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

Prishtina, 28 August 2024
Ref. no.:AGJ2522/24

This translation is unofficial and serves for informational purposes only.

JUDGMENT

in

case no. KI23/24

Applicant

Agim Zogaj

Constitutional review of Judgment [AC-I-21-0836-A0001] of the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo Related Matters of 26 October 2023

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 Agim Zogaj from Malisheva (hereinafter: the Applicant), represented by Besnik K. Berisha, a lawyer in the Municipality of Prishtina.

Challenged decision

2. The Applicant challenges the constitutionality of Judgment [AC-I-21-0836-A0001] of 26 October 2023 of the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo, on the Privatization Agency of Kosovo Related Matters (hereinafter: the Appellate Panel of the SCSC), in conjunction with Judgment [C. IV-15-0687] of 15 November 2021 of the Special Chamber of the Supreme Court of Kosovo on the Privatization Agency of Kosovo Related Matters (hereinafter: the SCSC).

Subject matter

3. The subject matter is the constitutional review of Judgment [AC-I-21-0836-A0001] of 26 October 2023 of the Appellate Panel of the SCSC, whereby it is claimed that the applicant's fundamental rights and freedoms 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 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).

Proceedings before the Constitutional Court

5. On 31 January 2024, the applicant, submitted, via e-mail, the referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

6. On 12 February 2024, the President of the Court by Decision [no. GJR. KI23/24] appointed Judge Radomir Laban as Judge Rapporteur and by Decision [no. KSH. KI23/24] appointed the Review Panel, composed of judges: Remzije Istrefi-Peci (Presiding), Nexhmi Rexhepi and Enver Peci (members).

7. On 21 February 2024, the Court notified the applicant about the registration of the referral.

8. On the same day, a copy of the referral was sent to the SCSC.

9. 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.

10. On 20 May 2024, the applicant through the submission submitted additional documents to the Court, respectively four (4) judgments of the SCSC whereby the claims of the claimants, former employees of the Social Enterprise "Auto Prishtina" (hereinafter: SOE "Auto Prishtina") were partially approved, the list of 12 September 2014 with the names of workers who had not received their salaries, the statement of the former director of SOE "Auto Prishtina" regarding the signing of this list, the decision to start the liquidation of SOE "Auto Prishtina" and the Agreement for liquidation services concluded between the Liquidation Authority of the Privatization Agency of Kosovo (hereinafter: the Liquidation Authority of the PAK) and R.Z., of 1 January 2015.

11. 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 . On the same day, the Court in full composition after deliberation, decided: (i) to declare, unanimously, the referral admissible; (ii) to find, unanimously, that there has been a 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; (iii) to declare, unanimously, invalid Judgment [AC-I-21-0836-A0001] of 26 October 2023 of the Appellate Panel of the SCSC; and (iv) to remand, unanimously, Judgment [AC-I-21-0836-A0001] of 26 October 2023 of the Appellate Panel of the SCSC, for reconsideration in accordance with the judgment of this Court.

Summary of facts

12. From the case file, it turns out that the applicant was employed in the SOE "Auto Prishtina", which enterprise entered into liquidation on 21 July 2014.

13. On 11 September 2014, the applicant submitted a request for compensation for unpaid salaries to the PAK Liquidation Authority, for the period October 2003-June 2014, in the amount of 19,370.00 euro (nineteen thousand three hundred and seventy euro).

14. From the case file, it follows that on 12 September 2014, the management of SOE "Auto Prishtina" had submitted to the PAK the register of workers whose salaries had not been paid in full.

15. On 31 March 2015, the PAK Liquidation Authority, by Decision [PRN-126-0177], rejected the aforementioned request of the applicant on the grounds that the request was statute-barred.

16. On 29 April 2015, the applicant submitted a lawsuit to the SCSC, against PAK, and SOE "Auto Prishtina", by which he requested to be recognized the right to compensation for unpaid salaries for the above-mentioned time period, with interest of 3.5% for each year. By his lawsuit, the applicant emphasized that he had not stopped claiming the unpaid salaries until the notification that the liquidation procedure of SOE "Auto Prishtina" had begun.

17. On 3 October 2017, the PAK Liquidation Authority filed a submission of defense against the claimant's lawsuit, by which it opposed the claim as time-barred on the grounds that *"... the applicant did not take any legal action against the SOE during the three-year statute of limitation period, which starts to be calculated at the latest from September 2003, when the applicant claimed that he was not paid by the SOE..."*. Moreover, in the defense against the applicant's lawsuit, the allegation of the applicant that he had repeatedly sought compensation for unpaid wages was contested, on the grounds that the applicant did not present any evidence proving this.

18. On 16 October 2018, the applicant submitted a response to the defense of the PAK Liquidation Authority, emphasizing that: *"... as far as the statute of limitation of the debt is concerned, it does not exist because the employee's request was permanent, he received an allowance from the employer for every month of 85.00 euro and it happened like that until the start of the liquidation on 21 July 2014... the claimant filed a lawsuit after the workers' request submitted to the PAK on 11.09.2014 and after more than 30 days have passed since the submission of the request together with the register from 38 employees, the employees filed a lawsuit with the Special Chamber of the Supreme Court of Kosovo on 29.04.2015"*.

19. On 2 November 2017, the PAK Liquidation Authority submitted a counter-response to the applicant's response, through which it reiterated the claims as a defense to the lawsuit and, among other things, stated that "*.. The claim that the applicant could not file a lawsuit in Kosovo courts is also ungrounded. SCSC Law since 2002 has allowed the applicant to submit a lawsuit against the SOE. The possibility to sue has always been open and only with the initiation of liquidation procedures in 2014 did the destination of the lawsuit change (from the SCSC to the Liquidation Authority)... Since 2003... The applicant has failed to submit a lawsuit to claim his wages, consequently his rights were time-barred...*".

20. On 15 November 2021, the SCSC, by Judgment [C-IV-15-0687]: (i) approved the claim of the applicant so that it obliged PAK that in the liquidation procedure of SOE "Auto Prishtina", to deal with the claim of the applicant as approved claim for the amount of 19,370.00 euro, with interest rate of 10%; (ii) obliged the PAK, namely the Liquidation Authority, to fulfill the claim in accordance with Article 40, par. 1 subpar. 1.6.1 and Article 41 of the Appendix to Law 04/L-034 on Privatization Agency of Kosovo; and (iii) decided that each party should bear its own costs.

21. By Judgment [C-IV-15-0687], the SCSC emphasized as follows: "*According to the case file – the evidence in support of the claim, it results that the applicant had continuously requested the compensation of personal income-salaries according to the contract - and the respondent has confirmed the existence of this obligation. Now the claimant has submitted a credit claim to the now respondent, this claim was rejected by the Decision of the LA PRN126-0177 of 31.03.2015. The applicant of the credit claim despite not submitting a complaint against the decision of the LA, on 29.04.2015 with the submission of the lawsuit to this court, it is considered that the claimant used the possibility of initiating the procedure for the protection of his rights within the legal term in accordance with Article 78 and 79 of Law No. 03/L-212 on Labor".*

22. Regarding the prescription of the debt, the SCSC, referring to paragraphs 1 and 2 of article 368 of Law No. 04/L-077 on Obligational Relationships (OG. number 16, 19 June 2012) (hereinafter: the LOR), regarding the interruption of the statute of limitation through the recognition of the debt indirectly, assessed that the PAK did not contest the authority and competencies of the management bodies of SOE "Auto Prishtina" in submission no. 8063 addressed to the latter on 16 July 2014. Further, in the reasoning of its judgment, the SCSC emphasized: *"... it is not contested that the respondent itself with the List of active workers who have not received their salaries according to the employment contract registered with no. 4 of 12.06.2014 had affirmed the existence of the obligation in the name of the unpaid salary for now the claimant in the amount now requested, and it is not disputed that PAK has continuously respected the authority and competencies of the management bodies of the now respondent until the day of the beginning of the liquidation procedure, namely until the day when the now claimant submitted the credit claim to the respondent*".

23. The SCSC, by Judgment [C-IV-15-0687], decided to not schedule a court hearing in this matter based on Article 398 of Law No. 03/L-006 on the Contested Procedure (OG. number 38, 20 September 2008) (hereinafter: the LCP) and paragraph 3 of Article 76 of Law No. 06/L-086 on the Special Chamber of the Supreme Court of Kosovo on the Privatization Agency of Kosovo Related Matters (OG. number 12, 27 June 2019) (hereinafter: Law on SCSC on PAK Related Matters), as it assessed that the factual situation was not disputed. In this regard, the SCSC emphasized the following:

> *"According to Article 398 of the LCP, applicable based on Article 76, par. 3 of Law No. 06/L-086: "After the answer if the court decides that there is contentious issue,*

and that there are no obstacles to give a just ruling, then it can bring an order that it accepts the indictments with no court session.

Therefore, this court, after completing the procedures with written statements of the parties and using all the opportunities for the presentation of evidence both in support and in opposition to the claim, this court decided that based on Article 398 of the LCP, to reach a decision on merits without holding a hearing, and approved the request as grounded".

24. On 21 December 2021, the PAK Liquidation Authority submitted an appeal to the SCSC Appellate Panel, against the above-mentioned judgment of the SCSC, on the grounds of erroneous determination of factual and legal situation, proposing that the appealed judgment be modified and Decision PRN126-0177 of the PAK Liquidation Authority of 31 March 2015 be upheld. In the appeal, the PAK Liquidation Authority emphasized that the applicant's claims were time-barred as he had not provided evidence for submitting his request to the court or any competent body before the limitation period ends. In this regard, the Liquidation Authority of the PAK referred to several judgments where the court had assessed as fair the decisions of the Liquidation Authority regarding the implementation of the statute of limitations within three (3) years.

25. From the case file, it turns out that, on 27 March 2023, the applicant submitted a response to the appeal before the Appellate Panel of the SCSC, with the proposal that the appeal of the PAK Liquidation Authority be rejected as ungrounded and the appealed judgment of the SCSC be upheld.

26. On 26 October 2023, the Appellate Panel of the SCSC, by Judgment [AC-I-21-0836-A0001] decided: (i) The complaint of the respondent is grounded; (ii) The Judgment of the first instance of the SCSC C-IV-15-0687 of 15 November 2021 is modified. (iii) The claimant's claim is rejected as ungrounded; and (iv) court fees are not determined for the appeal procedure.

27. The Appellate Panel of the SCSC in its judgment initially decided not to hold the oral part of the proceedings based on paragraph 1 of Article 69 of the Law on the SCSC on PAK Related Matters.

28. By Judgment [AC-I-21-0836-A0001], the Appellate Panel of the SCSC assessed that the SCSC had not acted correctly when it approved the applicant's claim. In this regard, the Appellate Panel of the Special Chamber of the Supreme Court noted as follows:

"The Appellate Panel considers that the approval of the claimant's claim was not a fair action on the part by the first instance of the SCSC.

The social enterprise "Auto Prishtina" entered into liquidation on 21 July 2014. From the moment of entry into liquidation of this enterprise, all authority and competencies related to this enterprise have passed to the Liquidation Authority, which means that any decision rendered after 21 July 2014 is not valid.

In this case, the list of active workers who have not received their salaries according to the employment contract issued by the SOE "Auto Prishtina" of 12 September 2014, to which the first instance of the SCSC gave trust by approving the claimant's claim was compiled by the SOE after the entry into liquidation of the company in question (21 July 2014), which means that the latter in this situation is invalid because all competencies had passed to the Liquidation Authority and the SOE had no authorization to take any action /decision or to acknowledge debt as in the present case".

29. By Judgment [AC-I-21-0836-A0001], the Appellate Panel of the SCSC, based on paragraph 1 of Article 353 of the LOR, found that the applicant's request for compensation of unpaid wages for the claimed period was time barred. In this respect, in the reasoning of the aforementioned judgment, it was emphasized:

> *"Initially, the claimant was unable to prove with any evidence that his employment relationship was terminated by any action taken by the PAK. Then, the same did not prove by any evidence that he had submitted his request to the court or any other competent authority within three years from the moment when the SOE is alleged to not have fulfilled its obligations to the applicant arising from the employment relationship and thus to interrupt the limitation period.*
>
> *Based on article 353, paragraph 1 of the Law on Obligational Relationships (LOR) "Claims for periodic charges that fall due annually or at specific shorter time intervals (periodic claims) shall become statute-barred three (3) years after each individual charge falls due, whether they are accessory periodic claims, such as interest claims, or such periodic claims by which a right itself is drawn upon, such as maintenance claims.*
>
> *Thus, from the aforementioned provision, it can be seen that the claimant's claim for unpaid salaries in the amount and for the claimed period is time-barred, and that the latter has not managed to prove with any evidence that he had interrupted the statute of limitations."*

Applicant's allegations

30. The applicant claims a violation of Article 31 [Right to Fair and Impartial Trial] of the Constitution.

31. The applicant states that his right to be heard in relation to his case has been violated since the SCSC and the Appellate Panel of the SCSC did not hold a hearing at all. The applicant claims: *"In the specific case with non-verbal and public review of the case, the principle of directness and adversariality was not respected, in the contested civil-legal case, where the compensation of the remaining salaries owed by the respondent was decided. This was caused both by the first instance and by the second instance of the Court of case, because the second instance entered in a factual matters (with the merit decision when it rejected the appeal contesting the appealing legal basis, erroneous and incomplete determination of factual situation). The applicant emphasizes that the Appellate Panel and the first instance in this case acted as if they decided to reject on procedural grounds, and in the present case the issue was meritorious and the case was quite complex with numerous contradictions between the litigating parties".* The applicant also adds *"regarding such precedents, the Constitutional Court has already decided, for which you can refer to cases KI145/19, KI146/19, KI147/19, KI149/19, KI186/19, KI187/19, KI200/19 and KI208/19, with applicants Belkize Vula Shala and others, Judgment of 28 April 2021) etc."*

32. Furthermore, through the submitted submission, the applicant claims that the contested judgment violates the provisions of the substantive and procedural law as well as the principle of legal certainty, since according to him, the latter is contrary to the case law, since in the additional submitted judgments, for the former workers of SOE "Auto Prishtina", the SCSC has partially approved their claims, based also on the list of 12 September 2014, while in his case the SCSC Appellate Panel dealt with the latter as an evidence that does not produce legal effect.

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 6
(Scope of the Administrative Authority of the Agency)

"*1. The Agency shall have broad and exclusive administrative authority over all Enterprises, Assets, interests, shares and property falling within the scope of Articles 5.1 and 5.2. Such authority shall include any action that the Agency considers reasonable and appropriate, within the limits of the Agency's administrative resources, to better enable the sale, liquidation, transfer or other disposition of an Enterprise, Asset or State Owned Interest. Without prejudice to the generality of the foregoing sentence, it is specifically provided that, with respect to Enterprises, such authority includes any action that the Agency considers reasonable and appropriate to preserve or enhance the value, viability, or governance of an Enterprise*".

ANNEX OF THE LAW No.04/L-034 ON THE PRIVATIZATION AGENCY OF KOSOVO

Article 40
(Priorities of Claims and Interests)

"1. In liquidation proceedings all Claims of creditors shall be satisfied according to classes 1.1 – 1.8 hereunder and in the following order:

[…]

1.7. unsecured Claims, including wage Claims that are not subject to higher priority treatment;

[…]"

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

Article 69
(Oral Appellate Proceedings)

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

[…]"

Article 76
(Conflicts and Interpretation)

"[…]

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".

LAW No. 03/L-006 ON CONTESTED PROCEDURE

Article 398
[No title]

"After the answer if the court decides that there is contentious issue, and that there are no obstacles to give a just ruling, then it can bring an order that it accepts the indictments with no court session…".

LAW NO. 04/L-077 ON OBLIGATIONAL RELATIONSHIPS

Article 353
[Periodic claims]

"1. Claims for periodic charges that fall due annually or at specific shorter time intervals (periodic claims) shall become statute-barred three (3) years after each individual charge falls due, whether they are accessory periodic claims, such as interest claims, or such periodic claims by which a right itself is drawn upon, such as maintenance claims.

[…]"

Article 368
[Acknowledgement of debt]

"1. Statute-barring shall discontinue when the debtor acknowledges the debt.

2. . A debt may be acknowledged by the debtor not only through a declaration made to the creditor but also indirectly, for example by paying something into an account, by paying interest or by providing security".

LAW No.03/L –212 ON LABOUR

Article 78
[Protection of Employees' Rights]

"1. An employee considering that the employer has violated labour rights may submit a request to the employer or relevant bodies of the employer, if they exist, for the exercise of rights violated.
2. Employer is obliged to decide on the request of the employee within fifteen (15) days from the day the request was submitted.
3. The decision from paragraph 2 of this Article shall be delivered in a written form to the employee within the term of eight (8) days".

Article 79
[Protection of an Employee by the Court]

"Every employee who is not satisfied with the decision by which he/she thinks that there are breached his/her rights, or does not receives an answer within the term from Article 78 paragraph 2 of this Law, in the following term of thirty (30) days may initiate a work dispute at the Competent Court".

Admissibility of the Referral

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

34. 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".

35. The Court also examines whether the applicant has met the admissibility criteria, as established by Law. In this regard, the Court refers to Article 47 (Individual Requests), 48 (Accuracy of the Referral) and 49 (Deadlines) of the Law, which establish:

Article 47
(Individual Requests)

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

Article 48
(Accuracy of the Referral)

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

Article 49
(Deadlines)

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

36. In assessing the fulfillment of the admissibility criteria, as mentioned above, the Court notes that the applicant has specified that he contests an act of a public authority, namely the Judgment [AC-I-21-0836-A0001] of the Appellate Panel of the SCSC of 26 October 2023, after exhausting all legal remedies established by law. The applicant has also clarified the rights and freedoms that he claims to have been violated, in accordance with the requirements of Article 48 of the Law and submitted the referral in accordance with the deadline established in Article 49 of the Law.

37. In addition, the Court also 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. Moreover, and finally, the Court also states that the referral is not manifestly ill-founded on constitutional basis, as foreseen in paragraph (2) of rule 34 of the Rules of Procedure, therefore, it is to be declared admissible and its merits must be examined.

Merits

38. The Court notes that the essence of this case is related to the applicant's request, submitted to the Liquidation Authority of the PAK, for the compensation of unpaid salaries for the period October 2003 - June 2014, as an employee of SOE "Auto Prishtina". On 31 March 2015, the PAK Liquidation Authority, by Decision [PRN-126-0177], rejected the request of the applicant on the grounds that the request was time-barred. Thus, on 29 April 2015, the applicant submitted a lawsuit to the SCSC, against PAK and SOE "Auto Prishtina", through which he requested that his right to compensation for the unpaid salaries for the above-mentioned time period be recognized. The Liquidation Authority of the PAK submitted a defense submission against the claimant's lawsuit, by which it opposed it as statued-barred. In relation to it, the applicant submitted a response to the defense of the PAK Liquidation Authority, where the latter then submitted a counter-response. On 15 November 2021, the SCSC, by Judgment [C-IV-15-0687], approved the claim of the applicant in such a way that it obliged PAK to handle the claim of the applicant in the liquidation procedure of the SOE "Auto Prishtina" as an approved claim, and decided not to hold a hearing. Against the judgment of the SCSC, the Liquidation Authority of the PAK submitted an appeal to the Appellate Panel of the SCSC on the grounds of erroneous determination of factual and legal situation, against which the applicant then submitted a response to the appeal. On 26 October 2023, the Appellate Panel of the SCSC, by Judgment [AC-I-21-0836-A0001] assessed the appeal of the Liquidation Authority of the PAK as grounded and modified the judgment of the first instance, so that it rejected the applicant's claim, on the grounds that according to the provisions of the LOR, his claim was time-barred. Also,

by the above-mentioned judgment, the Appellate Panel of the SCSC decided not to hold a court hearing.

39. The Court recalls that the applicant alleges a violation of Article 31 of the Constitution on the grounds that by the contested judgment of the Appellate Panel of the SCSC, the latter incorrectly applied the law and decided contrary to the case law of the SCSC, specifically contrary to the principle of legal certainty, since through the judgments submitted, for the former workers of the SOE "Auto Prishtina", the SCSC partially approved their claims, based also on the list of 12 September 2014, which in his case , the SCSC Appellate Panel treated as evidence that does not produce a legal effect. In addition, the applicant also claims a violation of the right to a fair and impartial trial guaranteed by Article 31 of the Constitution as a result of the absence of a hearing before the SCSC and the SCSC Appellate Panel. In this context, the Court notes that the applicant, in essence, files a claim for the lack of reasoning of the court decision, in particular in relation to the non-acceptance as valid evidence of the list of 12 September 2014 by the Appellate Panel of the SCSC.

40. Based on what was said above, taking into account the nature of this referral and the claims raised by the applicant for violation of Article 31 of the Constitution, the Court will further examine the claims of the applicant regarding (i) lack of reasoning of the court decision; and (ii) the absence of holding a hearing before the SCSC and the Appellate Panel of the SCSC.

I. Court's assessment regarding violation of the right to a "*reasoned decision*"

a) General principles

41. The guarantees enshrined in Article 6 paragraph 1 of the ECHR also include the obligation for the courts to give sufficient reasons for their decisions (see the case of the ECtHR, *H. v. Belgium*, nr. 8950/80, Judgment of 30 November 1987, paragraph 53). A reasoned decision shows the parties that their case has really been heard.

42. Despite the fact that the domestic court has a certain margin of appreciation regarding the selection of arguments and the decision on the admissibility of evidence, it is obliged to justify its actions by giving reasons for all its decisions (see the cases of the ECtHR: *Suominen v. Finland*, no. 37801/97, Judgment of 24 July 2003, paragraph 36; as well as the case *Carmel Saliba v. Malta*, no. 24221/13, Judgment of 24 April 2017, paragraph 73).

43. The lower Court or state authority, on the other hand, must give such reasons and justifications which will enable the parties to effectively use any existing right of appeal (see the ECtHR case *Hirvisaari v. Finland*, no. 49684/99, of 25 December 2001, paragraph 30).

44. Article 6 paragraph 1 obliges the courts to give reasons for their decisions, but this does not mean that a detailed answer is required for each argument (see the ECtHR cases, *Van de Hurk v. the Netherlands*, no. 16034/90, Judgment of 19 April 1994, paragraph 61; *García Ruiz v. Spain*, no. 0544/96, Judgment of 29 January 1999, paragraph 26; *Perez v. France*, no. 47287/99, Judgment of 12 February 2004, paragraph 81).

45. Whether the Court is obliged to give reasons depends on the nature of the decision taken by the court, and this can only be decided in the light of the circumstances of the case in question: it is necessary to take into account, among other things, the different types of submissions that a party can submit to the court, as well as the differences that exist

between the legal systems of the countries in relation to legal provisions, customary rules, legal positions and the submission and drafting of judgments (see the cases of the ECtHR *Ruiz Torija v. Spain*, no. 18390/91, Judgment of 9 December 1994, paragraph 29; *Hiro Balani v. Spain*, no. 18064/91, Judgment of 9 December 1994, paragraph 27).

46. However, if a party's submission is decisive for the outcome of the proceedings, it requires that it be answered specifically and without delay (see ECtHR cases *Ruiz Torija v. Spain*, cited above, paragraph 30; *Hiro Balani v. Spain* , cited above, paragraph 28).

47. Therefore, the courts are obliged to:

(a) examine the main arguments of the parties (see ECtHR cases, *Buzescu v. Romania*, no. 61302/00, Judgment of 24 August 2005, paragraph 67; *Donadze v. Georgia*, no. 74644/01, Judgment of 7 June 2006, paragraph 35);

(b) examine with particular rigor and care the requirements regarding the rights and freedoms guaranteed by the Constitution, the ECHR and its Protocols (see ECtHR cases: *Fabris v. France*, cited above, paragraph 72; *Wagner and JMWL v. Luxemburg*, no. 76240/01, Judgment of 28 June 2007, paragraph 96).

48. Article 6, paragraph 1, does not require the Supreme Court to give a more detailed reasoning when it simply applies a certain legal provision regarding the legal basis for rejecting an appeal because that appeal has no prospect of success (see ECtHR cases, *Burg and others v. France*, no. 34763/02; Decision of 28 January 2003; *Gorou v. Greece (no. 2)*, no. 12686/03, Decision of 20 March 2009, paragraph 41).

49. In addition, when rejecting an appeal, the appellate court can, in principle, simply accept the reasoning of the decision given by the lower court (see the ECtHR case, *García Ruiz v. Spain*, cited above, paragraph 26; see, contrary to this, *Tatishvili v. Russia*, no. 1509/02, Judgment of 9 July 2007, paragraph 62). However, the concept of a fair trial implies that a domestic court that has given a narrow reasoning for its decisions, either by repeating the reasoning previously given by a lower court or otherwise, was in fact dealing with important issues within its jurisdiction, which means that it did not simply and without additional effort accept the conclusions reached by the lower court (see the ECtHR case, *Helle v. Finland*, no. (157/1996/776/977), Judgment of 19 December 1997, paragraph 60). This requirement is all the more important if the party in dispute has not had the opportunity to present its arguments orally in the proceedings before the domestic court.

50. However, the appellate courts (in the second instance) which have jurisdiction to reject unfounded appeals and to resolve factual and legal issues in the contentious procedure, are obliged to justify why they refused to decide on the appeal (see the case of ECtHR, *Hansen v. Norway*, no. 15319/09, Judgment of 2 January 2015, paragraphs 77–83).

51. In addition, the ECtHR did not establish that the right was violated in a case in which a specific clarification was not provided regarding a statement that referred to an irrelevant aspect of the case, namely the absence of a signature and stamp, which is an error of a more formal than material nature and that error was immediately corrected (see the ECtHR case, *Mugoša v. Montenegro*, no. 76522/12, Judgment of 21 September 2016, paragraph 63).

b) Application of the aforementioned principles in the circumstances of the present case

52. Regarding the implementation of the aforementioned principles established through the case law of the ECtHR and the Court on the reasoning of the court decisions, the Court recalls that in the present case the applicant claims that the Appellate Panel of the SCSC has violated the provisions of the substantive and procedural law when it approved the appeal of the PAK Liquidation Authority and rejected his claim as time-barred.

53. In this regard, the Court notes that the Appellate Panel of the SCSC rejected the claim of the applicant for the compensation of unpaid salaries for the period October 2003-June 2014, based on paragraph 1 of Article 353 of the LOR which establishes as follows:

> *"Claims for periodic charges that fall due annually or at specific shorter time intervals (periodic claims) shall become statute-barred three (3) years after each individual charge falls due, whether they are accessory periodic claims, such as interest claims, or such periodic claims by which a right itself is drawn upon, such as maintenance claims."*

54. The Court, further, emphasizes that according to article 369 of the LOR, "*statute-barring shall discontinue with the filing of a suit or any other act by the creditor against the debtor before the court or other relevant authority to determine, secure or collect a claim."* In this regard, the Court recalls that the applicant, on 11 September 2014, submitted a request for compensation of unpaid salaries to the PAK Liquidation Authority, while on 29 April 2015, he submitted the lawsuit against the PAK Liquidation Authority to the SCSC .

55. Based on what was mentioned above, the Court brings to attention the fact that the applicant had requested the compensation of unpaid salaries for a period that includes 11 (eleven) years, a request which the Appellate Panel of the SCSC rejected as statute-barred. However, the Court notes that by the aforementioned judgment, the Appellate Panel of the SCSC has not explained how the statute of limitations was reached for the last 3 (three) years before the filing of the lawsuit, namely for the years 2011-2014.

56. In this regard, the Court notes that the Appellate Panel of the SCSC was satisfied with the assessment that the applicant's claim was time-barred in the absence of providing any evidence on the termination of the statute of limitation and the invalidity of the list of 12 September 2014. Regarding with this, the Court emphasizes that the Appellate Panel of the SCSC has not provided a reasoning as to how the statute of limitation for the last 3 (three) years has been reached but has contented itself with a general conclusion that his claim regarding the compensation of unpaid salaries for the period October 2003-June 2014 has become statute-barred.

57. Regarding the finding of the Appellate Panel of the SCSC that the applicant failed to prove with any evidence that he had interrupted the statute of limitation, the Court recalls that in the reasoning of the judgment of the SCSC as well as in the reasoning of the judgment of the Appellate Panel of the SCSC, it is noted that the applicant in support of his claim had attached, among other things, the following evidence to the lawsuit: the notice for filing the lawsuit submitted to the PAK on 23 April 2015, the employment contract, the letter from the PAK of 16 July 2014 addressed to the management of SOE "Auto Prishtina" and the list of active workers who had not received their salaries. In this regard, the Court assesses that a disproportionate burden has been placed on the applicant in providing other evidence, since the applicant, based on the reasoning of the above-mentioned judgments, submitted the evidence he had at his disposal, while other evidence mat have been at the institution, namely to PAK.

58. Further, the Court recalls that, in support of his claim, the applicant submitted to the Court 4 (four) judgments of the SCSC by which the claims of the former employees of SOE "Auto Prishtina" were partially approved, respectively judgments in the case of H.G., R.Z., S.B. and A.Z. The Court notes that, in these cases, the SCSC, based on article 353 of the LOR, found that the request for compensation of unpaid salaries that belongs to the last 3 (three) years, namely the relevant period 2011-2014, has not been statue barred. Also, by the judgments in the above-mentioned cases, the Court notes that the SCSC accepted as non-disputed evidence the list of 12 September 2014 with the names of active workers who had not received their salaries, which the Appellate Panel of the SCSC had considered as invalid.

59. As a result, the Court assesses that the Appellate Panel of the SCSC , when modifying the judgment of the SCSC and, consequently, rejecting the claim of the applicant, did not provide a reasoning as to why the claim was rejected as statute-barred on the basis of paragraph 1 of article 353 of the LOR, for the time period that includes the years 2011-2014.

60. The Court recalls that according to the case law of the ECtHR and the Court, the decision of an appellate court, however, must contain sufficient reasoning to show that the relevant court did not approve the findings reached by a lower court (see, the ECtHR case, *Tatishvili v. Russia*, no. 1509/02, Judgment of 9 July 2007, paragraph 62; and see the Court case, KI36/22, applicant *"Matkos Group" L.L.C.*, Judgment of 18 January 2023, cited above, paragraph 127).

61. In light of the above-mentioned assessments, the Court finds that the Judgment [AC-I-21-0836-A0001] of 26 October 2023 of the Appellate Panel of the SCSC, does not meet the criteria of a "*fair trial*" according to Article 31 of the Constitution in conjunction with Article 6 of the ECHR, due to the lack of reasoning of the court decision.

(i) Regarding the claim of absence of the hearing

62. In assessing the applicant's claim for violation of article 31 of the Constitution as a result of the lack of a hearing, the Court will refer to (i) the general principles established by the ECtHR regarding the right to a hearing according to Article 6 of the ECHR, and then apply the same (ii) to the circumstances of the present case.

(i) General principles regarding the right to a hearing within the meaning of Article 6 of the ECHR

63. The Court initially emphasizes that the ECtHR case law has established the basic principles regarding the right to a hearing. Based on this case law, the Court has also defined the relevant principles and exceptions, based on which the necessity of holding a hearing is assessed, depending on the circumstances of the respective cases (see, cases of the Court 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, applicants *Et-hem Bokshi and others*, Judgment of 10 December 2020, paragraphs 47-54 and 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, applicants *Muhamet Këndusi and others*, Judgment of 27 January 2021, paragraphs 46-53).

64. Public character of the proceedings before the judicial authorities protects litigants from the administration of justice in secret, in the lack of a public hearing. Moreover, publicity of judicial proceedings is also one of the mechanisms through which trust in justice is maintained. Such a principle, moreover, contributes to the achievement of the goals of Article 31 of the Constitution and Article 6 of the ECHR for a fair trial, the

guarantee of which is one of the fundamental principles of any democratic society embodied in the ECHR (see, ECtHR case *Malhous v. Czech Republic*, no. 33071/96, Judgment of 12 July 2001, paragraph 55).

65. In principle, litigants enjoy the right to a public hearing, but such an obligation is not absolute. As far as it is relevant to the present circumstances, the ECtHR case law has developed the key principles relating to (i) the right to a hearing before the first instance courts; (ii) the right to a hearing before the second and third instance courts; (iii) the principles on the basis of which it should be determined whether a hearing is necessary; and (iv) whether the lack of the first instance hearing can be remedied through a hearing at a higher instance and the relevant criteria for making this assessment.

66. Concerning the obligation to hold a hearing before the first instance courts, the ECtHR has emphasized that in proceedings before the first and sole court, the right to a hearing is guaranteed through paragraph 1 of Article 6 of the ECHR (see, cases of ECtHR *Fredin v. Sweden (no. 2)*, nr. 18928/91, Judgment of 23 February 1994, paragraphs 21-22; *Allan Jacobsson v. Sweden (no. 2)*, no. 16970/90, Judgment of 19 February 1998, paragraph 46; and *Salomonsson v. Sweden*, no. 38978/97, Judgment of 12 November 2002, paragraph 36). Exceptions to these cases, in principle, are made only if *"there are exceptional circumstances that would justify the absence of a hearing"*, (see the ECtHR case *Mirovni Inštitut v. Slovenia*, no. 32303/13, judgment of 13 June 2018, paragraph 36). The exceptional character of such circumstances stems essentially from the nature of the questions at issue, for example in cases where the proceedings concern exclusively legal or highly technical questions (*Koottummel v. Austria*, no. 49616/06, judgment of 10 March 2010, paragraphs 19-20).

67. Regarding the obligation to hold a hearing in the courts of the second or third instance, the ECtHR case law states that the absence of a hearing at second or third instance may be justified by the special features of the proceedings concerned, provided a hearing has been held at first instance (see, case of the ECtHR *Salomonsson v. Sweden*, cited above, paragraph 36). Thus, leave-to-appeal proceedings and proceedings involving only questions of law, as opposed to questions of fact, may comply with the requirements of Article 6 even though the appellant was not given an opportunity of being heard in person by the second instance court (see, ECtHR cases *Miller v. Sweeden* , no. 55853/00, Judgment of 8 February 2005, paragraph 30; and *Helmers v. Sweeden*, no.11826/85, judgment of 29 October 1991, paragraph 36).

68. With regard to the principles on the basis of which it must be determined whether a hearing is necessary, the Court refers to the Judgment of the Grand Chamber of the ECtHR, in case *Ramos Nunes de Carvalho e Sá v. Portugal*, in which were established the principles on the basis of which the necessity of a hearing should be assessed (see, ECtHR case, *Ramos Nunes de Carvalho e Sá v. Portugal*, Judgment of 6 November 2018, no. 55391/13 57728/13 74041/13, paragraphs 190-191).

69. According to this judgment, a hearing may not be required if (i) there are no issues of credibility or contested facts which necessitate a hearing and the courts may fairly and reasonably decide the case on the basis of the case file (see, cases of the ECtHR, *Döry v. Sweden*, no. 28394/95, Judgment of 12 February 2003, paragraph 37; *Saccoccia v. Austria*, cited above, paragraph 73; and *Mirovni Inštitut v. Slovenia*, cited above, paragraph 36; (ii) cases raising merely legal issues of a limited nature (see ECtHR cases *Allan Jacobsson v. Sweeden (no. 2)*, cited above, paragraph 49; and *Valová, Slezák and Slezák v. Slovakia* Judgment of 1 September 2004, paragraphs 65-68) or cases which present no particular complexity (*Varela Assalino v. Portugal* (see ECtHR case, *Varela Assalino v. Portugal*, no. 64336/01, Decision of 25 April 2002); and (iii) incudes highly

technical issues, which are better dealt with in writing than by means of oral argument in a hearing (see ECtHR case, *Döry v. Switzerland*, cited above, paragraph 41).

70. On the contrary, according to the assessment of the Grand Chamber of the ECtHR in the case *Ramos Nunes de Carvalho e Sá v. Portugal*, holding a hearing is necessary when: (i) issues of law and fact are examined, including cases in which it is assessed whether the authorities have correctly verified the facts (see, the case of the ECtHR *Malhous v. Czech Republic*, cited above, paragraph 60); (ii) when the circumstances require the court to gain its impression on the litigants by giving them the right to explain their personal situation, in person or through the representative (see, the case of the ECtHR *Miller v. Sweden*, cited above, paragraph 34); and (iii) where the court requires clarifications on certain points by holding a hearing (see ECtHR case *Lundevall v. Sweden*, no. 38629/97, judgment of 12 February 2003, paragraph 39).

71. Regarding the possibility of correction at the second-instance of the lack of a first-instance hearing and the respective criteria, the ECtHR, through its case law, has determined that, in principle, such correction depends on the competencies of the higher court. If the latter has full jurisdiction to examine the merits of the respective case, including the assessment of the facts, then the correction of the lack of a hearing in the first instance can be done in the second instance (see the case of the ECtHR, *Ramos Nunes de Carvalho e Sá v. Portugal*, cited above, paragraph 192).

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

73. Also, according to the case law of the ECtHR, the fact that the parties did not request to hold a hearing does not mean that they have waived the right to hold one. Based on the case law of the ECtHR, such a case depends on the characteristics of the domestic law and the circumstances of each individual case (see, cases of the ECtHR, *Göç v. Turkey*, no. 36590/97, Judgment of 11 July 2002, paragraph 48 and *Exel v. Czech Republic*, cited above, paragraph 47).

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

74. The Court recalls that based on the case law of the ECtHR, Article 6 of the ECHR, in principle, guarantees the holding of a hearing at least atone level of decision-making. Such is, in principle (i) mandatory if the court of first instance has the sole decision-making competence regarding questions of fact and law; (ii) non-mandatory at second instance if a hearing was held at first instance, despite the fact that such a determination depends on the characteristics of the relevant case, for example, if the second instance decides both on issues of fact and law; and (iii) mandatory in the second instance if it was not held in the first instance, in cases where the second instance has full competence to assess the decision of the first instance, also in relation to questions of fact and law.

75. Exceptions from the above cases, according to the case law of the ECtHR, can only be made if *"there are exceptional circumstances that would justify the absence of a hearing"*, such as cases that deal exclusively with legal issues or are of a highly technical nature (see ECHR cases *Mirovni Inštitut v. Slovenia* , cited above, paragraph 36; and *Koottummel v. Austria*, cited above, paragraphs 19-20); and when the courts can fairly and reasonably decide the case based on the case file (see, cases of the ECtHR, *Ramos Nunes de Carvalho e Sá v. Portugal*, cited above, paras 190-191; *Varela Assalino v. Portugal*, cited above; and *Döry v. Sweden*, cited above, paragraph 37).

76. The Court recalls that the applicant initially submitted a request to the Liquidation Authority of the PAK for the compensation of unpaid wages, for the period October 2003-June 2014, as an employee of the SOE "Auto Prishtina", a request which was rejected on the grounds that it was statute-barred. As a result, the applicant initiated the court proceedings by a lawsuit with the SCSC, against the PAK and SOE "Auto Prishtina", which was approved as grounded by the SCSC. Against the judgment of the SCSC, the Liquidation Authority of the PAK submitted an appeal to the SCSC Appellate Panel, which the latter, by the judgment, assessed as grounded and modified the first-instance judgment on the grounds that according to the provisions of the LOR, his request was time-barred.

77. Furthermore, the Court notes that during the proceedings conducted by the SCSC and the Appellate Panel of the SCSC, no hearing session was held, which, according to the applicant, violates his right to fair and impartial trial, guaranteed by Article 31 of the Constitution.

78. The Court further emphasizes that from the case file it does not turn out that the applicant has requested to hold a hearing before the SCSC and the Appellate Panel of the SCSC.

79. Regarding the non-holding of the court hearing, the Court recalls that the SCSC did not schedule a hearing on the grounds that the factual situation was not disputed between the parties, while the Appellate Panel of the SCSC, by the judgment by which it modified the judgment of the first instance, decided not to hold the oral part of the procedure based on paragraph 1 of article 69 of the Law on the SCSC on PAK Related Matters.

80. The Court recalls that based on Article 69 (Oral Appellate Proceedings) of the Law on the SCSC on PAK Related Matters, the Appellate Panel of the SCSC decides whether to hold one or more hearings orally regarding the respective complaint, based on its initiative or even a written request from a party. Consequently, the holding of a hearing at the appellate level does not necessarily depend on the party's request. It is also the duty of the relevant panel, based on its own initiative, to assess whether the circumstances of a case require holding a hearing. Moreover, based on Article 66 (Content of Appeal) and Article 70 (Submission of New Evidence) of the Law on the SCSC on PAK Related Matters, the Appellate Panel has the competence to assess both the issues of law and of the fact, and consequently, is equipped with full competence to assess the way the first instance of the SCSC has assessed the facts. In the circumstances of the present case, the Appellate Panel modified the judgment of the SCSC to the detriment of the applicant. In such circumstances, taking into account the legal provisions, the Court cannot conclude that the absence of a hearing at the Appellate Panel is justified only as a result of the absence of a request from the parties to the proceedings, especially considering the fact that the applicant did not appeal against the judgment of the SCSC, which was in his favor.

81. Furthermore, as mentioned above, the fact that the applicant has not requested a hearing does not necessarily mean that he waived such a request and also the absence

of this request does not necessarily exempt the relevant court from the obligation to hold such a hearing (see the case of the ECtHR, *Göç v. Turkey*, cited above, paragraph 48 and the Court's case KI145/19, KI146/19, KI147/19, KI149/19, KI150/19, KI151/19, KI152/19, KI153/19, KI154/19, KI155/19, KI156/19, KI157/19 and KI159/19, applicant *Et-hem Bokshi and others*, cited above, paragraph 54).

82. The Court, in what follows, based on the case law of the ECtHR, will assess whether in the circumstances of the present case there are exceptional circumstances that would justify the absence of a hearing at both instances of decision-making, namely if the nature of cases under assessment before the SCSC and the SCSC Appellate Panel, can be classified as "*exclusively legal or of a highly technical nature*".

If in the circumstances of the present case there are exceptional circumstances that would justify the absence of a hearing

83. The Court once again recalls that based on the case law of the ECtHR, the parties have the right to a hearing in at least one instance. Exception from the right to a hearing exists only in those cases in which it is determined that "*there are exceptional circumstances that would justify the absence of a hearing*" and which, according to the case law of the ECtHR, are classified as cases related to "*exclusively legal issues or are of a highly technical nature*".

84. Examples of issues of a highly technical nature in which a hearing is not necessarily necessary, according to the case law of the ECtHR, exist in cases related to social security (see, the case of the ECtHR *Döry v. Sweden*, cited above, paragraph 41). Similarly, according to the case law of the ECtHR followed by the Court, the absence of a hearing does not result in a violation in those cases in which the issues before the relevant court are exclusively legal (see, cases of the ECtHR *Saccoccia v. Austria*, cited above, paragraph 73 and *Allan Jacobsson v. Sweden (no. 2),* cited above, paragraph 49; and KI80/23, applicant *Behgjet Stoliqi*, Resolution on Inadmissibility of 17 January 2024, paragraph 47; and KI125/23, applicant *Hazir Bublica*, Resolution on Inadmissibility of 31 January 2024, paragraph 46).

85. On the contrary, in the cases in which the issues before the respective courts involved both questions of fact and law, the ECtHR, in its case law, adopted by the Court, did not find that there were exceptional circumstances that would justify the absence of a hearing (see, cases of the ECtHR *Malhous v. Czech Republic*, cited above, paragraph 60 and *Koottummel v. Austria*, cited above, paragraphs 20-21 as well as the Court's case KI145/19, KI146/19, KI147/19, KI149/19, KI150/19, KI151/19, KI152/19, KI153/19, KI154/19, KI155/19, KI156/19, KI157/19 and KI159/19, applicant *Et-hem Bokshi and others*, cited above, paragraph 72).

86. In the circumstances of the present case, the Court first recalls that the Appellate Panel has jurisdiction to deal with both questions of fact and questions of law. Based on paragraph 11 of article 9 (Judgments, Decisions and Appeals) of the Law on the SCSC on PAK Related Matters and paragraph 4 of article 69 (Oral Appellate Proceedings) and article 70 (Submission of New Evidence)) of the Annex to the Law on the SCSC, the parties, among other things, have the opportunity to file appeals before the Appellate Panel regarding both questions of law and facts, including the opportunity to submit new evidence.

87. In support of this finding, the Court recalls that by the Judgment in case *Ramos Nunes de Carvalho e Sá v. Portugal*, the ECtHR specifically determined that a hearing is necessary in circumstances that involve the need for consideration of issues of law and fact, including cases in which it is necessary to assess whether the lower authorities have

assessed the facts correctly. This is especially true in circumstances where a hearing has not even been held before the lower instance, as is the case in the circumstances of the present case.

88. In the light of the above facts, the Court notes that the SCSC by the judgment approved the request of the applicant for compensation of unpaid salaries for the period from October 2003 to 21 July 2014, on the grounds that (i) the applicant had continuously requested payment of unpaid salaries and that (ii) through the list of active workers, the respondent asserted the existence of the unpaid debt. After the appeal filed by the PAK with the allegation that the SCSC had erroneously determined the factual situation and had erroneously applied the substantive law, the first-instance judgment was modified by the SCSC Appellate Panel, on the grounds that the applicant's request was statute-barred according to paragraph 1 of article 353 of the LOR.

89. In this regard, the Court notes that the above-mentioned finding regarding the limitation of the claim, the Appellate Panel of the SCSC was based on (i) the lack of evidence provided by the applicant for submitting his request to the court or to any other competent authority, within three (3) years from the moment when the SOE "Auto Prishtina" is claimed not to have fulfilled its obligations; and (ii) the invalidity of the list of workers issued by the SOE "Auto Prishtina", on the grounds that from the entry of the latter into liquidation on 21 July 2014, all authority and competences had passed to the Liquidation Authority of the PAK. In this regard, the Court recalls the reasoning of the Appellate Panel of the SCSC, as follows:

> *In this case, the list of active workers who have not received their salaries according to the employment contract issued by the SOE "Auto Prishtina" of 12 September 2014, to which the first instance of the SCSC gave trust by approving the claimant's claim was compiled by the SOE after the entry into liquidation of the company in question (21 July 2014), which means that the latter in this situation is invalid because all competencies had passed to the Liquidation Authority and the SOE had no authorization to take any action /decision or to acknowledge debt as in the present case."*

90. From the above, the Court notes that the Appellate Panel modified the judgment of the SCSC by assessing as invalid the list of workers issued by SOE "Auto Prishtina", on which the SCSC was also based when it approved the applicant's claim, on the grounds that through this list the respondent had asserted its existence in the name of the unpaid salary. Also, the Appellate Panel reasoned its decision based on the lack of evidence provided by the applicant for the termination of the employment relationship by any action taken by the PAK and that he did not prove the interruption of the statute of limitation, through the timely submission of his request for compensation.

91. The Court notes that in the reasoning of the judgment of the SCSC as well as in the reasoning of the judgment of the Appellate Panel of the SCSC it is emphasized that the applicant, in support of his claim, had attached to the lawsuit, among other things, the following evidence: the notice for filing the claim submitted to PAK on 23 April 2015, the employment contract, the letter of PAK of 16 July 2014 addressed to the management of SOE "Auto Prishtina" and the list of active workers of 12 September 2024 who had not received salaries.

92. The Court recalls that according to the case law of the ECtHR, holding a hearing is considered necessary when issues of law and important factual issues must be examined (see, the case of the ECHR *Fischer v. Austria*, cited above, paragraph 44) or when it is necessary to assess whether the authorities have correctly determined the facts (see, the case of the ECtHR *Malhous v. Czech Republic [GC]*, cited above, paragraph 60) and

when it is necessary to ensure that the relevant facts are examined in more detail (see, the ECtHR case *Ramos Nunes de Carvalho e Sá v. Portugal* [GC], cited above, paragraph 211).

93. In the circumstances of the present case, the Court notes that the entry into liquidation of SOE "Auto Prishtina" is not disputed. However, the Court emphasizes that the holding of a hearing in the case of the applicant, by the Appellate Panel of the SCSC, was necessary in order to clarify the ambiguities regarding the validity and legality of the list of workers issued by SOE "Auto Prishtina", the termination of the employment relationship of the applicant and the lack of evidence provided by him.

94. Therefore, the Court finds that the case under review before the SCSC and the SCSC Appellate Panel does not involve (i) exclusively legal issues or (ii) issues of a technical nature. On the contrary, the case before the SCSC and the SCSC Appellate Panel involved important factual and legal issues. As a result, the Court assesses that there are no circumstances that justify the absence of a hearing and as a result the applicant's right to a fair and impartial trial guaranteed by Article 31 of the Constitution, in conjunction with Article 6 of the ECHR has been violated.

95. In conclusion, the Court finds that by the contested judgment of the Appellate Panel of the SCSC, as a result of (i) manifestly erroneous interpretation of the law and (ii) not holding the hearing, the applicant's right to a fair and impartial trial, guaranteed by Article 31 of the Constitution, in conjunction with Article 6 of the ECHR has been violated.

FOR THESE REASONS

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

DECIDES

I. TO DECLARE the Referral admissible;

II. TO HOLD, that there has been a violation of article 31 [Right to Fair and Impartial Trial] of the Constitution, in conjunction with article 6 (Right to a fair trial) of the ECHR;

III. TO DECLARE, invalid Judgment [AC-I-21-0836-A0001] of 26 October 2023 of the Appellate Panel of the SCSC.

IV. TO REMAND, Judgment [AC-I-21-0836-A0001] of 26 October 2023 of the Appellate Panel of the SCSC, for reconsideration in accordance with the Judgment of this Court;

V. TO ORDER, the Appellate Panel of the SCSC, to notify the Court, in accordance with rule 60 (5) of the Rules of Procedure, by 3 February 2025, about the measures taken to implement the Judgment of the Court ;

VI. TO REMAIN seized of the matter pending compliance with this 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. This Judgment enters into force on the day of its publication in the Official Gazette, in accordance with paragraph 5 of article 20 of the Law.

Judge Rapporteur **President of the Constitutional Court**

Radomir Laban Gresa Caka-Nimani

This translation is unofficial and serves for informational purposes only.