

Decision in the name of the Republic of Kazakhstan

May 27, 2019

case No. 7517-19-00-2 /10338

Almaty c.

The Medeu District Court of Almaty, chaired by Judge Zhumamuratova T.A., with the Secretary Sakova S.S., examined in open court a civil case, in which,

PLAINTIFF/ APPLICANT:

Serzhan Gulzada Urbalakzy

DEFENDANT:

Department of Justice of Almaty,

THIRD PARTY (involved in the case by the court):

Sekerbayeva Zhanar Sansyzbayeva

CLAIMANT'S CLAIM:

1. To invalidate the orders of the Department of Justice of Almaty No. 24 dated January 9, 2018, No. 124 dated 02.20.2018, No. 2 dated 3.01.2019;
2. To assign the RSU "Department of Justice of Almaty" to the obligation to register the "Kazakhstan Feminist Initiative "Feminita" Public Fund as a legal entity.

THE COURT INVOLVED:

Applicant: Serzhan G., her representative Shormanbaev A.S.

Representative of the defendant of the Department of Justice of Almaty: P. Nadzhapov

DESCRIPTIVE PART:

The applicant Serzhan G. filed to the court appealing with the following circumstances.

Serzhan G. and Sekerbayeva Z.S. established the "Kazakhstan Feminist Initiative "Feminita" Public Fund (*hereinafter - the Fund*) in December 2017. The applicant was elected to be a chairman of the Fund. After collecting all the required documents on December 27, 2017, the Fund applied for the state registration. By the Order No. 24 of January 9, 2018, the registration of the Fund was suspended, without indicating reasons.

After making the changes to the documents, the applicant resubmitted them on February 13, 2018. However, by the order No. 124 of February 20, 2018, the registration deadline was again interrupted and the documents were returned to eliminate the deficiencies.

On December 20, 2018, the applicant tried to re-register the fund. However, by the order No. 2 of January 3, 2019, the Department of Justice interrupted the registration period again for the same reasons.

The applicant believes that the orders of the Department of Justice are illegal and violate the rights to freedom of association enshrined in the International Covenant on Civil and Political Rights, the UN Convention and the Constitution of the Republic of Kazakhstan.

At the court hearing, the applicant G. Serzhan and her representative A. Shormanbayev, maintained its claims.

The representative of the defendant – P.A. Nadzhapov asked to refuse the applicant's claims, and provided withdrawal.

The third party Zh.S. Sekerbaeva did not attend the hearing. However, she sent a writing statement to agree on the consideration of the case without her participation and agreed with the stated requirements.

Motivation part:

According to part 1, article 292 of the Code of Civil Procedure, a citizen and a legal entity shall have the right to challenge the decision, actions (inaction) of a state body, local government, public association, organisation, official, public servant in court.

By virtue of paragraph 1 of article 293 of the Code of Civil Procedure for decisions, actions (inaction) of state bodies, local self-governmental bodies, public associations, organisations, officials, civil servants, subject to judicial challenge are collegial and sole decisions and actions (inaction), as a result of which: the rights and freedoms of a citizen are violated and legal interests of a legal entity; created obstacles to the exercise by a citizen of his rights and freedoms, as well as by a legal entity of legal interests; a citizen or legal entity is unlawfully imposed any duty or they are illegally prosecuted.

The court found that by orders of the Department of Justice of Almaty No. 24 dated January 9, 2018, No. 124 dated 02.20.2018, No. 2 dated 3.01.2019, the state registration deadline for the Kazakhstan Feminist Initiative Kazakhstan Fond Fund was interrupted.

According to art. 9 of the Law of the Republic of Kazakhstan “On state registration of legal entities and the registration of branches in representative offices” in case of an incomplete package of documents, any deficiencies in them, the need to obtain expert (specialist) opinions on constituent documents, as well as on other grounds provided by legislative acts of the Republic Kazakhstan, the term of state (accounting registration (re-registration), registration of termination of activities of legal entities, deregistration of a branch (representative offices), registration of amendments and additions to the constituent documents of a legal entity that is not related to a private business entity, as well as to a joint-stock company, the regulations on their branches (representative offices) are interrupted until the deficiencies are eliminated or an appropriate opinion (examination) is obtained.

As a ground for termination of registration is indicated Article 4 of the Law of the Republic of Kazakhstan “On non-profit organizations”, which indicates that non-profit organizations can be created to achieve social, cultural, scientific, educational, charity, managerial goals, protect rights, legitimate interests of citizens and organizations, resolve disputes and conflicts, satisfaction of the spiritual and other needs of citizens, protect the health of citizens, protect the environment, develop physical culture and sports, provide legal assistance, and also other goals aimed to provide public goods and the benefits of its members (participants). The aims of the non-profit organizations` activities are determined by constituent documents.

Article 22 of the specified Act provides that the non-profit organization`s charter must provide a name, including a legal form, subject and purposes of the non-profit organizations` activities.

To the arguments of the defendant that the subject and purposes of the fund provided for in paragraph 2.1 of the Charter of the fund does not meet the requirements of the law, namely, “On charity”, “On non-profit organizations”, “On public associations”, the court considers it substantiated on the following grounds.

Article 2 of this Law “On charity” determines that the goal of the charity is promoting the development of society`s self-organization by forming the maintenance and strengthening spiritual and moral values of charity in the society. The goal of charity is achieved by fulfilling the tasks of promoting peace, friendship and social harmony, of the unity of the people, spiritual culture, prestige and the role of the family in society, as well as protecting motherhood, patriotic education of children and youth.

In this case the court concludes that the goals of the fund's activities specified in paragraph 2 of the Charter of the fund do not envisage the strengthening of the spiritual and moral values, spiritual culture, prestige and the role of the family in society. This justification was set out in the order of January 9, 2018.

In addition, paragraph 2.1 of the Charter, the participants of the fund may make changes in the political sphere, which is also unacceptable for a legal entity with the status of a public fund.

Furthermore, the plaintiff's side refers to the fact that in subsequent appeals they made corresponding changes to the charter in terms of the objectives of the activity, however this statement is unfounded, such evidence is not presented to the court.

In this regard, court considers reasonable the non-elimination of previously indicated remarks that indicated as one of the grounds in interruption of state registration in the orders of February 20, 2018 and of January 3, 2019.

In the circumstances, given the circumstances established by the court, and also that the actions of the defendant were carried out within the framework of their authority and in accordance with the legislation on state registration of legal entities, Serzhan's claims are unfounded, subject to rejection.

The plaintiff's arguments about the violation of the International Covenant "On civil and political Rights" ratified by the Law of the Republic of Kazakhstan of November 28, 2005, the UN Convention "On the Accession of the Republic of Kazakhstan to the Convention on the Elimination of All Forms of Discrimination against Women" ratified by the Law of the Republic of Kazakhstan of June 29, 1998 № 248 and the Constitution of the Republic of Kazakhstan on the right to freedom of association cannot be taken into account by the court, since the activities of the association are also regulated by other legislative acts set forth above.

RESUME:

Guided by Articles 223-226 of the Code of Civil Procedure, the court

DECIDED:

In satisfying the stated requirements of Serzhan Gulzada Uralakyyzy to the RSU "Department of Justice of Almaty" on recognizing orders № 24 of January 9, 2018, № 124 of February 20, 2018, № 2 of January 3, 2019 unlawful, and assigning duties to RSU "Department of Justice Almaty city" state registration of the Public Association "Kazakhstan Feminist Initiative "Feminita" as a legal entity – to refuse.

An appeal may be filed against the decision, a petition by the prosecutor in compliance with the requirements of Articles 403, 404 of the Civil Procedure Code of the Republic of Kazakhstan to the Appeal Judicial Board of the Almaty City Court through the Medeu District Court of Almaty within one month from the date of the decision in final form.

The decision was finalized on May 31, 2019.

Judge

Zhumamuratov T. A.

Reference: The decision entered into force on «__» _____ 20__ year.