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

Prishtina, 14 June 2021
Ref.No.:AGJ1806/21

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JUDGMENT

in

Case No. KI188/20

Applicant

"Suva Rechtsabteillung"

Constitutional review of Judgment Ae.no.63/2019 of the Court of Appeals of Kosovo, of 15 October 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 Rechtsabteillung", having its seat in Lucerne, Switzerland, represented by the

Law Firm "ICS Assistance L.L.C.", through Besnik Z. Nikqi, a lawyer from Prishtina (hereinafter: the Applicant).

Challenged decision

2. The Applicant challenges the constitutionality of Judgment [Ae.no.63/ 2019] of the Court of Appeals of the Republic of Kosovo (hereinafter: the Court of Appeals) of 15 October 2020, in conjunction with Judgment [IV.EK. no.535/ 2015] of the Department for Commercial Matters of the Basic Court in Prishtina (hereinafter: the Basic Court) of 3 January 2019.

Subject matter

3. The subject matter of the Referral is the constitutional review of the challenged Judgment of the Court of Appeals, which allegedly has violated the Applicant's fundamental rights and freedoms 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

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 the Law on the Constitutional Court of the Republic of Kosovo, No. 03/L-121 (hereinafter: the Law) and Rule 32 [Filing of Referrals and Replies] of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

Proceedings before the Constitutional Court

5. On 22 October and 24 November 2020, respectively, the Court had sent a submission to the Supreme Court of the Republic of Kosovo (hereinafter: the Supreme Court), regarding a number of cases submitted to the Court challenging the Judgments of the Supreme Court in respect of the determination of the penalty interest in cases of claims for compensation of damages under the right of subrogation as a result of traffic accidents caused in the Republic of Kosovo. Having clarified that the respective cases before the Court, among other things, challenge the infringement of legal certainty, as a result of conflicting decisions of the Supreme Court in similar cases, the Court sought clarification whether (i) the Supreme Court has issued a principled position regarding compensation of damages and determination of the penalty interest in relation to claims under the right of subrogation; and if this is not the case (ii) to inform the Court regarding the case-law of the Supreme Court, namely in which cases does Article 382 of the LOR, and paragraph 6 of Article 26 of the Law on Compulsory Motor Liability Insurance (hereinafter: the Law on Compulsory Liability), respectively, apply.

6. On 1 December 2020, the Supreme Court (i) clarified before the Court the issues raised by the above submission; and (ii) submitted to the Court the Legal

Opinion on Interest of the Supreme Court (hereinafter: the Legal Opinion of the Supreme Court) of 1 December 2020.

7. On 23 December 2020, the Applicant submitted the Referral to the Court.

8. On 30 December 2020, the President of the Court appointed Judge Gresa Caka-Nimani as Judge Rapporteur and the Review Panel composed of Judges: Bajram Ljatifi (presiding), Safet Hoxha and Radomir Laban.

9. On 13 January 2021, the Court notified the Applicant about the registration of the Referral. On the same date, the Court notified the Court of Appeals about the registration of the Referral and sent a copy thereof to it.

10. On 23 February 2021, the Court (i) notified the Kosovo Insurance Bureau (hereinafter: the KIB) about the registration of the Referral by enabling it to submit its comments, if any, to the Court.

11. On 4 March 2021, the KIB submitted the respective comments to the Court.

12. On 28 April 2021, the Review Panel considered the report of Judge Rapporteur Gresa Caka-Nimani, and unanimously recommended to the Court the admissibility of the Referral and its review based on merits.

13. On the same day, the Court voted, unanimously, that the Referral is admissible; and by majority vote, it found that there has been no violation of Article 31 [Right to Fair and Impartial Trial] of the Constitution of the Republic of Kosovo in conjunction with Article 6(1) (Right to a fair trial) of the European Convention on Human Rights.

14. On the same date, the Judge Rapporteur, pursuant to Rule 58 (4) (Deliberations and Voting) of the Rules of Procedure, taking into account that she was not among the judges who ascertained as above, requested from the President of the Court to assign another judge, from the majority, to prepare the Judgment without constitutional violation.

15. On the same date, pursuant to the above rule, the President of the Court assigned Judge Safet Hoxha, as one of the judges of the Review Panel, to prepare the Judgment without constitutional violation.

16. On 2 June 2021, Judge Safet Hoxha presented the Judgment before the Court.

Summary of facts

17. On 19 December 2013, V.A., the Applicant's insured person, sustained injuries in a traffic accident caused by R.K., who was insured by KIB. The Applicant's insured person, namely V.A., was compensated in the amount of 138,734 CHF in the name of *"medical treatment and compensation due to incapacity for work."*

18. On 25 March 2014, the Applicant submitted a request for reimbursement to the KIB.

19. On 2 December 2015, given that the issue of subrogation had not been resolved through the above request, the Applicant filed a claim with the Basic Court against the KIB, seeking compensation of damages in the amount of 127,614.55 Euros. The KIB had filed a response to the claim, whereby it had proposed that the statement of claim should be rejected as unfounded.

20. On 3 January 2019, the Basic Court through Judgment [IV.EK.no.535/2015], (i) approved the Applicant's statement of claim; (ii) obliged the KIB, based on the relevant expertise of 22 June 2018, to pay to the Applicant the compensation in the amount of 114,477.59 Euros; (iii) obliged the KIB to pay to the Applicant the interest of twelve percent (12%) per annum, starting from 25 March 2014 until the definitive payment; and (iv) obliged the KIB to cover the costs of the proceedings. The Basic Court, by its Judgment, justified the imposition of a penalty interest of twelve percent (12%) per annum, by basing upon paragraph 6 of Article 26 of the Law on Compulsory Insurance.

21. On 25 January 2019, the KIB filed an appeal with the Court of Appeals against the above Judgment of the Basic Court, alleging essential violations of the provisions of the contested procedure, erroneous or incomplete determination of the factual situation and erroneous application of the substantive law, by proposing that the challenged Judgment be amended or quashed and the case be remanded for reconsideration. Whereas, on 7 February 2019, the Applicant submitted a response to the appeal and proposed that the appeal of the KIB be rejected as unfounded. The appeal and the response to the appeal, among others, argue and counter-argue issues that relate to the rate of the penalty interest, namely whether the provisions of the LOR or the Law on Compulsory Insurance are applicable. The Applicant, among other things, had stated that based on Article 382 of the LOR, the rate of the penalty interest is eight percent (8%) per annum, unless otherwise provided by special law, while, for issues relating to compulsory motor liability insurance, the special law is the Law on Compulsory Insurance, and based on Article 26 thereof, the rate of penalty interest is twelve percent (12%) per annum.

22. On 15 October 2020, the Court of Appeals, through Judgment [Ae.no.63/2019], partially upheld the Judgment of the Basic Court. It modified the same only in respect of the penalty interest, by obliging the KIB to pay the interest at the rate of eight percent (8%) from 25 March 2014 until the definitive payment. In the context of the latter, the Court of Appeals, *inter alia*, reasoned that (i) paragraph 7 of Article 26 of the Law on Compulsory Insurance, *"excludes the application of interest of 12% for debt regression, this interest is provided only for non-processing and delays in processing the claims for compensation of injured persons"*; and consequently, (ii) the claimant, respectively the Applicant, is entitled only to the penalty interest of eight percent (8%) per annum, as stipulated by Article 382 of the LOR.

Applicant's allegations

23. The Applicant alleges that the Judgment [Ae.no.63/2019] of the Court of Appeals, of 15 October 2020, was issued in breach of its fundamental rights and freedoms guaranteed by Article 31 [Right to Fair Trial and Impartial] of the Constitution in conjunction with Article 6 (Right to a fair trial) of the

ECHR. The Applicant specifically alleges (i) a violation of the principle of legal certainty as a result of divergence in the relevant case law of the Court of Appeals; and (ii) violation of the right to a reasoned court decision.

24. First, the Applicant, referring to the Decision [E.Rev.no.68/2019] of the Supreme Court, of 27 January 2020, which, among other things, had determined that the revision is not allowed in cases where the subject matter of review are only the *"accessory claims"*, namely the penalty interest, alleges that there are no other legal remedies at his disposal to challenge the aforementioned Judgment of the Court of Appeals.

25. In relation to the allegations concerning the violation of legal certainty, namely the divergence in the case law in respect of the determination of the penalty interest in cases of compulsory motor liability insurance, the Applicant, among other things, states that (i) the Court of Appeals has consistently applied the annual interest of twelve percent (12%) per annum in cases relating to compulsory motor liability insurance, as defined by Article 26 of the Law on Compulsory Insurance, with the exception of the challenged Judgment; and (ii) moreover, the challenged Judgment is also contrary to the principles elaborated in Judgments KI87/18, Applicant *"IF Skadeforsikring"*, Judgment of 15 April 2019 (hereinafter: the case of Court KI87/18) and KI35/18, Applicant *"Bayerische Versicherungsverbrand"*, Judgment of 6 January 2020 (hereinafter: the case of Court KI35/18), but also to the Legal Opinion of the Supreme Court itself, which *"endeavours to unify the case law"*. In the context of this allegation, the Applicant refers to the four Judgments of the Court of Appeals, as follows: (i) Judgment [Ae.no.215/2019] of 22 September 2020; (ii) Judgment [Ae.no.204/2019] of 5 August 2020; (iii) Judgment [Ae.no.282/ 2019] of 4 August 2017; and (iv) Judgment[Ae.no.127/2019] of 3 March 2020.

26. In relation to the allegations relating to the lack of a reasoned court decision, the Applicant states that the challenged Judgment of the Court of Appeals, (i) has not addressed its main allegation raised through the response to the appeal, whereby it was argued that interest of twelve percent (12%), as defined in Article 26 of the Law on Compulsory Insurance, should be applied as *"lex specialis"* and not the interest of eight percent (8%), as defined in Article 382 of the LOR, as *"lex generalis"*; (ii) the application of paragraph 2 of Article 382 of the LOR instead of paragraph 6 of Article 26 of the Law on Compulsory Insurance has not been justified; (iii) the reference in paragraph 7 of Article 26 of the Law on Compulsory Insurance is not justified, moreover, it fails to *"address the issue of penalty interest at all and any definition or exception to legitimacy in the right to penalty interest"*; (iv) contrary to Judgments KI87/18 and KI35/ 18 of the Constitutional Court, respectively, the deviation from its case law in breach of the principle of legal certainty was not justified; and (v) Article 12 (Requests of the regress of funds of health, pension and invalid insurance) of the Law on Compulsory Insurance defines the right to compensation of damage in motor liability insurance, whilst the exceptions are clearly defined in Article 11 (Exclusion from underwriting coverage) of the same law, which are not applicable in the circumstances of the specific case.

27. Through its allegations, the Applicant has elaborated on the basic principles of the right to 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 also referred to the case law of (i) the Court in cases KI55/09, Applicant *NTSH Meteorit*, Judgment of 3 December 2010; KI135/14, Applicant *IKK Classic*, Judgment of 10 November 2015; KI97/16, Applicant *IKK Classic*, Judgment of 4 December 2017; KI87/18, cited above; and KI35/18, cited above; and of (ii) the European Court of Human Rights (hereinafter: the ECtHR) in the cases of *Hadjianastassiou v. Greece* (Judgment of 16 December 1992); *Van de Hurk v. the Netherlands* (Judgment of 9 April 1994); *Hiro Balani v. Spain* (Judgment of 9 December 1994); *Ruiz Torija v. Spain* (Judgment of 9 December 1994); *Helle v. the Netherlands* (Judgment of 19 December 1997); *Souminen v. Finland* (Judgment of 1 July 2003); *Tatishvili v. Russia* (Judgment of 22 February 2007); *Boldea v. Romania* (Judgment of 15 May 2007); and *Grădinar v. Moldova* (Judgment of 6 February 2008).

28. Finally, the Applicant requests from the Court to (i) declare its Referral admissible; and (ii) find that the challenged Judgment, namely the Judgment [Ae.no. 63/2019] of the Court of Appeals, of 15 October 2020, has been issued in breach of Article 31 of the Constitution in conjunction with Article 6 of the ECHR, by declaring it invalid and remanding the case for reconsideration.

Comments submitted by the interested party KIB

29. On 4 March 2021, the KIB submitted to the Court its comments on the Applicant's Referral. According to the KIB, (i) the Applicant has not exhausted all legal remedies provided by law, because *"it has not initiated any revision at all as an extraordinary remedy before the Supreme Court"*; (ii) the penalty interest of twelve percent (12%) per annum, cannot be applied in the circumstances of the case, because the Applicant has not submitted the supplementation of the documentation required by the KIB, as determined in Article 26 of the Law on Compulsory Insurance and respective regulations of the Central Bank of Kosovo (hereinafter: the CBK); (iii) the Applicant's allegations involve issues relating to the erroneous and incomplete determination of the factual situation, whilst according to the case of Court KI72/16, the Court *"is not a court of fourth instance"*; and (iv) any approach contrary to this *"would seriously violate the fundamental principles of the constitutional and legal order, namely the Law No.03/L-199 on Courts; Law No. 03/L-006 on Contested Procedure, Law No. 04/L-018 on Compulsory Motor Liability Insurance, and Rules of Procedure of the Constitutional Court of the Republic of Kosovo."*

Assessment of the admissibility of Referral

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

31. 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".

32. The Court also refers to paragraph 4 of Article 21 [General Principles] of the Constitution, which stipulates:

"Fundamental rights and freedoms set forth in the Constitution are also valid for legal persons to the extent applicable."

33. In the following, the Court also examines whether the Applicant has fulfilled the admissibility criteria, as provided by Law. In this respect, the Court first 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..."

34. In this respect, the Court first states that the Applicant is entitled to file a constitutional complaint, by calling upon alleged violations of its fundamental rights and freedoms, which are valid for individuals as well as for legal persons (see, in this context, the case of Court KI118/18, Applicant *Eco Construction sh.p.k.*, Resolution on Inadmissibility of 10 October 2020, paragraph 29).

35. Whereas, as to the fulfilment of the admissibility criteria established in the Constitution and the Law and elaborated above, the Court finds that the Applicant is an authorized party, which is challenging an act of a public

authority, namely the Judgment [Ae.no.63/2019] of the Court of Appeals, of 15 October 2020, after having exhausted all legal remedies provided by law. The Court states that based on the case law of the Court, the decisions of the Court of Appeals can be challenged before the Court, and the latter has consistently assessed that the legal remedies have been exhausted by the applicants who have challenged the decisions of the Court of Appeals. This case law, has been built by the Court based upon the case law of the ECtHR, according to which, among other things, the Applicants are not-necessarily required to use also the extraordinary legal remedies (see the Guide on Admissibility Criteria, of 30 April 2020, I. Procedural grounds for inadmissibility; A. Non-exhaustion of domestic remedies; 2. Application of the rule; e) Existence and appropriateness, paragraph 89 and the references used therein).

36. The Applicant has also clarified the rights and freedoms which it alleges to have been violated, pursuant to the requirements of Article 48 of the Law and submitted the Referral in accordance with the deadlines established in Article 49 of the Law.

37. The Court also notes that the Applicant's Referral meets the admissibility criteria provided by paragraph (1) of Rule 39 of the Rules of Procedure. It cannot be declared inadmissible on the basis of the conditions established in paragraph (3) of Rule 39 of the Rules of Procedure. The Court also states that the Referral cannot be declared inadmissible on any other grounds. Therefore, it must be declared admissible and have its merits assessed.

Merits

38. The Court initially recalls that the circumstances of the present case relate to an accident of 2013, in which, the Applicant's insured person, namely V.A., had sustained physical injuries. Liability for the accident had fallen on R.K., insured with the KIB. The Applicant had compensated its insured person, namely V.A. in the amount of 138,734 CHF, in the name of the medical treatment and compensation due to incapacity for work. In relation to this amount, in 2014, the Applicant had addressed the KIB with a claim for compensation on the basis of the right to subrogation determined through the LOR and in the absence of an agreement; it filed a claim with the Basic Court. The Basic Court decided that the Applicant was right by upholding the obligation of the KIB to compensate the Applicant in the amount of 114,477.59 Euros as well as the obligation to pay the interest of twelve percent (12%) per annum, as defined in Article 26 of the Law on Compulsory Insurance, starting from 25 March 2014 until the definitive payment. The Court of Appeals had also finally upheld the Applicant's right to adequate compensation on the basis of subrogation, but had modified the Judgment of the Basic Court, in respect of the penalty interest. The Court of Appeals had determined that the annual interest rate should be eight percent (8%) per annum based on Article 382 of the LOR and not twelve percent (12%) per annum, based on Article 26 of the Law on Compulsory Insurance, as determined by the lower instance court. This finding of the Court of Appeals, in respect of the penalty interest rate, is challenged by the Applicant before the Court, by alleging violations of Article 31 of the Constitution in conjunction with Article 6 of the ECHR, due to (i) violation of the principle of legal certainty as a result of divergence in the

relevant case law of the Court of Appeals; and (ii) lack of a reasoned court decision (i). In the following, the Court will examine these two allegations of the Applicant, starting with those relating to the violation of legal certainty.

In relation to the violation of legal certainty

(i) General principles as developed by the case law of the ECtHR and the Court

39. The Court recalls that the Applicant alleges lack of consistency, namely a divergence in the case law of the Court of Appeals in respect of the determination of penalty interest in cases of compulsory motor liability insurance, by referring to four Judgments of the Court of Appeals, as follows: (i) Judgment [Ae.no.215/2019] of 22 September 2020; (ii) Judgment [Ae.no. 204/2019] of 5 August 2020; (iii) Judgment [Ae.no.282/2019] of 4 August 2020; and (iv) Judgment [Ae.no.127/2019] of 3 March 2020.

40. The Court notes that the four Judgments of the Court of Appeals referred to by the Applicant in the sense of allegations for a divergence in the relevant case law, (i) relate to the cases of compulsory motor liability insurance; (ii) uphold the relevant Judgments of the Basic Court in respect of the application of interest of twelve percent (12%) per annum, as defined in Article 26 of the Law on Compulsory Insurance; and (iii) state that the allegations of the respective parties for erroneous application of substantive law by the court of the first instance do not stand because the said court has correctly applied the applicable law, by having applied Article 26 of the Law on Compulsory Insurance in the circumstances of the respective cases. Therefore, it is not disputable that the Court of Appeals did not act in the same way in the circumstances of the present case, namely in its challenged Judgment.

41. But, the Court points out the fact that on 1 December 2020, the Supreme Court has issued a Legal Opinion on Interest, but the challenged Judgment of the Court of Appeals was issued prior to the above Legal Opinion being adopted.

42. More exactly, the Court recalls that the finding concerning the divergence in the case law of the Supreme Court in respect of the application of penalty interest in cases of compulsory motor liability insurance was reached in the Court cases KI87/18 and KI35/18.

43. Through these Judgments, the Court had reviewed the constitutionality of two different Judgments of the Supreme Court, and which had modified the respective Judgments of the Court of Appeals, in respect of the application of penalty interest in cases of compulsory motor liability insurance. In both cases, the Court, (i) having elaborated on the general principles of the ECtHR relating to the assessment of divergence in the case law and applied them to the circumstances of the respective cases; and (ii) after analysing in case KI87/17, seven (7) different decisions, while in case KI35/18, nine (9) of them, found that in the relevant case law existed *"profound and long-standing differences"* in respect of the application of legal provisions relating to penalty interest rate applicable in cases of compulsory motor liability insurance, moreover, despite

the fact that there were mechanisms determined by respective laws for ensuring consistency in the case law , this mechanism was not used by the Supreme Court (see the case of the Court, KI87/18, cited above, paragraph 79; and the case of Court KI35/18, cited above, paragraph 103).

44. With respect 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 basic principles and established criteria whether an alleged divergence of judicial decisions constitutes a violation of Article 6 of the ECHR. The criteria established by the ECtHR were applied also by the Court in its case law when examining the Applicants' allegations for violation of the principle of legal certainty, as a result of conflicting decisions (see, inter alia, the above cases of the Court KI35/18 and KI87/18, where a violation of Article 31 of the Constitution, in conjunction with Article 6 of the ECHR was found by the Court, as a result of a divergence in the case law of the ECtHR).

45. The Court further points out that the case law of the ECtHR has resulted in four fundamental principles that characterize the analysis concerning the consistency of case law, as follows: (i) that one of the essential components of the rule of law is legal certainty, which, inter alia, guarantees certain stability in legal situations and contributes to public confidence in the courts (see, mutatis mutandis, *Ştefănică 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, see the case KI35/18, cited above, paragraph 64); (ii) that there is no acquired right to consistency of the case-law (see, the ECtHR case, cited above, *Nejdet Şahin and Perihan Şahin v. Turkey*, paragraph 56, see also the above cited case of the Court, KI35/18, Applicant *Bayerische Versicherungsverbrand*, paragraph 65, as well as the case KI42/17, Applicant *Kushtrim Ibraj*, Resolution on Inadmissibility of 25 January 2018, paragraph 33); (iii) that the possibility of conflicting court decisions is an inherent trait of any judicial system which is based on a network of trial and appeal courts with authority over the area of their territorial jurisdiction, and such divergences may also arise within the same court; which divergence, in itself, cannot be considered self-contradictory (see, the case *Santos Pinto v. Portugal*, application no.390005/04, paragraph 41, Judgment of 20 May 2008, paragraph 41, see also the Case KI87/17 , Applicant *"IF Skadeforsikring"*, cited above, paragraph 66 and case KI35/18, Applicant *Bayerische Versicherungsverbrand*, paragraph 67); and (iv) except in cases of apparent arbitrariness, it is not its task to call into question the interpretation of domestic law by the domestic courts and in principle, it is not its function to compare different decisions of domestic courts, even if issued in apparently similar proceedings (see, for example, the cases of the ECtHR *Adamsons v. Latvia*, Judgment of 24 June 2008, paragraph 118; and *Nejdet Sahin and Perihan Sahin v. Turkey*, cited above, paragraph 50; and the case KI35/18 , cited above, paragraph 68).

46. However, the ECtHR, referring to the above principles, has established three basic criteria for determining whether an alleged divergence of court 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 determines mechanisms to overcome such divergences; and (iii)

whether those mechanisms have been applied and ,if so, to what effect (in this context, see the cases of the ECtHR, *Beian v. Romania* (no. 1), Judgment of 6 December 2007, paragraphs 37-39; *Lupeni Greek Catholic Parish 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 Şahin v. Turkey*, cited above, paragraph 53; and see the case of the Court, Kl29/17, Applicant *Adem Zhegrova*, Resolution on Inadmissibility, of 5 September 2017, paragraph 51; and see also the cases of the Court cited above, KI42/17, Applicant *Kushtrim Ibraj*, paragraph 39; KI87/17 Applicant *IF Skadiforsikring*, paragraph 67; KI35/18, Applicant *Bayerische Versicherungsverband*, paragraph 70).

(ii) Application of these principles to the circumstances of the present case

47. In the following, the Court will apply the principles elaborated above to the circumstances of the present case, by applying the criteria on the basis of which the ECtHR deals with the cases of divergence in respect of the case law, by beginning with the assessment whether in the circumstances of the present case, (i) the alleged contradictions in the case law are *"profound and long-standing"* and if this is the case, (ii) if there exist mechanisms capable of resolving the relevant divergence; and (iii) assessing whether these mechanisms have been applied in the circumstances of the present case and to what effect.

48. In this context, the Court must also reiterate that, based on the case law of the ECtHR, it is not its function to compare different decisions of the regular courts, even if taken in apparently similar proceedings. It must respect the independence of the courts. Moreover, 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 claim to have been resolved differently by the regular courts, thus resulting in a divergence 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 KI35/18, Applicant *"Bayerische Rechtsverbrand"*, cited above, paragraph 76).

49. The Court recalls that the Applicant alleges that in its case, the Court of Appeals decided differently regarding the penalty interest rate, thus acting contrary to its case law. In support of his arguments, the Applicant refers to the four Judgments of the Court of Appeals, as follows: (i) Judgment [Ae.no.215/ 2019] of 22 September 2020; (ii) Judgment [Ae.no.204/2019] of 5 August 2020; (iii) Judgment [Ae.no.282/2019] of 4 August 2020; and (iv) Judgment [Ae.no.127/2019] of 3 March 2020.

50. Before analysing whether (i) the challenged Judgment of the Court of Appeals, namely the Judgment [E.Rev.no.63/2019] of 15 October 2020 was rendered by the Court of Appeals contrary to its case law; and (ii) the alleged divergences in the case-law are "profound and long-standing", the Court initially recalls the reasoning of the challenged Judgment in respect of the penalty interest. The Court recalls that the Court of Appeals, by Judgment [Ae.no.63/2019], partially

upheld the Judgment of the Basic Court and modified the same only in respect of penalty interest, by obliging the KIB to pay the interest of eight percent (8%) from 25 March 2014 until the definitive payment. In the context of the latter, the Court of Appeals, among other things, reasoned that (i) paragraph 7 of Article 26 of the Law on Compulsory Insurance, *"excludes the application of interest of 12% for debt regression, this interest is provided only for non-processing and delays in processing the claims for compensation of injured persons"*; and consequently, (ii) the claimant, respectively the Applicant, is entitled only to the penalty interest of eight percent (8%) per annum, as defined by Article 382 of the LOR.

51. In this context, and with regard to the laws applicable in the circumstances of the present case, the Law on Obligational Relationships was adopted by the Assembly of the Republic of Kosovo on 10 May 2012, and was decreed by the President of the Republic of Kosovo on 30 May 2012, while on 19 June 2012 it was published in the Official Gazette of the Republic of Kosovo, and based on its Article 1059 (Entry into force), it has entered into force six (6) months after publication in the Official Gazette, namely on 19 December 2012, whereas the Law on Compulsory insurance was adopted by the Assembly of the Republic of Kosovo on 23 June 2011, was decreed by the President of the Republic of Kosovo on 5 July 2011, and was published in the Official Gazette of the Republic of Kosovo on 14 July 2011, and based on its Article 44 (Entry into force), it has entered into force fifteen (15) days after publication in the Official Gazette, namely on 29 July 2011. Moreover, this law, through its Article 43, has envisaged the repeal of the UNMIK Regulation 2001/25 which regulates the compulsory motor liability insurance and the respective sub-legal acts of the Central Bank of Kosovo (hereinafter: CBK), which are in contradiction with this law.

52. In the context of the Judgments of the Court of Appeals referred by the Applicant, the Court notes that all four of the above Judgments referred to by the Applicant in the sense of allegations for a divergence in the relevant case law, (i) relate to the cases of compulsory motor liability insurance; (ii) uphold the relevant Judgments of the Basic Court in respect of the application of interest of twelve percent (12%) per annum, as defined in Article 26 of the Law on Compulsory Insurance; and (iii) state that the allegations of the respective parties for erroneous application of substantive law by the court of the first instance do not stand because the said court has correctly applied the applicable law, by having applied Article 26 of the Law on Compulsory Insurance in the circumstances of the respective cases.

53. In the circumstances of the present case, the Court recalls that the Basic Court had decided that the Applicant was right by confirming the obligation of the KIB to compensate the Applicant in the amount of 114,477.59 Euros as well as the obligation to pay the interest of twelve percent (12%) per annum, as defined in Article 26 of the Law on Compulsory Insurance, starting from 25 March 2014 until the definitive payment. The Court of Appeals had also finally upheld the Applicant's right to adequate compensation on the basis of subrogation, but had modified the Judgment of the Basic Court, in respect of the penalty interest.

54. The Court recalls that the Court of Appeals, when modifying the Judgment of the Basic Court in respect of the late interest, had determined that the annual interest should be eight percent (8%) per annum based on Article 382 of the LOR and not twelve percent (12%) per annum, based on Article 26 of the Law on Compulsory Insurance, as determined by the lower instance court.

55. The Court states that it assesses the consistency of the case law of the regular courts only in respect of the violations alleged by the Applicant. Consequently, the lack of consistency in the case law must have resulted in a violation of the fundamental rights and freedoms of the Applicant. In order to ascertain such a violation, and to find that the fundamental rights and freedoms of the Applicant have been violated as a result of *"profound and long-standing differences"* in the relevant case law, the factual and legal circumstances of the Applicant's case should coincide with those of the cases with which the contradiction is alleged.

56. In the context of the circumstances of the case, the Court and the ECtHR have also acknowledged that the contradictions in the case law are an integral part of any judicial system, and that the divergences in the case law may also arise within the same court; such a thing, is not necessarily in contradiction with the Constituion and the ECHR (see, the case of ECtHR *Santos Pinto v. Portugal*, cited above, paragraph 41; and *Nejdet Sahin and Perihan Sahin v. Turkey*, cited above, paragraph 51). Moreover, and as stated above, the ECtHR has consistently reiterated that requirements for legal certainty and legitimate protection of public confidence in the courts do not guarantee a right to consistent case law. The development of the case law is important to maintain the proper dynamic of the continuous improvement of the administration of justice (see the case of the ECtHR, *Atanasovski v. "Former Yugoslav Republic of Macedonia"*, Judgment of 14 January 2010, paragraph 38; and *Nejdet Sahin and Perihan Sahin v. Turkey*, cited above, paragraph 58, see the case of Court KI35/18, Applicant *Bayerische Rechtsverbrand*, cited above, paragraph 98). An exception to these general principles is the apparent arbitrariness, and in terms of assessing the lack of judicial consistency, assessment whether there are *"profound and long-standing differences"* in the relevant case law and whether there is an effective mechanism to address them.

57. The Court, by referring to its case law, namely cases KI87/18 and KI35/18, recalls that it had found a violation of Article 31 of the Constitution in conjunction with Article 6 of the ECHR due to a violation of the principle of legal certainty as a result of the divergence of the case law, in case KI87/18 in the assessment of 3 (three) cases of the Supreme Court, issued within a period of 3 (three) years, and in case KI35/18 in the assessment of 9 (nine) cases of the Supreme Court issued over a period of 5 (five) years, after finding that (i) there were *"profound and long-standing differences"* ; (ii) the Supreme Court mechanism for harmonizing the case law existed; but (iii) the said mechanism was not used (see, the Cases of Court KI87/18, cited above, paragraph 79 and paragraphs 81 to 85, and case KI35/18, cited above, paragraph 70 and paragraphs 110-111).

58. On the other hand, solely the finding that there exist *"profound and long-standing differences"* in the case law regarding the penalty interest rate does

not necessarily result in a violation of Article 31 of the Constitution in conjunction with Article 6 of the ECHR. In order to ascertain such a thing, the Court must consider two other criteria of the ECtHR relating to the assessment of the lack of consistency in the case law, namely whether the applicable law provides for the mechanisms capable of resolving such divergences; and whether such a mechanism has been applied in the circumstances of a case and to what effect.

59. The Court emphasizes that the Supreme Court has a mechanism that enables the resolution of such contradictions, based on point 10 of paragraph 2 of Article 14 (Competencies and Responsibilities of the President and Vice-President of the Court) of the Law on Courts No.06/L-054 (hereinafter: the Law on Courts), the Presidents of Courts shall convene an annual meeting of all judges who have the obligation, *inter alia*, to review and propose changes to procedures and practices (see, the case of the Court KI87/18 Applicant *"IF Skadeforsikring"*, cited above, paragraph 80 and Case KI35/18, Applicant *Bayerische Rechtsverbrand*, cited above, paragraph 107).

60. In the following, and for the purpose of clarifying whether such a mechanism for resolving contradictions, which was consistently alleged by the Applicants in such cases before the Court, the Court recalls that in its request of 22 October 2020, it also addressed the Supreme Court with the question whether *"The Supreme Court had issued a principled position regarding the compensation of damages and the determination of penalty interest in respect of claims under the right of subrogation."*

61. The Supreme Court in its answer to the above question had answered as follows:

> *The above described case law of the Supreme Court of Kosovo has been consolidated from the time when there were submitted claims for compensation of damages under the right of subrogation, but there should be distinguished the cases when the Supreme Court of Kosovo in the proceedings according to extraordinary legal remedies cannot modify the decisions of lower instances in cases when it would be considered a violation of the principle "reformatio in peius."*
>
> *The provision of Article 203 of the Law on Contested Procedure stipulates that: "Second instance court can change the decision of the first instance to the prejudice of the complaining party, if only it complained and not the opposing party."*
>
> *The cited principle prevents the Supreme Court from changing the decisions of the lower instance courts also in respect of the annual rate of the penalty interest if the revision is of the claimant, who has partially won the litigation but has filed a revision for the rejected part. In this case, the Supreme Court, even if it finds that the substantive legal provisions on penalty interest have been incorrectly applied, it cannot change the court's decision. Also, the Supreme Court, when the revision is submitted only in respect of the interest, cannot elaborate at all on the assessment of its groundedness and eventually change the judgments of the lower instance*

court, because in this situation according to Article 211 paragraph 2 of the LCP the revision is not allowed at all, since in the sense of Article 30 paragraph 1 of the LCP, for the values of the subject matter of the dispute is taken into account only the value of the main claim, and not the interest (Article 30 paragraph 2 of the LCP).

The Supreme Court of Kosovo, in reflection of the constant claims of the courts of lower instances, but also based on the findings in its case-law a few months ago in the civil branch, had initiated the idea of the need for a legal opinion on the issue of interest, for which idea researches were conducted in the domestic practice, there were conducted comparative analyses of legislation and practice in the region, there was assessed the need to maintain continuity, but also the need for progressive changes in the function of the standards for adequate judicial protection and after having held many meetings, this idea has been materialized in a legal opinion, initially in the civil branch of the Supreme Court and thereupon in the General Session of the Supreme Court, held on 01 December 2020.

The legal opinion on the issue of interest has addressed, among other things, the situation of regression claims, point IX (nine) of the legal opinion. For the parts of this response relating to the requested information we appeal to you to consider the Legal Opinion on interest, a copy of which you will find attached."."

62. However, the Court through the present case also emphasizes that point 4 of paragraph 1 of Article 26 (Competencies of the Supreme Court) of the Law on Courts determines the exclusive competence of the Supreme Court itself to define principled attitudes, issue legal opinions and guidelines for unique application of laws by courts in the territory of the Republic of Kosovo. In the case involving the circumstances of the present case, namely the application of the penalty interest rate in relation to compulsory motor liability insurance, the Supreme Court had approved such a mechanism, namely a legal opinion on interest on 1 December 2020, respectively after that the Applicant had submitted his Referral to the Court and after the request of the Court, whereby the latter had sought clarification whether the Supreme Court had issued any unifying standpoint regarding its case law.

63. Consequently, referring to the four abovementioned cases of the Court of Appeals presented by the Applicant and the response of the Supreme Court, through its letter of 2 December 2020, the Court finds that in the circumstances of the present case, are not fulfilled the three criteria of the ECtHR regarding the assessment whether the lack of consistency, namely the divergences in the case law, have resulted in a violation of the rights and freedoms for a fair and impartial trial.

64. The Court first reiterates that in the circumstances of the present case it has not found *"profound and long-standing differences"* in the case law of the Court of Appeals regarding the application of the provisions governing the penalty interest rate in the context of compulsory motor liability insurance by submission of only four (4) decisions. Secondly, the Court considers that the clarification provided by the Supreme Court through its letter in relation to the

application of the provisions of the law in cases of claims referring to the determination of the penalty interest rate under the right of subrogation is clear. While, as regards the mechanism of the Supreme Court for harmonization of this practice, respectively the approval of the Legal Opinion regarding the Interest, the Court emphasizes that this mechanism was created and adopted after the submission to the Court of a number of cases which challenge the decisions of the regular courts in respect of determination of the penalty interest in the cases of claims for compensation under the right of subrogation.

65. Consequently, the Court finds that the challenged Judgment of the Court of Appeals does not contain a violation of the principle of legal certainty and a violation of the Applicant's right to a fair and impartial trial, as guaranteed by Article 31 of the Constitution in in conjunction with Article 6 of the ECHR.

In relation to the reasoned court decision

(i) General principles regarding the reasoning of court decisions

66. In regard to the right to a reasoned court decision guaranteed by Article 31 of the Constitution in conjunction with Article 6 of the ECHR, the Court first notes that it already has a consolidated case law. This case law is based upon the case law of the ECtHR (including but not limited to the cases of *Hadjianastassiou v. Greece*, Judgment of 16 December 1992; *Van de Hurk v. the Netherlands*, Judgment of 19 April 1994; *Hiro Balani v. Spain*, Judgment of 9 December 1994; *Higgins and Others v. France*, Judgment of 19 February 1998; *Garcia Ruiz v. Spain*, Judgment of 21 January 1999; *Hirvisaari v. Finland*, 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). Moreover, the basic principles regarding the right to a reasoned court decision have also been elaborated in the cases of this Court, including but not limited to KI22/16, Applicant *Naser Husaj*, Judgment of 9 June 2017; KI97/16, Applicant *IKK Classic*, Judgment of 9 January 2018; KI143/16, Applicant *Muharrem Blaku and others*, Resolution on Inadmissibility of 13 June 2018; KI24/17, Applicant *Bedri Salihu*, Judgment, of 27 May 2019; KI35/18, cited above; and KI227/19, Applicant *N.T. "Spahia Petrol"*, Judgment of 31 December 2020.

67. In principle, the Court states that the guarantees embodied in Article 31 of the Constitution include the obligation of the courts to provide sufficient reasons for their decisions (see, the case of Court KI230/19, Applicant *Albert Rakipi*, cited above, paragraph 139).

68. The Court also emphasizes that, based on its case law, which relies upon the case law of the ECtHR, when assessing the principle, which refers to the proper administration of justice, court decisions must contain the reasoning on which they are based. The extent to which the obligation to provide reasons applies may vary depending on the nature of the decision and must be determined in the light of the circumstances of the particular case. These are the essential arguments of the Applicants that need to be addressed and the reasons

provided must be based upon the applicable law (see, analogically, the cases of the ECtHR *Garcia Ruiz v. Spain*, application 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 of Court KI97/16, Applicant *IKK Classic*, cited above, paragraph 48; and case KI87/18 *IF Skadeforsikring*, cited above, paragraph 48). Having not required a detailed response to each complaint raised by the Applicant, this obligation implies that the parties to the proceedings may expect to receive a specific and explicit response to their allegations that are decisive to the outcome of the proceedings (see, the case *Moreira Ferreira v. Portugal*, Judgment of 5 July 2011 paragraph 84 and all references used therein, as well as the case of Court KI230/19, Applicant *Albert Rakipi*, Judgment of 9 December 2020, paragraph 137).

69. In addition, the Court refers to its case law where it has established that the reasoning of the decision must state the relationship between the merit findings and the examination of evidence on the one hand, and the legal conclusions of the court on the other. A judgment of a court will violate the constitutional principle of a ban on arbitrariness in decision-making, if the reasoning provided fials to contain the established facts, the legal provisions and the logical relationship between them (see the cases of Court KI87/18 Applicant *"IF Skadeforsikring"*, Judgment of 27 February 2019, paragraph 44; KI138/19, Applicant *Ibish Raci*, cited above, paragraph 45; as well as the case of Court KI230/19, Applicant *Albert Rakipi*, Judgment of 9 December 2020, paragraph 138).

(ii) Application of the abovementioned principles to the circumstances of the present case

70. When applying the general principles elaborated above, in the circumstances of the present case, and in order to assess whether the challenged Judgment was issued in accordance with the constitutional guarantees of a reasoned court decision, the Court recalls that when issuing its challenged Judgment, the Court of Appeals had modified the Judgment of the Basic Court, in respect of the penalty interest. The latter, in the circumstances of the present case, had applied the interest at the rate of twelve percent (12%) per annum, by referring to Article 26 of the Law on Compulsory Insurance, whilst the Court of Appeals had determined that in the circumstances of the respective case, Article 26 of the Law on Motor Third Party Liability Insurance is not applicable, as there must be applied the interest at the rate of eight percent (8) %, by referring to Article 382 of the LOR.

71. In the context of the Applicant's allegations, the Court, in the following, recalls the reasoning of the Court of Appeals in Judgment [Ae.no.63/2019], where is stated the following in respect of the penalty interest:

> *"Erroneous application of substantive law consists in the facts that, the interest approved by the court of the first instance is not legally applied in debt regression disputes, but only in the claims for compensation of damage of the injured persons in the extrajudicial proceedings as*

provided for in Article 26 of the Law on Compulsory Insurance, provisions which the courts of the first instance has referred to. The interest rate applied by the court of the first instance is foreseen in order to discipline the insurance companies in the insurance relationships against the claims for compensation of the injured persons, which the insurance companies are obliged to handle on an urgent basis within the deadlines provided for by the above provisions.

Paragraph 7 of Article 26 of the Law on Compulsory Motor Liability Insurance, excludes the application of the interest rate of 12% for debt regression, this interest is provided only for non-processing and the delay in processing the claims for compensation of the injured persons. Based on this it results that the claimant is entitled only to the penalty interest provided for in Article 382 of the LOR and not to the qualified interest according to the provisions applied by the court of the first instance. Given that the claimant with the submission of 23.3.2014 has requested the debt regression from the respondent, it turns out that from this date the respondent has been in delay since it failed to fulfil the obligation within the deadline until the definitive payment."

72. Based on the above reasoning of the Court of Appeals, the Court notes that the said court , initially (i) finds that the interest of twelve percent (12%) per annum, is *"provided only for non-processing and delays in processing the claims for compensation of injured persons"*; (ii) excludes the application of this interest, in the circumstances of the present case, by basing upon paragraph 7 of Article 26 of the Law on Compulsory Insurance; and (iii) finds that in the circumstances of the respective case, another law is to be applied, namely Article 382 of the LOR, which provides for the penalty interest of eight percent (8%) per annum.

73. On the basis of the above reasoning of the Court of Appeals, the Court emphasizes the fact that the said court has excluded the application of the penalty interest of twelve percent (12%), as defined in paragraph 6 of Article 26 of the Law on Compulsory Insurance by consequently applying Article 382 of the LOR.

74. In this context, the Court refers to Article 382, paragraph 2 of the LOR, which stipulates that: "The interest rate for penalty interest shall amount to eight percent (8%) per annum, unless stipulated otherwise by a separate act of law."

75. Whereas paragraph 6 of Article 26 of the Law on Compulsory Insurance stipulates that: *"In the event of noncompliance with time limits established under paragraph 1 of this Article, and non-fulfilment 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."*

76. Based on the foregoing, the Court notes that in determining the penalty interest "at the rate of 8%" according to paragraph 2 of Article 382 of the LOR the Court of Appeals specified that in relation to the penalty interest rate in cases of claims under the right of subrogation, wherein is included also the Applicant's case, paragraph 6 of Article 26 of the Law on Compulsory Insurance is not applicable.

77. Moreover, the Court notes that as a reason for modifying the decision on the penalty interest rate, the Supreme Court justifies that the lower instance courts, namely the Basic Court and the Court of Appeals, respectively, have erroneously interpreted the substantive law when finding that paragraph 6 of Article 26 of the Law on Compulsory Insurance is applicable.

78. In the context of similar allegations relating to the penalty interest rate, on 22 October and 24 November 2020, respectively, the Court sent a submission to the Supreme Court concerning a number of cases submitted to the Court challenging the decisions of the regular court in respect of the determination of penalty interest in cases of claims for compensation of damages under the right of subrogation as a result of traffic accidents caused in the Republic of Kosovo. The Court sought clarification as to whether (i) the Supreme Court has issued a principled position regarding compensation of damages and determination of the penalty interest in relation to claims under the right of subrogation; and if this is not the case (ii) to inform the Court regarding the case-law of the Supreme Court, namely in which cases does Article 382 of the LOR, and paragraph 6 of Article 26 of the Law on Compulsory Motor Liability Insurance (hereinafter: the Law on Compulsory Liability), respectively, apply.

79. To the aforementioned question of the Court, the Supreme Court had answered as follows::

> *"In this context, in principle in relation to the penalty interest for the relations of obligations that have arisen before 20.12.2012, there was applied the legal provision of Article 277 of the Law of Obligations (Official Gazette of the SFRY, no. 29/78, 39/85, 57/89), while for the relations of obligations that have arisen after 19.12.20 [12], there was applied the provision from article 382 of the Law on Obligational Relationships, no.04/L-077, Official Gazette of the Republic of Kosovo , no.19/19, of 19.06.2012, whilst for the claims of third parties to the Insurance Companies, in cases when the legal conditions are met following the entry into force (on 30 July 2011) of the Law on Compulsory Motor Insurance Liability, no.04/L-018, published in the Official Gazette no.4, of 14 July 2011, there were applied the provisions of this law.*
>
> *According to the Supreme Court "The cases of claims for compensation of damages under the right of subrogation according to the practice of the Supreme Court of Kosovo, and depending on the time of entering into the obligation are reviewed and decided in accordance with the provisions of the above cited laws, with relevant specifics [...]"*

80. Whereas as regards the determination of the penalty interest rate of 12%, the Supreme Court had clarified that: "*The rate of 12% of the annual interest is*

applied/ calculated when there are met the legal conditions, in cases of non-compliance with time limits (Article 26 paragraph 1 and 2, of the Law on Compulsory Motor Liability Insurance, No. 04/L-018, published in the Gazette Official No. 4, on 14 July 2011) and non-fulfilment of the obligation (Article 26 paragraph 4, of the same Law) by the responsible insurers (Insurance Companies) for each day of delay until the performance of the obligation by the responsible insurer, starting from the date of submission of the claim for compensation. The situation described according to the provisions of Article 26 of the Law on Compulsory Motor Liability Insurance, No.04 / L-018, published in the Official Gazette no.4, on 14 July 2011, refers to the liability that Insurance Companies have towards third parties, therefore the annual interest rate of 12% in this case aims to encourage a kind of correct approach of Insurance Companies to third parties, so that the claims for compensation of damages are dealt with within the legal deadlines, otherwise Insurance Companies will have to pay the annual interest of 12%.

The annual interest rate of 12% in certain cases, according to the law should be considered as a kind of penalty to Insurance Companies, when they are not responsible towards the third parties, but cannot be considered as favouring the claim of the creditor having the right to regression towards the obligated debtor because the relationship between the creditor and the debtor in the payment of the regression is a special relationship of obligations and is not the relationship of the third party with the Insurance Company, therefore in certain cases in respect of a claim of the third party as an injured party in relation to the insurance company there can be adjudicated the annual interest rate of 12%, but not also for the reimbursement claim."

81. Based on the above, the Court considers that the response given by the Supreme Court regarding its interpretation as to which law is to be applied regarding the penalty interest rate is in accordance with its reasoning given in the Judgment challenged by the Applicant in the present case. Therefore, the Court considers that the interpretation and application of the relevant legal provisions in determining the penalty interest by the Court of Appeals in the Applicant's case falls within the scope of legality, which is within the jurisdiction of this Court. Having said that, the Court of Appeals, through its Judgment and the clarification/response of the Supreme Court to the Court's question, has managed to explain the relationship between the facts presented and the application of the law to which it has referred, namely how they correlate with each other and how they have influenced the decision of the Supreme Court to modify the decisions of the lower instance courts in respect of the determination of the penalty interest rate.

82. Having done so, the Court reiterates that the Court of Appeals has fulfilled its constitutional obligation to provide a reasoned court decision, in accordance with the requirements of Article 31 of the Constitution, in conjunction with Article 6 of the ECHR and the case law of the Court, and that of the ECtHR.

83. Therefore, based on the above, it finds that the Judgment [Rev. No. 63/2019], of the Supreme Court, of 15 October 2020, in relation to the allegation for non-reasoning of the court decision does not constitute a violation of Article 31 of the Constitution in conjunction with Article 6 of the ECHR.

Conclusions

84. The Court has addressed all the allegations of the Applicant, by applying this assessment based on the case law of the Court and the ECHR in respect of the reasoning of the judgment and legal certainty in terms of the consistency of the case law, that are the guarantees which, with certain exceptions, are embodied in Article 31 of the Constitution and Article 6 of the ECHR.

85. First, as regards the allegation relating to the lack of reasoning of the court decision, the Court has found that the Judgment [E.Rev.no.63/2019] of the Supreme Court, of 15 October 2020, does not contain violations of Article 31 of the Constitution, in conjunction with Article 6 of the ECHR, because it has sufficiently reasoned its decision.

86. Second, as regards the principle of legal certainty in the context of a lack of consistency, namely the divergence of the case law of the Court of Appeals, the Court, having elaborated on the fundamental principles and criteria of the ECtHR in this respect, and applying the same to the circumstances of the present case found that in the case law of the Court of Appeals there are no *"profound and long-standing differences"* regarding the application of legal provisions which concern the applicable penalty interest rate in the cases of compulsory motor liability insurance, and consequently found that the principle of legal certainty was not infringed, and that the Judgment [E.Rev.no.63/2019] of 15 October 2020 was not issued in breach of the Applicant's fundamental rights and freedoms guaranteed by Article 31 of the Constitution, in conjunction with Article 6 of the ECHR.

FOR THESE REASONS

The Constitutional Court, pursuant to Articles 113.7 and 21.4 of the Constitution, Articles 20 and 47 of the Law and Rule 59 (1) of the Rules of Procedure, in the session held on 28 April 2021,

DECIDES

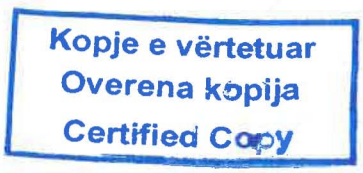
I. TO DECLARE the Referral inadmissible in a unanimous manner;

II. TO HOLD, by majority vote, that the Judgment Ae.no.63/2019 of the Court of Appeals of the Republic of Kosovo, of 15 October 2020, is in compliance with Article 31 [Right to Fair and Impartial Trial] of the Constitution of the Republic of Kosovo and Article 6 [Right to a fair trial] of the European Convention on Human Rights;

III. TO NOTIFY this decision to the Parties, and in accordance with Article 20.4 of the Law, to have the decision published in the Official Gazette;

IV. This Judgment is effective immediately.

The judge who prepared the Decision	**President of the Constitutional Court**
Safet Hoxha	Arta Rama-Hajrizi



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