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

Prishtina, on 13 August 2019
Ref. no.:AGJ 1409/19

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JUDGMENT

in

Case No. KI135/18

Applicant

Hava Simnica

Constitutional Review of Judgment Rev. nr. 112/2018 of the Supreme Court of Kosovo, of 7 May 2018

CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Arta Rama-Hajrizi, President
Bajram Ljatifi, Deputy President
Bekim Sejdiu, Judge
Selvete Gërxhaliu-Krasniqi, 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 Hava Simnica (hereinafter: the Applicant), residing in the village of Prugovcë, municipality of Prishtina.

Challenged decision

2. The Applicant challenges the constitutionality of the Judgment of the Supreme Court of the Republic of Kosovo (hereinafter: the Supreme Court), Rev. nr. 112/2018, of 7 May 2018, which she received on 12 June 2018.

Subject Matter

3. The subject matter is the constitutional review of the challenged Judgment, which has allegedly violated Applicant's rights guaranteed by Articles 22 [Direct Applicability of International Agreements and Instruments], 3 and 24 [Equality Before the Law], 31 [Right to Fair and Impartial Trial] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), and Article 6 of the European Convention on Human Rights (hereinafter: the Convention).

Legal basis

4. The Referral is based on paragraphs 1 and 7 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution, Articles 22 [Processing Referrals] and 47 [Individual Requests] of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter: the Law) and Rule 32 [Filing of Referrals and Replies] of the Rules of Procedure of the Constitutional Court (hereinafter: the Rules of Procedure).

Proceedings before the Constitutional Court

5. On 13 August 2018, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

6. On 19 September 2018, the President of the Court appointed Judge Safet Hoxha as Judge Rapporteur and the Review Panel composed of Judges Selvete Gërxhaliu-Krasniqi (Presiding), Bajram Ljatifi and Radomir Laban.

7. On 5 October 2018, the Court notified the Applicant about the registration of the Referral and a copy of the Referral was sent to the Supreme Court, pursuant to Article 20.4 of the Law.

8. On 19 July 2019, the Review Panel considered the Report of the Judge Rapporteur and unanimously recommended that the Court declare the Referral admissible and assess the substance of the Referral.

Summary of Facts

9. On 1 March 2004, the Applicant's husband was found dead at his work place in the Kosovo Energy Corporation (hereinafter: KEK).

10. On an unspecified date, the Applicant addressed the KEK authorities with a request that she be granted the right to retirement in the name of the allowance, due to the loss of the family provider.

11. On 26 May 2004, KEK, by Decision no. 114/16, in accordance with its bylaws, granted the Applicant the right to supplementary pension in the amount of €295 monthly, starting from 1 June 2004 until 1 July 2009. After this period, KEK terminated the payment of €295.

12. On 18 September 2009, the Applicant, together with her children, filed a claim with the Basic Court in Prishtina, through it seeking the payment of allowance in the name of loss of provision (alimentation) until the legal conditions provided by the laws in force exist thereto.

13. On 31 January 2017, the Basic Court in Prishtina, by Judgment C. nr. 2346/16, decided:

> *I. To APPROVE as grounded the claim of Claimants Hava Simnica, Besmira Simnica and Gresa Simnica from Prishtina and OBLIGED the Respondent KEK Prishtina that within fifteen days of receipt of this judgment, in the name of allowance accrued for the period from 01.10.2009 to 30.04.2013, pay to the Claimants the amount of €9,924.00. The Respondent is OBLIGED to pay to the Claimant Hava Simnica allowance in the monthly amount of €212.20, from 01.05.2013, until the legal conditions exist thereto, whereas to Claimant Gresa Simnica for the period from 01.05.2013 to 31.08.2014, pay the amount of €212.20, all with legal interest from 01.10.2016 until the final payment;*
>
> *II. The Respondent is OBLIGED to pay to the Claimants the costs of the proceedings in the amount of €1,710.60 within 15 (fifteen) days from receipt of this Judgment.*

14. Furthermore, the Basic Court in Prishtina reasoned:

> *"It is contested between the litigants whether the claim for payment of the allowance has gone beyond the statute of limitations, (...).*
> *The court had in mind the Respondent's allegations regarding the statute of limitations of the claim for pecuniary damage in the form of allowance and therefore referred to the uncontested fact that the Claimants through the Respondent's decision had been paid the monthly amount of €295 for a five-year period of time, until the end of June 2009. Taking into consideration that the payment was terminated from July 2009, for this reason the Claimants in September 2009, that is two months after the termination of payment, have initiated a contested procedure, it results from this fact that the claim within the meaning of Article 376 of the Law on Obligational Relationship (LOR) is within the deadline".*

15. KEK, against the Judgment of 31 January 2017 of the Basic Court in Prishtina, exercised its right to appeal to the Court of Appeal, alleging incomplete determination of the factual situation and wrongful application of substantive law.

16. On 14 December 2017, the Court of Appeal by Judgment Ac. nr. 1802/2017 rejected the appeal of KEK as ungrounded, fully accepting the factual finding and the legal position of the first instance court as fair and lawful. Among other things, the judgment states:

> *"The first instance court found that the monthly payment was terminated from July 2009, which is why the Claimants in September 2009, two months after the payment was terminated, initiated a contested procedure, based on this fact, according to the court of first instance, it results that the claim pursuant to Article 376 of the Law on Obligational Relationship is within deadline.*
> *[...]*
> *"The Panel considers that the appellate claims made by the Respondent do not stand with the complaint regarding the statute of limitations. The Panel finds that the right of provision in the event of the loss of the family provider is a right established by law and pursuant to Article 373 par. 3 of the LOR, this right cannot be under statute of limitations".*

17. On 4 September 2017, KEK filed a request for revision with the Supreme Court against the Judgment of the Court of Appeal of 14 December 2017, alleging that the substantive law was erroneously applied.

18. On 14 December 2017, the Supreme Court by Judgment Rev. nr. 112/2018, approved the request for revision of statute of limitations by KEK, on the grounds:

> *"... The Supreme Court of Kosovo has found that the lower instance courts, on the basis of a factually and properly established factual situation, erroneously applied the substantive law when they found that the Claimants' claim was grounded and as such approved, for which it was necessary to approve the Respondent's revision as grounded, to change the judgments of both courts and to reject the Claimants' claim.*
> *[...]*
> *"According to the assessment of this court, the claim of the Claimants has exceeded the statute of limitations pursuant to Article 376 of the LOR, so the objection of the Respondent's statute of limitations in this contest must be assessed based on Article 376 of the LOR, as it relates to the claim for the material remuneration in the name of lost provision-allowance and in this situation there is no room for the application of Article 373, paragraph 3 of the LOR, as both courts have erroneously assessed".*

Applicant's allegations

19. The Applicant alleges that the Supreme Court violated her right to equality before the law and the right to a fair trial, ruling against her case-law in completely the same circumstances, because:

> *"The Supreme Court ... by accepting the revision and reversing lower instance court decisions, and by rejecting the Claimant's claim as ungrounded, acted against its case law because... for the same*

circumstances-completely the same in our case, it decided quite differently, giving quite different reasons, and thereby violated the rights guaranteed by the Constitution, because it put us in an unequal position with other citizens on... completely identical claims".

20. The Applicant further alleges:

"We consider that this decision in our case is arbitrary and we expect the Constitutional Court to eliminate these violations and arbitrariness, because these kinds of decisions also violate the principle of legal certainty, ... which according to the Constitution and the laws on the courts, it (the Supreme Court) has to unify the jurisprudence of other courts, and it has no unification in decision making even within its panels... because there are members... who have participated in panels, where the same issue is decided differently with different decisions".

21. In support of her allegation, the Applicant has attached to her Referral Judgments Rev. nr. 55/2010 of 18 March 2012 and Rev. nr. 349/2016, of 11 January 2017, and alleges that her case should have been decided similarly as it had been decided in these Judgments.

22. Finally, the Applicant requests the Court to declare the Referral admissible; conclude violations of her rights guaranteed by the Constitution; declare the challenged judgment of the Supreme Court null and void and render the Judgment of the Basic Court in Prishtina and that of the Court of Appeal in force as *res judicata*.

Applicable law

Law on Obligational Relations, Official Gazette SFRY, of 30 March 1978

Compensation in the form of cash allowance
Article 188

1) In the event of death, of a bodily injury or damage to health, compensation shall be set as a rule in the form of a lifetime allowance or for a fixed period of time.

The right of the person who was provided for by the deceased
Article 194

1) The person who was provided for or assisted regularly by the deceased, as well as the person entitled by law to request alimentation from the deceased, has the right to compensation for damage suffered by the loss of alimentation or assistance.
2) This damage is compensated by the payment of the cash allowance in the amount of which is set taking into account all the circumstances of the case and which cannot be greater than what the injured party would have gained if the deceased had remained alive.

Statute of limitation of the right itself
Article 373

1) The right itself from which result periodic claims has a statute of limitations for five years, counting from the commencement for payment of the oldest unfulfilled claim after which the debtor has not made any payment.
2) When the statute of limitation applies to the right from which periodic claims derive, then the creditor loses its right not only for claiming future periodic payments that have derived from this statute of limitation.
3) The right to alimentation provided by law cannot have any statute of limitation.

Claim for compensation of damage

Article 376

1. The claim for compensation for the caused damage shall have a statute of limitation of three years from the date when the injured party learned about the damage and the person who caused the damage.
However, this claim shall have a statute of limitation of five years from the date on which the damage was caused.
2. The claim for damages caused by the breach of contractual obligation shall have a statute of limitation for the time set for the statute of limitation of this obligation.

Admissibility of Referral

23. The Court first examines whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution and further provided by the Law and in the Rules of Procedure.

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

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

25. The Court also examines whether the Applicant has fulfilled the admissibility requirements as set out in the Law. In this regard, the Court first refers to Articles 47 [Individual Requests], 48 [Accuracy of the Referral] and 49 [Deadlines] of the Law, which provide:

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...".

26. As to the fulfilment of these criteria, the Court concludes that the Applicant is an authorized party; has the available legal remedies; has specified the act of public authority, constitutionality of which she disputes with the Court and has submitted the Referral on time.

27. The Court further examines whether the Referral has met the admissibility requirements laid down in Rule 39 (1) (d) and 39 (2) of the Rules of Procedure, which stipulate:

Rule 39
[Admissibility Criteria]

(1) "The Court may consider a referral as admissible if:

[...]

(d) the referral accurately clarifies and adequately sets forth the facts and allegations for violation of constitutional rights or provisions".

(2) The Court may consider a referral as inadmissible if the referral is manifestly ill founded because the Applicant has not sufficiently proved and substantiated the claim".

28. Since the Applicant's Referral has met all the procedural criteria, also based on the fact that the Referral is not manifestly ill-founded within the meaning of Rule 39 (2), the Court determines that the Referral is admissible for review of the merits of the Referral.

Merits of the Referral

29. The Court, before assessing the Applicant's allegations, reiterates that pursuant to Article 53 [Interpretation of Human Rights Provisions] of the Constitution:

"Human rights and fundamental freedoms guaranteed by this Constitution shall be interpreted consistent with the court decisions of the European Court of Human Rights".

30. The Court recalls that the Applicant alleges that the challenged Resolution Rev. nr. 112/2017 of the Supreme Court, of May 7, 2018, violates her constitutional rights guaranteed by Articles 3 and 24 [Equality Before the Law], Article 31 [Right to Fair and Impartial Trial] of the Constitution, and Article 6 [Right to a Fair Trial] of the Convention.

31. The Court notes that the Applicant in substance alleges that the Supreme Court, in her case, ruled contrary to its own case-law, giving different reasons for identical issues.

32. In this sense, the Court will assess the Applicant's allegations under Article 31 of the Constitution in the light of the interpretation of Article 6 of the Convention, since the question of changing legal positions (divergences) by the regular courts on the same issues, as well as the obligation to make reasoned and reasonable decisions are guaranteed by the above provisions.

General principles on the right to a reasoned decision as conducted by the ECtHR case law

33. The Court, first and foremost, recalls that the guarantees contained in Article 6 paragraph 1 of the ECHR include the duty of the courts to reason their decisions. The reasoned court decision tells the parties that their case has indeed been examined (see ECtHR Judgment *H. v. Belgium,* no. 8950/80, paragraph 53, of 30 November 1987).

34. The Court also notes that, according to the ECtHR case law, Article 6 paragraph 1 obliges the courts to justify their decisions, however, this cannot be interpreted as requiring the courts to give a detailed answer to each allegation (see ECtHR cases, *Van de Hurk v. the Netherlands,* Judgment of 19 April 1994; *Garcia Ruiz v. Spain,* application no. 30544/96, Judgment of 21 January 1999, paragraph 26; *Jahnke and Lenoble v. France,* [GC], paragraph 81.).

35. In this regard, the ECtHR adds that the domestic court has a certain discretion in the choice of allegations and in allowing evidence, but it also has an obligation to justify its actions by giving reasons for its decisions (see ECtHR Judgment *Suominen v. Finland, application* 37801/97, of 1 July 2003, paragraph 36).

36. The Court also notes that in the light of the ECtHR's case law, in considering whether the reasoning of a judgment meets the standards of the right to a fair trial, the circumstances of the present case must be taken into account. The court decision should not be without reason, nor should the reasoning be vague. This is especially the case with the reasoning of the court decision which decides according to legal remedies, in which have been changed the legal

positions presented in the decision of lower court (see ECtHR case, *Van de Hurk v. The Netherlands,* Judgment of 19 April 1994, paragraph 61).

37. The Court wishes to emphasize that the notion of a fair trial, in accordance with the ECtHR case law, also requires that the national court which has given little reason for its rulings has actually addressed fundamental issues within its jurisdiction, that is, it had not simply and conclusively approved the conclusions reached by the lower court. This requirement is even more relevant in the event that a party to the dispute has not been able to present its case orally in the domestic proceedings (see ECtHR Judgment *Helle v. Finland,* application 157/1996/776/977, of 19 December 1997, paragraph 60).

38. In addition, the Court also refers to its case-law where it stipulates that the reasoning of the decision should emphasize the relationship between the findings of merit and the reflections when considering the evidence proposed, on the one hand, and the court's legal conclusions, on the other. The judgment of the court shall violate the constitutional principle of prohibiting arbitrariness in decision-making, if the reasoning given does not contain the established facts, legal provisions and the logical relationship between them (Constitutional Court, cases: no. KI72/12, *Veton Berisha and Ilfete Haziri,* Judgment of 17 December 2012, paragraph 61; no. KI135/14, *IKK Classic,* Judgment of 9 February 2016, paragraph 58, and KI96/16 *IKK Classic,* Judgment of 8 December 2017).

Application of the principles mentioned above on the right to a reasoned decision in this case

39. The Court notes that the Applicant, in support of her allegation, attached two Judgments of the Supreme Court to the Referral, to show that the latter in her case gave a completely different reasoning on completely identical issues.

40. In this regard, the Court shall conduct a comparative analysis to see the similarities in the factual and legal circumstances and the differences in reasoning between the Applicant's case and Applicants A and B.

41. As to Applicant (A), the Court notes that the Supreme Court by Judgment Rev. nr. 55/2010 of 18 March 2013, regarding the statutory limitation of the object sought by the claim, reasoned: *"The respondent's statement of limitation on the statutory limitation of the claimant's claim for payment of allowance under Article 376 of the LOR is ungrounded because the lower instance courts in this regard contain sufficient reasons which this court also approves". (...) This court also considers that the lower instance courts have correctly applied the substantive law, namely the provision of Article 195 paragraph 1 and 2 of the LOR. According to the provision of Article 188, paragraph 1 of the LOR, it is provided that after death, bodily injury or damage to health, compensation is set as a rule in the form of a lifetime allowance or for a fixed period of time. In the present case the respondent is obliged to pay the claimant 70% of the salary of the deceased until the day of retirement (13.08.2012) which the deceased would have earned if he were alive, ...".*

42. As to Applicant (B), the Court notes that the Supreme Court by Judgment Rev. nr. 349/2012, of 11 January 2017, regarding the statutory limitation of the object sought by the claim, reasoned: *"Like the second instance court, this court also thinks that the claimant is entitled to the right to alimentation (par. 1) due to the reason that by decision of the respondent pension application no. 01/10, dated 5.1.2005, she was granted the right to a pension in amount of €295, in the name of her deceased husband M. T., who while working with the respondent lost his life in the workplace on 18.11.2004. The claimant was duly paid her salaries from 1.1.2005 until 1.2.2010, while after that the claimant was left without alimentation funds. (...). The Supreme Court considers as inadmissible the allegation in the respondent's revision that the claimant's claim has reached its statutory limitation because the right of the claimant does not fall within the meaning of Article 373 par. 3 of the LOR, as both courts have rightly assessed".*

43. As to the Applicant, the Court notes that the Supreme Court, with the challenged Resolution Rev. nr. 112/2018, regarding the statutory limitation of the object sought by the claimed, reasoned: *"According to the assessment of this court the claim of the claimant has reached its statutory limitation pursuant to Article 376 of the LOR, so the objection of the respondent's statutory limitation in this dispute must be assessed pursuant to Article 376 of the LOR, as it relates to the claim for pecuniary compensation in the name of lost alimentation and in this situation there is no room for the application of Article 373, paragraph 3 of the LOR, as both courts have erroneously assessed".*

44. On the basis of the foregoing analysis, the Court notes that: 1) in all three cases, the Applicants' spouses lost their jobs in KEK, after whose death they had reached an agreement to obtain supplementary pension from KEK; 295 euros; 2) upon expiry of the agreement, all three applicants (1 to 3 months) subsequently filed a lawsuit in the first instance court and the respondent in all three cases was KEK; 3) in all three cases, the object sought by the claim was the claim for the payment of the monthly allowance which was claimed in the name of lost provision (alimentation), due to the loss of the sole provider of the family; 4) in all three cases, the law applicable at the time the claims were filed (2006-2009) was the SFRY Law on Obligational Relationship of 1978; 5) in the case of Applicants A. and B., the two judicial instances, including the Supreme Court, upheld their claims and concluded that the right of allowance sought by the claim in the name of alimentation under the provisions of LOR, cannot have statutory limitations.

45. From the above, the Court notes that: as to the time of filing the claims (expiry of the agreement with KEK), as to the object sought by the claim (realization of allowance in the name of lost provision (alimentation), as well as applicable law (LOR 1978), the Supreme Court, in the Applicant's case, ruled giving a completely different reasoning to its consolidated practice. In this case, it is worth noting that the conclusions of the first instance and second instance courts in all three cases are unified and in line with their previous case-law practice, but also in line with case-law practice of the Supreme Court itself, as in the case of Applicants (A) and (B), where the latter concluded that the right

of allowance sought by a claim in the name of lost provision (alimentation) within the meaning of Article 373, paragraph 3 of LOR, cannot have statutory limitations.

46. However, the Supreme Court in the Applicant's case, unlike the lower courts' conclusions and its conclusions as in Applicants (A) and (B), decided to amend the judgments of the lower instance courts, with an entirely different reasoning as to the statutory limitation of the claim, reasoning that: *"... the claim submission under Article 376 of the LOR has statutory limitations, ... and in this situation there is no room for the application of Article 373, paragraph 3 of the LOR, as both courts have erroneously assessed".*

47. Furthermore, the Court notes that the Supreme Court's reasoning, in cases of Applicants (A) and (B) was based on entirely the same circumstances, was in line with the judgments of lower courts, which became final after the Supreme Court upheld them, concluding that: "the right to the allowance claimed by the claimants in the name of lost provision (alimentation) cannot have statutory limitations because such a thing is guaranteed by Article 373, paragraph (3) of the LOR, which stipulates: " *3) The right to alimentation provided by law cannot have any statute of limitation",* further justifying its position with regard to the statutory limitation of this right in conjunction with Article 188 and Article 194, paragraphs 1 and 2 of the LOR (see above, the content of Articles 188 and 194 of the LOR).

48. In this regard, the Court does not consider the Supreme Court's right to interpret the applicable law in the present case contested because it is within its jurisdiction as a court. However, what the Supreme Court has failed to explain is precisely the relationship between the facts presented and the law enforcement on which it invoked, namely how they correlate with each other and how they have affected the conclusion of the Supreme Court to change the judgments of the lower instance courts and also to change its legal position regarding the statutory limitation of the object sought by claim, namely the claim for the payment of monthly allowance, in the name of lost provision (alimentation).

49. Concerning such a position of the Supreme Court, the Court reiterates that the ECtHR in Judgment *Hadjianastassiou v. Greece,* in paragraph 33, took the position that the national court must *"indicate with sufficient clarity the grounds on which they based their decision",* namely that the party has the right to know the reasons for the court decision.

50. In this regard, taking into account the previous position of the ECtHR, the Court is not clear on the fact as to why the Supreme Court based the reversal of the lower courts' judgments on KEK's allegation to the statutory limitation of the claim, and not to its previous case law practice, given that the Applicant's case was completely the same in factual and legal circumstances as that of Applicants A. and B.

51. Therefore, in the light of the foregoing, the Court considers that in the challenged Judgment, the Supreme Court did not give convincing reasons and

did not sufficiently elaborate the reason for departing from its previous case law practice, namely the fact of changing the lower instance courts' judgments and its legal position (see *mutatis mutandis* ECtHR case, *Van de Hurk v. the Netherlands,* Judgment of 19 April 1994, paragraph 61).

52. In the present case, the Court notes that the departure from the consolidated case-law has not been the result of reforms or the evolution of case-law for better administration of justice as required by Article 6 of the ECHR. *(see for more, the Constitutional Court, case KI87/18, with Applicant IF Skadeforsikring, Judgment of 27 July 2019).*

53. For these reasons, the Court considers that the Supreme Court, in the Applicant's case, did not meet its obligations under Article 6.1 of the ECHR for a reasoned and reasonable decision, when it concluded that the Applicant's claim be rejected as ungrounded on the basis of its statutory limitation as long as it had in earlier cases granted Applicants A. and B. the right to claim the payment of the monthly allowance in the name of lost provision.

54. In this regard, the Court reiterates that the proper handling of the submissions by the court during civil proceedings is essential to the correctness of the contested civil procedure. In examining a case, the court has a duty to consider effectively the grounds, arguments and evidence presented by the parties. The court's failure to properly examine specific, relevant and important arguments, has consistently been considered a violation of Article 6.1 of the Convention by the ECtHR.

55. The Court recalls that the reasoning of the judgment is a key component of a fair trial and is essential to the administration of justice and is the best indicator that proves that the courts have grounded statements in their decisions. The function of a reasoned decision is to show the parties that they have been heard. On the other hand, only by giving a reasoned decision can a public control of the administration of justice be realized (see *Tatishvili v. Russia,* ECtHR Judgment of 9 July 2007, paragraph 58; and case *Hirvisaari v. Finland,* as amended, paragraph 30, ECtHR Judgment of 27 September 2001).

56. The principle of the rule of law, underpinning a democratic state, implies the rule of law and the avoidance of arbitrariness in order to achieve respect and guarantee of human dignity, justice and legal certainty. Legal certainty, as a constitutional concept, encompasses the clarity, understanding and consistency of the normative system.

57. In conclusion, the Court, having regard to all the grounds set out above, concludes that the challenged Judgment violates the Applicant's right to a fair trial, as guaranteed by Article 31.1 of the Constitution and Article 6.1 of the ECHR, because the reasoning of the Judgment is in contravention to the case law of the Supreme Court itself, therefore the challenged Judgment is in contravention to the principle of legal certainty.

FOR THESE REASONS

The Court, pursuant to Rule 113.7 of the Constitution, Rule 59 (1) of the Rules of Procedure, in its session held on 19 July 2019, unanimously:

DECIDES

I. TO DECLARE the Referral admissible;

II. TO HOLD that there has been a violation of Article 31.1 [Right to Fair and Impartial Trial] of the Constitution, in conjunction with Article 6.1 [Right to a Fair Trial] of the ECHR;

III. TO DECLARE Judgment Rev. nr. 112/2018 of the Supreme Court, of 7 May 2013, invalid; and REMAND the same for retrial, in accordance with the Judgment of the Court;

IV. TO REMAIN seized of the matter pending compliance with this order;

V. TO ORDER that its Judgment KI135/18 be communicated to the Parties and in accordance with Article 20.4 of the Law, be published in the Official Gazette;

VI. This Judgement is effective immediately.

Judge Rapporteur **President of the Constitutional Court**

Safet Hoxha Arta Rama-Hajrizi