**Prishtina, on 11 June 2020**

**Ref.No.:AGJ 1575/20**

***This translation is unofficial and serves for informational purposes only.***

**JUDGMENT**

in

**Case No. KI123/19**

Applicant

**“SUVA Rechtsabteilung”**

**Constitutional review of Judgment Ae.no.146/17, of the Court of Appeals of Kosovo, of 26 February 2019**

**THE 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 the insurance company *“Suva Rechtsabteilung”* based in Lucerne, Switzerland, represented by ICS Assistance LLC, through Visar Morina and Besnik Mr. Nikqi, attorney at law from Prishtina (hereinafter: the Applicant).

**Challenged Decision**

1. The Applicant disputes the constitutionality of the Judgment Ae.no.146/17 of the Court of Appeals of Kosovo, of 26 February 2019 (hereinafter: the Court of Appeals). The challenged decision was received by the Applicant on 23 April 2019.

**Subject Matter**

1. The subject matter of the Referral is the constitutional review of the aforementioned Judgment of the Court of Appeals, which as alleged by the Applicant has violated his right guaranteed by 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**

1. 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, on Articles 22 [Processing Referral] and 47 [Individual Request] of the 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)).

**Proceedings before the Constitutional Court**

1. On 26 July 2019, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
2. On 14 August 2019, the President of the Court appointed Judge Safet Hoxha as Judge Rapporteur and the Review Panel, composed of judges: Arta Rama-Hajrizi (presiding), Gresa Caka-Nimani and RemzijeIstrefi-Peci (members).
3. On 9 September 2019 the Court notified the Applicant about the registration of the Referral and sent a copy thereof to the Court of Appeals.
4. On 6 December 2019, the Court notified the Kosovo Insurance Bureau about registration of the Referral.
5. On 7 February 2020, the Court requested from the Basic Court in Peja to submit a copy of the extrajudicial agreement of 25 January 2015.
6. On 18 February 2020, the Basic Court in Peja submitted the requested copy of the extrajudicial agreement.
7. On 13 May 2020 the Review Panel considered the report of the Judge rapporteur and unanimously made a recommendation to the Court to declare the Referral KI123 / 19 inadmissible for review and to assess its merits.
8. On the same day, the Court by a majority of votes found that the Judgment Ae. no. 146/17 of the Court of Appeals, of 26 February 2019, 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.

**Summary of facts**

1. On 19 January 2012, M.B., the Applicant’s insured person (hereinafter: the Applicant’s insured person), had suffered injuries in a traffic accident caused by B.A. For the fact that B.A. had no insurance for the damage caused to third parties under the Law on Road Traffic Safety, the latter was represented by the Kosovo Insurance Bureau (hereinafter: the KIB).
2. In 2013, the applicant's insured had received medical treatment and compensation due to incapacity to work for an indefinite period in the Swiss Confederation, which had been paid by the Applicant.
3. On 13 January 2015, the Applicant filed a claim with in the Basic Court in Prishtina, Department for Commercial Matters (hereinafter: the Basic Court) seeking compensation in the amount of 8,918.61 Euros, in the late payment(interest) rate of 12%, starting from 24 December 2012 until the final payment. KIB had submitted a response to the claim, whereby it had stated that it had entered into an extrajudicial agreement with the Applicant’s insured person, for all forms of damage, in which case it had also carried out the payment to the Applicant’s insured person.
4. On 25 January 2015, the KIB and the Applicant's insured person reached an extrajudicial agreement [certified at the Basic Court in Peja, C. No. 185/13, on 25 January 2015], where the latter was compensated by KIB in the amount of 1,000 Euros.
5. On the basis of the Court settlement:

“*The* *Respondent Kosovo Insurance Bureau based in Prishtina was OBLIGED [...] to pay to the claimant [the insured M.B.], [...] for all categories of damage, be it material or non-material, relating to the accident that occurred on 19.01.2012 [...] the amount of 1000 Euros [...]. “*

*[...]*

*“Since the court considers that we are dealing with a request which the litigants can freely have in disposal and that their request is not contrary to the provisions of Article 3, para.3 of the LCP, the court after this in support of the provision of Article 412 and 414 of the LCP, renders:*

*DECISION*

*APPROVING the Court settlement reached in today’s session between the litigants’ authorized persons and the same represents a valid enforcement title.”*

*[...]*

1. On 14 April 2017, the Basic Court by Judgment [II.EK. no. 8/15] rejected the claimant's statement of claim in its entirety.
2. The Basic Court found that with the extrajudicial agreement concluded on 25 January 2015 in the Basic Court in Peja *“[...] a Court settlement was concluded between [the Applicant’s insured person] and the respondent [KIB]. Therefore, since this agreement is concluded for all categories of material and non-material damage, it clearly implies that all possible claims arising from the compensation of the damage for which this contract was concluded, as well as the respondent [KIB] within the meaning of Article 940 of the LOR, was obliged to compensate the [Applicant’s] insured person for the claimed damage and it is not disputable that following the conclusion of the above mentioned agreement [the KIB] has paid for the claimed damage, as well as the claimant's insured person in the sense of Article 941 of the LOR, based on the fault of the respondent's insured person was entitled to claim compensation directly from the respondent.”“*
3. In the end, the Basic Court found that following the conclusion of the extrajudicial agreement, the Applicant’s insured person had consumed his right, to claim compensation of damages, while as for the Applicant’s allegations regarding the transfer of the right, according to this the Court they are unfounded. Consequently, the Basic Court found that no one can transfer to another person/entity the right which he had previously realised, and consequently this right has ceased to exist.
4. On an unspecified date, the Applicant lodged an appeal with the Court of Appeals against the above-mentioned Judgment of the Basic Court, alleging violations of the provisions of the contested procedure, erroneous and incomplete determination of the factual situation and erroneous application of substantive law, by proposing to have the challenged Judgment annulled and the case to be remanded for retrial. The KIB submitted a response to the appeal and proposed that the Applicant's appeal be declared unfounded.
5. Initially, the Applicant in his appeal, in relation to the allegation for essential violations of the provisions of contested procedure, had stated that “the challenged judgment is unclear, respectively, there are distinct contradictions in the reasoning of the judgment regarding the content of the evidence on which the decision is based, especially on the decisive facts which concern the active legitimacy of the Applicant and his insured person on the occasion of the resolution of the case which has directly preceded the subrogation proceeding. This makes the decision of this judgment, to be confusing, incomprehensible and contradictory to its reasoning and the evidence administered.”
6. Secondly, in relation to the allegation of erroneous determination of the factual situation, the Applicant in his complaint had specified the following:

*“Since there is no concrete reasoning or reference in the evidence which proves such a thing relating to this position of the court of first instance, for the claimant remains unknow the answer to the following questionss;*

*What were the requests of the claimant’s insured person [M.B.] in the civil dispute C. No. 185/13 which was concluded by a court settlement on 25.02.2015?*

*If eventually in the civil dispute C. Nr. 185/13 the subject of the statement of claim were the medical expenses and compensation for incapacity ti work, what did they consist of and what were they proved with?*

*Since the [Applicant’s] claims for reimbursement on the basis of the subrogation of the in the current dispute were filed against the respondent on 24.12.2012, respectively they were definitely specified on 12.02.2013, how is it possible that these requests are subject to court settlement dated 25.02.2015?*

*How is it possible that for the costs of medical treatment and compensation for temporary incapacity for work [...] paid by the [Applicant] in 2012/2013, its insured person [M.B] still had active legitimacy to sign the court settlement on 25.02.2015?”*

1. Based on the above, the Applicant stated that in the present case the Judgment of the Basic Court contains an erroneous determination of the factual situation, which results in the denial of the Applicant’s right to subrogation. Consequently, the Applicant addresses the Court of Appeals with a request to remand the case for retrial, where the Basic Court, in order to prove the issue of the active legitimacy of the Applicant, must reconsider the factual situation regarding the compensation of the costs of medical treatment and payment for the period of incapacity to work of Applicant’s insured person. In the following, the Applicant also requests clarification explaining what was the injured party M.B. compendated by the KIB, and if the latter has been notified about the medical expenses and incapacity to work, paid by the Applicant.
2. Thirdly, as regards the allegation of erroneous application of substantive law, the Applicant claimed that the Basic Court in its judgment referred only to Articles 940 and 941 of the Law on Obligational Relationships (hereinafter: the LOR), provisions which according to the Applicant define the obligation of the liability insurer and install the right in “actiodirecta” of the injured party, but this Court has not based upon the relevant provisions referring to the right to subrogation, respectively Articles 301 and 939 of the LOR.
3. Në vijim, parashtruesi i kërkesës pretendon se: *“[...] një raport me karakter juridik detyrimor mes dy palëve mund te ketë efekt juridik jo vetëm "Interpartes" por edhe ndaj palëve të treta çështje kjo, që ne një rast te ngjashëm, ku incidentalisht kishte mbërritur te trajtohej edhe nga Gjykata Supreme e Kosovës.”*
4. On 26 February 2019, the Court of Appeals, by Judgment No. 146/17, rejected as unfounded the appeal of the Applicant and confirmed the Judgment of the Basic Court.
5. The Courts of Appeals initially found that the challenged judgment of the Basic Court did not contain substantial violations of the provisions of the contested provisions and that the Basic Court has correctly applied the substantive law.
6. The Court of Appeals stated that the Basic Court had provided sufficient and convincing reasons, finding that an extrajudicial agreement was concluded between him and the KIB for the compensation of all forms of damage resulting from the traffic accident. Based on this finding, the Court of Appeals found that the Applicant’s insured person had exercised his right to compensation under the legislation of the Republic of Kosovo and consequently had no legal right to claim compensation also from the Applicant. Moreover, the Court of Appeals, on the basis of the case file, found that the Applicant had not been notified by its insured person that he had exercised this legal right to compensation in the Republic of Kosovo, specifically through judicial proceedings.
7. Finally, the Court of Appeals, having referred to Article 391, item e) of the Law on Contested Procedure (hereinafter: the LCP), found that court settlement has the characteristics of a final judgment and as such produces the same legal effects a judgment, and consequently in relation to the legal issue, for which the parties have reached a court agreement, no dispute can be conducted. Further, the Court of Apppeals, referring to Article 418 of the LCP, which stipulates that *“Court settlement can be reached only if charges are raised”* and that “[...] *that court settlement is annulled if reached by flattering, deceit or force”*, found that in the present case there have not been met the legal conditions for compensation pursuant to Article 941 of the LCT, as the Applicant’s insured person has exercised his legal right before the courts of the Republic of Kosovo. The Court of Appeals concluded that if the Basic Court would upheld the Applicant's claim, it would infringe the “legal certainty” of (in) the Republic of Kosovo by stripping the country's judicial decisions of legal effect.*”*

**Applicant’s allegations**

1. The Applicant alleges that the challenged Judgment of the Court of Appeals has been rendered in violation of Article 31 [Right to Fair and Impartial Trial] of the Constitution, in conjunction with Article 6 (Right to a fair teial) of the ECHR. The Applicant specifically claims a violation of: (i) his right to a reasoned court decision; and (ii) the principle of legal certainty as a result of divergence in the relevant case law of the Court of Appeals and the Supreme Court.

*In relation to the non-reasoning of the court decision*

1. With regard to his claim for violation of his right to a reasoned judicial decision, the Applicant states that the challenged Judgment [Ae.No.146/2017] of the Court of Appeals of Kosovo is characterized by a lack of adequate reasoning because the Court of Appeals did not provide any reasoning regarding the denial of the Applicant’s right to subrogation.
2. According to the Applicant, the lack of adequate reasoning by the Court of Appeals constitutes a serious violation of Article 31 of the Constitution. In this regard, the Applicant refers to the case law of the Constitutional Court, respectively the case KI55/09 [Applicant, *N.T.SH. Meteor*, Judgment of 6 April 2011].
3. The Applicant states that the Court of Appeals has not analyzed his allegations on all issues raised in his appeal, in particular the issue relating to the refusal to recognize the right to subrogation. In this context, the Applicant specifies that: *“Instead of properly and analytically analyzing the circumstances of the case, the applicable law in Kosovo in the concrete case, and the relevant case law of the Court of Appeals itself and at the same time the case law of the Supreme Court in similar cases, the Court of Appeals arbitrarily denies the right to compensation.”*
4. The Applicant considers that in the challenged Judgment of the Court of Appeals was taken into account only the court settlement between its insured person and KIB “[...] *without analyzing at all what is the subject of this Agreement, respectively to what damage caused it refers, if eventually the costs of medical treatment and compensation for the time of recovery were the subject of this Compensation Agreement, respectively whether the insured person had active legitimacy to claim such compensation or if this legitimacy belongs only to the Applicant.”*
5. Moreover, according to the Applicant, the Court of Appeals did not provide a reason why the Applicant could not claim compensation of damage for its insured person in accordance with the legal provisions in force, respectively Articles 300 and 939 of the LOR.
6. With respect to the allegation of non-justification of the court decision, the Applicant also referred to the case law of the European Court of Human Rights (hereinafter: the ECHR), respectively to the cases *Suominen v. Finland*, Application no. 37801/97, Judgment of 1 July 2003; *Hadjianastassiou v. Greece*, Application no. 12945/87, Judgment of 16 December 1992; *Tatishvili v. Russia*, Application no. 1509/02, Judgment of 22 February 2007; *Hiro Balani v. Spain*, Application no. 18064/91, Judgment of 19 December 1994; *RuizTorija v. Spain*, Application no. 18390/91, Judgment of 9 December 1994; *Helle v. Finland*, Application no. 20772/92, Judgment of 19 December 1997; and *Gradinar v. Moldova*, Application no. 7170/02, Judgment of 8 April 2008.
7. The Applicant considers that in the present case the case law of the Constitutional Court concerning the right to a reasoned court decision has not been applied. In this regard, the Applicant specifically refers to the case law of the Constitutional Court, respectively the case KI135/14, Applicant *IKK Classic*, Judgment of 9 February 2016, which concerned the issue of the right to subrogation, and where the Court had found a violation of Article 31 of the Constitution, in conjunction with Article 6 of the ECHR, as a result of non-reasoning of the court decision.

*In relation to the allegation for violation of the principle of legal certainty as a result of contradictory decisions in the respective case law of the Court of Appeals and the Supreme Court*

1. The Applicant also considers that the impugned decision has infringed the principle of legal certainty, as a result of the contradictory decisions in the relevant case law of the Court of Appeals and the Supreme Court. In relation to this allegation, the Applicant states that: *“The requirement for consistency in case law is substantial and contributes to the equal treatment of individuals who bring the same or, in important aspects, similar claims before the Court of Appeals or to the . Supreme Court of the Republic of Kosovo.”*
2. The Applicant further specifies that *“[...] the failure of the Court of Appeals to sufficiently elaborate on the Applicant's claims for compensation and the complete change contrary to the existing case law of this Court in respect of subrogation directly violates the principle of legal certainty in conjunction with Article 6 (1) of the European Convention.”*
3. The Applicant also considers that: *“[...] if the Court of Appeals, by its decision, deviates from its current case law, it must provide full and appropriate legal justification for this change in its legal position.”*
4. The Applicant in its referral, in support of his claim for infringement of legal certainty as a result of divergence in the relevant case law of the Court of Appeals and the Supreme Court, refers to a series of decisions of the Court of Appeals and the Supreme Court, which according to it have dealt with similar matters as is the case in the present referral, respectively: Decision [Rev. No. 14/2015] of the Supreme Court, of 14 May 2015; Judgment [Ae. No. 84/2019] of the Court of Appeals, of 28 January 2019; Judgment [Ae. No. 3/2017] of the Court of Appeals, of 28 December 2018; Judgment [Ae.No. 298/2016] of the Court of Appeals, of 26 February 2018; Judgment [E. Rev. no. 4/2018] of the Supreme Court, of 17 May 2018; and Judgment [E. Rev. no. 27/2018] of the Supreme Court, of 24 January 2018.
5. With regard to the above-mentioned decisions of the Court of Appeals and the Supreme Court, the Applicant alleges that *“On the basis of comparison of these judgments of the Court of Appeals it results that this Court has consistently and constantly applied the same legal position regarding the determination of the legal basis for the right to subrogation.” Therefore, according to the Applicant, the challenged decision of the Court of Appeals “[...] in a completely opposite way avoids the current case law, without providing an explanation as to why the Court diverges from the current legal interpretation regarding the same court matter, by basing its decision upon a Compensation Agreement and qualifying its legal effect not only “interpartes” but with legal effect also in relation to third parties - which is contrary to the basic principles of the obligational law.”*
6. The Applicant also refers to case KI87/18, Applicant *IF Skadiforsikring*, Judgment of 27 February 2019, where the Constitutional Court had found that: *“The Supreme Court, as a court of the last instance for deciding in a present case of the Applicant, taking a different position in the challenged judgment in a case that is completely identical or similar to other cases, without providing a clear and sufficient reasoning for this, violated the rights of the Applicant to a reasoned court decision. This led to the violation of the principle of legal certainty, as one of the basic components of the rule of law, which is also an inseparable element of the right to a fair trial under Article 31 of the Constitution and Article 6 paragraph 1 of the ECHR.”*
7. The Applicant concludes that the failure of the Court of Appeals to address his claim to recognize the right to subrogation without providing a legal reasoning and divergence from the current case law of the Court of Appeals in similar cases clearly constitutes a violation of the right to a fair and impartial trial, guaranteed by Article 31 of the Constitution of Kosovo, in conjunction with Article 6 of the ECHR.
8. Finally, the Applicant requests from the Court to asvertain: (i) violations of Article 31 [Right to Fair and Impartial Trial] of the Constitution, in conjunction with paragraph 1 of Article 6 (Right to a fair trial) of the ECHR; (ii) annul the Judgment [Ae. No. 146/2017] of 26 February 2019 of the Court of Appeals; and (iii) remand the case for retrial.

***Relevant legal provisions***

**The Law of Contracts and Torts, of 30 March 1978:**

**Statutory Subrogation**

**Neni 300**

*If an obligation is fulfilled by a person having some legal interest in the matter, the creditor's claim shall be transferred to him by the law itself at the moment of fulfilment, together with all accessory rights.*

***Subrogation in Case of Partial Fulfilment***

***Article 301***

*In case of partial fulfillment of the creditor's claim, all accessory rights by which such claim is guaranteed shall be transferred to the fulfiller, unless necessary for the fulfillment of the rest of creditor's claim. However, the creditor and the fulfiller may stipulate that they shall use the guarantees commensurately to their respective claims, while they may also stipulate that the fulfiller shall have the right of priority in effecting collection.*

**TRANSFER OF INSURED PERSON’S RIGHTS AGAINST THE LIABLE PERSON TO THE INSURER (SUBROGATION)**

**Article 939**

*On payment of compensation from insurance, the insurer shall acquire, by law, all rights of the insured person against the person liable for damage on whatever ground, up to the total amount of compensation.*

*Should such transfer be made entirely or partially impossible through the fault of the insured person, the insurer shall be released correspondingly from his obligation towards the insured person.*

*The transfer of right from the insured person to the insurer shall not be to the detriment of the insured person, so that should compensation received by the insured person from the insurer be, on whatever ground, lower than the damage sustained by him, the insured person shall be entitled to reimbursement from liable party's means for the remaining part of compensation, prior to the payment of insurer's claim on the ground of rights which have been transferred him.*

*As an exception to the rules of transfer of an insured person's rights to the insurer, these rights shall not pass to the insurer if damage was caused by a person in direct relationship with the insured person or person under the care and responsibility of the insured person, or a person living with him in the same household, or a person who is an employee of the insured person, unless such persons caused the damage by willful misconduct.*

*However, should some of the persons specified in the preceding paragraph be insured against liability, the insurer may demand the redress of the amount paid to the insured person from his insurer.*

**LIABILITY INSURANCE**

**Liability of the Insurer**

**Article 940**

*In case of liability insurance, the insurer shall be liable for damage caused by the insured event only if the third party sustaining damage request compensation.*

*The insurer shall bear, within the limits of the amount of insurance, the expenses of litigation over the liability of the insured person.*

**Personal Right of the Person Sustaining Damage and Direct Action**

**Article 941**

*In case of liability insurance the person sustaining damage may request the compensation for loss sustained due to an event falling within the sphere of liability of the insured person directly from the insurer, but only up to the amount of the insurer's obligation.*

*The person sustaining damage shall have, from the day of occurrence of the insured event, his own right to compensation from the insurance, so that any subsequent change in the insured person's rights against the insurer shall have no effect on the right of a person sustaining damage to compensation.*

**Assessment of the Admissibility of the Referral**

1. The Court first examines whether the Referral has fulfilled the admissibility requirements established by the Constitution, and further specified by the Law and Rules of Procedure.
2. 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.”*

1. The Court also refers to paragraph 4 of Article 21 [General Principles] of the Constitution, which states: *“Fundamental rights and freedoms set forth in the Constitution are also valid for legal persons, to the extent applicable.”*
2. The Court further examines whether the Applicant has met the admissibility requirements as set out in the Law. In this respect, the Court 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…”*

1. In this respect, the Court first notes that the Applicant is entitled to file a constitutional complaint, by referring to alleged violations of his fundamental rights and freedoms, which are valid for individuals as well as for legal persons (see the case of the Constitutional Court no. KI41/09, Applicant *AAB-RIINVEST LLC*, Resolution on Inadmissibility, of 3 February 2010, paragraph 14).
2. As to the fulfillment of other admissibility criteria set out in the Constitution and the Law and elaborated above, the Court finds that the Applicant is an authorized party which challenges an act of a public authority, namely the Judgment Ae. no.146/17 of the Court of Appeals, of 26 February 2019. As regards the exhaustion of legal remedies, the Court notes that the last decision, rendered in proceedings before the regular courts, is the challenged judgment of the Court of Appeals, against which due to the value of the dispute the revision was not allowed. Consequently, the Court finds that the Applicant has exhausted all legal remedies provided by law. The Applicant has also clarified the fundamental rights and freedoms for which it claims to have been violated, pursuant to the requirements of Article 48 of the Law, and has submitted the Referral in accordance with the deadlines stipulated in Article 49 of the Law.
3. The Court finds that the Applicant's Referral also meets the admissibility criteria provided for by paragraph (1) of Rule 39 of the Rules of Procedure. The same cannot be declared inadmissible on the basis of the conditions stipulated in paragraph (3) of Rule 39 of the Rules of Procedure.
4. The Court also states that the Referral cannot be declared inadmissible on any other grounds. It must therefore be declared admissible and its merits must be considered. (See also, in this context, the case of the ECtHR *Alimuçaj v. Albania*, Judgment of 9 July 2012, paragraph 144, see the cases of the Court KI87/18, Applicant *“IF Skadeforsikring”* , Judgment of 27 February 2019, paragraph 35, and KI35/18, Applicant B*ayerischeVersicherungsverbrand*, Judgment of 11 December 2019, paragraph 43).

**Merits of the Referral**

1. The Court recalls that the Applicant alleges that the challenged Judgment of the Court of Appeals was found to be in breach of its 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. In relation his allegation for violation of his right to fair and impartial trial, the Applicant specifically alleges (i) a violation of the right to a reasoned court decision and (ii) a violation of the principle of legal certainty as a result of divergence in the relevant case law of the Court of Appeals and the Supreme Court.
2. As regards the allegation of non-reasoning of the court decision, the Applicant specifically alleges that the Court of Appeals has not analyzed his allegations on all issues raised in his appeal, in particular in the issue concerning the refusal to recognize his right to subrogation. Secondly, the Applicant also considers that the challenged decision violated the principle of legal certainty, as a result of divergence in the relevant case law of the Court of Appeals and the Supreme Court.
3. Therefore, the Court shall subsequently elaborate on the Applicant's allegations concerning the right to a reasoned court decision and the principle of legal certainty as a result of divergence in the relevant case law of the Court of Appeals and the Supreme Court in the light of procedural guarantees guaranteed by Article 31 of the Constitution in conjunction with Article 6 of the ECHR, which have been interpreted in detail through the case law of the ECtHR, in accordance with which, the Court 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.
4. In this regard, the Court refers to Article 31 [Right to 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.”*

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

*“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.”*

1. *In relation to the right to a reasoned court decision*

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

1. 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 initially states that it already has a consolidated case law, which has been developed in accordance with the basic principles established in the case law of the ECtHR. (See, inter alia, the cases of Court KI72/12, Applicant *Veton Berisha and Ilfete Haziri*, Judgment of 17 December 2012; KI22/16, Applicant *NaserHusaj*, Judgment of 9 June 2017; KI97/16, Applicant *“IKK Classic”* , Judgment of 4 December 2017; KI143/16, Applicant *Muharrem Blaku and others*, Resolution on Inadmissibility, of 13 June 2018; KI87/18, Applicant *IF Skadiforsikring*, Judgment of 27 February 2019, and KI24/17, Applicant *Bedri Salihu*, Judgment of 27 May 2019).
2. The case law of the ECtHR and that of the Court initially emphasize that the right to a fair trial includes the right to a reasoned decision and that the courts must “state in a clear manner the reasons on which they have based their decision” (See the ECtHR case Hadjianastassiou v. Greece, Application no. 12945/87, Judgment of 16 December 1992, see also the case of the Court KI87/18, Applicant “*IF Skadeforsikring”*, cited above, paragraph 44).
3. However, even though the ECtHR states that Article 6 (1) of the ECHR obliges the courts to provide reasons for their decisions, this obligation cannot be understood as requiring a detailed answer to each allegation. (See ECtHR cases, *Van de Hurk v. The Netherlands*, Judgment of 19 April 1994, paragraph 61; *Garcia Ruiz v. Spain*, no. 30544/96, Judgment of 21 January 1999, paragraph 26, *Jahne and Lenoble v. France* [DHM ], Judgment of 16 December 1992, paragraph 81, and see the case of the Court KI97/16, Applicant *IKK Classic*, paragraph 47) .
4. The extent to which the obligation to provide reasons is applied may vary depending on the nature of the decision and must be determined in the light of the circumstances of the particular case. It is the essential arguments of the claimants that need to be addressed and the reasons provided must be based on applicable law. (See the ECtHR cases *Garcia Ruiz v. Spain*, no. 30544/96, Judgment of 21 January 1999, paragraph 29; *Hiro Balani v. Spain*, Judgment of 9 December 1994, paragraph 27; and *Higgins and others v. France*, paragraph 42, see also the case KI97/16, Applicant IKK Classic, cited above, paragraph 48; and case KI 87/18 “IF Skadeforsikring”, cited above, paragraph 48).
5. Consequently, the Court reiterates that the right to render a court decision in accordance with the law includes the obligation for the courts to provide reasons on their decisions, both at the procedural and substantive level. (See, mutatismutandis, case of the Court KI97/16t, Applicant IKK Classic, cited above, paragraph 54).
6. Finally, the Court, referring to its case law, recalls that court decisions will violate the constitutional principle of a ban on arbitrariness in decision-making, if the reasoning does not contain the established facts, the relevant legal provisions and the logical relationship between them. (See, inter alia, the cases of the Court: KI72/12, applicant *Veton Berisha and IlfeteHaziri*, cited above, paragraph 61; KI135/14, Applicant *IKK Classic*, cited above, paragraph 58; KI 96/16 Applicant *IKK Classic*,cited above, paragraph 52; and KI87/18, Applicant *“IF Skadeforsikring”* cited above, paragraph 49).

*(ii) Application of the aforementioned principles in the Applicant’s case*

1. In the present case, the substantial allegation of the Applicant is that the Court of Appeals has considered only the extrajudicial agreement for compensation, concluded between the Applicant's insured person and the KIB, thus failing to fully address the issue of medical expenses and compensation for incapacity to work paid by the Applicant to its insured person M.B.
2. In order to ascertain whether the reasoning given by the Court of Appeals meets the standards of a reasoned court decision, the Court first recalls the reasoning of the Court of Appeals, which states as follows:

*“The trial panel of the Court of Appeals of Kosovo, having carefully analyzed and reviewied the evidence contained in the case file, concluded that the [Applicant's] appeal is unfounded, for the reason that the Court of First Instance has provided sufficient and convincing reasons that the respondent, the Kosovo Insurance Bureau based in Prishtina, in an extrajudicial procedure has reviewed the appeal of the Applicant’s insured person and rendered a decision SK-632/2012 of 13/11 / 2012, by presenting an offer for compensation of damage in the amount of 755.00 euros, with which the injured party [M.B.] did not agree, so on 06/03/2013 he filed a claim for compensation of damages with the Basic Court in Peja, while on 25/02/2015, he concluded a court settlement with the respondent, specifically, in the presence of his lawyer [II], for all forms of damages that derive from the traffic accident dated 19/01/2012. This has been confirmed on the basis of the minutes of the Basic Court in Peja C.no.185 / 13 dated 25/02/2015, which court settlement was implemented in full by the defendant, thus fulfilling its financial obligation to the Applicant’s insured person and thereby the claimant's insured person has realised his subjective civil right pursuant to the local legislation and has had no legal right to seek compensation from the respondent, respectively on the basis of the cae file it does not result that the claimant has been notified by its insured person [M.B.], that he has exercised his legal right to compensation for damage in the Republic of Kosovo, specifically, through judicial proceedings.”*

1. Specifically, the Court of Appeals, referring to the provisions of the LCP, found that the court settlement has the characteristics of a final judgment and as such produces the same legal effects as the judgment, consequently in relation to the legal issue, for which the parties have reached a court agreement, no dispute can be conducted. In this regard, the Court of Appeals pointed out that *“[...] in th present case the legal conditions for reimbursement of damages under Article 941 of the LOR have not been met, as the claimant’s insured person has realised his legal right at the judicial bodies of the Republic of Kosovo and the same cannot transfer a non-existent legal claim to the claimant, while on the other hand the eventual approval of the statement of claim of [the Applicant] would directly violate the legal certainty of the Republic of Kosovo by stripping the country's judicial decisions of legal effect.”*
2. Based on the above reasoning of the Court of Appeals, the Court notes that the Court of Appeals did not adequately address the issue of compensation of the Applicant, which was a substantial claim raised in the statement of claim before the Basic Court. In its claim filed with the Basic Court, as well as in its appeal filed in the Court of Appeals, the Applicant had reasoned his claim for compensation under the right to subrogation by referring to the relevant provisions of the LOR, respectively Articles 300 and 939. However, the Court of Appeals bases its reasoning on the refusal of Applicant's claim compensation on the basis of the right to subrogation solely on the extrajudicial agreement, without providing relevant justification and interpretation also in respect of the Applicant's right to subrogation , as specified in his statement of claim and appeal filed with the Court of Appeals.
3. The Court also notes that in the above-mentioned position of the Court of Appeals it is established that the extrajudicial agreement annuls the issue of compensation of the Applicant, without specifying: (i) how the compensation paid by KIB to the insured person released the latter from the payment of compensation to the Applicant, based on the fact that this extrajudicial agreement was certified by the Basic Court in Peja, upon the request of the Applicant’s insured person for compensation of medical treatment and incapacity to work, realised in 2013; as well as (ii) how the extrajudicial agreement between the Applicant's insured person and the KIB has affected the Applicant's rights, when it is clear that the latter was not a party to this agreement.
4. The Court recalls that it had found violations of the right to a reasoned court decision, in a similar case, namely the case KI135/14, Applicant IKK Classic, cited above, and through which it assessed the constitutionality of the Judgment [E. Rev. no. 21/2014] of the Supreme Court, of 8 April 2014 (hereinafter: the case KI134/15). In this case, the Supreme Court had accepted the revision of the respondent, SIGMA Insurance Company, whose insured person had caused the traffic accident in the Republic of Kosovo in which the claimant’s insured person, respectively of the Insurance Company in the Federal Republic of Germany (IKK Classic) had suffered bodily injuries. Through the same judgment, the Supreme Court had annulled the judgments of the Court of Appeals and the former District Court of Economics in Pristina, with the reasoning that the lower instance courts “have erroneously approved as founded the statement of claim” of the claimant IKK Classic, filed in on the basis of the right to subrogation because, according to the Supreme Court, its insured person through the extrajudicial of 3 February 2009 concluded between him and SIGMA had received indemnity in the amount of 2,729 Euros. The Court found that *“the failure of the Supreme Court to provide clear and complete answers to the main question concerning the right of the Applicant [IKK Classic] to compensation, established by the courts of lower instance, is a violation of the Applicant's right to be heard and the right to a reasoned decision, as an integral part of the right to a fair and impartial trial.”*
5. On 16 March 2016, following the Judgment of the Constitutional Court in the case KI135/14, the Supreme Court issued a new, respectively second judgment in the case, Judgment E. Rev. no. 15/2016 whereby it repeated the findings of the first Judgment [E. Rev. no. 21/2014] of 8 April 2014, deciding that the request for revision of SIGMA is grounded. Following this Judgment, *IKK Classic* again submitted a referral to the Constitutional Court, in which case the Constitutional Court by Judgment KI97 / 16, of 14 December 2017 (hereinafter: the case KI97/ 16) found that the Supreme Court *“[...] by not taking into account and not justifying the alleged right of the Applicant to compensation, moreover by failing to address the findings of the Judgment of the Court in case no. KI135/14, the second judgment of the Supreme Court [E. Rev. no. 15/2016] of 16 March 2016, violated the Applicant’s right to a fair and impartial trial as guaranteed by Article 31 of the Constitution in conjunction with Article 6, paragraph 1 of the ECHR. As a result of this violation, the Applicant was deprived of his right to a reasoned decision.”*
6. Therefore, in the light of the above reasoning and on the basis of its case law in similar cases, the Court considers that the challenged Judgment of the Court of Appeals has not fully and clearly addressed the issues of compensation for medical expenses paid by the Applicant, which he had specified in his statement of claim (See *mutatis mutandis*, case KI135/14, paragraph 52).
7. Furthermore, the Applicant’s substantive claim, which was submitted on the basis of the right to subrogation, was not reasoned by the Basic Court either.
8. In this regard, the Basic Court had found that after the conclusion of the extrajudicial agreement, the Applicant’s insured person had consumed his right to claim compensation of damages, concluding that no one could transfer to another person/entity a right which he had previously realised, and consequently this right accordgint to the Basic Court had ceased to exist. The Court of Appeals in its judgment had only confirmed the finding of the Basic Court, adding that pursuant to Article 391, item e) of the LCP, court settlement has the characteristics of a final and final judgment and as such it produces the same legal effects as a judgment, and consequently in relation to the legal issue, for which the parties have reached a court agreement, no dispute can be conducted.
9. Consequently, the Court considers that the challenged Judgment of the Court of Appeal, Ae. no. 146/17, of 26 February 2019, does not meet the standards required for a reasoned decision, and thus violates the right of the Applicant, guaranteed by Article 31 of the Constitution, in conjunction with Article 6 of the ECHR.
10. Following the finding that the challenged Judgment of the Court of Appeals was found to be contrary to Article 31 of the Constitution, in conjunction with Article 6 of the ECHR due to the lack of a reasoned court decision, in the following the Court will examine the Applicant's allegations relating to the violation of the principle of legal certainty due to the lack of consistency in the case law of the Court of Appeals and the Supreme Court.
11. *In relation to the allegations which concern the principle of legal certainty, as a result of contradictory decisions*
12. *General principles as developed by the case law of the ECtHR and the Court*
13. With regard to the principle of legal certainty as a result of the lack of consistency in the case law, the ECtHR in its case law has developed fundamental principles and set the criteria whether an alleged divergence of court decisions constitutes a violation of Article 6 of the ECHR. During the review of Applicants’ allegations for the violation of the principle of legal certainty, as a result of contradictory decisions, the Court has applied in its case law also the criteria set by the ECtHR. (See, inter alia, the aforementioned cases of the Court KI35/18 and KI87/18, where the Court found a violation of Article 31 of the Constitution, in conjunction with Article 6 of the ECHR as a result of divergence in the case law of the ECtHR).
14. Regarding the first principle, the ECtHR has consistently stated that one of the essential components of the rule of law is legal certainty, which, among other things, guarantees an unquestionable certainty in legal situations and contributes to public confidence in the courts. (See, *mutatis mutandis*, Stefănică and others v. Romania, Application no. 38155/02, Judgment of 2 November 2010, paragraph 38, *Nejdet Şahin and Perihan Şahin v. Turkey*, Judgment of 20 October 2011, paragraph 56).
15. Regarding the second principle, the ECtHR, however, has specified that there is no right acquired for the consistency of case law. (See the case *Unédic v. France*, Application no. 20153/04, paragraph 74, 18 December 2008, see the above cited case *Nejdet Şahin and Perihan Şahin v. Turkey*, paragraph 56; see also the abovementioned case of the Court KI35/18, Applicant BayerischeVersicherungsverbrand, paragraph 65, as well as case KI42/17, Applicant Kushtrim Ibraj, Resolution on Inadmissibility of 25 January 2018, paragraph 33).
16. With regard to the third principle, the ECtHR has emphasized that the possibility of conflicting decisions is an inherent trait of any judicial system based on a network of basic and appellate courts, with authority over the area of their territorial jurisdiction, and a divergence may arise even within the same court. That in itselfs cannot be considered to be contradictory to the Convention. (see the case *Santos Pinto v. Portugal*, Application no. 390005/04, paragraph 41, Judgment of 20 May 2008, see also the case of the Court KI87/17, Applicant “*IF Skadeforsikring”*, cited above, paragraph 66 and case KI35/18 Applicant *BayerischeVersicherungsverbrand*, paragraph 67).
17. However, in view of the above principles, the ECtHR has established three basic criteria to determine whether an alleged divergence of judicial decisions 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 capable to overcome such divergences; and (iii) whether that mechanism has been applied and, if so, to what effect (in this context, see ECtHR cases, *Beian v. Romania* (no. 1), Judgment of 6 December 2007, paragraphs 37-39; *Greek Catholic Parish of Lupeni and others v. Romania*, Judgment of 29 November 2016, paragraphs 116 - 135; *Iordan Iordanov and others v. Bulgaria*, Judgment of 2 July 2009, paragraphs 49-50; *Nejdet Şahin and Perihan Şahink v. Turkey*, cited above, paragraph 53; and see the caseof the Court, Kl29/17, Applicant *Adem Zhegrova*, Resolution on Inadmissibility, of 5 September 2017, paragraph 51 and also see the cases of the Court cited above, KI42/17, Applicant *Kushtrim Ibraj*, paragraph 39, KI87/17 Applicant IF Skadiforsikring, paragraph 67, KI35/18, Applicant BayerischeVersicherungsververbrand, paragraph 70).
18. *Application of these principles in the circumstances of the present case*
19. In the following, the Court will apply the principles elaborated above in the circumstances of the present case, by applying the criteria on the basis of which the ECtHR addresses divergence issues concerning the case law, starting with the assessment whether in the circumstances of the case, (i) the alleged divergences in the case law are *“profound and long-standing”*; and if this is the case, (ii) the existence of mechanisms capable of resolving the respective divergence; and (iii) assessing whether these mechanisms have been applied in the circumstances of the concrete case and to what effect.
20. Initially, the Court should also reiterate that, on the basis of the ECtHR case law and the case law of the Court, it is not its role to compare different decisions of the regular courts, even if they are rendered in significantly similar proceedings, as their independence must be respected. Moreover, in such cases, despite allegations for constitutional violations of fundamental rights and freedoms as a result of divergences in the case law, the applicants must present to the Court the relevant arguments regarding the factual and legal similarity of the cases which as alleged by them have been resolved differently by the regular courts, resulting in conflicting decisions in the 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.(see the case cited above KI35/18, Applicant *BayerischeVersicherungsverbrand*, paragraph 76).
21. In the circumstances of the present case, the Court recalls that the Applicant alleges that in his case, the Court of Appeals has decided differently as regards the right to subrogation, thus acting contrary to its case law and the case law of the Supreme Court. In support of his allegation, he refers to six (6) other cases of the Court of Appeals and the Supreme Court as follows: Decision of the Supreme Court, Rev. No. 14/2015,of 14 May 2015; Judgment of the Court of Appeals, Ae. No. 84/2019, of 28 January 2019; Judgment of the Court of Appeals, Ae. No. 3/2017, of 28 December 2018; Judgment of the Court of Appeals, Ae. No. 298/2016 of 26 February 2018; Judgment of the Supreme Court, E. Rev. no. 4/2018, of 17 May 2018 and the Judgment of the Supreme Court, E. Rev. no. 27/2018, of 24 January 2018.
22. With regard the above-mentioned decisions of the Court of Appeals [Ae. No. 84/2019] of 28 January 2019 and [Ae. No. 3/2017] of 28 December 2018] and that of the Supreme Court [E. Rev. no. 27/2018] of 24 January 2018, the Court notes that these decisions specifically refer to the issue of the application of provisions governing the amount of late payments(interest) in the context of compulsory motor liability insurance. Subsequently, the Court notes that in these three decisions, the Court of Appeals and the Supreme Court had applied also the provisions of the LOR, respectively Article 939, which refers to the right to subrogation. However, the Court considers that these three (3) decisions, submitted by the Applicant, which in their essence address the issue of determination of the late payment and do not contain factual and procedural similarities, with the Applicant’s case.
23. While the following three decisions, which the Court will summarize briefly, respectively the Decisions of the Supreme Court [Rev. No. 14/2015] of 14 May 2015 and [E. Rev. no. 4/2018] of 17 May 2018 and the Judgment of the Court of Appeals [Ae. No. 298/2016] of 26 February 2018 refer to the issue of the assessment of the Supreme Court and the Court of Appeals concerning the effects of extrajudicial agreements for third parties, respectively the insurance companies that have reimbursed their insured persons for the damage caused by accidents and consequently they have not even been a part of these extrajudicial agreements.
24. *Decision of the Supreme Court, Rev. No. 14/2015, of 14 May 2015*
25. The Supreme Court by this Judgment apprved the revision of the claimant [Suva Wetzikon] and remanded the case for retrial. The claimant's insured person, in the capacity of the victim, had concluded an extrajudicial settlement with the Guarantee Fund, which represented the person who had caused the accident with the vehicle. The Basic Court and the Court of Appeals had rejected the claimant's statement of claim for compensation of a certain amount, in the name of medical treatment and payment due to incapacity for work as a result of the accident.
26. The Supreme Court, in its Judgment, had reasoned as follows*: “Does the* extrajudicial *agreement concluded between the injured party in this traffic accident with the Guarantee Fund have any effect on the relations between the claimant and the respondent and can it be considered that by the payment of the amount of [...] by the Guarantee Fund to the injured party [M.G.], the respondent has fulfilled its obligation to the claimant. Did the injured party know about the fact that the claimant has paid compensation for the damage suffered but despite this he concluded ant agreement with the Guarantee Fund? Therefore, the court of first instance must assess whether the extrajudicial settlement concluded between the Guarantee Fund and the injured party [M.G.] has a legal effect on the claimant and whether the injured party has had the capacity of a third person in the vehicle which was insured at the respondent’s company and is there a legal basis for the claimant's claim against the respondent for reimbursement of the damage that the claimant has paid [MG]. ”*
27. *Judgment of the Court of Appeals, Ae. No. 298/2016, of 26 February 2018*
28. The Court of Appeals rejected the appeal of the respondent [Kosovo Insurance Bureau], by reasoning as follows:

*“The Court of Appeals reviewed the claimant’s [Kosovo Insurance Bureau] appeal claims regarding the compensation for damages to the injured party [R.M.], by the respondent, which has derived from the Extrajudicial Agreement, and therefore he has no right to seek reimbursement , but found that they are unfounded because based on Article 190 of the LCT, which stipulates that “While also taking into account the circumstances after the occurrence of damage, the court shall determine damages in the amount necessary to restore the material state of the person sustaining damage ibnto the state it would have been without the damaging act or omission”. In this case, the amount covered by the Extrajudicial Agreement of (...) is not the total amount of damage, therefore there is also the obligation of the respondent to compensate the remaining part, respectively of the amount of (...) €.”*

1. *Decision of the Supreme Court, E. Rev. no. 4/2018 of 17 May 2018 [case IKK Classic]*
2. D.H., the Applicant’s insure person in cases KI134 / 15 and KI97 / 16, who had suffered grave injuries in a traffic accident caused by B.L., insurance user in the insurance company "SIGMA" in Prishtina (in further text: SIGMA). D.H., had received medical treatment in the Federal Republic of Germany in the amount of 18,985.36 Euros, which had been paid by the claimant [IKK Classic]. (See below the brief summary of cases KI134/15 and KI97/16 in paragraph 71 of this Judgment).
3. As a result of the Judgment of the Constitutional Court (case KI97/16), the Supreme Court by Judgment [E. Rev. no. 4/2018] of 17 May 2018, again approved the revision submitted by the respondent [SIGMA], but remanded the case to the first instance for retrial. The Supreme Court on the basis of the Judgment of the Constitutional Court KI97 / 16 found that *“[...] in this legal dispute matter, the facts for what were the necessary expenses for the recovery of the claimant’s insured person D.H. have not been clarified, as well as other expenses for the duration of his recovery and which the claimant has the right to have reimbursed by the defendant. After reaching the extrajudicial agreement between the respondent KS Sigma and the claimant’s insured person D.H., did the health condition of the latter deteriorate as a result of the accident caused by the respondent's insured person and did the further recovery of the insured person result as a consequence of the accident caused, namely is it in causal link with the accident caused and what expenses have been necessary for his recovery, expenses which can be accepted and which the respondent will be obliged to reimburse. [...].”*
4. In the light of the above decisions of the Court of Appeals and the Supreme Court, presented by the Applicant in his Referral, the Court notes that there is no uniform case law of the Court of Appeals and the Supreme Court relating to the right to subrogation, in particular in cases when the parties have entered into extrajudicial agreement without the involvement of the insurance company, which has paid for medical treatment and provided compensation for incapacity to work to their insured persons, as a result of accidents caused in the Republic of Kosovo.
5. Therefore, based on the above, and in the context of the obligation determined by the case law of the ECtHR and of Court that the applicants must present to the Court the relevant arguments regarding the factual and legal similarity of the cases which they claim have been resolved differently by the regular courts, resulting in conflicting decisions in the case law, the Court considers that in the circumstances of the present case, the Applicant has not fulfilled this obligation. In this respect, the Court found that three (3) of the six (6) decisions, submitted by the Applicant, which essentially elaborated on the issue of determination fo the late payment (interest) do not contain factual and procedural similarities with those in the case of the Applicant.
6. Subsequently, and with regard to the other three (3) decisions of the Court of Appeals and the Supreme Court, submitted by the Applicant, and which refer to similar factual and legal circumstances with the Applicant's case, the Court has clarified that the main criterion for assessing if the conflicting decisions are “manifestly arbitrary”, is the existence of “*profound and long-standing differences”* in the relevant case law. Therefore, the Court considers that in the present case there are no “*profound and long-standing differences”* in the case law of the Supreme Court and the Court of Appeals, respectively there is no court and uniform case law that refers to the recognition of the right to subrogation of insurance companies in cases when the latter have not been parties to the extrajudicial agreements.
7. Consequently, the Court considers that neither the number of the alleged contradictory judgments nor the time period within which these judgments were rendered provide a sufficient basis to justify the allegation for a violation of the principle of certainty as a result of the conflicting judgments.

**Conclusion**

1. The Court, when examining and considering the Applicant’s allegations, by applying on this basis the assessment of the case law of the Court and the ECtHR regarding the lack of a reasoned court decision and the principle of legal certainty in terms of consistency of the case law comes to the conclusion as follows:
2. As regards the first allegation of the Applicant concerning the lack of a reasoned court decision, the Court found that in issuing the judgment Ae. no. 146/17 of the Court of Appeals, of 26 February 2019, the Court of Appeals failed to justify the substantive allegations of the Applicant, and consequently his right guaranteed by Article 31 of the Constitution in conjunction with paragraph 1 of Article 6 of the ECHR, has been violated.
3. As regards the second allegation of the Applicant concerning the principle of legal certainty as a result of the conflicting decisions of the case law of the Court of Appeals and the Supreme Court, the Court having elaborated on the basic principles and criteria set by the Court and the ECtHR in this respect , and applied the same in the circumstances of the present case, found that neither the number of the alleged contradictory judgments nor the time period within which these judgments were rendered provide a sufficient basis to justify the allegation for a violation of the principle of certainty as a result of the conflicting judgments.

**FOR THESE REASONS**

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Articles 20 and 47 of the Law and Rule 59 (1) of the Rules of Procedure, on 13 May 2020, by majority of votes

**DECIDES**

I. TO DECLARE the Referral inadmissible;

II. TO FIND that there has been a violation 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 Ae. No. 146/17 of the Court of Appeals, of 26 February 2019;

IV. TO REMAND the Judgment Ae. No. 146/17, of the Court of Appeals, of 26 February 2019 for reconsideration in accordance with this Judgment of the Constitutional Court;

1. TO ORDER the Court of Appeals to notify the Court, in accordance with Rule 66 (5) of the Rules of Procedure, about the measures taken to enforce the Judgment of the Court;

VI. TO REMAIN strongly engaged in this case pending the compliance with this order;

VII. TO NOTIFY this Judgment to the parties and, in accordance with Article 20. 4 of the Law, and publish it in the Official Gazette;

IX. TO DECLARE that this Judgment is effective immediately.

**Judge Rapporteur President of the Constitutional Court**

Safet Hoxha Arta Rama-Hajrizi

***This translation is unofficial and serves for informational purposes only.***