



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

Prishtina, on xx xx 2021
Ref. no.:

This translation is unofficial and serves for informational purposes only

JUDGMENT

in

Case No. KI74/19

Applicant

“SUVA Rechtsabteilung”

**Constitutional review of Judgment E. Rev. No. 39/2018
of the Supreme Court of Kosovo of 8 January 2019**

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Arta Rama-Hajrizi, President
Bajram Ljatifi, Deputy President
Bekim Sejdiu, Judge
Selvete Gërxhaliu-Krasniqi, Judge
Gresa Caka-Nimani, Judge
Safet Hoxha, Judge
Radomir Laban, Judge
Remzije Istrefi-Peci, Judge, and
Nexhmi Rexhepi, Judge

Applicant

1. The Referral was submitted by Insurance Company “SUVA Rechtsabteilung” (hereinafter: “SUVA Rechtsabteilung”) from Switzerland (hereinafter: the Applicant), represented by Visar Morina from Prishtina and lawyer Besnik Mr. Nikqi from Prishtina.

Challenged decision

2. The Applicant challenges the constitutionality of the Judgment [E. Rev. No. 39/2018] of the Supreme Court of the Republic of Kosovo (hereinafter: the Supreme Court) of 8 January 2019, in conjunction with Judgment [Ae. No. 91/2016] of the Court of Appeals of 31 August 2018, and Judgment [III. C. No. 506/2012] of the Basic Court in Prishtina (hereinafter: the Basic Court) of 8 February 2016.

Subject matter

3. The subject matter of the Referral is the constitutional review of the aforementioned Judgment of the Supreme Court, which allegedly violates 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 Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter: the Law) and Rule 32 [Filing of Referrals and Replies] of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

Proceedings before the Court

5. On 7 May 2019, the Applicant submitted the Referral to the Court.
6. On 10 May 2019, the President of the Court appointed Judge Selvete Gërxhaliu-Krasniqi as Judge Rapporteur and the Review Panel composed of Judges: Arta Rama-Hajrizi (Presiding), Nexhmi Rexhepi and Remzije Istrefi-Peci.
7. On 30 May 2019, the Court notified the Applicant about the registration of the Referral and sent a copy of the Referral to the Supreme Court.
8. On 22 October 2020, the Court requested the Supreme Court to be notified about the case law regarding the application of penalty interest in debt subrogation disputes. The request to the Supreme Court, apart from the case under review KI74/19, was also related to other cases of a similar nature KI111/19, KI09/20 and KI113/20.
9. On 2 December 2020, the Supreme Court submitted a "Legal Opinion on Interest adopted at the general meeting of the Supreme Court of the Republic of Kosovo of 1 December 2020, based on Article 26 paragraph 1 item 1.4 of the Law on Courts". The relevant parts of the Legal Opinion of the Supreme Court are set out in the further text of this judgment.

10. On 28 April 2021, the Review Panel considered the report of the Judge Rapporteur and unanimously recommended to the Court the admissibility of the Referral and the assessment of its merits.
11. On the same date, the Court, unanimously, declared the Referral admissible and, by a majority of votes, found that there has been no violation of Article 31 [Right to Fair and Impartial Trial] of the Constitution in conjunction with Article 6.1 [E rights to a fair trial] of the European Convention on Human Rights.

Summary of facts

12. On 26 July 2010, there has been a traffic accident in which two passenger vehicles were involved and in that case the vehicle (owned by O.D.) with Kosovo registration plates and the insurance of the vehicles of the Insurance Company EUROSIG (hereinafter: EUROSIG) caused damage to the passenger vehicle (owned by M.H., the Applicant's insurer) with Swiss registration plates and the vehicle insurance of "SUVA Rechtsabteilung".
13. On 16 May 2011, the Applicant sent a request to the company EUROSIG, requesting compensation for damage on the basis of regress, which was caused as a result of the aforementioned traffic accident. According to this request, the Applicant received an offer from the company EUROSIG, which, according to the Applicant, did not cover the damage caused by the traffic accident which occurred through the fault of the insured of the company EUROSIG.
14. On 21 November 2012, the Applicant filed a lawsuit with the Basic Court in Prishtina against the company EUROSIG, by which he requested that in the name of the damage caused be paid the amount of € 50,858.62, with a penalty interest of 20% and starting from 16 May 2011, namely from the date of filing the lawsuit until 29 July 2011, while from 29 July 2011 until the final payment requested a penalty interest of 12%.
15. On 8 February 2016, the Basic Court in Prishtina rendered Judgment III. C. No. 506/2012, by which it approved the Applicant's statement of claim in its entirety. The reasoning of the Judgment reads:

"Since the cause of the accident was the respondent's insured, referring to Article 300 and Article 939 of the LOR, the court obliged it under the right of subrogation to regress to claimant the amount of damage caused by his insured.

Therefore, based on the above mentioned, the court found that the statement of claim of the claimant is grounded and therefore approved it and decided as in the enacting clause of the judgment.

As the respondent has been late in paying the damages incurred, based on Article 277 of the LOR, the court obliged the respondent to pay the claimant the adjudicated amounts of compensation together with the interest rate, in the amount of 20% which was calculated from the date of submission of the request for reimbursement to the respondent 16.05.2011 until 29.07.2011. The time for which this interest has been set for the delay has been calculated by the court in accordance with Article 5.1 of Rule 3 on the

amendment of the Rule on Compulsory Motor Third Party Liability Insurance. Whereas from 29.07.2011 until the final payment the annual interest of 12% will be calculated in accordance with Article 26-6 of Law 04/L-018 on Compulsory Motor Third Party Liability Insurance”.

16. On an unspecified date, EUROSIG filed an appeal with the Court of Appeals against the Judgment of the Basic Court in Prishtina, on the grounds of violation of the provisions of the contested procedure, erroneous and incomplete determination of factual situation, decision on interest, decision on costs of the proceedings and on the grounds of erroneous application of substantive law. The Applicant submitted his response to the complaint and proposed that the complaint of the company EUROSIG be declared ungrounded.
17. On 31 August 2018, the Court of Appeals by Judgment Ae. No. 91/2016, rejected, as ungrounded, the appeal of the company EUROSIG and upheld the Judgment of the Basic Court (i) regarding the principal debt on the basis of subrogation in the amount of 50,858.62 euro and modified the Judgment in question (ii) regarding the penalty interest, obliging EUROSIG to pay interest “*which is paid by local banks as for funds deposited in the bank over one year without a specific destination*” with an additional penalty in the amount of 20% from 16 May 2011 to 29 July 2011, while starting from 30 July 2011 until the final payment, only the penalty interest at an annual rate of 12%. The Court of Appeals explained that the reduction of the penalty interest from 20% to 12% after 30 July 2011, is a result of the entry into force of Law No. 04/L-018 on Compulsory Motor Third Party Liability Insurance (hereinafter: the Law on Compulsory Insurance).
18. On an unspecified date, EUROSIG filed a request for revision with the Supreme Court against the Judgment of the Court of Appeals, on the grounds of violation of the provisions of the contested procedure, erroneous application of the substantive law and exceeding the statement of claim.
19. On 8 January 2019, the Supreme Court rendered Judgment E. Rev. No. 39/2018, by which:

“The revision of the respondent, filed against Judgment Ae. No. 91/2016 of the Court of Appeals of Kosovo of 31.08.2018. [...] and Judgment Ae. No. 91/2016 of the Court of Appeals of Kosovo of 31.08.2018 is modified and Judgment III. C. No. 506/2012 of the Basic Court in Prishtina-Department for Economic Matters of 08.02.2016, so that the amount adjudicated by these judgments in the amount of € 50,858.62, the respondent is obliged to pay to the claimant the interest paid by local banks as for the funds deposited in term savings over 1 year without a specific destination, starting from 24.01.2012 onwards until the final fulfillment of this debt”.

20. The Supreme Court in the second paragraph of the enacting clause, which deals with the modification of the Judgment of the lower courts, stated:

“[...] the judgment of the second instance court in the part related to the adjudicated interest is included with erroneous application of the substantive law from Article 277 of the old LOR in conjunction with Article

26.7 of the Law on Compulsory Motor Liability Insurance, No. 04/L-018, published in the Official Gazette no. 4, of 14 July 2011, which entered into force on 30 July 2011.

The erroneous application of the substantive law lies in the facts that, as stated above, the claimant's request for compensation and the claim was filed at the time when the above-mentioned Law on Compulsory Motor Liability Insurance entered into force. Therefore, the interest approved by the second instance court and the court of first instance, is not legally applied in debt regress disputes, but only for delays in processing the claims of injured parties for compensation of damages in out-of-court proceedings as provided in Article 26 of the aforementioned Law and Article 5.1 of the CBK Rule no. 3 on amending the rule on compulsory motor third party liability insurance of 25 September 2008, in which provisions is referred the court of second instance. Those interest rates which have been applied by the court of first and second instance are foreseen in order to discipline the insurance companies in the insurance reports against the claims for compensation of the injured persons, which claims the insurance companies are obliged to deal with them urgently within the deadlines provided for in the above provisions.

Paragraph 7 of Article 26 of the aforementioned Law excludes the application of interest of 12% for debt regress, the interest provided only for non-treatment and delay in processing the claims of injured persons, for compensation. Thus, it undoubtedly turns out that the claimant is entitled only to simple interest, and not to "qualified" interest according to the provisions cited by the court of first and second instance".

Applicant's allegations

21. The Applicant alleges that Judgment E. Rev. No. 39/2018 violated Article 31 [Right to Fair and Impartial Trial] of the Constitution in conjunction with Article 6 (Right to a fair trial) of the ECHR.
22. The Applicant alleges that Article 31 of the Constitution and Article 6 of the ECHR have been violated due to the lack of reasoning of the Judgment, namely that the Supreme Court has not provided sufficient and adequate reasoning regarding the modification of Judgment Ae. No. 91/2016 of the Court of Appeals. regarding the penalty interest, and considers that this violates the principle of the right to a reasoned court decision.
23. The Applicant states in particular that it is not clear "*on what legal basis the Supreme Court finds that:*
 - *the lower instance courts have erred in the application of substantive law and the relevant reasoning in this regard, as well as*
 - *the reference by this Court in Paragraph 7 of Article 26 of Law 04/L-018 turns out to be a failure from the fact that the mentioned provision (Paragraph 7) does not even address this issue and at least corresponds to the content cited in the reasoning of Judgment [E. Rev. No. 39/2018 of 08.01.2019]. In addition, this position of the Supreme Court is completely different from its previous decisions, excluding the Judgment [E. Rev. No. 27/2017 of 24.01.2018], which for the same reasons was annulled by*

Judgment AGJ 1347/2019 (Case KI. 87/18) of 15.04.2019 by the Constitutional Court of the Republic of Kosovo”.

24. In addition, the Applicant further alleges that *“the judgment of the Supreme Court which it challenges is also contrary to its case law, as referring to its case law in the same situations it turns out that the Supreme Court unreservedly refers to and applies the respective regulations “lex specialis” in this area (CBK Rule No. 3 on Compulsory Motor Third Party Liability Insurance) when dealing with the institution of the penalty interest”.*
25. In support of his allegations, the Applicant submitted to the Court several judgments of the Supreme Court to show that the Supreme Court did not follow its case law. Judgments submitted to the Supreme Court are: *„[E. Rev. No. 27/2017] of 24.01.2018, [E. Rev. No. 23/2017 of 23 December 2017], [E. Rev. No. 48/2014 of 13 May 2014], [E. Rev. No. 62/2014 of 21 January 2015], [E. Rev. No. 14/2016 of 24 March 2016], [E. Rev. Nr. 06/2015 of 19 March 2015], [E. Rev. No. 55/2014 of 3 November 2014] and [E. Rev. No. 20/2014 of 14 April 2014]“.*
26. When it comes to the principle of legal certainty and consistency in decision-making, the Applicant states: *“The Supreme Court rendered judgments with different legal reasoning in identical cases, directly affecting the modification of the set amount of specific interest. (See the judgments listed above and the time period shown). These hesitations in the procedure of rendering a court decision of the highest court directly endanger the principle of legal certainty”.*
27. The Applicant requests the Court to annul Judgment E. Rev. No. 39/2018 of the Supreme Court, of 8 January 2019, on the grounds of violation of Article 31 [Right to Fair and Impartial Trial] of the Constitution, in conjunction with paragraph 1 of Article 6 (Right to a fair trial) of the ECHR- and remand 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.

[...]”.

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.
[...]*

LAW ON CONTRACT AND TORTS (Official Gazette of SFRY, no. 29/78, 39/85, 57/89)

„[...]

**III. DEFAULT INTEREST
When Owed**

Article 277

(1) A debtor being late in the performance of a pecuniary obligation shall owe, in addition to the principal, default interest, at the rate determined by federal law.

(2) Should the rate of stipulated interest be higher than the rate of default interest, it shall continue to run even after the debtor's delay.

[...]

Subsection 2

Delay

Debtor's delay

When a Debtor Is Late with Fulfillment

Article 324

(1) A debtor shall be late if he fails to fulfill the obligation within a time limit specified for fulfillment.

(2) Should the fulfillment time limit be not specified, the debtor shall be late if requested to fulfill the obligation by the creditor orally or in written, or by means of an out-of-court warning, or by initiating proceedings with the aim of achieving fulfilment of the obligation.

[...]

**LAW NO. 04/L-077 ON OBLIGATIONAL RELATIONSHIPS of
19 July 2012**

PART XXX

TRANSITIONAL AND FINAL PROVISIONS

Article 1057

Implementation of the present Law

*The provisions of the present Law shall not apply to obligational relationships which arose before the entry into force of the present Law.
[...]*”

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.*

Law no. 06/L-054 on Courts, which in Article 14 provides the mechanism for fair administration of justice and review of changes in case law

Article 14

Competences and Responsibilities of the President and Vice-President of the Court

“[...]

2.10. *The President of the Court shall convene an annual meeting of all judges in that court for counseling on the administration of justice within that court; to analyze the organization of the court; to review and propose changes to procedures and practices”.*

Rule III On Amending the Rule On Compulsory Third Party Liability Motor Vehicle Insurance of the Central Bank of the Republic of Kosovo, of 25 September 2008

Article 5

Claim Settlement

5.1 Settlement

Indemnity claims of third parties based on a CTPL Insurance in accordance with provisions of this Rule, including recourse from the Guarantee Fund have to be settled within the period of 10 days of the submission of necessary proofs and relevant documentation required by the insurance company or the Guarantee Fund referring to the claimed indemnity for death, bodily injury or property damage. The Guarantee Fund or an insurance company that fails to make a settlement of a valid claim within a period of ten (10) days as prescribed above shall pay a late payment penalty equal to 20 % yearly interest calculated from the date when the claim was reported until the date when indemnity was paid or settled. [...]”

Legal Opinion on Interest adopted at the General Meeting of the Supreme Court of the Republic of Kosovo, on 1 December 2020, based on Article 26 paragraph 1 item 1.4 of the Law on Courts

FIRST PART
Applicable Law

I. For the obligational relationship that have arisen before 20.12.2012, for interest apply the provisions of the Law on Obligations (Official Gazette of the SFRY), No. 29/78, 39/85, 57/89).

II. For the obligational relationship that have arisen after 19.12.2012, for interest apply the provisions of the Law on Obligations, No. 04/L-077, Official Gazette of the Republic of Kosovo, No. 19/19, of 19.06.2012.

PART TWO

IV. For the obligational relationships that have arisen before 20.12.2012, the rate/amount of penalty interest is set as for assets deposited in the bank, over one year, without a specific destination.

V. [...]

VI. For the obligational relationships that have arisen after 19.12.2012, the rate/amount of the annual penalty interest for all claims will be set at 8%, unless otherwise provided by a special law.

IX. For cases of claims for compensation of damage or coverage of expenses for the insured case (insured case compensation) by voluntary policy (voluntary insurance), the amount of interest is determined according to point IV (four) and VI (six) of this legal opinion, depending on which law was applied (was in force) when the creditor in a capacity of the debtor has fulfilled the obligation towards the third party.

Situations when the annual interest rate of 12 % is applied:

- When claims filed with Insurance Companies for personal injury are not dealt with within 60 days;*
- When claims filed with Insurance Companies for property damage are not dealt with within 15 days;*

Reasoning of legal opinion

Reasoning for item IX (nine) of legal opinion - *In the case law, there are frequent cases of creditors for reimbursement of damages who have fulfilled their obligations in advance to third parties, which are mainly related to cases provided by local insurance companies with foreign companies. For this type of claims in the practice of the courts, there has been an interpretation and application of legal provisions in several forms regarding the rate/amount of penalty interest for cases of reimbursement claims. This happened because the creditors when filing claims for*

compensation of damage referring to Article 26 of the Law on Compulsory Motor Third Party Liability Insurance, no. 04/L-018, published in the Official Gazette no. 4, dated 14 July 2011, which entered into force on 30 July 2011, requested that the claim be reimbursed at an annual rate of 12%, but the Supreme Court of Kosovo in its General Session through this legal opinion has assessed that an annual interest rate/penalty interest of 12% cannot be applied in all cases. This is because creditors' claims for reimbursement of damages mainly refer to situations of legal-civil relations (non-contractual for the creditor and the debtor), therefore, in such a case according to the assessment of the Supreme Court of Kosovo, the annual penalty interest must be paid according to item IV (four) and VI (six) of this legal opinion. This means that in case the creditor has fulfilled the obligation to the third party, before 20.12.2012, the interest rate will be applied as for the funds deposited in the bank over one year without a specific destination, while in case the creditor has fulfilled the obligation to the third party after 19.12.2012, then the rate/amount of penalty interest will be applied at a rate of 8%.

In addition to the above, the Supreme Court considers that the rate/amount of the annual penalty interest of 12%, cannot be applied due to the fact that according to the provisions of the Law on Compulsory Motor Liability Insurance, no. 04/L-018, promulgated in Official Gazette No. 4, dated 14 July 2011, which entered into force on 30 July 2011, the annual interest rate of 12%, comes into expression due to negligence of insurance companies (which then appear as regressive creditors), because if the regressive creditors had treated the claims of third parties in accordance with their legal responsibilities, the rate/amount of penalty interest of 12% could not be applied to them in court decisions, but the rate/amount would be applied as for funds deposited over a year without a specific destination, or the rate/amount of 8%, depending on which law was in force at the time the obligation relationship arose.

Admissibility of the Referral

28. The Court first examines whether the referral has fulfilled the admissibility requirements established in the Constitution, and further specified in the Law and foreseen in the Rules of Procedure.
29. 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”.*
30. The Court also refers to paragraph 4 of Article 21 [General Principles] of the Constitution, which establishes: “*Fundamental rights and freedoms set forth in the Constitution are also valid for legal persons to the extent applicable”.*

31. In this regard, the Court notes that the Applicant has the right to file a constitutional complaint, referring to alleged violations of his fundamental rights and freedoms applicable both to individuals and to legal persons (See, case of the Court No. KI41/09, Applicant: *AAB-RIINVEST University LLC*, Resolution on Inadmissibility of 3 February 2010, paragraph 14).
32. In addition, the Court also refers to the admissibility requirements as prescribed by the Law. In this regard, 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...”.

33. In assessing the fulfillment of the admissibility criteria as set out above, the Court notes that the Applicant has the right to file a constitutional complaint, referring to alleged violations of his fundamental rights and freedoms applicable both to individuals and to legal persons (See, cases of the Court KI118/18, Applicant, *Eco Construction l.l.c.*, Resolution on Inadmissibility, of 10 September 2019, paragraph 29; and. KI41/09, Applicant: *AAB-RIINVEST University LLC*, Resolution on Inadmissibility of 3 February 2010, paragraph 14). Therefore, the Court finds that the Applicant is an authorized party challenging an act of public authority, namely Judgment [E. Rev. 39/18] of the Supreme Court, of 8 January 2019, after the exhaustion of all legal remedies provided by law.
34. The Court notes that Judgment [E. Rev. 39/18] of the Supreme Court is of 8 January 2019, while the referral under review was submitted on 7 May 2019, meaning that it was submitted within the legal deadline provided by Article 49 of the Law.

35. The Court also considers that the Applicant has accurately indicated what rights, guaranteed by the Constitution and the ECHR, it claims to have been violated to its detriment, in accordance with the criteria set out in Article 48 of the Law.
36. Therefore, the Court concludes that the Applicant is an authorized party; that he has exhausted all legal remedies; that he respected the requirement of submitting the referral within the legal deadline; that he has accurately clarified the alleged violations of fundamental human rights and freedoms, and has shown what specific act of the public authority he is challenging.
37. In light of the allegations of the Referral and their arguments, the Court considers that the Referral raises serious constitutional issues and their addressing depends on the consideration of the merits of the referral. Also, the referral cannot be considered as manifestly ill-founded, within the meaning of Rule 39 of the Rules of Procedure, and no other basis has been established to declare it inadmissible (see the Constitutional Court, Case no. KI97/16, Applicant *IKK Classic*, Judgment of 4 December 2017).
38. Therefore, the Court declares the Referral admissible for review of its merits.

Merits of Referral

39. The Court recalls that the Applicant alleges a violation of the rights guaranteed by Article 31 [Right to Fair and Impartial Trial] of the Constitution in conjunction with Article 6 (Right to a fair trial) of the ECHR. The Applicant alleges that the challenged Judgment of the Supreme Court violated his right to a reasoned decision, which also violated the principle of legal certainty. According to the Applicant, these violations occurred because the Supreme Court in its Judgment did not provide a sufficient and adequate reasoning for the change of position regarding the calculation of the penalty interest, which it had consistently applied in its practice.
40. The Applicant further alleges that it remains unclear and unexplained the legal basis on which the Supreme Court based its judgment on the change of the penalty interest adjudicated by the lower courts.
41. The Applicant adds that the Judgment of the Supreme Court lacks the relevant reasoning for the new approach in this case, regarding the institution of penalty interest in the legal relationship of compulsory motor third party liability insurance because the Supreme Court has decided quite differently in the same cases.
42. Having regard to the allegations made in the Referral under review, the Court refers to Article 31 (1) and (2) [Right to Fair and Impartial Trial] of the Constitution, which stipulates:

“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*".

43. In addition, the Court refers to Article 6 (1) (Right to a fair trial) of the ECHR, which stipulates:

"In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law."

44. The Court reiterates that under Article 53 [Interpretation of Human Rights Provisions] of the Constitution, it is obliged to interpret the human rights and fundamental freedoms guaranteed by the Constitution. Accordingly, as regards the interpretation of the allegations of violation of Article 31 of the Constitution in conjunction with Article 6 of the ECHR, the Court will refer to ECtHR case law.

(i) General principles regarding the legal certainty and consistency of the case law

45. The ECtHR in its case law has established that it is not its function to deal with the errors of facts or law allegedly committed by a national court, unless in so far as they may have violated the rights and freedoms protected by the European Convention (see *García Ruiz v. Spain* cited above, paragraph 28). Similarly, it is not in its function to compare different decisions of national courts, even if given in apparently similar proceedings, it must respect the independence of those courts (see ECtHR case *Ādamsons v. Latvia*, Judgment of 24 June 2008, paragraph 118).
46. 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. Such divergences may also arise within the same court. That, in itself, cannot be considered contrary to the Convention (see ECtHR cases *Santos Pinto v. Portugal*, Judgment of 20 May 2008, paragraph 41; and *Tudor Tudor v. Romania*, cited above, paragraph 29).
47. However, the ECtHR has established the criteria which it uses to assess whether the contradictory decisions of the national courts, adjudicating in the last instance, violate the requirement of a fair trial provided for by Article 6 paragraph 1 of the European Convention, and those criteria are: **i)** *whether "profound and long-standing differences" exist in the case-law of the national courts; ii)* *whether the domestic laws provide for a mechanism to overcome these divergences, iii)* *whether that mechanism has been applied and, if so, to what extent* (see ECtHR Judgments, *Jordan Jordanov and Others v. Bulgaria*, Judgment of 2 July 2009, paragraphs 49-50, *Beian v. Romania* (number 1), Judgment of 6 December 2007, paragraphs 34-40; *\$tefan and \$tef v. Romania*, Judgment of 27 January 2009, paragraphs 33-36; *Schwarzkopf and Taussik v the Czech Republic*, decision on admissibility, of 2 December 2008, *Tudor Tudor*

v Romania, cited above, paragraph 31; and, *Ștefănică and Others v Romania*, Judgment of 2 November 2010, paragraph 36).

(ii) General principles on the right to a reasoned decision

48. The Court notes, first of all, that the guarantees contained in Article 6 paragraph 1 of the ECHR include the obligation of the courts to provide a reasoning for their decisions. The reasoned court decision, shows to the parties, that their case has really been examined. (see Judgment of the ECtHR *H. v. Belgium*, judgment of 30 November 1987, paragraph 53).
49. The Court also states that, according to the ECtHR case law, Article 6 paragraph 1 obliges the courts to give reasons for their judgments, however, this cannot be understood as requiring from the courts a detailed answer to every argument (see ECtHR cases *Van de Hurk v. Netherlands*, Judgment of 19 April 1994, *Garcia Ruiz v. Spain*, Application No. 30544/96, Judgment of 21 January 1999, paragraph 26, *Jahnke and Lenoble v. France*, decision on admissibility of 39 August 2000).
50. In this regard, the ECtHR adds that the domestic court has a certain margin of appreciation when choosing arguments and admitting evidence in support of the parties' submissions, but a domestic court is also obliged to justify its proceedings by giving reasons for its decisions (see ECtHR Judgment *Suominen v. Finland*, Application 37801/97, of 1 July 2003, paragraph 36).
51. The Court also notes that, in accordance with the ECtHR case law, when examining whether the reasoning of a court decision meets the standards of the right to a fair trial, the circumstances of the particular case should be taken into account. The court decision cannot be without any reasoning, nor will the reasoning be unclear. This applies in particular to the reasoning of the court decision deciding upon the legal remedy in which the legal position presented in the lower instance court decision has been changed (see case of ECtHR, *Van de Hurk v. The Netherlands*, cited above, paragraph 61).
52. The Court wishes to emphasize that the notion of a fair trial, according to the ECtHR case law, also requires that a national court which has given sparse reasons for its decisions, did in fact address the essential issues which were submitted to its jurisdiction and did not merely endorse without further ado the findings reached by a lower court. This requirement is all the more important where a litigant has not been able to present his case orally in the domestic proceedings. (See ECtHR Judgment *Helle v. Finland*, application 157/1996/776/977, of 19 December 1997, paragraph 60).
53. The Court also refers to its case law where it is established that the reasoning of the decision must state the relationship between the merit findings and reflections when considering the proposed evidence on one hand, and the legal conclusions of the court on the other. A judgment of a court will violate the constitutional principle of a ban on arbitrariness in decision making, if the justification given fails to contain the established facts, the legal provisions and the logical relationship between them (see, the Constitutional Court, cases: no. KI72/12, *Veton Berisha and Ilfete Haziri*, Judgment of 17 December 2012,

paragraph 61; No. KI135/14, *IKK Classic*, Judgment of 9 February 2016, paragraph 58, and KI97/16 *IKK Classic* Judgment of 11 January 2018).

(iii) Application of general principles regarding legal certainty and the right to a reasoned decision in the circumstances of the present case

54. The Court notes that the Applicant's main appealing allegation is that the Supreme Court did not state clear and sufficient reasons on which it based its decision to modify the judgments of the lower courts regarding the calculation of the amount of the penalty interest in the Applicant's case and by not justifying why it had taken a different decision in relation to its previous case law, it has violated the principle of legal certainty guaranteed by Article 31 of the Constitution and Article 6 paragraph 1 of the ECHR.
55. The Court considers that in the present case the allegations regarding the legal certainty and the right to a reasoned decision, due to the nature of the case and their interrelated relationship, must be examined in the context of a single reasoning. The Court recalls that the Supreme Court (Judgment E. Rev. 39/18) modified the judgments of lower instances (of the Court of Appeals Ae. No. 91/2016 of 31 August 2018 and of the Basic Court III. C. No. 506/2012 of 8 February 2016) only in relation to the decision on the adjudicated interest.
56. In this respect, the Supreme Court stated: "*The revision of the respondent, filed against Judgment Ae. No. 91/2016 of the Court of Appeals of Kosovo of 31.08.2018 is rejected and Judgment Ae. No. 91/2016 of the Court of Appeals of Kosovo of 31.08.2018 and Judgment III. C. No. 506/2012 of the Basic Court in Prishtina-Department for Economic Matters of 08.02.2016 are modified, so that the amount adjudicated by these judgments in the amount of € 50,858.62, the respondent is obliged to pay to the claimant the interest paid by local banks as for the funds deposited in term savings over 1 year without a specific destination, starting from 24.01.2012 onwards until the final fulfillment of this debt.*"
57. In this regard, the Court reiterates that in support of its allegation of a violation of the principle of legal certainty, the Applicant submitted eight (8) decisions of the Supreme Court in similar cases relating to the issue of regress and penalty interest, namely: (1) [E. Rev. No. 27/2018 of 24 September 2018]; (2) [E. Rev. No. 23/2017 of 14 December 2017], (3) [E. Rev. No. 48/2014 of 13 May 2014], (4) [E. Rev. No. 62/2014 of 21 January 2015], (5) [E. Rev. No. 14/2016 of 24 March 2016]; (6) [E. Rev. No. 6/2015 of 19.03.2015], (7) [E. Rev. No. 55/2014 of 3 November 2014] and (8) [E. Rev. No. 20/2014 of 14 April 2014].
58. In the following, the Court will recall the relevant parts of some of the abovementioned decisions.
59. In Judgment E. Rev. No. 27/2018 of 24 September 2018, the Supreme Court in the relevant part, reasoned: "*While the Supreme Court of Kosovo considers that the judgment of the court of second instance, regarding the adjudicated interest was rendered with erroneous application of the substantive law, therefore, it modified the latter in this part, leaving in force the judgment of the first instance court. Thus, the first instance court has correctly applied the*

substantive law when the claimant was recognized the right to interest in the amount adjudicated of 20% starting from 15.04.2011 until 29.07.2011 and interest of 12% starting from 29.07.2011 until the final payment because according to the provision of Article 277 of the LOR and Article 26.6 of the Law on Compulsory Motor Third Party Liability Insurance, by which provision it is foreseen that in case of non-compliance with the deadlines set out in par. 1 of this article and non-fulfillment of the obligation to pay the advance under par. 4 of this article, the responsible insurer is considered to be late in fulfilling the obligation for compensation, charging it with payment of interest for delay, this interest is paid in the amount of 12% of the annual interest and is calculated for each day of delay until the payment of compensation by the responsible insurer, starting from the date of filing the claim for compensation”.

60. In Judgment E. Rev. No. 23/2017, of 14 December 2017, the Supreme Court in the relevant part reasoned: *“This interest rate was foreseen until the entry into force of the Law on Compulsory Motor Liability Insurance (No. 04/L-018) which entered into force on 30.07.2011 and from this date interest of 12% should be calculated in accordance with Article 26, point 6. The second instance court has calculated the interest in the adjudicated amount paid by banks in the funds deposited over one year without a specific destination and interest under Rule 3 of the Central Bank of Kosovo (CBK) and the Law on Compulsory Motor Liability Insurance”.*
61. In Judgment E. Rev. No. 48/2014, of 27 October 2014, the Supreme Court in the relevant part reasoned: *“This Court notes that the lower instance courts also correctly applied the substantive law when recognized to the claimant the right to interest on the principal amount of 20% per annum starting from 19.11.2010 until 28.07.2011, and the interest rate of 12% starting from 29.07.2011 until the final payment, because according to the provisions of Article 277 of LOR and Article 26 of the Law on Compulsory Motor Liability Insurance no. 04/L - 018, which stipulates that in the event of non-compliance 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”.*
62. In Judgment E. Rev. No. 62/2014 of 21 January 2015, the Supreme Court in the relevant part reasoned: *“The Court notes that the second instance court has correctly applied substantive law when it recognized to the respondent the right to interest on the amount of the main debt at 12% starting from 14.6.2010 and until the final payment under the provisions of Article 277 of LOR in conjunction with Article 26 of the Law on Compulsory Motor Liability Insurance no. 04/L - 018, which stipulates that the interest is 12% per annum and is calculated for each day of delay until the damages caused by the liable insurer, starting from the date of submission of the compensation claim”.*
63. In Judgment E. Rev. No. 14/2016 of 24 March 2016, the Supreme Court in the relevant part reasoned: *“By Judgment Ae. No. 40/2015 of the Court of Appeals*

of Kosovo of 12.11.2015, the appeal of the respondent was rejected as ungrounded while Judgment C. No. 544/2013 of the Basic Court in Prishtina - Department for Commercial Matters of 23.12.2014 by which with part I of the enacting clause the statement of claim of the claimant was approved as grounded to oblige the Insurance Company "Insig" based in Prishtina, to compensate the claimant the amount of € 42,243.41 in name of regress from motor liability insurance, with interest of 12% per year, calculating it from 14.1.2010 until the final payment, within a period of 7 days from the day of service of this judgment [...] Supreme Court of Kosovo, after reviewing the judgment challenged under Article 215 of the LCP, found that: The revision is ungrounded".

64. In Judgment E. Rev. No. 6/2015 of 19 March 2015, the Supreme Court in the relevant part reasoned: "By Judgment Ae. No. 162/2013 of the Court of Appeals of Kosovo of 10.06.2014, the appeal of the respondent was rejected as ungrounded and Judgment C. No. 229/2012 of the Basic Court in Prishtina - Department for Commercial Matters of 16.07.2013 was upheld, by which the claimant's statement of claim was approved as grounded and the respondent was obliged to pay the claimant the amount of € 17,924.35 in the name of compensation for the casco regress damage related to the repair of the damaged vehicle "BMW 5" with license plates ES VS 2009 in the accident of 25.08.2009, owned by V.J. who insured this vehicle with casco insurance to the respondent, with a penalty interest of 12%, starting from 22.07.2010 until the final payment and the costs of the proceedings in the amount of 1.134.29 € [...] The Supreme Court of Kosovo reviewed the judgment of the court of second instance challenged by revision, within the meaning of Article 215 of the Law on Contested Procedure (LCP), and found that: The revision of the respondent is ungrounded".
65. In Judgment E. Rev. No. 55/2014 of 3 November 2014, the Supreme Court in the relevant part reasoned: "By Judgment Ae. no. 46/2013 of the Court of Appeals of Kosovo of 10.05.2014, the appeal of the respondent was rejected as ungrounded and Judgment C. No. 282/2012 of the District Commercial Court in Prishtina of 09.10.2012 by which the claimant's statement of claim was approved and the respondent was obliged to pay on behalf of the regressive debt the amount of € 14,041.58, with an annual interest of 12% [...] Supreme Court of Kosovo after reviewing the case file and the challenged judgment, in accordance with the provision of Article 215 of the LCP, assessed that: The revision is ungrounded".
66. In Judgment E. Rev. No. 20/2014 of 14 April 2014, the Supreme Court in the relevant part reasoned: "The claims of the respondent in the revision that the courts of lower instance erroneously applied the substantive law when the claimant was recognized the right with interest rate of the approved amount of 12% per year are ungrounded, because the courts of lower instance have correctly applied the substantive law, provision of Article 277 of the LOR in conjunction with Article 26 item 6 of the Law on compulsory motor liability insurance no. 04/L-018 by which provision is provided that in case of non-compliance with the deadlines set out in para. 1 of this article and non-fulfillment of the obligation in the advance payment from paragraph 4 of this article, the responsible insurer is considered to be in delay in fulfilling the

obligation for compensation, being charged with interest payment for delay. This interest is paid in the amount of 12% of the annual interest and is calculated for each day of delay until the payment of compensation by the responsible insurer, starting from the date of filing the claim for compensation.”.

67. In view of the abovementioned elaborations, the Court will use the test established on the basis of the case law of the ECtHR to determine: (i) whether there are “*profound and long-standing differences*” in the case law of the national courts, (ii) whether the domestic laws provide for a mechanism to overcome these divergences, (iii) whether that mechanism has been applied, and iv) whether the challenged decision of the Supreme Court meets the criteria of a reasoned decision in accordance with the case law of the ECtHR and the case law of the Court.
68. The Court refers to the Law on Courts No. 06/L-054, which in Article 14 foresees the mechanism for proper administration of justice and review of changes in the case law.

Article 14

Competences and Responsibilities of the President and Vice-President of the Court

[...]

The President of the Court shall convene an annual meeting of all judges in that court for counseling on the administration of justice within that court; to analyze the organization of the court; to review and propose changes to procedures and practices”

69. The Court further notes that in its case law in many cases it has consistently reiterated that the issues of fact and issues of interpretation and application of the law are within the scope of the regular courts and other public authorities, within the meaning of Article 113.7 of the Constitution and as such are issues of legality, unless and insofar as such issues result in violation of fundamental human rights and freedoms or create an unconstitutional situation (see, *inter alia*, Constitutional Court Case No. KI33/16, Applicant *Minire Zeka*, Judgment of 4 August 2018, paragraph 91).
70. The Court considers that the Supreme Court is the last and highest instance of the regular judiciary and as such should take care of the harmonization of case law in the Republic of Kosovo, as well as the proper administration of justice. It is the obligation of the Supreme Court that for cases that are relatively similar, as far as possible, its decisions be predictable and characterized by the correctness of the results. The predictability and regularity of Supreme Court decisions would be equally in favor of the appellants and the lower courts.
71. The Court notes that the Supreme Court found in the challenged Judgment: (i) that Article 324.2 of the LOR in conjunction with Article 26.7 of the Law on Motor Liability Insurance are legal provisions that are relevant to the Applicant’s case; (ii) that the “qualified” interest rate of 12% does not apply to debt regress cases, but only to claims for injured parties’ treatment for damages in out-of-

court proceedings; (iii) that the 12% interest rate is applied only to the settlement and delay in resolving the claims of the parties for compensation of damage, and not to the regression of the debt; and (iv) that for these reasons, the Applicant is entitled to the “simple” penalty interest provided for in Article 277 of the LOR (interest paid on term savings for a period longer than one year without the specific destination) and not “qualified” interest (12%).

72. In this regard, the Court refers to the relevant part of the judgment of the Supreme Court which establishes: *“...Paragraph 7 of Article 26 of the aforementioned Law excludes the application of interest of 12% for debt regress, the interest provided only for non-treatment and delay in processing the claims of injured persons, for compensation. Thus, it undoubtedly turns out that the claimant is entitled only to simple interest, and not to “qualified” interest according to the provisions cited by the court of first and second instance. Since the claimant with the submission dated 24.01.2012, has requested payment of the debt from the respondent, it results that from this date the respondent has been in delay in terms of Article 324.2 of the old LOR which was then in force, according to which : “Should the fulfillment time limit be not specified, the debtor shall be late if requested to fulfill the obligation by the creditor orally or in written, or by means of an out-of-court warning, or by initiating proceedings with the aim of achieving fulfillment of the obligation”. It follows that the claimant within the meaning of Article 277.1 of the aforementioned Law has the right to claim from the debtor-here the respondent who is late with the fulfillment of the debt in cash, in addition to the amount of the debt also the interest which is paid as for deposits in savings with a term of more than 1 year and without a defined destination, starting from the day of the respondent’s delay regarding the payment of the disputed debt. Otherwise, according to Article 1057 of the LOR of the Republic of Kosovo, the provisions of this law do not apply to the relationship of obligations that have arisen before the entry into force of this law. Since the damage occurred at the time of validity of the old LOR then the provisions of that law apply in general, and in particular for interest, since Article 1057 does not exclude from application only the provisions on interest but the entire Law on Obligations of the Republic of Kosovo when the relationship of obligations arose before the entry into force of this law, therefore in this case any other type of interest other than that approved as in the provision of this judgment cannot be adjudicated”.*
73. The issue of whether the Applicant has been recognized the right to “qualified” penalty interest (12%) or to “simple” interest which is paid on deposited funds with a term longer than one year without a specific destination, it is a matter of application and interpretation of the law by the Supreme Court in the trial, which, as such, is not in itself contrary to the right to a fair and impartial trial, unless there appears to be a flagrant violation of rights and fundamental freedoms, which did not happen in the case under consideration.
74. Based on the above, the Court finds that the Supreme Court has determined the legal basis and explained in what cases the legal norm is applied which determines the “qualified” penalty interest of 12%, namely the “simple” interest paid for the savings of for a period longer than one year without a definite destination and why in the Applicant's case is applied the rate which determines the “simple” penalty interest from the interest paid on time savings funds for a

period longer than a year without a specific destination. In the challenged judgment of the Supreme Court, there is a logical connection between the legal basis, the reasoning and the conclusions drawn, which means that the challenged judgment contains all the components of a reasoned decision.

75. As regards the consistency of the case-law, on the basis of the triple test established by the ECtHR, the Court finds: (i) that in the present case it has not been established that there are “*profound and long-standing*” differences in the consistency of the case-law Supreme Court; (ii) that there is a mechanism for the proper administration of justice and review of differences in case law (see Law on Courts No. 06/L-054, Article 14. 2.10); and (iii) that the Supreme Court, on 1 December 2020, issued a “Legal Opinion on interest, regarding the applicable law, amount and calculation period” pursuant to Article 14. 2.10 of the Law on Courts.
76. In this regard, the Court notes that Article 31 of the Constitution in conjunction with Article 6 (1) of the ECHR do not establish an acquired right to consistency of case law. The development of case law is not, in itself, inconsistent with the fair administration of justice as failure to maintain a dynamic and evolving approach would jeopardize continued reform or improvement (see ECtHR cases *Nejdet Sahin and Perihan Sahin v. Turkey*, judgment of 20 October 2010, paragraph 58; *Lupeni Greek Catholic Parish and Others v. Romania* (Judgment of 29 November 2016, paragraph 116). Differences in case law, by their very nature, are 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. The role of the Supreme Court is precisely reflected in resolving such disputes (see ECtHR *Beian v. Romania* (no. 1), cited above, paragraph 37).
77. With regard to the decisions of the Supreme Court submitted by the Applicant to illustrate the contradictory views of the Supreme Court and to compare them with the challenged Judgment in the present case, the Court notes that it is not its function to compare those decisions with the challenged judgment, except in cases of apparent arbitrariness which did not occur in the circumstances of the present case, in particular as regards respect for the independence of the regular courts (see, *mutatis mutandis*, ECHR *Adamsons v. Latvia*); cited above, paragraph 118).
78. In view of the above, the Court concludes that the challenged judgment of the Supreme Court is in accordance with the right to legal certainty and to a reasoned decision: (i) explains that a “qualified” penalty interest rate of 12% applies only to failure to resolve or delay in resolving claims by injured parties for compensation of damage, not for debt payment; (ii) that the Applicant, pursuant to Article 277.1 of the old LOR, has the right to demand from the debtor, who has been late in fulfilling the debt in cash, in addition to the amount of the debt also the amount of the “simple” penalty interest paid for term savings for a period longer than one year without a specific destination, starting from the day when the respondent started to be late in terms of payment of the disputed debt; and (iii) that the Supreme Court, on 1 December 2020, issued a “Legal Opinion on interest in terms of applicable law, amount and calculation period” pursuant to Article 14.2.10 of the Law on Courts.

79. The Court therefore finds that there has been no violation of Article 31 [Right to Fair and Impartial Trial] of the Constitution in conjunction with Article 6 (1) (Right to a fair trial) of the ECHR.

Conclusion

80. With regard to the allegations of violation of the principle of legal certainty, the Court found: (i) that in the present case the existence of “*profound and long-standing*” differences regarding the consistency of the case law of the Supreme Court has not been established; (ii) that there is a mechanism for the proper administration of justice and for reviewing differences in case law (see Law on Courts No. 06/L-054, Article 14. 2.10); (iii) that the Supreme Court, on 1 December 2020, issued a “Legal Opinion on interest in terms of applicable law, amount and calculation period” pursuant to Article 14.2.10 of the Law on Courts; (iv) that the possibility of contradictory decisions is an inherent trait of any judicial system based on a network of basic and appellate courts with powers within its territorial jurisdiction; (v) and what law should be applied in the circumstances of the present case is the prerogative and duty of the Supreme Court; and (vi) that the role of the Supreme Court is precisely to resolve such disputes.
81. With regard to the allegations of violation of the right to a reasoned decision, the Court found that (i) the Supreme Court declared the legal basis and explained why in the Applicant’s case the norm which determines the “simple” penalty interest paid for time savings funds for a period longer than one year without a specific destination is applied; (ii) that the challenged judgment of the Supreme Court contains the logical connection between the legal basis, the reasoning and the conclusions drawn; (iii) that, as a logical flow between the legal basis, reasoning and conclusions, it resulted that the challenged judgment of the Supreme Court meets the criteria of a reasoned decision; and (iv) the question whether the Applicant has been recognized the right to a “qualified” penalty interest of 12% or to a “simple” interest which is paid on deposited funds with a term longer than one year without a specific destination, is a matter of application and interpretation of the law and the discretion of the Supreme Court in the trial, which, as such, is not in itself contrary to the right to a fair and impartial trial.
82. Finally, the Court finds that in the circumstances of the present case there has been no violation of Article 31 [Right to Fair and Impartial Trial] of the Constitution in conjunction with Article 6 (1) (Right to a fair trial) of the ECHR.

FOR THESE REASONS

The Constitutional Court, in accordance with 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 unanimously the Referral admissible;

- II. TO HOLD, by a majority of votes, that Judgment E. Rev. No. 39/2018 of the Supreme Court of the Republic of Kosovo, of 8 January 2019, is in compliance with Article 31 [Right to Fair and Impartial Trial] of the Constitution of the Republic of Kosovo and Article 6.1 (Right to a fair trial) of the European Convention on Human Rights;
- III. TO NOTIFY this Judgment to the Parties and, in accordance with Article 20.4 of the Law, be published in the Official Gazette;
- IV. This Judgment is effective immediately.

Judge Rapporteur

President of the Constitutional Court

Selvete Gërxhaliu-Krasniqi

Arta Rama-Hajrizi

This translation is unofficial and serves for informational purposes only