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

Prishtina, on 17 September 2024
Ref. no.: AGJ 2534/24

This translation is unofficial and serves for informational purposes only.

JUDGMENT

in

case no. KI190/22

Applicant

Ramiz Isaku

Constitutional review of Judgment [AC-I-21-0642] of 31 August 2022 of the Appellate Panel of the Special Chamber of the Supreme Court

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 Ramiz Isaku, residing in Gjilan (hereinafter: the Applicant), represented by lawyer Shevqet Xhelili.

Challenged decision

2. The Applicant challenges Judgment [AC-I-21-0642] of 31 August 2022 of the Appellate Panel of the Special Chamber of the Supreme Court (hereinafter: the Appellate Panel of the SCSC) in conjunction with Judgment [C-IV-14-2629] of 6 September 2021 of the Specialized Panel of the Special Chamber of the Supreme Court (hereinafter: the Specialized Panel of the SCSC).

Subject matter

3. The subject matter of the referral is the constitutional review of the contested Judgment, whereby it is claimed that the applicant's rights guaranteed by Article 31 [Right to Fair and Impartial Trial] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution) have been violated.

Legal basis

4. The Referral is based on paragraph 4 of Article 21 [General Principles] and 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).

5. 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

6. On 2 December 2022, the applicant submitted the referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

7. On 5 December 2022, the President of the Court by Decision [no. Gjr. KI190/22] appointed Judge Safet Hoxha as Judge Rapporteur and by Decision [no. KSH. KI190/22] appointed the Review Panel, composed of judges: Selvete Gërxhaliu-Krasniqi (Presiding), Remzije Istrefi-Peci and Nexhmi Rexhepi (members).

8. On 9 December 2022, the Court notified the applicant about the registration of the referral and sent a copy of the referral to the Special Chamber of the Supreme Court of the Republic of Kosovo on Privatization Agency of Kosovo Related Matters (hereinafter: the SCSC).

9. On 28 December 2022, the applicant submitted additional documents to the Court, respectively submitted several decisions of the SCSC, of other parties which, according to the applicant, were similar to his case but in which the SCSC had decided differently.

10. On 16 December 2022, Judge Enver Peci took an oath before the President of the Republic of Kosovo, in which case his mandate at the Court began.

11. On 11 March 2024, Judge Jeton Bytyqi took an oath before the President of the Republic of Kosovo, in which case his mandate at the Court began.

12. On 17 July 2024, the Review Panel considered the report of the Judge Rapporteur and unanimously recommended to the Court the admissibility of the referral and its assessment on merits.

13. On the same day, the Court unanimously (i) found that the referral is admissible; (ii) found that the Judgment [AC-I-21-0642] of 31 August 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; (iii) declared invalid the Judgment [AC-I-21-0642] of 31 August 2022 of the Appellate Panel of the SCSC; (iv) remanded the Judgment [AC-I-21-0642] of 31 August 2022 of the Appellate Panel of the SCSC, for retrial in accordance with the Judgment of this Court.

Summary of facts

14. From the case file it follows that the applicant was employed in the Social Enterprise "Industria e Duhanit" in Gjilan (hereinafter: SOE "Industria e Duhanit").

15. On 15 August 2006, the Kosovo Trust Agency (hereinafter: KTA) through a letter notified the company's employees, in this case also the applicant, about the termination of the employment contract, notifying them that the unpaid salaries are an obligation of the employer, and that these claims will be considered according to the liquidation procedures.

16. The KTA, through the means of information, notified the employees of "Industria e Duhanit" that the latter should submit their claims towards SOE "Industria e Duhanit" to the Liquidation Authority of KTA no later than 24 September 2007.

17. On 21 September 2007, the applicant submitted a request for salary compensation to the PAK Liquidation Authority, for the period August 2003 to May 2004, in the amount of 1515.51 euros (one thousand five hundred and fifteen euro and fifty one cent).

18. On 10 March 2014, the PAK Liquidation Authority by Decision [GJI. 003-0583/0121] rejected as invalid the aforementioned request of the applicant, on the grounds that based on paragraph 2.1 of article 36 of Law no. 04/L-034 on the Privatization Agency of Kosovo and Article 608 of the Law on the Associated Labor, the same is statute-barred.

19. On 11 April 2014, the applicant submitted a request to the SCSC, against the aforementioned decision of the PAK Liquidation Authority, whereby he requested i) the review of the latter, ii) recognition of his right of compensation for unpaid salaries for the above-mentioned time period; and iii) to oblige the opposing party to compensate all contributions deriving from the employment relationship with legal interest. The applicant in his complaint claimed, among other things, that he submitted his request to the PAK Liquidation Authority on time, based on the PAK notice of dismissal.

20. On 22 June 2021, the PAK, through a submission submitted to the SCSC, opposed the aforementioned request of the applicant, on the grounds that the same is statute barred, arguing that, *"... the applicant has not submitted any evidence to the Liquidation Authority that he has submitted any complaint to any court or other competent body for the period of three years from the date of the alleged request"* referring to article 608 of the Law on Associated Labor. Moreover, the Liquidation Authority of the PAK, in their submission, emphasized: "*... that after the preliminary review, the Liquidation Authority found that the information provided was insufficient for inclusion in any income distribution, thus on 20 January 2014, it sent a request for additional information to the representative of the complainant. The representative of the complainant has returned an answer which includes the authorization for representation certified by the notary".*

21. On 6 September 2021, the Specialized Panel of the SCSC by the Judgment [C-IV-14-2629] decided as follows: i) rejected as ungrounded the applicant's request whereby he asked that the request for review of the decision is approved as grounded and oblige the PAK to compensate the salaries for the time period 2003 to 10 May 2004; (ii) upheld as fair and based on law the Decision [GJI.003-0583/0121] of the PAK Liquidation Authority, of 10 March 2014, iii) decided that each party should bear its own costs of proceedings.

22. In the reasoning of the Judgment [C-IV-14-2629], the Specialized Panel of the SCSC, emphasized as follows: *"The court has examined the claims and submissions of the parties to the procedure and concluded that the applicant's request belongs to the period August 2003 - May 2004, while the request for compensation submitted to the Liquidation Authority belongs to 21 September 2007, which means that it is submitted after the expiration of the deadline within three years from the moment the request arose. Therefore, within the meaning of Article 376, paragraph 1 of the LOR (1978), which provision expressly provides that "a claim for damages for loss caused shall expire three years after the party sustaining injury or loss became aware of the injury and loss and of the tort-feasor",* the court came to the conclusion that the complaint submitted by the applicant is ungrounded.

23. On 27 September 2021, the applicant submitted an appeal to the Appellate Panel of the SCSC, against the above-mentioned judgment of the first instance, claiming that, among other things, the first instance did not correctly determine the factual situation, and the substantive law was erroneously applied. In his complaint, the applicant also referred to a number of cases of his former colleagues, who according to him, in the same factual and legal circumstances, had won their cases before the Appellate Panel of the SCSC.

24. On 22 October 2021, the PAK submitted a submission to the Appellate Panel of the SCSC, as a response to the applicant's appeal, whereby it opposes the applicant's appealing allegations, considering them as not based on law, and fully supports the judgment of the first instance.

25. On 31 August 2022, the Appellate Panel of the SCSC by the Judgment [AC-I-21-0642], i) rejected the applicant's appeal as ungrounded, and ii) upheld the Judgment [C-IV-14 -2629] of 6 September 2021 of the Specialized Panel of the SCSC. The Appellate Panel, in the reasoning of its judgment, finds that the applicant failed to bring sufficient evidence to recognize his right to unpaid salaries for the period August 2003- May 2004. This is because the only evidence that the applicant has submitted is

the list of unpaid salaries from the SOE, which is not sufficient, as well as the notice for the termination of the employment relationship, of 15 August 2006, does not have a name, as a result it is not considered to belong to the applicant. In relation to the prescription of the request, the Appellate Panel of the SCSC emphasizes that*"... it agrees with the findings of the Liquidation Authority and the 1st instance of the SCSC that the request for salaries is prescribed"* based on Article 608 of the Law on Associated Labor, finding that the statute of limitations occurred before submitting the applicant's request to the PAK. This is because the applicant submitted the request to the PAK on 21 September 2007, while the last requested salary is that of May 2004, the same was prescribed after three years, that is, in May 2007. Also, the applicant has not presented any evidence that would prove the interruption of the statute of limitation.

26. On 29 September 2022, the applicant submitted the proposal for the initiation of the request for the protection of legality to the Office of the Chief State Prosecutor, against the decisions of the lower instances, alleging erroneous application of the substantive right in accordance with Article 247, par .1 point b) of the LCP.

27. On 4 October 2022, the Office of the Chief State Prosecutor by Notice [KLC. no. 97/22], found that the request for the protection of legality is not allowed on the grounds that the decisions of the Appellate Panel of the SCSC cannot be subject to any further instance of appeal other than the subject of review by the Constitutional Court. This by referring to article 9, point 14 of Law no. 06/L-086 on the Special Chamber of the Supreme Court of Kosovo on the Privatization Agency of Kosovo Related Matters, which provides that: *"All Judgments and Decisions of the appellate panel are final and not subject to any further appeal"*.

Applicant's allegations

28. The applicant claims that by the contested decision, his rights guaranteed by Article 31 [Right to Fair and Impartial Trial] of the Constitution have been violated.

29. The applicant first emphasizes that by the decisions of the regular courts, the substantive law was erroneously applied "*due to the fact that the issue of meeting the claims of employees regarding their rights in the Social Enterprise under the administration of the PAK, is regulated by the law on the Kosovo Privatization Agency, as a special law (lex special)*".

30. The applicant further claims that the Appellate Panel of the SCSC and the Specialized Panel of the SCSC have rendered selective and discriminatory judgments, as the claims of the former employees of the SOE "Industria e Duhanit" in Gjilan, with legal basis and material evidence, same as those of the applicant, were approved as grounded claims, while his claim was rejected. The applicant, in support of this claim, submitted to the Court the cases resolved by the SCSC of his former colleagues, for whom he claims to have been in the same circumstances and for the same the latter has decided in their favor.

31. The cases that the applicant has brought to the Court and for which he claims that they were in the same circumstances and regarding the latter the regular courts have decided differently are a total of ten cases, respectively twenty decisions (first instance and second instance) as follows:

(i) Case N.H, respectively Judgment [C-IV-13-1408] of 2, November 2015, of the Specialized Panel of the SCSC and Judgment [AC-I-15-0270] of 8 June 2017 of the Appellate Panel of the SCSC;
(ii) Case A.A, respectively Judgment [C-IV-14-2496] of 7 September 2021 of the Specialized Panel of the SCSC and Judgment [AC-I-21-0644 of 29 September 2022 of the Appellate Panel of the SCSC;
(iii) Case A.K and M.R, respectively Judgment [C-IV-13-1567] of 10 September 2015 of the Specialized Panel of the SCSC and Judgment [AC-I-15-0216] of 9 January 2020 of the Appellate Panel of the SCSC;
(iv) Case N.SH, respectively Judgment [C-IV-14-2524] of the Specialized Panel of the SCSC and Judgment [AC-I-21-0666] of 13 October 2022 of the Appellate Panel of the SCSC;
(v) Case H.K, respectively Judgment [C-IV-14-2552] of 7 September 2021 of the Specialized Panel of the SCSC and Judgment [AC-I-21-0638] of 29 September 2022 of the Appellate Panel of the SCSC;
(vi) Case F.SH, respectively Judgment [C-IV-14-2510] of 25 October 2021 of the Specialized Panel of the SCSC and Judgment [ACI-21-0733] of 8 December 2022 of the Appellate Panel of the SCSC;
(vii) Case B.M, respectively Judgment [C-IV-14-2517] of 25 October 2021 of the Specialized Panel of the SCSC and Judgment [AC-I-21-0720] of 17 November 2022 of the Appellate Panel of the SCSC;
(viii) Case D.J, respectively Judgment [C-IV-13-1267] of 17 December 2020 of the Specialized Panel of the SCSC and Judgment [AC-I-21-0001] of 2 October 2021 of the Appellate Panel of the SCSC;
(ix) Case N.H, Judgment [C-IV-13-1656] of 10 September 2015 of the Specialized Panel of the SCSC and Judgment [AC-I-15-0215] of 13 April 2018 of the Appellate Panel of the SCSC;
(x) Case S.S, Judgment [C-IV-13-1605] of 2 October 2015 of the Specialized Panel of the SCSC and Judgment [AC-I-15-0225] of 26 December 2019 of the Appellate Panel of the SCSC.

32. Further, the applicant claims that all his former colleagues who had won the case before the SCSC, had submitted the same evidence as the applicant, specifying that "*the Work Booklet has never been requested*".

33. Regarding the reasoning of the regular courts that the request of the applicant is time-barred, the latter, referring to the legislation in force, states that "*PAK, by the fact of notifying the complainant in writing about obligations from the employment relationship, is considered to have waived the statute of limitations.*" The statute of limitation rules cannot be applied because the only action of the appellant, in this case, was the request to the Liquidation Authority, and the terms and procedure of the liquidation are regulated by a separate law, in this case by the Law on PAK (Annex of the Law) and that ultimately the deadlines derive from the moment of notification of the liquidation procedure.

34. Moreover, the applicant states that none "*of potential creditor, cannot exercise their creditor rights against an SOE without the opening of the liquidation procedure by the PAK, and references such as the one that the applicant has not initiated a legal case, is unacceptable".*

35. The Applicant proposes to the Court i) to annul the Judgment [C-IV-14-2629] of 6 September 2021, of the Specialized Panel; as well as ii) Judgment [AC-I-21-0642] of 31

August 2022, of the Appellate Panel of the SCSC and the case be remanded for reconsideration and retrial to the first instance of the Supreme Court.

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. 04/L-034 ON THE PRIVATIZATION AGENCY OF KOSOVO

Article 36
Invalid and Improper Claims

1. The Liquidation Authority shall deny, in whole or in part, the validity of any Claim or alleged equity or ownership interest if such denial is required or permitted by the present law or another element of the Law of Kosovo or an order issued by the Court.
2. Without limiting the scope or applicability of paragraph 1 above, the following shall constitute good and sufficient legal grounds under the present law for rejecting a Claim or an alleged equity or ownership interest:
2.1.the Claim or allegation is time-barred by applicable time limitations;

[...]

THE LAW OF CONTRACT AND TORTS (of 1978)

Article 376
Claiming Damages for Loss

A claim for damages for loss caused shall expire three years after the party sustaining injury or loss became aware of the injury and loss and of the tort-feasor.
In any event, such claim shall expire five years after the occurrence of injury or loss.
A claim for damages for loss caused by violation of a contractual obligation shall expire within the time specified for unenforceability due to the statute of limitations of such obligation.

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

Article 1
Purpose

[…]

1.27. Joint Panel – a panel composed of all the judges from the Appellate Panel, which is competent to set standing principles and legal opinions on matters related to uniform application of the laws or the consolidation of judicial practice.
2. Words of any gender used in this law shall include any other gender as well.

Admissibility of the Referral

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

37. In this regard, the Court refers to paragraphs 1 and 7 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution, which provide:

"1. The Constitutional Court decides only on matters referred to the court in a legal manner by authorized parties.
[…]
7. Individuals are authorized to refer violations by public authorities of their individual rights and freedoms guaranteed by the Constitution, but only after exhaustion of all legal remedies provided by law".

38. The Court further 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 ...".

39. Regarding the fulfillment of the admissibility criteria, as mentioned above, the Court finds that the applicant is: an authorized party, who contests an act of a public authority, namely the Judgment [AC-I-21-0642] of 31 August 2022 of the Appellate Panel of the SCSC in conjunction with Judgment [C-IV-14-2629] of 6 September 2021 of the Specialized Panel of the SCSC, after exhausting all legal remedies established by law and submitted the referral within the legal deadline.

40. In addition to these criteria, the Court must also examine whether the applicant has met the admissibility criteria, established in rule 34 [Admissibility Criteria], namely sub-rule (2) of the Rules of Procedure, which stipulates:

"(2) The Court may consider a referral as inadmissible if the referral is intrinsically unreliable when the applicant has not sufficiently proved and substantiated his/her allegations".

41. The Court finds that the applicant's referral meets the admissibility criteria, established in rule 34 (1) (d) of the Rules of Procedure. The latter cannot be declared inadmissible based on the requirements established in rule 34 (2) of the Rules of Procedure. Therefore, The Court assesses that the applicant's referral meets the requirements for assessment on merits.

Merits of the Referral

42. The Court first recalls the essence of the referral, which is related to the rejection of the applicant's request for the compensation of unpaid salaries, respectively the salaries from August 2003 to 20 May 2004, when he was an employee of SOE "Industria e Duhanit". The KTA notified the employees of SOE "Industria e Duhanit" through the means of information that the latter should submit their requests to the SOE "Industria e Duhanit" to the offices of KTA no later than 24 September 2007. The applicant submitted his request for salary compensation for the aforementioned period on 21 September 2007 to the PAK Liquidation Authority. The latter rejected the request on the grounds that the applicant's request was time-barred. Furthermore, against the aforementioned decision of the PAK, the applicant filed a lawsuit with the Specialized Panel of the SCSC, requesting that the decision be annulled, claiming specifically that in the present case the statute of limitations has not been reached, since the PAK by the very fact of the written notification to the complainant for obligations from the employment relationship, it is considered that he has waived the statute of limitation. The Specialized Panel rejected the applicant's complaint on the grounds that based on paragraph 1 of Article 376 of the Law on Obligations of 1978 as well as Article 608 of the Law on Associated Labor in the present case the statute of limitations had been reached and that the applicant, among other things, had not submitted all the evidence, respectively he had not submitted the work booklet. After the applicant's appeal to the Appellate Panel of the PAK, the latter rejected the appeal, fully upholding the decision of the first instance.

43. The Court points out that the applicant claims that by the contested Judgment of the Appellate Panel as well as the Judgment of the Specialized Panel of the PAK, his rights guaranteed by Article 31 [Right to Fair and Impartial Trial] of the Constitution have been violated.

44. The Court notes that the essence of the allegations for violation of the right to a fair trial is related to the inconsistency of the decisions of the Specialized Panel and the Appellate Panel of the SCSC, where, according to the applicant, the latter have failed to decide equally on same factual and legal issues. The applicant in support of this claim submitted 20 judgments of the regular courts, respectively ten judgments of the Specialized Panel of the SCSC and ten judgments of the Appellate Panel of the SCSC (listed in paragraph 29) for ten of the former his colleagues, all workers of SOE "Industria e Duhanit" with the claim that in their cases the regular courts have decided differently, respectively they have decided in their favor. Therefore, the Court in the following will analyze this essential claim of the applicant in accordance with the standards of the case law of the ECtHR, in harmony with which, based on Article 53 [Interpretation of Human Rights Provisions] of the Constitution, it is obliged to interpret the fundamental human rights and freedoms guaranteed by the Constitution.

45. Having said that, in relation to the applicant's claim of violation of Article 31 [Right to Fair and Impartial Trial] of the Constitution, in conjunction with Article 6 (Right to a fair trial) of the ECHR due to the lack of consistency in the case law of the Supreme Court, the Court will first elaborate the general principles, and then, apply them to the circumstances of the present case.

(i) General principles as developed by the case law of the ECtHR and the Court

46. Regarding the principle of legal certainty as a result of the lack of consistency in the case law of the Supreme Court, the ECtHR in its case law: (i) has developed the basic principles; and (ii) has established the criteria whether an alleged divergence of court decisions constitutes a violation of Article 6 of the ECHR. The Court, while examining the claims of the applicants for violation of the principle of legal certainty, as a result of contradictory decisions, has also applied the criteria established by the ECtHR, in its case law (see, among others, the above-mentioned cases of the Court KI35/18, applicant "*Bayerische Versicherungsverbrand*", Judgment of 6 January 2020; and KI87/18, applicant "*IF Skadeforsikring*", Judgment of 15 April 2019; KI78/21, applicant *Raiffeisen Bank J.S.C.*, Judgment of 30 March 2022, where the Court found violation of Article 31 of the Constitution, in conjunction with Article 6 of the ECHR as a result of the divergence in the case law of the Supreme Court, as well as cases KI74/19, applicant "*SUVA" Rechtsabteilung*, Judgment of 21 June 2021 and KI09/20, applicant *"SUVA" Rechtsabteilung*, Judgment of 31 May 2021; judgments which the Court, in dealing with the merits of the claims for divergence in the case law of the Supreme Court, found that there has been no violation of Article 31 of the Constitution, in conjunction with Article 6 of the ECHR).

47. In addition, the Court notes that the ECtHR case law has resulted in basic principles that characterize the analysis regarding the consistency of case law. In this context, the Court notes that the ECtHR in its case *Albu and Others v. Romania* (Judgment of 10 May 2012, paragraph 34) had affirmed all the principles established through its case law, re-emphasizing and adding as follows:

(i) It is not the function of the Court [ECtHR] to deal with matters of fact and law allegedly made by the domestic courts unless they may have infringed the rights and freedoms protected by the ECHR (referring to the case *Garcia Ruiz v. Spain*, Judgment of 21 January 1999, paragraph 28). *Similarly, it is not the function of the Court [ECtHR] except in cases of apparent arbitrariness to compare different decisions of the domestic courts, even if they are taken in distinctly similar procedures, because the independence of these courts must be respected* (referring to the case *Ādamsons v Latvia*, Judgment of 24 June 2008, paragraph118);

(ii) The possibility of adversarial decisions is an indivisible feature of any judicial system based on the network of basic and appellate courts, with authorizations within their territorial jurisdiction, and an avoidance may also occur within the same court, which avoidance cannot be considered contrary in itself (referring to the case *Santos Pinto v. Portugal* , Judgment of 20 May 2008);

(iii) *The criteria guiding the Court's [ECtHR] assessment of the conditions in which the contradictory decisions of the last instance of the domestic courts are in violation of the requirement for fair trial embodied in Article 6, paragraph 1 of the Convention [ECHR] consist in determining whether there are "profound and long-standing differences" in the case law, whether the domestic law provides for a mechanism to overcome these contradictions, and whether this mechanism is used, and if so, to what effect (referring to the cases Iordan Iordanov and Others v Bulgaria*, Judgment of 2 July 2009, paragraphs 49-50; case *Beian (no. 1) Ştefan v Romania*, Judgment of 6 December 2007, paragraphs 34-40; *Ştefan and Ştef v Romania*, Judgment of 27 January 2009; *Tudor and Tudor v Romania*, Judgment of 24 March 2009, paragraph 31; and *Ştefănică and others v Romania*, Judgment of 2 November 2010, paragraph 36*);*

(iv) The ECtHR's assessment is always based on the principle of legal certainty which is inseparable in all articles of the Convention [ECHR] and constitutes one of the essential components of the rule of law (*Beian case (no.1),* cited above, paragraph 39, *Iordan and Iordanov and others*, cited above, paragraph 47, *Ştefănică and others v Romania*, cited above, paragraph 31);

(v) The principle of legal certainty guarantees, among other things, a certain certainty in legal situations and contributes to public trust in the courts. The continued issuance of contradictory decisions, on the other hand, could create a situation of legal uncertainty, which could undermine public confidence in the judicial system, in as much as such confidence is clearly one of the essential components of a rule of law-based state (referring to the cases *Paduraru v Romania*, paragraph 98, *Vinčić and Others v Serbia*, Judgment of 1 December 2009, paragraph 56; *Ştefănică and Others v Romania*, cited above, paragraph 38);

(vi) However, requests for legal certainty and protection of the legitimate trust of the public do not represent an acquired right to consistency of the case law of the court (referring to case *Unedić v. France*, Judgment of 18 December 2008, paragraph 74). According to the ECtHR: "*The development of case law is not in itself contrary to the proper administration of justice since failure to ensure a dynamic and developmental approach would risk obstruction (Atanasovski v. The former Yugoslav Republic of Macedonia*, Judgment of 24 June 2010*)".*

48. Following these principles, the Court, based on the case law of the ECtHR, has also emphasized that there cannot be considered to be any divergence in the case law when the factual situations of the case are objectively different. Equally, the treatment of the two disputes differently cannot be considered to give rise to a divergent case law when

this is justified by a change in the factual situations in question (see, in this context, the Court's case, KI35/18, cited above, paragraph 76;)

49. The Court recalls that the ECtHR, in developing its basic principles through its case law, has established three basic criteria for determining whether an alleged divergence of the court decisions constitutes a violation of Article 6 of the ECHR, which criteria are also affirmed in the Court's case law (see specifically the above-mentioned cases KI35/18 and KI87/18). The criteria defined by the ECtHR are the following:

(i) whether there are "*profound and long-standing differences*" in case law;
(ii) whether domestic law establishes mechanisms capable of resolving such divergences; and
(iii) whether those mechanisms have been implemented and to what effect (in this context, see ECtHR cases, *Beian v. Romania* (no.1), Judgment of 6 December 2007, paragraphs 37 -39; *Lupeni Greek Catholic Parish and Others v Romania*, Judgment of 29 November 2016, paragraphs 116 - 135; *Iordan Iordanov and Others v Bulgaria*, Judgment of 2 July 2009, paragraphs 49-50; *Nejdet Şahin and Perihan Şahin v Turkey*, cited above, paragraph 53; and see Court's case Kl29/17, applicant *Adem Zhegrova*, Resolution on inadmissibility of 5 September 2017, paragraph 51; and see also Court's cases cited above, KI42/17, *Kushtrim Ibraj*, paragraph 39; KI87/18 Applicant *IF Skadiforsikring*, paragraph 67, KI35/18 Applicant *Bayerische Versicherungsverbrand*, paragraph 70).

50. The Court further notes that the concept of "*profound and long-standing differences*" was elaborated by the ECtHR, *inter alia,* in the case of the *Lupeni Greek Catholic Parish and others v. Romania*, the case in which the ECtHR had found a violation of Article 6 of the ECHR due to a violation of the principle of legal certainty (see, in the case of the ECtHR, *Lupeni Greek Catholic Parish and others v. Romania*, cited above, paragraph 135). Likewise, the ECtHR in its cases *Iordan and Iordanov v Bulgaria* (Judgment of 2 July 2009) found a violation of Article 6 of the ECHR as a result of "*profound and long-standing differences*" in the case law of a single court, namely the Supreme Court and by not using the mechanism to ensure the harmonisation and consistency of case law (see, in this context, also the other cases of the ECtHR where the latter found a violation of Article 6 of the ECHR, as a result of the violation of the principle of legal certainty due to the contradictory case laws of the supreme courts, *Beian v. Romania (no. 1),* cited above; *Hayati Celebi and Others v Turkey*, Judgment of 9 February 2016; *Ferreira Santos Pardal v Portugal*, Judgment of 30 July 2015).

51. The Court also points out in this regard that the ECtHR has not found a violation of Article 6 of the ECHR in cases of divergent case law even and if the latter has affected a large number of people in relation to the same case over a short period of time before the respective contradictions were resolved by the higher courts, thus enabling state mechanisms to ensure proper consistency (see, *inter alia*, the case of the ECtHR, *Albu and Others v Romania*, cited above, paragraphs 42, 43; see also the Court case KI35/18, applicant *Bayerische Versicherungsverbrand*. cited above, paragraph 73).

52. The latter is related to the second and third criteria, namely the existence of a mechanism capable of resolving discrepancies in case law and whether this mechanism has been used and to what effect. In this regard, the ECtHR first found that the lack of such a mechanism constitutes a violation of the right to a fair trial guaranteed by Article 6 of the ECHR (see, in this context, *Tudor v Romania*, cited above, paragraphs 30-32; and *Ştefănică and others v Romania*, cited above, paragraphs 37-38; and *Nejdet Sahin and Perihan Sahin v Turkey*, cited above, paragraph 54). In this regard, the ECtHR has reiterated on many occasions the

importance of establishing mechanisms to ensure consistency and uniformity of court practice. It has also stated that it is the responsibility of states to organise their legal systems in such a way as to avoid divergences in case law (see ECtHR cases *Vrioni and Others v. Albania*, Judgment of 24 March 2009, paragraph 58; *Mullai and Others v. Albania*, Judgment of 23 March 2010, paragraph 86; and *Nejdet Sahin and Perihan Sahin v. Turkey*, cited above, paragraph 55). The ECtHR has also stressed that the role of a supreme court is precisely to resolve such contradictions (in this context, see ECtHR case *Beian v. Romania (no. 1),* cited above, paragraph 37; and *Lupeni Greek Catholic Parish and Others v. Romania*, cited above, paragraph 123). This is because, if the contradictory practice takes place within one of the highest judicial authorities in a country, that court itself becomes a source of legal uncertainty, thus undermining the principle of legal certainty and weakening public confidence in the judicial system (see, in this context, the case of the ECtHR *Beian (no. 1),* cited above, paragraph 39; and *the Greek-Catholic Parish (Lupeni and Others v. Romania*, cited above, paragraph 123). These principles established in the ECtHR's case law have also been accepted through the Court's own practice in its aforementioned cases KI35/18 and KI87/18 (see paragraph 172 of the Judgment in case KI35/18).

(ii) Application of these principles in the circumstances of the present case

53. In what follows, the Court will apply the principles outlined above in the circumstances of the present case, applying the criteria on the basis of which the Court and the ECtHR deal with the issues of divergence pertaining to the case law, starting with the assessment of whether in the circumstances of the present case, (i) the alleged contradictions in the case law are "*profound and long-standing*"; and if this is the case, (ii) there is a mechanism to resolve the relevant divergence; and (iii) the assessment of whether these mechanisms have been applied and to what effect in the circumstances of the present case.

54. In this context and based on the above, the Court reiterates that it is not its function to compare different decisions of regular courts, even if they are taken in significantly similar procedures. It must respect the independence of the regular courts.

55. In the application of the principles elaborated above and the assessment of the three aforementioned criteria, the Court: (a) will recall the circumstances of the rejection of his request for compensation of unpaid salaries for the period August 2003-May 2004 for the applicant and the law applied in his case; (b) will present the summary of ten cases of former colleagues, namely twenty (20) judgments, submitted by the applicant in his referral to the Court.

(a) The circumstances of the rejection of the applicant's request for compensation of unpaid salaries for the period 2003-2004 as well as the law applied in his case

56. The Court, as it has specified in detail above, recalls that KTA, through the means of information, had notified the workers of SOE "Industria e Duhanit", including the applicant, that they should submit their requests to SOE "Industria e Duhanit no later than 24 September 2007. Furthermore, on 21 September 2007, the applicant submitted a request for salary compensation to the PAK Liquidation Authority, for the period August 2003 to 20 May 2004, and on 10 March 2014, the Liquidation Authority of the PAK rejected as invalid the aforementioned request of the applicant on the grounds that based on paragraph 2.1 of article 36 of Law No. 04/L-034 on the Privatization Agency of Kosovo and article 608 of the Associated Labor Law, the latter is out of time and statute barred.

57. Further, against the aforementioned decision of the PAK, the applicant filed a lawsuit with the Specialized Panel of the PAK, requesting that it be annulled, claiming specifically that in the present case the statute of limitations has not been reached, since PAK, by the very fact of the written notification to the complainant for obligations from the employment relationship, is considered to have waived the statute of limitations. The Specialized Panel rejected the applicant's complaint on the grounds that based on paragraph 1 of Article 376 of the Law on Obligations (of 1978) as well as Article 608 of the Law on Associated Labor in the present case the statute of limitations had been reached.

58. After the applicant's appeal to the PAK Appellate Panel, the latter rejected the appeal, fully upholding the decision of the first instance regarding the statute of limitation, adding the fact that the applicant, among other things, had not submitted all the evidence, respectively, he had not submitted the work booklet, as well as the decision which the applicant submitted as evidence, by which he was dismissed from work, is nameless.

59. The essential claim of the applicant is related to the inconsistency of the case law of the Specialized Panel and the Appellate Panel of the SCSC, where according to the applicant, the latter issued contradictory decisions on the same factual and legal issues, in violation of the right to a fair trial, namely in violation of the principle of legal certainty. In this context, the applicant argues that all his former colleagues who had won the case before the SCSC had submitted the same evidence as the applicant, specifying that "*the work booklet was never requested*" and they submitted the request on the same date as the applicant.

60. The Court recalls that, as explained above, the Applicant in support of his claim, due to the inconsistency of the case law of the SCSC, submitted to the Court ten (10) judgments of the Appellate Panel and ten (10) judgments of the Specialized Panel, respectively, the cases for ten of his former colleagues, all former employees of SOE "Industria e Duhanit" who in the same factual and legal circumstances had won the cases before the SCSC.

61. The Court will further assess whether the factual and legal circumstances are similar to the cases, which the applicant claims to have been resolved differently by the regular courts, in the following Court will present a separate summary for each of the aforementioned cases.

(b) *Summary of cases submitted by the applicant*

The case of N.H respectively Judgment [C-IV-13-1408] of 20 November 2015, of the Specialized Panel of the SCSC and Judgment [AC-I-15-0270] of 8 June 2017 of the Appellate Panel of the SCSC

62. Regarding the case of N.H., where the case file shows that she was an employee of SOE "Industria e Duhanit", and who, after being notified by PAK of her dismissal, submitted a request to the Liquidation Authority of PAK for the compensation of unpaid salaries for the period August 2003 - May 2004. On 20 June 2013, the PAK Liquidation Authority rejected the aforementioned request. On 29 September 2013, N.H. filed a complaint with the SCSC, against the aforementioned decision, and attached to the complaint the appealed decision of the PAK and the notice of termination of the employment relationship. In its defense against the complaint, the PAK invoked Article 608 of the Associated Labor Law, claiming that the claim is time-barred. On 20 November 2015, the Specialized Panel of the SCSC, by Judgment [C-IV-

13-1408] concluded that the complaint should be approved as grounded and the PAK should be obliged to pay the applicant compensation for the unpaid salaries. The Specialized Panel in the present case found that regarding the statute of limitation of the request based on Article 608 of the Law on Associated Labor, this provision cannot be applied, because for the issues of fulfilling the requirements of the workers of SOEs under the administration of PAK are regulated by the Law on PAK as a special law. The Appellate Panel of the SCSC, by Judgment [AC-I-15-0270], of 8 June 2017 rejected the appeal of the PAK as ungrounded, accepted the position of the Specialized Panel of the SCSC in its entirety.

The case of A.A, respectively Judgment [C-IV-14-2496] of 7 September 2021 of the Specialized Panel of the SCSC and Judgment [AC-I-21-0644 of 29 September 2022 of the Appellate Panel of the SCSC

63. Regarding the case of A.A, an employee of SOE "Industria e Duhanit", who, after being notified by the PAK of his dismissal, submitted a request to the Liquidation Authority of PAK for the compensation of unpaid salaries in the period August 2003 – May 2004. On 10 March 2014, the PAK Liquidation Authority rejected the aforementioned request. On 11 April 2014, A.A. has submitted a lawsuit to the SCSC, against the above-mentioned decision, and attached the following evidence to the lawsuit: the appealed decision of the PAK, the notice for the termination of the employment relationship, the list of the calculation of unpaid salaries for the above-mentioned time period. On 7 September 2021, the Specialized Panel of the SCSC, by Judgment [C-IV-14-2496] found that the appeal should be approved as grounded and the appealed decision of the Liquidation Authority of the PAK be modified, obliged PAK to pay the claimant compensation for unpaid salaries. The Specialized Panel in the present case concluded that the notice issued by KTA on 15 August 2006, has the legal effect of terminating the statute of limitation. The Specialized Panel found that in the present case, the new limitation period began on 16 August 2006, and it is considered that the request was submitted within the legal deadline. The Appellate Panel of the SCSC, by the Judgment [AC-I-21-0644] of 29 September 2022, approved as grounded the claimant's appeal, seeking compensation, while rejecting as ungrounded the complaint of the PAK and had upheld in entirety the position of the first instance of the SCSC.

Case A.K and M.R, respectively Judgment [C-IV-13-1567] of 10, September 2015 of the Specialized Panel of the SCSC and Judgment [AC-I-15-0216] of 9 January 2020 of the Appellate Panel of the SCSC

64. Regarding the case of *A.K. and M.R*., the employees of SOE "Industria e Duhanit", and after being notified by PAK of their dismissal, submitted a request to the PAK Liquidation Authority for the compensation of unpaid salaries in the period of time August 2003 – May 2004. On 2 August 2013, the PAK Liquidation Authority rejected the aforementioned request. On 19 August 2013, A.K and M.R filed a complaint with the SCSC, against the aforementioned decisions. He attached the appealed decisions of the PAK and the notice of the termination of the employment relationship to the complaint. On 10 September 2015, the Specialized Panel of the SCSC, by Judgment [C-IV-13-1567] found that the complaint must be approved as grounded and the PAK to be obliged to pay the applicants compensation for the unpaid salaries. The Specialized Panel did not approve the claim of the PAK regarding the statute of limitation of the request based on Article 608 of the Law on Associated Labor, stating that this provision cannot be applied, because for the issues of meeting the claims of the workers of SOEs under the administration of the PAK are regulated by the Law on the PAK as a special law. The Appellate Panel of the SCSC, by Judgment [AC-I-15-0216] of

9 January 2020, rejected the appeal of the PAK as ungrounded and upheld point I of the Specialized Panel of the SCSC, by which the PAK obliges to compensate the applicants in the requested amounts.

Case N.SH, respectively Judgment [C-IV-14-2524] of the Specialized Panel of the SCSC and Judgment [AC-I-21-0666] of 13 October 2022 of the Appellate Panel of the SCSC

65. Regarding the case of SOE, an employee of SOE "Industria e Duhanit", and who, after being notified by PAK of her dismissal, submitted a request to the Liquidation Authority of PAK for the compensation of unpaid salaries. On 10 March 2014, the PAK Liquidation Authority rejected the aforementioned request. On 11 April 2014, SOE submitted a complaint to the SCSC, against the aforementioned decision. He attached to the complaint the appealed decision of the PAK, the notification for the termination of the relationship. The Specialized Panel of the SCSC, by Judgment [C-IV-14-2524] concluded that the applicant's complaint should be approved as grounded and the appealed decision of the PAK Liquidation Authority should be annulled and the PAK should be obliged to compensate the applicant for unpaid salaries. The Specialized Panel did not approve the claim of the PAK regarding the prescription of the request, after finding that the notification issued by the KTA on 15 August 2006, has the legal effect of terminating the prescription. In the present case, the new limitation period begins to run from 16 August 2006, which establishes that the request of the applicant was submitted within the legal period. The Appellate Panel of the SCSC by Judgment [AC-I-21-0666] of 13 October 2022, rejected the appeal of the PAK as ungrounded, fully accepted the position of the Specialized Panel of the SCSC regarding the main debt requested by the applicant.

Case H.K, respectively Judgment [C-IV-14-2552] of 7 September 2021 of the Specialized Panel of the SCSC and Judgment [AC-I-21-0638] of 29 September 2022 of the Appellate Panel of the SCSC

66. Regarding the case of H.K., an employee of SOE "Industria e Duhanit", who, after being notified by PAK of his dismissal, submitted a request to the Liquidation Authority of PAK for the compensation of unpaid salaries in the period of August 2003 – May 2004. On 10 March 2014, the PAK Liquidation Authority rejected the aforementioned request. On 11 April 2014, H.K. filed a complaint with the SCSC, against the aforementioned decision. He attached to the complaint the appealed decision of the PAK, the notice of the termination of the employment relationship and the list of unpaid salaries for the abovementioned time period . On 7 September 2021, the Specialized Panel of the SCSC, by Judgment [C-IV-14-2552], concluded that the applicant's complaint should be approved as grounded, and the appealed decision of the PAK Liquidation Authority should be annulled and oblige the PAK to compensate the applicant for the unpaid salaries. The Specialized Panel did not approve the claim of the PAK regarding the prescription of the request, after finding that the notification issued by the KTA on 15 August 2006, has the legal effect of terminating the prescription. In the present case, the new limitation period begins to run from 16 August 2006, which establishes that the request of the applicant was submitted within the legal period. The Appellate Panel of the SCSC, by Judgment [AC-I-21-0638] of 29 September 2022, rejected the appeal of the PAK as ungrounded, fully accepted the position of the Specialized Panel of the SCSC regarding the right for the compensation of unpaid salaries during the period August 2003 - May 2004 requested by the applicant.

Case F.SH, respectively Judgment [C-IV-14-2510] of 25 October 2021 of the Specialized Panel of the SCSC and Judgment [ACI-21-0733] of 8 December 2022 of the Appellate Panel of the SCSC

67. Regarding the case of F.SH., an employee of SOE "Industria e Duhanit", and who, after being notified by PAK of her dismissal, on 21 September 2007, submitted a request to the Liquidation Authority of PAK for compensation of unpaid salaries in the period August 2003 - May 2004. On 10 March 2014, the PAK Liquidation Authority rejected the aforementioned request on the grounds that *"... the information provided was insufficient to enable involvement in any distribution of liquidation proceeds"*. The PAK Liquidation Authority considered the request as out of time and time-barred, invoking Article 608 of the Law on Associated Labor of 1976. On 11 April 2014, F.SH. filed a complaint with the SCSC, against the aforementioned decision. The appealed decision of the PAK, the notice of the termination of the employment relationship, the list of unpaid salaries for the above-mentioned time period have been attached to the complaint. On 25 October 2021, the Specialized Panel of the SCSC, by Judgment [C-IV-14-2510], concluded that the appeal should be approved as grounded, and the appealed decision of the PAK Liquidation Authority should be modified so that the same is obliged to pay the applicant the compensation for the unpaid salaries. The Specialized Panel in the present case did not approve the claim of the PAK regarding the prescription of the request, after finding that the notification issued by the KTA on 15 August 2006, has the legal effect of terminating the prescription. In the present case, it finds that the request of F.SH. it was submitted within the legal deadline. The Appellate Panel of the SCSC, by Judgment [AC-I-21-0733] of 8 December 2022, finds that the applicant has provided sufficient evidence proving that she is entitled to the requested compensation and that the claim of the PAK is not grounded as far as the prescription of the request is concerned, since the notification of the KTA has the legal effect about the termination of the prescription and the beginning of a new term. Based on these findings, the Appellate Panel rejected the appeal of the PAK as ungrounded and upheld the judgment of the first instance of the SCSC regarding the right to compensation of unpaid salaries during the requested period August 2003 - May 2004 to F. SH., and obliged PAK to fulfill the compensation.

Case B. M., respectively Judgment [C-IV-14-2517] of 25 October 2021 of the Specialized Panel of the SCSC and Judgment [AC-I-21-0720] of 17 November 2022 of the Appellate Panel of the SCSC

68. Regarding the case of B.M., an employee of SOE "Industria e Duhanit", who, after being notified by PAK of his dismissal, submitted a request to the Liquidation Authority of PAK on 21 September 2007 for the compensation of his salaries unpaid in the period August 2003 - May 2004. On 10 March 2014, the PAK Liquidation Authority rejected the above-mentioned request. On 11 April 2014, B.M. filed a complaint with the SCSC, against the aforementioned decision. The appealed decision of the PAK and the list of unpaid salaries for the above-mentioned time period have been attached to the complaint. On 25 October 2021, the Specialized Panel of the SCSC, by Judgment [C-IV-14-2517], found that the complaint of B.M. should be rejected as ungrounded and the appealed decision of the PAK Liquidation Authority be upheld as fair and based on law. The Specialized Panel, in the present case, found that the applicant's request was time barred by referring to article 376, par.1 of the LOR (1978) and that the respondent PAK has correctly assessed the factual circumstances. On 8 November 2021, B.M. submitted an appeal to the Appellate Panel of the SCSC against the decision of the first instance, through which he claims that by the appealed Judgment the factual situation was not correctly determined, and the substantive law was erroneously applied. The Appellate Panel of the SCSC, by

Judgment [AC-I-21-0720] of 17 November 2022, did not agree with the findings of the Specialized Panel of the SCSC regarding the statute of limitation of the request, finding that the notification of the KTA- for the termination of the employment relationship has the legal effect of terminating the limitation period. It also found that the applicant rightly waited for the start of the liquidation procedure of the SOE on 4 July 2007 and submitted the request to the Liquidation Authority on 21 September 2007 within the legal deadline. accepted the applicant's complaint as grounded, modified the first instance Judgment of the SCSC and obliged the respondent PAK to compensate the applicant for the requested unpaid salaries.

Case D.J, respectively Judgment [C-IV-13-1267] of 17 December 2020 of the Specialized Panel of the SCSC and Judgment [AC-I-21-0001] of 2 October 2021 of the Appellate Panel of the SCSC

69. In relation to the case of D.J., an employee of the SOE "Industria e Duhanit", who, after being notified by the PAK of his dismissal, submitted a request to the Liquidation Authority of the PAK for the compensation of unpaid salaries in the period of time August 2003 – May 2004. On 10 June 2013, the PAK Liquidation Authority rejected the aforementioned request. On 15 July 2013, D.J. filed a complaint with the SCSC, against the aforementioned decision. The appealed decision of the PAK, the liquidation request form and a copy of the work booklet have been attached to the complaint. On 17 December 2020, the Specialized Panel of the SCSC, by Judgment [C-IV-13-1267], found that the complaint of the applicant D.J. should be rejected as ungrounded and the appealed decision of the PAK Liquidation Authority should be confirmed as fair and based on law. The Specialized Panel in the present case concluded that the applicant's request was prescribed by referring to article 36.2.1 of the Annex to Law no. 04/L-034 on the PAK, provision 608 of the Law on Associated Labor of 1976 and article 137 of the LOR (1978) and that the respondent PAK has correctly assessed the factual circumstances. The Appellate Panel of the SCSC, by Judgment [AC-I-21-0001] of 2 September 2021, did not agree with the findings of the SCSC Panel regarding the statute of limitation of the request, finding that the notification of the KTA for the termination of the employment relationship has the legal effect of terminating the limitation period. It also found that the applicant rightly waited for the start of the liquidation procedure of the SOE on 4 July 2007 and submitted the request to the Liquidation Authority on 20 September 2007 within the legal deadline. Based on these findings, the Appellate Panel approved the applicant's complaint as grounded, modified the Judgment of the first instance of the SCSC and obliged the respondent PAK to compensate the applicant for the requested unpaid salaries.

Case N.H, Judgment [C-IV-13-1656] of 10 September 2015 of the Specialized Panel of the SCSC and Judgment [AC-I-15-0215] of 13 April 2018 of the Appellate Panel of the SCSC

70. Regarding the case of N.H., an employee of SOE "Industria e Duhanit", who, after being notified by PAK of her dismissal, submitted a request to the Liquidation Authority of PAK for the compensation of unpaid salaries for the period of time August 2003 – May 2004. On 7 August 2013, the PAK Liquidation Authority rejected the aforementioned request. On 27 August 2013, E. S. submitted a complaint to the SCSC, against the above-mentioned decision, and attached to the complaint the appealed decision of the PAK and the notice of the termination of the employment relationship. On 10 September 2015, the Specialized Panel of the SCSC, by Judgment [C-IV-13-1656], found that the appeal should be approved as grounded, annul the appealed decision of the Liquidation Authority of the PAK and the PAK is obliged to

pay the applicant compensation for the unpaid salaries. The Specialized Panel in the present case concluded that, based on Article 608 of the Law on Associated Labor, it concluded that this provision cannot be applied because the matters for fulfilling the requirements of the workers of SOEs under the administration of the PAK are regulated with the Law on the Privatization Agency of Kosovo as a special law, presented in the above-mentioned defense regarding the prescription of the request. The Appellate Panel of the SCSC, by Judgment [AC-I-15-0215] of 13 April 2018, agreed with the findings of the Specialized Panel of the SCSC, finding that the notification of the KTA on the termination of the employment relationship has a legal effect for interrupting the limitation period. It also found that the applicant rightly waited for the start of the liquidation procedure of the SOE on 4 July 2007 and submitted the request to the Liquidation Authority on 9 August 2007 within the legal deadline.

Case S.S, Judgment [C-IV-13-1605] of 2 October 2015 of the Specialized Panel of the SCSC and Judgment [AC-I-15-0225] of 26 December 2019 of the Appellate Panel of the SCSC

71. Regarding the case of S.S., the workers of SOE "Industria e Duhanit", and after being notified by PAK of their dismissal submitted a request to the Liquidation Authority of PAK for the compensation of unpaid salaries for the period August 2003 - May 2004. On 7 August 2013, the PAK Liquidation Authority rejected the aforementioned request. On 2 September 2013, S. S. submitted a complaint to the SCSC, against the aforementioned decision. The Liquidation Authority of the PAK in the defense submitted for the rejection of the applicant's request due to the statute of limitations has invoked provision 608 of the Law on Associated Labor of 1976. On 2 October 2015, the Specialized Panel of the SCSC, by Judgment [C-IV-13-1605], concluded that the appeal of the applicant S. S. should be approved as grounded, and the appealed decision of the PAK Liquidation Authority should be annulled and the PAK should be obliged to compensate the applicant for unpaid salaries. The Specialized Panel of the SCSC concluded that the provision 608 of the Law on Associated Labor cannot be applied because the matters for fulfilling the requirements of the workers of SOEs under the administration of the PAK are regulated with the Law on the Privatization Agency of Kosovo as a special law. The Appellate panel of the SCSC, by Judgment [AC-I-15-0225] of 26 December 2019, rejected the PAK complaint and upheld the Judgment of the Specialized Panel, finding that the notification of the KTA on the termination of the employment relationship has a legal effect for interrupting the limitation period. It also found that the applicant rightly waited for the start of the liquidation procedure of the SOE on 4 July 2007 and submitted the request to the Liquidation Authority within the legal deadline. The Specialized Panel has rightly decided when it approved her claim and annulled the decision of the Liquidation Authority.

c) Assessment of the three criteria set out in the case law of the ECtHR and the Court

72. As mentioned above, the Court will nevertheless continue with the examination and assessment of the claim for lack of consistency in the case law of the Specialized Panel and the Appellate Panel of the SCSC, based on the cases elaborated above, of the applicant's former colleagues, namely 20 (twenty) summarized judgments of regular courts, 10 (ten) judgments of the Specialized Panel and ten (10) judgments of the Appellate Panel of the SCSC. In terms of this claim of the applicant, the Court will proceed with the elaboration of the three aforementioned criteria, starting with the review and assessment: (i) if there are profound and long-standing differences.

(i) *If there are profound and long-standing differences*

73. The Court notes that it assesses the consistency of the case law of the regular courts only in relation to the alleged violations of the Applicant. Consequently, the lack of consistency in case law must have resulted in a violation of the fundamental rights and freedoms of the applicant. In order to ascertain such a violation, and to ascertain that the fundamental rights and freedoms of the Applicant have been violated as a result of "*profound and long-standing differences*" in the relevant case law, the factual and legal circumstances of the case of the applicant should coincide with those of the cases, the contradiction of which is alleged.

74. The Court recalls once again that the applicant in support of his claims has submitted to the Court a total of 20 decisions of regular courts, namely 10 (ten) judgments of the Appellate Panel of the SCSC, as well as 10 (ten) judgments of the Specialized Panel of the SCSC, with the claim that in ten cases of his former colleagues, in the same factual and legal circumstances, the latter have decided differently, respectively in favor of the respective parties, unlike the case of the applicant.

75. In what follows, the Court notes that the circumstances of the above-mentioned cases, respectively the judgments of the Appellate Panel of the SCSC submitted by the applicant, were rendered in the period between 2017 and 2022, respectively for a period of 5 years and the same were related to the payment of salaries for the period May 2003 and August 2004 to all former employees of SOE "Industria e Duhanit" in Gjilan. Consequently, the Court notes that in the cases submitted by the applicant and elaborated above, respectively in 8 (eight) of the former colleagues of the applicant, the Specialized Panel, by their decisions approved by the Appellate Panel, approved the requests of the parties for compensation of salaries from May 2003 to August 2004, not approving the position of the PAK Liquidation Authority, that the latter have been statute barred. The Specialized Panel in eight (8) of the cases elaborated above found that the notice issued by KTA on 15 August 2006, has the legal effect of terminating the statute of limitations. Moreover, in the same judgments, it is emphasized that regarding the statute of limitation of the request based on Article 608 of the Law on Associated Labor, emphasizing that this provision cannot be applied, because the issues of fulfilling the requirements of the workers of SOEs under the administration of the PAK are regulated by the Law on the PAK as a special law. This position was also approved by the Appellate Panel. In two (2) other cases, namely in the case of former employee B. M. and D. J. elaborated in detail in paragraph 66 and 67, the Specialized panel assessed that the requests of these two applicants are prescribed by referring to article 376, par. 1 of the LOR (1978). The Appellate Panel of the SCSC did not agree with the findings of the Specialized Panel of the SCSC regarding the prescription of the request, finding that the notification of the KTA on the termination of the employment relationship has legal effect for the termination of the term of prescription. It also found that the applicants rightly waited for the start of the liquidation procedure of the SOE on 4 July 2007 and submitted the request to the Liquidation Authority on 21 September 2007 within the legal deadline.

76. The Court, returning to the case of the applicant, recalls that on 6 September 2021, the Specialized Panel of the SCSC acting according to the request of the applicant by Judgment [C-IV-14-2629] decided to reject as ungrounded the applicant's request whereby he requested the review of the decision [GJI003-0583/0121] of the PAK Liquidation Authority, emphasizing: "*the applicant's request belongs to the period August 2003 - May 2004, while the request for compensation submitted to the Liquidation Authority belongs to 21 September 2007, which means that it is submitted after the expiration of the deadline within three years from the moment the request arose. Therefore, within the meaning of Article 376, paragraph 1 of the*

LOR (1978), which provision expressly provides that "a claim for damages for loss caused shall expire three years after the party sustaining injury or loss became aware of the injury and loss and of the tort-feasor".

77. Further on 31 August 2022, the Appellate Panel of the SCSC, by Judgment [AC-I-21-0642], rejected the applicant's appeal as ungrounded, emphasizing that the applicant failed to bring sufficient evidence to recognize his right to unpaid salaries for the period August 2003-May 2004. This is because the only evidence he has submitted is the list of unpaid salaries from the SOE, which is not sufficient, as well as the notice of termination of the employment relationship of 15 August 2006, there is no name, as a consequence the same is not considered to belong to the applicant. In relation to the statute of limitation of the request, the Appellate Panel of the SCSC states: "*... based on Article 608 of the Law on Associated Labor, finding that the statute of limitations occurred before submitting the applicant's request to the PAK. This is because the applicant submitted the request to the PAK on 21 September 2007, while the last requested salary is that of May 2004, the same was prescribed after three years, that is, in May 2007. Also, the applicant has not presented any evidence that would prove the interruption of the statute of limitation".*

78. The Court also recalls that in all the cases elaborated above, of the applicant's former colleagues, it results that the regular courts, respectively the Appellate Panel, have approved the appeals of the applicant's former colleagues, considering that they are not prescribed based on Article 608 of the Law as it was not specifically requested to fulfill the criterion of handing over the work booklet, as specified in the case of the applicant.

79. The Court in this respect reiterates the position it has consistently maintained with regard to the fact that the application and interpretation of the law is within the jurisdiction of the regular courts; and that its role is only to ensure that the application and interpretation of the law by the regular courts is compatible with the Constitution and the ECHR (see the cases of the ECtHR, *Brualla Gomes de la Torre v France*, Judgment of 19 December 1997, paragraph 31; *Kuchoglu v Bulgaria*, Judgment of 10 May 2007, paragraph 50; *Işyar v Bulgaria*, Judgment of 20 November 2008, paragraph 48; and *Nejdet Sahin and Perihan Sahin v Turkey*, cited above, paragraph 49). That being said, the Court has also pointed out that the exception to this general principle are cases of manifested arbitrariness (see, for example, ECtHR cases *Adamsons v Latvia*, cited above, paragraph 118; *Nejdet Sahin and Perihan Sahin v Turkey*, cited above, paragraph 50; and *Albu and Others v Romania*, cited above, paragraph 34).

80. In the context of the circumstances of the case, the Court recalls that the Court has emphasized that the contradictions in case law are an integral part of each judicial system and that the divergence in case law may also occur within the same court. Such a thing is not compulsorily contrary to the Constitution and the ECHR (see ECtHR cases *Santo Pinto v Portugal*, cited above, paragraph 41; and *Nejdet Sahin and Perihan Sahin v Turkey*, cited above, paragraph 51). Moreover, and as noted above, the ECtHR has consistently stressed that requests for legal certainty and legitimate protection of public trust in the courts do not provide/guarantee a right in consistent case law. Furthermore, the development of case law is important to maintain the appropriate dynamics of continuous improvement of the administration of justice (see the case of the ECtHR, *Atanasovski v. "Former Yugoslav Republic of Macedonia"*, Judgment of 14 January 2010, paragraph 38; and *Nejdet Sahin and Perihan Sahin v. Turkey*, cited above, paragraph 58). However, based on the ECtHR case law, the exception to these general principles is apparent arbitrariness, and in the sense of

assessing the lack of judicial consistency, assessing whether there are "*profound and long-standing differences*" in the relevant case law and whether there is an effective mechanism to address the same.

81. The Court notes that, unlike the case under review, the Appellate Panel of the SCSC in ten (10) above-mentioned cases submitted by the applicant himself and related to the compensation of salaries for the period 2003-2004 for former workers of SOE "Industria e Duhanit" found that article 608 of the Law on Associated Labor is not applicable, considering that the limitation period has stopped with the notification of the PAK for compensation claims.

82. From the above, the Court notes that in addition to the application of Article 608 of the Law on Associated Labor in the case of the applicant, from the decisions of the Appellate Panel in the cases of his former colleagues, submitted to the Court by the applicant himself, in the case of listing the criteria to apply for compensation, only in the case of the applicant, the work booklet is mentioned.

83. The Court, referring to its case law, namely cases KI87/18 and KI35/18, recalls that it found a violation of Article 31 of the Constitution in conjunction with Article 6 of the ECHR due to the violation of the principle of legal certainty as a result of the divergence of case law, in case KI87/18 in the assessment of 4 (four) cases of the Supreme Court, issued in a time period of 3 (three) years, and in case KI35/18 in the assessment of 6 (six) cases of the Supreme Court issued in a period of 5 (five) years and after finding that: (i) there have been "*profound and long-standing differences*"; (ii) the mechanism of the Supreme Court for the harmonization of the case law existed; but that (iii) the aforementioned mechanism was not used (see Court cases KI87/18, cited above, paragraph 79 and paragraphs 81 to 85; and case KI35/18, cited above, paragraph 70 and paragraphs 110-111) . In relation to the mentioned cases of the Court, the Court emphasizes that in cases KI35/18 and KI87/18, the subject matter before the regular courts in all cases was the determination of the amount of default interest in relation to the demands of private insurance companies, presented in within the right of subrogation.

84. The Court in this case takes into account that in the twenty (20) judgments submitted by the applicant, namely ten (10) judgments of the Appellate Panel of the SCSC as well as the judgments that preceded the latter, respectively the judgments of the Specialized Panel, at the time of submitting his request, reflect only those judgments that the applicant had access to and available to him to support his claim regarding the lack of unified practice in the Appellate Panel of the SCSC.

85. Following this elaboration, the Court notes that the decisions of the Appellate Panel of the SCSC submitted to the Court by the applicant himself, and as it was pointed out above, result in the same factual and legal situation, are rendered from 2017 to 2022, respectively in a period of 5 years. As a result, the Court notes that in the present case we are also dealing with long-standing differences in the case law of the Appellate Panel of the SCSC.

86. From the above, it follows that the Appellate Panel of the SCSC, interpreting and applying two different laws, namely the Law on Associated Labor and the Law on PAK in similar factual and legal circumstances in the case of the request for compensation of salaries has resulted in conflicting interpretation and practice, and as a result of this there are profound and long-standing differences in its case law (see, in this case, the ECtHR cases of *Iordan and Iordanov v. Bulgaria*, cited above, paras. 49-50).

87. In this context and as a consequence, the Court should find that in the circumstances of the present case, there are "*profound and long-standing differences*" in the case law of the regular courts.

88. On the other hand, the finding that there are "*profound and long-standing differences*" in the case law, does not necessarily result in a violation of Article 31 of the Constitution in conjunction to Article 6 of the ECHR. In order to ascertain such a thing, the Court should also consider the other two criteria of the ECtHR that are related to the assessment of the lack of consistency in case law, namely whether the applicable law establishes mechanisms capable of resolving such divergences; and whether such a mechanism has been applied in the circumstances of a case and to what effect.

(ii) *if the applicable law establishes mechanisms capable of resolving such divergences; and*
(iii) *if such a mechanism has been applied in the circumstances of a case and to what effect.*

89. The Court emphasizes that the Appellate Panel of the SCSC has a mechanism that enables the resolution of such contradictions, which is foreseen by paragraph 27 of article 1 of Law no. 06/L-086 on the SCSC, which determines as follows:

" 1.27. Joint Panel – a panel composed of all the judges from the Appellate Panel, which is competent to set standing principles and legal opinions on matters related to uniform application of the laws or the consolidation of judicial practice".

90. Despite the fact that a mechanism that enables the resolution of contradictions such as in the present case, from the case file results this existing mechanism, in the circumstances of the present case it was not used.

91. In this context, the Court recalls that in case KI87/18, cited above, it had emphasized that based on point 10 of paragraph 2 of Article 14 (Competences and Responsibilities of the President and the Vice-President of the Court) of Law no. 06/L-054 on the Courts (hereinafter: the Law on Courts), the Presidents of the Courts through the annual meetings of all judges have the obligation, among others, to review and propose changes in procedures and practices (see the Court case KI87/18 "*IF Skadeforsikring*", cited above, paragraph 80). Through this case, the Court also stated that the operation of the practice harmonization mechanism itself is not impossible or limited to anything, which would directly reduce its application and efficiency in the case law itself (see the Court case KI87/18 "*IF Skadeforsikring*", cited above, paragraph 81).

92. In this sense, the Court considers that the Supreme Court, as a result of the lack of a unified practice in this type of cases, has itself served as a source of divergences in the case law even of lower instance courts, thus violating the principle of legal certainty.

93. The Court emphasizes that the ECtHR has consistently stressed that the role of a supreme court is precisely to resolve such contradictions. Moreover, it has also held that, if the contradictory practice takes place within one of the highest judicial authorities in a country, that court itself becomes a source of legal uncertainty, thus undermining the principle of legal certainty and weakening public confidence in the judicial system (see, in this case, the case of the ECtHR *Lupeni Greek Catholic Parish v Romania*, cited above, paragraph 123; *Beian v Romania*, cited above, paragraph 39; and *Albu and Others v Romania*, cited above, paragraph 38).

Conclusion

94. Consequently, the Court, taking into account the above, finds that in the circumstances of the present case, the three criteria of the ECtHR are met, namely the assessment of whether the lack of consistency, namely the divergences in case law, have resulted in a violation of the rights and freedoms to a fair and impartial trial. The Court reiterates that in the circumstances of the present case, it finds:

(i) "*profound and long-standing differences*" in the case law of the Appellate Panel of the SCSC;
(ii) That there are mechanisms of the Supreme Court to harmonize this practice; and that
(iii) This existing mechanism, from the case file results that it has not been used.

95. As a result, the Court should find that in the context of the Applicant's allegations, the "*profound and long-standing differences*" in the Supreme Court's case law related to the non-use of the mechanisms established by law and designed to ensure the proper consistency within the case law of the highest court in the country have resulted in violation of the principle of legal certainty and in violation of the right to a fair and impartial trial of the applicant, as guaranteed by Article 31 of the Constitution in conjunction with Article 6 of the ECHR.

96. With regard to the latter, the Court notes that the finding of violation of Article 31 of the Constitution in conjunction with Article 6 of the ECHR, in the circumstances of the present case, is related only to the non-use of the mechanisms established by law and designed to ensure the proper consistency within the case law of the Supreme Court, and in no way prejudices the outcome of the merits of the case or the legal position that the Supreme Court decides and applies in the present case.

97. Therefore, the Appellate Panel of the SCSC in the retrial procedure, should examine and assess the applicant's allegations, submitted in his appeal to the Appellate Panel of the SCSC, and related to salary compensation for the period May 2003 - August 2004 depending on the position or the result of the mechanism used by the Appellate Panel of the SCSC that are related to the issue of the divergence of case law of this court regarding the interpretation and application of provision of article 608 of the Law on Associated Labor in the present case.

FOR THESE REASONS

The Constitutional Court, in accordance with Articles 21.4 and 113.7 of the Constitution, Articles 20 and 47 of the Law and Rule 48 (1) (a) of the Rules of Procedure, in its session held on 17 July 2024 unanimously

DECIDES

I. TO DECLARE the Referral admissible;

II. TO HOLD that Judgment [AC-I-21-0642] of 31 August 2022 of the Appellate Panel of the Special Chamber of the Supreme Court, is not in compliance with paragraph 1 of the 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 European Convention on Human Rights;

III. TO DECLARE the Judgment [AC-I-21-0642] of 31 August 2022 of the Appellate Panel of the Special Chamber of the Supreme Court, invalid;

IV. TO REMAND Judgment [AC-I-21-0642] of 31 August 2022 of the Appellate Panel of the Special Chamber of the Supreme Court, for retrial in accordance with the Judgment of this Court;

V. TO ORDER the Appellate Panel of the Special Chamber of the Supreme Court to notify the Court, pursuant to rule 60 (5) of the Rules of Procedure, about the measures taken to implement the Judgment of the Court by 22 January 2025;

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

VII. This Judgment enters into force on the day of its publication in the Official Gazette of the Republic of Kosovo in accordance with Article 20.5 of the Law.

Judge Rapporteur	**President of the Constitutional Court**
Safet Hoxha	Gresa Caka-Nimani

This translation is unofficial and serves for informational purposes only.