



REPUBLIKA E KOSOVËS - REPUBLIKA KOSOVO - REPUBLIC OF KOSOVO
GJYKATA KUSHTETUESE
USTAVNI SUD
CONSTITUTIONAL COURT

Prishtina, on 23 June 2023
Ref. no.: AGJ 2218/23

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JUDGMENT

in

case no. KI82/22

Applicant

Valon Loxhaj

**Constitutional review of Judgment Rev. no. 103/2022 of the Supreme Court of
Kosovo, of 30 March 2022**

CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

Gresa Caka-Nimani, President
Bajram Ljatifi, Deputy President
Selvete Gërxhaliu-Krasniqi
Safet Hoxha, Judge
Radomir Laban, Judge
Remzije Istrefi-Peci, Judge
Nexhmi Rexhepi, Judge and
Enver Peci, Judge

Applicant

1. The Referral was submitted by Valon Loxhaj from the Municipality of Istog (hereinafter: the Applicant).

Challenged decision

2. The Applicant challenges the constitutionality of Judgment Rev. no. 103/2022 of the Supreme Court (hereinafter: the Supreme Court) of 30 March 2022 in conjunction with Judgment Ac. no. 504/2019 of the Court of Appeals of Kosovo (hereinafter: the Court of Appeals) of 13 October 2021, and Judgment [C. no. 1507/16] of the Basic Court of Prishtina, of 22 October 2018.

Subject matter

3. The subject matter is the constitutional review of Judgment Rev. no. 103/2022 of the Supreme Court of Kosovo of 30 March 2022, whereby the Applicant's rights guaranteed by Articles 31 [Right to Fair and Impartial Trial], 32 [Right to Legal Remedies] and 54 [Judicial Protection of Rights] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution) in conjunction with Articles 6 (Right to a fair trial) and 13 ((Right to an effective remedy) of the European Convention on Human Rights (hereinafter: the ECHR) have allegedly been violated.

Legal basis

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

Proceedings before the Constitutional Court

5. On 10 June 2022, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 23 February 2022, the President of the Court by Decision No. GJR. KI82/22 appointed Judge Radomir Laban as Judge Rapporteur and the Review Panel composed of judges: Gresa Caka-Nimani (Presiding), Bajram Ljatifi and Nexhmi Rexhepi (members).
7. On 24 June 2022, the Court notified the Applicant of the registration of the Referral. On the same day, a copy of the Referral was served on the Supreme Court.
8. On 30 September 2022, the Court requested the Basic Court of Prishtina to submit the complete case file of the Referral KI82/22.
9. On 4 October 2022, the Basic Court of Prishtina submitted the above-mentioned documentation.
10. On 13 December 2022, pursuant to paragraph 2 of Article 42 (Right to Hearing and Waiver) of the Rules of Procedure, the Court decided to hold a hearing, taking into account that in the circumstances of the present case, it considered that it is necessary to clarify some factual matters related to the dismissal, reinstatement to job position and the level of compensation of the Applicant as a result of unlawful dismissal of the latter by the opposing party ProCredit Bank - Branch in Peja.
11. On 16 December 2022, Judge Enver Peci took the oath before the President of the Republic of Kosovo, thus commencing his term at the Court.

12. On 30 March 2023, the Court served the summonses for participation in the public hearing to the Applicant and ProCredit Bank - Branch in Peja.
13. On 13 and 14 April 2023, the Applicant and ProCredit Bank - Branch in Peja confirmed their participation in the public hearing.
14. On 25 April 2023, a public hearing was held. The Applicant and his representative, Mr. Isa Salihi, a lawyer from Prishtina, as well as the representative of ProCredit Bank, Mr. Kujtim Kërveshi from "Kërveshi & Partners" Law Firm from Prishtina, attended the public hearing.
15. On 7 June 2023, the Review Panel reviewed the report of Judge Rapporteur and unanimously recommended to the Court the admissibility of the Referral.
16. On the same day, the Court decided unanimously/by the majority (i) to declare the Referral admissible; (ii) to hold that there was a violation of paragraph 1 of Article 31 [Right to Fair and Impartial Trial] of the Constitution and paragraph 1 of Article 6 (Right to a fair trial) of the ECHR; (iii) to declare invalid the Judgment [Rev. no. 103/2022] of the Supreme Court of 30 March 2022, the Judgment [Ac. no. 504/19 of the Court of Appeals of 13 October 2021, the Judgment [C. no. 1507/16] of the Basic Court of Prishtina of 22 October 2018; (v) the issue of annulling as unlawful the notification of dismissal of the Applicant and the issue of his reinstatement to the same job position consist an adjudicated matter or *res judicata*, upheld by the Judgment [Ac. no. 1955/13 of] of the Court of Appeals of 27 January 2016.

Summary of facts

17. From the case files, it appears that the Applicant filed through his authorized representative a lawsuit against the respondent ProCredit Bank with its seat in Prishtina on 26 January 2011 before the Municipal Court in Prishtina, which he clarified through his submission dated 20 October 2012, whereby he requested to have the notification of the counterclaimant ProCredit Bank with its seat in Prishtina dated 15 December 2010 annulled as unlawful, due to the termination of his employment relationship in an unlawful manner, and oblige the respondent to reinstate the Applicant to his previous job position as Loan Officer with ProCredit Bank - Branch in Peja, as well as oblige the respondent to compensate the amount of 18,724.69 Euro to the Applicant for unpaid personal income for the period from 01.09.2009 to 31 August 2012, the amount of 2,070 euro for unpaid pension and disability contribution to the account of the Pension Trust, and effective from 01.09.2012 and until the Applicant is reinstated to his workplace with the respondent, pay him 850 euro in monthly arrears for his personal monthly income, with a monthly interest rate of 3.5%, while asking the amount of 779.72 euro for the costs of proceedings, and all this within 7 days from the day this judgment is rendered otherwise through forcible execution.
18. On 14 December 2012, the Basic Court of Prishtina rendered the Judgment [C. no. 2569/ 11] and decided to: **(i) GRANT** as founded the Applicant's statement of claim and **ANNUL** as unlawful the notification of the respondent "ProCredit Bank" in Prishtina dated 15.12.2010 on termination of the Applicant's employment contract; **(ii) OBLIGE** the respondent "ProCredit Bank" in Prishtina to reinstate the Applicant to his previous job position as a Loan Officer with "Pro Credit Bank" - Branch in Peja; **(iii) OBLIGE** the respondent "Pro Credit Bank" in Prishtina to pay the amount of 18,724, 69 euro to the Applicant for unpaid monthly personal income for the time period from 01.09.2009 to 31.08.2012, calculating the interest rate in monthly payment arrears, pay him the amount of 2,070 euro for unpaid pension and disability contribution in the account of the Pension Trust, and effective 01.09.2012 and until the Applicant is

reinstated to his job position with the respondent, pay him 850 euro in monthly arrears for his personal monthly income, with a monthly interest rate of 3.5%; **(iv) OBLIGE** the respondent to reinstated the Applicant to his previous job position according to point II of the enacting clause of this Judgment, with the payments of the amounts according to point III of the enacting clause as well as the payment of the costs of the proceedings in the amount of 779.72 euro to be made within 7 days from the day this judgment is rendered otherwise through forcible execution.

19. The Municipal Court of Prishtina reasoned that: **(i)** the fact that the claimant was unlawfully denied the right to the salary increase for the period from 01.09.2009 to 15.01.2011 from 600 euro to 850 euro is established; **(ii)** the claimant's employment relationship was unlawfully terminated for the disputed period from 15.01.2011 to 31.08.2012 and it has been impossible for him to benefit his personal income; **(iii)** the court took for granted the financial expertise which was conducted by the judicial-financial expert A.B., on 14.08.2012, who performed the calculation of personal income based on the salaries earned by his colleagues working as load annalists with the respondent, who were employed and held the same positons at that time with the respondent as the Applicant; **(iv)** the court assesses that in the present case the Applicant's employment contract was terminated in violation of Article 72 of the Law on Labour because the respondent terminated his employment contract through a notification and not by a decision as provided by this legal provision; **(v)** according to the provision of Article 80 of the Law on Labour, if the dismissal is unlawful, the court may reinstate the employee to his previous position and order the compensation of all salaries and other benefits lost during the unlawful dismissal; **(vi)** in this particular case, the respondent did not implement Article 70.3 of the Law on Labour because there is no evidence that the Applicant was invited to a meeting with the employer to explain the reasons for which the respondent intended to terminate the employment contract, and that the Applicant was not notified of the possibility of being accompanied in such a meeting by any representative chosen by him; **(vii)** referring to notion of unsatisfactory performance without specifying the criteria, causes and circumstances on which such allegation is based is not sufficient to show the employee's performance level.
20. The respondent ProCredit Bank filed an appeal against the above-mentioned judgment, alleging an essential violation of the provisions of the contested procedure, erroneous and incomplete determination of the factual situation and erroneous application of substantive law, motioning the court to have the appeal granted and quash the challenged judgment and remand the case to the first instance court for retrial and reconsideration, or amend the challenged judgment so that the Applicant's statement of claim is rejected as unfounded in its entirety.
21. On 27 June 2016, the Court of Appeals issued the judgment [Ac no. 1955/ 13] and decided to: **(i) REJECT** as unfounded the appeal of the authorized representative of the respondent ProCredit Bank with its seat in Prishtina, **UPHELD** the Judgment of the Municipal Court of Prishtina, C. no. 2596/11, dated 14.12.2012, under point (I) (one) and II (two) of the enacting clause; **(ii) GRANT** as partially founded the appeal of the authorized representative of the respondent ProCredit Bank with its seat in Prishtina, **QUASH** Judgment C. no. 2569/11 of the Municipal Court of Prishtina, dated 14.12.2012, under point III and IV of the enacting clause (*except for the deadline for fulfilling the obligation in the upheld part*) and the case is remanded to the first instance court for retrial and reconsideration in this part.
22. The Court of Appeals reasoned that: **(i)** the Court of Appeals, starting from this state of the case, assesses that the conclusion and legal position of the first instance court in the part of the enacting clause which was upheld by the judgment of the Court of Appeals

(point I of the judgment) is fair and legal, since the challenged judgment is not involved in essential violations of the provisions of the contested procedure and that the substantive law has been correctly applied; **(ii)** the first instance court has fully and fairly established the factual situation, proving all the decisive facts of the case, thus creating a clear overview of the factual situation; **(iii)** the first instance court found sufficient at this point the assessment of the financial expert, thus allowing the expert to determine the volume of the right; **(iv)** the expert cannot determine whether the party is entitled to a right because the expert can only assess the amount of the claim based on the request of the court; **(c)** the first instance court should in retrial pay attention because the employment contract is the basis for determining the rights and duties of work and, in this regards, the amount of the salary; **(vi)** in this context, it is important to assess whether the employee performs other work duties that are not defined under the contract and that for the same work other employees are paid more, or if the same employee has been discriminated against by other employees despite performing work duties identical to others; **(vii)** for the part remanded for retrial, the first instance court is instructed to prove in the reopened proceedings whether the Applicant is entitled to a salary higher than the salary in the contract, from which period the liability will start running, namely from the termination of the employment relationship on 15.12.2010 before the termination of the contract, namely from 01.09.2009 onwards; **(viii)** then, depending on the court's assessment of the volume of the claim, it should also be decided on the claim referring to the pension trust savings; **(ix)** regarding the interest rate, it should be decided in the reopened proceedings since the interest claim is an accessory claim and falls within the same treatment as the principal claim.

23. On 15 March 2018, the Applicant specified the statement of claim alleging that the respondent should be obliged to pay the claimant compensation due to the unlawful dismissal from work pursuant to Article 80, paragraph 1, subparagraph 1.2 of the Law on Labour, as follows: a) For personal income unearned from 01.09.2009 to 31.08.2012, the net amount of 18,724.69 Euro b) For the unpaid pension contributions for the period from 01.09.2009 to 31.08.2012, the amount of 2070.00 Euro; c) For TAK liabilities due for period from 01.09.2009 to 31.08.2012, payable to TAK, the amount of 1,339.75 Euro.
24. The Applicant further claimed that the respondent should be obliged to pay to the claimant as follows: **a)** for unpaid salaries and the salary difference for unearned personal income for the period from 01.09.2012 to 30.06.2017, along with the legal interest, the amount of 54, 340.00 Euro to the Applicant; **b)** for the difference of unpaid personal income (1,326.93 Euro - 600 Euro) from 01.07.2017 to 22.10.2018, the amount of 615 Euro each paid separately; **c)** for being unable to use the annual leave for the year 2011-2016 along with legal interest for this period, the amount of 4,412.52 Euro to the Applicant; **d)** for the pension contribution for the period from 01.09.2012 to 30.06.2017, which must be transferred to the Pension Savings Trust of the Applicant, along with the legal interest for this period, the amount of 6,028.00 Euro; **e)** for the tax liability due for these salaries along with the legal interest for the period 01.09.2012 to 30.06.2017, the amount of 4,439.00 Euro, which amount must be transferred to the TAK account; **f)** for PI tax due for the period 01.07.2017 onwards until the final payment to the TAK account, the amount of 43.67 euro to be paid for each month separately; **g)** for pension contributions for the period 01.07.2017 onwards until the final payment, the amount of 69.33 euro to be paid for each month separately; **h)** pursuant to Article 144.2 of LCP, for the monthly personal income for the future, the amount of 1,326.93 Euro per month, with 8% interest calculated from 01.11.2018 until the final payment to the Applicant.

25. The Applicant emphasized that the Court of Appeals, through the Judgment Ac. no. 1955/13 of 27.06. 2016, upheld the Judgment P. no. 2569/11 of the Municipal Court of Prishtina of 14.12.2012 to reinstate the Applicant to his job position he was holding as a “Loan Officer with the ProCredit Bank - Branch in Peja” and the Applicant resumed his work as of 01.10.2016, however, the case was remanded for reconsideration regarding the debt the respondent ProCredit Bank owed to the Applicant for the unearned personal income and other accessory rights under the employment relationship from 01.09.2009 onwards.
26. The Applicant emphasized that following his reinstatement to work from 01.10.2016 until today, the Applicant benefited from the respondent ProCredit Bank incomplete salaries, less than 50% of them, which amount of money was calculated by the financial expert A.B. in his supplementary report dated 12.03.2018.
27. On 22 October 2018, the Basic Court of Prishtina rendered the Judgment [C. no. 1507/16] and decided to: **(i) GRANT** partially as founded the Applicant’s statement of claim, **OBLIGE** the respondent to compensate the Applicant for his personal income for the period from 01.09.2012 to 30.09.2016, the amount of 41,678.00 Euro net salary, including the pension contribution in the amount of 2,319.00 Euro, tax liability in the amount of 1,191.94 Euro, which represents twice the amount of 20,839.00 Euro, all of this with an annual legal interest as banks pay for funds without a specific destination, with a maturity of 12 months starting from 22.10.2018 until the full payment, as well as the costs of the proceedings in the amount of 3,428.12 Euro, and all claims within 7 days from the date this judgment is rendered otherwise through forcible execution;

(ii) REJECT the part of the statement of claim whereby the Applicant’s statement of claim against the defendant ProCredit Bank was granted in its entirety as founded and annul as unlawful Article 4 of the Employment Contract no. 16/88 of 29.06.2016, concluded between the Applicant and the respondent, whereby the Applicant was reinstated to his job position as a Loan Analyst and Article 8 of this Contract, whereby the monthly salary was allocated to the Applicant in the amount of 600.00 Euro from 03.10.2016 onwards;

oblige the respondent to pay to the claimant the compensation due to lawful dismissal pursuant to Article 80, paragraph 1, subparagraph 1.2 of the Law on Labour, as follows:

- a) For personal income unearned from 01.09.2009 to 31.08.2012, the net amount of 18,724.69 Euro;
- b) For the unpaid pension contributions for the period from 01.09.2009 to 31.08.2012, the amount of 2070.00 Euro;
- c) For TAK liabilities due for period from 01.09.2009 to 31.08.2012, payable to TAK, the amount of 1,339.75 Euro.

To oblige the respondent as in point II under a, b, c of this statement of claim to pay as held-to-maturity funds for more than one year without a specific destination, starting from 01.09.2012 until full payment is made:

To oblige the respondent to pay the claimant:

- a) For unpaid salaries and the salary difference for unearned personal income for the period from 01.09.2012 to 30.06.2017, along with the legal interest, the amount of 54,340.00 Euro;
- b) For the difference of unpaid personal income (1,326.93 Euro - 600 Euro) from 01.07.2017 to 22.10.2018, the amount of 615 Euro each paid separately;
- c) For being unable to use the annual leave for the year 2011-2016 along with legal interest for this period, the amount of 4,412.52 Euro;

- d)** For the pension contribution for the period from 01.09.2012 to 30.06.2017, which must be transferred to the Pension Savings Trust of the Applicant, along with the legal interest for this period, the amount of 6,028.00 Euro;
 - e)** For the tax liability due for these salaries along with the legal interest for the period 01.09.2012 to 30.06.2017, the amount of 4,439.00 Euro, which amount must be transferred to the TAK account;
 - f)** For PI tax due for the period 01.07.2017 onwards until the final payment to the TAK account, the amount of 43.67 Euro to be paid for each month separately;
 - g)** For pension contributions for the period 01.07.2017 onwards until the final payment, the amount of 69.33 Euro to be paid for each month separately;
- To oblige the respondent as in point II under a, b, c, d, e, f and g of this statement of claim to pay as held-to-maturity funds for more than one year without a specific destination, starting from 01.07.2017 until full payment, and the debt as in point IV under b, to pay it with 8% interest, for each month separately, starting from 01.07.2017 onwards, until the final payment is made;

To oblige the respondent pursuant to Article 144.2 of LCP to pay to the claimant for the personal monthly income in the future the amount of 1,326.93 Euro per month, with 8% interest calculated from 01.11.2018 until the final payment as **an unfounded claim**.

28. The Basic Court reasoned that: **(i)** the court found the completed financial expertise regarding the calculation of salaries and contributions for the claimant for the challenged period as founded and well-argued; **(ii)** the Applicant's statement of claim is based on the payment of income for the challenged period, therefore it obliged the respondent to compensate the salaries for the period from 01.09.2012 to 30.09.2016, taking as the basis of calculation the contracted salary of 600 Euro gross per month for the Applicant as a Loan Analyst according to the Contract dated 27.03.2009 and the last Contract no. 16188 dated 29.09.2016; **(iii)** when deciding on the amount of the claim, the court also took as a basis the income that the Applicant previously earned in public institutions, specifically in the regional waste management company "Ambienti" sh.a, where the income earned from this company for the disputed period were reduced to income on behalf of salaries for the Applicant; **(iv)** the court partially granted the Applicant's statement of claim since the legal basis of the statement of claim for this category of claims was created by annulling the respondent's decision and by its obligation to reinstate the Applicant to work, while for the rejected part it decided as in the enacting clause of this judgment; **(c)** pursuant to Article 32.5 of the Law on Labour, unused annual leave days cannot be monetarily compensated, exceptionally this can be done when the employment relationship expires, whereas in the specific case of the Applicant, the employment relationship has not expired; **(vi)** pursuant to Article 80.1.1 of the Law on Labour, the court decided that the Applicant should be compensated with double salaries since it was proven that the Applicant's employment relationship was unlawfully terminated; **(vii)** regarding the interest, the court decided based on the relevant provisions of LOR.
29. On 8 December 2018, the Applicant filed an appeal against the Judgment [C. no. 1507/16] of the Basic Court of 22 October 2018 mainly against the rejecting part of the statement of claim, namely point II of the judgment concerned, alleging: (i) violation of European human rights standards for a fair trial by an impartial and independent court; (ii) essential violation of the provisions of the contested procedure; (iii) incomplete and incorrect determination of the factual situation; and, (iv) incorrect application of substantive provisions.
30. Regarding the violations of the procedural provisions, the Applicant alleged that the first instance court did not give sufficient and convincing reasons for the decisive facts,

which renders the first instance judgment meaningless and also unenforceable. The Applicant emphasized that there were essential violations of the provisions of Articles 144 and 146 of LCP in conjunction with Article 186 of LOR and other provisions of the Law on Labour.

31. Regarding the incomplete and erroneous determination of the factual situation by the first instance court, the Applicant alleged that for the period from 01.09.2009 to 31.08.2012 based on the financial report of the expert A.B., it results that the unearned salaries along with legal interest amount to 18,724.69 Euro, the pension contribution amounts to 2,070 Euro, while the net monthly salary that the respondent must pay to the Applicant until he is reinstated to his job position is 850 Euro. According to the Applicant, the first instance court erroneously established the factual situation for the above-mentioned period in relation to the point of the enacting clause rejecting the statement of claim for the payment of personal income and other accessory claims from the employment relationship for this period.
32. Regarding the erroneous application of substantive law, the Applicant alleged that regarding point I of the enacting clause of the challenged judgment, the first instance court erroneously relies on the provision of Article 80, para. 1.1. of the Law on Labour because the Applicant's statement of claim has to do with compensation of personal income and accessory claims from the employment relationship as well as the difference in unpaid claims as specified in the statement of claim. According to the Applicant, he was reinstated to his job position through an enforceable court decision, therefore, the first instance court erroneously decided on the Applicant's reinstatement to work and had to rely on the provision of Article 80, para. 1.2. of the Law on Labour which provides: *"In cases where the dismissal is deemed unlawful under Article 5 of this Law, the court may reinstate the employee in his or her previous employment and orders compensation of all salaries and other benefits lost during the time of unlawful dismissal from work."* The Applicant also pointed out that the first instance court erroneously applied the substantive law because the income that the Applicant generated from the regional company "Ambienti" sh.a., in Peja is not a personal income pursuant to Law on Labour but as a board member of the company concerned, for which he paid the tax to TAK according to the law on the tax for unearned income. The Applicant underlined that the right to compensation for unpaid personal income and other accessory claims is based on the legal provisions of substantive law, namely on the provisions of Articles 55, 58 and 50 of the Law on Labour and the provisions of Articles 136, 137 and 140 of LOR.
33. The respondent submitted a response to the Applicant's appeal alleging: (i) essential violation of the provisions of the contested procedure from Articles 182.1 and 182.2 of LCP; (ii) erroneous application of substantive law; and (iii) motioning to have the respondent's appeal granted, so that the challenged judgment is partially amended under point I of the enacting clause in such a way that it is granted only in terms of the amount of 20,839.00 Euro and not to double this amount as decided in the challenged judgment. Regarding the essential violation of the provisions of the contested procedure, the respondent alleged that the first instance court violated Article 182.2 of LCP as it exceeded the Applicant's statement of claim. The respondent pointed out that the Applicant requested, for the period from 01.09.2012 to 30.09.2016, only the payment of unpaid salaries, and not to double the amount. Regarding the application of the substantive law, the respondent claimed that in the present case, it is in violation of Article 80.1 of the Law on Labour, since according to the previous court decision, the Applicant was reinstated to his job position based on the provision of Article 80, paragraph 1.2., and the amount of compensation must therefore also be in accordance with the provision of Article 80, paragraph 1.2 of the Law on Labour and not based on paragraph 2 of Article 80 of the Law on Labour.

34. On 13 October 2021, the Court of Appeals issued the judgment [Ac no. 504/19] and decided to: **(i) REJECT** as unfounded the appeal of the representative of the Applicant and **UPHEL** the Judgment C. no. 1507/16 of the Basic Court of Prishtina of 22.10.2018 under point I of the enacting clause in the part referring to interest and costs of the proceedings and point II of the enacting clause of the judgment; **(ii) GRANT** as founded the appeal of the authorized representative of the respondent ProCredit Bank, **AMEND** the Judgment [C. no. 1507/16] of the Basic Court of Prishtina of 22.10.2018 under point I of the enacting clause of the judgment in the part referring compensation of personal income, pension contribution and tax withholding, in a manner adjudicated as follows: The respondent ProCredit Bank is **OBLIGED** to compensate the Applicant for personal income for the period from 01.09.2012 to 30.09.2016 in the amount of 20,839.00 Euro, of which the amount of 2,139.00 euro for the pension contribution, and the amount of 1,191.94 Euro for tax withholding.
35. The Court of Appeals reasoned that: **(i)** the first instance judgment is not fair and lawful only in relation to the compensation part of personal income, pension contribution and tax withholding; **(ii)** regarding the allegation for the impartiality of the first instance court, the Court of Appeals assessed that when a party questions the impartiality of the court and considers that the court has conducted an unfair legal process, it must give concrete reasons regarding this issue; **(iii)** there are no substantial violations of the provisions of the contested procedure because the enacting clause of the challenged judgment is not in contradiction with the reasoning of the same; **(iv)** the judgment of the Municipal Court does not determine in any part that the contract is concluded according to that judgment, by that judgment the respondent only was forced to reinstate the Applicant to his previous job position, while the court cannot decide on the terms of the contract because this is a matter to be agreed among the parties themselves; **(c)** the respondent has no obligation to pay more than the compensation of the amount of salary that was due at the time when the Applicant was unlawfully dismissed from work and that this is supported by Article 55 of the Law on Labour; **(vi)** the approved amount exceeds the Applicant's statement of claim and that in this case substantial violations of the provisions of the contested procedure were committed; **(vii)** the Applicant's dismissal from work was unlawful and he therefore, by decision, was reinstated to his job position, thus the Applicant is therefore only entitled to compensation for all salaries and other benefits lost during his dismissal, but not to their double payment; **(viii)** the Court of Appeals emphasized that the first instance court erroneously applied the provisions of Article 80.1.1 and 1.2. of the Law on Labour, because these provisions cannot be applied cumulatively but alternatively and depending on the circumstances only one of the paragraphs of Article 80 of the Law on Labour applies; **(ix)** because according to the Court of Appeals, the first instance court should have either ordered the double compensation of salaries due for the time of dismissal, or ordered the reinstatement of the Applicant to work and the compensation of all salaries and benefits lost during the time of unlawful dismissal; **(x)** logically and legally, the Applicant has been damaged only for those salaries that he would have been able to earn if his employment relationship had not been terminated.
36. The Applicant submitted a revision to the Supreme Court alleging violation of international standards, essential violation of the provisions of the contested procedure, erroneous application of substantive law, motioning the court to amend the first instance judgment in the rejecting part, grant the Applicant's statement of claim or quash the first and second court instance judgments and remand the case for retrial.
37. In the revision filed to the Supreme Court, the Applicant challenged Judgment C. no. 1507/16 of the Basic Court of Prishtina of 22 October 2018 and the Judgment [Ac. no. 504/2019] of the Court of Appeals 13 October 2019. The Applicant alleged that the Basic Court in the retrial related to the Applicant's claim for compensation of damage

due to the non-payment of personal income and other accessory claims from the employment relationship did not adhere to the observations and suggestions of the Court of Appeals made in Judgment Ac. no. 1955/13 of 27 June 2016. The Applicant pointed out that he was reinstated to his jobs position with the respondent ProCredit Bank through the execution procedure enforced through the Ruling E. no. 541 of the Basic Court of Peja of 06.02.2017 which was based on Judgment C. no. 2569/11 of the Municipal Court of Prishtina of 14.12.2021 and Judgment Ac. no. 1955/13 of the Court of Appeals 1955/13 of 27.06.2016. The Applicant added that the Court of Appeals, through the Judgment Ac no. 1955/13 of 27 June 2016 appointed the financial expert A.B., who in his report dated 14.07.2017 and the supplementary report dated 12.03.2018, fairly calculated the unearned personal income of the Applicant and other accessory rights from the employment relationship, after the case was remanded for retrial by the Court of Appeals, starting from 01.09.2012 to 30.06.2017. While for the earlier period, the same expert A.B., in the first report dated 14.08.2012 calculated the personal income and accessory rights from the employment relationship for the period from 01.09.2009 to 31.08.2012. The Applicant emphasized that based on the financial report of the expert A.B., dated 14.08.2012, for the period from 01.09.2009 to 31.08.2012, the amount sums up to 18,132.00 Euro, which along with the legal interest amounts to 18,724.69 Euro, the pension contribution amounts to 2,070 Euro, while the net monthly salary that the respondent must pay to the Applicant until the same is reinstated to his job position is 850 Euro per month, however, the Basic Court by the Judgment C. no. 1507/16 on 22 October 2018, in point II, the second paragraph (no no.), rejected in its entirety the Applicant's claim for payment of the unearned personal income and accessory claims from the employment relationship for the period from 01.09.2009 to 31.08.2012 and related to the same period, the Basic Court does not justify it by a single sentence.

38. The Applicant further emphasized that according to his remarks as a claimant, the financial expert issued a supplementary report on 14.07.2017 and 12.03.2018 regarding unearned personal income and accessory claims from the employment relationship calculating: (i) the two periods from 01.09.2009 to 31.08.2012 and the period from 01.09.2012 to 30.06.2017; (ii) then the difference of unearned personal income and accessory claims from the employment relationship from 01.07.2017 to 22.10.2018 when the main trial in the reopened proceedings was completed; and (iii) the difference of unearned personal income and accessory claims from the employment relationship for the future, after 22.10.2018 until the final payment pursuant to the provision of Article 144.2 of LCP in conjunction with the provision of Article 186 of LOR.
39. In this regard, the Applicant pointed out that the Basic Court and the Court of Appeals did not correctly and entirely establish the factual situation because they "enhanced" the financial reports of 14.07.2017 and 12.03.2018 and did not "enhance at all" the financial report of 14.08.2012. The Applicant also emphasized that by his submission of 15.03 2018 and the submission in written form in the closing statement of 22.10.2018, he specified the statement of claim for all legal bases for the realization of unearned personal income and accessory claims from the employment relationship, calculating the periods from 01.09.2009 to 31.08.2012, the period from 01.09.2012 to 30.06.2017, the period from 01.07.2017 to 22.10.2018 when the main trial in the reopened proceedings was completed and the period after 22.10.2018 until the final payment.
40. On 30 March 2022, the Supreme Court by the Judgment [Rev. no. 103/2022] rejected as unfounded the Applicant's revision filed against the Judgment of the Court of Appeals [Ac. no. 504/2019] of 13.10.2021.
41. The Supreme Court, inter alia, reasoned: **(i)** the Supreme Court considers that the legal position of the second instance court is acceptable when it decided to amend the first

instance court judgment by approving the amount of 20,839.00 Euro and rejecting the rest, doubling this amount; **(ii)** regarding the allegation for discrimination pursuant to Article 5 of the Law on Labour, the Supreme Court considers that in the present case there was no discrimination as defined in Article 3 of the Law on Protection from Discrimination because there was no difference, exception or direct or indirect limitation against the Applicant; **(iii)** the Supreme Court further added that discrimination is any difference, exception, limitation or preference on any grounds defined in Article 1 of the Law on Protection from Discrimination that are related to the characteristics of the person alleging discrimination, and in the present case by the challenged judgments of the lower instance courts the decision to terminate the employment relationship was found unlawful and the respondent was obliged to reinstate the Applicant to his job position; **(iv)** the Supreme Court assesses that the provision of Article 55, paragraph 2 of the Law Labour has been correctly applied because the Applicant was unlawfully dismissed from work and therefore reinstated to his job position by decision, however, the Applicant is only entitled to compensation for all his salaries and other benefits lost during his dismissal, but not to double them; **(c)** because during the time he was not at work he did he perform any work for the respondent, and the revision allegations in this regard were therefore rejected as unfounded.

Applicant's allegations

42. The Applicant alleges a violation of Articles 31 [Right to Fair and Impartial Trial], 32 [Right to Legal Remedies] and 54 [Judicial Protection of Rights] of the Constitution in conjunction with Articles 6 (Right to a fair trial) and 13 (Right to an effective remedy) of the ECHR.
43. The Applicant points out that Article 31 of the Constitution and Article 6 of the ECHR require, inter alia, that the court and the panel must be established by law, the panel should be independent and impartial, the parties should have an equal opportunity to present their case or the principle of equality of arms, access to the courts is effective and not only formal, the entire court proceedings is also conducted and administered fairly, and that the judgment or decision through which is decided on the rights and obligations should contain sufficient reasoning about the parties' allegations.
44. The Applicant alleges that it took more than 10 years for his case to be tried before the regular courts, which means that his right to a fair and impartial trial within a reasonable time has been violated, especially considering the nature of the dispute, i.e. the termination of the employment relationship.
45. The Applicant alleges that: *"The Court of Appeals, by amending the provision of the first instance judgment, acted in complete contradiction with the legal provisions by reducing by about 50% the compensation amount for unpaid salaries, the second instance court did not deal with the procedural and substantive violations which the first instance court has done to the detriment of the claimant, namely the Applicant, but it only dealt with the claimant's appellate allegations."*
46. The Applicant alleges that his case as a judicial process as a whole was not conducted correctly, including the way how the evidence of the litigants was collected, administered and decided upon.
47. The Applicant further alleges that: *"The Applicant requested, through the revision, that the Supreme Court finds that the Court of Appeals, as a second instance court, did not at all examine the legal provisions under Articles 53 and 71 of the Law on*

Labour, which are two facts based on evidence and the law, firstly the claimant was not notified in time of dismissal in accordance with Article 71.C

48. The Applicant also alleges that in his case, the principle of access guaranteed by Article 31 of the Constitution and Article 6 of the ECHR was violated because *“Failing to administer the evidence fairly, the Supreme Court when ruling according to Revision Rev. no. 103/2022 has only described entirely in a Copy Paste style the judgment of the Court of Appeals and no paragraph has it examined the Appellant’s allegations.”*
49. The Applicant states that *“On 15.09.2010, the employer unilaterally terminated his employment relationship - terminated the employment contract, notifying the employee that the employment relationship was terminated, as elaborated in the introductory part - procedural background. The Appellant considers that the employer terminated the contract in complete violation of the legal procedures, thus seriously violating the Appellant’s rights, as according to the Law Labour and other collective agreements applicable in the Republic of Kosovo, the procedures for terminating the employment contract must be applied precisely, and we consider that in this particular case, the employer failed to apply any of the legal provisions of the applicable laws in the Republic of Kosovo. This fact has also been confirmed by the Basic Court of Prishtina based on Judgment C. no. 2569/1 of 14.12.2012.”*
50. The Applicant further *“...considers that the first instance court, the second instance court and the Supreme Court of Kosovo have not correctly established the factual situation - his position, since his employment contract was terminated unlawful on 15.09.2010, while he was reinstated to his job position on 03.10.2016. In view of this action by the employer - ProCredit Bank, the same was supposed to be obliged by the Court to compensate the claimant for the monthly salaries from 15.09.2010 to 03.10.2016, with legal interest, as we consider that upon the reinstatement of the employee to his job position, the fact that the same was dismissed in violation of the legal provisions has been proven, which is an indisputable fact, since upon the reinstatement of the employee to his job position, the legal conditions have been met for the claimant to be compensated for all his salaries in full for the period wherein he was subjected to court proceedings due to the unlawful dismissal by the employer - the respondent: ProCredit Bank. The claimant considers that the competent Courts have committed flagrant violations of his rights guaranteed by the Constitution.*
51. Regarding compensation for unpaid salaries, the Applicant alleges: *“Pro Credit Bank caused significant damages to him through its unlawful actions, while based on the Judgment of the Court of Appeals, the Applicant has not been compensated to the amount he would have earned if he had been employed since the same person has not received any salary for about 72 months, and this regard it appears that the Court has approved only half of the salary, i.e. about 277 euro per month, although it was necessary to compensate the salary which was in the contract as well as the increases that were made for other employees in the same position with the same qualification.”*
52. Finally, the Applicant requests the Court to find as follows: (i) to declare the Referral admissible; (ii) to hold that there was a violation of Articles 31, 32 and 54 of the Constitution in conjunction with Articles 6 and 13 of the ECHR; (iii) to declare the Judgment Rev. no. 103/2022 of the Supreme Court of 30 March 2022 invalid; (iv) to decide and impose any other legal measure that the Constitutional Court considers to be based on the Constitution and the Law deemed reasonable in the case at stake.

Clarifications given by the Applicant and the representative of Pro Credit Bank at the public hearing

53. At the public hearing of 25 April 2023, the Applicant clarified: (i) from 15.12.2010 to 31 August 2012, namely his salaries and accessory rights from the employment relationship were not paid and compensated for eighteen (18) months due to his unlawful dismissal; (ii) while for the period 2012-2016, the applicant was deducted 7,000 Euro from the salary compensation and accessory rights from the employment relationship due to the latter's engagement as a board member in the regional company "Ambienti"; (iii) the Applicant emphasized that there was no conflict of interest when in 2016 he was reinstated to his job position with ProCredit Bank while continuing to be a board member at the regional company "Ambienti"; (iv) the Applicant pointed out that the amount of salary that ProCredit Bank should compensate him is 850 Euro because he received a good evaluation during the work period; (v) the Applicant emphasized that the amount of the salary of 600 Euro was only for the probation period, and even if his salary was calculated at 600 Euro, he was still compensated by only half of the amount due to him; (vi) according to the Applicant, it is quite easy to calculate the amount of 600 Euro in relation to the 72 months that he was unemployed and not compensated for unlawful dismissal; (vii) the Applicant pointed out that the Basic Court recognized his right based on the legal provision under Article 80, paragraph 1 and point 1 and point 2 of the Law Labour regarding the doubling of personal income, however, this right was not recognized by subsequent judgments of regular courts; and (viii) that the termination of the contract between the Applicant and ProCredit Bank in 2021 was done unilaterally because the latter exerted "psychological pressure" on the Applicant.
54. The representative of Pro Credit Bank explained: (i) pursuant to Article 80, paragraph 1, subparagraphs 1.1 and 1.2 of the Law on Labour, the courts alternatively decide either on reinstatement and payment of unpaid salaries or only double payment of unpaid salaries; (ii) during the assessment of the amount of the Applicant's compensation, the regular courts have compared the Applicant's salary with the salary of three other ProCredit Bank employees, instead of taking only the Applicant's salary as a basis; (iii) comparing the Applicant's salary with the salaries of other employees is in contradiction with the protection of the latter's personal data; (iv) the Applicant was "deducted" from the basic salary of 600 Euro for the time he was engaged in the regional company "Ambienti"; (v) in this context, receiving the salary from ProCredit Bank and from the regional company "Ambienti" at the same time is not allowed by law and may cause "problems" for the Applicant with TAK and not only with his employer ProCredit Bank; (vi) the Applicant's right to salary has never been violated because even when he was reinstated to his position, he continued to earn the salary, the amount of the salary was disputed, which was decided by the regular courts relying on the expertise of financial expert; (vii) this is not about a violation of any provision of the Law on Labour regarding the issue of "deduction" of salaries and the calculation of the amount, because the calculation of the amount was made in accordance with the salary that the Applicant would have earned; (viii) the courts have assessed whether the Applicant is entitled to compensation of salaries or double them pursuant to Article 80, paragraph 1, subparagraphs 1.1 and 1.2 of the Law on Labour; and (ix) the regular courts correctly interpreted the relevant provision of the Law on Labour when they did not grant doubling of the salary for the applicant.

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.”*

Article 32
[Right to Legal Remedies]

“Every person has the right to pursue legal remedies against judicial and administrative decisions which infringe on his/her rights or interests, in the manner provided by law.”

Article 53
[Interpretation of Human Rights Provisions]

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

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.”
[...]

Article 13
(Right to effective remedy)

“Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

LAW NO. 03/L-212 ON LABOUR

Article 5
Prohibition of all Forms of Discrimination

1. Discrimination is prohibited in employment and occupation in respect of recruitment, training, promotion of employment, terms and conditions of employment, disciplinary measures, cancellation of the contract of employment

or other matters arising out of the employment relationship and regulated by Law and other Laws into force.

2. Direct or indirect discrimination of persons with disabilities is prohibited during employment, promotion and capacity building, if that job may be performed adequately by a person with disabilities.

3. It is not considered discrimination, any distinction, elimination or giving priority, relation to any designated place of work, based on certain criteria required for that job.

4. In the case of hiring new employees, employer is obliged to create equal opportunities and criteria to both male and female applicants.

5. Provisions of the Law No. 2004/3 against Discrimination shall be directly applicable with regards to employment relationship concluded between the employee and employer.

Article 53

Prohibition on Termination of Contract

During pregnancy, maternity leave and absence from work due to special care for the child, the employer shall not terminate the contract with the employee and/or make a transfer to another post, except in cases of termination of the contract according to Article 76 of this Law.

Article 55

Salary, Salary Compensation and other Income

1. An employee is entitled to a salary defined in compliance with this Law, Collective Contract, Employer's Internal Act and Employment Contract.

2. The right to salary, overtime, salary compensation and other income, shall be exercised by the employee on the basis of the agreement reached with the employer for the work performed and time spent at work as defined in the employment contract.

3. The employer shall pay men and women an equal remuneration for work of equal value covering base salary and any other allowances.

4. The employer shall issue a salary statement for each salary payment and any other remuneration paid to the employees. Salary payments can be made through bank transfers or in cash payments for which the employer shall keep a register.

5. Salaries in Kosovo shall be paid in the official currency Euro (€).

6. Salary shall be executed in terms defined in the Collective Contract, Employer's Internal Act or Employment Contract, at least once per month.

Article 71

Notification period for termination of employment contract

1. The employer may terminate an employment contract for an indefinite period according to Article 70 of this Law with the following periods of notification:

- 1.1. *from six (6) months - 2 years of employment, thirty (30) calendar days;*
- 1.2. *from two (2)- ten (10) years of employment: forty-five (45) calendar days;*
- 1.3. *above ten (10) years of employment: sixty (60) calendar days.*

2. The employer may terminate an employment contract for a fixed term with thirty (30) calendar days notice. The employer who does not intend to renew a fixed term contract must inform the employee at least thirty (30) days before the expiry of the contract. Failure to do so entitles the employee to an extension of employment with full pay for thirty (30) calendar days.

Article 72 **Procedure Prior to the Termination of the Contract**

1. *The decision to terminate an employment contract shall be issued in writing and shall include the grounds for the dismissal*
2. *Decision, under paragraph 1 of this Article, shall be final on the day of submission to the employee.*
3. *Employer is obliged to execute the salary and other allowances up to day of the termination of employment relationship.*
4. *The employer may deny the employee access to the premises of the enterprises during the period of notification, namely prior to terminating the employment contract.*

Article 80 **Court decision on Termination of Employment Contract**

1. *If the court finds that the employer's cancellation of the employment contract is unlawful according to the provisions of this Law, the collective contract or the employment contract, it shall order the employer to do one of the following:*
 - 1.1. *to pay the employee compensation, additional to any allowance and other amounts to which the employee may be entitled under this Law, the employment contract, a collective contracts or the Internal Act, in such amount as the court considers just and equitable, but which shall not be less than twice the value of any severance payment to which the employee was entitled at the time of dismissal; or*
 - 1.2. *in cases where the dismissal is deemed unlawful under Article 5 of this Law, the court may reinstate the employee in his or her previous employment and orders compensation of all salaries and other benefits lost during the time of unlawful dismissal from work.*
2. *The employer is obliged, that within the defined term, to implement the decision of competent court.*

Assessment of the admissibility of the Referral

55. The Court first examines whether the Applicant has fulfilled the admissibility requirement, established in the Constitution and further specified in the Law and the Rules of Procedure.

56. 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.

57. The Court also examines whether the Applicant fulfilled the admissibility requirements, as prescribed in the Law. In this respect, the Court refers to Article 47 [Individual Requests] and Article 48 [Accuracy of the Referral] and Article 49 [Deadlines] of the Law, which stipulate:

*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...”

58. In assessing the fulfilment of the admissibility requirements as referred above, the Court notes that the Applicant specified that he challenges an act of a public authority, namely the Judgment [Rev. no. 103/2022] of the Supreme Court of 30 March 2022, after having exhausted all legal remedies established by law. The Applicant also clarified the rights and freedoms he alleges to have been violated, in accordance with the requirements of Article 48 of the Law, and submitted the Referral in accordance with the deadline set in Article 49 of the Law.

59. The Court also considers that the Referral cannot be considered clearly unfounded on constitutional grounds, as provided by paragraph (2) of Rule 39 of the Rules of Procedures, and consequently, the Referral is declared admissible for review based on the merits. (see also the ECtHR case, *Alimuçaj vs. Albania*, no. 20134/05, Judgment of 9 July 2012, paragraph 144, and see Court cases [KI75/21](#), with Applicant “*Abrazen LLC*”, “*Energy Development Group Kosova LLC*”, “*Alsi&Co. Kosovë LLC*” and

“Building Construction LLC”, Judgment of 19 January 2022, paragraph 64; [KI27/20](#), Applicant, *Lëvizja VETËVENDOSJE!*, Judgment of 22 July 2020, paragraph 43).

Merits of the Referral

60. The Court recalls that the Applicant alleges that his fundamental rights and freedoms guaranteed under Articles 31 [Right to Fair and Impartial Trial], 32 [Right to Legal Remedies] and 54 [Judicial Protection of Rights] of the Constitution in conjunction with Articles 6 (Right to a fair trial) and 13 (Right to an effective remedy) of the ECHR have been violated.
61. The Court underlines that the case in substance is related to the dismissal of the Applicant from the position of Loan Officer by the respondent ProCredit Bank. The Applicant requested to have the notification/decision of the respondent ProCredit Bank annulled as unlawful and oblige the same to reinstate the Applicant to his previous job position by compensating his unpaid personal income and other accessory claims he is entitled to by law. The Municipal Court of Prishtina granted as founded the Applicant’s statement of claim and annulled as unlawful the notification of the respondent ProCredit Bank regarding the termination of the employment contract and ordered the reinstatement of the Applicant to his previous position by compensating him the monthly unpaid personal income and other accessory claims he is entitled to by law. Following an appeal filed by respondent ProCredit Bank, the Court of Appeals partially granted the appeal of the respondent ProCredit Bank and ordered to have the case remanded for retrial and reconsideration. The Basic Court, in the retrial proceedings, granted the Applicant’s statement of claim for the compensation of a part of the unpaid personal income and the accessory claims, while it rejected the Applicant’s statement of claim for the rest of the unpaid personal income and the accessory claims. Following the appeals by the Applicant and the respondent ProCredit Bank, the Court of Appeals rejected as unfounded the Applicant’s appeal in the part referring to the interest and costs of the proceedings and the judgment of the Basic Court in the part referring to the personal income compensation and other accessory claims from the employment relationship. In the meantime, the Applicant submitted a revision to the Supreme Court alleging violation of international standards, essential violation of the provisions of the contested procedure, erroneous application of substantive law, motioning the court to quash the first and second instance court judgments and remand the case for retrial. The Supreme Court rendered a Judgment rejecting as unfounded the Applicant’s revision filed against the judgments of the Court of Appeals and the Basic Court.
62. The Court notes that the Applicant made detailed allegations before the regular courts related to: (i) proper compensation of personal income and other accessory claims due to unlawful dismissal; (ii) unlawful dismissal and the right to be reinstated to his previous job position; (iii) allegation of violation of the principle of equality of arms and failure to resolve his case within a reasonable time.
63. Based on the nature and issues raised under this case, the Court considers that the Applicant’s allegations should be assessed in the light of a reasoned decision as guaranteed by 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. The Court also considers that in the circumstances of the present case, the fair application of the procedural aspect that has to do with the right to a reasoned decision may affect the material aspect of this Referral, so that it would trigger a different epilogue in favour of the Applicant.

64. During the assessment of the merits of the case under review, the Court will apply the standards of the ECtHR case law, which, based on Article 53 [Interpretation of Human Rights Provisions] of the Constitution, is obliged to ensure that the fundamental rights and freedoms guaranteed under the Constitution are interpreted in compliance with the ECtHR judicial decisions.

General principles regarding the right to a reasoned decision

65. The guarantees embodied in Article 6, paragraph 1 of the ECHR, also include the obligation of courts to present sufficient reasoning for their decisions. (see the ECtHR case, [H. v. Belgium](#), no. 8950/80, Judgment of 30 May 1987, paragraph 53). A reasoned court decision shows the parties that their case has really been considered.
66. Even though the domestic court has a certain freedom of assessment regarding the selection of arguments and the decision on the admissibility of evidence, it is obliged to justify its actions by giving reasons for all its decisions (see the ECtHR cases: [Suominen v. Finland](#), no. 37801/97, Judgment of 24 July 2003, paragraph 36; and case [Carmel Saliba v. Malta](#), no. 24221/13, Judgment of 24 April 2017, paragraph 73).
67. The lower instance court or state authority, on the other hand, must give such reasons and justifications to enable the parties to effectively use any existing right of appeal (see the ECtHR case [Hirvisaari v. Finland](#), no. 49684/99 of 25 December 2001, paragraph 30).
68. Article 6, paragraph 1 obliges the courts to give reasons for their decisions, but this does not mean that a detailed response is required for each argument (see the ECtHR cases, [Van de Hurk v. The Netherlands](#), no. 16034/90, Judgment of 19 April 1994, paragraph 61; [Garcia Ruiz v. Spain](#), no. 30544/96, Judgment of 29 January 1999, paragraph 26; [Perez v. France](#), no. 47287/99, Judgment of 12 February 2004, paragraph 81).
69. Whether the Court is obliged to give reasons depends on the nature of the decision taken by the court, and this can only be decided in the light of the circumstances of the case concerned, it is necessary to take into account, among other things, the different types of submissions that a party can submit to the court, as well as the differences that exist between the legal systems of the countries in relation to legal provisions, customary rules, legal positions and the submission and drafting of judgments (see the ECtHR cases [Ruiz Toria v. Spain](#), no. 18390/91, Judgment of 9 December 1994, paragraph 29; [Hiro Balani v. Spain](#), no. 18064/91, Judgment of 9 December 1994, paragraph 27).
70. However, if a party's submission is decisive for the outcome of the proceedings, it requires to be responded to specifically and without delay (see the ECtHR case, [Ruiz Toria v. Spain](#), cited above, paragraph 30; Judgment [Hiro Balani v. Spain](#), cited above, paragraph 28).
71. Therefore, domestic courts are obliged to:
- (a) examine the main arguments of the parties (see cases [Buzescu v. Romania](#), no. 61302/00, Judgment of 24 August 2005, paragraph 67; [Donadze v. Georgia](#), no. 74644/01, Judgment of 07 June 2006, paragraph 35);
 - (b) examine strictly and with utmost diligence the requirements regarding the rights and freedoms guaranteed by the Constitution, the ECHR and its Protocols (see ECtHR cases: [Fabris v. France](#), cited above, paragraph 72;

[Wagner and JMWL v. Luxembourg](#), no. 76240/01, Judgment of 28 June 2007, paragraph 96);

72. Article 6, paragraph 1 does not require the Supreme Court to give more detailed reasoning when it simply applies a certain legal provision regarding the legal basis for rejecting an appeal because such an appeal has no prospect of success (see ECtHR case, [Burg and others v. France](#), no. 34763/02; Decision of 28 January 2003; [Gorou v. Greece](#) (no. 2), no. 12686/03, Decision of 20 March 2009, paragraph 41).
73. Similarly, in a case involving a request for allowing an appeal to be filed, which is a prerequisite for proceedings before a higher instance court, as well as for a possible decision, Article 6, paragraph 1 cannot be interpreted in the sense that it orders a detailed justification of the decision on rejecting the request for filing the appeal (see the ECtHR cases [Kukkonen v. Finland](#) (no. 2), no. 47628/06, Judgment of 13 April 2009, paragraph 24; [Bufferne v. France](#), no. 54367/00; Decision of 26 February 2002),
74. In addition, when rejecting an appeal, the Court of Appeals may, in principle, simply accept the reasoning of the decision given by the lower instance court (see the ECtHR case [Garcia Ruiz v. Spain](#), cited above, paragraph 26; see, contrary to this, [Tatishvili v. Russia](#), no. 1509/02, Judgment of 09 July 2007, paragraph 62); However, the concept of a fair trial implies that a domestic court that has given a narrow explanation for its decisions, either by repeating the reasoning previously given by a lower instance court or otherwise, was in fact dealing with important issues within its jurisdiction, meaning that it did not simply and without additional effort grant the conclusions reached by the lower instance court (see case [Helle v. Finland](#), no. (157/1996/776/977), Judgment of 19 December 1997, paragraph 60). This requirement is all the more important if the party to the dispute has not had the opportunity to present its arguments orally in the proceedings before the local court.
75. However, the Courts of Appeals (in the second instance) having jurisdiction to reject unfounded appeals and to resolve factual and legal considerations in the contested procedure are obliged to justify why they rejected to decide on the appeal (see the ECtHR case [Hansen v. Norway](#), no. 15319/09, Judgment of 2 January 2015, paragraphs 77-83);
76. In addition, the ECtHR did not determine that the right was violated in a case in which a specific clarification was not provided regarding a statement referring to an irrelevant aspect of the case, namely the lack of a signature and seal, which is an error of a more formal than material nature and such error was immediately corrected (see the ECtHR case [Mugoša v. Montenegro](#), no. 76522/12, Judgment of 21 September 2016, paragraph 63);

Application of the general principles in the circumstances of the present case

77. The Court reiterates that it is not its duty to replace regular courts, which are in a better position to assess the evidence at their disposal, establish the facts and interpret local law (see, for example, the ECtHR case [Khamidov v. Russia](#), no. 72118/01, Judgment of 15 November 2007, paragraph 170); the Court emphasizes that when it comes to establishing the facts and interpreting the law, it is “sensitive” of the subsidiary nature of its role and that it should be careful in assuming the role of the court of fact, except when such a thing is made unavoidable by the circumstances of the case (see, for example, the ECtHR case [Bărbulescu v. Romania](#), no. 61496/08, Judgment of 2017, paragraph 129).

78. The need for the Court to take on this role in this particular case is also reinforced by the principle that Article 31 of the Constitution and Article 6 (1) of the ECHR, as well as the Constitution and the ECHR as a whole, must be interpreted in such a way as to guarantee rights that are practical and effective and not theoretical or false (see, inter alia, the ECtHR case [Vistiņš and Perepjolkins v. Latvia](#), no. 71243/01, Judgment of 25 October 2012, paragraph 114);
79. The Court emphasizes that in its case law in many cases it has established that the matters of facts and the matters of interpretation and application of the law are within the scope of regular courts and other public authorities pursuant to Article 113.7 of the Constitution and as such, they are matters of legality, unless and as long as such matters result in the 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). Regardless of the assessment scope of the regular courts, the final decision regarding compliance with the requirements of the Constitution and the ECHR remains with the Constitutional Court (see the provisions of Articles 4 paragraph 6 [Form of Government and Separation of Power] and 112, paragraph 1 [General Principles] of the Constitution; and also, see, *mutatis mutandis*, the ECtHR case [Konstantin Markin v. Russia](#), no. 30078/06, Judgment of 22 March 2012, paragraph 126);
80. The Court notes that based on the ECtHR consolidated jurisprudence, there can be no justification for Article 6 (1) of the ECHR to be interpreted in a limited way (see the ECtHR case *Moreira de Azevedo v. Portugal*, no. 11296/84, Judgment of 23 October 1990, paragraph 66); the criteria of a fair and impartial trial are valid for the proceedings as a whole (see the ECtHR case, [Stran Greek Refineries and Stratis Andreadis v. Greece](#), no. 13427/87, Judgment of 9 December 1994, paragraph 49). Consequently, the proceedings are examined in their entirety in order to verify whether they have been conducted in accordance with the criteria of a fair and impartial trial (see the ECtHR case [De Tommaso v. Italy](#), no. 43395/09, Judgment of 23 February 2017, paragraph 172); the lack of a fair and impartial trial may result from a number of factors of different importance (see the ECtHR case [Carmel Saliba v Malta](#), no. 24221/13, Judgment of 29 November 2016, paragraph 79, related to the criterion for giving reasons).

The res judicata aspect of the unlawful dismissal and reinstatement to the job position of the Applicant

81. As a preliminary matter of this case, the Court assesses that annulling and declaring unlawful the notification of the respondent ProCredit Bank of 15 December 2010 on the dismissal of the Applicant and his reinstatement to the previous job position with ProCredit Bank are adjudicated matters or *res judicata* upheld by Judgment [C. no. 2569/11] of the Municipal Court of Peja of 14 December 2012 and Judgment [Ac. No. 1955/13] of the Court of Appeals of 27 June 2016.
82. In the circumstances of the present case, the Court will assess whether the regular courts have reasoned in accordance with the standards defined under Article 31 of the Constitution in conjunction with Article 6 (1) of the ECHR the essential aspects of the Applicant's case related to: **(i)** the period from 15 December 2010 (the day of the Applicant's dismissal) to 31 August 2012 regarding the realization of unpaid personal income and other accessory claims from the employment relationship; **(ii)** the period from 1 September 2012 to 30 September 2016, during which period the Applicant earned personal income in the regional company "Ambienti" sh.a., until he was reinstated to his previous job position with the respondent ProCredit Bank.

The disputed period from 15 December 2010 to 31 August 2012

83. Regarding the period from 15 December 2010 to 31 August 2012, the Court notes that the Municipal Court of Peja (Judgment C. no. 2569/11) awarded the Applicant the unearned personal income and the other accessory claims from the employment relationship. However, in the further stages of proceedings conducted before all other higher instance courts, the period from 15 December 2010 to 31 August 2012, was not addressed at all.
84. In this regard, the Court assesses that the complete disregard by the regular courts of the period from 15 December 2010 to 31 August 2012 regarding unearned personal income and other accessory claims from the employment relationship, is an important aspect of the Applicant's claim. The right to a reasoned decision requires that the essential matters of a case are seriously examined by the regular courts and not have them completely neglected, as occurred in the present case. Furthermore, knowing that the Applicant requested continuously before all court instances, among other things, the assessment of the period from 15 December 2010 to 31 August 2012.
85. Consequently, the Court finds that the complete disregard by the regular courts of the period from 15 December 2010 to 31 August 2012 regarding unearned personal income and other accessory claims from the Applicant's employment relationship, is in contradiction with the procedural guarantees from paragraph 1 of Article 31 of the Constitution in conjunction with paragraph 1 of Article 6 of the ECHR.

The disputed period from 31 August 2012 to 30 September 2016

86. The Court reiterates that the period from 31 August 2012 to 30 September 2016 is related to the Applicant's employment with the regional company "Ambienti" sh.a. and the income he earned there. The Court notes that the Applicant was - effectively - reinstated to his previous position as Loan Officer with the respondent ProCredit Bank on 3 October 2016.
87. The Court therefore considers that the period from 31 August 2012 to 30 September 2016 is an essential aspect of the Applicant's claim that should have been seriously examined by the regular courts because it is related to the correct calculation of personal income and other accessory claims of the Applicant being engaged in the regional company "Ambienti" sh.a., while on the one hand, being unable to earn personal income and other accessory claims until the Applicant was effectively reinstated to his previous job position with the respondent ProCredit Bank on 3 October 2016.
88. The Court notes that the Basic Court (Judgment C. no. 1507/16 of 22.10.2018) regarding the Applicant's employment with the regional company "Ambienti" sh.a., during the disputed period, stipulated: *"When deciding on the statement of claim, the Court also took as a basis the income that the claimant previously earned in public institutions, specifically in the regional waste management company "Ambienti" sh.a., where the income earned from this company for the disputed period is reduced to income on behalf of salaries for the claimant."*
89. The Court first assesses that it is legitimate and legally grounded that the Applicant's unearned salaries during the disputed period (31 August 2012 to 30 September 2016) are compared and reduced in proportion to the salaries the Applicant earned during his employment with the regional company "Ambienti" sh.a. For the Court, this case in itself is not disputable and does not raise issues of fundamental human rights and freedoms. However, it is also unacceptable for the Court the way the regular courts

have addressed this case, which due to the way of reasoning or rather its lack of reasoning - in fact and in truth - raises matters of fundamental individual rights and freedoms.

90. In the light of the foregoing, the Court assesses that the regular courts failed to establish: (i) what was the salary that the Applicant earned with the regional company "Ambienti" sh.a.; (ii) what was the exact difference between the salaries that the Applicant earned during the disputed period with the regional company "Ambienti" sh.a., compared to the unearned personal income with the respondent ProCredit Bank; (iii) what was the exact reduction during the disputed period, respectively during the engagement of the Applicant in the regional company "Ambienti" sh.a. against unearned income with the respondent ProCredit Bank.
91. The Court assesses that the explanation given by the regular courts shows an obvious lack of accurate and understandable reduction of the Applicant's unearned personal income with the respondent ProCredit Bank in comparison to the salaries the same earned with the regional company "Ambienti" sh.a, related to the disputed period from 31 August 2012 to 30 September 2016.
92. Consequently, the Court assesses that the deficit reasoning given by the regular courts regarding the reduction of the amount of the Applicant's unearned salaries during the disputed period (from 31 August 2012 to 30 September 2016) is in contradiction with the right to a reasoned decision guaranteed by Article 31 of the Constitution in conjunction with Article 6 (1) of the ECHR.
93. Regarding the allegations for an impartial court established by law, a trial within a reasonable time and fair administration of justice as well as Articles 32 and 54 of the Constitution, the Court assesses that these allegations do not raise any new matters that have not been examined previously and that the same have been consumed with a finding of a violation of the right to a reasoned decision as guaranteed by Article 31 of the Constitution in conjunction with Article 6 (1) of the ECHR (see the Court case [KI193/18](#), Applicant *Agron Vula*, Judgment of 22 April 2020, paragraph 145 and the references mentioned therein).

Conclusion for the entire dispute period from 15 December 2010 to 30 September 2016

94. The Court assesses that the explanation given by the regular courts shows a clear lack of an accurate and understandable explanation of the amount of Applicant's unearned personal income with the respondent ProCredit Bank for the entire disputed period from 15 December 2010, when the Applicant's employment relationship was terminated unlawfully, to 30 September 2016, when the Applicant was reinstated to his job position with the respondent ProCredit Bank by a court decision. Also, the regular courts have not justified how much the reduced amounts were, namely the realization of the Applicant's income in the regional company "Ambienti" sh.a.
95. In the light of the foregoing, the Court concludes that the regular courts failed to explain by a single word why the Applicant is not entitled to unearned personal income with the respondent ProCredit Bank for the disputed period from 15 December 2010 to 31 August 2012, and why the Applicant is entitled to compensation for unpaid personal income from 31 August 2012 to 30 September 2016, even though it was indisputably proven that the Applicant's employment relationship was unlawfully terminated on 15 December 2010, which became a *res judicata* matter as upheld by the Judgment [C. no. 2569/11] of the Municipal Court of Peja of 14 December 2012 and the Judgment [Ac. no. 1955/13] of the Court of Appeals of 27 April 2016.

Regarding other Applicant's allegations

96. Regarding the other Applicant's allegations for accessory claims from the employment relationship related to double compensation of unearned personal income, pension trust deduction, personal income tax, salary discrimination compared to other colleagues, the Court notes that the Court of Appeals (Judgment Ac. no. 504/19, dated 13.10.2021) reasoned: **(i)** the Court of Appeals points out that the first instance court erroneously applied the provisions of Article 80.1.1 and 1.2 of the Law on Labour, because such provisions cannot be applied cumulatively but alternatively and depending on the circumstances only one of the paragraphs of Article 80 of the Law on Labour applies; **(ii)** because according to the Court of Appeals, the first instance court should have either ordered the double compensation of salaries due during the time of dismissal, or ordered the reinstatement of the Applicant to his position and the compensation of all salaries and benefits lost during the time of unlawful dismissal; **(iii)** logically and legally, the Applicant has been damaged only for those salaries that he would have been able to earn if his employment relationship had not been terminated; and that **(iv)** the regular courts in general in the case of the Applicant have examined the accessory claims from the employment relationship related to pension trust deduction, personal income tax, salary discrimination compared to other colleagues.
97. Regarding the Applicant's allegation of salary discrimination compared to other colleagues, the Court notes that the Supreme Court (Judgment Rev. no. 103/2022, of 30.03/2022) reasoned: **(i)** the Supreme Court states that discrimination is any difference, exception, limitation or preference on any basis defined under Article 1 of the Law on Protection from Discrimination that relates to the characteristics of the claimant of discrimination; **(ii)** whereas in the present case, by the challenged judgments of the lower instance courts, the decision to terminate the employment relationship was declared unlawful and the respondent was obliged to reinstate the Applicant to his position.
98. In the light of the foregoing, the Court assesses that the Applicant's allegations for accessory claims from the employment relationship related to double compensation, discrimination, pension trust deduction and personal income tax, are clearly unfounded, on constitutional grounds, and should be declared inadmissible in accordance with Article 113 (7) of the Constitution, Articles 47 and 48 of the Law and Rule 39 (2) of the Rules of Procedure (see eligibility, ECtHR case, [Toziczka v. Poland](#), no. 29995/08, Judgment of 24 July 2012, paragraph 48 -49);
99. The Court also considers that the allegation for violation of Article 54 of the Constitution and Article 13 of the ECHR cannot be the subject to constitutional review, because it does not raise any new matter that has not been examined in light of Article 31 of the Constitution in conjunction with Article 6 (1) of the ECHR (see mutatis mutandis Court cases no. [KI65/15](#), Applicants *Tatjana Davila, Ljubiša Marić, Zorica Kršenković, Zlatoj Jevtić*, Judgment of 14 September 2016; and no. [KI193/18](#), Applicant *Agron Vula*, Judgment of 22 April 2020).

Conclusion

100. The Court concludes that in the present case, it found a violation of the right to a reasoned decision as one of the components of the general right to a fair and impartial trial that guarantees procedural justice embodied in paragraph 1 of Article 31 of the Constitution and in paragraph 1 of Article 6 of the ECHR.

101. The Court reiterates that the right to a reasoned decision requires that the essential allegations raised by the Applicant before the regular courts must be responded to appropriately, especially if they relate to the decisive allegations that in the present case are referred to (i) the disputed period from 15 December 2010 to 31 August 2012 regarding unearned personal income and other accessory claims from the Applicant's employment relationship; and (ii) the disputed period from 31 August 2012 to 30 September 2016, which is related to the correct calculation of the reduction of Applicant's personal income and other accessory claims for the time he was engaged in the regional company "Ambienti" sh.a.
102. In the light of the foregoing, the Court imposes an obligation on the regular courts - in the retrial of this case - to find and confer in a precise and unambiguous manner: (i) the amount of compensation of the Applicant's unearned personal income for the disputed period from 15 December 2010 to 31 August 2012; (ii) the amount of compensation of the Applicant's unearned personal income for the disputed period 31 August 2012 to 30 September 2016, in accordance with the principle of effectiveness of basic human rights and freedoms as guaranteed by paragraph 1 of Article 31 of the Constitution in conjunction with paragraph 1 of Article 6 of the ECHR.
103. The Court also reiterates that annulling and declaring unlawful the notification of the respondent ProCredit Bank of 15 December 2010 on the dismissal of the Applicant and his reinstatement to the previous job position with ProCredit Bank are adjudicated matters or *res judicata* upheld by Judgment [C. no. 2569/11] of the Municipal Court of Peja of 14 December 2012 and Judgment [Ac. no. 1955/13] of the Court of Appeals of 27 June 2016. Consequently, the Court assesses that these matters cannot be the subject of repeated review by the regular courts during the retrial ordered by this Judgment.

FOR THESE REASONS

The Constitutional Court, pursuant to Articles 113 (1) and (7) and 116 of the Constitution, Articles 20 and 47 of the Law and Rule 59 (1) of the Rules of Procedure, in the session held on 7 June 2023, unanimously,

DECIDES

- I. TO DECLARE the Referral admissible;
- II. TO HOLD that there has been a violation of paragraph 1 of Article 31 [Right to Fair and Impartial Trial] of the Constitution and paragraph 1 of Article 6 [Right to a fair trial] of the European Convention on Human Rights;
- III. TO HOLD that the Judgment [Rev. no. 1955/13] of the Court of Appeals of 27 January 2016, regarding the annulment of the notification of 15 December 2010 on the termination of the employment relationship regarding the reinstatement to the previous position is *res judicata*;
- IV. The DECLARE the Judgment [Rev. no. 103/2022] of the Supreme Court of 30 March 2022, the Judgment [Ac. no. 504/19] of the Court of Appeals of 13 October 2021 and the Judgment [C. no. 1507/16] of the Basic Court of 22 October 2018, invalid;
- V. TO REMAND the case for reconsideration to the Basic Court of Prishtina, in accordance with the Judgment of this Court;

- VI. TO ORDER the Basic Court of Prishtina to notify the Court, in accordance with Rule 66 (5) of the Rules of Procedure, by 18 August 2023, of the measures taken to implement the Judgment of this Court;
- VII. TO NOTIFY this Judgment to the parties;
- VIII. TO HOLD that this Judgment is effective on the date of its publication in the Official Gazette in accordance with Article 20 (5) of the Law.

Judge Rapporteur

President of the Constitutional Court

Radomir Laban

Gresa Caka-Nimani

This translation is unofficial and serves for informational purposes only.