



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

Prishtina, on 19 September 2024
Ref. no.: AGJ 2537/24

This translation is unofficial and serves for informational purposes only.

JUDGMENT

in

case no. KI103/24

Applicant

Sylejman Zeneli

**Constitutional review of Judgment [Rev. no. 485/2022] of 5 January 2023 of the
Supreme Court of Kosovo**

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

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

Applicant

1. The Referral is submitted by Sylejman Zeneli, residing in Prishtina (hereinafter: the Applicant), represented by Rexhep Potera, a lawyer in the Municipality of Prishtina.

Challenged decision

2. The Applicant challenges Judgment [Rev. no. 485/2022] of 5 January 2023 of the Supreme Court of Kosovo (hereinafter: the Supreme Court), in conjunction with Judgment [AC. no. 4626/2020] of 16 September 2022 of the Court of Appeals and Judgment [C. no. 312/2019] of 20 January 2020 of the Basic Court in Prishtina-Branch in Lipjan (hereinafter: the Basic Court).
3. The contested Judgment was served on the applicant on 29 December 2023.

Subject matter

4. The subject matter is the constitutional review of the contested Judgment, whereby it is claimed that the applicant's fundamental human rights and freedoms guaranteed by articles 7 [Values], 24 [Equality Before the Law] 31 [Right to Fair and Impartial Trial], 54 [Judicial Protection of Rights] and 55 [Limitations on Fundamental Rights and Freedoms] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), in conjunction with paragraph 1 of article 6 (Right to a fair trial) of the European Convention on Human Rights (hereinafter: the ECHR) have been violated.

Legal basis

5. The Referral is based on 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 25 (Filing of Referrals and Replies) of the Rules of Procedure No. 01/2023 of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

Proceedings before the Constitutional Court

6. On 26 April 2024, the applicant submitted the referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
7. On 29 April 2024, the applicant completed his referral with additional documents.
8. On 7 May 2024, the President of the Court by Decision [GJR. KI103/24] and Decision [KSH. KI103/24] appointed Judge Jeton Bytyqi, as Judge Rapporteur and the Review Panel composed of Judges: Radomir Laban (Presiding), Remzije Istrefi-Peci and Nexhmi Rexhepi (members).
9. On 15 May 2024, the Court notified the applicant about the registration of the referral and sent a copy of the referral to the Supreme Court. On the same date, the Court requested the Basic Court to submit acknowledgment of receipt indicating the date when the applicant was served with the contested Judgment of the Supreme Court.
10. On 30 May 2024, the Basic Court submitted the acknowledgment of receipt requested by letter of 15 May 2024.
11. On 14 June 2024, the Court notified Limak Kosovo International Airport "Adem Jashari" J.S.C (hereinafter: "Limak Kosova") about the registration of the referral, notifying the latter that they can submit their comments regarding the referral within 15 (fifteen) days. The Court did not receive any comments from "Limak Kosova", within the specified period.

12. On 11 September 2024, the Review Panel considered the report of the Judge Rapporteur and unanimously recommended to the Court the admissibility of the referral. On the same day, the full Court after deliberation, unanimously (i) declared the referral admissible; (ii) declared invalid Judgment [Rev. no. 485/2022] of 5 January 2023, of the Supreme Court; and (iii) remanded Judgment [Rev. no. 485/2022] of 5 January 2023, of the Supreme Court for retrial.

Summary of facts

13. Based on the case file, it turns out that the applicant from 1 January 2002, until 4 April 2011 was employed in the position of Insurance Manager, in “*Limak Kosova*”, who signed a three (3) year employment contract with the same employer on 4 April 2011 until 3 April 2014.
14. On 25 May 2012, “*Limak Kosova*” by Decision [HR-2012-0273], terminated the applicant’s employment relationship with the claim that he failed to fulfill his duties according to the employment contract.
15. Regarding his employment relationship with “*Limak Kosova*”, the applicant initiated two (2) court proceedings:
 - (i) the procedure through the first lawsuit against “*Limak Kosova*”, with the claim that the termination of the employment relationship was unlawful, and as a consequence the employer must be obliged to return him to the working place and compensate him for all lost salaries; and
 - (ii) the procedure through the second lawsuit “*Limak Kosova*”, whereby he requested to be paid three (3) accompanying pension salaries and two (2) jubilee salaries, according to the General Collective Agreement (this Agreement that originates from Article 90 (Collective Agreement) of Law No. 03/L- 212 on Labor), which was in force from 1 January 2015 to 31 December 2017, after he reached retirement age on 2 April 2017.

(i) Facts regarding the first court procedure related to the termination of the employment relationship of the applicant

16. On an unspecified date, the applicant, against “*Limak Kosova*” filed a lawsuit with the Basic Court, whereby he requested the annulment of the Decision [HR-2012-0273], by which the applicant’s employment relationship was terminated, and as a result requested a return to the working place and the payment of the lost salaries.
17. On 20 December 2016, the Basic Court, after the case was remanded for retrial, by Judgment [C. no. 412/2015] approved the lawsuit of the applicant, obliging “*Limak Kosova*” to (i) return him to the working place as a Security Manager; and (ii) to compensate him for lost salaries, as a result of the unlawful termination of the employment relationship.
18. On 20 July 2020, deciding upon the appeal of “*Limak Kosova*”, the Court of Appeals, by Judgment [AC. no. 1276/17] (i) rejected the latter’s appeal and (ii) upheld the Judgment [C. no. 412/2015] of 20 December 2016, of the Basic Court.
19. On 26 April 2021, deciding according to the revision submitted by “*Limak Kosova*”, the Supreme Court, by Judgment [Rev. no. 508/2020], rejected the revision of “*Limak Kosova*”, upholding the findings of the Basic Court and the Court of Appeals, for (i) reinstatement of the working place; and (ii) compensation for lost salaries as a result of

termination of employment relationship. According to the information submitted by the applicant in his referral, he was compensated for lost salaries until reaching his retirement age.

(ii) The facts regarding the procedure for compensation of accompanying retirement and jubilee salaries

20. In 2017, while the court proceedings for his return to the working place before the regular courts were pending, the applicant reached retirement age. As a result, he submitted a request to “*Limak Kosova*” for the payment of three (3) accompanying retirement salaries and two (2) jubilee salaries according to the General Collective Agreement, which was in force from 1 January 2015 to 31 December 2017. The applicant states in his referral that he did not receive a response from “*Limak Kosova*”.
21. On an unspecified date, the applicant filed a lawsuit against “*Limak Kosova*” with the Basic Court, whereby he requested the compensation of three (3) accompanying retirement salaries in the total amount of four thousand three hundred and fifty (4,350.00) euro and two (2) jubilee salaries in the amount of one thousand four hundred and fifty (1,450.00) euro. “*Limak Kosova*” filed a response to the lawsuit reasoning, among other things, that the applicant’s employment relationship was terminated on 25 May 2012, and that at the time of termination of the employment relationship, there was no general collective agreement in force.
22. On 20 January 2020, the Basic Court, by Judgment [C. no. 312/2019], rejected the lawsuit of the applicant as ungrounded, on the grounds that (i) he is not entitled to the jubilee salary since at the time he reached the jubilee year in 2012, the Collective Agreement was not in force; while (ii) with regard to the compensation of accompanying salaries due to pension, the applicant at the time of retirement was not employed at “*Limak Kosova*”, due to the fact that his employment relationship was terminated, on 25 May 2012.
23. On 12 February 2020, the applicant against the Judgment [C. no. 312/2019] of the Basic Court, submitted an appeal to the Court of Appeals, claiming, among other things, that by Judgment [C. no. 412/2015] of Basic Court, the decision to terminate the employment relationship of the applicant was annulled and “*Limak Kosova*” was obliged to return him to his working place as an Insurance Manager.
24. On 16 September 2022, the Court of Appeals, by Judgment [Ac. no. 4626/2020], rejected his appeal as ungrounded, on the grounds that the applicant was not in employment relationship from 25 May 2012, until the day of reaching retirement age.
25. On 17 November 2022, the applicant submitted a revision to the Supreme Court, against the aforementioned Judgment of the Court of Appeals, filing the same claims as before the Court of Appeals.
26. On 5 January 2023, the Supreme Court, by its Judgment [Rev. no. 485/2022], rejected the applicant’s revision on the grounds that (i) he was not entitled to the jubilee reward, since at the time he had reached the jubilee year in 2012, the General Collective Agreement was not in force. While (ii) in terms of salary compensation due to retirement, the applicant at the time of retirement was not employed at “*Limak Kosova*”, due to the fact that his employment relationship was terminated on 25 May 2012, and as a result of the same, he did not effectively perform his work and duties at “*Limak Kosova*”, in the last three (3) months before retirement and did not realize monthly income.

Applicant's allegations

27. The Applicant claims that the contested Judgment of the Supreme Court violated his rights guaranteed by Article 7 [Values], 24 [Equality Before the Law], 31 [Right to Fair and Impartial Trial], 54 [Judicial Protection of Rights] and 55 [Limitations on Fundamental Rights and Freedoms] of the Constitution, and paragraph 1 of Article 6 [Right to a due fair trial] of the ECHR).
28. The applicant emphasizes that the first instance court by Judgment [C. no. 312/2019] of 20 January 2020, rejected his claim for the payment of accompanying and jubilee salaries despite the fact that the same court by Judgment [C. no. 412/2015], of 20 December 2016, annulled as unlawful the decision of "Limak Kosova" to terminate the employment relationship, obliging the latter to return him to the working place in the position of Insurance Manager, and to compensate him for the lost salaries from 25 May 2012 to 2 May 2017, respectively until the day of retirement. The applicant points out that we have two opposite decisions of the same court for the same claimant, because by Judgment [C. no. 412/2015] of 20 December 2016, the Basic Court annulled the decision to terminate the employment relationship against the claimant, while on the other hand the same court rejected his claim for the payment of three (3) accompanying retirement salaries and two (2) jubilee salaries, adding that the Judgment of 20 December 2016 was upheld by the Court of Appeals by Judgment [AC. no. 1276/2017] of 20 July 2020 and by the Supreme Court by Judgment Rev. no. 508/2020 of 26 April 2021.
29. The applicant states that on 3 June 2021, he sent the Judgment the Supreme Court [Rev. no. 508/2020] of 26 April 2021 to the Court of Appeals, in which the latter rejected the revision of the employer "Limak Kosova" and upheld the Judgment [Ac. no. 1276/2017] of the Court of Appeals of 20 July 2020 and Judgment [C. no. 412/2015] of 20 December 2016 of the Basic Court, which approved his claim for return to the working place and compensation for lost salaries. The applicant states that the Court of Appeals in its Judgment [CA. no. 4626/2020], emphasizes that the claimant's employment relationship was terminated on 25 May 2012, despite the fact that the aforementioned judgments were presented to that court, whereby the decision of the employer "Limak Kosova" to terminate the employment relationship was annulled.
30. In this context, the applicant alleges that the Judgment of the Court of Appeals is contradictory, since the reasoning for termination of the employment relationship, according to him, should not be a basis for not approving the lawsuit for the payment of accompanying retirement and salary jubilee, and that the Court of Appeals did not explain why, according to it, the claimant was not in an effective employment relationship. Further, the applicant states that it is a proven fact that the claimant was in employment relationship, from 1971, until the date of retirement on 2 May 2017. According to him, the reasoning of the Judgment of the Court of Appeals [AC. no. 4626/2020] of 16 September 2022, according to page 6, "*that the claimant in the last three months before retirement has not received monthly salary from the employment relationship and the respondent rejects it as ungrounded*", because in the case file there was also the judgment of the Court of Appeals and the Supreme Court submitted by the submissions cited above and that, moreover, the latter has been compensated by "Limak Kosova" for lost salaries as a result of the unlawful termination of the employment relationship.
31. The applicant further emphasizes that he submitted a request for revision to the Supreme Court, against the Judgment [AC. no. 4626/2020] of the Court of Appeals of 16 September 2022, adding that the to the request for revision were also attached the judgments by which his claim for return to the working iplace was approved. However,

the latter states that the Supreme Court rejected the revision as ungrounded, on the grounds that the claimant's employment relationship was terminated on 25 May 2012, and that during this period the General Collective Agreement was not in force.

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 No.03/L –212 on Labour

Article 3 Definitions

- 1. The terms used in this Law shall have the following meaning:*
[...]
- 1.8. Collective Contract - an agreement between employers' organisations and employees' organisations regulating the rights, duties and responsibilities deriving from employment relationship on the basis of the agreement reached;*
[...]

Article 4 Hierarchy among the Law, Collective Contract, Employer's Internal Act and the Labour Contract

- 1. Provisions of the Collective Contract, Employer's Internal Act and Labour Contract shall be in compliance with the provisions of this Law.*

2. *Collective Contract shall not include any less favourable rights for the employee and employer than the rights defined by this Law;*

Article 11
The Content of an Employment Contract

1. *An employment contract shall include, the following:*

[...]

- 1.13. *the rights and duties not defined with the Employment contract shall be regulated by the provisions of this Law, Collective Contract and Employer's Internal Act;*

[...]

Article 90
Collective Contract

[...]

4. *Collective Contract may be concluded for a certain period of time with a duration of maximum three (3) years.*

5. *Collective Contract shall be applicable to those employers and employees who commit themselves to the implementation of obligations deriving from such an agreement.*

6. *Collective Contract shall not include such provisions that limit the rights of employees and that are less favourable than the ones defined by this Law.*

[...]

The General Collective Agreement in Kosovo, of 18 march 2014

Article 3
Application and inclusion

Provisions of the GCAK are applied throughout the territory of the Republic of Kosovo.

Article 52
Jubilee rewards

1. *Employee is entitled to jubilee rewards in following cases:*

- 1.1. *for 10 years of continuous experience at the last employer, equal to one monthly wage,*

- 1.2. *for 20 years of continuous experience, for the last employer, equal to two monthly wages,*

- 1.3. *for 30 years of continuous experience, for the last employer, equal to three monthly wages.*

2. *The last employer is the one who provides jubilee rewards.*

3. *Jubilee reward, is paid in a timeframe of one month, after meeting the conditions from the present paragraph.*

Article 53
Retirement reimbursement

When retiring, employee is entitled to a reimbursement equal to three (3) monthly wages, he/she received during the last three (3) months

Admissibility of the Referral

32. The Court first examines whether the Applicant has fulfilled the admissibility requirements established in the Constitution, and further specified in the Law and in the Rules of Procedure.
33. In this respect, the Court refers to paragraphs 1 and 7 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution, which establish:

Article 113
[Jurisdiction and Authorized Parties]

“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”.

[...]

34. The Court further examines whether the Applicant has fulfilled the admissibility requirements as specified by the Law, namely Articles 47, 48 and 49 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. In all other cases, the deadline shall be counted from the day when the decision or act is publicly announced ...”.

35. Regarding the fulfilment of the abovementioned criteria, the Court finds that the Applicant is an authorized party; he challenges the constitutionality of Judgment [Rev. no. 485/2022] of 5 January 2023 of the Supreme Court, after having exhausted all available legal remedies under paragraph 7 of article 113 of the Constitution and

paragraph 2 of article 47 of the Law; he specified the rights guaranteed by the Constitution, which he claims to have been violated, as provided by Article 48 of the Law; and submitted the referral within the legal deadline of 4 (four) months, in accordance with the requirements of Article 49 of the Law.

36. In addition, the Court examines whether the applicant has fulfilled the admissibility criteria set out in rule 34 [Admissibility Criteria], namely provisions (1) (d) and (2) of Rule 34 of the Rules of Procedure, which establish:

(1) *“The Court may consider a referral as admissible if:*

[...]

(d) the referral accurately clarifies and adequately sets forth the facts and allegations for violation of constitutional rights or provisions.

(2) *The Court may consider a referral as inadmissible if the referral is manifestly ill founded because the Applicant has not sufficiently proved and substantiated the claim.”*

[...]

37. The Court also finds that the applicant’s referral meets the admissibility criteria set forth in paragraph (1) of rule 34 (Admissibility Criteria) of the Rules of Procedure. The latter cannot be declared inadmissible on the basis of the requirements established in paragraph 2 of rule 34 of the Rules of Procedure.
38. Furthermore, and finally, the Court emphasizes that the referral cannot be declared inadmissible on any other basis. Therefore, it should be declared admissible and its merits examined.

Merits of the referral

39. The Court first recalls that the circumstances of the present case are related to the fact that the applicant was employed in the position of Security Manager, at the International Airport of Prishtina “*Adem Jashari*”, from 1 January 2002, until 4 April 2011, and then signed a three (3) year employment contract with “*Limak Kosova*” starting from 4 April 2011 to 3 April 2014, with the possibility of extension. On 25 May 2012, “*Limak Kosova*” terminated the applicant’s employment relationship with the claim that he has failed to fulfill the work duties defined in his employment contract. Consequently, the applicant initiated two (2) court proceedings, respectively:

(i) filing the first lawsuit against “*Limak Kosova*”, with the Basic Court, claiming that the termination of the relationship was unlawful. This procedure had resulted in the issuing of Judgment [C. no. 412/2015] of 20 December 2016 of the Basic Court, whereby it was decided that the applicant (i) should return to his previous working place, and (ii) to be compensated for lost salaries as a result of the termination of the employment relationship. This Judgment was upheld by Judgment [AC. no. 1276/17] of 20 July 2020 of the Court of Appeals and Judgment [Rev. no. 508/2020] of 26 April 2021, of the Supreme Court. As a result of this Judgment, according to the applicant, he was compensated for lost salaries until his retirement age in 2017; and

(ii) the filing of the second lawsuit against “*Limak Kosova*” with the Basic Court, requesting: (i) the payment of three (3) accompanying pension salaries, since the latter in 2017, had reached retirement age; and (ii) the payment of two (2) jubilee salaries, according to the General Collective Agreement, which was in force from 1 January 2015 to 31 December 2017. Regarding this lawsuit, the

Basic Court by Judgment [C. no. 312/ 2019] of 20 January 2020, rejected the claimant's lawsuit as ungrounded, on the grounds that: (i) he is not entitled to the jubilee reward, since at the time he reached his jubilee year in 2012, the General Collective Agreement was not effective; while with regard to (ii) the compensation of accompanying retirement salaries as a result of retirement, the applicant at the time of retirement was not employed by "*Limak Kosova*" due to the fact that his employment relationship was terminated on 25 May 2012. The judgment of the Basic Court was upheld by Judgment [Ac. no. 4626/20] of 16 September 2022 of the Court of Appeals; and the contested Judgment [Rev. no. 485/2022] of 5 January 2023, of the Supreme Court.

40. The Court points out that the applicant in his referral to the Court contests the second procedure, namely the Judgment [Rev. no. 485/2022] of 5 January 2023 of the Supreme Court in conjunction with Judgment [AC. no. 4626 /2020] of 16 September 2022 of the Court of Appeals and Judgment [C. no. 312/2019] of 20 January 2020 of the Basic Court, claiming the violation of his rights, guaranteed by Article 7 [Values], 24 [Equality Before the Law], 31 [Right to Fair and Impartial Trial], 54 [Judicial Protection of Rights] and 55 [Limitations on Fundamental Rights and Freedoms] of the Constitution, and paragraph 1 of Article 6 (Right to a fair) of the ECHR.
41. The applicant, in the context of the second procedure, namely the Judgment [Rev. no. 485/2022] of 5 January 2023, of the Supreme Court essentially claims that the regular courts, including the Supreme Court, did not take into account the fact that the first procedure that ended with the issuance of the Judgment [Rev. no. 508/2020] of 26 April 2021 of the Supreme Court, obliged "*Limak Kosova*" to return the applicant to to his workplace, and to compensate him for the lost salaries. In the following, the applicant adds that as a result of the completion of the first procedure, he was compensated for the lost salaries until the date of retirement and as a result, he claims that he was also entitled to all other employee rights, including the rights that were related to the benefits defined by the General Collective Agreement.
42. Therefore, the applicant essentially raised claims in terms of his right to a fair and impartial trial, guaranteed by Article 31 of the Constitution, in conjunction with Article 6 of the ECHR, claiming that the regular courts during the conduct of the second procedure, which is the subject of assessment before this court, have erroneously interpreted the provisions of the General Collective Agreement, without taking into consideration the decisions of the regular courts, rendered in the first procedure, whereby it was decided that (i) he should return to his previous working place and (ii) be compensated for lost salaries. Consequently, the applicant specifies that he is also entitled to the rights defined in the General Collective Agreement, including the following salaries defined in Article 53 (Retirement reimbursement); and jubilee salaries according to Article 52 (Jubilee Rewards) of this agreement.
43. In light of the applicant's essential allegation, the Court notes that the Collective Agreement, on which provisions the applicant relies on, originates from Article 90 of the Law on Labor. Consequently, the Court will deal with the applicant's allegation in the context of the interpretation and application of the applicable law, from which the Collective Agreement originates, and the rights and obligations arising from this agreement.
44. Following this, the Court, during the assessment of the applicant's claims, in terms of his right to a fair and impartial trial, and which are related to the erroneous and manifestly arbitrary interpretation of the law, will apply the principles and standards developed through the case law of the ECtHR, in fulfillment of the requirements of Article 53 [Interpretation of Human Rights Provisions] of the Constitution, according

to which the Court is obliged to ensure that the fundamental rights and freedoms guaranteed by the Constitution are interpreted in harmony with the court decisions of the ECtHR.

A. General principles regarding the erroneous and arbitrary interpretation and application of law

45. The Court first emphasizes that based on its case law, as a general rule, the allegations of erroneous interpretation and application of the law that are claimed to have been committed by the regular courts fall within the scope of legality and, as such, in principle, are not matters of the Constitutional Court (see Court cases no. [KIO6/17](#), with applicant *L. G. and five others*, Resolution on Inadmissibility of 25 October 2016, paragraph 36; [KI75/17](#), applicant *X*, Resolution on Inadmissibility of 6 December 2017, paragraph 55; and [KI122/16](#), applicant *Riza Dembogaj*, Judgment of 30 May 2018, paragraph 56).
46. In this regard, the Court has consistently reiterated that it is not its duty to deal with the way the regular courts deal with the determination of facts or the interpretation of law (legality), unless and insofar they (the regular courts) may have violated the rights and freedoms protected by Constitution (constitutionality). In principle, the Constitutional Court may not itself assess the law which has led a regular court to adopt one decision rather than another. If it were otherwise, the Court would be acting as a court of “*fourth instance*”, which would result in exceeding the limits set by its jurisdiction. In fact, it is the role of the regular courts to interpret and apply the pertinent rules of procedural and substantive law (see, among others, the decisions of the Constitutional Court in cases: [KI70/11](#), applicant *Faik Hima, Magbule Hima and Besart Hima*, Resolution on Inadmissibility of 16 December 2011, paragraph 29; [KIO6/17](#), Applicant *L.G. and five others*, cited above, paragraph 37; and [KI122/16](#), applicant *Riza Dembogaj*, Resolution on Inadmissibility of 19 June 2018, paragraph 57).
47. However, the Constitutional Court can assess the interpretations and application of laws by regular courts exceptionally and only if those interpretations may have resulted in arbitrary or manifestly unreasonable conclusions (see Court case [KI75/17](#), with applicant *X*, cited above, paragraph 59).
48. Therefore, although the role of the Court is limited in terms of the assessment of the interpretation of the law, it must make sure and take action when it notices that a particular court has applied the law in a manifestly arbitrary manner which could have resulted in “*arbitrary conclusions*” (see Court cases [KIO6/17](#), applicant *L. G. and five others*, Resolution on Inadmissibility of 25 October 2016, paragraph 40 and ECtHR cases, *Anheuser-Busch Inc. v. Portugal*, no.73049/01, Judgment of 11 January 2007, paragraph 83, *Kuznetsov and Others v. Russia*, no. 184/02, paragraphs 70 74 and 84; *Sovtransavto Holding v. Ukraine*, no. 48553/99, Judgment of 6 November 2002, paragraphs 79, 97 and 98; *Beyeler v. Italy*, no. 33202/96, paragraph 108; *Koshoglu v. Bulgaria*, Judgment of 10 May 2007, paragraph 50; see also, case [KIO6/17](#), applicant *L. G. and five others*, Resolution on Inadmissibility of 25 October 2016, paragraph 40).
49. In this regard, the Court, affirming the principles and positions of the ECtHR, emphasizes that the primary role of regular courts is to resolve the problems surrounding the interpretation of legislation, while the role of the Constitutional Court is to ensure or verify that the effects of this interpretation be in compliance with the Constitution (see, in this regard, the position of the ECtHR in case, *Miragall Escolano and Others v. Spain*, no. 38366/97, Judgment of 25 April 2000, paragraphs 33-39; *Koshoglu v. Bulgaria*, no. 48191/99, Judgment of 10 May 2007, paragraph 50).

B. Court’s assessment

50. The Court will first assess the applicant's allegation regarding the payment of accompanying salaries in the event of retirement, as stipulated by Article 53 of the General Collective Agreement; and then it will assess the applicant's allegation regarding the jubilee salaries as defined by Article 52 of this agreement.

a) Regarding accompanying salaries after retirement

51. 51. In this regard, the Court recalls that Article 53 of the General Collective Agreement, which was in force at the time when the applicant reached retirement age, determined that:

"When retiring, employee is entitled to a reimbursement equal to three (3) monthly wages, he/she received during the last three (3) months."

52. In this regard, the Court notes that although the applicant had not effectively worked at "Limak Kosova" until he reached the retirement age, as he was following the procedures regarding the legality of his dismissal by Decision [HR -2012-0273] of "Limak Kosova", the Basic Court by Judgment [C. no. 412/2015] of 20 December 2016, decided on (i) the return of the applicant to his working place, and (ii) the compensation for wages lost as a result of his dismissal. This Judgment was upheld by the Court of Appeals by Judgment [AC. no. 1276/17] of 20 July 2020, and by the Supreme Court by Judgment [Rev. no. 508/2020] of 26 April 2021.

53. Regarding the above, the Court notes that the applicant's dismissal from work was found unlawful by the regular courts, and the Court of Appeals and the Supreme Court were aware of this when deciding regarding the contested decisions. According to the applicant, he was also compensated for unpaid salaries up to retirement age.

54. For this reason, the Court refers to the relevant parts of the Judgment [C. no. 312/2019] of 20 January 2020 of the Basic Court, which, among other things, reasoned: "...From the employment contract for a fixed period concluded between the claimant and the respondent, signed on 04.04.2011, it results that the claimant established the employment relationship with the respondent at a certain time starting from 04.04.2011 to 03.04. 2014, with the possibility of extension for another year. [...]" adding that "the court found that the claimant's claim is unfounded, on the grounds that the claimant's employment relationship has been terminated since 25.05.2012, at the time when the aforementioned general collective agreement was not in force, and no other collective agreement was in force at the time when the employment relationship was terminated."

55. The Court notes that the factual situation determined by the Basic Court was fully accepted by the Court of Appeals, by Judgment [Ac. no. 4626/2020] of 16 September 2022, which reasoned: "As for the accompanying salary in the case of retirement, it turns out that the claimant, at the time of retirement, was not in employment relationship with the respondent, because as of 25.05.2012, the claimant's employment relationship was terminated. Thus, the claimant did perform work and work duties effectively for the respondent, and as a result, he is not entitled to the accompanying payment, in the amount of three monthly salaries, because the claimant for the last three months, before retirement did not realize monthly salary from the employment relationship with the respondent. Therefore, the panel assesses that the claimant, whose employment relationship was terminated unlawfully, and this fact was confirmed by a final decision, has the right to compensation for real damage and lost profit, but not the compensation from the employment relationship during the term when he was not in an effective employment relationship, performing work and work duties, according to the employment contract with the employer."

Therefore, the claimant's appealing allegations were unfounded, because he did not prove them the necessary extent that with the respondent, as the last employer, was in an uninterrupted employment relationship for a duration of 10, 20 or 30 years, at the time when GCAK was in force and did not even prove that 3 months before retirement, he received salary from his last employer."

56. As for the compensation of accompanying and salaries, the Supreme Court emphasized: *"Regarding salary compensation due to retirement; the claimant on 05.04.2017 at the time of his retirement was not employed by the respondent, due to the fact that the respondent terminated his employment relationship by the decision dated 05.25.2012. The Supreme Court, taking into account Article 53 of the General Collective Agreement of Kosovo, assessed that the claimant has not effectively performed the work and duties with the respondent in the last three months before retirement, has not realized a monthly income there, from which it follows that he is not entitled to the payment compensation in the amount of three monthly salaries.*
57. From the abovementioned interpretation of the regular courts regarding the right to accompanying salaries, it follows that the Basic Court, including the Court of Appeals and the Supreme Court, interpreted the right to accompanying salaries, it follows that the Basic Court, including the Court of Appeals and the Supreme Court separately from the fact that the decision to terminate the employment relationship was declared unlawful, by final court decisions. This despite the fact that both the Court of Appeals and the Supreme Court were aware that by the court decisions "*Limak Kosova*" was obliged to return the applicant to the working place and compensate him for the lost salaries, as a result of the unlawful dismissal from work.
58. In this context, the Supreme Court interpreting Article 53 of the General Collective Agreement, which establishes that *"When retiring, employee is entitled to a reimbursement equal to three (3) monthly wages, he/she received during the last three (3) months"*, assessed that the applicant is not entitled to this right as he has not effectively performed the work and duties of the respondent in the last three months before retirement, and has not realized a monthly income for the respondent.
59. However, the decision on his dismissal was annulled and "*Limak Kosova*" was obliged to return the applicant to his working place but given the fact that he had already reached retirement age, he exercised his right to lost salaries, as if he were in a regular employment relationship with "*Limak Kosova*", by final decisions.
60. Therefore, the Court assesses that the lost wages, including the last three (3) wages, were known and calculable even if the applicant was not dismissed in an unlawful manner, as it has been established by a final court decision, he would accomplish them. Therefore, the Court notes that paragraph 53 of the General Collective Agreement, in the circumstances of the present case, and taking into account that (i) his dismissal from work was declared unlawful by a final court decision; and (ii) the fact that in the meantime he had reached retirement age cannot be interpreted as requiring him to have effectively worked until the day of retirement.
61. The Court, therefore, notes that the interpretation of Article 53 of the General Collective Agreement by the Supreme Court, in the circumstances of the present case, has resulted in arbitrary conclusions for the applicant, since regarding the termination of his employment relationship, it results that the termination of the employment relationship was unlawful and "*Limak Kosova*" was obliged to pay the lost salaries as a result of the unlawful termination of the employment contract. This fact was disregarded by the regular courts, including the Supreme Court.

62. Therefore, the Court must find that the Judgment of the Supreme Court whereby the request for protection of legality of the applicant was rejected as ungrounded, in the circumstances of the present case, did not meet the criteria of a “*fair trial*” according to article 31 of the Constitution in conjunction with article 6 of the ECHR, on the grounds of manifestly erroneous or arbitrary application and interpretation of the law, and as a result, finds that there has been a violation of article 31 of the Constitution and article 6 of the ECHR.

b) Regarding the right to “jubilee salaries”

63. As for the applicant’s claim regarding the right to jubilee salaries, the Court notes that in line with the conclusions of the Basic Court and the Court of Appeals, the Supreme Court emphasized that: “*From the examination of the case file, it turns out that the claimant concluded the first employment contract with the predecessor of the respondent on 7.02.2002, so the tenth anniversary would be on 7.02. 2012, in this period of time there was no collective contract in Kosovo*”.

64. In this regard, the Court refers to the content of Article 52 of the General Collective Agreement, which refers to the “*continuous experience for the last employer*”.

65. The Court also refers to a number of cases where it declared as manifestly ill-founded the referrals related to the claims of the applicants that they were entitled to jubilee salaries when they had reached the jubilee year during the time the Collective Agreement was not in force (see, *inter alia*, Court cases [KI118/20](#), applicant *Selim Leka*, Resolution on Inadmissibility, of 21 October 2021; and [KI72/23](#), applicant *Isa Hashani*, Resolution on Inadmissibility, of 17 January 2024. The Court does not consider it necessary to depart from this case law.

66. Therefore, taking into account the Supreme Court’s findings as well as the Court’s own case law regarding such cases, the applicant’s claims for violation of the right to a fair trial, as a result of not awarding jubilee salaries, is ungrounded.

67. Finally, the Court, taking into account the above, considers that it is not necessary to examine the applicant’s claims regarding Articles 7 [Values], 24 [Equality Before the Law], 54 [Judicial Protection of Rights] of the Constitution.

FOR THESE REASONS

The Constitutional Court, in accordance with paragraphs 1 and 7 of article 113 of the Constitution, articles 20 and 47 of the Law and rule 48 (1) a) of the Rules of Procedure, in the session held on 11 September 2024, unanimously

DECIDES

- I. TO DECLARE, the referral admissible;
- II. TO HOLD, that Judgment [Rev. no. 485/2022] of 5 January 2023, of the Supreme Court of the Republic of Kosovo is not in compliance with paragraph 1 of article 31 [Right to Fair and Impartial Trial] of the Constitution of the Republic of Kosovo in conjunction with paragraph 1 of article 6 (Right to a fair trial) of the European Convention on Human Rights;
- III. TO DECLARE INVALID, Judgment [Rev. no. 485/2022] of 5 January 2023, of the Supreme Court of the Republic of Kosovo;
- IV. TO REMAND, Judgment [Rev. no. 485/2022] of 5 January 2023, of the Supreme Court of the Republic of Kosovo, for retrial in accordance with the findings of the Judgment of the Court;
- V. TO ORDER the Supreme Court of the Republic of Kosovo to notify the Court, in accordance with sub-rule (5) of rule 60 of the Rules of Procedure, by 11 March 2025, about the measures taken to implement the Judgment of the Court;
- VI. TO NOTIFY this Judgment to the parties and, in accordance with paragraph 4 of Article 20 of the Law, publish it in the Official Gazette;
- VII. TO HOLD, that this Judgment enters into force on the day of its publication in the Official Gazette of the Republic of Kosovo, in accordance with paragraph 5 of Article 20 of the Law.

Judge Rapporteur

President of the Constitutional Court

Jeton Bytyqi

Gresa Caka-Nimani

This translation is unofficial and serves for informational purposes only.