



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

Priština, 9. januara 2018. godine
Br. ref.: AGJ 1182/18

JUDGMENT

in

Case No. KI97/16

Applicant

“IKK Classic”

**Constitutional review of
Judgment E. Rev. 15/2016 of the Supreme Court of Kosovo
of 16 March 2016**

CONSTITUTIONAL COURT OF REPUBLIC OF KOSOVO

composed of:

Arta Rama-Hajrizi, President
Ivan Čukalović, Deputy President
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Bekim Sejdiu, Judge
Selvete Gërxhaliu-Krasniqi, Judge and
Gresa Caka-Nimani, Judge

Applicant

1. The Referral is submitted by the insurance company IKK Classic (hereinafter: the Applicant), represented by lawyers Besnik Nikqi and Visar Morina from Prishtina.

Challenged decisions

2. The Applicant challenges Judgment [E.Rev.15/2016] of the Supreme Court of Kosovo of 16 March 2016.

Subject matter

3. The subject matter is the constitutional review of the challenged Judgment, which allegedly violates the Applicant's rights guaranteed by Article 24 [Equality Before the Law], Article 31 [Right to Fair and Impartial Trial] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution) in conjunction with Article 6 (Right to a Fair Trial) of the European Convention on Human Rights (hereinafter: 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 and Articles 22 [Processing of Referrals], 47 [Individual Requests] and 48 [Accuracy of the Referral] of the Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter: the Law) and Rule 29 [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 9 February 2016, the Constitutional Court delivered the Judgment in case KI135/14, Applicant *IKK Classic*, Constitutional review of Judgment E. Rev. No. 21/2014 of the Supreme Court of Kosovo of 8 April 2014 (hereinafter: Judgment of the Court in Case No. KI135/14). It declared invalid the Judgment of the Supreme Court [E.Rev.no.21/2014] of 8 April 2014, because it found that this Judgment was rendered in violation of a right to a reasoned decision as guaranteed by Article 31 [Right to a Fair and Impartial Trial] of the Constitution in conjunction with Article 6 (Right to a Fair Trial) of the ECHR.
6. On 7 April 2016, the Supreme Court notified the Court about its new and second Judgment [E. Rev. 15/2016] of 16 March 2016, respectively, rendered in respect of the Judgment of the Court in Case No. KI135/14.
7. On 25 April 2016, the Applicant also informed the Court about the above referred to Judgment of the Supreme Court, alleging that it: a) again constitutes a violation of its right to a reasoned decision and b) did not implement the Judgment of the Court in Case No. KI135/14.
8. On 29 April 2016, the Court informed the Applicant that, based on the Constitution, it only decides on matters referred to it in a legal manner by authorized parties and that the Applicant has a right to submit a new referral with the Court.

9. On 22 June 2016, the Applicant submitted to the Court a new Referral, registered as referral No. KI97/16, alleging that the new, respectively, the second Judgment of the Supreme Court [E. Rev. 15/2016] of 16 March 2016, rendered in respect of the Judgment of the Court in Case No. KI135/14, continues to violate its right to a reasoned decision.
10. On 12 July 2016, the President of the Court appointed Judge Robert Carolan as Judge Rapporteur and the Review Panel composed of judges Almiro Rodrigues (presiding), Snezhana Botusharova and Bekim Sejdiu.
11. On 29 August 2016, the Court notified the Applicant about the registration of the Referral and sent a copy of the Referral to the Supreme Court of Kosovo.
12. On 2 November 2016, the President of the Court appointed Judge Gresa Cakanimani as Judge Rapporteur to replace Robert Carolan, who resigned from the position of the Judge of the Court on 9 September 2016. The composition of the Review Panel remained unchanged.
13. On 4 December 2017, the Review Panel deliberated on the Report of Judge Rapporteur and unanimously recommended to the Court the admissibility of the Referral.

Summary of facts

14. On 24 November 2008, D.H., the insured of the Applicant, suffered grave injuries in a traffic accident caused by B.L., holder of an insurance at the Insurance Company "SIGMA" in Prishtina (hereinafter: SIGMA). D.H. received medical treatment in the Federal Republic of Germany at an amount 18.985,36 Euro, which was covered by the Applicant.
15. On 3 February 2009, SIGMA and D.H., reached an extra-judicial agreement, whereby the latter was compensated by SIGMA for an amount 2,729 Euro. Based on this agreement, SIGMA considered that it had fulfilled all of its obligations regarding the payment of compensation for the damage caused by the traffic accident of 24 November 2008, including the amount of 18.985,36 Euro paid by the Applicant, as the insurance company of D.H.
16. On an unspecified date, the Applicant requested SIGMA to be compensated for the above referred to amount. The Applicant requested that SIGMA reimburse the above-stated expenses for the treatment of D.H., based on Rule 3 of the Rules on Compulsory Third Party Liability Motor Vehicle Insurance of the Central Banking Authority.
17. The Applicant and SIGMA did not reach an agreement as to the question of compensation and therefore referred their claims to the regular courts.
18. The then District Commercial Court in Prishtina approved as grounded the lawsuit of the Applicant and obliged SIGMA to compensate to the Applicant the amount of 18.985,36 Euro. In the appeal proceedings, the Court of Appeal confirmed the ruling of the District Commercial Court, by holding that the

respondent party (SIGMA) must compensate the amount of 18.985,36 Euro to the Applicant.

19. On 4 March 2014, SIGMA filed with the Supreme Court a request for revision, arguing that it had fulfilled its obligation for pecuniary and non-pecuniary damage to the insured D.H. and that the Applicant, as a Foreign Insurance Company, would have compensation rights vis-à-vis Kosovo Insurance Companies only via bilateral agreement between the Republic of Kosovo and the State of the Foreign Insurance Company.
20. The Supreme Court through Judgment [E. Rev. no. 21/2014] of 8 April 2014 approved as grounded the request for revision of SIGMA and ascertained that the courts of lower instance had erroneously applied the law, and that SIGMA is absolved from compensating the amount that the Applicant claimed.
21. On 3 September 2014, the Applicant submitted to the Court a Referral, challenging the abovementioned Judgment of the Supreme Court. That referral was registered under Case no. KI135/14 (see Judgment in Case KI135/14, Applicant *IKK Classic*, Constitutional review of Judgment E. Rev. No. 21/2014 of the Supreme Court of Kosovo of 8 April 2014).
22. The Applicant alleged that this Judgment of the Supreme Court was rendered in breach of Article 24 [Equality Before the Law], Article 31 [Right to Fair and Impartial Trial] of the Constitution in conjunction with paragraph 1 of Article 6 (Right to a Fair Trial) of the ECHR and Article 46 [Protection of Property] of the Constitution. The Applicant alleged, among others, that the challenged Judgment of the Supreme Court is characterized by lack of reasoning pertaining to its essential allegations.
23. On 9 February 2016, the Court through Judgment in Case No. KI135/14, held that there has been a breach of Article 31 [Right to a Fair and Impartial Trial] of the Constitution in conjunction with paragraph 1 of Article 6 (Right to a fair trial) of the ECHR, due to unreasoned Judgment of the Supreme Court.
24. The Judgment of the Court in Case No. KI135/14 concluded that the Supreme Court Judgment [E. Rev. No. 121/2014] of 8 April 2014 did not meet the standards of a reasoned decision and through its Judgment [KI135/14], summarized the allegations of the Applicant which it considered are essential and, therefore, require a response by the Supreme Court in order to respect the rights of the Applicant and to meet the standards of a right to a reasoned decision.
25. In fact, the Judgment of the Court in Case No. KI135/14 maintained that the Supreme Court Judgment [E. Rev. No. 121/2014] of 8 April 2014 failed to address the following essential allegations of the Applicant: *“(i) whether the extra-judicial agreement struck between SIGMA and the insured DH barred the Applicant from the right to compensation; (ii) how the compensation paid for by SIGMA to the insured DH absolved the former to pay compensation to the Applicant as well; (iii) how the extra-judicial agreement struck between SIGMA and DH can affect the rights of the Applicant-where it is clear - that*

the latter was not a party to that agreement". (See Constitutional Court Case KI135/14, Applicant *IKK Classic*, Judgment of 9 February 2016, § 51).

26. On 16 March 2016, following the Judgment of the Court in Case No. KI135/14, the Supreme Court rendered its new, respectively its second Judgment on the matter [Judgment E. Rev. no. 15/2016] of 16 March 2016, through which it reiterated the findings of the first Judgment, [E. Rev. no. 21/2014] of 8 April 2014, by holding that the request for revision of SIGMA is grounded; and that the rulings of the courts of lower instance, which found that SIGMA is obliged to compensate to the Applicant the amount of 18.985,36 Euro, must be rejected as ungrounded.
27. In responding to the essential allegations of the Applicant, as also emphasized by the Judgment of the Court in Case No. KI135/14, the Supreme Court through its second Judgment [E. Rev. no. 15/2016] of 16 March 2016, responded through the following two paragraphs:

"[...] by the aforementioned extra-judicial agreement, entered into by Sigma IC and the Claimant's insured, the Claimant's right to regress of indemnity for the damage, which it paid to its insured, D.H., was denied, because the Claimant's insured has directly realized the damage compensation from the Respondent, based on that agreement, according to which, he has waived all the claims – whether present, or future – related to this damage". Therefore, the legal relation between the Claimant and its insured, D.H., remains a legal relation only between them, on the basis of which, the also Claimant has paid the indemnity, without being aware that its insured had realized the indemnity from Sigma IC. This means that the Claimant's insured has been compensated twice, which is not fair.

If the Claimant's insured had not directly realized the indemnity from the Respondent, the Claimant would have undoubtedly been entitled to the regression of debt against the Respondent for the amount it had paid to its insured, because the option of regression has been stipulated by Article 939, paragraph 1, of the aforementioned law".

Applicant's allegations

28. The Applicant claims a violation of Articles 24 [Equality Before the Law] and 31 [Right to Fair and Impartial Trial] of the Constitution, in conjunction with Article 6 (Right to a fair trial) of the ECHR.
29. As it pertains to allegations for violation of Article 31 of the Constitution in conjunction with Article 6 of the ECHR, the Applicant maintains that the Supreme Court Judgment [E. Rev. 15/2016] of 16 March 2016 continues to lack reasoning pertaining to its essential allegations; and that the Supreme Court failed to provide reasoning pertaining to the key findings and questions raised by the Judgment of the Court in Case No. KI135/14, primarily on how the fulfillment of obligations by SIGMA to the insured D.H., through the extra-judicial agreement, prevents the Applicant from its right to compensation.

30. As it pertains to the allegations for violation of Article 24 of the Constitution, the Applicant maintains that in its case, the Supreme Court Judgment is inconsistent with its own case-law in similar situations. The Applicant argues that the case-law of the Supreme Court in similar situations suggests that indemnity settlements produce ‘*inter-partes*’ and not ‘*erga omnes*’ legal effects, and accordingly, the rights and interests of third parties cannot be affected through such settlements. In support of these claims, the Applicant refers to three rulings of the Supreme Court [E. Rev. no. 62/2014; E. Rev. no. 48/2014; and E. Rev. no. 14/2015].

Assessment of admissibility

31. The Court first examines whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution and as further specified in the Law and the Rules of Procedure.
32. In this respect, the Court first refers to paragraphs 1 and 7 of the Article 113 [Jurisdiction and Authorized Parties] of the Constitution, which establishes:
- “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.”*
33. The Court also refers to paragraph 4 of Article 21 [General Principles] of the Constitution, which establishes:
- “4. Fundamental rights and freedoms set forth in the Constitution are also valid for legal persons to the extent applicable”.*
34. In this respect, the Court notes that, pursuant to Article 21.4 of the Constitution, the Applicant is entitled to submit a constitutional complaint, invoking alleged violations of its fundamental rights and freedoms which are valid for individuals as well as for legal persons. (Constitutional Court case No. KI41/09, *Applicant AAB-RIINVEST University L.L.C.*, Resolution on Inadmissibility of 3 February 2010, §14).
35. Accordingly, the Court notes that the Applicant has fulfilled the criteria established by the Constitution’s Article 113.7, as it is an authorized party, contesting an act of a public authority, namely the Supreme Court Judgment [E. Rev. 15/2016] of 16 March 2016, and has exhausted all legal remedies provided for by law.
36. In continuation, the Court examines whether the Applicant has fulfilled the admissibility requirements as further specified in the Law and Rules of Procedure. In this respect, the Court first refers to Article 48 [Accuracy of the Referral] and 49 [Deadlines] of the Law, which provide:

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. In all other cases, the deadline shall be counted from the day when the decision or act is publicly announced...”

37. Regarding the fulfillment of these requirements, the Court notes that the Applicant has accurately specified the rights, guaranteed by the Constitution and the Convention that have allegedly been violated, in accordance with Article 48 of the Law and has submitted the referral within the four (4) month legal deadline foreseen in Article 49 of the Law.
38. The Court finally notes that this Referral is not manifestly ill-founded within the meaning of the Rule 36 (1) (d) of the Rules of Procedure. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible. (See also ECtHR case *Alimuçaj v. Albania*, application no. 20134/05, Judgment of 9 July 2012, § 144).

Merits of the Referral

39. The Court recalls that the Applicant alleges violations of its rights guaranteed by Article 24 [Equality Before the Law] and 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 primarily maintains that the second, respectively the challenged Judgment of the Supreme Court violates its rights to a reasoned decision, because it has not addressed its essential arguments, including those required by the Judgment of the Court in Case No. KI135/14, in addition to being a Judgment which contradicts Supreme Court's own case law.
40. The Court initially examines the merits of the Referral, pursuant to the allegations related to Articles 31 [Right to Fair and Impartial Trial] of the Constitution in conjunction with Article 6 (Right to a fair trial) of the ECHR.
41. In this regard, the Court refers to Article 31 [Right to a Fair and Impartial Trial] of the Constitution, which provides:

“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.”

42. In addition, the Court refers to Article 6.1 (Right to a fair trial) of the ECHR which provides:

“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.”

43. The Court reiterates that the right to a reasoned decision is guaranteed by Article 31 of the Constitution in conjunction with Article 6 of the ECHR and its application has been interpreted by the European Court of Human Rights (hereinafter: the ECtHR) through its case law. The Court, pursuant to Article 53 [Interpretation of Human Rights Provisions] of the Constitution, is obliged to interpret the human rights and fundamental freedoms guaranteed by the Constitution in harmony with the ECtHR case law. Consequently, regarding the interpretation of allegations concerning violation of Article 31 of the Constitution in conjunction with Article 6 of the ECHR, the Court will refer to the ECtHR case law.

(i) General principles on the right to a reasoned decision as developed by the ECtHR case law

44. The Court recalls that the right to a fair hearing includes the right to a reasoned decision. The ECtHR has reiterated that, according to its established case-law, which reflects a principle linked to the proper administration of justice, judgments of courts and tribunals should adequately state the reasons on which they are based. (See ECtHR cases *Tatishvili v. Russia*, application no. 1509/02, Judgment of 22 February 2007, § 58; *Hiro Balani v. Spain*, ECtHR, application no. 18064/91, Judgment of 9 December 1994, § 27; and *Higgins and Others v. France*, application no. 134/1996/753/952, Judgment of 19 February 1998, § 42).
45. In addition, while the ECtHR has also held that authorities enjoy considerable freedom in the choice of the appropriate means to ensure that their judicial systems comply with the requirements of Article 6(1) of the ECHR, their courts must "indicate with sufficient clarity the grounds on which they based their decision". (See ECtHR case *Hadjianastassiou v. Greece*, application no. 12945/87, Judgment of 16 December 1992, § 33).
46. The ECtHR case law emphasizes that an essential function of a reasoned decision is to demonstrate to the parties that they have been heard. Moreover, a reasoned decision affords a party the possibility to appeal against it, as well as the possibility of having the decision reviewed by an appellate body. It is only by giving a reasoned decision that there can be public scrutiny of the administration of justice. (See, *mutatis mutandis*, ECtHR cases *Hirvisaari v. Finland*, application no. 49684/99, 27 September 2001, § 30; *Tatishvili v. Russia*, application no. 1509/02, Judgment of 22 February 2007, § 58; and

Suominen v. Finland, application no. 37801/97, Judgment of 1 July 2003, § 37).

47. However, while the ECtHR maintains that Article 6, paragraph 1, obliges the courts to give reasons for their decisions, it has also held that this cannot be understood as requiring a detailed answer to every argument. (See ECtHR cases *Van de Hurk v. the Netherlands*, Judgment of 19 April 1994, § 61; and *Higgins and Others v. France*, application no. 134/1996/753/952, Judgment of 19 February 1998, § 42).
48. The extent to which this duty to give reasons applies may vary according to the nature of the decision and must be determined in the light of the circumstances of the case. (ECtHR cases *García Ruiz vs Spain*, application no. 30544/96, Judgment of 21 January 1999, § 29; *Hiro Balani v. Spain*, judgment of 9 December 1994, § 27; and *Higgins and Others v. France, Ibidem*, § 42).
49. For example, in dismissing an appeal, an appellate court may, in principle, simply endorse the reasons for the lower court's decision. (See ECtHR cases *García Ruiz v. Spain*, judgment of 21 January 1999, § 26; and *Helle v. Finland*, judgment of 19 December 1997, § 59 and 60). A lower court or authority in turn must give such reasons as to enable the parties to make effective use of any existing right of appeal. (ECtHR case *Hirvisaari v. Finland*, application no. 49684/99, judgment of 27 September 2001, § 30).
50. However, the ECtHR has also noted that, even though a domestic court has a certain margin of appreciation when choosing arguments in a particular case and admitting evidence in support of the parties' submissions, a domestic court is obliged to justify its activities by giving reasons for its decisions. (ECtHR case *Suominen v. Finland*, application no. 37801/97, Judgment of 1 July 2003, § 36).
51. Therefore, while it is not necessary for the court to deal with every point raised in argument (see also *Van de Hurk v Netherlands, Ibidem*, § 61), the applicant's main arguments must be addressed. (ECtHR cases *Buzescu v. Romania*, application no. 61302/00, Judgment of 24 May 2005, § 63; *Pronina v Ukraine*, application no. 63566/00, Judgment of 18 July 2006, § 25). Likewise, giving a reason for a decision that is not a good reason in law will not meet Article 6 criteria.
52. Finally, the Court also refers to its own case law where it considers that the justification of the decision must state the relationship between the merit findings and reflections when considering the proposed evidence on the one hand, and the legal conclusions of the court, on the other. A judgment of a court will violate the constitutional principle of a ban on arbitrariness in decision making, if the justification given fails to contain the established facts, the legal provisions and the logical relationship between them. (Constitutional Court cases No. KI72/12, *Veton Berisha and Ilfete Haziri*, Judgment of 17 December 2012, § 61; and No. KI135/14, *IKK Classic*, Judgment of 9 February 2016, § 58).

(ii) The application of the above referred to principles into the present case

53. The Applicant alleges that even through the second Supreme Court Judgment [E. Rev. 15/2016 of 16 March 2016], it fails to understand why its rights to compensation are denied, because its essential allegations have not been addressed nor reasoned by the referred to Judgment.
54. Throughout the regular court system, the Applicant has maintained that, by fulfilling the obligations towards the insured D.H., it has gained the right to subrogation from SIGMA (the transfer of insured person's rights against liable person to insurance agency) as determined by the Law on Obligational Relationships (Law No. 04/L-77 On Obligational Relationships, published in Official Gazette on 19 June 2012). The Applicant has also claimed throughout the regular court system that the extra-judicial agreement reached between SIGMA and D.H., does not exclude the rights of the Applicant to subrogation, and that this extra-judicial agreement cannot affect the rights of the Applicant, as it has '*inter-partes*' and not '*erga-omnes*' legal effects.
55. The Court through its Judgment in Case No. KI135/14, recognized these Applicant's allegations as essential and as ones that require to be addressed. The Court specifically noted that based on the nature and the specific circumstances of the case, the following key questions needed to be addressed in order to have a decision that meets the standards of a right to a reasoned decision as guaranteed by Article 31 of the Constitution in conjunction with Article 6 of the ECHR: "(i) *whether the extra-judicial agreement struck between SIGMA and the insured DH barred the Applicant from the right to compensation; (ii) how the compensation paid for by SIGMA to the insured DH absolved the former to pay compensation to the Applicant as well; (iii) how the extra-judicial agreement struck between SIGMA and DH can affect the rights of the Applicant-where it is clear - that the latter was not a party to that agreement*" (see the Judgment of the Court KI135/14, § 51).
56. The Court observes that the Supreme Court, in its second Judgment [E.Rev.15/2016] of 16 March 2016, recognized that "*the Constitutional Court, (...) remanded the aforementioned judgment to the Supreme Court of Kosovo for retrial, (...) reasoning that the Court failed to clearly explain some important matters*", which the challenged Judgment enumerates one by one, but fails to respond to.
57. In fact, in an effort to address the Applicant's allegations and the Judgment of the Court in Case No. KI135/14, the Supreme Court noted that "*the insured D.H. was compensated twice by the Applicant and by "SIGMA" and that "the Claimant has paid the indemnity, without being aware that its insured had realized the indemnity from Sigma IC"*". Thus the challenged Judgment considers that "*the Claimant's insured has been compensated twice, which is not fair*". The Supreme Court then also states that "*if the Claimant's insured had not directly realized the indemnity from the Respondent, the Claimant would have undoubtedly been entitled to the regression of debt against the Respondent*".

58. Therefore, it appears that the Supreme Court maintains that it is unfair that the insured D.H. was compensated twice and that if D.H. did not get compensation from SIGMA, then the Applicant would have been entitled to compensation instead. However, the Supreme Court Judgment does not address the essential allegations of the Applicant and does not provide adequate reasoning why its rights to compensation are denied.
59. More specifically, while the Supreme Court Judgment maintains that the Applicant is not entitled to any compensation, despite the fact that it has compensated the insured D.H., which the Supreme Court itself maintains is not fair, it still fails to provide the Applicant with the responses to its essential allegations and the reasoning behind its decision, in particular in light of its own case-law.
60. In fact, Supreme Court Judgment has not explained why has the Applicant not gained the right to subrogation nor has it responded to the allegations that the Judgment of the Court in Case No. KI135/14 has designated as essential, namely, how the compensation paid for by SIGMA to the insured D.H. absolved the former to pay compensation to the Applicant as well; and how the extra-judicial agreement struck between SIGMA and D.H. can affect the rights of the Applicant, where it is clear that the latter was not a party to that agreement.
61. The Court reiterates, as it has done in its Judgment of the Court in Case No. KI135/14 (paragraph 47), that it is not its task to consider whether the Supreme Court correctly interpreted the applicable law (legality), but to consider whether the challenged Judgment of the Supreme Court infringed the individual rights and freedoms protected by the Constitution (constitutionality). (See also Constitutional Court case No. KI72/14, Applicant *Besa Qirezi*, Judgment of 4 February 2015, § 65; and ECtHR case *Garcia Ruiz v. Spain*, application no. 30544/96, § 28).
62. Moreover, on this point, the Court reiterates (see also Judgment of the Court in Case KI135/14, paragraph 48) that, as a general rule, the establishment of facts of the case and the interpretation of law are a matter solely for the regular courts whose findings and conclusions in this regard are binding on the Court. However, where a decision of a regular court is clearly arbitrary, the Court can and must call it into question. (See ECtHR *Sisojeva and Others v. Latvia*, application no. 60654/00, Judgment of 15 January 2007, § 89).
63. Furthermore, it is not the task of the Court to decide what would have been the most appropriate way for the regular courts to deal with the arguments raised. However, Court considers that the Supreme Court, by ignoring the point altogether, even though it was specific, pertinent and important, fell short of its obligations under Article 6 § 1 of the ECHR. (See ECtHR case of *Pronina v. Ukraine*, application no. 63566/00, Judgment of 18 July 2006, § 25).
64. Therefore, in light of the above observations and taking into account the proceedings as a whole, the Court considers that the second Judgment of the Supreme Court, [E.Rev.15/2016] of 16 March 2016, respectively, failed to remedy the violations found through Judgment of the Court in Case No.

KI135/14 and to give sufficient reasons to the Applicant as to why its rights to compensation are denied in the circumstances of this specific case. Therefore, it did not satisfy the requirements of fairness as required by Article 6 of the ECHR. (See ECtHR case of *Grădinar v. Moldova*, application no. 7170/02, Judgment of 8 April 2008, § 115).

65. The Court considers that the failure of the Supreme Court to provide clear and complete answers with regard to the questions concerning the entitlement of the Applicant to the compensation as determined by the courts of the lower instance is in breach of the Applicant's rights to be heard and the right to a reasoned decision, as a component of the right to a fair and impartial trial. (See the Judgment of the Court, § 59).
66. The Court notes that the ECtHR also found a violation of Article 6 (1) of the Convention (in *Hiro Balani v. Spain*), where the applicant made a submission requiring a specific and express reply. The court failed to give a reply making it impossible to ascertain whether they had simply neglected to deal with the issue or intended to dismiss it and if so, what were the reasons for dismissing it. (See also the Judgment of the Court in case KI135/14, § 56).
67. Accordingly, it must be concluded the Supreme Court Judgment [E. Rev. 15/2016] of 16 March 2016 fell short of the requirement of a "fair trial" under Article 31 of the Constitution in conjunction with Article 6 § 1 of the ECHR due to a lack of a reasoned decision.
68. In this respect, the Court reiterates that this conclusion exclusively concerns the challenged Judgment of the Supreme Court from the perspective of its level of reasoning pertaining to the essential allegations of the Applicant, and in any way, does not prejudice the outcome of the merits of the case.
69. Finally, the Court considers that it is not necessary to examine the allegations of the Applicant under Article 24 [Equality Before the Law] of the Constitution, as it has found violation of Article 31 of the Constitution in conjunction with paragraph 1 of Article 6 of the ECHR.

Conclusion

70. In conclusion, the Court finds that by not giving due consideration and reasoning to the Applicant's alleged right to compensation, in addition to not addressing the findings of Judgment of the Court in Case No. KI135/14, the second Supreme Court Judgment, [E. Rev. no. 15/2016] of 16 March 2016, respectively, has violated the Applicant's right to a fair and impartial trial as guaranteed by Article 31 of the Constitution in conjunction with Article 6 § 1 of the ECHR. As a result of this violation, the Applicant was deprived from his right to reasoned decision.
71. In sum, in accordance with the Rule 74 (1) of the Rules, the Judgment of the Supreme Court [E. Rev. no. 15/2016] of 16 March 2016 is declared invalid and the case is remanded to the Supreme Court for reconsideration.

FOR THESE REASONS

The Constitutional Court, pursuant to Articles 113 (7) and 116 (1) of the Constitution, Articles 47 and 48 of the Law and Rules 56 (1), 63 (1) (5) and 74 (1) of the Rules of Procedure, on 4 December 2017, unanimously

DECIDES

- I. TO DECLARE the Referral admissible;
- II. TO HOLD that there has been a breach of Article 31 [Right to Fair and Impartial Trial] of the Constitution in conjunction with paragraph 1 of Article 6 (Right to a Fair Trial) of the European Convention on Human Rights;
- III. TO DECLARE invalid the Judgment of the Supreme Court [E. Rev. no. 15/2016] of 16 March 2016;
- IV. TO REMAND the Judgment of the Supreme Court [E. Rev. no. 15/2016] of 16 March 2016 for reconsideration, in conformity with this Judgment of the Constitutional Court;
- V. TO REMAIN seized of the matter pending compliance with that order;
- VI. TO ORDER the Supreme Court to inform the Court, in accordance with Rule 63 (5) of the Rules of Procedure, about the measures taken to enforce the Judgment of the Court;
- VII. TO NOTIFY this Judgment to the Parties;
- VIII. TO PUBLISH this Judgment, in accordance with Article 20 (4) of the Law, in the Official Gazette;
- IX. TO DECLARE this Judgment effective immediately.

Judge Rapporteur

Gresa Caka Nimani
Gresa Caka-Nimani



President of the Constitutional Court

Arta Rama-Hajrizi
Arta Rama-Hajrizi