



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

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Prishtina, on 20 September 2024  
Ref. no.:AGJ 2539/24

*This translation is unofficial and serves for informational purposes only.*

## JUDGMENT

in

**case no. KI177/22**

Applicant

**Pashk Bibaj**

**Constitutional review of Judgment [AC-II-21-0058] of the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo Related Matters, of 23 May 2022**

### THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

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

#### **Applicant**

1. The Referral was submitted by Pashk Bibaj from the Municipality of Gjakova (hereinafter: the Applicant), represented by Prek Kola, a lawyer in the Municipality of Gjakova.

## **Challenged decision**

2. The Applicant challenges the constitutionality of the Judgment [AC-II-21-0058] of 23 May 2022, of the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo Related Matters (hereinafter: the Appellate Panel of SCSC).
3. The Applicant was served with the contested decision on 2 November 2022.

## **Subject matter**

4. The subject matter is the constitutional review of the contested Judgment [AC-II-21-0058] of 23 May 2022, of the Appellate Panel of SCSC, whereby it is claimed that the Applicant's rights guaranteed by article 31 [Right to Fair and Impartial Trial] in conjunction with article 6 (Right to a fair trial) of the European Convention on Human Rights (hereinafter: ECHR) and 32 [Right to Legal Remedies] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution) have been violated.

## **Legal basis**

5. The Referral is based on paragraphs 1 and 7 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution, articles 22 (Processing Referrals) and 47 (Individual Requests) of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter: the Law) and Rule 25 (Filing of Referrals and Replies) of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).
6. On 7 July 2023, the Rules of Procedure of the Constitutional Court of the Republic of Kosovo No. 01/2023, were published in the Official Gazette of the Republic of Kosovo and entered into force fifteen (15) days after their publication. Consequently, during the examination of the Referral, the Constitutional Court refers to the provisions of the aforementioned Rules of Procedure. In this regard, in accordance with Rule 78 (Transitional Provisions) of the Rules of Procedure No. 01/2023, exceptionally, certain provisions of the Rules of Procedure No. 01/2018, will continue to be applied in cases registered in the Court before its abrogation, only if and to the extent that they are more favourable for the parties.

## **Proceedings before the Constitutional Court**

7. On 16 November 2022, the applicant submitted the referral by mail service, which the Constitutional Court of the Republic of Kosovo (hereinafter: the Court) received on 18 November 2022.
8. On 2 December 2022, the Court notified the applicant about the registration of the referral.
9. On 2 December 2022, the Court notified the SCSC about the registration of the referral and requested the acknowledgment of receipt that proves when the applicant was served with the contested judgment of the Appellate Panel of SCSC.
10. On 5 December 2022, the President of the Court by Decision [no. GJR. KI177/22] appointed judge Bajram Ljatifi, as Judge Rapporteur and by Decision [no. KSH. KI177/22] appointed the Review Panel, composed of judges: Safet Hoxha (Presiding), Remzije Istrefi-Peci and Nexhmi Rexhepi (members).

11. On 5 December 2022, the SCSC submitted to the Court the acknowledgment of receipt, which proves that the legal representative of the applicant was served with the contested judgment of the Appellate Panel of the SCSC on 2 November 2022.
12. On 16 December 2022, Judge Enver Peci took the oath in front of the President of the Republic of Kosovo, in which case his mandate at the Court began.
13. On 29 May 2023, the Court requested from the SCSC the complete case file.
14. On 1 June 2023, SCSC submitted the requested case file to the Court.
15. On 14 June 2023, the Court initially notified the Basic Court about the registration of the referral and at the same time requested to notify the Court if the applicant submitted a response to the complaint of the Privatization Agency of Kosovo (hereinafter: PAK).
16. On 26 June 2023, the Basic Court submitted clarifications and supplementary documents.
17. On 1 August 2023, the Court sent a letter to the SCSC, through which it requested to provide answers or information to the following questions:

*“(i) Has the applicant been informed about the conduct of the court proceedings regarding his case before the Special Chamber of the Supreme Court of Kosovo?”*

*“(ii) Has the applicant presented any document/response in defense of his case before the Special Chamber of the Supreme Court of Kosovo?”*
18. On 2 August 2023, the SCSC submitted its answers to the Court’s questions, which will be reflected below in this Judgment.
19. On 18 January 2024, the Review Panel considered the report of the Judge Rapporteur and decided that the case be postponed for review in one of the next sessions, with the request that the same be completed with additional clarifications.
20. On 11 March 2024, Judge Jeton Bytyqi took the oath in front of the President of the Republic of Kosovo, in which case his mandate at the Court began.
21. On 7 May 2024, the Court sent a letter to the Court of Appeals requesting the following response:

*“(i) In the present case, namely in relation to subject matter jurisdiction, has your court rendered a decision by which it has declared itself incompetent? If this is the case, then has the applicant been notified about this decision?; and*

*(ii) Following this, in the event of rendering such a decision, by which the Court of Appeals has declared itself incompetent, please submit to the Court a copy of the decision and information on whether the applicant has been notified about the decision for the transfer of the case to the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo Related Matters”*.
22. On 8 May 2024, the Court of Appeals submitted to the Court a copy of the accompanying Act [Ac. no. 5176/19] submitted to the SCSC on 28 September 2021.
23. On 6 June 2024, the Court returned the case file to the SCSC.

24. On 4 September 2024, the Review Panel considered the report of the Judge Rapporteur and unanimously recommended to the Court the admissibility of the referral. On the same day, the Court unanimously decided to (i) declare the referral admissible and (ii) hold that the Judgment [AC-II-21-0058] of 23 May 2022 of the Appellate Panel of the SCSC is not in compliance with paragraph 1 of Article 31 [Right to Fair and Impartial Trial] of the Constitution in conjunction with paragraph 1 of Article 6 (Right to a fair trial) of the ECHR; and (iii) remand the Judgment [AC-II-21-0058] of 23 May 2022, of the Appellate Panel of the SCSC for retrial according to the findings of the Court's Judgment.

### **Summary of facts**

25. On 23 April 2001, the applicant in the capacity of the buyer and the "Bec" Agricultural Cooperative, headquartered in the Municipality of Gjakova - in the capacity of the seller, concluded the Contract for the sale of immovable properties, respectively plots no. 731, no. 732 and no. 733.
26. From the case file, it follows that on 14 March 2002, the Municipal Court in Peja by Decision [Vr. no. 2073/2002] certified the sale-purchase Contract (hereinafter: the Sales Contract).
27. On 3 March 2005 and 5 July 2006, the Kosovo Trust Agency (hereinafter: KTA) requested the Director for Cadastre, Geodesy and Property in the Municipality of Gjakova not to implement the cadastral changes based on the sales contract, on behalf and title of the applicant.
28. On 7 March 2005, KTA through a letter notified the President of the Municipal Court in Peja about the annulment of the aforementioned sale contract, specifying that the KTA administers all socially or publicly owned enterprises registered or operating in the territory of Kosovo in accordance with UNMIK Regulation 2002/12 on the establishment of the Kosovo Trust Agency.
29. Based on the case file, respectively according to the certificates on property rights issued by the Directorate for Cadastre, Geodesy and Property in the Municipality of Gjakova on 4 March 2019, respectively the certificates [no. 459/19] related to plots 731-0 and [no. 459/19] related to plot 734-0, and which are the subject of the Contract, of 23 April 2001, the latter were issued in the name of the applicant, as the owner of these plots.
30. On 28 April 2016, the Privatization Agency of Kosovo (hereinafter: PAK), filed a lawsuit for the annulment of the contested contract with the Basic Court in Gjakova (hereinafter: the Basic Court). PAK, through the lawsuit filed, claimed that Agricultural Cooperative "Bec" (hereinafter: AC "Bec") is a social enterprise placed under the administration of PAK, therefore PAK has full legal capacity to acquire, hold or sell the property *"as well as having all the self-evident competencies for the full fulfillment of the duties and powers granted by Law No. 04/L-034 on the PAK; as well as to sue and be sued in its name"*. Among other things, the PAK emphasized that in accordance with the decision of the PAK Board, according to Article 9 (Liquidations by the Agency) of Law 04/L-034 on the Privatization Agency of Kosovo, of 2011 (hereinafter: Law on PAK), the liquidation of the company AC "Bec" entered into force on 9 September 2013 and that this company is administered by the Liquidation Authority.
31. PAK justified its lawsuit for the annulment of the contested contract that (i) the concluded contract is in full contradiction with the Law on PAK; (ii) the contract has no legal basis and was concluded in complete violation of Article 6 of UNMIK Regulation no. 2000/54, of 27 September 2000 and Article 5 of UNMIK Regulation no. 2002/12 of 13 June 2002; (iii) the contract was signed by an unauthorized person and this results

in the absolute invalidity of the contract; and (iv) the Municipal Court in Peja - which certified the contract, was not competent in the territorial aspect since the object of the contract was the cadastral plots in the territory of Gjakova. In the following, PAK claimed that: *“based on Article 86 of the Law on Legal Property Relations, the form of this contract has been subject to the legislation of Kosovo, the Law in force, namely Article 26, point 14 of the Law on regular courts (Official Gazette of SAPK 2178) and Article 13 of the Law on Out of Contentious Procedure (Official Gazette of SAPK 422/39) establish that for the contract to be valid it must be certified in the Competent Court, which in this case was the Municipal Court of Gjakova, and no other Court, this contract was certified in the Court of Peja”, and “this court was not territorially competent for certification of the sales contract since the object of this contract is the cadastral plots recorded in Brekoc, the property of KB “Bec” which is in the Municipality of Gjakova, therefore, from the legal point of view of the territorial competence and not the sales contract for these assets, it had to be certified at the Municipal Court in Gjakova, where de facto and de jure the property and the object of the contract are located”*. In the end, the PAK specified that: *“The relevant legal framework after 1999, starting from 10 June 1999, has determined that all movable and immovable properties in Kosovo are under the administration of UNMIK, regulation 1999/1 article 6 the owner of the right of use, i.e. at this time, is the one in whose name the property is found in the public register”*.

32. On 2 February 2018, the applicant submitted a response to the PAK lawsuit, opposing the lawsuit in its entirety, on the grounds that (i) the latter, as a lay party in this obligational relationship, did not have and could not be aware that the object of the contract is administered by PAK; (ii) the seller - the signatory of the contract had to be notified by the PAK, that he does not have the powers to alienate the immovable property of AC “Bec”; (iii) The Municipal Court in Peja should have known that such a contract cannot be legalized; (iv) the applicant, having no knowledge of these prohibitions, entered into the contractual relationship in good faith. Following this, the applicant also specified that after signing the contract, the property was registered in his name in the respective cadastral registers.
33. On 2 August 2019, the Basic Court by Judgment [C. no. 210/16] decided to (i) reject the claim of the PAK as ungrounded, whereby it requested that the contract certified on 14 March 2002 be declared invalid; (ii) to reject the claim of the PAK as ungrounded, whereby it requested to oblige the applicant to hand over the cadastral plots to the PAK possession; and (iii) obliged the PAK to pay the procedural costs to the applicant.
34. The Basic Court, by the aforementioned Judgment, confirmed that (i) the applicant is a buyer of immovable in good faith, which is the subject of the contract; (ii) the immovable properties are still registered in the name of the applicant; (iii) *“[AKP] itself has neglected such sales due to the fact that it has not been able to manage the enterprises since initially the same was established on the basis of UNMIK Regulation 2002/12 which entered into force on 13.06.2002, while the contract was concluded on 14.03.2002; (iv) “it is not known [when] J.S.C. “Bec” was taken into management since it was registered as a joint-stock company, while the company entered into liquidation by decision of the PAK on 09.09.2013, also, the claimant took actions in 2005 with two letters, and that by addressing the Notice dated 07.03.2005, addressed the President of the Municipal Court in Peja, with a request for the annulment of the contracts which is the object of this case, noting that the PAK administers all socially or publicly owned enterprises registered or operating in the territory of Kosovo in accordance with UNMIK regulation 2002/12 on the establishment of the Kosovo Trust Agency” and (v) “Notice of 05.07.2006 addressed to the Director for Cadastre, Geodesy and Property in Gjakova, [...] where it was mentioned that we sent you a letter on 03.03.2005 not to implement the cadastral changes from the title contract of Mr. Pashk Bibaj, and all these circumstantial actions since the respondent was not notified and measures were*

*not taken against the management of the company (or at least they were not presented) who sold the immovable property which is the subject of this contract”.*

35. More specifically, the Judgment of the Basic Court clarifies that: “[Basic Court] confirmed the fact that the respondent was a buyer in good faith and that he fulfilled his contractual obligations; (ii) the immovable properties before the sales contract were recorded in the name of J.S.C. “Bec”; and (iii) this company initially formed the Sales Commission, which made a decision that the immovable properties that are the subject of the sales contract should be sold to the applicant.
36. On 16 September 2019, against the Judgment [C. no. 210/16] of the Basic Court, PAK submitted a complaint to the Court of Appeals on the grounds of essential violations of the provisions of the contested procedure, erroneous or incomplete determination of factual situation as well as erroneous application of substantive law.
37. On 19 September 2019, the Basic Court served the applicant with a copy of the PAK complaint for a response to the complaint.
38. On 16 October 2019, the Basic Court sent the case file to the Court of Appeals, namely the Judgment [C. no. 210/16] of the Basic Court and the complaint of the PAK.
39. On 5 November 2019, the applicant submitted the response to the complaint, by which he contested the complaint of the PAK on the grounds that (i) the claims of the PAK are declarative and not based on evidence and facts; (ii) At no point in the complaint has the PAK emphasized the concrete violations that it claims the Basic Court has committed, but only relies on its assumptions and does not offer any arguments regarding the essential procedural violations; and (iii) the Basic Court in a fair and complete manner determined the factual situation based on the evidence and facts found in the case file, as well as on the testimony of the applicant.
40. On 6 November 2019, the Basic Court forwarded the response to the applicant’s appeal to the Court of Appeals for “further actions”.
41. On 7 November 2019, the Court of Appeals accepted the response to the applicant’s appeal.
42. On 28 September 2021, the Court of Appeals through the accompanying act [Ac. no. 5176/19] forwarded the case file to SCSC, considering that based on Article 5 (Jurisdiction) paragraph 4 of Law no. 06/L-086 on the Special Chamber of the Supreme Court of Kosovo Privatization Agency Related Matters (hereinafter: the Law on the SCSC), the SCSC has subject matter jurisdiction to decide on the appeal of the PAK.
43. In the accompanying act of the Court of Appeals submitted to the Appellate Panel of the SCSC, it is emphasized that: *“Parties to the proceedings in this contested case are the Social Enterprise ‘Bec’, with headquarters in the village of Bec, Municipality of Gjakova, which is represented by the Privatization Agency of Kosovo (PAK), Regional Office, as claimant, and Pashk Bibaj from Gjakova, as respondent, with the object of the lawsuit the annulment of the contract on the sale and delivery of immovable property. Law No. 06/L-086, on the Special Chamber of the Supreme Court of Kosovo on PAK Related Matters, article 5, para. 4, provided that for any claim, matter, case or proceeding (collectively hereafter referred to in the text as a “matter”) referred to other courts prior to the date of entry into force of the present law shall continue to remain under that court’s jurisdiction, and its Decisions and Judgment with respect thereto shall be subject to the review of the Special Chamber upon the timely submission of an application by a party or an affected third party. Therefore, on the basis of the above, we hand over the civil case Ac. no. 5176119, with all its documents,*

*to your jurisdiction, in order to decide according to the complaint of the claimant, filed against the judgment of the Basic Court in Gjakova C. no. 21 0116, of 02.08.2019”.*

44. On 4 October 2021, the SCSC received the file submitted by the Court of Appeals and registered the case with the Appellate Panel of the SCSC with number AC-II-21-0058.
45. Based on the case file submitted by the SCSC, it turns out that the latter did not receive the applicant’s response to the PAK complaint.
46. Moreover, based on the response of the Court of Appeals, sent to the Court on 8 May 2024, it results that the applicant was also not notified about the transfer of his case to the Appellate Panel of the SCSC.
47. On 23 May 2022, the SCSC Appellate Panel by Judgment [AC-II-21-0058] decided to (i) approve the appeal of the PAK as grounded; (ii) to modify the Judgment [C. no. 210/16] of 2 August 2019 of the Basic Court; (iii) annul the sales contract [Vr. no. 2073/2002] certified on 14 March 2002; and (iv) oblige the applicant to hand over the immovable properties, which are the subject of the sales contract, to the PAK.
48. In relation to holding the hearing, the Appellate Panel (i) decided not to hold an oral hearing; and (ii) in relation to the response to the appeal of the PAK, the Appellate Panel specified that: *“based on the acknowledgment of receipt that exists in the file, the PAK complaint was accepted by the respondent’s lawyer on 19.09.2019, but there is no evidence in the file that any response was given to this complaint”.*
49. Whereas, in relation to the jurisdiction of the SCSC to decide on the PAK lawsuit, the SCSC Appellate Panel specified that: *“The object of the dispute is the request for the recognition of the right of ownership related to the mentioned plots. These plots before their sale were in the name of SOE AC “BEC”, Gjakova. The Basic Court in Gjakova had subject-matter jurisdiction for this lawsuit, as well as the complaint filed by the claimant against the Judgment of this court C. No. 210/16 of 02.08.2019, it wrongly addressed the Court of Appeals in Prishtina, since at the time of filing the appeal on 16 September 2019, this Court had no jurisdiction to decide on this appeal”.* Following this, the Appellate Panel found that based on articles 5, 6 and paragraph 1 of article 76 (Conflicts and Interpretation) of the Law on the SCSC, the SCSC *“has subject matter jurisdiction even for such lawsuits as the one in this case.*
50. In the end, regarding the merits of the appeal, the Appellate Panel (i) supported as grounded the claims of the PAK regarding the invalidity of the Sales Contract, certified on 14 March 2002 because *“based on Article 6 of UNMIK Regulation 2000/54 of 27.09.2000, which supplements and amends UNMIK Regulation no. 1999/1 of 26.06.1999, the Special Representative of UNMIK was the only authority after the inclusion of Kosovo under the international protectorate in June 1999, to administer public properties, including social properties”* and as such has been concluded contrary to the provisions of this Regulation; (ii) the sale contract has been certified by an incompetent court; (iii) the Appellate Panel does not contest *“honesty and conscientiousness of [the applicant] who had entered into a contractual relationship, not knowing in advance some facts that were important in the process of selling these properties. However, only because of the respondent’s honesty, the sales contract has no legal basis to remain in force based on the law that was in force at the time of its conclusion”.* And if *[the applicant] has paid the contracted price on the basis of this contract as he claims, for which there is no evidence in the case file, he is clearly harmed by this contractual relationship. However, he has the possibility to request compensation and the return of the funds paid in a special court procedure if this has happened”.*

i) *The response of the Basic Court in Gjakova, submitted on 26 June 2023*

51. On 26 June 2023, the Court received the answers to the Court's questions from the Basic Court in Gjakova.
52. Regarding the question of whether the applicant submitted a response to the appeal of the PAK to the Court of Appeals, the Basic Court clarified as follows: (i) to the Judgment of the Basic Court, of 2 August 2019, the PAK on 16 September 2019 submitted appeal to the Court of Appeals; (ii) on 19 September 2019, the applicant's representative received the PAK complaint; (iii) *"Since the party has a deadline of 7 days to submit a complaint and has not done so based on the accompanying act of 16.10.2023, it can be seen that the court has sent the case together with all its documents, including the complaint, for decision to the Court of Appeals"*; (iv) The Court of Appeals accepted the case submitted by the Basic Court on 18 October [2019]; (v) on 5 November 2019, the legal representative of the applicant in the Basic Court submitted an answer to the complaint; (vi) the Basic Court submitted the answer to the appeal to the Court of Appeals on 6 November 2019, and the latter accepted this answer on 7 November 2019; and (vii) *"Regarding the decision of the second instance whether the response to complaint is included, we cannot analyze it, since it is a decision of the second instance, as far as the procedure is concerned, we as a court have taken all the actions that are within our competence"*.

ii) *Response of the Special Chamber of the Supreme Court, submitted on 2 August 2023*

53. On 2 August 2023, the SCSC to the question whether the applicant was notified about the transfer of the case to the SCSC, the latter responded as follows:

*"Regarding your request related to case AC-II-21-0058, we inform you that the original case together with the supporting documents was submitted to the Constitutional Court on 01.06.2023"*.

**Applicant's allegations**

54. The applicant claims that the Judgment [AC-II-21-0058] of the SCSC Appellate Panel of 23 May 2022, was rendered in violation of his fundamental rights and freedoms guaranteed by Article 31 [Right to Fair and Impartial Trial] in conjunction with Article 6 (Right to a fair trial) of the ECHR and Article 32 [Right to Legal Remedies] of the Constitution.
55. The applicant states that after submitting the case to SCSC: *"[...] we, as the responding party, have never been notified about the course of this procedure and we have not been given the opportunity to present evidence and facts in favor of the respondent in the Appellate Panel of the Supreme Court in order to create equality of arms and procedural opposition"*.
56. Regarding the annulment of the contract, the applicant states that: *"The Appellate Panel in its Judgment annulled Contract VR. no. 2073/2002 of 14.03.2002, so this contract is not specified correctly in the aforementioned Judgment as to when this contract was concluded, as according to the contract it is dated 23.04. 2001 and compiled on 20.04.2001 and certified by the District Court in Peja on 28.02.2002, therefore, from this factual situation it is not known which contract it is about since the dates are different, and this judgment in this form cannot produce a legal effect as it is contrary to the real factual situation according to the contract"*.
57. In this context, the applicant emphasizes that *"[...] we consider that this Judgment contains violation of Article 31 of the Constitution of Kosovo for a fair trial, because*



*the Appellate Panel had to open a review session due to the change of competences and the modification of the Judgment to the detriment of the respondent that the latter present his claims regarding the facts and evidence which the Appellate Panel of the Special Chamber of the Supreme Court has decided that each party is equal in the procedure”.*

58. Regarding the allegation of violation of Article 32 of the Constitution, the applicant states that *“The other procedural violations are because the respondent was not notified in time about the Judgment of the Appellate Panel [Ac-II-21-0058] even though in this procedure lawyer Prek Kola from Gjakova was engaged, with authorization in the case file, this Judgment has affected the rights of the respondent even without being notified of the court decision until 02.11.2022”.*
59. Finally, the applicant highlights: *“we, as the responding party, have never been notified about the course of this procedure and we have not been given the opportunity to present evidence and facts in favor of the respondent in the Appellate Panel of the Supreme Court in order that the equality of arms and procedural opposition are created”.*

## **Relevant constitutional and legal provisions**

### **Constitution of the Republic of Kosovo**

#### **Article 31 [Right to Fair and Impartial Trial]**

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

### **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. 03/L-006 ON CONTESTED PROCEDURE**

### **Article 5**

**(No title)**

*“5.1 The court shall enable each party to make a statement on the claims and allegations submitted by the contentious party.*

*5.2 Only for the cases determined by this law, the court has the power to settle the claim for which the contentious party was not enabled to make a statement.”*

**Article 187  
(No title)**

*“187.1 A sample of the complaint presented timely, legally and complete, is sent within seven days to the opposing party by the court of the first degree complain, that can be replied with presentation of a complaint within seven days.*

*187.2 A sample of the reply with complaint the first degree court sends to the complainer immediately or at the latest within the period of seven days from its arrival to the court. [...]*

**Article 188  
(No title)**

*188.1 After receiving the reply to the complaint, or after the deadline for replying to the complaint, the court of the first degree will forward the subject will following documentation to the court of the second degree the complaint and the reply presented within a period of seven days at most.*

*188.2 If the complainer asses that during the first degree procedure the provisions of contestation procedures are violated, the court of the first degree can issue explanation regarding the subject of the complain relating to the violations of the kind, and according to the need it can conduct investigations aiming at verification of the correctness of the subject in the complaint.*

**LAW No. 06/L-054 ON COURTS**

**Article 26  
Competencies of the Supreme Court**

*1. The Supreme Court is competent to:*

*[...]*

*1.6. decide on Privatization Agency of Kosovo or Kosovo Trust Agency cases before its Special Chamber, as provided by Law;*

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

**Article 5  
Jurisdiction**

*1. The Special Chamber shall have exclusive jurisdiction over all cases and proceedings involving any of the following:*

1.1. a challenge to a decision or other action of the KTA or the Agency taken pursuant to the KTA Regulation or, respectively, based on the Law on the Privatization Agency of Kosovo.

1.2. a claim against the KTA or the Agency arising from the failure or refusal of the KTA or the Agency to perform an act or obligation required by law or contract;

1.3. a claim against the KTA or the Agency for financial losses alleged to have been caused by a decision or action taken by the KTA or the Agency pursuant to the administrative authority provided by the KTA Regulation or the Law on the Privatization Agency of Kosovo in respect of an Enterprise or Corporation;

1.4. a claim against an Enterprise or Corporation that is alleged to have arisen during or prior to the time that such Enterprise or Corporation is or was subject to the administrative authority of the KTA, the Agency;

1.5. a claim alleging a right, title or interest with respect to:

1.5.1. any asset or property over which the Agency or the KTA has or has asserted administrative authority;

1.5.2. the ownership of an Enterprise or Corporation;

1.5.3. the ownership of any capital of an Enterprise or Corporation; or

1.5.4. any property or asset in the possession or control of an Enterprise or Corporation if such right, title or interest is alleged to have arisen during or prior to the time that such Enterprise or Corporation is or was subject to the administrative authority of the KTA or the Agency;

1.6. a claim or complaint objecting or challenging any aspect of an official list of eligible employees of an Enterprise issued by the KTA or the Agency under Article 10 of UNMIK Regulation No. 2003/13 or any successor legislation governing the establishment of such a list;

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

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

2. During hearings, the appellate panel shall be presided over by its Presiding Judge. The Presiding Judge shall be responsible for the proper conduct of the hearing. At the beginning of each hearing, the Presiding Judge shall ascertain the attendance of the parties and their lawyers.

3. A party that is represented in a proceeding by a lawyer may address the Appellate Panel only through its lawyer, unless a member of the Appellate Panel puts a question directly to a party.

4. At the opening of the hearings, the Presiding Judge shall give a short introduction to the appeal, the legal issues in dispute and any finding of fact made by the issuer of the concerned Decision or Judgment that a party has alleged to be "clearly erroneous".

5. At a hearing, the parties shall be given the opportunity to give oral presentations of their legal arguments. The parties shall confine their presentations to the facts and evidence reflected in the record that are material to the appeal and to the legal issues that are material to the appeal. The Appellate Panel may impose a reasonable limit on the period of time allocated to each party for such presentations.

6. Except as specifically permitted pursuant to Article 70 of this Law, the judge(s) shall not conduct evidentiary proceedings.

7. The Registrar shall ensure that verbatim minutes of all oral appellate hearings are taken and recorded by the court reporter. Such minutes shall be signed by the Presiding Judge.

### **Article 70 Submission of New Evidence**

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

### **Article 76 Conflicts and Interpretation**

1. *The provisions of the present Law shall prevail over any inconsistent provision in any other regulation, law or piece of secondary legislation. However, that in the event of any conflict between the present law and Law No. 04/L-035 on the Reorganization of certain enterprises and their assets or any successor legislation thereto, the latter legislation shall prevail.*

2. *Upon entry into force of the present law, the President of the Supreme Court in close cooperation with the Supervising Judge of the Special Chamber and the Administrator of the Special Chamber, shall immediately undertake all steps necessary for the reorganization of work at the single judges and panels and the re-assignment of cases to each judge.*

3. *In interpreting and applying this law, where necessary to resolve a procedural issue not sufficiently addressed in this law, the Special Chamber shall apply, mutatis mutandis, the relevant provision(s) of the Law on Contested Procedures.*

### **Admissibility of the Referral**

60. The Court first examines whether the Applicant has fulfilled the admissibility requirements established in the Constitution, and further specified in the Law and in the Rules of Procedure.

61. In this respect, the Court refers to paragraphs 1 and 7 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution, which establish:

*“1. The Constitutional Court decides only on matters referred to the court in a legal manner by authorized parties. [...]*

*Individuals are authorized to refer violations by public authorities of their individual rights and freedoms guaranteed by the Constitution, but only after exhaustion of all legal remedies provided by law”.*

62. In the following, the Court examines whether the Applicant has fulfilled the admissibility criteria, as established in the Law. In this regard, the Court refers to articles 47 (Individual Requests), 48 (Accuracy of the Referral) and 49 (Deadlines) of the Law, which stipulate:

Article 47

(Individual Requests)

- “1. Every individual is entitled to request from the Constitutional Court legal protection when he considers that his/her individual rights and freedoms guaranteed by the Constitution are violated by a public authority.*
- 2. The individual may submit the referral in question only after he/she has exhausted all the legal remedies provided by the law”.*

Article 48  
(Accuracy of the Referral)

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

Article 49  
(Deadlines)

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

63. Regarding the fulfillment of these criteria, the Court notes that the applicant is an authorized party, who contests an act of a public authority, namely the Judgment [AC-II-21-0058] of 23 May 2022 of the Appellate Panel of the SCSC and has exhausted all legal remedies established by law. The Applicant has also specified the fundamental rights and freedoms that he claims to have been violated, in accordance with the requirements of Article 48 of the Law and has submitted the referral in accordance with the deadlines established in Article 49 of the Law.
64. The Court finds that the applicant's referral meets the admissibility criteria, established in paragraph 1 of rule 34 (Admissibility Criteria) of the Rules of Procedure. The latter cannot be declared inadmissible based on the requirements established in paragraph 3 of rule 34 of the Rules of Procedure.
65. Furthermore, and finally, the Court emphasizes that the referral cannot be declared inadmissible on any other basis. Therefore, it must be declared admissible, and its merits must be examined.

**Merits**

66. The Court initially recalls that the circumstances of the present case are related to the fact that the applicant and the Agricultural Cooperative "SH.A. Bec" in 2001 had concluded the contract, registered in the Municipal Court in Peja on 14 March 2002 with number [V. no. 2073/2002] for the sale and purchase of immovable properties, property of "SH.A. Bec". On 3 March 2005 and 5 July 2006, the KTA submitted a request to the Cadastral Office in Gjakova for the non-implementation, namely the non-registration of immovable property in the name of the applicant. On 28 April 2016, PAK filed a lawsuit with the Basic Court in Gjakova, whereby it requested the declaration of invalidity of the sale and purchase contract and the handover of the immovable property in the possession of the PAK, on the grounds that the sale-purchase contract was concluded and certified in violation of the legal provisions in force and contrary to the rules for the sale of assets of social enterprises. On the other hand, he submitted a response to the lawsuit filed by the PAK, whereby he contested the claims of the PAK, claiming that the sales contract was concluded in accordance with the provisions of the Law on Obligations. Following the lawsuit filed by the PAK, the Basic Court by the Judgment [C.

no. 210/16] of 2 August 2019 rejected claim request of the PAK on the grounds that the applicant “*is a buyer of immovable property which is the subject of the contract*”. Against this decision, on 16 September 2019, PAK filed an appeal with the Court of Appeals. In this regard, from the case file it follows that the applicant submitted a response to the PAK complaint. However, from the case file it turns out that on 16 October 2019, the Basic Court submitted the case file, including the Judgment [C. no. 210/16] of the Basic Court and the appeal of the PAK to the Court of Appeals. In the meantime, on 5 November 2019, the applicant submitted a response to the PAK complaint, which the Basic Court forwarded to the Court of Appeals on 6 November 2019. Following this, on 28 September 2021, the Court of Appeals by the accompanying Act [Ac. no. 5176/19] addressed to the immovable property stated that based on paragraph 4 of Article 5 (Jurisdiction) of the Law on the SCSC, the latter has the subject matter jurisdiction to decide on the complaint of the PAK, and how as a result, he also submitted the case file, which included the PAK complaint, but not including the applicant’s response to the PAK complaint. Also, based on the case file, received both by the SCSC and by the Court of Appeals, it results that the applicant was not informed about the transfer of the case to the Appellate Panel of the SCSC. As a result of the transfer of the case to the Appellate Panel of the SCSC, the latter, by the Judgment [AC-II-21-0058], after determining the subject matter jurisdiction in relation to the PAK lawsuit, approved the PAK appeal as grounded and modified the Judgment [C. no. 210/16] of the Basic Court of 2 August 2019.

67. Following the aforementioned findings, the applicant in his referral to the Court contests the Judgment [AC-II-21-0058] of the Appellate Panel of the SCSC, claiming, in essence, a violation of his rights guaranteed by Article 31 [Right to Fair and Impartial Trial] of the Constitution in conjunction with Article 6 of the ECHR, because as a result of the failure by the court authorities to notify about the transfer of his case to the Appellate Panel of the SCSC, he (i) was unable to present evidence in his favor and (ii) was also unable to request the holding of a hearing in this court instance. In relation to the latter, the Court notes that based on paragraph 1 of Article 69 (Oral Appellate Proceedings) of the Law on SCSC it is stipulated that: “*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.*”
68. The Court, based on the circumstances of the present case and the claims of the applicant in his referral to the Court, assesses that his claims are related to the principle of adversarial proceedings in court proceedings and his right to be heard, as an integral part of the right to a fair and impartial trial, guaranteed by paragraph 1 of article 31 of the Constitution, in conjunction with paragraph 1 of article 6 of the ECHR.

#### **A. General principles of the ECtHR and the Court**

69. Consequently, in assessing the aforementioned claims, the Court will elaborate (i) the general principles regarding (a) the principle of adversariality and (b) the right to a hearing guaranteed by paragraph 1 of Article 31 of the Constitution in conjunction with paragraph 1 of article 6 of the ECHR, as far as they are relevant in the circumstances of the present case, to continue with (ii) the application of these general principles in the circumstances of the present case. The Court will examine these categories of claims based on the case law of the Court and the ECtHR, in accordance with which, based on Article 53 [Interpretation of Human Rights Provisions] of the Constitution, it is obliged to interpret the fundamental rights and freedoms guaranteed by the Constitution.

70. The Court, based on its consolidated case law, based on the case law of the ECtHR, initially considers it important to reiterate the general position that the "fairness" required by the abovementioned articles of the Constitution, and of the ECHR, is not a "substantive" fairness, but rather a "procedural" fairness. At the practical terms, the concept of "procedural fairness" means: (i) the possibility of adversarial procedures/the principle of procedural adversariality; (ii) the possibility of the parties, at different stages of the procedure, to present arguments and evidence that they consider important for the relevant case; (iii) the possibility of efficient contestation of the arguments and evidence presented by the opposing party; and (iv) the right to have their arguments which, viewed objectively, are important for the resolution of the case, to be heard and examined by the regular courts in an appropriate manner (see, similarly, the case of the ECtHR [Barbera, Messeque and Jabardo v. Spain](#), no. 10590/83, Judgment of 6 December 1988, paragraph 68; and Court cases [KI42/16](#), applicant *Valdet Sutaj*, Resolution on Inadmissibility, of 17 November 2016, paragraph 41; and cases of the Constitutional Court: [KI128/19](#), applicant *Artan Mala*, Resolution on Inadmissibility, of 25 February 2021, paragraph 58; [KI22/19](#), applicant *Sabit Ilazi*, Resolution on Inadmissibility, of 7 June 2019, paragraph 42; and [KI148/21](#), applicant *Fatos Dervishaj*, Resolution on Inadmissibility, of 8 October 2019, paragraph 58).
71. Based on the above, the Court reiterates the importance of the right to an adversarial process, as an integral part of a fair and impartial trial, according to which the parties must have the opportunity not only to make known any evidence needed for their claims to succeed, but also to have knowledge of, and comment on, all evidence adduced or observations filed, with a view to influencing the court's decision and it is within the competence of the courts to inform and enable litigants to access information (see, *inter alia*, ECtHR cases [Krčmář and Others v. Czech Republic](#), no. 35376/97, Judgment of 3 March 2000, paragraph 40; [Nideröst-Huber v. Switzerland](#), no. 18990/91, Judgment of 18 February 1997, paragraph 24; and [Mantovanelli v. France](#), no. 21497/93, Judgment of 18 March 1997, paragraph 33' and Court's case [KI159/17](#), applicant *Ismet Miftari*, Resolution on Inadmissibility, of 10 April 2019).
72. In what follows, the Court, placing emphasis on the essential claim of the applicant, which is related to the right to hold a hearing, emphasizes that the case law of the ECtHR established the basic principles regarding the right to a hearing. Based on this case law, the Court has also established the relevant principles and exceptions, based on which the necessity of holding a hearing is assessed, depending on the circumstances of the respective cases. Recently, through a number of judgments, the Court has emphasized these principles, finding a violation of Article 31 of the Constitution in conjunction with Article 6 of the ECHR due to the lack of a hearing before the SCSC, namely before the Specialized Panel and the Appellate Panel, (see, among others, Court's cases [KI145/19](#), [KI146/19](#), [KI147/19](#), [KI149/19](#), [KI150/19](#), [KI151/19](#), [KI152/19](#), [KI153/19](#), [KI154/19](#), [KI155/19](#), [KI156/19](#), [KI157/19](#) and [KI159/19](#), applicant *Et-hem Bokshi and Others*, Judgment of 10 December 2020; [KI160/19](#), [KI161/19](#), [KI162/19](#), [KI164/19](#), [KI165/19](#), [KI166/19](#), [KI167/19](#), [KI168/19](#), [KI169/19](#), [KI170/19](#), [KI171/19](#), [KI172/19](#), [KI173/19](#) and [KI178/19](#), applicant *Muhamet Këndusi and Others*, Judgment of 27 January 2021; [KI181/19](#), [KI182/19](#) and [KI183/19](#), applicant *Fllanza Naka, Fatmire Lima and Leman Masar Zhubi*, Judgment of 27 January 2021; [KI220/19](#), [KI221/19](#), [KI223/19](#) and [KI234/19](#), applicant *Sadete Koca Lila and Others*, Judgment of 25 March 2021; and [KI186/19](#); [KI187/19](#), [KI200/19](#) and [KI208/19](#), applicant *Belkize Vula Shala and Others*; Judgment of 28 April 2021 and [KI01/20](#), applicant *Momir Marinković*, Judgment of 29 July 2021).

### **B. Court's assessment**

73. As it was emphasized above, in assessing the applicant's allegations, the Court will focus on the allegation of the applicant to request the holding of a hearing before the Appellate

Panel of the SCSC, enabled according to the provisions of the Law on SCSC as a result of the non-notification of the transfer of the case to the Appellate Panel of the SCSC .

74. As specified in the part of the proceedings before the Court, as a result of the applicant's claims and in the light of the procedure conducted before the regular courts, the Court requested the latter, specifically the Court of Appeals, if the applicant was notified about the transfer of his case to the Appellate Panel of the SCSC, however, the Court of Appeals, apart from submitting the Accompanying Act of transferring the case to the Appellate Panel of the SCSC, did not submit specific information to the Court whether the applicant was notified about the transfer of the case. Moreover, based on the complete case file by the Appellate Panel of the SCSC, it also does not result that the applicant was notified by this court instance that the issue related to the claim and the complaint of the PAK, respectively in which the applicant was the respondent was transferred to the Appellate Panel of the SCSC .
75. Therefore, in the light of the above and based on the principles elaborated above, in what follows the Court must first assess whether in the circumstances of the present case, the fact that the applicant did not have the opportunity to request the holding of the hearing, made possible by paragraph 1 of article 69 (Oral Appellate Proceedings) of the Law on the SCSC violated his right to present relevant arguments and evidence in his favor.
76. The Court first points out that based on the provisions of the LCP, which are related to the subject matter jurisdiction, to the decisions or accompanying acts of the regular courts for the transfer of cases to other courts, in this case to the SCSC, it does not result that the parties file legal remedies. Moreover, based on paragraph 4 of article 5 of the aforementioned Law on the SCSC, it is provided that: *“For any claim, matter, case or proceeding (collectively hereafter referred to in the text as a “matter”) referred to other courts prior to the date of entry into force of the present law shall continue to remain under that court’s jurisdiction, and its Decisions and Judgment with respect thereto shall be subject to the review of the Special Chamber upon the timely submission of an application by a party or an affected third party”*.
77. In terms of the latter, namely in relation to the jurisdiction of the SCSC to decide on the lawsuit of the PAK, the Court notes that the Appellate Panel by its Judgment had emphasized that: *“The object of the dispute is the request for the recognition of the right of ownership related to the mentioned plots. These plots before their sale were in the name of SOE AC “BEC”, Gjakova. The Basic Court in Gjakova had subject-matter jurisdiction for this lawsuit, as well as the complaint filed by the claimant against the Judgment of this court C. No. 210/16 of 02.08.2019, it wrongly addressed the Court of Appeals in Prishtina, since at the time of filing the appeal on 16 September 2019, this Court had no jurisdiction to decide on this appeal”*. Following this, the Appellate Panel found that based on articles 5, 6 and paragraph 1 of article 76 (Conflicts and Interpretation) of the Law on the SCSC, the SCSC *“has subject matter jurisdiction even for such lawsuits as the one in this case”*.
78. Having said this, the Court does not question the obligation defined by the aforementioned provision, based on which the Court of Appeals transferred the case to the Appellate Panel of the SCSC. However, in the circumstances of the case, as claimed by the applicant himself, the obligation for the applicant to be notified about the transfer of his case to the Appellate Panel of the SCSC, so that he can exercise his right to request the holding of a hearing in this instance of the SCSC as defined by Article 69 of the Law on the DHPGJS is disputed.
79. In this regard, the Court recalls that paragraph 1 of Article 69 of the Law on the SCSC establishes that: *“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”.*

80. In the following, paragraph 4 of the same article stipulates that: *“At the opening of the hearings, the Presiding Judge shall give a short introduction to the appeal, the legal issues in dispute and any finding of fact made by the issuer of the concerned Decision or Judgment that a party has alleged to be “clearly erroneous”.* Whereas paragraph 5 of article 69 of the law, in terms of the adversarial principle and equality of arms gives the opportunity to offer *“[...] to give oral presentations of their legal arguments. The parties shall confine their presentations to the facts and evidence reflected in the record that are material to the appeal and to the legal issues that are material to the appeal. The Appellate Panel may impose a reasonable limit on the period of time allocated to each party for such presentations”.*
81. Similarly, based on the provisions of the Law on the SCSC, in force since 2019, and applicable in the circumstances of the present case, the Court notes that based on Article 66 (Content of Appeal) and Article 70 (Submission of New Evidence) of this law, the parties, among other things, have the opportunity to file appeals before the Appellate Panel also regarding issues of law and facts, including the possibility to present new evidence and consequently the Appellate panel has the competence of assessing the issues of law and fact, and of the full competence to assess the way the lower authority has assessed the facts, in the specific case of the applicant, the Basic Court. Consequently, the Court assesses that it is indisputable that the case under review before the Appellate Panel is not (i) an exclusively legal issue; and (ii) neither of a technical nature. On the contrary, the case before the Appellate Panel involved important factual and legal issues.
82. In terms of the latter, the Court takes into consideration the fact that the Judgment of the Basic Court rejecting the claim of the PAK had decided in favor of the applicant, as a result of the transfer of the case to the Appellate Panel of the SCSC on the part of the Court of Appeals, by the contested Judgment of the Appellate Panel of the SCSC, the claim of the PAK was approved as grounded, and as a result the sale contract was canceled as invalid, obliging the applicant that the immovable property, object of the sales contract and already registered in his name, be handed over to the PAK.
83. The Court, returning to the findings of the Appellate Panel by its Judgment, notes that in relation to holding the hearing, the Appellate Panel had (i) decided not to hold an oral hearing; and (ii) in relation to the response to the appeal of the PAK, the Appellate Panel found that: *“[...] based on the acknowledgment of receipt that exists in the file, the PAK complaint was accepted by the respondent’s lawyer on 19.09.2019, but there is no evidence in the file that any response was given to this complaint”.*
84. In relation to the former, the Court also emphasizes the fact that the Appellate Panel did not justify the *“waiving of the hearing”*, but was satisfied only with the reference to Article 69 of the Law on the SCSC. The latter, as it is clarified above, simply determines the competence of the Appellate Panel to decide on the holding of the hearing based on its own initiative or at the request of the party. The relevant judgment does not contain any additional clarification regarding the decision of the Appellate Panel to *“waive of the hearing”*. In this context, the Court emphasizes that based on the case law of the ECtHR, in the assessment of the claims related to the absence of a hearing, it should also be examined whether the rejection to hold such a hearing is justified (see also the cases of the ECtHR, *Pönkä v. Estonia*, application no. 64160/11, Judgment of 8 November 2016, paragraphs 37-40 and *Mirovni Inštitut v. Slovenia*, no. 32303/13), Judgment of 13 March 2018, paragraph 44 and references used therein).
85. Continuing with the second, based on the answers of the Basic Court, it turns out that as a result of the complaint of the PAK, the applicant had submitted an answer to the

complaint, which was not part of the file submitted by the Court of Appeals to the Appellate Panel of the SCSC. In this regard, the Court without prejudice whether the response to the PAK complaint by the applicant was submitted within the deadline set by law or not, in any case the same in terms of respecting the principle of adversariality, including the respect of the principle of equality of arms, as an integral part of the right to a fair and impartial trial, this answer should have been part of the file, for which the Appellate Panel of the SCSC had to offer its assessment and finding, including here also the finding in the sense of its admissibility or submission of the response to the complaint within the deadline set by law.

86. The Court following the elaboration of the principles and standards developed through the case law of the ECtHR, affirmed through the Court's own case law and the examination of the claims of the applicant, in terms of the right to hold a hearing and which is closely related to the principle of adversariality, finds that in the circumstances of the present case the applicant (i) does not contest or question the jurisdiction or subject matter competence of the SCSC to decide in relation to the PAK complaint (ii) however, in terms of the principle of adversariality, it finds that the applicant was prevented or denied the right to request a hearing, as a result of the non-notification of the transfer of his case to the Appellate Panel of the SCSC. Therefore, the Court finds that the contested Judgment, namely the Judgment [AC-II-21-0058] of 23 May 2022, of the Appellate Panel of the SCSC, was rendered in violation of the principles and guarantees embodied in Article 31 of the Constitution, in conjunction with Article 6 of the ECHR, which resulted in the violation of the applicant's right to request a hearing.
87. The finding by the Court of a violation of Article 31 of the Constitution in conjunction with Article 6 of the ECHR, in the circumstances of the present case, is exclusively related to the right of the applicant to submit a request for holding a hearing, as it is explained in this Judgment. However, based on its finding that is related to the principle of adversariality and the rights of the applicant guaranteed by law and the Constitution, the Court reiterates that the Appellate Panel, in the retrial procedure, and in terms of his right to be heard, should give the opportunity to the applicant to present all arguments regarding questions of law and facts, including the possibility to present new evidence. In the following, based on the fact that the finding of the Basic Court's Judgment was in favor of the applicant, the Appellate Panel must examine and assess the way this court has assessed the facts in the circumstances of the case, enabling the parties in the procedure to present all relevant arguments and evidence related to the process of sale - purchase and ownership of immovable properties in this case.
88. Therefore, in the circumstances of the present case, the Court concluded that: (i) based on Article 69 of the applicable Law on the SCSC, the applicant has the right to submit a request to the Appellate Panel to hold a hearing, by which the latter, in the sense and within the framework of the principle of adversariality, has the right to present his arguments and evidence related to the claim of the PAK; (ii) however, such a request was not possible for the applicant because he was not notified about the transfer of his case from the Court of Appeals to the Appellate Panel of the SCSC, either by the Court of Appeals or the Appellate Panel of the SCSC itself.
89. Finally, the Court finds that the Judgment [AC-II-21-0058] of 23 May 2022, of the Appellate Panel of the SCSC was rendered in violation of paragraph 1 of Article 31 [Right to Fair and Impartial Trial] of the Constitution of the Republic of Kosovo in conjunction with paragraph 1 of Article 6 (Right to a fair trial) of the ECHR.

## FOR THESE REASONS

The Constitutional Court, in accordance with paragraph 7 of Article 113 of the Constitution, articles 20 and 47 of the Law and in accordance with rule 48 (1) (a) of the Rules of Procedure, in the session held on 4 September 2024, unanimously

## DECIDES

- I. TO DECLARE, the Referral admissible;
- II. TO HOLD, that Judgment [AC-II-21-0058] of 23 May 2022, of the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo Related Matters is not in compliance with paragraph 1 of Article 31 [Right to Fair and Impartial Trial] of the Constitution of the Republic of Kosovo in conjunction with paragraph 1 of Article 6 (Right to a fair trial) of the European Convention on Human Rights;
- III. TO DECLARE INVALID, Judgment [AC-II-21-0058] of 23 May 2022, of the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo Related Matters;
- IV. TO REMAND, Judgment [AC-II-21-0058] of 23 May 2022, of the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo for retrial in accordance with the findings of the Judgment of the Court;
- V. TO ORDER the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo to notify the Court, in accordance with Rule 60 (5) of the Rules of Procedure, by 4 March 2024, about the measures taken to implement the Judgment of the Court;
- VI. TO REMAIN seized of the matter pending compliance with that order;
- VII. TO NOTIFY this Judgment to the parties and, in accordance with paragraph 4 of article 20 of the Law, to publish it in the Official Gazette;
- VIII. TO HOLD that this Judgment is effective on the date of its publication in the Official Gazette of the Republic of Kosovo, in accordance with paragraph 4 of Article 20 of the Law.

**Judge Rapporteur**

**President of the Constitutional Court**

Bajram Ljatifi

Gresa Caka-Nimani

***This translation is unofficial and serves for informational purposes only.***