Prishtina, on 23 March 2023
Ref. no.:MM 2141/23

# DISSENTING OPINION

of Judge

## RADOMIR LABAN

**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 of Kosovo
on Privatization Agency of Kosovo related matters, of 16 March 2022**

Expressing from the beginning my respect and the agreement to the opinion of the majority of judges that in this case there has been a violation of Article 31 [Right to Fair and Impartial Trial] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution) in conjunction with Article 6 (Right to a fair trial) of the European Convention on Human Rights (hereinafter: ECHR),

However, I as an individual judge have a dissenting opinion regarding the conclusion of the majority and I do not agree with the opinion of the majority. I consider that there has been no violation of the right to a hearing from Article 31 [Right to Fair and Impartial Trial] of the Constitution in conjunction with Article 6 (Right to a fair trial) of the ECHR as presented in the judgment.

First of all, I would like to emphasize that this dissenting opinion by me, as a single judge, was late and that I am solely to blame for not writing a dissenting opinion immediately on the first judgment, when a violation of the right to a hearing was established. Although in the previous three years I consistently voted against the position of the majority and in the sessions I argued the reasons why I believe that there has been no violation of the right to a public hearing, I did not write a dissenting opinion. This has happened because I considered that by the first decisions of regular courts, most judges will see that the Applicants do not receive any benefit from such decisions. On the contrary, the position of the majority of judges with such decisions expose the Applicants to additional court proceedings and costs, while at the same time they have no chance to exercise their essential right for which they

initiated the proceedings. I thought that the majority of judges, when they see this, will change their position, because no applicant turned to the Constitutional Court just to have the right to a hearing or some other procedural right, on the contrary, every applicant turned to the court in order to realize some substantive right, namely an effective right which he considers to belong to him. Considering that the position of the majority of judges did not change even after the first decisions of regular courts, from which it became completely clear that such decisions expose applicants to additional costs and new court procedures that are strictly formal in terms of holding a session where not a single evidence is presented but it is only noted that the hearing was held, I consider that I am obliged to express the dissenting opinion. For all the above, I decided to express my disagreement with the opinion of the majority in writing in order to oppose in the clearest possible way, in my opinion, the completely erroneous and inaccurate practice of the Court.

As a judge, I agree with the factual situation as stated and presented in the judgment and accept the same factual situation as correct. Also, I, as a judge agree with the way the Applicant's allegations were filed and presented in the judgment and accept them as correct.

However, I do not agree with the legal analysis regarding the admissibility of the case and the opinion of the majority that there has been a violation of the right to a hearing as stated and presented in the judgment, and I will explain my disagreement in detail.

For the above, and pursuant to Rules 61 and 63 of the Rules of Procedure of the Constitutional Court, in order to follow as easily and clearly as possible the reasoning of my dissenting opinion **(I)** I will repeat the allegations of the Applicant regarding the alleged violations of the rights; **(II)** present the content of relevant constitutional and legal provisions **(III)** reason the basic principles regarding the right to a hearing under Article 31 [Right to Fair and Impartial Trial] of the Constitution in conjunction with Article 6 (Right to a fair trial) of the ECHR; **(IV)** explain in detail the cases in which the ECtHR reasoned that there have been exceptional circumstances that justified the waiver of the public hearing**; (V)** apply the above basic principles in the present case; **(VI)** draw a conclusion regarding the alleged violations of the Applicant's rights guaranteed by Article 31 [Right to Fair and Impartial Trial] of the Constitution in conjunction with Article 6 (Right to a fair trial) of the ECHR.

## (I) Applicant's allegations regarding alleged violations of rights

1. The Applicant states that its rights guaranteed by Article 24 [Equality Before the Law], Article 31 [Right to Fair 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.

2. In support of those allegations, the Applicant adds:

> *"The Special Chamber of the Supreme Court of the Republic of Kosovo, by its decision C - IV 14 - 5731 of 21.11.2019, which rejected the statement of claim of the complainant here, the entity "Metalinvest" J.S.C. with the reasoning that the claim is statute-barred as well as Decision AC - I - 19 - 0213 of the Appellate Panel of the Special Chamber of the Supreme Court, of 04.16.2022, apart from the legal violations of the LOR as described above, it also represents a violation of the principles of the Constitution of the Republic of Kosovo, namely Article 24, Article 31, paragraphs 1 and 2, Article 54, as well as Article 102 of the Constitution of the Republic of Kosovo.*

*We base this allegation on the fact that the Special Chamber of the Supreme Court, not assessing the facts of the matter in a fair and complete manner, treats the parties in the court proceedings in an unfair and discriminatory manner".*

3. The Applicant further alleges that *"Contrary to Article 31, paragraphs 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 of 21.11.2019, as well as decision AC - I - 19 - 0213 of the Appellate Panel of the Special Chamber of the Supreme Court, of 16.04.2022, the parties to the proceedings were not provided the court proceedings, by which procedure would protect the rights of the parties, by not convening court sessions at all and deciding based on the assessment of evidence outside the court session. Challenging the statements of the parties in the court proceedings is a violation of human rights to a fair trial, preventing the parties from presenting or supplementing any evidence by which the said right could be argued. That way of decision-making is also in contradiction with Article 6 of the European Convention on Human Rights, which allegations were also submitted in the appeal, and the Appellate Panel of the Special Chamber of the Supreme Court did not assess and did not reason the allegations of the parties to the proceedings. The Special Chamber of the Supreme Court challenged the parties' statement in the court proceedings by not holding a court session for statements regarding the evidence and allegations of the parties to the proceedings.*

*The legal actions of the Special Chamber of the Supreme Court of the Republic of Kosovo in such court proceedings come into conflict with Article 102 of the Constitution of the Republic of Kosovo, preventing equal access of the parties to an impartial, independent, fair and lawful court proceedings".*

4. The Applicant addresses the Court with the following request, "*to annul the judgment [C – IV – 14 – 5731] of the Special Chamber of the Supreme Court of Kosovo, of 06.12.2019 and judgment [AC – I – 19 – 0213] of the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo, of 16.03.2022 as unlawful decisions and that the case be remanded for retrial to the Special Chamber of the Supreme Court of Kosovo".*

## (II) Content of relevant constitutional and legal provisions

5. In this respect, I first recall Article 31 [Right to Fair and Impartial Trial] paragraph 1 and 2, and Article 6 (Right to a fair trial) of the ECHR.

**Constiturion 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.*

*[…]*

**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. [...]*

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

**Article 10**
**Judgments, Decisions and Appeals**

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

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

**Article 36**
**General Rules on Evidence**

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

**Article 64**
**Oral Appellate Proceedings**

*1. The Appellate Panel shall, on its own initiative or the written application of a party, decide to whether or not to hold on or more oral hearings on the concerned appeal. The Appellate Panel shall take into account any application*

*for oral proceedings submitted by any of the parties setting forth its reasons for requesting oral proceedings. Such an application must be filed prior to the closing of written appellate procedures.*
*[…]*

**Article 65**
**Submission of New Evidence**

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

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

**Article 69**
**Oral Appellate Proceedings**

1.

*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 on Contested Procedure no. 03/L-006**

*"[…]*
*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".*

**(III) Basic principles relating to the right to a hearing from Article 31 [Right to Fair and Impartial Trial] of the Constitution in cojunction with Article 6 (Right to a fair trial) of the ECHR;**

6. It is a general principle that litigants have a right to a public hearing because this protects them against the administration of justice in secret with no public scrutiny. By rendering the administration of justice visible, a public hearing contributes to the achievement of the aim of Article 6 paragraph 1, namely a fair trial (*Malhous v, Cezch Republic* [GC], no. 33071/96, judgment of 12 July 2001, paragraphs 55–56). While a public hearing constitutes a fundamental principle enshrined in Article 6 paragraph 1, the obligation to hold such a hearing is not absolute (*De Tommaso v. Italy* [GC], no. 43395/09, judgment of 23 February 2017, paragraph 163). The right to an oral hearing is not only linked to the question whether the proceedings involve the examination of witnesses who will give their evidence orally (*Ramos Nunes de Carvalho e Sá v. Portugal* [GC], no. 55391/13, 57728/13 and 74041/13, judgment of 6 November 2018, paragraph 187). To establish whether a trial complies with the requirement of publicity,

it is necessary to consider the proceedings as a whole (*Axen v. Germany*, no. 8273/78, judgment of 8 December 1983, paragraph 28).

7. In the proceedings before a court of first and only instance the right to a "public hearing" under Article 6 paragraph 1 entails an entitlement to an "oral hearing" (*Fredin v. Sweeden* (no. 2), no. 18928/91, judgment of 23 February 1994, paragraphs 21-22; *Allan Jacobsson v. Sweeden* (no. 2), no. 8/1997/792/993, judgment of 19 february 1998, paragraph 46; (*Göç v. Turkey* [GC], no. 36590/97, judgment of 11 July 2002, paragraph 47; *Selmani and Others v. former Yougoslav Republic of Macedonia*, no. 67259/14, judgment of 9 May 2017, paragraphs 37-39) unless there are exceptional circumstances that justify dispensing with such a hearing (*Hesse-Anger and Anger v. Germany* (dec.), no. 45835/99, judgment of 21 May 2003; *Mirovni Inštitut v. Slovenia*, no. 32303/13, judgment of 13 June 2018, paragraph 36). The exceptional character of such circumstances stems essentially from the nature of the questions at issue, for example in cases where the proceedings concern exclusively legal or highly technical questions (*Koottummel v. Austria*, no. 49616/06, judgment of 10 March 2010, paragraph 19), and not from the frequency of such questions (*Miller v. Sweeden*, no.55853/00, judgment of 8 May 2005, paragraph 29; *Mirovni Inštitut v. Slovenia*, cited above, paragraph 37).

8. The absence of a hearing at second or third instance may be justified by the special features of the proceedings concerned, provided a hearing has been held at first instance (*Helmers v. Sweeden*, no.11826/85, judgment of 29 October 1991, paragraph 36, but contrast see paragraphs 38-39; *Salomonsson v. Sweeden*, no. 38978/97, judgment of 12 February 2003, paragraph 36). Thus, leave-to-appeal proceedings and proceedings involving only questions of law, as opposed to questions of fact, may comply with the requirements of Article 6 even though the appellant was not given an opportunity of being heard in person by the appeal or cassation court (*Miller v. Sweeden* , cited above, paragraph 30). Regard therefore needs to be had to the particularities of proceedings in the highest courts.

9. The ECtHR has examined whether the lack of a public hearing at the level below may be remedied by holding a public hearing at the appeal stage. In a number of cases, it has found that the fact that proceedings before the appellate court are held in public cannot remedy the lack of a public hearing at the lower levels of jurisdiction where the scope of the appeal proceedings is limited, in particular where the appellate court cannot review the merits of the case, including a review of the facts and an assessment as to whether the penalty was proportionate to the misconduct. If, however, the appellate court has full jurisdiction, the lack of a hearing before a lower level of jurisdiction may be remedied before that court (*Ramos Nunes de Carvalho e Sá v. Portugal* [GC], cited above, paragraph 192 and case-law references therein). As a result, a complaint concerning the lack of a public hearing may be closely linked to a complaint concerning the allegedly insufficient extent of the review performed by the appellate body (ibid, paragraph 193).

10. The ECtHR has emphasised the importance of an adversarial hearing before the body performing the judicial review of a decision not complying with the guarantees of Article 6, where that body has a duty to ascertain whether the factual basis for the decision was sufficient to justify it (*Ramos Nunes de Carvalho e Sá v. Portugal* [GC], cited above, paragraph 211). In this particular case, the lack of a hearing either at the stage of the disciplinary decision or at the judicial review stage, combined with the insufficiency of the judicial review, gave rise to a violation of Article 6 paragraph 1 (paragraph 214).

11. Accordingly, unless there are exceptional circumstances that justify dispensing with a hearing (see the summary of the case-law in *Ramos Nunes de Carvalho e Sá v. Portugal* [GC], cited above, paragraph 190), the right to a public hearing under Article 6 paragraph 1 implies a right to an oral hearing at least at one level of jurisdiction (*Fischer v. Austria*, no. 16922/90, judgment of 26 April 1995, paragraph 44; *Salomonsson v. Sweeden*, cited above, paragraph 36).

12. In *Vilho Eskelinen ad others v. Finland* [GC], no. 63235/00, judgment of 19 April 2007, paragraph 74, the Court found no violation of Article 6 paragraph 1 on account of the lack of a hearing. It attached weight to the fact that the applicants had been able to request a hearing, although it had been for the courts to decide whether a hearing was necessary; that the courts had given reasons for refusing to hold a hearing; and that the applicants had been given ample opportunity to put forward their case in writing and to comment on the submissions of the other party (ibid.). For a case where interim measures were taken without a hearing being held, see *Helmut Blum v. Austria, no. 33060/10*, judgment of 5 April 2016, paragraphs 70–74.

13. It may also be legitimate in certain cases for the national authorities to have regard to the demands of efficiency and economy (*Eker v. Turkey*, no. 24016/05, judgment of 24 January 2018, paragraph 29. In the case cited, the ECtHR did not deny that the proceedings at two levels of jurisdiction had taken place without a hearing. The ECtHR pointed out that the legal issues had not been especially complex and that it had been necessary to conduct the proceedings promptly (paragraph 31). The dispute had concerned textual and technical matters that could be adequately determined on the strength of the case file. Moreover, the proceedings had involved an exceptional emergency procedure (an application for an order for publication of a reply in a newspaper), which the Court found to be necessary and justifiable in the interests of the proper functioning of the press.

14. It should be noted that in the context of disciplinary proceedings, in view of what is at stake – namely the impact of the possible penalties on the lives and careers of the persons concerned and their financial implications – the ECtHR has held that dispensing with an oral hearing should be an exceptional measure and should be duly justified in the light of its case-law (*Ramos Nunes de Carvalho e Sá v. Portugal* [GC], cited above, paragraphs 208-211). The case cited is also important in relation to disciplinary sanctions against a judge. The Court emphasised the specific context of disciplinary proceedings conducted against judges (paragraphs 196, 211 and 214)

15. As regards proceedings concerning prisoners, incarceration cannot in itself justify not giving them a hearing before a civil court (*Igranov and others v. Russia*, no. 42399/13 and 8 others, judgment of 10 September 2018, paragraphs 34-35). Practical reasons may be taken into consideration but the principles of the right to a fair hearing must be observed and the prisoner must have the opportunity to ask to be present at the hearing (*Altay v. Turkey* (no. 2), no. 11236/09, judgment of 9 July 2019, paragraph 77). If the prisoner has not made such a request when this possibility was not provided for in domestic law, that does not mean that the prisoner has waived his or her right to appear in court (paragraph 78). In this context, the first question to be determined is whether the nature of the dispute dictates that the prisoner should appear in person. If so, the domestic authorities are required to take practical measures of a procedural nature to ensure the prisoner's effective participation in the hearing in his or her civil case (*Yevdokimov and others v. Russia*, no. 27236/05, 44223/05, 53304/07, 40232/11, 60052/11, 76438/11, 14919/12, 19929/12, 42389/12, 57043/12 and 67481/12, judgment of 16 May 2016, paragraphs 33-47. In the case cited, the domestic courts had refused to allow prisoners to attend hearings in civil proceedings to which they were parties, on the grounds that no provision was made in domestic law for

transferring the prisoners to the court. Finding that the applicants had been deprived of the opportunity to present their cases effectively, the ECtHR held that the domestic authorities had failed to meet their obligation to ensure respect for the principle of a fair trial (paragraph 52 – see also *Altay v. Turkey* (no. 2), cited above, paragraphs 78–81). Furthermore, a practical problem arising because the applicant is serving a prison sentence in a different country does not preclude consideration of alternative procedural options, such as the use of modern communication technologies, so that the applicant's right to be heard can be respected (*Pönkä v. Estonia*, no. 64160/11, judgment of 8 February 2017, paragraph 39).

16. In *Ramos Nunes de Carvalho e Sá v. Portugalisë* [GC], the Grand Chamber summarised some examples of situations where a hearing was, or was not, necessary (pragraphs 190–191).

17. 381. Specific applications:

a) A hearing may not be required where there are no issues of credibility or contested facts which necessitate a hearing and the courts may fairly and reasonably decide the case on the basis of the parties' submissions and other written materials (*Döry v. Sweeden*, no. 28394/95, judgment of 12 February 2003, paragraph 37; *Saccoccia v. Austriae*, no. 69917/01, judgment of 4 May 2009, paragraph 73; *Mirovni Inštitut v. Slovenia*, cited above, paragraph 37).

b) The Court has also accepted that forgoing a hearing may be justified in cases raising merely legal issues of a limited nature (*Allan Jacobsson v. Sweeden* (no. 2), cited above, paragraph 49; *Valová, Slezák and Slezák v. Slovakia* no.44925/98, judgment of 1 September 2004, paragraphs 65-68) or cases which present no particular complexity (*Varela Assalino v. Portugal*, no. 64336/01, decision of 25 April 2002 (dec.); *Speil v. Austria*, no. 42057/98, decision (dec.). The same also applies to highly technical questions. The ECtHR has had regard to the technical nature of disputes over social-security benefits, which are better dealt with in writing than by means of oral argument. The ECtHR has repeatedly held that in this sphere the national authorities, having regard to the demands of efficiency and economy, could abstain from holding a hearing since systematically holding hearings could be an obstacle to the particular diligence required in social-security proceedings (*Schuler-Zgraggen v. Switzerland*, no. 14518/89, presuda od 24 june 1993 godine, paragraph 58; *Döry v. Sweden*, cited above, paragraph 41; and contrast see *Salomonsson v. Sweeden*, cited above, paragraphs 39–40). The judgment in *Ramos Nunes de Carvalho eSá v. Portugal* [GC], cited above, specified that notwithstanding the technical nature of some discussions and depending on what was at stake in the proceedings, public scrutiny could be viewed as a necessary condition both for transparency and for the protection of litigants' rights (paragraphs 208 and 210).

c) On the contrary, holding an oral hearing will be deemed necessary when it comes to examining issues of law and important factual questions (*Fischer v. Austria*, cited above, paragraph 44), or assessing whether the facts were correctly established by the authorities (*Malhous v. Cezch Republic* [GC], cited above, paragraph 60) and ensuring a more thorough review of facts in dispute (*Ramos Nunes de Carvalho e Sá v. Portugal* [GC], cited above, paragraph 211), and where the circumstances require the courts to gain a personal impression of the applicant, to allow the applicant to explain his personal situation, in person or through his representative Guide on Article 6 of the European Convention on Human Rights. Right to a fair trial (criminal limb), updated on 31 August 2022 (*Miller v. Sweeden*, cited above, paragraph 34 in fine; *Andersson v.*

*Sweeden* no. 17202/04, judgment of 7 March 2011, paragraph 57) – for example when the court needs to hear evidence from the applicant about his personal suffering in order to determine the level of compensation to award him (*Göç v. Turkey* [GC], cited above, paragraph 51; *Lorenzetti v. Italy*, paragraph 33) or to obtain information about the applicant's character, behaviour and dangerousness (*De Tommaso v. Italy* [GC], cited above, paragraph 167 – or where the court requires clarifications on certain points, inter alia by this means (*Fredin v. Sweeden* (no. 2), cited above, paragraph 22; *Lundevall v. Sweeden*, no. 38629/97, judgment of 12 February 2003, paragraph 39).

18. The case of Pönkä v. Estonia concerned the use of a simplified procedure (reserved for small claims) and the court's refusal to hold a hearing, without providing reasons for its application of the written procedure (paragraphs 37-40). The case of Mirovni Inštitut v. Slovenia concerned a challenge against a decision to reject a bid in a tendering procedure. The domestic court had given no explanation for refusing to hold a hearing, thus preventing the Court in Srasbourg from determining whether the domestic court had simply neglected to deal with the applicant institute's request for a hearing or whether it had decided to dismiss it and, if so, for what reasons (paragraph 44). In both cases the Court found that the refusal to hold a hearing had breached Article 6 paragraph 1 (Pönkä v. Estonia, cited above, paragraph 40; Mirovni Inštitut v. Slovenia, cited above, paragraph 45).

19. In a case concerning hearings before the Court of Arbitration for Sport (CAS), the ECtHR found that the matters relating to the question whether the sanction imposed on the applicant for doping had been justified, had required a hearing open to public scrutiny. The ECtHR observed that the facts had been contested and that the penalties which the applicant had been liable to incur carried a significant degree of stigma and were likely to adversely affect her professional honour. The ECtHR therefore concluded that there had been a violation of Article 6 paragraph 1 on account of the lack of a public hearing before the CAS (Mutu and Pechstein v. Sitzerland, no. 40575/10 nd 67474/10, judgment of 4 February 2019, paragraphs 182–183).

20. Whenever an oral hearing is to be held, the parties have the right to make oral submissions, to choose another way of participating in the proceedings (for example by appointing a representative) or to ask for an adjournment. For the effective exercise of those rights, the parties to the dispute must be informed of the date and place of the hearing sufficiently in advance to be able to make arrangements. The ECtHR has stated that the national courts are required to check the validity of the notification prior to embarking on the merits of the case. The analysis set out in the domestic decisions must go beyond a mere reference to the dispatch of a judicial summons and must make the most of the available evidence in order to ascertain whether an absent party was in fact informed of the hearing sufficiently in advance. A domestic court's failure to ascertain whether an absent party received the summons in due time and, if not, whether the hearing should be adjourned, is in itself incompatible with genuine respect for the principle of a fair hearing and may lead the Court to find a violation of Article 6 paragraph 1 (see Gankin and others v. Russia, no. 2430/06, 1454/08, 11670/10 and 12938/12, judgment of 31 August 2016, paragraphs 39 and 42, and the summary of the principles established in the case-law concerning notification of hearings, the provision of information to the parties and the question of waiving the right to a hearing, paragraphs 34–38).

21. Presence of press and public: The public character of proceedings before judicial bodies protects litigants against the administration of justice in secret with no public scrutiny and thus constitutes one of the means whereby confidence in the courts can be maintained, contributing to the achievement of the aim of a fair trial (Diennet v.

France, no. 18160/91, judgment of 26 September 1995, paragraph 33; Martinie v. France [GC], no. 58675/00, judgment of 12 April 2006, paragraph 39; Gautrin and others v. France, no. 38/1997/822/1025-1028, judgment of 20 May 1998, paragraph 42; Hurter v. Switzerland, no. 53146/99, judgment of 14 March 2006, paragraph 26; Lorenzetti v. Italiy, no. 32075/09, judgment of 10 July 2012, paragraph 30. Article 6 paragraph 1 does not, however, prohibit courts from deciding, in the light of the special features of the case, to derogate from this principle (Martinie v. France [GC], paragraphs 40-44). Holding proceedings, whether wholly or partly, in camera must be strictly required by the circumstances of the case (Lorenzetti v. Italiy, cited above, paragraph 30). The wording of Article 6 paragraph 1 provides for several exceptions.

22. According to the wording of Article 6 paragraph 1, "the press and public may be excluded from all or part of the trial"

a) „In the interests of morals, public order or national security in a democratic society" (Zagorodnikov v. Russia, no. 66941/01, judgment of 7 September 2007, paragraph 26; B. i P. v. United Kingdom, no. 36337/97 and 35974/97, paragraph 39); Guide to Article 6 of the Convention - Right to a fair trial (civil limb) European Court of Human Rights 75/97 Last updated: 31 August 2019.

b) „where the interests of juveniles or the protection of the private life of the parties so require": the interests of juveniles or the protection of the private life of the parties are in issue, for example, in proceedings concerning the residence of minors following their parents' separation, or disputes between members of the same family (ibid, paragraph 38); however in cases involving the transfer of a child to a public institution the reasons for excluding a case from public scrutiny must be subject to careful examination (Moser v. Austria, no.12643/02, judgment of 21 December 2006, paragraph 97). As for disciplinary proceedings against a doctor, while the need to protect professional confidentiality and the private lives of patients may justify holding proceedings in private, such an occurrence must be strictly required by the circumstances (Diennet v. France, cited above, paragraph 34; and for an example of proceedings against a lawyer: Hurter v. Switzerland, cited above, paragraphs 30– 32);

c) „or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice": it is possible to limit the open and public nature of proceedings in order to protect the safety and privacy of witnesses, or to promote the free exchange of information and opinion in the pursuit of justice (B. i P. v. United Kingdom, cited above, paragraph 38; Osinger v. Austria, no. 54645/00, judgment of 24 June 2005, paragraph 45)

23. The ECtHR has added that the case-law concerning the holding of a hearing as such, relating mainly to the right to address the court as enshrined in Article 6 paragraph 1 (see above) is applicable by analogy to hearings that are open to the public. Thus, where a hearing takes place in accordance with domestic law, it must in principle be public. The obligation to hold a public hearing is not absolute since the circumstances that may justify dispensing with one will essentially depend on the nature of the issues to be determined by the domestic courts (De Tommaso v. Italiy [GC], cited above, paragraphs 163-67). "Exceptional circumstances – including the highly technical nature of the matters to be determined - may justify the lack of a public hearing, provided that the specific subject matter does not require public scrutiny" (Lorenzetti v. Italy, cited above, paragraph 32).

24. The mere presence of classified information in the case file does not automatically imply a need to close a trial to the public. Accordingly, before excluding the public from a particular set of proceedings, the courts must consider specifically whether such exclusion is necessary for the protection of a public interest, and must confine the measure to what is strictly necessary in order to attain the aim pursued (Nikolova and Vandova v. Bulgaria, no. 31195/96, judgment of 25 March 1999, paragraphs 74-77, concerning a hearing held in camera because of documents classified as State secrets).

25. Lastly, the lack of a hearing may or may not be sufficiently remedied at a later stage in the proceedings (Le Compte, Van Leuven and De Meyere v. Belgium, no. 6878/75; 7238/75, paragraphs 60–61; Diennet v. France, cited above, paragraph 34; Malhous v. Cezch Republic [GC], cited above,paragraph 62).

26. Waiver of the right to a public hearing/to appear at the hearing: neither the letter nor the spirit of Article 6 paragraph 1 prevents an individual from waiving his right to a public hearing of his own free will, whether expressly or tacitly, but such a waiver must be made in an unequivocal manner and must not run counter to any important public interest (Le Compte, Van Leuven and De Meyere v. Belgium , cited above, paragraph 59; Håkansson and Sturesson v. Sweeden, no.11855/85, judgment of 21 February 1990, paragraph 66; Exel v. Cezch Republic, no. 48962/99, judgment of 5 October 2005, paragraph 46). The summons to appear must also have been received in good time (Yakovlev v. Russia, no. 72701/01, judgment of 15 March 2005, paragraphs 20–22).

27. Conditions governing a waiver of these rights: the person concerned must consent (Le Compte, Van Leuven and De Meyere v. Belgium , cited above, paragraph 59), of his own free will (Albert and Le Compte v. Belgium, no. 7299/75; 7496/76, judgment of 10 February 1983, paragraph 35). The right may be waived expressly or tacitly (Le Compte, Van Leuven and De Meyere v. Belgium , cited above, paragraph 59). But it must be done in an unequivocal manner (Albert and Le Compte v. Belgium, cited above, paragraph 35; Håkansson and Sturesson v. Sweeden, cited aove, paragraph 67) and it must not run counter to any important public interest (ibid, paragraph 66).

28. Failure to request a public hearing does not necessarily mean that the person concerned has waived the right to have one held; regard must be had to the relevant domestic law (Exel v. Cezch Republic, cited above, paragraph 47; Göç v. urkey [GC], cited above, paragraph 48 in fine). Whether or not the applicant requested a public hearing is irrelevant if the applicable domestic law expressly excludes that possibility (Eisenstecken v. Austria, no. 29477/95, judgment of 3 October 2000, paragraph 33)

29. Examples: waiver of the right to a public hearing in disciplinary proceedings: Le Compte, Van Leuven and De Meyere v. Belgium , cited above, paragraph 59; H. v. Belgium, 1987, paragraph 54. Unequivocal waiver of the right to a public hearing: Schuler-Zgraggen v. Switzerland, cited above, paragraph 58; and contrast Exel v. Cezch Republic, cited above, paragraphs 48–53.

## (IV) Cases in which the ECtHR reasoned that there were exceptional circumstances that justified the waiver of the public hearing

30. Highlighting the general principles of the right to a hearing in the above section, I stated all the general principles as stated by the ECtHR in its manuals and guides for the application of Article 6 of the ECHR, and the general conclusion is that the right to a public hearing is a rule that suffers certain exceptions.

31. For the further needs of the analysis of the specific case, I will elaborate the exceptions to the general rule and apply them to a specific case.

32. I recall that the ECtHR in Ramos Nunes de Carvalho e Sá v. Portugal [GC], cited above, the Grand Chamber summarized some examples of situations in which a hearing was, or was not, necessary (paragraphs 190–191).

33. Specific applications:

a) A hearing may not be required where there are no issues of credibility or contested facts which necessitate a hearing and the courts may fairly and reasonably decide the case on the basis of the parties' submissions and other written materials (Döry v. Sweden, paragraph 37; Saccoccia v. Austria, cited above, paragraph 73; Mirovni Inštitut v. Slovenia, paragraph 37).

b) The Court has also accepted that forgoing a hearing may be justified in cases raising merely legal issues of a limited nature (Allan Jacobsson v. Sweeden (no. 2), cited above, paragraph 49; Valová, Slezák and Slezák v. Slovakia, 2004, paragraphs 65-68) or cases which present no particular complexity (Varela Assalino v. Portugal (dec.), cited above; Speil v. Austria (dec.), cited above. The same also applies to highly technical. The ECtHR has had regard to the technical nature of disputes over social-security benefits, which are better dealt with in writing than by means of oral argument. In some cases, the ECtHR has repeatedly held that in this sphere the national authorities, having regard to the demands of efficiency and economy, could abstain from holding a hearing since systematically holding hearings could be an obstacle to the particular diligence required in social-security proceedings (Schuler Zgraggen v. Switzerland, cited above, paragraph 58; Döry v. Switzerland, cited above, paragraph 41; and contrast, see case Salomonsson v. Switzerland , cited above, paragraphs 39–40). The judgment in case Ramos Nunes de Carvalho e Sá v. Portugal [GC], cited above, specified that notwithstanding the technical nature of some discussions and depending on what was at stake in the proceedings, public scrutiny could be viewed as a necessary condition both for transparency and for the protection of litigants' rights (paragraphs 208 and 210).

34. First, the ECtHR in case Döry v. Sweden paragraphs 37-45, the ECtHR concluded that there were exceptional circumstances that justified the waiver of the hearing in the applicant's cases, explaining in detail;

> *37. The Court first finds that the entitlement to a "public hearing" in Article 6 § 1 necessarily implies a right to an "oral hearing". However, the obligation under Article 6 § 1 to hold a public hearing is not an absolute one. Thus, a hearing may be dispensed with if a party unequivocally waives his or her right thereto and there are no questions of public interest making a hearing necessary. A waiver can be done explicitly or tacitly, in the latter case for example by refraining from submitting or maintaining a request for a hearing (see, among other authorities, Hakansson and Sturesson v. Sweden, no. 11855/85, judgment of 21 February 1990, Series A no. 171-A, p. 20, § 66; and Schuler-Zgraggen v. Switzerland, judgment of 24 June 1993, Series A no. 263, pp. 19-20, § 58 Furthermore, a hearing may not be necessary due to exceptional circumstances of the case, for example when it raises no questions of fact or law which cannot be adequately resolved on the basis of the case-file and the parties' written observations (see, mutatis mutandis, Fredin v. Sweden (no. 2), no. 18928/91, judgment of 23 February 1994, Series A no. 283-A, pp. 10-11, §§ 21-22, and Fischer v. Austria, judgment of 26 April 1995, Series A no. 312, pp. 20-21, paragraph 44).*
>
> *38. In the present case, the Court notes that the applicant did not request a hearing before the County Administrative Court in either of her cases. As Section*

*9 of the 1971 Act provided that the proceedings before the administrative courts were normally in writing, the applicant could have been expected to request a hearing before that court if she attached importance to it. She did not do so, however, and the Court therefore finds that she can reasonably be considered to have waived her right to a hearing before the County Administrative Court. Moreover, the Supreme Social Insurance Court only determined whether or not leave to appeal should be granted and, as a consequence of its refusal to grant leave, did not make a full examination of the applicant's case. Even assuming that Article 6 § 1 applies to the determination of this question, the Court finds that it could be adequately resolved on the basis of the case file and the written submissions and that, accordingly, the absence of an oral hearing before the Supreme Social Insurance Court was justified.*

*39. It remains to be determined whether the lack of an oral hearing before the Administrative Court of Appeal involved a breach of the applicant's rights under Article 6 § 1. In this connection, the Court reiterates that in proceedings before a court of first and only instance there is normally a right to a hearing (see, among other authorities, Hakansson and Stureson v. Sweden, judgment cited above, p. 20, § 64). However, the absence of a hearing before a second or third instance may be justified by the special features of the proceedings at issue, provided a hearing has been held at first instance (see, for instance, Helmers v. Sweden, no. 11826/85, judgment of 29 October 1991, Series A no. 212-A, p. 16, § 36). Accordingly, unless there are exceptional circumstances that justify dispensing with a hearing, the right to a public hearing under Article 6 § 1 implies a right to an oral hearing at least before one instance.*

*40. The Court notes that no hearing was held at first instance since the applicant did not request the County Administrative Court to hold one. It acknowledges that, in the interests of the proper administration of justice, it is normally more expedient that a hearing is held already at first instance rather than only before the appellate court. Depending on the circumstances of the case, it might therefore be acceptable to reject a request for a hearing upon appeal, although no such hearing has been held at first instance.*

*41. The Court further recognises that disputes concerning benefits under social-security schemes are generally rather technical and their outcome usually depends on the written opinions given by medical doctors. Many such disputes may accordingly be better dealt with in writing than in oral argument. Moreover, it is understandable that in this sphere the national authorities should have regard to the demands of efficiency and economy. Systematically holding hearings could be an obstacle to the particular diligence required in social-security cases (see Schuler-Zgraggen v. Switzerland, judgment cited above, pp. 19-20, paragraph 58).*

*42. In the applicant's cases, the Court observes that the jurisdiction of the Administrative Court of Appeal was not limited to matters of law but also extended to factual issues. The issue in both cases was whether the applicant's ability to work was reduced in a way which would have made her entitled to benefits under the 1962 and 1976 Acts. The Court observes, however, that the courts' assessments were entirely based on the medical evidence in the cases, presented in the form of written opinions issued by different physicians. It does not appear that the physicians' opinions differed. Also the applicant referred to this written evidence; in her appeal against the Office's decision of 20 November 1991, she contended that the medical opinions in fact showed that she was entitled to the benefits sought.*

*43. In these circumstances, it must be concluded that the dispute in the cases, as presented by the applicant to the Administrative Court of Appeal, concerned the correct interpretation of written medical evidence. The Court considers that the appellate court could adequately resolve this issue on the basis of the medical certificates in question and the applicant's written submissions. It notes, in this connection, that the applicant, in the decisions rejecting her requests for oral hearings, was invited by the appellate court to submit final observations in writing.*

*44. The Court further takes into account that the applicant did not request the Administrative Court of Appeal to call any witnesses and did not rely on any other oral evidence. In fact, she did not state any reasons for her requests that the appellate court hold hearings in the cases.*

*45. Having regard to the foregoing, the Court finds that there were exceptional circumstances which justified dispensing with a hearing in the applicant's cases. There has accordingly been no breach of Article 6 § 1 of the Convention.*

35. Then the ECtHR in case of Saccoccia v. Austria, paragraphs 73-80, the ECtHR concluded that there were exceptional circumstances that justified the waiver of the hearing in the applicant's cases, explaining in detail;

*73. The Court must therefore examine whether there where circumstances of such a nature as to dispense the courts from holding a hearing. The Court has accepted that a hearing may not be required where there are no issues of credibility or contested facts which necessitate a hearing and the courts may fairly and reasonably decide the case on the basis of the parties' submissions and other written materials (see, as a recent authority, mutatis mutandis, Jussila v. Finland [GC], no. 73053/01, paragraph 41, ECtHR 2006-XIV, with further references).*

*74. It follows from the Court's case-law that the character of the circumstances that may justify dispensing with an oral hearing essentially comes down to the nature of the issues to be decided by the competent national court, not to the frequency of such situations. It does not mean that refusing to hold an oral hearing may be justified only in rare cases (ibid., §42). The overarching principle of fairness embodied in Article 6 is, as always, the key consideration.*

*75. In particular the Court has had regard to the technical nature of disputes over social-security benefits, which are better dealt with in writing than by means of oral argument. It has repeatedly held that in this sphere the national authorities, having regard to the demands of efficiency and economy, could abstain from holding a hearing since systematically holding hearings could be an obstacle to the particular diligence required in social-security proceedings (see, for instance, Schuler-Zgraggen v. Switzerland, 24 June 1993, paragraph 58, Series A no. 263; Döry v. Sweden, no. 28394/95, § 41, 12 November 2002; and Pitkanen v. Sweden, no. 52793/99, 26 August 2003). In addition the Court has sometimes noted that the dispute at hand did not raise issues of public importance such as to make a hearing necessary (see Schuler-Zgraggen, ibid.).*

*76. Furthermore, the Court has accepted that forgoing a hearing may be justified in cases raising merely legal issues of a limited nature (see Allan Jacobsson (no. 2), cited above, paragraphs 48-49, and Valova and others v. Slovakia, no. 44925/98, paragraph 68, 1 June 2004) or of no particular complexity (Varela*

*Assalino v. Portuga (decision), no. 64336/01, 25 April 2002, and Speil v. Austria (decision) 42057/98, 5 September 2002).*

*77. Turning to the circumstances of the present case, the Court observes that the courts had to examine whether the conditions laid down in the relevant provisions of the ELAA and the 1998 Treaty for execution of the forfeiture order were met. The issues to be examined included questions of reciprocity, the question whether the acts committed by the applicant were punishable under Austrian law at the time of their commission, compliance with statutory time-limits and whether the proceedings before the Rhode Island District Court, which had issued the confiscation order, had been in conformity with the standards of Article 6 of the Convention.*

*78. In the Court's view, the present proceedings concerned rather technical issues of inter-State cooperation in combating money-laundering through the enforcement of a foreign forfeiture order. They raised exclusively legal issues of a limited nature. All the Austrian courts had to establish was whether the conditions set out in the ELAA and the 1998 Treaty for granting the execution of the confiscation order were met. As has already been established (see paragraphs 63-64 above), the proceedings did not involve any review of the merits of the forfeiture order issued by the Rhode Island District Court.*

*79. The present proceedings did not require the hearing of witnesses or the taking of other oral evidence. Furthermore, the Court agrees with the Government that the courts were not called upon to hear the applicant in person. The proceedings did not raise any issue of his credibility, nor did they concern any circumstances which would have required the courts to gain a personal impression of the applicant. In these circumstances, the courts could fairly and reasonably decide the case on the basis of the parties' written submissions and other written materials. They were therefore dispensed from holding a hearing.*

*80. Consequently, there has been no violation of Article 6 paragraph 1.*

36. Further, in the case Saccoccia v. Austria, the ECtHR referred to the case (*Varela Assalino v. Portugal* decision no. 64336/01, of 25 April 2002, where it concluded that there were exceptional circumstances that justified the waiver of the hearing in the cases the applicant, explaining in detail;

*In the present case the applicant was in principle entitled to a public hearing as none of the exceptions laid down in the second sentence of Article 6 paragraph 1, A. p. 20, paragraph 64) applied In addition, he expressly requested, before the Court of Appeals, and then the Supreme Court, that a hearing be held before the first-instance court.*

*It remains to be seen whether the nature of the issues to be decided required public hearings.*

*In this regard, the court recalls that the court in Tomar decided, in both proceedings, that the state of the case file made it possible, without the need for additional evidence, to examine the applicant's allegations. In fact, the court considered that the facts of the case had been established, so that it remained to decide only on the legal questions concerning the interpretation of the relevant provisions of the Civil Code.*

*In the eyes of the Court, this conclusion cannot be considered unreasonable. In fact, the contested proceedings did not raise any issue which could not be adequately resolved on the basis of the case file. Unlike the case Malhous (Malhous v. Czech Republic [GC], no. 33071/96, judgment of 12 July 2001, unpublished), the only question was the interpretation of the relevant provisions of the Civil Code, the facts of the cause already established, both in one another procedure and also in the other procedure. The court particularly notes, in connection with the procedure number 192/96, that the applicant did not adequately challenge the version of the facts presented by the opposing party, so the court in Tomar was not invited to decide on disputed facts, but only on the question of law in dispute.*

*Under these conditions, when only questions of law are to be decided, for which the dispute to be resolved is more appropriate in writing than to submissions, examination based on the case file may be sufficient. In this regard, the court emphasizes that the applicant did not present any evidence that would convince him that only the oral phase after the exchange of statements could ensure the fairness of the proceedings.*

*Finally, the Court notes that in certain cases it is legitimate for national authorities to take into account imperatives of efficiency and economy (judgment Schuler-Zgraggen cited above, ibid). Therefore, in cases such as this one, where the facts are not in dispute and the legal issues are not particularly complex, failure to hold a public hearing does not violate the requirements of Article 6 paragraph 1 in matters of orality and publicity. (see the judgment Allan Jacobsson v. Sweden (no. 2) cited above, p. 169, paragraph 49).*

37. Also, in the case of Saccoccia v. Austria, the ECtHR referred to the case *Speil v. Austri*a decision no. 42057/98, of 5 September 2002), where it concluded that there were exceptional circumstances that justified the waiver of hearings in the applicant's cases, reasoning in detail;

*The Court observes that the Administrative Court dismissed this request on the ground that it found that the administrative authorities had not committed any procedural error and that the facts were undisputed in view of the applicant's failure to challenge the first instance authority's findings of fact. The Court notes that where the facts are not disputed and a tribunal is only called upon to decide on questions of law of no particular complexity, an oral hearing may not be required under Article 6 paragraph 1 (see Varela Assalino, cited above, with further references). The Court considers that such was the situation in the present case as the Administrative Court only had to decide on questions of law which did, however, not raise complex issues. Taking further into account national authorities' demands of efficiency and economy (see decision Schuler-Zgraggen cited above, p. 20, paragraph 58), the Court concludes that the Administrative Court could abstain from holding an oral hearing.*

38. The ECtHR has also accepted that a waiver of the hearing may be justified in cases where only questions of law are raised which are limited in nature (see Allan Jacobsson v. Sweden (no. 2),where in paragraphs 44-49 reasoned:

*44. In the view of the Commission, the Supreme Administrative Court, although it was the only judicial instance that had acted in the proceedings in issue, had not been under an obligation to hold an oral hearing. The applicant's main request to the court, to be granted a building permit, was dismissed because of lack of competence. The only issue to be determined on its merits was whether the public*

*authorities had been entitled to revoke the detailed development plan concerned and the court concluded that they had been empowered to do so irrespective of the rights that might have accrued during the plan's existence. The particular facts pertaining to the applicant's situation were therefore of no importance. His appeal had not raised any question of fact or of law that could not have been adequately dealt with on the case file. There had therefore been no violation of Article 6 § 1 of the Convention.*

*45. The Government, mainly agreeing with the Commission, stressed that the essence of the matter examined by the Supreme Administrative Court was whether the decision to annul the detailed development plan was contrary to the law. The relevant law had been clear and the facts undisputed, leaving little scope for judicial discretion. In addition, the outcome of the proceedings could hardly be said to have been important to the applicant. Extending the right to an oral hearing to cases such as the present one might have severe consequences for the expediency and efficiency of the administration of justice, in particular before the appellate courts where the workload is considerable. There were thus strong reasons justifying the refusal to hold a hearing.*

*46. The Court recalls that, according to its case-law, in proceedings, as here, before a court of first and only instance the right to a "public hearing" under Article 6 § 1 entails an entitlement to an "oral hearing" unless there are exceptional circumstances that justify dispensing with such a hearing (see, for instance, Fredin v. Swweden (no. 2), no. 18928/91 judgment of 23 February 1994, Series A no. 283-A, pp. 10–11, paragraphs 21–22; Fischer v. Austria, no. 16922/90, of 26 April 1995, Series A no. 312, pp. 20–21, paragraph 44; and the Stallinger and Kuso v. Austria judgment of 23 April 1997, Reports of Judgments and Decisions 1997-II, pp. 679–80, paragraph 51).*

*47. As to the particular circumstances of the proceedings in the applicant's case, the Court notes that the Supreme Administrative Court did not consider that it had jurisdiction to deal with his request to be granted a building permit. It only had competence to deal with a collateral issue, namely the lawfulness of the revocation of the detailed development plan of 1938.*

*48. In rejecting the appeal on this point, the Supreme Administrative Court based its reasoning on a direct application of the pertinent provisions in Chapter 17, section 4, and Chapter 5, section 11, of the 1987 Act which were couched in precise and clear terms (see paragraphs 24 and 26 above). It held that, under these provisions, the plan in question was to be considered as one whose implementation period had expired and could thus be amended or annulled without regard to the rights that may have accrued during its existence. Moreover, this provision was an exception to the general requirement in Chapter 1, section 5, that when taking planning decisions the authorities must have regard to individual interests, not only public interests (ibid.). Since the Supreme Administrative Court adopted this interpretation of the law, it did not need to determine any issue of fact as to the applicant's individual interests or, so it appears, any other factual point concerning his arguments against the revocation of the detailed development plan (see paragraph 23 above).*

*49. Thus, in view of the above considerations, the Court does not find on the evidence before it that the applicant's submissions to the Supreme Administrative Court were capable of raising any issues of fact or of law pertaining to his building rights which were of such a nature as to require an oral hearing for their disposition (see the above-mentioned Fredin (no. 2), judgment, p. 11,*

*paragraph 22). On the contrary, given the limited nature of the issues to be determined by it, the Supreme Administrative Court, although it acted as the first and only judicial instance in the case, was dispensed from its normal obligation under Article 6 paragraph 1 to hold an oral hearing. Accordingly, there has been no violation of this provision.*

39. Finally, the ECtHR has also accepted that a waiver of the hearing may be justified in cases where only questions of law are raised which are limited in nature (Valová, Slezák and Slezák v. Slovakia, cited above), where in paragraphs 65-69 reasoned:

*65. The Court notes that in its judgment of 30 January 1998 the Nitra Regional Court expressly stated that the only point in question was a question of law: it was called upon to decide whether the applicants had standing, within the meaning of Section 4 of the Land Ownership Act, to have the property restored. From this point of view the crucial issue was whether or not the private company of which the applicants' predecessors had been members and from which the land in question had been taken away had been a legal person.*

*66. That issue was determined in the judgment of the Nitra branch office of the Bratislava Regional Court of 16 December 1993 delivered in the context of proceedings which concerned a different restitution claim of the applicants. Prior to the delivery of that judgment the Regional Court held an oral hearing in the course of which the applicants were free to submit their arguments. In these circumstances, the Court considers that another public hearing was not indispensable under Article 6 § 1 of the Convention when deciding on the point at issue.*

*67. The Court does not find on the evidence before it that the applicants' submissions to the Nitra Regional Court were capable of raising any issues of fact or of law pertaining to their restitution claim which were of such a nature as to require an oral hearing for their disposition. At the relevant time Section 250f of the Code of Civil Procedure permitted courts to deliver a judgment without prior oral hearing in similar cases (see paragraph 36 above).*

*68. In view of the above considerations and given the limited nature of the issues to be determined by the Nitra Regional Court, the Court finds that the absence of a hearing in the proceedings before the Nitra Regional Court was not contrary to the requirements of Article 6 § 1 of the Convention in the particular circumstances of the case.*

*69. Accordingly, there has been no violation of Article 6 paragraph 1.*

## (V) Application of the above-mentioned basic principles to the present case

40. I recall that the Applicant is a company that during 1997 had business cooperation with the company "Feronikeli". That business cooperation included the Applicant's obligation to deliver its products to the "Feronikeli" company, which were necessary for it to carry out its economic activity without any problem. Specifically, during 1997, according to the documents in the case file, the company "Feronikeli" ordered a certain amount of their products from the Applicant, which the Applicant delivered that same year, and which can be seen on the basis of the delivery note that is in the file subject. With the mentioned delivery note, it is confirmed that the Applicant delivered the contracted amount of his products to the company "Feronikeli" for a total amount of 1,506,463.00 Yugoslavian dinars at the time, which, according to the financial expert's

report made at the request of the Applicant, represents the amount of 271,456,00 euro. However, according to the Applicant, the company "Feronikeli" did not pay the funds for the delivered products within the deadline.

41. It was these allegations of the Applicant that the company "Feronikeli" did not fulfill its obligations towards the Applicant that led to the situation that the Applicant sought compensation for his rights in court proceedings, which, according to the Applicant, he initiated by submitting a statement of claim to the District Commercial Court in Prishtina. The statement of claim, as claimed by the Applicant, was initiated on 26 November 1998 by using the right to send letters to the court through the postal service. However, the regular courts could not determine from the case file whether the District Commercial Court in Prishtina undertook procedural actions in order to process and decide on the Applicant's tatement of claim from 1998.

42. On 12 May 2006, the Applicant continued legal proceedings in order to realize his claims by submitting a proposal for enforcement to the District Court in Prishtina against the company "Feronikeli" which the District Court by decision [I. No. 209/2006] terminated on the objection of PAK, due to the fact that the company "Feronikeli" entered the privatization process. Bearing in mind this new circumstance, the Applicant submitted a request to the Liquidation Authority of PAK regarding his claim, which was rejected by the PAK Liquidation Authority. The Applicant, using legal remedies, filed an appeal with the Special Chamber of the SCSC against the decision of the PAK Liquidation Authority, which rejected it without scheduling a hearing, „*considering that the claim was statute barred*".

43. The Applicant filed an appeal with the Appellate Panel of the SCSC, in which he cited the following facts as a basis, among other things „*that the Specialized Panel of the SCSC did not take into consideration that the statute of limitations was interrupted by the filing the statement of claim in 1998", as well as that „Specialized Panel of the SCSC did not hold a hearing"*. The Appellate Panel of the SCSC rendered a decision rejecting the Applicant's appeal as ungrounded, reasoning;

> *The appealed judgment of the Special Chamber is correct in its result and legal reasoning, therefore it should be upheld.*
>
> *Based on Article 374 of the Law on Obligations, which was in force at the time of the creation of the relationship, mutual claims of legal entities from contracts on the sale of goods and services, as well as claims for compensation for expenses incurred in connection with those contracts, expire in three years.*
>
> *Based on Article 387 of the Law on Obligations, the statute of limitations is terminated when the debtor acknowledges the debt.*
>
> *In this case, the debt stated by the appellant is based on several invoices issued from 1 January 1997 to 31 December 1997, which exist in the case file.*
>
> *The obligation of the statute of limitations for the respondent SOE to pay the debt based on the issued invoices reached on 1 January 2001.*
>
> *The appellant alleges that the recognition of the debt from 2006 for the payment of invoices issued for the specified period, as well as the claim filed at the SCSC in 2006 or at the LA, the statute of limitations was interrupted. However, again failed to interrupt the statute of limitations because the latter states that it filed the claim in 2006, which is again more than three years, which is required by law for claims to be statute-barred.*

*The appellant turned to the Liquidation Authority even later, namely on 21 October 2006, when the statute of limitation of claim was indisputable.*

*Consequently, it can be concluded that the appellant's claim was submitted after the legal deadline, therefore it is time-barred within the meaning of Article 374 of the Law on Obligations.*

*Based on Article 387 of the Law on Obligations, it is clear that the respondent did not give a written statement for the recognition of the debt, or the latter did not take any other indirect action for the recognition of the debt, determined by the aforementioned legal provision, therefore, in the case of this appellant, there is no interruption of the statute of limitations.*

*Based on Article 374 of the LOR, the appellant had three years at his disposal to claim the debt against the SOE at the SCSC, however, it failed to file a timely claim at the SCSC.*

*For these reasons, the Appellate Panel assesses as correct the judgment of the first instance of the SCSC when by the appealed judgment it dismissed as ungrounded the appeal filed against the decision of the Liquidation Authority.*

*For these reasons, the Appellate Panel considers that the appellant's appeal should be rejected as ungrounded and that the appealed judgment should be upheld as fair and based on the law, while not entering into the applicant's appealing allegations.*

44. The very fact that the Specialized Panel of the SCSC and the Appellate Panel of the SCSC, among other things, did not hear the litigants and held a public hearing are the main allegations of the Applicant regarding the violation of Article 31 of the Constitution in conjunction with Article 6 of the ECHR.

45. Returning to the present case as far as I am concerned as a judge, there is no dispute that a hearing was not held before the Specialized Panel of the SCSC and the Appellate Panel of the SCSC, as stated in the judgment itself.

46. Also, as far as I am concerned as a judge, there is no dispute that the applicant has not waived the right to a hearing, on the contrary, it is indisputable that the Applicant by the last submission requested a public hearing in the appeal submitted to the Appellate Panel of the SCSC in which it is stated:

*„The authorized representative of the claimant proposes to the Appellate Panel of the Special Chamber of the Supreme Court in Prishtina that, in order to consider the appeal in terms of Article 190, paragraph 4 of the LCP, to hold a public hearing for the correct determination of the factual situation".*

47. Therefore, in the circumstances of the present case, I hold (i) that the fact that the Applicant did not request a hearing before the Specialized Panel of the SCSC does not imply his waiver of this right, ii) that the Applicant expressly requested the holding of a public hearing, before the Appellate Panel of the SCSC, which creates an obligation for it to examine the necessity of holding the hearing; (iii) that the Applicant was denied the right to a hearing at both levels of the panels of the SCSC.

48. Therefore, in the further analysis, I will reason whether, in the circumstances of the present case, there are exceptional circumstances that justify the absence of a hearing before the Specialized Panel of the SCSC and the Appellate Panel of the SCSC.

49. Furthermore, even if I, as a single judge, and the judges who are the majority refer to the same practice of the ECtHR, that is, the judgment of the Grand Chamber of the ECtHR *Ramos Nunes de Carvalho e Sá v. Portugal*, cited above, I consider that the majority has erroneously interpreted this judgment of the Grand Chamber, namely interprets it exclusively from a formalistic point of view until it goes into the essence of the judgment and the ECtHR cases to which this judgment refers, which are exceptions to the rule on the obligation of a public hearing and which I elaborated in detail in paragraphs 32-39 of this dissenting opinion.

50. Through a detailed review of the above-mentioned exceptions to the general rule on necessity of public hearing, I conclude that the ECtHR first (I) determines what legal issue should be resolved before the competent court, then, (II) whether a public hearing is necessary when resolving this legal issue or the ltter can be resolved more easily by reviewing the documentation, and finally (III) whether the hearing of witnesses, confrontation, or some action that will facilitate the resolution of the issue in a public session is necessary in the determination and resolution of these issues.

**(I) the legal issue should be resolved before the competent court,**

51. Therefore, following the consistent vase law of the ECtHR, namely the Grand Chamber in the judgment *Ramos Nunes de Carvalho e Sá v. Portugal it is first necessary to* determine what legal issue should be resolved before the competent court.

52. Returning to the present case, the statement of claim, that is, the dispute between the parties arose because the Applicant claims that the company "Feronikeli" did not pay him the claims it owed. And the legal question that the regular courts should have determined is the question of determining the statute of limitations of the claim that the Applicant points out in its statement of claim.

53. Therefore, I conclude that the regular courts should have determined whether the applicable Article 374 of the Law on Obligations, which was in force at the time of the establishment of the relationship, which foresees the mutual claims of legal entities for contracts on the sale of goods and services, as well as claims for compensation for expenditures made in connection with those contracts, become statute-barred for three years.

54. Also, regular courts should have determined whether, based on Article 387 of the Law on Obligations, there was recognition of the debt and whether there was an interruption of the statute of limitation, as claimed by the Applicant.

55. Based on the above, I conclude that all disputable issues are "*exclusively legal issues*", namely the applicability of the Law on Obligations, and the interpretation of Articles 374 and 387 of the Law on Obligations.

56. I recall the ECtHR in the case of Saccoccia v. Austria, cited above, paragraphs 77-78, the ECtHR concluded that there have been exceptional circumstances that justified the waiver of hearings in the Applicant's cases, reasoning in detail;

> *77. Turning to the circumstances of the present case, the Court observes that the courts had to examine whether the conditions laid down in the relevant provisions of the ELAA and the 1998 Treaty for execution of the forfeiture order were met. The issues to be examined included questions of reciprocity, the question whether the acts committed by the applicant were punishable under Austrian law at the time of their commission, compliance with statutory time-limits and whether the proceedings before the Rhode Island District*

*Court, which had issued the confiscation order, had been in conformity with the standards of Article 6 of the Convention.*

*78. In the Court's view, the present proceedings concerned rather technical issues of inter-State cooperation in combating money-laundering through the enforcement of a foreign forfeiture order. They raised exclusively legal issues of a limited nature. All the Austrian courts had to establish was whether the conditions set out in the ELAA and the 1998 Treaty for granting the execution of the confiscation order were met. As has already been established (see paragraphs 63-64 above), the proceedings did not involve any review of the merits of the forfeiture order issued by the Rhode Island District Court.*

57. Furthermore, the ECtHR in the case of *Varela Assalino v. Portugal* decision no. 64336/01, of 25 April 2002, where it concluded that "*exclusively legal issues*" were involved and reasoned;

*In the eyes of the Court, this conclusion cannot be considered unreasonable. In fact, the contested proceedings did not raise any issue which could not be adequately resolved on the basis of the case file. Unlike the case Malhous (Malhous v. Czech Republic [GC], no. 33071/96, judgment of 12 July 2001, unpublished), the only question was the interpretation of the relevant provisions of the Civil Code, the facts of the cause already established, both in one another procedure and also in the other procedure. The court particularly notes, in connection with the procedure number 192/96, that the applicant did not adequately challenge the version of the facts presented by the opposing party, so the court in Tomar was not invited to decide on disputed facts, but only on the question of law in dispute.*

*Under these conditions, when only questions of law are to be decided, for which the dispute to be resolved is more appropriate in writing than to submissions, examination based on the case file may be sufficient. In this regard, the court emphasizes that the applicant did not present any evidence that would convince him that only the oral phase after the exchange of statements could ensure the fairness of the proceedings.*

*Finally, the Court notes that in certain cases it is legitimate for national authorities to take into account imperatives of efficiency and economy (judgment Schuler-Zgraggen cited above, ibid). Therefore, in cases such as this one, where the facts are not in dispute and the legal issues are not particularly complex, failure to hold a public hearing does not violate the requirements of Article 6 paragraph 1 in matters of orality and publicity. (see the judgment Allan Jacobsson v. Sweden (no. 2) cited above, p. 169, paragraph 49).*

58. Subsequently, the ECtHR also accepted that a waiver of the hearing may be justified in cases where only questions of law are raised which are limited in nature (see Allan Jacobsson v. Sweden (no. 2),where in paragraph 48 reasoned:

*48. In rejecting the appeal on this point, the Supreme Administrative Court based its reasoning on a direct application of the pertinent provisions in Chapter 17, section 4, and Chapter 5, section 11, of the 1987 Act which were couched in precise and clear terms (see paragraphs 24 and 26 above). It held that, under these provisions, the plan in question was to be considered as one whose implementation period had expired and could thus be amended or annulled without regard to the rights that may have accrued during its existence. Moreover, this provision was an exception to the general requirement in Chapter*

*1, section 5, that when taking planning decisions the authorities must have regard to individual interests, not only public interests (ibid.). Since the Supreme Administrative Court adopted this interpretation of the law, it did not need to determine any issue of fact as to the applicant's individual interests or, so it appears, any other factual point concerning his arguments against the revocation of the detailed development plan (see paragraph 23 above).*

59. Based on the above, I conclude that the ECtHR in all cases where the legal issue concerns the interpretation of the legal norm of its application, the determination of the existence of rights in accordance with the legal norm, the ECtHR took the view that the absence of holding a public hearing is not in contradiction with the requirements of Article 6 of the ECHR.

**(II) whether a public hearing is necessary when resolving this legal issue or it can be solved more easily by reviewing the documentation**

60. Furthermore, consistently following the case law of the ECtHR and the Grand Chamber in judgment *Ramos Nunes de Carvalho e Sá v. Portugal* the second question that the ECtHR asks in order to determine whether a public hearing is necessary is the question of whether a public hearing is necessary when resolving a legal issue or whether it can be resolved more easily by reviewing the documents.

61. Returning to the present case, I recall that all the disputable issues are "*exclusively legal issues*", namely the applicability of the Law on Obligations and the interpretation of Articles 374 and 387 of the Law on Obligations.

62. I recall you that the Applicant filed an appeal with the Specialized Panel of the SCSC, which issued a judgment [C-IV- 14-5731], rejecting the statement of claim of the Applicant's representative as ungrounded, reasoning that;

*The decision is rendered without holding a court hearing because the facts and evidence in the case are clear enough, therefore the individual judge does not expect more information and arguments to be brought to the hearing in terms of Article 72, paragraph 11 of the Law on SCSC (No. 06 L-086).*

*The claimant requested a debt in the amount of 271,456 euro, emphasizing that he supplied the respondent with various products from 1 January 1997 to 31 December 1997, based on a regular business relationship.*

*The time period 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 has never before requested this debt from the respondent by a lawsuit filed in one of the courts or another competent authority.*

*The deadline for filing a statement of claim regarding debt compensation began to run on 31 December 1997.*

*In accordance with Article 374 of the Law on Obligations no. 29/1978, which was applicable at the time, provides: "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 assessed that no proceedings have been initiated before a court or other competent authority to request the alleged debt.*

*Therefore, the Court came to the conclusion that the lawsuit in question should be rejected in entirety as ungrounded, because it is statute-barred. The statute of limitations has not been interrupted and the claimant has not submitted any evidence in this regard.*

*Taking into account the statute of limitation, the court is obliged to dismiss the lawsuit in entirety, as stated in the enacting clause.*

63. Furthermore, the Applicant filed an appeal with the Appellate Panel of the SCSC rendered a decision rejecting the Applicant's appeal as ungrounded, reasoning;

*In this case, the debt stated by the appellant is based on several invoices issued from 1 January 1997 to 31 December 1997, which exist in the case file.*

*The obligation of the statute of limitations for the respondent SOE to pay the debt based on the issued invoices reached on 1 January 2001.*

*The appellant alleges that the recognition of the debt from 2006 for the payment of invoices issued for the specified period, as well as the claim filed at the SCSC in 2006 or at the LA, the statute of limitations was interrupted. However, again failed to interrupt the statute of limitations because the latter states that it filed the claim in 2006, which is again more than three years, which is required by law for claims to be statute-barred.*

*The appellant turned to the Liquidation Authority even later, namely on 21 October 2006, when the statute of limitation of claim was indisputable.*

*Consequently, it can be concluded that the appellant's claim was submitted after the legal deadline, therefore, it is time-barred within the meaning of Article 374 of the Law on Obligations.*

64. Based on the above, I conclude that "*exclusively legal issues*" were raised before the Specialized Panel of the SCSC and the Appellate Panel of the SCSC (i) when the debt arose based on the applicable laws, (ii) whether there was an interruption of the statute of limitation based on the applicable laws, and (iii) whether the statute of limitations has occurred based on the applicable laws.

65. First of all, I note that the first question (i) when the debt arose based on the applicable laws, the regular courts could only determine on the basis of the documentation that the Applicant submitted, in which it claimed to have supplied the respondent with various products since 1 January 1997 until 31 December 1997, based on a regular business relationship.

66. Furthermore, I note that the second question (ii) whether there has been an interruption of the statute of limitation on the basis of valid laws, the regular courts could only determine on the basis of the documentation submitted by the applicant in the regular courts, namely written evidence that the debt was recognized, or by written evidence that it demanded the return of the debt by filing a lawsuit before regular courts within the appropriate time frame.

67. Finally, I note that the third question (iii) whether the statute of limitations has occurred on the basis of valid laws, the regular courts could only determine on the basis of the documentation provided by the applicant, namely the written evidence that the lawsuit before the regular courts within the appropriate time period demanded the payment of the debt.

68. I recall that the ECtHR in the case of Döry v. Sweeden, paragraphs 37-45, paragraphs 43-45, the ECtHR concluded that there have been exceptional circumstances that justified the waiver of the hearing in the Applicant's cases, reasoning in detail;

> *43. In these circumstances, it must be concluded that the dispute in the cases, as presented by the applicant to the Administrative Court of Appeal, concerned the correct interpretation of written medical evidence. The Court considers that the appellate court could adequately resolve this issue on the basis of the medical certificates in question and the applicant's written submissions. It notes, in this connection, that the applicant, in the decisions rejecting her requests for oral hearings, was invited by the appellate court to submit final observations in writing.*
>
> *44. The Court further takes into account that the applicant did not request the Administrative Court of Appeal to call any witnesses and did not rely on any other oral evidence. In fact, she did not state any reasons for her requests that the appellate court hold hearings in the cases.*
>
> *45. Having regard to the foregoing, the Court finds that there were exceptional circumstances which justified dispensing with a hearing in the applicant's cases. There has accordingly been no breach of Article 6 § 1 of the Convention.*

69. Then the ECtHR in the case of Saccoccia v. Austria paragraph 79, the ECtHR concluded that there have been exceptional circumstances that justified the waiver of the hearing in the Applicant's cases, explaining in detail;

> *79. The* present *proceedings did not require the hearing of witnesses or the taking of other oral evidence. Furthermore, the Court agrees with the Government that the courts were not called upon to hear the applicant in person. The proceedings did not raise any issue of his credibility, nor did they concern any circumstances which would have required the courts to gain a personal impression of the applicant. In these circumstances, the courts could fairly and reasonably decide the case on the basis of the parties' written submissions and other written materials. They were therefore dispensed from holding a hearing.*

70. Furthermore, the ECtHR in the case of *Varela Assalino v. Portugal* decision no. 64336/01, of 25 April 2002, where it concluded that "*exclusively legal issues*" are involved and reasoned;

> *Under these conditions, when only questions of law are to be decided, for which the dispute to be resolved is more appropriate in writing than to submissions, examination based on the case file may be sufficient. In this regard, the court emphasizes that the applicant did not present any evidence that would convince him that only the oral phase after the exchange of statements could ensure the fairness of the proceedings.*

71. Subsequently, the ECtHR also accepted that a waiver of the hearing may be justified in cases where only legal questions are raised that are limited in nature (see Allan Jacobsson v. Sweden (no. 2),where in paragraph 49 it reasoned:

> *49. Thus, in view of the above considerations, the Court does not find on the evidence before it that the applicant's submissions to the Supreme Administrative Court were capable of raising any issues of fact or of law pertaining to his building rights which were of such a nature as to require an oral hearing for their disposition (see the above-mentioned Fredin (no. 2), judgment, p. 11, § 22). On the contrary, given the limited nature of the issues to be determined by it, the Supreme Administrative Court, although it acted as the first and only judicial instance in the case, was dispensed from its normal obligation under Article 6 § 1 to hold an oral hearing. Accordingly, there has been no violation of this provision.*

72. Finally, the ECtHR also accepted that a waiver of the hearing could be justified in cases where only questions of law are raised that are limited in nature (see Valová, Slezák and Slezák v. Slovakia, cited above), where in paragraph 67 it reasoned:

> *67. The Court* does *not find on the evidence before it that the applicants' submissions to the Nitra Regional Court were capable of raising any issues of fact or of law pertaining to their restitution claim which were of such a nature as to require an oral hearing for their disposition. At the relevant time Section 250f of the Code of Civil Procedure permitted courts to deliver a judgment without prior oral hearing in similar cases (see paragraph 36 above).*

73. Based on the above, I conclude that the ECtHR in all cases where the legal issue could be better determined by the written statement, the ECtHR took the position that the absence from holding a public hearing is not in conflict with the requirements from Article 6 of the ECHR.

**(III) whether the hearing of witnesses, a confrontation, or some action that will facilitate the resolution of disputed issues by a public session is necessary for the determination and resolution of disputed issues.**

74. Finally, following the consistent practice of the ECtHR and the Grand Chamber in judgment Ramos Nunes de Carvalho e Sá v. Portugal, as the third issue that the ECtHR poses to determine whether a public hearing is necessary is whether the determination and the resolution of contested issues requires the hearing of witnesses, confrontation, or an action that will facilitate the resolution of contested issues in a public hearing.

75. Returning to the present case, I recall that all contested issues are "*exclusively legal issues*", namely the application of the Law on Obligations and the interpretation of Articles 374 and 387 of the Law on Obligations.

76. Further, I note that the Applicant has not requested that any witnesses be heard or that a confrontation be conducted or that evidence be presented that cannot be presented without holding a public hearing.

77. I also recall that before the Specialized Panel of the SCSC, which rendered the judgment [C-IV-14-5731], which rejected the claim of the applicant as ungrounded, whereby it reasoned;

*The decision is rendered without holding a court hearing because the facts and evidence in the case are clear enough, therefore the individual judge does not expect more information and arguments to be brought to the hearing in terms of Article 72, paragraph 11 of the Law on SCSC (No. 06 L-086).*

78. Firstly, the ECtHR in case Döry v. Sweden paragraph 44, the ECtHR concluded that there have been exceptional circumstances that justified the waiver of hearing in the cases of the Applicant, reasoning in detail;

> *44. The Court further takes into account that the applicant did not request the Administrative Court of Appeal to call any witnesses and did not rely on any other oral evidence. In fact, she did not state any reasons for her requests that the appellate court hold hearings in the cases.*

79. Then, the ECtHR in case Saccoccia v. Austria, paragraphs 79-80, the ECtHR concluded that there have been exceptional reasoning in detail;

> *79. The* present *proceedings did not require the hearing of witnesses or the taking of other oral evidence. Furthermore, the Court agrees with the Government that the courts were not called upon to hear the applicant in person. The proceedings did not raise any issue of his credibility, nor did they concern any circumstances which would have required the courts to gain a personal impression of the applicant. In these circumstances, the courts could fairly and reasonably decide the case on the basis of the parties' written submissions and other written materials. They were therefore dispensed from holding a hearing.*
>
> *80.* Consequently*, there has been no violation of Article 6 § 1.*

80. On the basis of the above, I conclude that the ECtHR in all cases where the legal question could be without hearing the witness and the presentation of the evidence, so that the legal question can be better determined by the written statement, the ECtHR is of the view that the absence of public hearing

## (IV) The conclusion regarding the alleged violations of the Applicant's rights

81. Based on the above and taking into account the established practice of the ECtHR, consistently following the practice of the ECtHR, namely the Grand Chamber in the judgment Ramos Nunes de Carvalho e Sá v. Portugal, I as an individual judge conclude that in the circumstances of the present case, there are exceptional circumstances that justify the absence of a hearing before the Specialized Panel of the SCSC and the Appellate Panel of the SCSC, namely;

**I.** that the ECtHR in all cases where the legal issue concerns the interpretation of the legal norm of its application, the determination of the existence of rights in accordance with the legal norm, the ECtHR has held the position that not holding a public hearing is not in violation with the requirements of Article 6 of the ECHR.

**II.** that the ECtHR in all cases where the legal issue could be better determined by written presentation, the ECtHR has held the position that not holding a public hearing is not contrary to the requirements of Article 6 of the ECHR.

**III.** that the ECtHR in all cases where a legal issue could be resolved without the hearing of witnesses and the presentation of evidence that can only be presented in a public hearing, and that legal issues can be better determined by

the presentation of a written statement, the ECtHR assessed that not holding a public hearing is not contrary to the requirements of Article 6 of the ECHR.

82. I consider that no Applicant has turned to the Constitutional Court only to have the right to a hearing or any other procedural right, on the contrary, every Applicant turned to the Court to exercise an essential right, namely a effective right which it consider to belongs to him.

83. In the present case, the Applicant addressed the Court for compensation of his claim and the regular courts provided him the opportunity to present his evidence, which the Applicant did.

84. The duty of the Court is to first determine if there has been a violation and to correct it by enabling the Applicant to exercise the substantive right that the applicant requested and not to provide him with a procedural right that is not effective.

85. I conclude that in the circumstances of the present case there are exceptional circumstances that justify the absence of the hearing before the Specialized Panel of the SCSC and the Appellate Panel of the SCSC, because all the evidence could have been presented in writing, which in the present case it is more suitable for corroborating evidence.

86. For the above, I conclude that there has been no violation of the right to a hearing from Article 31 [Right to Fair and Impartial Trial] of the Constitution in conjunction with Article 6 (Right to a fair trial) of ECHR as presented in the judgment.

87. Further, I consider that by this decision of the majority, we expose the Applicant to new court proceedings and additional expenses that are strictly formal in terms of holding a public hearing, making it impossible to exercise the substantive rights of the Applicant.

88. In the end, even if my interpretation of the exceptional circumstances justifying the absence of the hearing before the Specialized Panel of the SCSC and the Appellate Panel of the SCSC is not correct, taking into account the circumstances in the present case, the majority of judges should have determined in the judgment the violation of the declaratory nature as a moral satisfaction for the Applicant, in order not to expose him unnecessarily to new court proceedings and additional expenses that are strictly formal in terms of holding a public hearing without the possibility for the Applicant to exercise his essential rights.

**Dissenting Opinion is submitted by Judge;**

Radomir Laban, Judge

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On 30 January 2023 in Prishtina