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

Prishtina, on 12 April 2021
Ref.No:RK 1745/21

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RESOLUTION ON INADMISSIBILITY

in

Case No. KI87/20

Applicant

"SUVA" Rechtsabteilung

Constitutional review of Decision E. Rev. no. 68/2019 of the Supreme Court, of 27 January 2020

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" having its seat in Lucerne, Switzerland, represented by ICS Assistance LLC, through Visar Morina and Besnik Z. Nikqi, lawyers in Prishtina (hereinafter: the Applicant).

Challenged decision

2. The Applicant challenges the constitutionality of Decision [E.Rev.no.68/2019] of the Supreme Court of the Republic of Kosovo (hereinafter: the Supreme Court), of 27 January 2020. The Applicant has received the challenged Decision on 10 February 2020.

Subject matter

3. The subject matter of the Referral is the constitutional review of the above-mentioned Decision of the Supreme Court, which as alleged by the Applicant has violated its fundamental rights and freedoms guaranteed by Article 31 [Right to Fair and Impartial Trial] of 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: ECHR) and Article 46 [Protection of Property] of the Constitution in conjunction with Article 1 (Protection of Property) of Protocol no. 1 of the ECHR.

Legal basis

4. The Referral is based on paragraph 4 of Article 21 [General Principles] and paragraphs 1 and 7 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution, Articles 22 [Processing Referrals] and 47 [Individual Requests] of Law No.03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter: the Law) and Rule 32 [Filing of Referrals and Replies] of the Rules of Procedure of the Court (hereinafter: the Rules of Procedure).

Proceedings before the Constitutional Court

5. On 8 June 2020, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

6. On 12 June 2020, the President of the Court appointed Judge Nexhmi Rexhepi as Judge Rapporteur and the Review Panel composed of Judges: Arta Rama-Hajrizi (presiding), Bekim Sejdiu and Selvete Gërxhaliu-Krasniqi.

7. On 17 June 2020, the Court notified the Applicant about the registration of the Referral and sent a copy thereof to the Supreme Court. On the same date, the Court sent a request to the Basic Court in Prishtina, Department for Commercial Matters (hereinafter: the Basic Court) asking them to submit the acknowledgment of receipt which proves the time when the challenged Decision of the Supreme Court was served on the Applicant.

8. On 3 July 2020, the Basic Court in Prishtina submitted the requested acknowledgment of receipt, which shows that the Applicant has received the challenged Decision on 10 February 2020.

9. On 26 March 2021, the Review Panel considered the report of the Judge Rapporteur, and unanimously made a recommendation to the Court on the inadmissibility of the Referral.

Summary of facts

10. On the basis of the case file, on 25 December 2012, the person B.I. who was insured at the Company submitting the Referral had suffered a traffic accident caused by the insured person of the "Siguria" Company in Prishtina. The Apllicant's insured person received medical treatment for a certain period in the Swiss Confederation, which had been paid for by the Applicant.

11. On 20 September 2013, the Applicant initiated a claim for debt regression in extrajudicial proceedings. According to the case file, as a result of the failure to reach an indemnity agreement in the extrajudicial proceedings, it results that on 8 December 2015, the Applicant filed a claim with the Basic Court based on the right of subrogation.

12. On 5 April 2018, the Basic Court by Judgment [III.Ek.no. 561/2015]: (i) approved the Applicant's statement of claim in its entirety; (ii) obliged the Insurance Company "Siguria" to pay to the Applicant the amount of compensation of 69,371.63 Euros, along with the interest of 12% per annum starting from 20 September 2013 until the definitive payment; and (iii) obliged the "Siguria" Company to pay the costs of the proceedings.

13. The Basic Court, by its Judgment, justified the determination of the penalty interest of 12% by basing upon Article 26 of the Law No.04/ L-018 on Compulsory Motor Liability Insurance (hereinafter: the Law on Compulsory Insurance).

14. On an unspecified date, the Company "Siguria" filed an appeal with the Court of Appeals against the above Judgment of the Basic Court, alleging violation of the provisions of the contested procedure, erroneous application of substantive law, and erroneous and incomplete determination of the factual situation by proposing to have the challenged Judgment rejected as ungrounded. The Applicant submitted a response to the appeal and proposed that the appeal of the "Siguria" Company be declared ungrounded while the Judgment [III.Ek.no. 561/2015] of the Basic Court, of 5 April 2018, be confirmed.

15. On 3 September 2019, the Court of Appeals, by Judgment [Ae.no.130/ 2018] partially approved the appeal of the "Siguria" Company by modifying the Judgment [III.Ek.no.561/2015] of the Basic Court, of 5 April 2018, only in the part concerning the amount of penalty interest, thus obliging the "Siguria" Company to pay the penalty interest to the claimant at the annual rate of 8% per annum.

16. In the context of the latter, the Court of Appeals found that the Judgment of the Basic Court as regards the part concerning the payment of penalty interest was involved in an erroneous application of substantive law. The Court of Appeals found that *"[...] the interest approved by the court of the first instance is not legally applied in disputes for debt regression but only in addressing the claims of injured persons for compensation of damages in extrajudicial proceedings as provided for by Article 26 of the Law on Compulsory Motor Liability Insurance, the provisions which the court of the first instance calls upon. [...]*

Paragraph 7, of Article 26 of the Law on Compulsory Motor Liability Insurance, excludes the application of interest of 12% for debt regression, this interest is foreseen only for non-treatment and the delay in handling the claims for compensation of the injured persons. It results that the claimant is entitled only to the penalty interest provided for in Article 382 of the LOR [Law on Obligational Relationships], but not to the qualified interest according to the provisions applied by the court of the first instance."

17. On 30 October 2019, the Applicant filed a revision with the Supreme Court against the Judgment [Ae.no.130/2018]of the Court of Appeals, of 3 September 2018, alleging violations of the provisions of the contested procedure and erroneous application of the substantive law, by suggesting that in this case should be applied Article 26, paragraph 6 of the Law on Compulsory Insurance, respectively the annual interest rate of 12%.

18. On 27 January 2020, the Supreme Court, by Decision [E.Rev.no.28/2019] rejected as inadmissible the Applicant's revision submitted against the Judgment [Ae.nr.130/ 2018] of the Court of Appeals, of 3 September.

19. In relation to its finding, the Supreme Court reasoned that:

"On the basis of the revision of the claimant's authorized representative, it results that the Judgment of the court of the second instance was challenged only in relation to the decision regarding the adjudicated interest. In the sense of Article 30.2 of the LCP [Law on Contested Procedure], interest, procedural costs, contracted penalties and other accessory claims are not taken into consideration if they do not constitute the main claim, while in the present case the main claim is debt regression in the amount of 69,371, 63 Euros, the interest is accessory, so in the sense of paragraph 1 of this article only the value of the main claim is taken into considerations as the value of the subject of the dispute. Article 211.2 of the LCP provides that revision is not permitted in legal property disputes in which the claim concerns monetary claims, handing over of the item or fulfilment of any other promise if the value of the subject of the dispute in the challenged part of the judgment does not exceed 3,000 Euros. Hence, the revision of the claimant's authorized representative is inadmissible."

Applicant's allegations

20. The Applicant alleges that the Decision [E.Rev.no.28/2019] of the Supreme Court, of 27 January 2020, was issued in violation of its fundamental rights and freedoms guaranteed through Article 31 [Right to Fair and Impartial Trial] of the Constitution in conjunction with Article 6 (Right to a fair trial) of the ECHR, and Article 46 [Protection of Property], in conjunction with Article 1 of Protocol no. 1 of the ECHR.

I. In relation to the allegation for violation of Article 31 of the Constitution, in conjunction with Article 6 of the ECHR

21. The Applicant alleges a violation of Article 31 of the Constitution in conjunction with Article 6 of the ECHR as a result of a violation of the right to (i) a reasoned court decision; (ii) access to court; and (iii) inconsistency or divergence in the case law of the Supreme Court.

(i) In relation to the non-reasoning of the judicial decision

22. The Applicant first states that the challenged Decision of the Supreme Court, *"[...] is not supported by a concrete legal provision, which would explicitly exclude the possibility of processing a statement of claim concerning the penalty interest rate, while in fact, the Law on Contested Procedure does not contain such a provision (where revision in relation to penalty interest is explicitly not permitted), but the limitation on whether or not the revision is permitted is based upon the value of legal property disputes."*

23. The Applicant further specifies that: *"[...] the limitation on whether or not the revision is permitted is based upon the value of legal property disputes. Otherwise, in the present case, the legal property claim relates to "trade disputes" (in respect of which revision is permitted in disputes having the value over 10,000.00 Euros/Article 508 of the LCP) and not as; stated in the reasoning of the Decision of the Supreme Court the value of 3,000.00 euros (for which it results that the Supreme Court has not correctly referred to the respective provision concerning the value of the dispute in the concrete case as "trade dispute")."*

24. While the Applicant has elaborated the basic principles of the right to a reasoned court decision as guaranteed by Article 31 of the Constitution in conjunction with Article 6 of the ECHR, and in support of these arguments, the Applicant has referred also to cases KI35/18, Applicant *Bayerische Rechstverbrand*, Judgment of 11 December 2019; KI87/18, Applicant *IF Skadeforsikring*, Judgment, of 27 February 2019, KI72/12, Applicant *Veton Berisha and Ilfete Haziri*, Judgment, of 17 December 2012; KI22/16, Applicant *Naser Husaj*, Judgment, of 9 June 2017; KI97/16 Applicant *IKK Classic*, Judgment of 4 December 2017; KI143/15, Applicant *Muharrem Blaku and others*, Resolution on Inadmissibility, of 13 June 2018; KI24/17, Applicant *Bedri Salihu*, Judgment of 27 May 2019, as well as the case law of the European Court of Human Rights (hereinafter: the ECtHR) *Hadjianastassou v. Greece*, Judgment, of 16 December 1992; *Van de Hurk v. The Netherlands*, Judgment, of 19 April 1994; *Hiro Balani v. Spain*, Judgment of 9 December 1994; *Garcia Ruiz v. Spain*, Judgment, of 21 January 1999; *Hirvisaari v. Finland*, Judgment of 27 September 2001; *Suominen v. Finland*, Judgment of 1 July 2003; *Buzescu v. Romania*, Judgment, of 24 May 2005; *Pronina v. Ukraine*, Judgment of 18 July 2006; and *Tatishvili v. Russia*, Judgment, of 22 February 2007.

25. The Applicant considers that the challenged Ruling of the Supreme Court lacks adequate reasoning because paragraph 2 of Article 30 of the Law on Contested Procedure (hereinafter: the LCP) has been erroneously interpreted. Consequently, according to the Applicant, he was denied the right to the main hearing on his statement of claim in its entirety, respectively it was made impossible for him *"[...] to have the allegation for erroneous application of the*

substantive law in the part of the claim concerning the penalty interest treated by the use of revision."

26. In this respect, the Applicant specifies that *"[...] Article 30 of the LCP is only in the function of determining the value of the subject of the dispute in general, but in no way in cases where the statement of claim related to interest is the sole (independent) subject of the main hearing (as in the present case by the revision)."*

27. The Applicant continues by highlighting that *"On the contrary, such a position respectively grammatical interpretation of the provision of Article 30.2 of the LCP by the Supreme Court of Kosovo results to be illogical by the conclusion that the dispute relating to the statement of claim for interest is completely worthless."* In the context of this allegation, the Applicant refers to the claim of 8 December 2015, where according to him *"[...] the penalty interest was included in the claim together with the request for subrogation which was also treated as such by the judgments of the courts of lower instances."*

28. The Applicant further highlights that his reasoning *"[...] relies on the well-known concept of civil law that "the interest shares the same fate as the principal debt", therefore the denial of the right to the main hearing by the use of revision in the present case results to be contrary to this concept and as such would result in the conclusion that the claim for penalty interest cannot be subject to review by revision respectively in a court process."*

29. In this connection, the Applicant reiterates that "*The Court has failed to provide adequate reasoning for the decision, to interpret and correctly apply Article 30 of the LCP in the disputable case, is also argued in a doctrinal aspect. According to the Commentary on the Law on Civil Procedure (Iset Morina and Selim Nikqi, "Commentary on the Law on Contested Procedure" (2012). "provision of para.2 of Article 30 of the LCP explicitly stipulates that other accessory claims (interest) should not be calculated for determining the value of the subject of the dispute."* This definition in respect of the determination of the value of the dispute is a logical consequence of the application of the principle that "accessory claims (interest) share the fate of the main claim". Consequently, the Applicant reiterates that *"[...] the interest is not taken into consideration for determining the value of the subject of the dispute, except in the case when interest is the sole subject of the statement of claim." In the context of the latter, the Applicant states that: "[...] for the statement of claim relating to the interest as a subject of revision respectively as an independent claim in the main trial, in the sense of Article 30.1 and 30.2 of the LCP its amount is taken into consideration for determining the value of the dispute. Otherwise, a different stance and interpretation of this provision, results in the conclusion that the statement of claim for the payment of penalty interest is worthless and as such makes it impossible to have the case treated by revision - as inadmissible, as decided by the Supreme Court in the challenged Decision."*

30. In the context of what is stated above, the Applicant refers to the case law and the constitutional practice of the region, by stating that *"[...] the penalty interest may be the only review by revision including the respective practice on*

calculation of the value of the dispute where the penalty interest is the sole subject of the revision." In support of this allegation, the Applicant refers to a presentation of *"Dr. Ivo Grbin: Vrhovni Sud Hrvatske II Rev 65/00 dt. 30.09.2003 Stav. Teacher Suda RH Odluka Br. U-III-2646/2007 & Delimicno BiH: Vrhovni Sud BiH Br. 57 0 PS 004906 16 rev 2 dt. 11.08.2016."*

31. The Applicant reiterates that *"the Supreme Court of Kosovo has thus made it impossible to review the claimant's allegations on the trade dispute, respectively to review the allegation on the manner of calculation of the penalty interest in the present case and the application of the annual rate of 12% instead of 8 % as determined by the decision of the Court of Appeals. Based on the case file it is clearly seen that the value of the disputable statement of claim on interest, which was subject to revision (difference between the annual rate of 8% and 12%) consists of the amount of 16,956.45 Euros. Therefore, the decision of the Supreme Court for not allowing the Applicant's Revision based on the criterion of the amount of the statement of claim according to the Law on Contested Procedure clearly shows that the reasoning of the Supreme Court decision is not only deficient but also represents an erroneous interpretation of applicable legislation."*

32. Finally and in the context of the lack of reasoning of the court decision, the Applicant states that *"The lack of reasoning of the challenged decision is also proved by the fact that in the part of the reasoning the Supreme Court did not even specify the value of the statement of claim relating to the accessory claim, namely the penalty interest. For the Supreme Court, a short paragraph was sufficient as the reasoning of the Decision that "in this case, the main claim is the debt regression of 69,371.63 Euros while the interest is an accessory claim, hence in the sense of para.1 of this Article only the value of the main claim is taken into consideration as a subject of the dispute", without providing even a single further explanation as to the monetary value of the accessory claim in this court case and whether such a decision is contrary to the well-known principle in the civil law that " the interest shares the same fate as the principal debt."*

(ii) In relation to the allegation for denial of the right of access to court

33. The Applicant states that the Decision of the Supreme Court has denied his right of access to court and the right to be heard.

34. The Applicant specifies that: *"Since the Applicant has used all regular legal remedies to exercise the right to indemnity by the claim for subrogation in the first and second instance, such a decision of the Supreme Court with serious shortcomings in part of the reasoning is a denial of access to justice and constitutes a lack of proper administration of justice in the present case".*

(iii) In relation to the allegation for a divergence in the case law of the Supreme Court

35. In this connection, the Applicant clarifies that *"[...] there are dozens of cases of the Supreme Court of Kosovo wherein in the revision procedure it was decided regarding the allegations for erroneous application of the substantive law in*

respect of the interest, respectively that in this case, is to be applied the interest of 12% per annum (according to "lex specialis") [...]" and consequently according to the Applicant, in the absence of a review of its revision by the Supreme Court, the Judgment of the Court of *Appeals "[...] by the erroneous application of substantive law (annual interest rate 8%) which is contrary to the practice of the Supreme Court of Kosovo."* In the context of the latter, the Applicant refers to and has submitted the Judgments of the Supreme Court, respectively the Decision [E.Rev.43/2014] of 22 September 2014; and Judgments [E. Rev. 25/2014, of 13 May 2014; [E. Rev. 23/2017] of 14 December 2017, and [E. Rev. 27/2018] of 24 September 2018. Subsequently, the Applicant has also submitted a Judgment [C.no.745/2013] of the Basic Court in Prishtina, of 28 September 2016 and Judgment [Ae.no. 247/2016] of the Court of Appeals, of 6 June 2018.

II. In relation to the allegation for violation of Article 46 of the Constitution in conjunction with Article 1 of Protocol no. 1 of the ECHR

36. The Applicant also alleges that *"[...] the failure of the Supreme Court of Kosovo to render reasoned decisions (and in the present case the arbitrary refusal of the submitted revision)"* by him, has also violated the right to property guaranteed by Article 46 of the Constitution in conjunction with Article 1 of Protocol no. 1 of the ECHR.

37. In the context of this allegation, the Applicant states "[...] that he has had legitimate expectations that he would enjoy a compensation in the above amount under the right of subrogation which means the right to reimbursement of the damage caused by the responsible person or his liability insurer on the basis of the annual interest determined by law." In this respect, the Applicant refers to the case of the Court KI58/09, KI59/09, KI60/09, KI64 /09, KI66/09, KI69/09, KI70/09, KI72/09, KI75/09, KI76/09, KI77/09, KI78 /09, KI79/09, KI03/10, KI05/10, KI13/10, *Gani Prokshi and 15 other former employees of the Kosovo Energy Corporation*, Judgment, of 18 October 2010, paragraph 59 stating that: *"[...] such a legitimate expectation is guaranteed by Article 1 of Protocol No. 1 to the Convention, its nature is concrete, and not a mere hope."*

38. Subsequently, the Applicant specified that *"this legitimate expectation [of his] is based on the Compulsory Motor Liability Insurance System (Article 2, paragraph 4 of the CBK Rule No. 3 on Compulsory Motor Liability Insurance - 2008 [...]"*. In this case, the Applicant also refers to the case of Court KI40/ 09, Applicant *Imer Ibrahimi and 48 other former employees of the Kosovo Energy Corporation*, Judgment of 23 June 2010, and the case of the ECtHR, *Gratzingerova v. the Czech Republic*, Application No. 39794/98, Decision on Admissibility, 10 July 2002.

39. Consequently, the Applicant concludes that the denial of his right *"[...] of subrogation and payment of penalty interest according to the applicable legislation as a result of a non-reasoned decision constitutes a clear interference with the enjoyment of the right to property in the sense of Article 46 of the Constitution and Article 1 of Protocol 1 to the European Convention on Human Rights."*

40. Finally, the Applicant requests from the Court to: declare his Referral admissible; to find that the challenged Decision [E. Rev. no.68 / 2019] of the Supreme Court, of 27 January 2020, was issued in violation of Article 31 of the Constitution in conjunction with Article 6 of the ECHR, as well as Article 46 of the Constitution, in conjunction with Article 1 of Protocol No. 1 of the ECHR; as well as to declare the challenged Decision of the Supreme Court invalid, by remanding the case for reconsideration.

Relevant Constitutional and Legal Provisions

Constitution of the Republic of Kosovo

Article 31 [Right to Fair and Impartial Trial]

1. Everyone shall be guaranteed equal protection of rights in the proceedings before courts, other state authorities and holders of public powers.
2. Everyone is entitled to a fair and impartial public hearing as to the determination of one's rights and obligations or as to any criminal charges within a reasonable time by an independent and impartial tribunal established by law.
3. Trials shall be open to the public except in limited circumstances in which the court determines that in the interest of justice the public or the media should be excluded because their presence would endanger public order, national security, the interests of minors or the privacy of parties in the process in accordance with law.
4. Everyone charged with a criminal offense has the right to examine witnesses and to obtain the obligatory attendance of witnesses, experts and other persons who may clarify the evidence.
5. Everyone charged with a criminal offense is presumed innocent until proven guilty according to law.

Article 46 [Protection of Property]

1.The right to own property is guaranteed.

[...]

European Convention on Human Rights

Article 6 (Right to a fair trial)

1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.

3. Everyone charged with a criminal offence has the following minimum rights:

a. to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;
b. to have adequate time and facilities for the preparation of his defence;
c. to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;
d. to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
e. to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

Additional Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms

ARTICLE 1
Protection of property

Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of

property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.

Law No. 03/L-006 on Contested Procedure

4. Determination of the value of the disputable facility

Article 30

30.1 The claimant is obliged, in the legal disputes over property, to determine the value of the disputed facility. Only the value of the disputed facility included in the main claim is taken into consideration.
30.2 If not included in the main claim, the interest, procedural expenditure, contracted penalties and other claims are not taken into consideration.

CHAPTER XIV EXTRAORDINARY MEANS OF STRIKE (ADDRESSING)

Article 211

211.1 Against the decision of the court of second instance, sides can present a revision within a period of thirty (30) days from the day the decision was brought.
211.2 Revision is not permitted in the property-judicial contests, in which the charge request involves money requests, handing items or fulfillment of a proposal if the value of the object of contest in the attacked part of the decision does not exceed 3, 000 €.
211.3 Revision is not permitted in the property-judicial contests, in which the charge request doesn't involve money requests, handing items or fulfillment of other proposal, if the value of the object of contest shown in the charge doesn't exceed 3,000 €.
211.4 Excluding, when dealt with the charge claim from the paragraph 2 and 3 of this article, the revision is always permitted:
a) food contests;
b) contests for damage claim for food lost due to the death of the donator of fond;
c) contests in work relations initiated by the employee against the decision for break of work contract.

Article 508

Revision in trade disputes is not allowed if the value of the disputed subject dispute does not exceed 10.000 Euro.

LAW 04/L-077 ON OBLIGATIONAL RELATIONSHIPS [published in the Official Gazette on 19 June 2012. Accordingt to Article 1059 of the Law, the Law entered into force six (6) months after its publication in the Official Gazette]

Article 281
Subrogation by law

If an obligation is performed by a person that has any legal interest therein the creditor's claim with all the accessory rights shall be transferred thereto upon performance by law alone.

SUB-CHAPTER 3
DELAY IN PERFORMANCE OF PECUNIARY OBLIGATIONS PENALTY INTERES

Article 382
Penalty interes

1. A debtor that is in delay in performing a pecuniary obligation shall owe penalty interest in addition to the principal.

2. The interest rate for penalty interest shall amount to eight percent (8%) per annum, unless stipulated otherwise by a separate act of law.

SUB-CHAPTER 6
TRANSFER OF INSURED PERSON'S RIGHTS AGAINST LIABLE PERSON TO INSURANCE AGENCY (SUBROGIMI)

Article 960
Subrogation

1. *Upon the payment of compensation from insurance all the insured person's rights against a person that is in any way liable for the damage up to the amount of the insurance payout made shall be transferred by law alone to the insurance agency.*

2. *If through the fault of the insured person such a transfer of rights to the insurance agency is partly or wholly made impossible the insurance agency shall to an appropriate extent be free of its obligations towards the insured person.*

3. *The transfer of rights from the insured person to the insurance agency may not be to the detriment of the insured person; if the insurance payout obtained from the insurance agency is for any reason lower than the damage incurred the insured person shall have the right to obtain a payment from the liable person's assets for the remaining compensation before the payment of the insurance agency's claim deriving from the rights transferred thereto.*

4. *Irrespective of the rule on the transfer of the insured person's rights to the insurance agency, the rights shall not be transferred thereto if the damage was inflicted by a person who is a direct relative of the insured person, a person for whose action the insured person is liable or who lives in the same household, or a person who works for the insured person, unless any of these inflicted the damage intentionally.*

5. *If any of those specified in the previous paragraph was insured against liability the insurance agency may demand that his/her insurance agency reimburse the amount paid to the insured person.*

LAW NO. 04/L-018 ON COMPULSORY MOTOR LIABILITY INSURANCE

Article 26
Compensation claims procedure

1. The insurer shall be obliged to process, for damages to persons latest within a period of 60 (sixty) days, while for damages to property within a period of 15 (fifteen) days from the day of submission of the compensation

claim, the claim shall be processed and the injured party shall be notified in writing of:
1.1. compensation offer with relevant explanations;
1.2. decision and legal reasons for rejecting the compensation claim, when the liability and the damage degree are disputable.

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

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

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

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

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

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

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

Assessment of the admissibility of Referral

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

42. 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."*

43. 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.*"

44. In addition, the Court will examine whether the Applicant has fulfilled the admissibility criteria, as provided by Law. In this respect, the Court refers to Articles 47 [Individual Requests], 48 [Accuracy of the Referral] and 49 [Deadlines] of the Law, which establish:

Article 47
[Individual Requests]

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

Article 48
[Accuracy of the Referral]

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

Article 49
[Deadlines]

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

45. In this regard, the Court initially notes that the Applicant is entitled to submit a constitutional complaint, by calling upon 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 University L.L.C., Resolution on Inadmissibility of 3 February 2010, paragraph 14).

46. As to the fulfillment of the other admissibility criteria established in the Constitution and the Law and elaborated above, the Court finds that the Applicant is an authorized party who is challenging an act of a public authority, namely the Decision [E. Rev. no.68/2019] of the Supreme Court, of 27 January 2020, after having exhausted all legal remedies provided by law. The Applicant has also clarified the fundamental rights and freedoms which it alleges to have been violated, in accordance with the requirements of Article 48 of the Law and has submitted the Referral in accordance with the deadlines established in Article 49 of the Law.

47. In addition, the Court examines whether the Applicant has fulfilled the admissibility criteria established in Rule 39 [Admissibility Criteria] of the Rules of Procedure. Rule 39 (2) of the Rules of Procedure stipulates that:

> *"(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."*

48. The Court recalls that the accident occurred in 2012. It was caused by the insured person of the "Siguria" Company, while the Applicant's insured person B.I. suffered material damage. The Court also notes that according to the Applicant, on 20 September 2013, the relevant reimbursement was sought from the "Siguria" Company, and taking into consideration that no agreement was reached, on 8 December 2015 the Applicant filed a claim with the Basic Court. The claim for compensation of material damage was approved by the Basic Court, and there was determined a penalty interest rate of 12% starting from 20 September 2013 until the definitive payment. In this context, the Court recalls that the Basic Court by Judgment [III.Ek.no.561/2015] of 5 April 2018 reasoned the determination of penalty interest of 12% by basing upon Article 26 of the Law No. 04/L-018 on Compulsory Insurance in conjunction with Article 382 paragraph 2 of the LOR.

49. The Court of Appeals by Judgment [Ae.no.130/2018], of 3 September 2019 partially approved the appeal of the "Siguria" Company and modified the Judgment [III.Ek.no. 561/2015] of the Basic Court, of 5 April 2018 only as regards the part referring to the amount of penalty interest, by obliging the "Siguria" Company to pay to the claimant the penalty interest at the annual rate of 8% per annum, after finding that the Basic Court on this point has erroneously applied the substantive law, respectively Article 26, paragraph 6 of the Law on Compulsory Insurance is not applicable in cases of claims based on the right of subrogation, and that it is Article 382 of the LOR that applies in this case. Consequently, the Applicant filed a revision with the Supreme Court, by challenging the Judgment of the Court of Appeals only as regards the part of its decision concerning the penalty interest. In this case, the Supreme Court, by Decision [E.Rev.no.28/2019] of 27 January 2020, dismissed the Applicant's revision as inadmissible. The Supreme Court found that the Applicant has filed a revision only in relation to the issue of penalty interest, and referring to Article 30 paragraph 2 of the LCP, penalty interest is not taken into consideration as an accessory claim if it does not constitute the main claim, which in this case is the

claim for compensation in the amount of 69,371, 63 Euros, based on the right of subrogation,. Consequently, the Supreme Court having applied paragraph 2 of Article 211 of the LCP found that *"the value of the subject of the dispute in the challenged part of the judgment does not exceed 3,000 Euros"*.

50. The Applicant challenges the above findings of the Supreme Court, by specifying that the challenged Decision contains violations of his right to a fair and impartial trial, guaranteed by Article 31 of the Constitution in conjunction with Article 6 of the ECHR. The Court recalls that regarding his allegation for a violation of Article 31 of the Constitution, in conjunction with Article 6 of the ECHR, the Applicant alleges: (i) non-reasoning of the court decision; (ii) denial of his right of access to court; and (iii) divergence in the case law as a result of contradictory decisions of the Supreme Court.

51. The Court recalls that the Applicant also alleges a violation of his right to property, guaranteed by Article 46 of the Constitution, in conjunction with Article 1 of Protocol No. 1. 1 of the ECHR.

52. These two categories of allegations, namely the violation of the right to a fair and impartial trial and the violation of the right to property, will be examined by the Court on the basis of the case law of the ECtHR, in accordance with which, and pursuant to Article 53 [Interpretation of Human Rights Provisions] of the Constitution, it is obliged to interpret the fundamental rights and freedoms guaranteed by the Constitution. In the following, the Court will examine the Applicant's allegations relating to the violation of the right to a fair and impartial trial, and then proceed with the examination of the allegations related to the right to property.

I. Allegations for violations of Article 31 of the Constitution in conjunction with Article 6 of the ECHR

(i) In relation to the non-reasoning of the court decision

53. The Court recalls that the Applicant in the context of his allegation for lack of reasoning of the court decision considers that the challenged Decision of the Supreme Court lacks adequate reasoning because paragraph 2 of Article 30 of the LCP was interpreted in an erroneous manner. The Applicant further emphasizes that its reasoning "[...] *relies on the well-known concept of civil law that "the interest shares the same fate as the principal debt", therefore the denial of the right to the main hearing by the use of revision in the present case results to be contrary to this concept and as such would result in the conclusion that the claim for penalty interest cannot be subject to review by revision respectively in a court process.*" Following this allegation, the Applicant specifies that *"the interest, be it as an accessory claim (sharing the fate of the main claim - in the amount of 69,371.63 Euros) as well as an independent claim (which is subject to review also by revision in the amount of 16, 956.45 Euros) results in a value of the dispute over the amount of 10, 0000.000 Euros (in conformity with the provision of article 50 [9] of LCP) and as such meets the procedural conditions to be subject to review by revision."*

54. Consequently, the Applicant specifies that *"[...] the value of the disputable statement of claim for interest, which was subject to revision (difference between the annual rate of 8% and 12%), is in the amount of 16,956.45 Euros. Therefore, the decision of the Supreme Court not to allow the Applicant's Revision based on the criterion of the value of the statement of claim according to the Law on Contested Procedure clearly shows that the reasoning of the decision of the Supreme Court is not only incomplete but also represents an erroneous interpretation of applicable legislation."*

55. Therefore, based on the Applicant's allegations, the Court notes that the Applicant, even though he raises the issue of non-reasoning of the decision, in essence, the Applicant alleges an erroneous interpretation and application of the Law by the Supreme Court in relation to the provisions of Article 30 of the LCP.

56. Therefore, based on the content of the Applicant's allegations, the Court will assess whether the allegations for erroneous application of the law fall within the domain of legality or constitutionality.

57. In this respect, the Court notes that as a general rule, the allegations for erroneous interpretation of the law allegedly committed by the regular courts relate to the scope of legality and as such do not fall within the jurisdiction of the Court and therefore, in principle, cannot be considered by the Court (see, the Cases No. KI06/17, Applicant *LG and five others*, Resolution on Inadmissibility of 25 October 2016, paragraph 36; KI75/17, Applicant *X*, Resolution on Inadmissibility of 6 December 2017, paragraph 55 and KI122/16, Applicant *Riza Dembogaj*, Judgment of 30 May 2018, paragraph 56).

58. The Court has consistently reiterated that it is not its role to deal with errors of facts or law allegedly committed by the regular courts (legality), unless and in so far as they may have infringed the rights and freedoms protected by the Constitution (constitutionality).It cannot itself assess the law that lead a regular court to render one decision rather than another. If it were otherwise, the Court would act as a court of *"fourth instance"*, which would result in exceeding the limitats imposed on its jurisdiction. In fact, it is the role of regular courts to interpret and apply the pertinent rules of both procedural and substantive law. (see, the case *Garcia Ruiz v. Spain,* ECtHR, no. 30544/96, of 21 January 1999, paragraph 28; and see also the cases of Court: Kl70/11, Applicants: *Faik Hima, Magbule Hima and Besart Hima,* Resolution on Inadmissibility of 16 December 2011; and the abovementioned cases Kl06/17, Applicant *L. G. and five others,* paragraph 37, and KI122/16, Applicant *Riza Dembogaj*, paragraph 57).

59. This stance has been consistently held by the Court, based on the case law of the ECHR, which clearly maintained that it is not the role of this Court to review the conclusions of the regular courts in respect of the factual situation and the application of the substantive law(see, the ECtHR case, *Pronina v. Russia*, Application no. 65167/01, Decision on admissibility of 30 June 2005, and the Court cases cited above KI06/17, Applicant *LG and five others*, paragraph 38 and KI122/16, Applicant *Riza Dembogaj*, paragraph 57).

60. In this sense, and in accordance with the case law of the ECHR, the Court has emphasized that even though the role of the Court is limited in terms of assessing

the interpretation of the law, it must ensure and take measures where it observes that a court has *"applied the law manifestly erroneously"* in a particular case or so as to reach *"arbitrary conclusions"* or *"manifestly unreasonable"* for the Applicant in question. (see, the cases of the ECtHR, *Anheuser-Busch Inc.*, Judgment, paragraph 83; *Kuznetsov and Others v. Russia*, no.184/02, paragraphs 70-74 and 84; *Păduraru v. Romania*, no.63252/00, paragraph 98; *Sovtransavto Holding v. Ukraine,* Application no. 48553/99, paragraphs 79, 97 and 98*; Beyeler v. Italy [GC],* Application no. 33202/96, paragraph 108*; Koshoglu v. Bulgaria,* Judgment of 10 May 2007, paragraph 50*;* see also the case of the Court cited above KI122/16, Applicant *Riza Dembogaj,* paragraph 57 and KI154/17 and KI05/18, Applicant *Basri Deva, Aferdita Deva and Limited Liability Company "BARBAS"*, paragraphs 60 to 65 and references used therein).

61. In the circumstances of the present case, the Court recalls that the Supreme Court had found that the Applicant had filed his request for revision against Judgment [Ae.no.130/2018]of the Court of Appeals, of 3 September 2019 concerning the issue of the amount of penalty interest. The Court also recalls that in his request for revision the Applicant alleged erroneous interpretation and application of the substantive law by the Court of Appeals when determining the amount of penalty interest, respectively when deciding that Article 26 paragraph 6 of the Law on Compulsory Insurance is not applicable and that it is Article 382 of the LOR that applies in this case.

62. The Court notes that the Supreme Court dismissed the Applicant's revision as inadmissible, by finding as follows:

> *"In the sense of Article 30.2 of the LCP, interest, procedural costs, contracted penalties and other accessory claims are not taken into consideration if they do not constitute the main claim, while in the present case the main claim is debt regression in the amount of 69,371, 63 Euros, the interest is accessory, so in the sense of paragraph 1 of this article only the value of the main claim is taken into consideration as the value of the subject of the dispute."*

63. In the context of the reasoning of the Supreme Court, the Court refers to Article 30 of the LCP, which stipulates:

> *"30.1 The claimant is obliged, in the legal disputes over property, to determine the value of the disputed facility. Only the value of the disputed facility included in the main claim is taken into consideration.*
>
> *30.2 If not included in the main claim, the interest, procedural expenditure, contracted penalties and other claims are not taken into consideration."*

64. The Supreme Court having referred to paragraph 2 of Article 211 of the LCP by its Decision found that: *"Article 211. 2 of the LCP, provides that revision is not permitted in legal property disputes in which the claim concerns monetary claims, handing over of the item or fulfilment of any other promise if the value of the subject of the dispute in the challenged part of the judgment does not exceed 3,000 Euros. Hence, the revision of the claimant's authorized representative is inadmissible".*

65. In this regard, the Court recalls that the Applicant alleges that "[...] *in the present case and based on the state of facts it is evident that the interest, be it as an accessory claim (sharing the fate of the main claim - in the amount of 69,371.63 Euros) as well as an independent claim (which is subject to review also by revision in the amount of 16, 956.45 Euros) results in a value of the dispute over the amount of 10, 0000.000 Euros (in conformity with the provision of article 50 [9] of LCP) and as such meets the procedural conditions to be subject of review by revision".*

66. Based on the foregoing, the Court reiterates that the Constitutional Court can assess the legal interpretations of the regular courts exceptionally and only if those interpretations are arbitrary or manifestly unreasonable (see the case-law cited above, KI75/17, Applicant X, paragraph 59).

67. However, based on the above elaboration, as well as the interpretation and reasoning provided by the Supreme Court, in the present case, it has not been proven that there is arbitrariness in the interpretation provided by the Supreme Court when rejecting the Applicant's revision as inadmissible.

68. The Court also notes that the Applicant in his Referral also specifies that *"[...] the limitation on whether or not the revision is permitted is based upon the value of legal property disputes. Otherwise, in the present case, the legal property claim relates to "trade disputes" (in respect of which revision is permitted in disputes having the value over 10,000.00 Euros/Article 508 of the LCP) and not as; stated in the reasoning of the Decision of the Supreme Court the value of 3,000.00 Euros (for which it results that the Supreme Court has not correctly referred to the respective provision concerning the value of the dispute in the concrete case as "trade dispute")."*

69. In this respect, the Court notes that in trade disputes, Article 508 of the LCP stipulates that *"Revision in tradel disputes is not allowed if the value of the subject of the dispute in the challenged part of the final judgment does not exceed 10,000. Euro."* However, the Court recalls that the Supreme Court has based its reasoning dismissing the revision specifically upon Article 30, paragraph 2 of the LCP, which provision stipulates that *"interest, procedural costs, contracted penalties and other accessory claims are not taken into consideration if they do not constitute the main claim."*

70. Therefore, in the circumstances of the present case, the Court reiterates that the Applicant, beyond the allegation for a violation of Article 31 of the Constitution, as a result of non-reasoning the decision of the Supreme Court, which relates to the issue of interpretation and application of Article 30, paragraph 2 of the LCP, does not sufficiently support or argue before the Court how this interpretation of the *"legal provisions"* by the Supreme Court may have been *"manifestly erroneous "*, resulting in *"arbitrary conclusions"* or *"manifestly unreasonable"* for the Applicant, or how the proceedings before the Supreme Court may have not been fair or even arbitrary.

71. In conclusion, the Court finds that the Applicant in his Referral has failed to prove and substantiate his allegation that the Supreme Court during the interpretation and application of substantive law, respectively the provisions of the LCP has violated his right guaranteed by Article 31 of the Constitution, and consequently, this allegation is manifestly ill founded on constitutional basis, as provided by paragraph (2) of Rule 39 of the Rules of Procedure.

(ii) In relation to the allegation for denial of the Applicant's right of access to court

72. The Court recalls that the ECtHR found that Article 6 paragraph 1 of the ECHR guarantees the "right to a court", of which "the right of access", that is, the right to institute proceedings before a court in civil matters, constitutes one aspect of it, as an essential part of the right to a fair trial. However, this right is not absolute, but may be subject to limitations; these limitations are permitted since the "right of access" by its very nature calls for individual regulation by the states. In this respect, the states enjoy a certain margin of appreciation, although the final decision as to the observance of the requirements of the right to a fair trial rests with the Court (see, *mutatis mutandis*, ECtHR case *Osman v. The United Kingdom*, no. 87/1997/871/1083, Judgment of 28 October 1998, para.147; see the ECtHR case, *Prince Hans-Adam II of Liechtenstein v. Germany*, no. 42527/98, Judgment of 12 July 2001, paragraph 44.).

73. In the Applicant's case, the Court recalls that the Applicant states that *"Since the Applicant has used all regular legal remedies to exercise the right to indemnity by the claim for subrogation in the first and second instance, such a decision of the Supreme Court with serious shortcomings in part of the reasoning is a denial of access to justice and constitutes a lack of proper administration of justice in the present case."* In this regard, the Applicant essentially alleges that as a result of the dismissal of his revision as inadmissible by the challenged Decision of the Supreme Court, his request for review of the merits of the case concerning the penalty interest has failed to be addressed and reviewed by the latter based on the merits.

74. In the context of this allegation, the Court recalls that after the Judgment of the Court of Appeals, whereby the Judgment of the Basic Court was partially amended, specifically only with regard to the issue of penalty interest, the Applicant filed a revision with the Supreme Court alleging erroneous application of substantive law by the Court of Appeals, which had decided regarding the amount of the 8% penalty interest rate based on Article 382, paragraph 2 of the LOR. Consequently, the Supreme Court dismissed the Applicant's revision as inadmissible by having referred to Article 30, paragraph 2 and Article 211 of the LCP, and consequently found that *"the value of the subject of the dispute in the challenged part of the Judgment does not exceed 3,000 Euros."*

75. The Court, referring to the case law of the ECtHR, which has maintained that although everyone has the right to use legal remedies against administrative and judicial decisions, the ECHR does not guarantee the right to appeal if it is not provided for by domestic law (see, *mutatis mutandis*, the ECtHR case *Darnay v. Hungary*, Application no.36524/97, Decision of 16 April 1998). In this context, the Court finds that the Applicant has used the available legal remedies, whilst

regarding his request for revision, which concerns the issue of penalty interest, the Supreme Court based on the relevant provisions of the LCP has found that it was not permitted.

76. Terefore, and based on the above clarifications, the Court considers that the Applicant does not sufficiently prove and substantiate his allegation regarding the denial of his right of access to court, and consequently, this allegation is manifestly ill founded on constitutional basis, as provided by paragraph (2) of Rule 39 of the Rules of Procedure.

(iii) In relation to his allegation for a divergence in the case law of the Supreme Court

77. In regard to his allegation for a divergence in the case law of the Supreme Court, the Applicant clarifies that *"[...] there are dozens of cases of the Supreme Court of Kosovo wherein in the revision procedure it was decided regarding the allegations for erroneous application of the substantive law in respect of the interest, respectively that in this case, is to be applied the interest of 12% per annum (according to "lex specialis") [...]"*

78. For clarification purposes, the Court emphasizes that it has established general principles regarding the lack of consistency, namely the divergence in the case law in the context of the procedural guarantees embodied in Article 31 of the Constitution in conjunction with Article 6 (Right to a fair trial) of the ECHR, through Judgments KI35/18, Applicant, *Bayerische Versicherungsverbrand*, Judgment of 6 January 2020 and KI87/18, Applicant, *IF Skadeforsikring*, Judgment, of 27 February 2019.

79. The Court, referring to its case law, states that in such cases, namely allegations for constitutional violations of fundamental rights and freedoms as a result of divergences in the case law, the Applicants must submit to the Court relevant arguments concerning the factual and legal similarity of the cases for which they allege to have been resolved differently by the regular courts, thus resulting in contradictory 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 *Bayerische Versicherungsverbrand*, paragraph 76).

80. In the circumstances of the present case, the Court recalls that the Applicant alleges that in his case, the Supreme Court decided differently, by finding that his request for revision must be rejected as inadmissible. In support of his allegation, the Applicant refers to and has submitted four (4) decisions of the Supreme Court, respectively the Decision [E. Rev. 43/2014] of 22 September 2014; and Judgments [E. Rev.25/2014, of 13 May 2014; [E. Rev. 23/2017] of 14 December 2017; and [E. Rev.27/2018] of 24 September 2018.

81. With respect to the above Judgments of the Supreme Court [E. Rev. 25/2014] of 13 May 2014; [E. Rev. 23/2017] of 14 December 2017; and [E. Rev. 27/2018] of 24 September 2018, the Court notes that these judgments specifically refer to the request for revision against the Judgments of the lower courts, claims that have

been filed by insurance companies, and in addition to the issue of penalty interest as an accessory claim, also refer to the main claim filed in the claim, namely the claim regarding compensation as a result of the right of subrogation and the claim relating to the determination of the amount of penalty interest. While the Decision [E. Rev. 43/2014] of 22 September 2014 of the Supreme Court refers to the finding of the latter on dismissal as inadmissible of the revision filed by the Insurance Company against the judgments of the lower courts because the value of the main claim adjudicated by the lower court did not meet the requirement of submitting the revision under Article 508 of the LCP. By this Decision, the Supreme Court had ascertained that *"[...] the value of the dispute in the claimant's claim submitted to the court on 22.9.2011, and specified with the submission of 13.9.2013 amounts to 7.143,71 Euros, while as per the final judgment challenged by revision the value of the dispute is set in the amount of 6.952, 88 Euros "*.

82. However, the Court considers that these four (4) decisions of the Supreme Court, submitted by the Applicant, do not contain factual and procedural similarities, as in the Applicant's case because in the three (3) decisions referred to by the Applicant, the subject of review by revisions was not only the issue of penalty interest but also the issue of the main claim.

83. Consequently, the Court finds that the Applicant, in the circumstances of the present case, has not fulfilled the obligation to submit to the Court the relevant arguments concerning the factual and legal similarity of the cases for which he claims to have been resolved differently by the regular courts, thus resulting in contradictory decisions in the case law and which may have resulted in a violation of his constitutional rights and freedoms.

84. In conclusion, the Court finds that the Applicant in his Referral has failed to prove and substantiate his allegation for a divergence in the case law of the Supreme Court, and consequently, this allegation is manifestly ill-founded on constitutional basis, as provided by paragraph (2) of Rule 39 of the Rules of Procedure.

II. Allegation for a violation of Article 46 of the Constitution in conjunction with Article 1 of Protocol No. 1 of the ECHR

85. The Court recalls that the Applicant alleges that *"[...] the failure of the Supreme Court of Kosovo to issue reasoned decisions (and in this case the arbitrary refusal of the revision submitted by him" also* violated the right to property guaranteed by Article 46 of the Constitution in conjunction with Article 1 of Protocol No. 1 of the ECHR. Specifically, the Applicant states that in his case there were legitimate expectations that he would enjoy compensation in the above amount under the right of subrogation, respectively *"the right to reimbursement of the damage caused by the liable person or his liability insurer based on the annual interest provided for by law"*.

86. In this context, the Court notes that the Applicant relates his allegation for a violation of Article 46 of the Constitution, in conjunction with Article 1 of Protocol No. 1. 1 of the ECHR specifically to his allegation for a violation of his right to a

fair and impartial trial, as a result of the failure to reason the judgment of the Supreme Court. In this sense, the Court recalls that as regards the Applicant's allegations for violation of Article 31 of the Constitution, in conjunction with Article 6 of the ECHR, which specifically refer to allegations for non-reasoning of the decision, violation of his right of access to court and divergence in the case law of the Supreme Court has found that the latter are manifestly ill founded on constitutional basis.

87. The Court considers that the Applicant's allegation for violation of his right to property, guaranteed by Article 46 of the Constitution, in conjunction with Article 1 of Protocol No. 1 of the ECHR is manifestly ill-founded on constitutional basis, and consequently inadmissible as provided by paragraph (2) of Rule 39 of the Rules of Procedure.

88. In conclusion, the Court finds that the Applicant's Referral is inadmissible, because:

I. Allegations for violation of Article 31 of the Constitution, relating to allegations about (i) non-reasoning of the court decision; (ii) violation of his right of access to court; and (iii) violation of the principle of legal certainty as a result of divergence in the case law of the Supreme Court are inadmissible because they are manifestly ill-founded on constitutional basis, as provided for by Article 47 of the Law and paragraph (2) of Rule 39 of the Rules of Procedure; and

II. Allegation for violation of his right to property, guaranteed by Article 46 of the Constitution, in conjunction with Article 1 of Protocol no. 1 of the ECHR is inadmissible as manifestly ill-founded on constitutional basis, as provided for by Article 47 of the Law and paragraph (2) of Rule 39 of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court, pursuant to Articles 21.4 and 113.7 of the Constitution, Articles 20 and 47 of the Law and Rules 39 (2) and 59 (2) of the Rules of Procedure, on 26 March 2021, unanimously

DECIDES

I. TO DECLARE the Referral inadmissible;

II. TO NOTIFY this Decision to the Parties;

III. TO PUBLISH this Decision in the Official Gazette, in accordance with Article 20.4 of the Law;

IV. This Decision is effective immediately.

Judge Rapporteur **President of the Constitutional Court**

Nexhmi Rexhepi Arta Rama-Hajrizi

This translation is unofficial and serves for informational purposes only.