristics of the case concerned, provided that a hearing has been held in the first instance (see, in this context, the ECtHR case *Salomonsson v. Sweden*, Judgment of 12 November 2002, paragraph 36). Therefore, proceedings before appellate courts, and which involve only matters of law, and not matters of fact, may be considered to be in accordance with the guarantees embodied in Article 6 of the ECHR, even if a hearing has not been held in the second instance (see, ECtHR case *Miller v. Sweden*, Judgment of 8 February 2005, paragraph 30; and see, also, in Court cases KI145/19, KI145/19, KI146/19, KI147/19, KI149/19, KI150/19, KI151/19, KI152/19, KI153/19, KI154/19, KI155/19, KI156/19, KI157/19 and KI159/19, Applicant *Et-hem Bokshi and others*, cited above, paragraph 50). That said, and in principle, the absence of a hearing can only be justified by "*the existence of exceptional circumstances*", as defined through the ECtHR judicial practice, otherwise such one is guaranteed to the parties at least at one level of jurisdiction, based on Article 31 of the Constitution in conjunction with Article 6 of the ECHR.

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

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

56. Regarding the fourth issue, namely the possibility of a second instance correction of the absence of a first instance hearing and the respective criteria, the ECtHR has determined

through its judicial practice that, in principle, such a correction depends on the powers of the higher court. If the latter has full jurisdiction to review the merits of the relevant case, including the assessment of the facts, then the correction of the absence of a first instance hearing can be done in the second instance (see ECtHR case *Ramos Nunes de Carvalho e Sá v Portugal*, cited above, paragraph 192 and the references used therein; and see also ECtHR Guide of 31 December 2020 on Article 6 of the ECHR, Right to a fair trial, civil part, IV. Procedural criteria; B. Public hearing, paragraph 401 and references used therein).

57. Consequently, the Court, referring to the ECtHR case law and that of the Court, points out that the very fact that the parties have not requested the holding of a hearing does not mean that they have waived the right to hold one (see Court cases KI145/19, KI145/19, KI146/19, KI147/19, KI149/19, KI150/19, KI151/19, KI152/19, KI153/19, KI154/19, KI155/19, KI156/19, KI157/19 *and KI159/19, Applicant Et-hem Bokshi and others*, cited above, paragraph 54, for more, regarding the waiver of the right to a hearing, see the ECtHR Guide of 30 April 2020 on Article 6 of the ECHR, Right to a fair trial, civil aspect, IV. Procedural criteria; B. Public hearing, paragraphs 420 and 421 and references used therein). Based on the ECtHR case law, such a case depends on the characteristics of the domestic law and the circumstances of each case separately (see ECtHR case *Göç v Turkey*, cited above, paragraph 48).

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

(ii) without sufficient justification; (iii) in arbitrary interpretation of the law; and (iv) in violation of their right to a trial within a reasonable period of time.

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

(ii) Application of the principles elaborated above in the circumstances of the present case

60. The Court first recalls that based on the ECtHR case law, Article 6 of the ECHR, in principle, guarantees the holding of a hearing on at least one level of decision-making. One such is, as explained above, in principle, (i) mandatory if the court of first instance has sole decision-making power in respect of matters of fact and law; (ii) non-binding in the second instance if a hearing was held in the first instance, despite the fact that such a determination depends on the characteristics of the respective case, for example, if the second instance decides both on matters of fact and law; and (iii) mandatory in the second instance if such a hearing is not held in the first instance, in cases where the second instance has full competence to assess the decision of the first instance, also in respect of fact and law matters. Exceptions from these cases are, in principle, made only if *"exceptional circumstances exist that would justify the absence of a hearing"*, and which the ECtHR, as explained above, through its judicial practice has defined as cases that relate exclusively to legal matters or are of a high technical nature.

61. However, by looking at the entire court proceedings of the present request, it is clear that the Applicant at the time of filing the appeal with SCSC Specialised Panel, did not request the holding of a public hearing, which would constitute the trial at the first level. In this part of the court proceedings, the SCSC Specialised Panel rejected the Applicant's request without scheduling a public hearing, applying the provisions of *Article 72 paragraph 11 of the Law on SCSCK (no. 06 L-086)* and found that *"The decision is rendered without a hearing because the facts and evidence presented in the case are quite clear…"*.

62. The Court finds that the same approach was also maintained by the SCSC Appellate Panel, which also rejected the Applicant's appeal without scheduling a public hearing.

63. In view of this outcome of the procedure before the SCSC Specialised Panel and before the SCSC Appellate Panel, the question arises whether the Applicant has waived in any way the right to a public hearing before the Special Chamber panels or precisely both chambers of the Special Chamber have made procedural concessions neglecting the Applicant's rights, where they have rendered judgments at both levels, without holding a public hearing, which in certain circumstances would result in violation of the Applicant's rights guaranteed by Article 31 of the Constitution in conjunction with Article 6 of the ECHR.

64. In order to obtain an adequate response, the Court, through further analysis, will determine whether the Applicant has waived the right to a hearing or at a stage of the court proceedings, he has filed such a request with one of the SCSC panels. If the response to this question proves to be negative, then the Court, based on the ECtHR case law, must assess whether in the circumstances of the present case "there are exceptional circumstances that would justify the absence of a hearing" at both decision-making levels, namely before the SCSC Specialised Panel and the SCSC Appellate Panel, respectively. The Court shall also make this assessment based on the principles established through the Judgment of the Grand Chamber *Ramos Nunes de Carvalho and Sá v Portugal*.

a) Right to a public hearing session

If the Applicant has waived the right to a hearing before the Specialised Panel of SCSC

65. In this regard, the Court initially recalls that the Applicant through his individual complaint filed with the SCSC Specialised Panel, did not explicitly request the holding of a hearing at the first level of the court proceedings, namely in the procedure before the SCSC Specialised Panel, and therefore it can be considered in some way that he has "*voluntarily waived the right*" to a public hearing at the first level of the trial, although it is more than understandable and obvious that he, as all parties to the proceedings, when filing a lawsuit, have the expectation that the competent court will appoint a public hearing where the factual and legal circumstances of the case will be discussed, which certainly represents the legitimate expectation of each party.

66. More precisely, based on the ECtHR case law, in circumstances in which the parties have not requested the holding of a hearing, such as the case of the Applicant, the ECtHR, inter alia, assesses whether the absence of such a request can be considered as the implicit waiver of Applicant's right to a hearing. That said, the absence of a request for a hearing, based on the ECtHR case law, is never the only factor determining the necessity of holding a hearing. In all cases, if the absence of a request for a hearing releases a court from the obligation to hold a hearing, it depends on (i) the specifics of the applicable law; and (ii) the circumstances of a case (see, ECtHR case *Gőç v Turkey*, cited above, paragraph 46). Next, the Court will assess these two categories of cases.

67. More specifically, in cases where a relevant party has not made a request for a hearing, the ECtHR has assessed that the absence of such a request can be considered as an implicit waiver of a hearing, always in the light of the applicable law and the circumstances of a given case. For example (i) the *Miller v. Sweden* case (Judgment of 6 May 2005), in which the respective Applicant had not requested a hearing at appeal level, but the same had requested a hearing at first instance level, resulted in the ECtHR finding that the request for a hearing was made at the "most appropriate stage of proceedings" and consequently, the ECtHR had emphasized that it could not be ascertained that the party had waived the request for a hearing implicitly. Furthermore, in combination with the finding that both

the fact and the law were examined at appeal level, and consequently the nature of the cases under review was not exclusively legal or technical, the ECtHR found that there are no exceptional circumstances that would justify the absence of a hearing, finding a violation of Article 6 of the ECHR (see *Miller v. Sweden*, cited above, paragraphs 28-37); also (ii) in Salomonsson *v. Switzerland* (Judgment of 12 February 2003), in which the respective Applicant had not requested the holding of a hearing in either of the instances, the ECtHR, although finding that the respective Applicant may be considered to have implicitly waived the right to a hearing (see paragraph 35 of the Salomonsson *v. Switzerland* case), nevertheless found a violation of Article 6 of the ECHR due to the absence of a hearing, because it concluded that in the circumstances of the present case, there were no exceptional circumstances that would justify the absence of a hearing, in particular considering the fact that the level of appeal also examined matters of fact and not only the law (see the *ECtHR* case *Salomonsson v. Switzerland*, cited above, paragraphs 36-40).

68. First, with regard to the specifics of the applicable law, namely the Law and Annex to the Law on SCSC, the Court recalls that based on Article 64 of the Annex to the Law on SCSC, "the *Appellate Panel decides whether or not to hold more oral hearings on the respective appeal*", based on its own initiative or even the written request of a party. Article 69 (Oral Appellate Proceedings) of Law no. 06/L-086 for SCSC, has the same content. Based on these provisions, the Court, through Judgments in the cases of the former company "Agimi", had assessed that holding a hearing does not necessarily depend on the request of the party. Based on the applicable provisions, it is also the duty of the relevant panel, on its own initiative, to assess whether the circumstances of a case require the holding of a hearing. Furthermore, beyond the powers of the Specialized Panel, based on Article 60 (Content of Appeal) and Article 65 (Submission of New Evidence) of the Annex to the Law on SCSC, the Appellate Panel also has the competence to assess both matters of law and fact, and as a result, is equipped with full competence to assess the way in which the lower authority, namely the Specialized Panel, has assessed the facts.

69. Secondly, in relation to the circumstances of a case, the Court recalls that the ECtHR case law, stresses that the absence of a request for a hearing, and the assessment whether this fact could result in the finding that the relevant party implicitly waived the right to a hearing, should be assessed in the entirety of the specifics of proceedings, and not as a single argument, to ascertain whether or not the absence of a hearing resulted in a violation of Article 6 of the ECHR (see Court cases of the former enterprise "Agimi" KI145/19, KI145/19, KI146/19, KI147/19, KI149/19, KI150/19, KI151/19, KI152/19, KI153/19, KI154/19, KI155/19, KI156/19, KI157/19 and KI159/19, Applicant *Et-hem Bokshi and others*, cited above, paragraph 62).

70. The Court recalls that the ECtHR in the case *Gőç v Turkey* found a violation of Article 6 of the ECHR due to the lack of a hearing, rejecting the Turkish Government's claims that (i) the case was simple and that it could be dealt with swiftly only on the grounds of the case files, especially because the respective Applicant did not request the conduct of any new evidence through the complaint; and that (ii) the respective Applicant had not requested the holding of a hearing (for the facts of the case, see paragraphs 11 to 26 of the ECtHR case *Gőç v Turkey*). In examining the relevant case, and after assessing whether in its circumstances there were any extraordinary circumstances that would justify the absence of a hearing, the ECtHR found a violation of paragraph 1 of Article 6 of the ECHR, stressing, inter alia, that (i) despite the fact that the respective Applicant had not made a request for a hearing, it does not appear from the circumstances of the case that such a request would have any prospect of success; moreover that (ii) it cannot be considered that the respective

Applicant has waived his right to a hearing by not requesting one before the court of appeal since the latter did not have full jurisdiction to determine the amount of compensation; (iii) the respective Applicant was not given the opportunity to be heard even before the lower instance and which had competence for both the assessment of the facts and of the law; and (iv) the substantive issue, in the circumstances of this case, was whether the respective Applicant should be provided a hearing before a court which was responsible for corroborating the facts of the case (for the case reasoning, see paragraphs 43 to 52 of the *Gőç v Turkey* case).

71. Accordingly, referring to the factual and legal circumstances of the *Gőç v Turkey* case and comparing them with the factual and legal circumstances of the Applicant, the Court recalls that the SCSC Specialised Panel had waived the hearing on the grounds that the facts and arguments presented in writing were quite clear that we are dealing with a request that is out of time due to the fact that the Applicant had submitted his debt settlement claim, for the first time, only on 21 October 2006 to the PAK Liquidation Authority.

72. More specifically, the Court finds that the SCSC Specialised Panel, instead of scheduling a public hearing, where all the circumstances of the case would be examined, took a completely formalistic approach in examining the case of the Applicant, applying the provisions of "*Article 72 paragraph 11 of the Law on SCSCK (no. 06 L-086)",* in conjunction with Article 374 of the Law on Obligational Relationships (cited above), concluding that *"The decision is rendered without holding a hearing because the facts and evidence presented in the case are quite clear, therefore the individual judge does not expect that at the hearing there will be more information and arguments within the meaning of Article 72 paragraph 11 of the Law on Obligational Relationships (no. 06 L-086)'.*

73. In fact, the Court finds that the SCSC Specialised Panel rendered the decision to waive the public hearing because the facts in the case files, as it had pointed out, were quite clear that the Applicant submitted the request for compensation outside the time limit of three years, referring to Article 374 of the Law on Obligational Relationships, which states that *"claims from commercial contracts and claims for the return of expenditure arising in connection with such contracts shall become statute-barred after three years".*

74. The SCSC Specialised Panel, without holding a public hearing, concluded as follows: **(i)** that the contractual obligations to the Applicant arose in December 1997; **(ii)** that the time limit for which the claimant claimed the debt expired in December 2000; **(iii)** that the Applicant submitted the claim for compensation for the first time on 21 October 2006 to the PAK Liquidation Authority and that as such is outside the 3-year time limit; and **(iv)** that the Applicant had never previously claimed this debt from the respondent by a court action filed with a court or other competent body.

75. However, such a conclusion of the SCSC Specialised Panel is not entirely clear to the Court, not because in the linguistic sense it is incomprehensible, but because it did not provide an explanation as to why it considers that the Applicant's allegation, "*that it filed in 1998 the claim by which it had interrupted the statute of limitations*", is not a legally valid allegation which, as such, requires or does not require the appointment of a public hearing.

76. In such circumstances, the Court cannot conclude that the Applicant's absence of a request to hold a hearing at the level of the SCSC Specialized Panel can be considered as an implicit waiver of its right to a hearing, because on the basis of irrefutable allegations and material evidence from the case files, it is clear that it had a real expectation that the SCSC

Specialized Panel, as the competent court, would appoint a public hearing to avoid all doubts regarding the statute of limitations of the claim.

If the Applicant has waived the right to a hearing before the SCSC Appellate Panel

77. Furthermore, the Court also analysed the proceedings before the SCSC Appellate Panel to determine whether the Applicant has waived the right to a hearing before this Panel, as a second instance court, which, respecting the guarantees of Article 31 of the Constitution, must correct the omissions if they were made by the first instance court. In this context, the Court notes that the Applicant filed an appeal with the SCSC Appellate Panel against the Decision of the SCSC Specialised Panel. In its appeal, the Applicant emphasized that the SCSC Specialised Panel, ***i)*** *has not justified the fact that the claim was filed with the Economic Court of the District of Prishtina by the claimant on 26.11.1998, proceeded in this court with the postal recommendation of 26.11.1998, which is a circumstance for the interruption of statute of limitations period;* ***ii)*** *that the court has not held a court hearing to hear the claims of the parties or even to provide evidence that would affect the fair ruling on the claim of the claimant;* ***iii)*** *that the court by failing to establish the judicial review has violated the fundamental principle of the party to be heard in a court proceeding [...] thereby violating also, the human rights related to the right to have his case heard fairly, publicly and within a reasonable period of time (Article 6 of the European Convention on Human Rights).*

78. Therefore, the Court finds that two of the three main allegations of the Applicant raised before the SCSC Appellate Panel are directly related to the complaint regarding the failure to hold a public hearing before the SCSC Specialized Panel, where the Applicant, with his arguments, unequivocally justified the need for holding the hearing in public. Consequently, it is clear the intention of the Applicant that during the public hearing, which was not held before the SCSC Specialised Panel, he should be given the opportunity to present his arguments regarding the erroneous conclusion by the court of first instance, "*that he never before filed a claim for debt collection*", as well as to hear the positions of the Appellate Panel regarding this claim. In view of this, it cannot be said that the Applicant did not raise the issue of holding a public hearing or that he voluntarily waived the right to a public hearing. Furthermore, how far the Applicant's complaint claims go in this regard, can also be seen on the basis of the claim presented in the appeal filed with the SCSC Appellate Panel, stating that:

> *"The authorized of the claimant proposes to the Court of Appeal of the Special Chambers of the Supreme Court in Prishtina that in the case of review of the appeal within the meaning of Article 190 para. 4 of the LEP, to hold the court hearing for the just ascertainment of the factual situation."*

79. With this in mind, the Court finds that this Applicant's request for holding a public hearing before the SCSC Appellate Panel is very clear, and as such requires that it be handled by the second instance SCSC Panel.

80. However, based on the content of the Judgment [AC-I-19-0213] of the SCSC Appellate Panel, it turns out that it ignored the Applicant's request, moreover, not only did it not schedule the hearing in order to avoid the omission of the SCSC Specialised Panel, but it went so far as to simply disregard this Applicant's request to the extent that it does not declare it in the judgment and therefore does not justify it, considering it, apparently, irrelevant.

81. Therefore, the Court finds that the SCSC Appellate Panel waived the holding of a public hearing, despite the claimant's request, basing all the reasoning in its Judgment [AC-I-19-0213] on the legal provisions, which only in the procedural sense justify its conclusion that we are dealing with the statute-barred creditor claim, by not responding to the main allegations of the Applicant, who expressly requested the holding of a public hearing due to the omission of the SCSC Specialized Panel.

82. In view of the above, the Court considers that there is no need for it to deal further with the determination whether the Applicant waived the public hearing before the SCSC Appellate Panel, when it is more than clear that its purpose in the appeal filed was precisely to hold the public hearing, which is very clearly evident from the case files.

83. What the Court finds as a common characteristic of the present court proceedings which has been conducted at two levels is that (i) the Applicant was not given the opportunity to be heard before the SCSC Specialised Panel, which is competent for the assessment of facts and laws; (ii) the Applicant was not given the opportunity to be heard even before the SCSC Appellate Panel, even though the Applicant explicitly requested it; (iii) the SCSC Appellate Panel, neither in the substantive sense did take into account nor handle the Applicant's allegations regarding its request to hold a public hearing.

b) If in the circumstances of the present case, there are exceptional circumstances that would justify the absence of a hearing before the SCSC Specialised Panel and the SCSC Appellate Panel

84. The Court once again recalls that based on the ECtHR case law, the parties have the right to a hearing in at least one instance. This instance is mainly the first instance and the one that has the jurisdiction to decide both on matters of fact and on matters of law. In this context, as regards the obligation to hold a hearing in the second or third instance courts, the ECtHR case law states that the absence of a hearing may be justified on the basis of the special characteristics of the case in question, provided that a hearing has been held in the first instance. In principle, if a hearing has been held in the first instance, proceedings before the courts of appeal, and which involve only questions of law, and not matters of fact, may be considered to be in accordance with the guarantees embodied in Article 6 of the ECHR, even if in the second instance a hearing has not been held. That said, the exemption from the right to a hearing is only for those cases in which it is determined that there are *"extraordinary circumstances that would justify the absence of a hearing"*. These circumstances, as explained above, the ECtHR case law has classified as cases related to "*exclusively legal or high technical matters*".

85. For example, the ECtHR has classified matters related to social security, mainly as matters of a technical nature, in which a hearing is not necessarily necessary. Of course, there are exceptions to this rule. In any case, the specific circumstances of a case are examined. For example, the ECtHR had not found violations in the cases *Schuler-Zgraggen v Switzerland* and *Dory v Sweden*, but had found violations in the case *Miller v Sweden* and *Salomonsson v Switzerland*, although all these cases were related to social security matters.

86. Similarly, the ECtHR also acts in those cases in which the cases before the court concerned are exclusively legal, and do not involve the assessment of disputed facts. For example, in the case Saccoccia *v Austria* (Judgment of 18 December 2008), the ECtHR found no violation of Article 6 of the ECHR due to the lack of a hearing, as it found that the matters

complained of by the respective Applicant were not matters of fact, but only limited matters of a legal nature (*Saccoccia v Austria*, cited above, paragraph 78), while in the case *Allan Jacobsson v Sweden* (no. 2) (Judgment of 19 February 1998), the ECtHR also found no violation of Article 6 of the ECHR due to the lack of a hearing, as it found that the matters complained of by the respective Applicant involved neither a matter of law nor a matter of fact (see ECtHR case *Allan Jacobsson v. Sweden (no. 2)*, cited above, paragraph 49).

87. On the contrary, in other cases in which the ECtHR determined that the cases before the respective courts included both matters of fact and law, it did not find that there were exceptional circumstances that would justify the absence of a hearing. For example, in the case *Malhous v the Czech Republic* (Judgment of 12 July 2001), the ECtHR found a violation of Article 6 of the ECHR due to the lack of a hearing, as it determined that the matters complained of by the respective Applicant involved not only questions of law but also the fact, namely the assessment of whether the lower authority had assessed the facts fairly (see case *Malhous v the Czech Republic*, cited above, paragraph 60). Similarly, in the case *Koottummel v Austria* (Judgment of 10 December 2009), the ECtHR found a violation of Article 6 of the ECHR for the absence of a hearing, because it found that the cases before it could qualify as matters of exclusively legal or technical nature, which could consist in exceptional circumstances which would justify the absence of a hearing (see case *Koottummel v Austria*, cited above, paragraphs 20 and 21).

88. In the circumstances of the present case, the Court first recalls that the SCSC Specialised Panel, although it has an obligation to rule on matters of fact and law, clearly has not done so, because it has not appointed a public hearing to first substantiate all the factual circumstances, and consequently to rule on legal matters. In the context of what was said, the Court recalls that the SCSC Appellate Panel also has jurisdiction to deal with both facts and legal matters. Pursuant to paragraph 11 of Article 10 (Judgments, Decisions and Appeals) of Law no. 04/L-033 on the Special Chamber of the Supreme Court of Kosovo on Privatization Agency Related Matters (hereinafter: the Law on SCSC) and paragraph 4 of Article 64 (Oral Appellate Proceedings) and Article 65 (Submission of New Evidence) of the Annex to the Law on SCSC, the parties, among others, have the opportunity to submit appeals to the Appellate Panel regarding matters of law and fact, including the possibility to submit new evidence.

89. In support of this finding, the Court recalls that the Judgment of the ECtHR, *Ramos Nunes de Carvalho e Sá v Portugal*, specifically stipulated that a hearing is necessary in circumstances entailing the need to examine matters of law and fact, including cases in which it is necessary to assess whether the lower authorities have correctly assessed the facts. This applies especially in circumstances in which a hearing has not been held even before the lowest instance, as is the case in the circumstances of the present case.

90. In fact, in some cases the ECtHR had found a violation of Article 6 of the ECHR when a hearing was not held in a court of appeal jurisdiction, even when a hearing was held in the lower instance, despite the fact that the assessment of the necessity of the hearing at appeal level is less rigorous when a hearing was held in the first instance. For example, in *Helmers v Sweden*, the ECtHR examined a case in which the applicant was allowed a hearing at first instance, but not at appeal level, which had the power to assess both the law and the facts in the circumstances of the case. In this case, the ECtHR reiterated that (i) the guarantees embodied in Article 6 of the ECHR do not necessarily guarantee a hearing at appeal level, if one is held in the first instance; and (ii) in making this decision, the relevant court should also take into account the need for expeditious handling of cases and the right to a trial

within a reasonable time. However, pointing out that such a determination depends on the nature of the matters involved in a case and the need for the existence of exceptional circumstances in order to justify the absence of a hearing, the ECtHR found a violation of Article 6 of the ECHR (for the relevant case reasoning, see paragraphs 31 to 39 of the *Helmers v Sweden* case).

91. Finally, the Court also points out the fact that the SCSC Appellate Panel had not justified *"the waiver of the hearing"*, despite the fact that the Applicant explicitly requested one, referring to Article 190.4 of the LCP, which specifically stipulates that, *"The court of second instance can determine evaluation of the case when it estimates that for a rightful factual state is to be determined and all or partial proofs administered in the court of first instance should be considered*." On the contrary, the judgment in question [AC-I-19-0213], does not contain any additional explanation regarding the Decision of the SCSC Appellate Panel to *"waive the hearing"*. What is contained in the contested Judgment of the SCSC Appellate Panel is the reasoning that is based exclusively on the legal provisions of the Law on Obligational Relationships (applicable at the moment of creation of the debt), by which the finding of both the SCSC Specialised Panel and the SCSC Appellate Panel is justified, that we are dealing with the statute-barred creditor claim. Furthermore, the fact that the finding of the SCSC Appellate Panel is even more incomprehensible, is shown in the part of the reasoning in the Judgment, in which it refers to Article 387 of the Law on *Obligational Relationships, pointing out that "the respondent (the Applicant) has not given any written statement on the acceptance of the debt, or has not taken any other indirect action for the recognition of the debt, defined by the aforementioned legal provision, therefore in the case of this complainant there is no interruption of statute of limitations",* not addressing the claim of the Applicant that in the case files there is a proof that it had taken procedural actions in 1998, thus contradicting the conclusion of the SCSC Specialised Panel at the moment of filing the claim for repayment of the debt, as well as at the moment of filing the complaint with the SCSC Appellate Panel.

92. In support of this, the Court stresses that based on the ECtHR case law, in assessing the allegations related to the absence of a hearing, it should be examined whether the rejection to hold such a hearing is justified. For example, in the case of ECtHR *Pönkä v Estonia* (Judgment of 8 November 2016), which was related to the conduct of a simplified procedure (reserved for small actions), the ECtHR had found a violation of Article 6 of the ECHR, because the relevant court had not justified the absence of a hearing (see ECtHR *Pönkä v Estonia*, cited above, paragraphs 37-40). Also, in the case of the ECtHR *Mirovni Inštitut v Slovenia*, cited above, the ECtHR found a violation of Article 6 of the ECHR, inter alia, although the relevant court had not provided any justification for not holding a hearing (see ECtHR case *Mirovni Inštitut v Slovenia*, cited above, paragraph 44). In the context of the lack of justification for not holding a hearing, the ECtHR, through its judicial practice, has consistently emphasized, among other things, that the lack of justification about the necessity of holding a hearing prevents the higher court from assessing whether such an opportunity has simply been neglected, or what are the arguments based on which the court has overlooked such an opportunity in relation to the circumstances that a particular case raises (see ECtHR case *Mirovni Inštitut v Slovenia*, paragraph 44 and the references used therein).

93. Therefore, and in conclusion, the Court, taking into account that (i) the fact that the Applicant did not explicitly request the holding of a hearing at the level of the SCSC Specialised Panel, does not imply that it implicitly waived this right; (ii) despite the Applicant's specific request for a hearing before the SCSC Appellate Panel, such a hearing

was not held and consequently, the standards that apply to the necessity of holding a hearing before the SCSC Appellate Panel are more rigorous because, in principle, the parties are entitled to a hearing at least before a court instance; (iii) the cases under review before the SCSC Appellate Panel cannot be qualified either as exclusively legal or as matters of a technical nature, but rather as matters of fact and law; (iv) the SCSC Appellate Panel did not assess the Applicant's claims and consequently did not justify the "*waiver of the hearing"*; (v) the SCSC Appellate Panel had not justified "*the existence of extraordinary circumstances that would justify the absence of a hearing*". Consequently, the challenged judgment [AC-I-19-0213] of the Appellate Panel of the Special Chamber of the Supreme Court on Privatization Agency of Kosovo Related Matters of 16 March 2022, was rendered contrary to the guarantees embodied in Article 31 of the Constitution in conjunction with Article 6 of the ECHR.

94. The Court finally also concludes that, having already found that the challenged Judgment of the SCSC Appellate Panel is not in accordance with Article 31 of the Constitution in conjunction with Article 6 of the ECHR, due to the absence of a hearing considers that it is not necessary to examine the Applicant's other allegations. The respective allegations of the Applicant should be reviewed by the SCSC Appellate Panel, in accordance with the findings of this Judgment. Furthermore, given that the SCSC Appellate Panel has full jurisdiction to review contested decisions of the SCSC Specialised Panel based on the applicable laws to the SCSC, it has the possibility of second-degree correction of the absence of a hearing in the first instance.

95. The finding of the Court for a violation of Article 31 of the Constitution in conjunction with Article 6 of the ECHR, in the circumstances of the present case, relates exclusively to the absence of a hearing, as explained in this Judgment, and in no way relates to or does prejudice the outcome of case merits.

Conclusion

96. The Court, in the circumstances of this case, has assessed the allegations of the Applicants, regarding the absence of a hearing, a right guaranteed, according to the clarifications of this Judgment, through Article 31 of the Constitution in conjunction with Article 6 of the ECHR.

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

98. Under the circumstances of the present case, the Court finds that (i) the fact that the Applicants have not requested a hearing before the Appellate Panel does not imply their waiver of this right nor does it relieve the Appellate Panel of the obligation to its initiative, to address the necessity of holding a hearing; (ii) the Applicants have been denied the right

to a hearing at both levels of the SCSC; (iii) the SCSC Appellate Panel did not address "*matters of exclusively legal or highly technical nature*", based on which could have existed *"extraordinary circumstances that would justify the absence of a hearing*"; (iv) the SCSC Appellate Panel did not reason the waiving of the oral hearing although this was the main allegation of the Applicant. Taking into account all these circumstances and other reasons given in this Judgment, the Court found that the challenged Judgment, namely Judgment [AC-I-19-0213] of the SCSC Appellate Panel< of 16 August 2022, was rendered contrary to the guarantees embodied in Article 31 of the Constitution in conjunction with Article 6 of the ECHR, regarding the right to a hearing.

99. Finally, the Court also noted that (i) under the applicable Law on the SCSC, the SCSC Appellate Panel has full jurisdiction to review the decisions of the SCSC Specialised Panel and, consequently, based on the ECtHR case law, has the possibility of correcting the absence of the hearing at the level of the lower court, respectively, the SCSC Specialised Panel; (ii) it is not necessary to deal with the Applicant's other allegations because they must be examined by the SCSC Appellate Panel in accordance with the findings of this Judgment; and (iii) the finding of a violation of Article 31 of the Constitution in conjunction with Article 6 of the ECHR, in the circumstances of the present case, is related only to the procedural guarantees for a hearing and in no way prejudices the outcome of the merits of the case.

FOR THESE REASONS

The Constitutional Court, pursuant to Articles 113.1 and 113.7 of the Constitution, Articles 20 and 47 of the Law and Rule 59 (1) (a) of the Rules of Procedure, in its session held on 25 January 2023, by a majority of votes:

DECIDES

I. TO DECLARE the referral admissible;

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

III. TO DECLARE the Judgment [AC-I-19-0213] of the SCSC Appellate Panel, of 16 March 2022, invalid;

IV. TO REMAND the case for retrial to the SCSC Appellate Panel, in accordance with the findings of this Judgment;

V. TO ORDER the SCSC Appellate Panel to inform the Court in accordance with Rule 66 (5) of the Rules of Procedure, by 25 July 2023, about the measures taken to enforce the Judgment of the Court;

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

VII. This Judgment is effective immediately.

Judge Rapporteur	**President of the Constitutional Court**
Remzije Istrefi-Peci	Gresa Caka-Nimani

This translation is unofficial and serves for informational purposes only.