

JUDGMENT

27 June 2016

Astana

Judge A.S. Smailov of the Judicial Review Panel of the Civil Division of the Supreme Court of the Republic of Kazakhstan,

after preliminary examination of a petition by the Green Salvation Environmental Association for review and/or certiorari in a civil case of a ruling of 6 November 2015 by the Specialized Inter-District Economic Court for the City of Almaty and of a judgment of 28 December 2015 by the Almaty City Court Appeal Panel on Civil and Administrative Matters,

in a civil case concerning an application by the Green Salvation Environmental Association against the City of Almaty Department of Natural Resources and Environmental Management (a municipal public authority), with Mikhail Yuryevich Novoselov, Ile Alatau State National Nature Park (designated by the government as a public authority) and Kronverk LLC as third parties, requesting that the conclusion of a State Environmental Review be recognized as unlawful and set aside,

HAS FOUND AS FOLLOWS:

Green Salvation, an environmental association, ('Green Salvation') brought court proceedings against the City of Almaty Department of Natural Resources and Environmental Management (a municipal public authority) ('the Department'), with M.Y. Novoselov, Ile Alatau State National Nature Park (a public authority) and Kronverk LLC as third parties, requesting that the conclusion of a State Environmental Review concerning the draft Environmental Impact Assessment for the Kok Zhailau Ski Complex Road Construction Project ('the SER Report') be recognized as unlawful and set aside,

On 6 November 2015, the Specialized Inter-District Economic Court for the City of Almaty dismissed the application.

On 28 December 2015, the Almaty City Court Appeal Panel on Civil and Administrative Matters upheld this ruling by the court of first instance.

In its petition, Green Salvation requests that the disputed judicial acts be set aside, considering that they are unlawful and unfounded, because the findings of these courts were inconsistent with the established circumstances of the case and incorrectly applied the substantive and procedural law.

In disputing the SER Report, Green Salvation states that destruction of *Malus sieversii* (wild apple) and/or wild apricot trees in connection with construction of a road on the site chosen entails not only destruction of the plants themselves – plants which

are listed in the Red Book of Kazakhstan – but also destruction of the habitats of these species.

Consequently, in the petitioner's view, the SER Report does not comply with the requirements of the legislation currently in force.

Having examined the case file and studied the arguments in the petition, I consider that there are no grounds for review of the judicial acts, for the following reasons.

Under Article 438(5) of the Civil Procedure Code of the Republic of Kazakhstan, significant breaches of substantive and procedural law that have led to an unlawful judicial act provide grounds for review on a point of law, where such judicial acts have come into legal force. There have been no such violations in this case.

It is clear from the case file that the Department produced an SER report, dated 11 February 2015, on the draft Environmental Impact Assessment for the Kok Zhailau Ski Complex Road Construction Project.

This SER Report investigated not only matters related to assessing the environmental impact of these activities, but also other aspects of the project: in particular, general information was given, including consideration of the hazard class of the enterprise concerned, of the public health protection zone and of the site attributes, determining the location of its structural units such as heating, water and sewerage systems, etc.

Paragraph 16 of the SER Report shows that 1,967 trees and 10 shrubs, which are suitable for transplanting, and 1,361 conifer trees (Tian Shan spruce), 3,283 deciduous trees (including 465 wild apple), 12 coniferous shrubs and 15,855 other shrubs, none of which is suitable for transplanting, all lie directly in the path of the road construction. In addition, 48,000 m² of grassland containing wildflowers and culinary and medicinal herbs, 1,200 m² of ferns and 2,400 m² of sedum species are scheduled for destruction and subsequent restoration; 24,053 m² of wild brushwood and coppice shoots and 492 m² of naturally occurring saplings will be subject to clearance, while 76 tree stumps will be subject to extraction.

Thus, Paragraph 16 gives general data on the species composition and health status of the vegetation scheduled for mandatory destruction. Consequently, the local courts have rightfully found that the disputed SER Report was not conclusive as to felling (sanitary felling) and destruction of plants. The destruction of vegetation was carried out by Ile Alatau State National Nature Park, which is the relevant public authority, on the basis of permits obtained.

It is clear from the case file that the SER Report was prepared in accordance with the Environmental Code on the basis of materials provided not only by Kronverk LLC but also by other official bodies, in particular by the project owner, City of Almaty Highways Authority, which is a municipal public authority.

In addition, these findings by the courts are completely consistent with

Article 46 of the Environmental Code and with the Rules for Conduct of State Environmental Review, approved by Order No. 100 of the Minister for Energy of the Republic of Kazakhstan of 16 February 2015, under which an EIA is to be carried out in order: to define and limit the possible negative effects on the environment and on public health of the proposed administrative, economic, investment, rule-making and other activities; to balance the interests of economic development and environmental protection; to prevent harm to third parties in the course of environmental management.

It is clear from the SER Report that this project adheres to permissible levels for emissions of harmful substances into the atmosphere during the period of construction works.

Therefore I consider that the local courts correctly determined and established the circumstances that were significant in this case and verified all the arguments and objections from the Parties; in accordance with the requirements of Article 77 of the Civil Procedure Code, the courts also assessed each piece of evidence presented to them in terms of admissibility, relevance, reliability and – taking all the evidence together – sufficiency to settle this civil case.

The grounds and reasons for these rulings are set out in detail in the judicial acts, citing the relevant provisions of the law.

A party's disagreement with findings of the courts that comply with the law and are consistent with the objective circumstances of the case does not provide grounds for review of disputed judicial acts.

Pursuant to subparagraph 2 of Article 444(1) of the Civil Procedure Code, the judge

HAS DECIDED:

That the petition for review of the ruling of 6 November 2015 by the Specialized Inter-District Economic Court for the City of Almaty and of the judgment of 28 December 2015 by the Almaty City Court Appeal Panel on Civil and Administrative Matters should not be forwarded to the Judicial Review Panel of the Civil Division of the Supreme Court of the Republic of Kazakhstan.

A copy of this judgment is to be sent to the party which filed the petition.

Judge

A. Smailov

This is a true and faithful copy

*[Round stamp of the Supreme Court
of the Republic of Kazakhstan]*

Judge

[signed]

A. Smailov