



REPUBLIKA E KOSOVËS
Republika Kosova - Republic of Kosovo
Gjykata Kushtetuese / Ustavni sud / Constitutional Court

Pristina, 15 October 2010
Ref. No.: RK 54 /10

RESOLUTION ON INADMISSIBILITY

in

Case No. KI 54/09

Ahmet Fetiu

vs.

**Decision A. No. 298/2009 of the Supreme Court of Kosovo,
dated 11.09.2009**

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

Composed of

Enver Hasani, President
Kadri Kryeziu, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Ivan Čukalović, Judge
Gjyljeta Mushkolaj, Judge and
Iliriana Islami, Judge

Applicant

1. The Applicant is Mr. Ahmet Fetiu, from the Municipality of Gjakova.

Challenged decision

2. The Applicant challenges the Judgment of the Supreme Court of Kosovo, A. no. 298/2009, dated 11 September 2009, which was served on the Applicant on 19 September 2009.

Subject matter

3. On 15 October 2009, the Applicant filed a referral with the Constitutional Court, , challenging the judgment of the Supreme Court A. no. 298/2009. The Applicant claims that the judgment in question denied him the registration of the ownership of cadastral plot No. 1798, Cadastral Zone in Gjakova,, in the Immovable Property Rights Register.

Legal basis

4. Article 113 (7) of the Constitution of the Republic of Kosovo (hereinafter referred to as: the "Constitution"), Article 20 of Law No. 03/L-121 on the Constitutional Court of the Republic Kosovo (hereinafter referred to as: the "Law"), and Section 55 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter referred to as: the "Rules").

Summary of the proceedings before the Court

5. The referral was filed with the Constitutional Court on 15 October 2009.
6. On 16 July 2010, after having considered the Report of the Judge Rapporteur, Dr. Gjyljeta Mushkolaj, the Review Panel, composed of the Judges Altay Suroy (Presiding), Prof. Dr Ivan Čukalović, and Prof. Dr. Iliriana Islami made a recommendation to the full Court on the inadmissibility of the Referral.

Summary of facts

7. The Applicant claims that the cadastral plot No. 1798, Cadastral Zone of Gjakova-town, is the property of his family.
8. The property in question, according to the Municipality of Gjakova, was expropriated on 20 August 1960, based its Decision 03-4242/60. Nonetheless, the transfer of ownership was not registered in the Municipal Cadastral Office in Gjakova until 16 December 1998 (Decision 952-01-275/98).
9. The Applicant challenged Decision 952-01-275/98 at the Geodetic Authority in Belgrade. On 24 December 1998, the said Authority issued Decision No. 03-952 – 1290/98, annulling Decision 952-01-275/98 of the Municipal Cadastral Office in Gjakova. Nonetheless, the Municipal Cadastral Office in Gjakova apparently never transferred the land into applicant's ownership, but, instead, constructed a parking lot and other facilities on that land.
10. On 22 September 2008, the Applicant complained to the Municipal Cadastral Office in Gjakova that the decision of the Geodetic Authority in Belgrade was never executed. He, therefore, requested the Municipal Cadastral Office to register the land in his name. However, the Municipal Cadastral Office refused his request on 22 September 2008 (No. 952-1290/98), stressing that, based on Article 56 (1) on the Law on Administrative Procedure, the interested party bears the burden of proof. Therefore, considering that the applicant had not offered complete evidence to support his request (only a photocopy of the decision of the Geodetic Authority in Belgrade, instead of the original), his request was rejected as ungrounded.
11. The Applicant filed an appeal against Decision No. 952-1290/98 of the Municipal Cadastral Office with the Supreme Court, which, by Judgment A. No. 298/2009 of 11 September 2009, ruled that it concurred with the reasoning of the Municipal Cadastral Office of Gjakova, and added that Article 3(2) of Law 2002/5 on the Establishment of the

Immovable Property Rights Register is based on the same conclusion. The Supreme Court also explained that the transfer of ownership was complete and valid, pursuant to Decision on expropriation No. 03-4242/60, dated 20 August 1960. The Supreme Court emphasized that the registration of land as municipal property in 1998 was only a technical issue and that the decision on land restitution would conflict with the original decision on expropriation rather than the efforts to register the property in 1998. According to the Supreme Court, ownership was not a contested issue.

Applicant's allegations

12. The Applicant claims that the decision of the Supreme Court violated Article 31 of the Constitution and Article 6 of the European Convention on Human Rights and Fundamental Freedoms.

Assessment of the admissibility of the Referral

13. In order to be able to adjudicate the Applicant's Referral, the Court needs first to assess if the Applicant has fulfilled the admissibility requirements laid down in the Constitution, the Law and the Rules of Procedure.
14. As to the present case, the Applicant should have submitted sufficient evidence, showing that the assessment of evidence by the Supreme Court was clearly inaccurate, constituting a failure by the Supreme Court to guarantee to the Applicant a fair trial, pursuant to Article 31 of the Constitution.
15. However,, it is not the task of the Constitutional Court to assess the legality and accurateness of decisions made by competent judicial institutions, unless there is evidence that such decisions have been rendered in an obviously unfair and inaccurate manner.
16. The Constitutional Court's task with regard to alleged violations of constitutional rights is to examine whether the proceedings, taken as a whole, were fair and complied with the specific safeguards stipulated by the Constitution. The Constitutional Court is, therefore, not a fourth instance of appeal, and has no jurisdiction to reopen court proceedings or to substitute decisions of regular courts with its own findings.
17. There is no evidence in the instant case that the Supreme Court has assessed the evidence provided by the Applicant in an inaccurate manner. In fact, the Applicant has failed to prove that the Supreme Court has violated Article 6 of the European Convention on Human Rights and Article 31 of the Constitution. The Applicant has also failed to submit the necessary evidence that would prove that the Supreme Court and the Kosovo Cadastral Agency have violated basic human rights guaranteed by the Constitution
18. For these reasons, the Court finds that the Applicant's Referral is manifestly ill-founded, and, therefore, rejects it as inadmissible (see *Resolution on Inadmissibility Case No. KI 13/09, Sevdail AVDYLI Against Supreme Court Judgment A. No. 533/2006 of 11 September 2006 and Supreme Court Judgment A. No. 353/2003 of 2 December 2003, dated 17 June 2010*).

FOR THESE REASONS

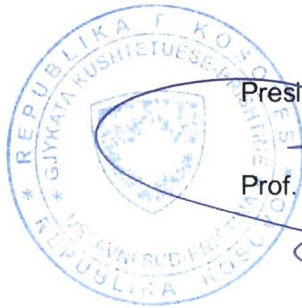
The Court, pursuant to Article 113 (7) of the Constitution, Article 20 of the Law, and Article 55 of the Rules of Procedure, unanimously,

DECIDES

- I. TO REJECT the referral as Inadmissible.
- II. This Decision shall be notified to the parties and shall be published in the Official Gazette, in accordance with Article 20 (4) of the Law.
- III. This Decision is effective immediately.

Judge Rapporteur

Dr. Gyljeta Mushkolaj



President of the Constitutional Court

Prof. Dr. Enver Hasani

