REPUBLIKA E KOSOVËS - РЕПУБЛИКА КОСОВО - REPUBLIC OF KOSOVO
GJYKATA KUSHTETUESE
УСТАВНИ СУД
CONSTITUTIONAL COURT

Prishtina, on 6 January 2020
Ref. no.:AGJ 1496/20

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JUDGMENT

in

Case No. KI35/18

Applicant

"Bayerische Versicherungsverbrand"

Constitutional review of Judgment E. Rev. No.18/2017 of the Supreme Court of Kosovo of 4 December 2017

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Arta Rama-Hajrizi, President
Bajram Ljatifi, Deputy President
Bekim Sejdiu, Judge
Selvete Gërxhaliu, Judge
Gresa Caka-Nimani, Judge
Safet Hoxha, Judge
Radomir Laban, Judge
Remzije Istrefi-Peci, Judge and
Nexhmi Rexhepi, Judge

Applicant

1. The Referral was submitted by the insurance company "*Bayerische Versicherungsverbrand*" with its seat in Munich, Germany, represented by ICS Assistance LLC, by Visar Morina and Besnik Mr. Nikqi, lawyers from Prishtina (hereinafter: the Applicant).

Challenged decision

2. The Applicant challenges constitutionality of Judgment [E. Rev. No. 18/2017] of 4 December 2017 of the Supreme Court of the Republic of Kosovo (hereinafter: the Supreme Court) in conjunction with Judgment [Ae. No. 12/2016] of 6 June 2017 of the Court of Appeals and Judgment [III. C. No. 626/2013] of 30 October 2015 of the Basic Court in Prishtina (hereinafter: the Basic Court).

Subject matter

3. The subject matter is the constitutional review of the abovementioned Judgment of the Supreme Court, which allegedly violates the Applicant's fundamental rights and freedoms guaranteed by Articles 31 [Right to Fair and Impartial Trial] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution) in conjunction with Article 6 (Right to a fair trial) of the European Convention on Human Rights (hereinafter: the ECHR).

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 32 [Filing of Referrals and Replies] of the Rules of Procedure of the Court (hereinafter: the Rules of Procedure).

5. On 31 May 2018, the Constitutional Court of the Republic of Kosovo (hereinafter: the Court) adopted in the administrative session the amendments and supplementation to the Rules of Procedure, which was published in the Official Gazette of the Republic of Kosovo on 21 June 2018 and entered into force 15 (fifteen) days after its publication. Accordingly, in reviewing the Referral, the Court refers to the legal provisions of the new Rules of Procedure in force.

Proceedings before the Court

6. On 22 February 2018, the Applicant submitted the Referral to the Court.

7. On 26 February 2018, the President of the Court appointed Judge Gresa Caka-Nimani as Judge Rapporteur and the Review Panel composed of Judges: Altay Suroy (Presiding), Snezhana Botusharova and Arta Rama-Hajrizi.

8. On 21 March 2018, the Court notified the Applicant about the registration of the Referral and sent a copy of the Referral to the Supreme Court.

9. On 16 June 2018, the term of office of the Judges: Snezhana Botusharova and Almiro Rodrigues ended. On 26 June 2018, the term of office of the judges: Altay Suroy and Ivan Čukalović ended.

10. On 9 August 2018, the President of the Republic of Kosovo appointed new judges: Bajram Ljatifi, Safet Hoxha, Radomir Laban, Remzije Istrefi-Peci and Nexhmi Rexhepi.

11. On 12 October 2018, the Court sent a letter to the Applicant requesting him to attach a copy of the claim, the reply to the appeal and the reply to revision by them in the proceedings before the regular courts. On the same date, the Court notified the Insurance Company "INSIG" (hereinafter: INSIG) about the registration of the Referral and requested it to attach the revision submitted to the proceedings before the regular courts.

12. On 16 October 2018, the Applicant submitted the requested documents to the Court.

13. On 2 November 2018, the Insurance Company "INSIG", attached the requested document and submitted the relevant comments to the Court.

14. On 30 November 2018, as the term of office to the four abovementioned judges as Judges of the Court ended, the President of the Court, based on the Law and the Rules of Procedure, rendered Decision No. GJR. 35/18 on the appointment of the new Review Panel and the latter was composed of: Arta Rama-Hajrizi (Presiding), Bajram Ljatifi and Remzije Istrefi-Peci.

15. On 19 April 2019, the Applicant, by a letter, informed the Court about the receipt of the Judgment of the Court of 15 April 2019 in case KI87/18 which was submitted to the Court by the same representatives as of the Applicant, requesting the Court to consider the case KI35/18 as a priority on the grounds that: *"[...] we are dealing with the same issue, moreover an earlier Individual Referral and with an interest in avoiding the possibility that the judgments of the Supreme Court would serve as a precedent [...]"*.

16. On 6 November 2019, the Judge Rapporteur presented the preliminary report to the Review Panel, and it was unanimously decided to adjourn the decision on the case for a next session.

17. On 8 November 2019, the Court requested from the Basic Court the full case file.

18. On 11 November 2019, the Basic Court submitted the full case file to the Court.

19. On 11 December 2019, the Review Panel considered the report of the Judge Rapporteur and unanimously recommended to the Court the admissibility of the Referral.

20. On the same date, the Court unanimously held that (i) the Referral is admissible; and by majority held that (ii) Judgment [E. Rev. No. 18/2017] of 4 December 2017 of the Supreme Court is not in compliance with Article 31 [Right to Fair and Impartial Trial] of the Constitution in conjunction with Article 6 (Right to a fair trial) of the ECHR. Judge Nexhmi Rexhepi voted against this finding.

Summary of facts

21. On 4 June 2007, the person H.H. who was insured by the Applicant had a traffic accident caused by an insurer of INSIG in Prishtina. Person H.H., namely the Applicant's insured, was compensated by the latter in the amount of € 10,500.

22. According to the case file, it follows that on 12 May 2009, the Applicant filed a claim with the Basic Court.

23. According to the case file, it also follows that on 10 March 2011, the District Commercial Court by Judgment [IV. C. No. 503/2010] approved the Applicant's statement of claim as grounded. The respondent, namely INSIG, filed an appeal against this Judgment with the Court of Appeals. The latter, by Judgment [Ae. No. 233/2012] of 24 October 2013, approved the appeal, and remanded the case for retrial.

24. On 30 October 2015, in the repeated procedure, the Basic Court by Judgment [III. C. No. 626/2013] (i) approved the Applicant's statement of claim; (ii) obliged INSIG to pay the Applicant an amount of € 10,500 as a compensation, together with a penalty interest of 20% per year, starting from the date of filing the claim, namely 12 May 2009 until the final payment; and (iii)) forced INSIG to pay the costs of the proceedings. The Basic Court, by its Judgment, justified the imposition of a 20% penalty interest based on Article 277 (Default Interest) of the Law on Obligational Relationship of 30 March 1978 (hereinafter: LOR) and Article 5 (Claim Settlement) of Rule 3 amending the Rule on Compulsory Motor Liability Insurance (hereinafter: Rule 3).

25. On an unspecified date, INSIG filed appeal with the Court of Appeals against the aforementioned Judgment of the Basic Court, alleging violation of the provisions of the contested procedure, erroneous or incomplete determination of factual situation and erroneous application of substantive law, with the proposal that the challenged Judgment be modified or annulled and the case be remanded for retrial. The Applicant filed a response to the appeal and proposed that INSIG appeal be declared ungrounded.

26. On 6 June 2017, the Court of Appeals, by Judgment [Ae. No. 12/2016], rejected as ungrounded the appeal of INSIG and upheld the Judgment of the Basic Court (i) in respect of the principal debt on the basis of subrogation in the amount of € 10,500, and modified the relevant Judgment (ii) in respect of the penalty interest, forcing INSIG to pay the interest "*paid by commercial banks on funds deposited in the bank over one year without a specified destination*" with an additional penalty of 20% of from 12 May 2009 until 29 July 2011, whilst starting from 30 July 2011 until the final payment, only th default interest 12% on the annual interest rate. The Court of Appeals clarified that the 20% interest rate reduction to 12% after 30 July 2011, is the result of the entry into force of Law No. 04/L-018 on Compulsory Motor Liability Insurance (hereinafter: Law on Compulsory Insurance).

27. On 14 July 2017, INSIG filed an appeal against the Judgment of the Court of Appeals with the Supreme Court alleging violation of the provisions of

contested procedure and erroneous application of substantive law, with the proposal that the revision be approved as grounded and the Judgments of the lower instance courts be annulled and the case be remanded for retrial. INSIG specifically challenged the amount of the default interest, namely the time from which it was calculated, noting that the Court of Appeals incorrectly applied the legal provision, namely Article 26 of the Law on Compulsory Insurance, when deducting 20% interest and 12% from the date of filing the claim because, according to the allegation, "*this is only valid when the injured party does not receive a response within 60 days*". On the other hand, the Applicant filed response to revision, proposing that (i) the respective revision be declared inadmissible pursuant to paragraph 2 of Article 214 of Law 04/L-118 on Amending and Supplementing Law 04/L-006 on Contested Procedure (hereinafter: Law on Amending and Supplementing the LCP); and (ii) declare INSIG allegations of erroneous application of substantive law by the Court of Appeals as ungrounded, because the latter acted correctly when reasoning its decision under Rule 3 of the Rule 3 and Article 26 of the Law on Compulsory Insurance.

28. On 4 December 2017, the Supreme Court by Judgment [E. Rev. No. 18/2017] (i) rejected INSIG revision regarding the principal debt on a subrogation basis; while (ii) approved as grounded the revision regarding the default interest, obliging INSIG to pay the default interest "*in the amount of savings deposits without term paid by commercial banks in Kosovo without a specific destination over one year*" from 3 August 2015, namely the date on which the expertise was made, until the final payment. In the context of the latter, the Supreme Court, *inter alia*, reasoned:

> "*... [The Applicant] shall be paid interest on the amount of saving deposits payable by commercial banks in Kosovo without a fixed destination of more than one year, from 3.8.2015, (the day of expertise). until the final payment because the provision of Article 26.6 of the Law on Compulsory Motor Liability Insurance (Law No. 04L-018) providing for a 12% interest rate, and the provision of Article 5.5 of Rule 3 of the Central Bank of Kosovo (CBK) The Rule Amending the Rule on Compulsory Motor Liability Insurance of 1.10.2008 does not apply in the present case because there is no evidence in the case file that [the Applicant] has addressed [INSIG] with an extrajudicial claim for compensation, which [INSIG] has not addressed and thus delayed. Moreover this law has no retroactive effect because the case occurred in 2007 while this law entered into force in 2011*".

Applicant's allegations

29. The Applicant alleges that Judgment [E. Rev. No. 18/2017] of 4 December 2017 of the Supreme Court in rendered in violation of the fundamental rights and freedoms guaranteed by Article 31 [Right to Fair and Impartial Trial] of the Constitution in conjunction with Article 6 (Right to a fair trial) of the ECHR. The Applicant specifically alleges a violation of the right to a reasoned court decision and the principle of legal certainty as a result of the divergence in the relevant case law of the Supreme Court.

30. As to the allegations related to the lack of a reasoned court decision, the Applicant alleges that the Supreme Court, when modifying the Judgment [Ae. No. 12/2016] of the Court of Appeals of 6 June 2017, did not specify the legal basis on which has based its decision regarding the default interest. Moreover, according to the Applicant, the Supreme Court also acted contrary to its case law in respect of default interest, in respect of which, unlike the present case, it applied Rule 3 and the Law on Compulsory Insurance. In this context, the Applicant refers to seven (7) Judgments of the Supreme Court, as follows: (i) Judgment [E. Rev. No. 20/2014] of 14 April 2014; (ii) Judgment [E.Rev. No. 48/2014] of 27 October 2014; iii) Judgment [E. Rev. 55/2014] of 3 November 2014; (iv) Judgment [E. Rev. 62/2014] of 21 January 2015; (v) Judgment [E. Rev. No. 6/2015] of 19 March 2015; (vi) Judgment [E. Rev. No. 14/2016] of 24 March 2016; and (vii) Judgment [E. Rev. 27/2017] of 14 December 2017.

31. The Applicant specifically states that, by the challenged Judgment, the Supreme Court had determined the default interest "*in the amount of deposits without fix-term paid by commercial banks in Kosovo without a specific destination for more than one year*", without reasoning (i) the legal basis upon which this default interest is determined; nor (ii) the departure from its case law in respect of the default interests.

32. In addition, the Applicant alleges that the Supreme Court also failed to reason (i) the determination of the time from which INSIG had been delayed, namely the date of mechanical expertise without legal support, unlike the date on which the compensation claim was filed, in respect of which the Supreme Court held that there was no evidence that it was submitted, contrary to the evidence administered at the main hearing of 20 October 2015; and (ii) did not justify the retroactive effect of the law on Compulsory Insurance, despite Article 43 (Repeal) of this law.

33. In its allegations, the Applicant has elaborated on the fundamental principles of the right to a reasoned court decision as guaranteed by Article 31 of the Constitution in conjunction with Article 6 of the ECHR and in support of these arguments, the Applicant also referred to the cases of the Court KI55/09, Applicant *NTSH Meteorit*, Judgment of 3 December 2010; KI135/14, Applicant *IKK Classic*, Judgment of 10 November 2015; KI138/15 Applicants *Sharr BeteiligungsGmbH LLC*, Judgment of 4 September 2017; and KI97/16 Applicant *IKK Classic*, Judgment of 4 December 2017; and the case law of the European Court of Human Rights (hereinafter: the ECtHR) *Boldea v. Romania* (Judgment of 15 February 2007); *Hiro Balani v. Spain* (Judgment of 9 December 1994); *Ruiz Torija v. Spain* (Judgment of 9 December 1994) and *Helle v. the Netherland* (Judgment of 19 December 1997).

34. Finally, the Applicant requests the Court to declare its Referral admissible, and to conclude that the challenged Judgment of the Supreme Court is rendered in violation of Article 31 of the Constitution in conjunction with Article 6 of the ECHR, and the same be declared invalid, remanding the case for retrial.

Comments submitted by the interested party "INSIG"

35. On 2 November 2018, INSIG sent to the Court its comments regarding the Applicant's Referral. According to INSIG, the Supreme Court has correctly decided regarding the default interest, due to the fact that the Applicant did not submit to INSIG a claim for compensation as provided by law. Furthermore, according to INSIG, the Court of Appeals and the Basic Court have erroneously applied the legal provisions when setting interest rates of 20% and 12% because "*this applies only when the claimant does not receive a response to the claim for pecuniary damage within 60 days*". Finally, INSIG proposes to the Court to reject the Applicant's Referral as ungrounded.

Relevant legal provisions

LAW ON OBLIGATIONAL RELATIONSHIPS

III. DEFAULT INTEREST

When Owed

Article 277

(1) A debtor being late in the performance of a pecuniary obligation shall owe, in addition to the principal, default interest, at the rate determined by federal law.
(2) The Federal Executive Council shall determine the default interest on the monetary obligation resulting from the contract in the economy.
(3) Should the rate of stipulated interest be higher than the rate of default interest, it shall continue to run even after the debtor's delay.

RULE 3 ON AMENDING THE RULE ON COMPULSORY THIRD PARTY LIABILITY MOTOR VEHICLE INSURANCE

"Article 5 Claim Settlement

5.1 Settlement
Indemnity claims of third parties based on a CTPL Insurance in accordance with provisions of this Rule, including recourse from the Guarantee Fund have to be settled within the period of 10 days of the submission of necessary proofs and relevant documentation required by the insurance company or the Guarantee Fund referring to the claimed indemnity for death, bodily injury or property damage.

The Guarantee Fund or an insurance company that fails to make a settlement of a valid claim within a period of ten (10) days as prescribed above shall pay a late payment penalty equal to 20 % yearly interest calculated from the date when the claim was reported until the date when indemnity was paid or settled".

Article 26
Compensation claims procedure

1. The insurer shall be obliged to process, for damages to persons latest within a period of 60 (sixty) days, while for damages to property within a period of 15 (fifteen) days from the day of submission of the compensation claim, the claim shall be processed and the injured party shall be notified in writing of:
1.1. compensation offer with relevant explanations;
1.2. decision and legal reasons for rejecting the compensation claim, when the liability and the damage degree are disputable.

2. If the submitted claim is not completed by evidence and documentation necessary to render a decision on compensation, the insurer shall be obliged, latest within a period of 3 (three) days from the date of the receipt of compensation claim, to notify the injured party in writing, indicating the evidence and documentation required to supplement the claim. Time limits from paragraph 1 of this Article on insurer's obligation to process the compensation claims shall apply as of the day of receipt or the completion of claim documentation, respectively.

3. CBK will issue sub-legal act to establish the compensation procedure, including such determination when a claim is considered completed by evidence and documentation necessary to render a decision on compensation.

4. Being unable to establish the damage, or to have the compensation claim fully processed respectively, the liable insurer shall be obliged to pay to the injured party the undisputable share of damage as an advance payment, within the time limit set out in paragraph 1 of this Article.

5. If the liable insurer fails to reply to the injured party within the time limits established under paragraph 1 of this Article, the injured party shall have the right to file a lawsuit to the competent Court.

6. In the event of noncompliance with time limits established under paragraph 1 of this Article, and non-fulfillment of obligation in advance payment from paragraph 4 of this Article, the liable insurer shall be held responsible for the delay in fulfilling the compensation obligations, hence charging the insurer with an interest rate for the delay. This interest rate shall be paid at twelve percent (12 %) of the annual interest rate and shall be counted for each delay day until the compensation is paid off by the liable insurer, starting from the date of submission of compensation claim.

7. Provisions from paragraph 1, 2, 4 and 5 of this Article shall respectively apply in cases of compensation claims processing which shall bind the Bureau to damages based on border insurance and the Compensation Fund liabilities.

8. Special procedures and time limits under the Crete Agreement shall apply to compensation claims from the International Motor Insurance Card system.

Assessment of the Admissibility of Referral

36. The Court first examines whether the Referral has met the admissibility criteria established in the Constitution and further specified in the Law and the Rules of Procedure.

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

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

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

39. The Court further examines whether the Applicant has fulfilled the admissibility requirements as prescribed by the Law. In this regard, the Court refers to Article 47 [Individual Requests], Article 48 [Accuracy of the Referral] and Article 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...".

40. In this regard, the Court notes that the Applicant has the right to file a constitutional complaint, invoking the alleged violations of his fundamental rights and freedoms, which apply to individuals and legal entities. (See Constitutional Court case No. KI41/09, Applicant *AAB-RIINVEST University L.L.C.*, Resolution on Inadmissibility of 3 February 2010, paragraph 14).

41. As to the fulfillment of the admissibility criteria laid down in the Constitution and the Law, as elaborated above, the Court finds that the Applicant is an authorized party challenging an act of a public authority, namely Judgment [E. Rev. No. 18/2017] of 4 December 2017 of the Supreme Court, having exhausted all legal remedies provided by law. The Applicant also clarified the rights and freedoms that allegedly were violated in accordance with the requirements of Article 48 of the Law and submitted the Referral in accordance with the time limits set forth in Article 49 of the Law.

42. The Court finds that the Applicant's Referral also meets the admissibility criteria set out in paragraph 1 of Rule 39 of the Rules of Procedure. The latter cannot be declared inadmissible on the basis of the requirements set out in paragraph 3 of Rule 39 of the Rules of Procedure.

43. The Court also notes that the Referral cannot be declared inadmissible on any other grounds. It must therefore be declared admissible and its merits should be reviewed (See also, in this context, the case of the ECtHR, *Alimuçaj v. Albania*, Judgment of 9 July 2012, paragraph 144).

Merits

44. The Court initially recalls that the accident occurred in 2007. It was caused by INSIG insured, while the insured of the Applicant H.H. suffered material damage. The Court also notes that according to the Applicant, on 12 May 2009, the relevant reimbursement was requested by INSIG, and given that no agreement was reached, the latter filed a claim with the Basic Court on 19 March 2010. However, according to all regular courts, the date 12 May 2009, figures as the date of filing the claim with the relevant court, and the date from which the regular courts, with the exception of the Supreme Court, have calculated that INSIG has fallen into default, and consequently the calculation of the default interest has begun.

45. The Court further recalls that the Applicant's case was originally remanded for retrial by Judgment [Ae. No. 233/2012] of 24 October 2013 of the Court of Appeals. In the retrial, all three instances of the regular courts, by their respective Judgments, approved the amount of compensation of € 10,500 in the name of the principal debt. This amount, according to the case file, was also confirmed through the expertise of 3 August 2015, which was supplemented on

10 September 2015. The first, namely of 3 August 2015, is relevant because it is used by the Supreme Court as a date from which the default interest should be calculated. It is the latter, namely the calculation of the default interest, which is challenged throughout the regular courts and the Applicant's main allegation before the Court.

46. In this context, the Court recalls that the Basic Court by Judgment [III. C. No. 626/2013] of 30 October 2015, based on Article 277 of the LOR and Article 5 of Rule 3 set the penalty interest of 20 % per year starting from the day of filing the claim, namely 12 May 2009 until the final payment. The Court of Appeals by Judgment [Ae. No. 12/2016] of 6 June 2017, based on Article 277 of the LOR, Article 5 of Rule 3 and Article 26 of the Law on Compulsory Insurance, determined the interest "*that pay commercial banks for funds deposited in the banks for more than one year without specific destination*" with an additional penalty (i) of 20% starting from 12 May 2009, as the date of filing the claim, until 29 July 2011, the date in which the Law on Compulsory Insurance entered into force and pursuant to Article 43 thereof, Rule 3 was repealed; whereas (ii) from 30 July 2011 until the final payment, only the 12% of the annual interest rate, based on Article 26 of the Law on Compulsory Insurance. Whereas, the Supreme Court, by Judgment [E. Rev. No. 18/2017] of 4 December 2017, upheld INSIG revision in respect of default interest, and determined INSIG default interest only to be "*in the amount of interest savings deposits without term paid by commercial banks in Kosovo without a fixed destination for more than one year*" from 3 August 2015, namely the date on which the expertise was made, until the final payment. The Court emphasized that (i) Rule 3 and the Law on Compulsory Insurance are not applicable in the circumstances of the present case because they were not in force in 2007 when the accident occurred and had no "*retroactive effect*", and (ii) "*there is no evidence in the case file that [the Applicant] addressed [INSIG] with a claim for extrajudicial redress for which [INSIG] has not dealt with and thus has fallen into default*".

47. The Supreme Court, however, did not specify and reason the legal basis on which (i) it set the default interest "*in the amount of savings deposits without term paid by commercial banks in Kosovo without a specific destination for more than one year*"; and (ii) the date of expertise, namely 3 August 2015, as the date from which the default interest was calculated, despite that the Basic Court and the Court of Appeals, which set the date for filing the claim, namely 12 May 2009, as the date from which INSIG was in delay, and consequently the date from which the default interest is calculated.

48. The aforementioned are, in substance, the Applicant's main allegations, on the basis of which he alleges that Judgment [E. Rev. No. 18/2017] of the Supreme Court of 4 December 2017, was in breach of his fundamental rights and freedoms. guaranteed by Article 31 of the Constitution in conjunction with Article 6 of the ECHR, due to lack of reasoning of the court decision, and moreover, in breach of the principle of legal certainty, because according to the Applicant, the Supreme Court in rendering this Judgment had also acted contrary to its case law.

49. These two categories of allegations, the lack of a reasoned court decision and the inconsistency in the case-law of the Supreme Court with regard to the legal provisions on the default interest in the context of compulsory motor third party liability insurance, will be examined by the Court on the basis of the case law of the ECtHR, in accordance with which, pursuant to Article 53 [Interpretation of Human Rights Provisions] of the Constitution, is obliged to interpret the fundamental rights and freedoms guaranteed by the Constitution. Therefore, and hereinafter, the Court will first examine the Applicant's allegations regarding (i) the lack of a reasoning of the court decision, to proceed with the examination of the allegations concerning (ii) the lack of consistency, namely the divergence in case law of the Supreme Court. To this end, the Court will first elaborate the general principles, and then apply them in the circumstances of the present case.

I. As to the allegations related to the lack of a reasoned court decision

50. With regard to the right to a reasoned court decision guaranteed by Article 31 of the Constitution in conjunction with Article 6 of the ECHR, the Court first notes that it already has a consolidated practice. This practice was built based on the ECtHR case law, including, but not limited to cases *Hadjianastassiou v. Greece*, Judgment of 16 December 1992; *Van de Hurk v. the Netherlands*, Judgment of 19 April 1994; *Hiro Balani v. Spain*, Judgment of 9 December 1994; *Higgins and Others v. France*, Judgment of 19 February 1998; *Garcia Ruiz v. Spain*, Judgment of 21 January 1999; *Hirvisaari v. Finland*, of 27 September 2001; *Suominen v. Finland*, Judgment of 1 July 2003; *Buzescu v. Romania*, Judgment of 24 May 2005; *Pronina v. Ukraine*, Judgment of 18 July 2006; and *Tatishvili v. Russia*, Judgment of 22 February 2007. In addition, the fundamental principles regarding the right to a reasoned judicial decision have also been elaborated in the cases of this Court, including but not limited to KI72/12, Applicant *Veton Berisha and Ilfete Haziri*, Judgment of 17 December 2012; KI22/16, Applicant *Naser Husaj*, Judgment of 9 June 2017; KI97/16, Applicant "*IKK Classic*", Judgment of 9 January 2018; and KI143/16, *Muharrem Blaku and others*, Resolution on Inadmissibility of 13 June 2018; and KI124/17, Applicant *Bedri Salihu,* Judgment of 27 May 2019).

51. In principle, the case law of the ECtHR and that of the Court point out that the right to a fair trial includes the right to a reasoned decision and that the courts must "*indicate with sufficient clarity the reasons on which they base their decision*". However, this obligation of the courts cannot be understood as a requirement for a detailed answer to each argument. The extent to which the obligation to give reasons may vary depending on the nature of the decision and must be determined in the light of the circumstances of the case. The essential arguments of the Applicants are to be addressed and the reasons given must be based on the applicable law.

52. The Court also recalls that it has consistently stated that the decisions of the courts will violate the constitutional principle of the prohibition of arbitrariness in decision-making if the reasoning given does not contain established facts, the relevant legal provisions and the logical relationship between them. (See, *inter alia*, the cases of the Court: KI72/12, Applicants *Veton Berisha and Ilfete Haziri*, cited above, paragraph 61; KI135/14,

Applicant *IKK Classic*, cited above, paragraph 58; KI 96/16 Applicants *IKK Classic*, cited above, paragraph 52; and KI87/18 Applicant *"IF Skadeforsikring"*, Judgment of 27 February 2019, paragraph 49).

53. The Court recalls that in the circumstances of the present case, the Applicant's allegations of the lack of reasoning with regard to the challenged Judgment of the Supreme Court consist in (i) amending the default interest imposed by the lower courts without justifying and without establishing the legal basis on which was set the default interest; and (ii) setting the date of expertise rather than of filing the claim as the date from which the default interest is calculated. The Court considers that these two issues constitute the substantive allegations of the Applicant and must therefore have been reasoned by the Supreme Court.

54. In order to determine whether the reasoning given by the Supreme Court meets the standards of a reasoned court decision, the Court recalls the reasoning of the Supreme Court in Judgment [E. Rev. No. 18/2017], where is stated as below:

> *„[...] the claimants [the Applicants] is to be paid the debt at the interest of savings deposits without fix-term paid by commercial banks in Kosovo, with no specific destination for more than one year, from the filing of the claim on 03.08.2015 (from the date of the expertise), until the final payment because the provision of Article 26.6 of the Law on Compulsory Motor Liability Insurance (Law No. 04/L-018), providing for a 12% interest nor the provision of Article 5.5 of Rule 3 of the Central Bank of the Republic of Kosovo (CBK) Rule on Amending the Rule on Compulsory of Motor Liability Insurance of 1.10.2008 does not apply in the present case, as there is no evidence in the case file that the claimant has addressed the respondent with a claim for extra-judicial compensation - that the respondent has not dealt with and thus falls into delay. Furthermore, this law has no retroactive effect, as the case occurred in 2007 and this law entered into force in 2011".*

55. In this context, and as noted above, the Court notes that the Supreme Court excluded the applicability of Rule 3 and the Law on Compulsory Insurance in the circumstances of the present case, reasoning that (i) the latter were not in force at the time when the accident happened in 2007; and (ii) there is no evidence that the Applicant filed a claim for compensation with the respondent, namely INSIG. On the basis of this reasoning, the Supreme Court quashed the Judgments of the lower courts regarding the default interest of 20% and 12% respectively.

56. In this context, the Court notes that the Court held that the default interest rate of 12% as set out in Article 26 of the Law on Compulsory Insurance and 20% as set out in Article 5 of Rule 3 are not applicable in the circumstances of the case, because the relevant regulation was not in force at the time of the accident in 2007. However, noting that there was no evidence that the Applicant had filed a claim for compensation, the Court was based on the same legal regulative which stated that it was not applicable in terms of determining the amount of the default interest. The Court recalls that the claims for indemnity, namely

compensation and the relevant time limits, are set out in Article 5 of Rule 3 and Article 26 of the Law on Compulsory Insurance.

57. Furthermore, the Court notes that in setting the default interest "*in the amount of savings deposits without term paid by commercial banks in Kosovo without a specific destination for more than one year*", the Supreme Court (i) did not specify and justify the legal basis; and (ii) did not justify the determination of the date of expertise, namely 3 August 2015, as the date from which the default interest is calculated, despite the Basic Court and the Court of Appeals which had set the date of filing the claim, namely 12 May 2009, as the date from which INSIG was delayed, and consequently the date from which the default interest is calculated. In respect of the latter, the Court notes the difference of six (6) years of default interest depending on what date is calculated the date of falling overdue of the respondent.

58. With regard to the abovementioned positions of the Supreme Court, the Court reiterates that the ECHR, *inter alia*, in the Judgment *Hadjianastassiou v. Greece*, cited above, held that the domestic courts should "*indicate with sufficient clarity the reasons on which they base their decision*". (See, in this context, also the case of Court KI87/18 Applicant *"IF Skadeforsikring"*, cited above, paragraph 61).

59. Furthermore, and based on its case law, the Court notes that the relevant reasoning of the Supreme Court failed to explain precisely the relationship between the facts presented and the application of the law which it used and which it did not cited at all, namely, how they correlate with each other and how they influenced the decision of the Supreme Court to modify the decisions of the lower court on how to set interest rates. (See also the case of Court KI87/18 Applicant *"IF Skadeforsikring"*, cited above, paragraphs 60 and 87). The Court stated several times in its case law that the court decisions will violate the constitutional principle of prohibiting arbitrariness in decision-making if the reasoning given do not contain established facts and legal provisions, as well as the logical relationship between them.

60. The Court recalls that it found a violation of that right in a reasoned court decision in a similar case, namely KI87/18, in which it assessed the constitutionality of Judgment [E. Rev. No. 27/2017] of 24 January 2018 of the Supreme Court (hereinafter: case KI87/18). In this case, the latter had also approved the respondent's revision and modified the judgments of the lower instance courts on regarding the manner in which the default interest was set. Even in this case, the Supreme Court had determined "*the interest in the amount of the savings deposits payable by commercial banks in Kosovo, with no fixed destination for more than one year, from filing the claim on 19.11.2010 until the final payment*". The Court notes that even in this case, the Supreme Court stated that the Law on Compulsory Insurance entered into force after the accident happened, and was therefore not applicable in the circumstances of the respective case. (See the case of Court KI87/18 Applicant *"IF Skadeforsikring"*, cited above, paragraph 21). The Court held that the reasoning of the decision of the Supreme Court did not meet the standards embodied in Article 31 of the Constitution in conjunction with Article 6 of the ECHR, *inter alia*, because (i) the Supreme Court did not specify the applicable

law in the relevant circumstances (see the case of Court KI87/18 Applicant *"IF Skadeforsikring"*, cited above, paragraph 58); and (ii) did not explain the relationship between the facts presented and the law enforcement to which it referred. (See the case of Court KI87/18 Applicant *"IF Skadeforsikring"*, cited above, paragraph 60).

61. Therefore, having regard to the foregoing observations and the proceedings as a whole, the Court considers that the Judgment of the Supreme Court, namely Judgment [E. Rev. No. 18/2017] of 4 December 2017, did not give sufficient reasons to the Applicant to (i) determine the default interest "*in the amount of savings deposits without term paid by commercial banks in Kosovo without a specific destination over one year*"; and (ii) determining the date of expertise and not the date of filing the claim, as the lower courts found, from which the default interest is calculated, thereby infringing the Applicant's right to a reasoned court decision, as an integral part of the right to fair and impartial trial guaranteed by Article 31 of the Constitution in conjunction with Article 6 of the ECHR (See also in this context the case of ECtHR *Grădinar v. Moldova*, Judgment of 8 April 2008, paragraph 115).

62. Upon finding that the Judgment [E. Rev. No. 18/2017] of the Supreme Court of 4 December 2017 was rendered in violation of Article 31 of the Constitution in conjunction with Article 6 of the ECHR, due to lack of a reasoned court decision, the Court will next consider the Applicant's allegations concerning the violation of the principle of legal certainty by the Supreme Court in rendering this Judgment, namely the lack of consistency in the relevant case law.

63. Consequently and in the following, the Court will elaborate (i) the fundamental principles deriving from the ECtHR case law concerning the consistency of case law; and (ii) the relevant criteria on the basis of which the ECtHR assesses whether the lack of consistency, namely the divergence in case-law, constitutes a violation of Article 6 of the ECHR. (For more on the consistency of case law, see the ECtHR Guide of 31 December 2018 on Article 6 of the ECHR (Civil limb); Right to a Fair Trial; Part IV. Procedural Requirements; A. Fairness; 2. Scope, c. Consistency of domestic case law).

II. As to allegations related to divergence of the case law

(i) General principles

64. With regard to the fundamental principles related to the consistency of case law, the Court notes that the case law of the ECtHR has resulted in four fundamental principles that characterize the analysis as to the consistency of case law, as follows: (i) legal certainty; (ii) does not have an acquired right to consistency in case law; (iii) the divergence is not necessarily contrary to the ECHR; and (iv) excluding evident arbitrariness.

65. Concerning the first principle, the ECtHR has focused on the principle of legal certainty, which in this context is embodied in all the articles of the ECHR and constitutes one of the fundamental aspects of the rule of law. (See ECHR case, *Neydet Sahin and Perihan Sahin v. Turkey*, Judgment of 20 October 2011,

paragraph 56). This principle guarantees certain stability in legal situations and contributes to public confidence in the courts. The persistence of divergence in the case law can create situations of legal uncertainty resulting in a decrease in public confidence in the judicial system, while this trust is clearly one of the essential components of the rule of law. (See, in this context, the case of ECtHR *Hayati Çelebi and Others v. Turkey*, Judgment of 9 February 2016, paragraph 52; and *Ferreira Santos Pardal v. Portugal*, Judgment of 30 July 2015, paragraph 42; see also case of the Court, KI42/2017, Applicant *Kushtrim Ibraj*, Resolution on Inadmissibility of 25 January 2018, paragraph 33).

66. As to the second principle, the ECtHR found that the requirements of legal certainty and the protection of the legitimate confidence of the public, do not confer nor guarantee an acquired right to consistency of case law. The development of case law is not, in itself, inconsistent with the fair administration of justice as failure to maintain a dynamic and evolving approach would jeopardize continued reform or improvement. (See, *inter alia*, the cases of the ECHR, *Nejdet Sahin and Perihan Sahin v. Turkey*, cited above, paragraph 58; and the *Lupeni Greek Catholic Parish and Others v. Romania*, Judgment of 29 November 2016, paragraph 116; and see also case of the Court, KI42/2017, Applicant *Kushtrim Ibraj*, cited above, paragraph 34).

67. Regarding the third principle, the ECtHR found that the possibility of conflicting court decisions is an inherent trait of any judicial system which is based on a network of trial and appeal courts with authority over the area of their territorial jurisdiction. Such divergences may also arise within the same court. That, in itself, cannot be considered contrary to the ECHR. (See, ECHR cases, *Nejdet Sahin and Perihan Sahin*, cited above, paragraph 51; *Albu and Others v. Romania and Sixty-Three (63) Other Claims*, Judgment of 10 May 2012, paragraph 34; *Santo Pinto v. Portugal*, Judgment of 20 May 2008, paragraph 41; and the *Lupeni Greek Catholic Parish and Others v. Romania*, cited above, paragraph 122; and see also the case of the Court, KI42/2017, with Applicant *Kushtrim Ibraj*, cited above, paragraph 35).

68. Finally, and with regard to the fourth principle, the ECtHR has consistently stated that, except in cases of apparent arbitrariness, it is not its task to call into question the interpretation of domestic law by the domestic courts. (See, for example, ECHR *Ādamsons v. Latvia*, Judgment of 24 June 2008, paragraph 118; and *Nejdet Sahin and Perihan Sahin v. Turkey*, cited above, paragraph 50) and in principle, it is not its function to compare different decisions of the courts, even if issued in apparently similar proceedings. It must respect the independence of those courts. Furthermore, the ECtHR has emphasized that there can be no consideration of divergence in case law when the factual circumstances of the case are objectively different. (See, in this context, the case of ECtHR *Uçar v. Turkey*, Decision of 29 September 2009). Equally, treating the two disputes differently cannot be considered to create divergent case law when justified by a change in the factual situations in question. (See ECtHR cases, *Hayati Çelebi and others,* Judgment of 9 February 2016, paragraph 52; as well as the *Lupeni Greek Catholic Parish and Others v. Romania*, cited above, paragraph 116).

69. The Court also notes that the ECtHR approach to analyzing divergences in case law differs depending on the fact whether (i) the divergences exist within the same branch of courts; or (ii) between two different branches of the courts which are completely independent of each other. The second situation concerns judicial systems consisting of more than one branch of the judicial system, each with its own, independent, supreme court, which is not subject to any common judicial hierarchy. The main case of the ECtHR concerning the lack of consistency, namely the divergence of case law, *Nejdet Şahin and Perihan Şahin v. Turkey*, falls into this category. However, the fundamental principles established through this case are also used in assessing divergences concerning case law even in cases belonging to the first category, namely those with a unique judicial system, which would be the case in the context of legal system of the Republic of Kosovo.

70. Referring to the principles set out above, the Court further notes that the ECtHR uses three basic criteria to determine whether an alleged divergence constitutes a violation of Article 6 of the ECHR, as follows:: (i) *whether "profound and long-standing differences" exist in the case-law*; (ii) whether the domestic law provides for a mechanism to overcome these divergences, *and* (iii) whether that mechanism has been applied and, if so, to what extent. (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*, cited above, paragraphs 116 - 135; *Iordan Iordanov and Others v. Bulgaria*, Judgment of 2 July 2009, paragraphs 49-50; *Nejdet Sahin and Perihan Sahin v. Turkey*, cited above, paragraph 53; and *Hayati Çelebi and Others*, cited above, paragraph 52; and see also the case of the Court, KI42/2017, Applicant *Kushtrim Ibraj*, cited above, paragraph 39).

71. The Court further notes that the concept of "*profound and long-standing differences*" has been 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 found a violation of Article 6 of the ECHR, because of a breach of the principle of legal certainty. (See ECHR case, *Lupeni Greek Catholic Parish and others v. Romania*, cited above, paragraph 135). Therefore, the Court, and to the extent relevant, will elaborate superficially on the circumstances of the present case. The latter had to do with "*profound and long-standing differences*" in a case law of a single court, namely of the Supreme Court, and the failure to use the mechanism to ensure the harmonization and consistency of case law. More specifically, the circumstances of this case reflect the existence of conflicting case law within the higher domestic court, resulting in divergent case law within the lower courts as a consequence. The case concerned the interpretation of a legislative decree, as formulated prior to the relevant amendments, and related to the jurisdiction of the courts to decide on the actions of the Greek Catholic Parish. This decree was consistently interpreted inconsistently, in some cases rejecting, and in other cases approving the jurisdiction to decided on disputes brought before them by the Greek Catholic Parish, thus affecting the rights of access to court as guaranteed by Article 6 of the ECHR, to the Applicants concerned. As a result, the Romanian legislature amended the text of the relevant decree. However, this amendment resulted in another set of conflicting court decisions. As a consequence, the right of access to court became contested for a large number

of Greek Catholic parishes. Moreover, this contradictory case law had affected a large number of persons and would consequently bring a large number of court cases, and the domestic courts expected to face a large number of claims.

72. In illustrating the case above, the Court notes that in finding a violation of Article 6 of the ECHR in terms of divergence in case law, and in determining whether "*profound and long-standing differences*" exist, the ECtHR also considered whether the discrepancy was isolated or affected a large number of people. (See, *inter alia*, the case of the ECtHR, *Albu and Others v. Romania*, cited above, paragraph 38).

73. The Court also notes in this respect that the ECtHR has not found a violation of Article 6 of the ECHR in cases of divergent case law even and if it has affected a large number of people regarding the same matter over a short period of time, before the respective disputes were settled by the higher courts, thereby enabling state mechanisms to ensure proper consistency. (See, *inter alia*, the case of the ECtHR, *Albu and Others v. Romania*, Judgment of 10 May 2012, paragraphs 42 - 43).

74. The latter relates to the second and third criteria, namely the existence of a mechanism capable of resolving inconsistencies in case law and whether this mechanism has been used and to what extent. In this regard, the ECtHR initially held that the absence of such a mechanism constituted a violation of the right to a fair trial guaranteed by Article 6 of the ECHR. (See, in this context, *Tudor Tudor v. Romania*, Judgment of 4 March 2009, paragraphs 30-32; and *Ştefănică and Others v. Romania*, Judgment of 2 February 2010, paragraphs 37-38; and Nejdet *Sahin and Perihan Sahin v. Turkey*, cited above, paragraph 54). In this regard, the ECtHR has repeatedly emphasized the importance of establishing mechanisms to ensure consistency and uniformity of the case law of the courts. It has also stated that it is the responsibility of states to organize their legal systems in such a way as to avoid divergences in case law. (See ECHR 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; *Brezovec v. Croatia*, Judgment of 29 March 2011 , paragraph 66; and *Nejdet Sahin and Perihan Sahin v. Turkey*, cited above, paragraph 55). The ECtHR has also emphasized that the role of a supreme court is precisely to resolve such controversies. (In this context, see ECHR case, *Beian v. Romania* (no. 1), cited above, paragraph 37; *Zielinski and Pradal & Gonslaez and Others v. France*, Judgment of 28 October 1999; 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, thereby 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 *Lupeni Greek Catholic Parish and Others v. Romania*, cited above, paragraph 123).

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

75. In the following, the Court will apply the principles set out above in the circumstances of the present case, applying the criteria on the basis of which

the ECtHR addresses divergence issues with regard to case law, starting with the assessment of whether, in the circumstances of the present case, (i) the alleged divergences in case law are "*profound and long-standing*" and, if this is the case, (ii) the existence of mechanisms capable of resolving the relevant divergence; and (iii) an assessment of whether these mechanisms have been implemented and with what effect in the circumstances of the present case. The Court will apply these criteria, having regard to the fundamental principles concerning the consistency of the case law elaborated above, thereby (i) the importance of legal certainty; (ii) the fact that the principle of legal certainty and the importance of consistency in case law do not guarantee a right to such consistency in case law; (iii) that, in fact, divergences in case law do not necessarily result in a violation of the Constitution and the ECHR; and importantly (iv) that the ECtHR finds such violations in the event of evident arbitrariness.

76. In this regard, the Court should also reiterate that, based on the ECtHR case law, it is not its function to compare different decisions of regular courts, even if taken in apparently similar proceedings. It must respect the independence of the courts. Moreover, in such cases, namely allegations of constitutional violations of fundamental rights and freedoms as a result of divergences in the case law, the Applicants should submit to the Court relevant arguments concerning the factual and legal similarity of the cases alleging that they have been resolved differently than the regular courts, thus resulting in a divergence in case law and which may have resulted in a violation of their constitutional rights and freedoms guaranteed by Article 31 of the Constitution in conjunction with Article 6 of the ECHR.

77. In the circumstances of the present case, the Court recalls that the Applicant alleges that in his case, the Supreme Court decided differently regarding the default interest, acting contrary to its case law. In support of his arguments, it refers to the other seven (7) Supreme Court cases as follows: (i) Judgment [E. Rev. No. 20/2014] of 14 April 2014; (ii) Judgment [E. Rev. No. 48/2014] of 27 October 2014; (iii) Judgment [E. Rev. 55/2014] of 3 November 2014; (iv) Judgment [E. Rev. 62/2014] of 21 January 2015; (v) Judgment [E. Rev. No. 6/2015] of 19 March 2015; (vi) Judgment [E. Rev. V. 14/2016] of 24 March 2016; and (vii) Judgment [E. Rev. 27/2017] of 24 January 2018. Moreover, in case KI87/18, the Court assessed the constitutionality of the Judgment [E. Rev. 23/2017] of the Supreme Court of 23 December 2017, and which the Court will also include in its analysis.

78. Before analyzing and finding whether the challenged Judgment of the Supreme Court, beyond the absence of a reasoned court decision, was also rendered in breach of the principle of legal certainty as a result of the divergence in the relevant case law, the Court will further and initially present the relevant parts of the abovementioned Judgments, namely those relating to the amount of the default interest and the moment of its calculation, insofar as the latter are elaborated.

a) Judgment [E. Rev. No. 20/2014] of 14 April 2014

79. The Supreme Court by Judgment [E. Rev. No. 20/2014] of 14 April 2014 rejected as ungrounded the respondent's revision against Judgment [Ae. No. 3/2013] of 16 January 2014, confirmed the annual interest of 12%, thereon based on Article 26 of the Law on Compulsory Insurance in relation to an Accident caused in 2009, and also confirmed that the calculation of default interest in the circumstances of this case starts from the date of filing a claim for compensation. In this regard and among others, this Judgment states as follows:

> *"The respondent's claims in the revision that the lower instance courts have erroneously applied the substantive law when the claimant was recognized the interest at the rate of 12% per year of the approved amount are ungrounded, as the lower instance courts right have correctly applied the substantive law and the provision of Article 277 of the LOR in conjunction with Article 26 item 6 of the law on compulsory motor third party liability insurance No. 04/L-018 which provides that in case of failure to comply with the deadlines set forth in paragraph 1 of this Article, and failure to pay the advance payment referred to in paragraph 4 of this Article, the responsible insurer shall be deemed to be in default in fulfilling its indemnity obligation, being charged with delayed interest payment. This interest is payable at the rate of 12% of the annual interest and is calculated for each day of delay starting from the date of filing the claim for compensation.*

b) Judgment [E. Rev. No. 48/2014] of 27 October 2014

80. The Supreme Court by Judgment [E. Rev. No. 48/2014] of 27 October 2014, rejected as ungrounded the respondent's revision against the Judgment [Ac. No. 460/2012] of 13 May 2014, and confirmed the application of an annual interest rate of 20% until 29 July 2019, based on Article 5 of Rule 3 and thereafter 12%, based on Article 26 of the Law on Compulsory Insurance, in connection with an accident caused in 2009. The Supreme Court also confirmed the date 19 November 2010, namely the filing of a claim for indemnity, as the date from which the calculation of default interest in the circumstances of this case begins. In this regard and *inter alia*,, this Judgment states as follows:

> *"This Court considers that the lower instance courts also correctly applied the substantive law when they recognized to the claimant the right to interest in the amount of the principal debt at the rate of 20% per year from 19.11.2010 to 28.7. 2011 and interest of 12% starting from 29.7.2011 until the final payment because according to the provision of Article 277 of the LOR and Article 26.6 of the Law on Compulsory Motor Insurance No. 04/L – 018 which provides that in case of failure to comply with the deadlines set forth in paragraph 1 of this Article, and failure to fulfill the obligation to pay the advance referred to in paragraph 4 of this Article, the responsible insurer shall be deemed to be late in fulfilling the indemnity obligation by charging interest on late payment, this interest is*

paid at the rate of 12% of the annual interest and is calculated for each day of delay until the indemnity is paid by the responsible insurer, beginning on the date of filing of the claim for compensation".

c) Judgment [E. Rev. 55/2014] of 3 November 2014

81. The Supreme Court by Judgment [E. Rev. 55/2014] of 3 November 2014 rejected as ungrounded the respondent's revision against Judgment [Ae. No. 46/2013] of 10 May 2014, and upheld the annual interest rate of 12% based on Article 26 of the Law on Compulsory Insurance in relation to an accident caused in 2009. In this respect and among others, this Judgment states as follows:

"The Judgment of the Court of Appeals of Kosovo, Ae. No. 43/2013 of 10.5.2014, rejected the appeal of the respondent as ungrounded and upheld the judgment of the District Commercial Court [...], which upheld the claimant's statement of claim and the respondent was obliged to pay in the name of regressive debt the amount of € 14,041.58, with an annual interest rate of 12%, calculated from 19.12.2010 until the definitive payment and on behalf of procedural expenses the amount of [...]".

82. As to the moment of the calculation of the default interest, this Judgment of the Supreme Court shows that it was calculated from 19 December 2010, which is related to that of the filing of claim. In this respect, this Judgment stated as follows:

"The respondent's allegation that the respondent's offer was not taken into account is not grounded, since the parties failed to reach an extrajudicial settlement, the matter remain to be resolved in a civil dispute."

d) Judgment [E. Rev. 62/2014] of 21 January 2015

83. The Supreme Court by Judgment [E. Rev. No. 62/2014] of 21 January 2015, rejected as ungrounded the respondent's revision against Judgment [Ae. No. 57/2013] of 10 June 2014, and confirmed the annual interest rate of 12% based on Article 26 of the Law on Compulsory Insurance in relation to an accident caused in 2009 and calculating the delay from the moment of filing the claim for compensation. In this regard and among other things, this Judgment states as follows:

"This Court considers that the second instance court correctly applied the substantive law when it recognized to the claimant the right to interest in the amount of the principal debt at the rate of 12% starting from 14.6.2010 until the final payment because according to the provision of Article 277 of the LOR and Article 26.6 of the Law on Compulsory Motor Insurance No. 04/L –018 is foreseen the rate of 12% of the annual interest and is calculated for each day of delay until the indemnity is paid by the responsible insurer, beginning on the date of filing of the claim for indemnity. It follows from the case file that the claimant filed the claim for compensation of damage with the respondent from 14.06.2010 [...]".

e) Judgment [E. Rev. No. 6/2015] of 19 March 2015;

84. The Supreme Court by Judgment [E. Rev. No. 6/2015] of 19 March 2015 rejected as ungrounded the respondent's revision against Judgment [Ae. No. 162/2013] of 10 June 2014, and upheld the annual interest of 12 % based on Article 26 of the Law on Compulsory Insurance in relation to an accident caused in 2009. In this respect and among others, this Judgment states as follows:

> *"By the judgment of the Court of Appeals of Kosovo Ae. No. 162/2013 of 10.06.2014, the appeal of the respondent was rejected as ungrounded, and the Judgment of the Basic Court in Prishtina [...] was upheld, which approved as grounded the statement of claim of the claimant, and the respondent was obliged to pay the claimant the amount of € 17,924.35, in the name of compensation for damage-Casco regression related to the repair of the damaged vehicle [...] in the accident of 25.08 .2009, [...] with a 12% penalty interest rate, starting on 22.07.2010 until the final payment and the costs of the proceedings in the amount of € 1.134,29.*

f) Judgment [E. Rev. No. 14/2016] of 24 March 2016

85. The Supreme Court by Judgment [E. Rev. No. 14/2016] of 24 March 2016, rejected as ungrounded the respondent's revision against Judgment [Ae. No. 40/2015] of 12 November 2015, and upheld the annual interest of 12 % based on Article 26 of the Law on Compulsory Insurance in relation to an accident caused in 2009. In this respect and among others, this Judgment states as follows:

> *"By the judgment of the Court of Appeals of Kosovo Ae. No. 40/2015 of 12.11.2015, the appeal of the respondent was rejected as ungrounded, and the Judgment of the Basic Court in Prishtina [...] was upheld, which in part I of the enacting clause approved as grounded the claimant's statement of claim to oblige the insurance company [...]to pay the claimant the amount of €42,243.41, in the name of the regression from the motor insurance, with an interest rate of 12% pr year, counting from 14.1.2010, until the final payment [...]*

g) Judgment [E. Rev. 23/2017] of 14 December 2017

86. The Supreme Court by Judgment [E. Rev. 23/2017] of 14 December 2017, modified Judgment [Ae. No. 53/2016] of 21 September 2017, determining the application of the annual interest rate of 20% until 29 July 2019, based on Article 5 of Rule 3 and thereafter 12%, on the basis of Article 26 of the Law on Compulsory Insurance, in respect of an accident caused in 2009. The Supreme Court also confirmed 22 April 2010, namely the filing of the claim for damages, as the date from which the calculation of the default interest in the circumstances of this case begins. In this regard and among other things, this Judgment states as follows:

> *"[...] as to the interest rate, the appealed judgment Ae No. 53/2016 of the Court of Appeals of Kosovo of 21.09.2017 is modified, and the respondent*

is obliged to pay the claimant up to 20% interest in the amount of the approved claim, starting from 22.04.2010 as the date of filing the claim for compensation of damage up to 29.07.2011, and from 30.07.2011 until the final payment the interest at the rate of 12% in the adjudicated amount".

h) Judgment [E. Rev.27/2017] of 24 January 2018

87. The Supreme Court by Judgment [E. Rev. No. 27/2017] of 24 January 2018, the Judgment which was declared in violation of the Constitution by Case KI87/18, modified Judgment [Ae. No. 191/2015] of 31 October 2017, in respect of the default interest. The Supreme Court modified the finding of the lower courts which had determined the application of an annual interest rate of 12% based on Article 26 of the Law on Compulsory Insurance in connection with an accident in 2009. The Supreme Court determined that in the circumstances in this case, "*the interest rate in the amount of savings deposits paid by commercial banks in Kosovo without a fixed destination of more than one year*" In this regard, and among other, this Judgment states as it follows:

„Regarding determination of the interest rate, the judgments of the lower instance courts dealt with the erroneous application of the substantive law, and as a consequence they were amended so that the claimant should be paid the amount of € 23,609.24, by the respondent with interest of savings deposits paid by commercial banks in Kosovo, without specific destiation of more than one year, from 19.11.2010 until the definitive payment, since the Law on Compulsory Insurance has entered into force in 2011 while the case occurred in 2009 and as such does not apply to the present case".

88. In addition, prior to the analysis of whether (i) the challenged Judgment of the Supreme Court, namely Judgment [E. Rev. No. 18/2017] of 4 December 2017, is rendered by the Supreme Court in violation of its case law; and (ii) the divergences alleged in the case law are "*profound and long-standing*", the Court first recalls the reasoning of the challenged Judgment with regard to the default interest. The Court recalls at the same time that the Supreme Court, in the circumstances of the present case, determined (i) "*interest on saving deposits without term paid by commercial banks in Kosovo without a specific destination for more than one year*"; (ii) the date of expertise, namely 3 August 2015 as the date from which the calculation of the default interest begins; and (iii) that Rule 3 and the Law on Compulsory Insurance was not applicable in the circumstances of the present case.

89. In this context, and with regard to the applicable law in the circumstances of the present case, the Court first notes that based on Article 9 (Entry into Force) of Rule 3, the latter entered into force on 1 October 2008. Whereas, the Law on Compulsory Motor Liability Insurance was adopted by the Assembly of the Republic of Kosovo on 23 June 2011, by Decree of the President of the Republic of Kosovo on 5 July 2011, published in the Official Gazette of the Republic of Kosovo on 14 July 2011, and based on Article 44 thereof (Entry into Force), entered into force fifteen (15) days after its publication in the Official Gazette, consequently on 29 July 2011. Furthermore, this Law, through its Article 43,

has established the repeal of UNMIK Regulation 2001/25 governing the compulsory motor insurance and the respective sub-legal acts of the Central Bank of Kosovo (hereinafter: the CBK), which are contrary to this law.

90. This regulative, including the LOR, which was applied in all cases referred to by the Applicant and clarified above, specifies both the amount of default interest and the time from which it is calculated. With regard to the amount of the default interest, the Court notes that it (i) is not expressly set forth in Article 277 of the LOR; (ii) is 20% based on Article 5 of Rule 3; and (iii) is 12% based on Article 26 of the Law on Compulsory Insurance. Whereas, as regards the time of the calculation, the Court notes that the default interest is applied from the moment of delay to the fulfillment of the obligation. The calculation of this moment (i) is not specifically defined in Article 277 of the LOR; (ii) commences on the date the damage is reported until the date on which the indemnity has been paid or settled pursuant to Article 5 of Rule 3; whereas (iii) in the event of damage to property, it commences within fifteen (15) days of the filing of a completed claim for damages pursuant to Article 26 of the Law on Compulsory Insurance.

91. The Court recalls that in the circumstances of the present case, the Court of Appeals, by Judgment [Ae. No. 12/2016] of 6 June 2017, set the date of 29 July 2011, namely the date of entry into force of the Law on Compulsory Insurance, as the date from which the default interest rate would be reduced from 20% to 12%, thereby applying Article 26 of the Law on Compulsory Insurance in respect of the default interest. However, the Court recalls that the Supreme Court, in quashing the judgments of the lower courts in respect of the default interest, stated that neither (i) Rule 3 nor (ii) the Law on Compulsory Insurance were in force at the time the accident occurred in 2007, and consequently, were not applicable in the circumstances of the present case. However, and as already pointed out by the Court, the finding that there has been a violation of Article 31 of the Constitution in conjunction with Article 6 of the ECHR as a result of the lack of reasoning of the court decision, in quashing the lower courts' judgments in respect of delay, the Supreme Court did not justify two issues: (i) the legal basis on which the new default interest was determined; and (ii) the legal basis on which it had determined the date of expertise as the date on which INSIG has fallen into default, and was obliged to pay the default interest.

92. As to the allegations regarding the violation of the principle of legal certainty, namely, in the circumstances of the present case, the lack of consistency in case law, the Court notes that the Judgments referred to by the Applicant can be divided into two categories. Judgment [E. Rev. No. 27/2017] of 24 January 2018 falls in the first category and which, as in the circumstances of the present case, determined *"the interest on saving deposits without term paid by commercial banks in Kosovo, with no specific destination over one year"*, whereas, in contrast, had applied this interest from the date of filing the claim, namely 19 November 2010. This case was also considered by the Court in case KI87/18, in which it found a violation of Article 31 of the Constitution in conjunction with Article 6 of the ECHR, both as a result of the lack of a reasoned court decision and as a result of the lack of consistency in the relevant case law, thus resulting in a violation of the principle of legal certainty. (See

more specifically paragraphs 82-88 of case KI87/18, Applicant "*IF Skadeforsikring*", cited above).

93. Whereas, other Judgments fall in the second category, and in which the Supreme Court applied the 12% interest rate prescribed by Article 26 of the Law on Compulsory Insurance, with the exception of Judgments [E. Rev. No. 48 2014] of 27 October 2017 and [E. Rev. No. 23/2017] of 14 December 2017, to which the Supreme Court applied the 20% default interest until 29 July 2011, whilst from that date, namely, the date of entry into force of the Law on Compulsory Insurance, the default interest of 12%. The Court notes that the interpretation of the applicable law by the Supreme Court in these two cases coincides with the interpretation of the Court of Appeals in Judgment [Ae. No. 12/2016] of 6 June 2017, in the Applicant's circumstances.

94. In all other cases within this category, namely Judgments [E. Rev. 55/2014] of 3 November 2013; [E. Rev. No. 20/2014] of 14 April 2014; [E. Rev. 62/2014] of 21 January 2015; [E. Rev. No. 6/2015] of 19 March, 2015; and [E. Rev. No. 14/2016] of 24 March 2016 of the Supreme Court (i) 12% default interest was applied based on Article 26 of the Law on Compulsory Insurance; and (ii) this default interest was in all cases applied starting on the due dates of 2010, taking into account, as the starting date, the date of filing the request for compensation or the claim.

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

96. In this respect, the Court notes that, unlike all the cases referred to by the Applicant, including the Judgment of the Court in case KI87/18, the accident occurred in 2007. It is not disputable that Rule 3 and the Law on Compulsory Insurance were not in force at the time of the accident. However, the Court notes that the Law on Compulsory Insurance in at least five (5) above cases was applied retroactively, and consequently, before its entry into force. This is unlike the circumstances of the present case, in which the Supreme Court modified the Judgments of the lower courts on the grounds that Rule 3 and the Law on Compulsory Insurance were not applicable because they were not in force at the time of the accident.

97. The Court in this respect reiterates its position that it has consistently held 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 are compatible with the Constitution and the ECHR (See ECtHR cases, *Brualla Gomes de la Torre v. France*, Judgment of 19 December 1997, paragraph 31; *Waite and Kennedy v. Germany*, Judgment of 18 February 1999, paragraph 54; *Kuchoglu v. Bulgaria*, Judgment of 10 May 2007, paragraph 50; *Işyark v. Bulgaria*,

Judgment of 20 November 2008, paragraph 48; and *Nejdet Sahin and Perihan Sahin v. Turkey, cited* above, paragraph 49). Having said that, the Court has also stated that the exception to this general principle, are the cases of evident arbitrariness. (See, for example, ECtHR cases *Adamsons v. Latvia*, cited above, paragraph 118; and *Nejdet Sahin and Perihan Sahin v. Turkey*, cited above, paragraph 50).

98. In the context of the circumstances of the case, the Court recalls that the ECtHR has stated that the contradictions in the case law are an integral part of any judicial system and that divergence in the case law may also arise within the same court. That, in itself, is not necessarily 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 stated that the requirements for legal certainty and legitimate protection of public confidence in the courts do not provide/guarantee a right to consistent case law. Moreover, the development of case law is important to maintain the proper dynamic for the continuous improvement of the administration of justice. (See ECtHR case, *Atanasovski v. "the Former Yugoslav Republic of Macedonia"*, Judgment of 14 January 2010, paragraph 38; and *Nejdet Sahin and Perihan Sahin*, cited above, paragraph 58). However, based on the ECtHR case law, an exception to these general principles, is an apparent arbitrariness, and in terms of assessing the lack of judicial consistency, assessing whether there are "*profound and long-standing differences*" in the relevant case law and if there is an effective mechanism to address the latter.

99. The Court notes that in the circumstances of the present case, in at least nine (9) cases, including the Applicant's case, and within a period of five (5) years, the Supreme Court has applied the legal provisions regarding the amount of the default interest in different manner in respect of accidents, which, with the exception of the Applicant's case, occurred in 2009, and consequently prior to the entry into force of the Law on Compulsory Insurance. Interpretations include (i) the determination of the default interest in the amount of savings deposits paid by commercial banks in Kosovo without specific destinations over one year, in two cases, including the Applicant's case; (ii) the application of the 12% interest rate determined by Rule 3 until the date of entry into force of the Law on Compulsory Insurance, the date on which the 20% interest was applied in two cases; and (iii) the application of a 20% interest rate in respect of accidents caused in 2009 and beginning on the certain dates in 2010, the period in which Rule 3 was in force and not the Law on Compulsory Insurance, and which, as stated above, was applied retroactively in at least five (5) cases. Moreover, the Court notes that the same divergence is evident in all the decisions of the Court of Appeals and which were reviewed through revision by the Supreme Court.

100. The Court also notes that, unlike the case under consideration, the Supreme Court rejected as ungrounded the requests for revision in cases [E. Rev. No. 48/2014] of 27 October 2014; [E. Rev. No. 62/2014] of 21 January 2015; [E. Rev. 55/2014] of 3 November 2014; [E. Rev. No. 20/2014] of 14 April 2014; [E. Rev. No. 14/2016] of 24 March 2016; and [E. Rev. No. 6/2015] of 19 March 2015, the cases which sometimes include the application of 12% and 20%

interest based on the date of entry into force of the Law on Compulsory Insurance, and sometimes apply retroactively Article 26 of the Law on Compulsory Insurance, thus applying a 12% interest rate starting in 2010.

101. The Court recalls that the case law of the ECtHR has emphasized the fact that the divergence in the case law is not necessarily inconsistent with the ECHR, because the dynamic and evolving approach of the courts to the interpretation of applicable law and, moreover, the development of the case law is important to maintain the proper dynamic of continually improving the administration of justice. However, in the circumstances of the present case, the contradictions highlighted in the relevant case law of the Supreme Court do not present a trend of improvement and consolidation of the case law in relation to default interest in cases of compulsory motor third party liability insurance. Moreover, the aforementioned contradictions do not constitute an isolated case.

102. On the contrary, given the nature of the cases related to compulsory motor liability insurance, this conflicting case law has consistently affected a number of persons over a five (5) year period, and has the potential to affect an even greater number of persons, resulting in an increase in the number of lawsuits and the challenging of the court decisions as a result of the continuing contradictions in the case law of the Supreme Court regarding compulsory motor liability insurance.

103. In this context and consequently, the Court must find, as it did in Case KI87/18, that in the circumstances of the present case, and with regard to the determination of the amount of default interest relating to motor liability insurance, there are "*profound and long-standing differences*" in the case law of regular courts. (See also Case KI87/18, Applicant "*IF Skadeforsikring*", cited above, paragraph 79).

104. This finding, however, does not apply to the Applicant's allegations that relate to the moment from which this default interest applies. The Court recalls that, unlike all the cases referred to the Court, and as already established, without elaborating and reasoning the relevant legal basis, in the circumstances of the Applicant's case, the Supreme Court set the date of expertise as the date from which the calculation of the default interest started. However, the Court notes and considering that this is the only case of all the cases examined in which the Supreme Court departed from its case law in this respect, it cannot find "*profound and long-standing differences*" in the relevant case law, as to the interpretation of legal provisions related to the delay, namely the moment of calculating the default interest. The Court considers that in this context the Applicant's case is an isolated case and, based on the ECtHR case law, cannot pass the threshold to find "*profound and long-standing differences*" and violate the principle of legal certainty. The Court is satisfied with the finding of a violation of Article 31 of the Constitution in conjunction with Article 6 of the ECHR due to the lack of a reasoned court decision in this regard.

105. On the other hand, the finding that there are "*profound and long-standing differences*" in the case law regarding the amount of default interest does not necessarily result in a violation of Article 31 of the Constitution in conjunction with Article 6 of the ECHR. To find this, the Court must also consider the other

two ECtHR criteria that are relevant to assessing the lack of consistency of case law, namely whether the applicable law establishes mechanisms capable of resolving such divergence; and whether such a mechanism has been applied in the circumstances of a case and with what effect.

106. The Court notes that the Supreme Court has a mechanism to enable resolution of such contradictions, a mechanism which has not been applied in the circumstances of the present case, thereby meeting both of the abovementioned criteria.

107. In this context, the Court recalls that in the case KI87/18, the Court stated that based on item 10 of paragraph 2 of Article 14 (Competences and Responsibilities of the President and Vice-President of the Court) of Law on Courts No. 06/L-054 (hereinafter: the Law on Courts), the Presidents of the courts shall convene an annual meeting of all judges in that court for counseling on the administration of justice within that court; to analyze the organization of the court; to review and propose changes to procedures and practices. (See case of the Court KI87/18 Applicant *"IF Skadeforsikring"*, cited above, paragraph 80). Through this case, the Court also emphasized that the functioning of the mechanism of harmonization of the case law itself is neither impossible nor limited, and which would directly reduce its application and efficiency in the practice itself. (See case of the Court KI87/18 Applicant *"IF Skadeforsikring"*, cited above, paragraph 81)

108. However, and furthermore, the Court also notes in this case that item 4 of paragraph 1 of Article 26 (Competences of the Supreme Court) of the Law on Courts, defines the exclusive competence of the Supreme Court itself to determine principled positions, issue legal opinions and guidelines for unique application of laws by the courts in the territory of the Republic of Kosovo. In the case involving the circumstances of the present case, namely the application of the default interest on compulsory motor third party liability insurance, the Supreme Court not only failed to do so but in fact served as a source of divergence in the case law, thus violating the principle of legal certainty.

109. The Court notes that the ECtHR has consistently emphasized that the role of a supreme court is precisely to resolve such contradictions. In addition, it has also maintained that, if the contradictory practice takes place within one of the highest court authorities in a country, that court itself becomes a source of legal uncertainty, thereby undermining the principle of legal certainty and weakening public confidence in the judicial system.

110. Therefore, the Court, in the light of the foregoing, finds that in the circumstances of the present case all three criteria of the ECtHR are met regarding the assessment whether the lack of consistency, namely the divergences in the case law, have resulted in a violation of the rights and freedoms to fair and impartial trial. The Court reiterates that, in the circumstances of the present case, it found "*profound and long-standing differences*" in the case-law of the Supreme Court on the application of provisions governing the amount of default interest in the context of compulsory motor third party liability insurance, and moreover, it has also

established that the existing mechanisms of the Supreme Court to harmonize this practice, were not used.

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

Conclusions

112. The Court dealt with all of the Applicant's allegations, applying on this assessment the case law of the Court and of the ECtHR regarding the lack of a reasoned court decision and the principle of legal certainty in terms of the consistency of the case law, such safeguards, that, with certain exceptions, are guaranteed by Article 31 of the Constitution and Article 6 of the ECHR.

113. As to the lack of a reasoned court decision, the Court found that in rendering the Judgment [E. Rev. No. 18/2017] of 4 December 2017, the Supreme Court failed to substantiate the Applicant's substantive allegations and did not reason its decision as to the amount of the default interest and the time from which the calculation of the respective interest runs.

114. As to the principle of legal certainty in the context of the lack of consistency, namely the divergence of the case law of the Supreme Court, the Court, having elaborated the fundamental principles and criteria of the ECtHR in this context, applied the latter in the circumstances of the present case, and found that in the case law of the Supreme Court there are "*profound and long-standing differences*" with regard to the application of legal provisions relating to the amount of default interest applicable in cases of compulsory motor liability insurance, moreover, despite the fact that the insurance mechanisms of consistency in case law are set out in the respective laws, this mechanism was not used by the Supreme Court. Therefore, the Court found that the principle of legal certainty has been violated, and that the Judgment [E. Rev. No. 18/2017] of 4 December 2017 was rendered in violation of the Applicant's fundamental rights and freedoms guaranteed by Article 31 of the Constitution in conjunction with Article 6 of the ECHR. The Court did not find the same violation with regard to the application of the legal provisions relating to the time of falling into default, namely the moment from which the calculation of the default interest begins, assessing the Supreme Court's departure from the case law in this regard as an isolated case and which cannot pass the test set by the ECtHR to hold "*profound and long-standing differences*" in the case law.

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 59 (1) (a) of the Rules of Procedure, in the session held on 11 December 2019,

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 and Article 6 [Right to a fair trial] of the European Convention on Human Rights;

III. TO DECLARE invalid Judgment E. Rev. No. 18/2017, of the Supreme Court of 4 December 2017;

IV. TO REMAND Judgment E. Rev. No. 18/2017 of the Supreme Court of 4 December 2017 for reconsideration in accordance with the Judgment of this Court;

V. TO ORDER the Supreme Court to submit information to the Court, in accordance with Rule 66 (5) of the Rules of Procedure, about the measures taken to implement the judgment of the Court;

VI. TO REMAIN seized of the matter, pending compliance with that order;

VII. TO NOTIFY this Judgment to the Parties and, in accordance with Article 20.4 of the Law, be published in the Official Gazette;

VIII. This Judgment is effective immediately.

Judge Rapporteur **President of the Constitutional Court**

Gresa Caka-Nimani

Arta Rama-Hajrizi

This translation is unofficial and serves for informational purposes only.