

JUDGMENT

14 November 2016

Astana

Judge N.K. Sultanov 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 ruling of 11 March 2016 by the Specialized Inter-District Economic Court for the City of Almaty and of a judgment of 29 June 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 the City of Almaty Highways Authority (a municipal public authority), with Kazakhskiy PromTransProekt LLP as a third party, requesting that the Environmental Impact Assessment for the Kok Zhailau Ski Complex Road Construction Project 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 Highways Authority ('the Authority') requesting that the Environmental Impact Assessment for the Kok Zhailau Ski Complex Road Construction Project be recognized as unlawful and set aside,

On 11 March 2016, the Specialized Inter-District Economic Court for the City of Almaty dismissed Green Salvation's application.

On 29 June 2016, the Almaty City Court Appeal Panel on Civil Matters upheld this ruling.

In its petition, Green Salvation asks the court to set aside the disputed judicial acts, pleading breaches of substantive and procedural law acknowledged by the courts, and to issue a new judgment in favour of its application.

Having studied the arguments in the petition, the judge is of the opinion 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 judicial acts concerned that the Environmental Impact Assessment ('the EIA') for the Kok Zhailau Ski Complex Road Construction Project ('the Project') was commissioned from Kazakhskiy PromTransProekt LLP ('KAZPTP') under terms of reference set by the City of Almaty Highways Authority, which is a division of the Akimat (Mayor's Office) of the City of Almaty, and under Architectural and Planning Specifications No. 2837 of 12 September 2014 issued by the City of Almaty Directorate for Architecture and Urban Development.

The Project owner is the Authority, the general designer of the Project is KAZPTP and the source of funding for the Project is the National Budget of the Republic of Kazakhstan.

The basis for development of the Project was provided by: Resolution No. 1761 of the Government of the Republic of Kazakhstan of 29 December 2012 approving the Plan to develop world-class ski resorts in Almaty Region and close to the City of Almaty; Resolution No. 2/303 of the Akimat of the City of Almaty of 25 April 2014 on project design specifications and estimates and on highways construction for the City; the City of Almaty Development Master Plan to 2020; Contract No. 40-GZ of 11 June 2014 for public procurement of works; Architectural and Planning Specifications No. 2837 of 12 September 2014; and the Terms of Reference of 13 June 2014.

In setting out the cause of its action, Green Salvation has claimed that Chapter 8 of the EIA ('Flora and fauna impact assessment') 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 in the path of the road construction.

In addition, 139 conifer trees (Tian Shan spruce), 609 deciduous trees (including 71 wild apple) and 20 shrubs are in an unsatisfactory condition and will be subject to sanitary felling.

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 subject to 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.

In Green Salvation's view, the defendant is in breach of the legislation that provides for the protection and conservation of plants listed in the Red Book of

Kazakhstan, insofar as the EIA makes provision for clearance (felling) of *Malus sieversii* (wild apple), which also appears on the Red List of Threatened Species compiled by the International Union for the Conservation of Nature (IUCN).

In dismissing Green Salvation's application, the courts proceeded on the basis that, under Article 14 of the Law of the Republic of Kazakhstan on Highways and Articles 35, 36 and 47 of the Environmental Code of the Republic of Kazakhstan, a state environmental review includes checks on compliance with the rules for conducting an EIA, on full and adequate information gathering during the EIA process, on whether or not this information has been taken into account in making technical decisions about the project concerned and on the compliance of all documentation, including the EIA, with the environmental requirements of the laws of the Republic of Kazakhstan.

Green Salvation appealed before the courts against the conclusion of State Environmental Review No. 07-08-119 of 11 February 2015.

In an effective ruling of 6 November 2015, the Specialized Inter-District Economic Court for the City of Almaty dismissed an application by Green Salvation for the conclusion [full report] of the State Environmental Review to be recognized as unlawful and set aside.

In the context of examining the present civil case, both the court of first instance and the appeal court made a legal assessment of the EIA, finding that it complied with the Impact Assessment Guidelines (the Instructions on conducting Environmental Impact Assessments for proposed economic or other activities when preparing preliminary, planning, predesign and design documentation, approved by Order No. 204-P of 28 June 2007 of the Minister for Environmental Protection of the Republic of Kazakhstan) and with the measures envisaged for minimizing any negative impacts of implementing the Project, which are intended to prevent adverse consequences (destruction, degradation, damage and depletion of natural ecological systems and natural resources), and for improving the environment, taking into account the requirements of environmental legislation.

When it produced the EIA, KAZPTP presented information on vegetation that was either suitable or unsuitable for transplanting, including information on deciduous trees, inter alia 71 wild apple trees (*Malus sieversii*) subject to sanitary felling. The information provided represents the actual situation in the area affected by the Project and the possible consequences resulting from construction of the road.

The EIA, which has in its turn undergone state environmental review, provides the basis for local executive agencies to prohibit or permit the construction, reconstruction (expansion, retooling, modernization) or major repair of enterprises, buildings and other structures, in accordance with Article 20(2) of the Environmental Code.

Since it was not established that the Authority had acted in breach of

environmental law, the courts held the applicant's arguments to be unfounded.

The findings of the courts were consistent with the circumstances that are significant in this case.

The position of the courts is based on the provisions of the law and is consistent with the evidence studied during the court proceedings.

The grounds and reasons for these rulings are set out in detail in the disputed judicial acts.

The arguments in the petition were subject to study by the local courts and were given a proper legal evaluation.

In these circumstances, there are no grounds on which to grant the petition.

A party's disagreement with findings of the courts that are based on a full, objective 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 petition for review of the ruling of 11 March 2016 by the Specialized Inter-District Economic Court for the City of Almaty and of the judgment of 29 June 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

N. Sultanov

This is a true and faithful copy

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

[signed]

Judge

N. Sultanov