

DECISION
of the Judicial Chamber

September 3, 2019

№ 2a-6757/19

Almaty

The Judicial Chamber for Civil Cases of the Almaty City Court composed of: presiding judge T. Nabiyeu,
judges: B. Makhpirov, D. Makhmetova,
examined a civil case at the hearing in the premises of the Almaty City Court upon application of:

COMPLAINANT: Serzhan Gulzada Urbalakyzy;

DEFENDANT: the Department of Justice of Almaty;

THIRD PARTY: Sekerbayeva Zhanar Sansyzybayevna,

APPLICANT REQUIREMENTS:

1. To declare illegal the orders of the Department of Justice of Almaty No.24 dated January 9, 2018, No. 124 dated February 20, 2018, No.2 dated January 3, 2019;

2. To entrust the Department of Justice of Almaty with the obligation to state registration of the Public Fund "Kazakhstan Feminist Initiative "Feminita" as a legal entity.

PARTICIPATED IN THE COURT:

Applicant: G. Serzhan, her representative advocate G. Okapova,

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

received on appeal from the applicant on the decision of the Medeu District Court of Almaty dated May 27, 2019,

ESTABLISHED:

G. Serzhan (hereinafter - the applicant) appealed to the court with the aforementioned statement to the Department of Justice of Almaty.

By the decision of the Medeu District Court of Almaty dated May 27, 2019, in satisfaction of the stated requirements of Serzhan Gulzada Urbalakyzy to the Department of Justice of Almaty on invalidating orders No.24 of January 9, 2018, No.124 of February 20, 2018, No.2 of January 03, 2019, assigning obligations to the Department of Justice of Almaty to state registration of the Public Fund "Kazakhstan Feminist Initiative "Feminita" as a legal entity - refused.

In the appeal, the applicant asks to cancel the decision and make a new decision on the satisfaction of the application, indicating that the court has incorrectly determined and clarified the range of circumstances relevant to the case, the court's findings do not correspond to the circumstances of the case, the rules of substantive and procedural law are violated.

The third party did not appear in the appellate instance, although it was notified of the time and place of the meeting, did not report the reasons for the failure to appear, therefore, by virtue of paragraph 2 of Article 418 of the Code of Civil Procedure, the case was considered in its absence.

Having heard the applicant and her representative, who supported the appeal, the objections of the representative of the defendant against the appeal, having studied the case materials, examined the arguments of the complaint, the chamber considers that the decision of the court of the 1st instance is lawful, reasonable and must be left unchanged for the following reasons.

Significant violations that may allow reviewing judicial acts that have not entered into legal force on appeal include violations of procedural law listed in paragraph 1 of Article 427 of the Code of Civil Procedure. The improper application of substantive law can be attributed to a substantial violation only if, as a result, the case is incorrectly resolved by the court.

Such violations were not committed during the trial by the court of first instance.

As can be seen from the materials of the case and established by the court, the term of state registration of the Public Fund "Kazakhstan Feminist Initiative "Feminita" was interrupted by the orders of the Department of Justice of Almaty No.24 dated January 9, 2018, No.124 dated February 20, 2018, No.2 dated January 03, 2019.

The court correctly pointed out that the subject and objectives of the fund's activities, as provided for in paragraph 2.1 of the charter of the fund, do not comply with the requirements of

the legislation, namely the laws “on Charity”, “on Non-Profit Organizations”, “on Public Associations”.

So, Article 2 of the Law “On Charity” establishes that the purpose of charity is to promote the development of society’s self-organization by forming, maintaining and strengthening the spiritual and moral values of charity in society.

The goal of charity is achieved, among other things, by fulfilling the tasks of promoting peace, friendship and social harmony, the unity of the people, spiritual culture, prestige and the role of the family in society, as well as protecting motherhood and patriotic education of children and youth.

The court came to the justified conclusion that the goals of the foundation’s activities specified in Paragraph 2 of the Charter do not provide for the strengthening of spiritual and moral values, spiritual culture, prestige and the role of the family in society in society. This justification was set out in the order of January 9, 2018.

In addition, according to paragraph 2.1 of the Charter, persons, members of the fund can make changes in the political sphere, which is also unacceptable, for a legal entity with the status of a public foundation.

The court correctly pointed out that the applicant refers to the fact that in subsequent appeals they made the corresponding changes to the charter in terms of the goals of the activity, however this statement is unfounded, such evidence was not presented to the court.

The court made a reasonable conclusion that the previously submitted observations, indicated by one of the grounds for the interruption of the period of state registration in the orders of 20.02.2018 and 03.01.2019, are justified.

Given the above, and in accordance with Article 72 Code of Civil Procedure, the trial court came to the correct conclusion that the claims of G. Serzhan are unfounded, subject to rejection.

In the appeal the applicant does not bring other new material arguments, not considered by the court of first instance. Thus, by virtue of Part 2 of Article 426 of the Code of Civil Procedure, there are no grounds for amending or canceling a judicial act.

Under the circumstances, the judicial chamber considers that the conclusions of the court of first instance set out in the decision are consistent with the circumstances of the dispute and are consistent with the requirements of the law, there were no violations of substantive and procedural law, and therefore, the contested judicial act is lawful, there are no grounds for its cancellation of this or change is not available.

Based on the above, guided by Articles 423 - 426 of the Code of Civil Procedure of the Republic of Kazakhstan, the Chamber

DECIDED:

The decision of the Medeu District Court of Almaty dated May 27, 2019 in this case is upheld, the appeal is dismissed.

The decision of the appellate instance shall enter into force on the day of its announcement.

An application, a protest to challenge the decision may be filed in cassation appeal to the Supreme Court of the Republic of Kazakhstan within six months from the date of its entry into force.

Chairman, judge:

T. Nabyev

Judges:

B. Makhpirov

D. Makhmetova