



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

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Prishtina, 2 March 2020  
Ref. no.:RK 1521/20

*This translation is unofficial and serves for informational purposes only.*

## **RESOLUTION ON INADMISSIBILITY**

in

**Case No. KI53/19**

Applicant

**Muharrem Mehmeti**

**Constitutional review of the Judgment ARJ-UZVP.no.62/2018  
of the Supreme Court, of 5 December 2018**

**THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO**

composed of:

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

### **Applicant**

1. The Applicant is Muharrem Mehmeti, residing in Prishtina (hereinafter: the Applicant).

## **Challenged decision**

2. The Applicant challenges the Judgment [ARJ-UZVP.no.62/2018] of the Supreme Court of the Republic of Kosovo (hereinafter: the Supreme Court), of 5 December 2018.

## **Subject matter**

3. The subject-matter of the Referral is the constitutional review of the challenged Judgment which as alleged by the Applicant violated his rights guaranteed by Articles 21 [General Principles], 24 [Equality before the Law], 31 [Right to Fair and Impartial Trial], and Article 54 [Judicial Protection of Rights] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution) and Article 6 [Right to a fair trial] of the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter: ECHR) and Article 7 of the Universal Declaration of Human Rights (hereinafter: UDHR).

## **Legal basis**

4. The Referral is based on paragraphs 1 and 7 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution, Article 22 [Processing Referrals] of the Law on the Constitutional Court of the Republic of Kosovo, No.03/L-121 (hereinafter: the Law) and Rule 32 [Filing of Referrals and Replies] of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo, No. 01/2018 (hereinafter: the Rules of Procedure).

## **Proceedings before the Constitutional Court**

5. On 3 April 2019, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 10 April 2019, the President of the Court appointed Judge Safet Hoxha as Judge Rapporteur and the Review Panel composed of Judges: Selvete Gërxhaliu-Krasniqi (presiding), Bajram Ljatifi and Radomir Laban.
7. On 18 April 2019, the Court notified the Applicant about the registration of the Referral. On the same date, the Court sent a copy of the Referral to the Supreme Court.
8. On 6 June 2019, the Applicant submitted to the Court a request to expedite his case before the Court.
9. On 23 August 2019, the Applicant submitted to the Court, another request to expedite his case before the Court.
10. On 22 January 2020, the Applicant again submitted to the Court, for the third time, the request to expedite his case before the Court.

11. On 5 February 2020, the Review Panel considered the report of the Judge Rapporteur and unanimously recommended to the Court that the Referral be inadmissible.

### **Summary of facts**

12. On the basis of the case file it is noted that the Ministry of Labour and Social Welfare, the Pension Department Administration (hereinafter MLSW), by Decision of 9 November 2015, had rejected as unfounded the Applicant's request for recognition of the right to age contribution-payer pension.
13. On 8 December 2015, the Applicant filed a claim with the Basic Court in Prishtina (hereinafter: the Basic Court) seeking to annul the Decision of MPMP 9 November 2015, alleging that he meets the conditions for recognition of age contribution-payer pension, with the fact that he has been an employee of Trepça from 1982 to 1990, when he was dismissed from work.
14. On 4 October 2017, the Basic Court by Judgment [A.no.2080/15/b] rejected the Applicant's claim as unfounded and confirmed the Decision of the MLSW, of 9 November 2015. The Basic Court in its Judgment reasoned that the Applicant did not meet the criteria set out in Article 8 of the Law No.04/L-131 on Pension Schemes Financed by the State, to gain the right to age contribution-payer pension. This Judgment further states that *"Having analyzed the legal criterion in Article 8 item 1.3 the Court notes that in order for the public authority to decide on the entitlement to the contribution-payer pension the party must provide valid evidence of the payment of contributions under the provisions of the Law on Pension and Disability Insurance No.011-24 /83 (Official Gazette of SAPK No.26/83) of 1.01.1999. On the basis of the case file, the Court finds, as also ascertained in the decision of the responding authority, that the claimant has deposited evidence (employment booklet) only for contributions for a period of 8 years, 4 months and 13 days. Therefore, the Court finds that the decision of the responding authority in this administrative case is legally correct"*.
15. The Applicant filed an appeal with the Court of Appeals against the aforementioned Judgment of the Basic Court, alleging that it was rendered by substantial violations of the provisions of the proceedings, and erroneous determination of the factual situation and erroneous application of substantive law.
16. On 18 July 2018, the Court of Appeals by Judgment [AA.no.57/2018] rejected as unfounded the Applicant's appeal and confirmed the Judgment [A.no.2080 /15/b] of the Basic Court, of 4 October 2017. The Court of Appeals justified that the appeal was unfounded by the fact that the Basic Court had rejected the Applicant's claim as unfounded in a fair manner and without substantially violating the provisions of the contested procedure. It was further considered that the Basic Court had administered the evidence and the facts in a correct and complete manner and had properly applied the substantive law.

17. The Applicant filed a request for extraordinary review of the judicial decision with the Supreme Court against the aforementioned Judgment of the Court of Appeal alleging violations of procedural provisions and erroneous application of substantive law.
18. On 5 December 2018, the Supreme Court by Judgment [ARJ-UZVP.no.62/2018] rejected as unfounded the request for extraordinary review of the judicial decision. The Supreme Court in its Decision further considered that *“The legal position of the lower instance courts, is approved as regular and completely based upon the law also by this Court, since the challenged judgments do not contain violations of substantive law, as alleged by the claimant in the request”*.

### **Applicant’s allegations**

19. The Court recalls that the Applicant alleges that the challenged Judgment violated his rights protected by Articles 21 [General Principles], 24 [Equality before the Law], 31 [Right to Fair and Impartial Trial], and 54 [Judicial Protection of Rights] of the Constitution and Article 6 [Right to a fair trial] of the ECHR and Article 7 of the UDHR.
20. The Applicant, referring to the Regulations of the regular courts, contends that *“the said decisions were not based on the ex officio recommendation no.235/18 issued by the Ombudsperson addressed to executive bodies and the report of the Director-General of the International Labour Office GB.253/17/17 Geneva 1992.”*
21. Finally, the Applicant requests from the Court: *“My request is that the years 88/99 which were lost by the Serbian regime against my wish, be accounted. I request that those lost years be accounted as they have been recognized to the education and health institutions.”*

### **Relevant legal provisions**

#### **Law No.04/L-212 on Pension Schemes Financed by the State**

[...]

#### *[Article 8]*

*[Conditions and criteria for recognition of the right to age contribution-payer pension]*

*1. The right to age contribution-payer pension shall be realized by all persons who have citizenship of Kosovo and who:*

- 1.1. have reached the age of sixty-five (65);*
- 1.2. should have pension contribution-payer work experience, according to the Law on pension and disability insurance, No. 011-24/83 (Official Gazette of SAPK No.26/83) before the date 1.01.1999;*
- 1.3. provide valid evidence on payment of contributions under provisions of the Law on Pension and Disability Insurance No.011-24/83 (Official Gazette of SAPK No.26/83) before 01.01.1999.*

2. *Categorization of users of contribution-payer pension, according to the duration of the payment of contribution according to the qualification structure and other criteria shall be defined by a sub-legal act which shall be approved by the respective Ministry.*
3. *Persons who meet the conditions and criteria for the age contribution-payer pension may not be users of any other pension scheme established by this Law.*
4. *Exceptionally, the users of the age contribution-payers pension and users of other pensions determined by this Law, may also be foreign nationals, with the state of whom the Republic of Kosovo shall conclude Bilateral Agreement for social insurance.*
5. *Provisions of Bilateral Agreement for social insurance which are concluded by the Republic of Kosovo with the respective states shall prevail over the provisions of this Law and other laws of the social security field.*
6. *With this Law there shall be recognized the work experience on contribution-payer pension for the years 1989- 1999 of the employees of education, health and others who have worked in the system of the Republic of Kosovo.*

### **Admissibility of the Referral**

22. The Court first examines whether the Referral has fulfilled the admissibility requirements established by the Constitution, and further specified by the Law and Rules of Procedure.
23. In this respect, the Court refers to paragraphs 1 and 7 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution which establish:
  - “1. *The Constitutional Court decides only on matters referred to the court in a legal manner by authorized parties.*  
[...]
  7. *Individuals are authorized to refer violations by public authorities of their individual rights and freedoms guaranteed by the Constitution, but only after exhaustion of all legal remedies provided by law”.*
24. Further, the Court refers to Article 48 [Accuracy of the Referral] and 49 [Deadlines] of the Law, which provides

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 [...].”*

25. As to the fulfillment of these requirements, the Court finds that the Applicant is an authorized party, challenging an act of a public authority, namely the Judgment [ARJ-UZVP.no.62/2018] of the Supreme Court, of 5 December 2018; he has specified the rights and freedoms which he claims to have been violated, and has exhausted all legal remedies provided by law, as well as has submitted the Referral within the prescribed legal deadline.
26. However, in addition to these criteria, the Court must also examine whether the Applicant has fulfilled the admissibility criteria laid down in Rule 39 [Admissibility Criteria] of the Rules of Procedure. Specifically, Rule 39 (2) provides that:

*“(2) The Court may consider a referral as inadmissible if the referral is manifestly ill founded because the Applicant has not sufficiently proved and substantiated the claim.”*
27. In this regard, the Court first recalls that the Applicant alleges that the Supreme Court, by the challenged Judgment, has violated his rights guaranteed by Articles 21, 24, 31 and 54 of the Constitution, Article 6 of the ECHR and Article 7 of the UDHR.
28. In this respect, the Court notes that, in essence, the Applicant complains that in his case the regular courts did not correctly determine the factual situation, by rejecting as unfounded the Applicant's claim for recognition of an age contribution-payer pension.
29. In relation to the aforementioned allegations, the Court considers that the Applicant has built his case on grounds of legality, namely on the correct corroboration of facts established by the Supreme Court and those of the lower instances.
30. The Court recalls that these allegations concern the field of legality and as such do not fall under the jurisdiction of the Court, and therefore in principle, cannot be examined by the Court. (See, the case KI56 / 17, Applicant *Lumturije Murtezaj*, Resolution on Inadmissibility of 18 December 2017, paragraph 35).
31. In this respect, the Court notes that it is not its duty to deal with the errors of law allegedly committed by the regular courts (legality), unless and in so far that they may have violated the rights and freedoms fundamental rights protected by the Constitution (constitutionality). If it were otherwise, the Court would be acting as a court of “fourth instance”, which would result in exceeding the limits established by its jurisdiction. Pursuant to the ECtHR case law and also to its already consolidated case law, the Court reiterates that it is the role of the regular courts to interpret and apply the respective rules of procedural and substantive law and that no abstract assessment can be made as to why a regular court has decided in one way rather than another. (See, the ECtHR case *García Ruiz v. Spain*, no. 30544/96 of 21 January 1999, para.28 and see also the case: KI70/11,

Applicants *Faik Hima, Magbule Hima and Bestar Hima*, Resolution on Inadmissibility of 16 December 2011).

32. The Constitutional Court can only examine whether the evidence was presented in a correct manner and whether the proceedings in general, viewed in their entirety, were conducted in such a way that the Applicant had a fair trial (See, among other authorities, the case *Edwards v. United Kingdom*, No. 13071/87, Report of the European Commission on Human Rights, adopted on 10 July 1991).
33. On the basis of the case file, the Court notes that the reasoning provided in the Judgment of the Supreme Court is clear and having reviewed all the proceedings, the Court also found that the proceedings before the Court of Appeal and the Basic Court have not been unfair or arbitrary. (See, the case *Shub v. Lithuania*, No. 17064/06, ECtHR Decision of 30 June 2009).
34. The Supreme Court, while examining the Applicant's allegations, reasoned that the Court of Appeals has correctly rejected as unfounded the Applicant's appeal, since the Applicant failed to comply with Article 8 of the Law 04/L-131 on Pension Schemes Financed by the State as he did not provide convincing evidence on payment of work experience contributions as required by the provision of the aforementioned Article.
35. More precisely, the Supreme Court in its Decision had stated as follows:

*“this court considers that the first instance court, when examining the claimant's claim, has presented sufficient evidence which establish that the claimant's allegations are unfounded, as they are contrary to the factual situation determined by the responding body and contrary to the evidence contained in the case file, since the decision of the administrative body of the Respondent is in accordance with the applicable legal provisions.*

*On the basis of the administered evidence it results that the claimant failed to comply with Article 8 of the Law 04/L-131 as he did not provide convincing evidence for the payment of work experience contributions, according to the above Law.”*

36. In light of this, the Court further considers that the Applicant has not proved that the proceedings before the Supreme Court or other regular courts were unfair or arbitrary, or that his constitutional rights and freedoms protected by the Constitution have been violated as a consequence of a misinterpretation of procedural law. The Court reiterates that the interpretation of the law is the duty of the regular courts and is a matter of legality (See, Case KI63/16, Applicant *Astrit Pira*, Resolution on Inadmissibility of 8 August 2016, paragraph 44 and see also the Case KI150/15; KI161/15; KI162/15; KI14/16; KI19/16; KI60/16 and KI64/16, Applicants *Arben Gjukaj, Hysni Hoxha, Driton Pruthi, Milazim Lushtaku, Esat Tahiri, Azem Duraku and Sami Lushtaku*, Resolution on Inadmissibility of 15 November 2016, paragraph 62).
37. The Court notes that the mere fact that the Applicant is not satisfied with the outcome of the Judgment of the Supreme Court or the mere mention of the

Articles of the Constitution is not sufficient to build an allegation on a constitutional violation. When alleging such violations of the Constitution, the Applicants must provide reasoned allegations and compelling arguments. (See, in this context, the case of Court KI136/14, *Abdullah Bajqinca*, Resolution on Inadmissibility of 10 February 2015, paragraph 33)

38. As a result, the Court considers that the Applicant has not substantiated the allegations that the proceedings in question were in any way unfair or arbitrary and that the challenged decision violated his rights and freedoms guaranteed by the Constitution and the ECHR.
39. In conclusion, pursuant to Rule 39 (2) of the Rules of Procedure, the Referral is manifestly ill-founded on constitutional grounds and thus inadmissible.

### **FOR THESE REASONS**

The Constitutional Court, pursuant to Article 113.1 and 113.7 of the Constitution, and Rule 39 (2) of the Rules of Procedure, on 5 February 2020, unanimously

### **DECIDES**

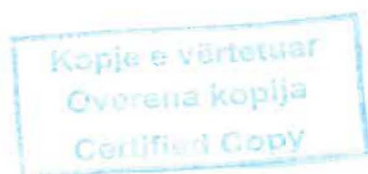
- I. TO DECLARE the Referral inadmissible;
- II. TO NOTIFY this Decision to the Parties;
- III. TO PUBLISH this Decision in the Official Gazette, in accordance with Article 20.4 of the Law;
- IV. This Decision is effective immediately.

**Judge Rapporteur**

**President of the Constitutional Court**

Safet Hoxha

Arta Rama-Hajrizi



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