

JUDGMENT

14 November 2016

Astana

Judge G.B. Duisenbayev 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 of a determination of 6 June 2016 by the Specialized Inter-District Economic Court for the City of Almaty and of a determination of 20 July 2016 by the Almaty City Court Appeal Panel on Civil Matters

in a civil case concerning an application by the Green Salvation Environmental Association against Kronverk, a limited liability company, requesting that the document ‘Materials for an inventory of the area’s vegetation and a survey of the forest pathology’, produced by Kronverk, be recognized as unlawful and set aside,

HAS FOUND AS FOLLOWS:

Green Salvation, an environmental association, filed the above-mentioned application to the court against Kronverk LLC (‘Kronverk’), on the basis that Kronverk had produced the disputed materials, which were commissioned by Kazakhskiy PromTransProekt LLP for the Kok Zhailau Ski Complex Road Construction Project. It claimed that, in carrying out work to make an inventory of the area’s vegetation and a survey of the forest pathology, Kronverk relied on regulations which do not apply to the territory of the Ile Alatau State National Nature Park and have no legal force.

On 6 June 2016, the Specialized Inter-District Economic Court for the City of Almaty dismissed the application.

On 20 July 2016, the Almaty City Court Appeal Panel on Civil Matters upheld this determination by the court of first instance.

In its petition, the applicant submits that the substantive law was incorrectly applied by the local courts and that their findings were inconsistent with the circumstances of the case: it asks the court to set aside the previous judicial acts and to issue a new judgment in favour of its application.

Having studied the arguments put forward in the petition, the judge considers that there are no grounds for review of the judicial acts.

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 unlawful judicial acts provide grounds for review on a point of law, where such judicial acts have come into legal force.

On examining this case, the courts did not accept that there had been any such violations.

As is clear from the judicial acts concerned, the disputed materials were produced by Kronverk under terms of reference provided by Kazakhskiy PromTransProekt LLP in the context of the Kok Zhailau Ski Complex Road Construction Project, to make an inventory of the area's vegetation and to survey the forest pathology.

Under Article 293 of the Civil Procedure Code, decisions and acts (or omissions) of public authorities, local authorities, public associations, organizations, officials and public employees that are subject to judicial challenge include collective and individual decisions and acts (or omissions).

Under Paragraph 5 of Decision No. 20 of the Supreme Court of 24 December 2010 on some issues of application by the courts of the provisions of Chapter 27 of the Civil Procedure Code of the Republic of Kazakhstan, which is a decision with regulatory force, the applicant has the right to appeal against any collective or individual decision of a public authority or local authority or any act (or omission) of an official or public employee that meets both the following criteria: it arises from public-law relationships (relations of authority and hierarchy) in the exercise of government; it gives rise, for the applicant, to any of the legal consequences provided for by subparagraphs 1 or 3 of Article 279(1) of the Civil Procedure Code.

The local courts correctly found that the disputed materials do not give rise to legal consequences for the applicant, as provided for by Article 293 of the Civil Procedure Code, and therefore the applicant's claims are not subject to consideration and settlement in civil proceedings.

In these circumstances, the local courts' dismissals of the application were well founded, since it was given a proper legal evaluation, consistent with the circumstances of the case.

The arguments put forward in the applicant's petition have been subject to examination by the lower courts and were given a proper legal evaluation, which indicated no significant breaches of substantive or procedural law leading to an unlawful judicial act and providing grounds for review of the judicial act on a point of law: therefore there are no grounds for forwarding the petition for review before the Supreme Court.

A party's disagreement with findings of the courts that are based on a study of the 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 Green Salvation Environmental Association's petition for review of the determination of 6 June 2016 by the Specialized Inter-District Economic Court for the City of Almaty and of the determination of 20 July 2016 by the Almaty City Court Appeal Panel on Civil 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

G.B. Duisenbayev

This is a true and faithful copy

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

[signed]

Judge

G.B. Duisenbayev