

DRAFT

The Constitutional Court has protected potential cultural heritage sites

FAO: *development* *companies'* *in-house* *lawyers*

Pepeliaev Group advises that the Russian Constitutional Court has adopted Resolution No. 17-P dated 11 April 2024. This determines that courts can prohibit facilities from being demolished until a dispute is resolved for them to be treated as cultural heritage sites.

The situation in dispute

An initiative group went to court to challenge a refusal of the body responsible for preserving cultural heritage sites to include a railway station in the list of identified cultural heritage sites.

The court upheld the administrative claim. However, by that time, the building had already been demolished because the plaintiffs were refused provisional remedies for the period when the litigation was ongoing. Reliance was placed on it being impossible to grant such provisional remedies under the existing provisions of the Russian Code of Administrative Procedure (the 'Administrative Procedure Code'). Having an unenforceable court decision on their hands, the individuals ended up applying to the Russian Constitutional Court (the 'Constitutional Court').

Pepeliaev Group's comment

When courts consider administrative claims seeking to have orders of regional bodies responsible for preserving cultural heritage sites held invalid, they treat such orders as regulatory instruments.

As regards cases in which regulatory instruments are challenged, the Administrative Procedure Code establishes that the only provisional remedy a court may grant in such administrative cases is a prohibition on the instrument in question or certain of its provisions being enforced against the administrative plaintiff. The Code also specifically stipulates that no other provisional remedies can be applied in cases under which regulatory instruments are challenged (article 211).

The Constitutional Court reviewed articles 85, 87(4) and 211 of the Administrative Procedure Code.

It held that the above rules do not comply with the Russian Constitution. This is because they unreasonably limit a court's power to grant provisional remedies in an administrative case to invalidate a regulatory instrument of a regional body responsible for preserving cultural heritage where the latter refuses to include a facility that has features of a cultural heritage site in the list of identified cultural heritage sites.

The Constitutional Court's main conclusions:

1. Before a final court decision is adopted and comes into force in a case where a refusal is challenged of a regional body responsible for preserving cultural heritage, it remains possible that the facility will be included in the list of identified cultural heritage sites (historical and cultural landmarks) if it is proven that the facility has the relevant features (characteristics).
2. The right of individuals who act as administrative plaintiffs to have access to cultural heritage sites (article 44(2) of the Constitution) can be infringed by the facility being torn down.
3. The conditions which are envisaged in the Administrative Procedure Code for a provisional remedy to be granted in a case where legal instruments are challenged of a regional body responsible for preserving cultural heritage when it has refused to assign the status of a cultural heritage site to a specific facility which has relevant features do not, within the current legal framework, meet the constitutional principles of the fair administration of justice. Nor are they in line with the Constitution recognising culture as the unique heritage of the Russian multi-ethnic nation, while they contain no effective judicial guarantees for protecting cultural heritage sites (historical and cultural landmarks).
4. Now, until relevant amendments are introduced into the legal framework, if a regulatory instrument of a regional body responsible for preserving cultural heritage is challenged where such body is refusing to include a site which has features of cultural heritage in the list of identified cultural heritage sites, courts should take the following into account:
 - when a court considers an administrative lawsuit it may grant provisional remedies under that case in the form of an obligation being imposed on the owner (person lawfully in possession) of such facility or of the land plot on which it is located not to tear it down;
 - if the owner (person lawfully in possession) of a relevant facility which has features of a cultural heritage site or the owner (person lawfully in possession) of a land plot on which the facility is located is not a party to the lawsuit, the court may, when it grants the above provisional remedy, join such person as a party to the lawsuit further to article 47 of the Administrative Procedure Code.
 - The federal legislature has been ordered to make the necessary amendments to the current legal framework of administrative court

proceedings. This does not preclude the legislature from being able to use its law-making powers to extend provisional remedies when cases are considered under Chapter 21 of the Administrative Code to challenge orders and other instruments whose regulatory powers are manifested in them being able to affect the legal treatment of various facilities or give rise to specific conditions for such facilities to be used (operated) and protected. Another possible use of such law-making powers is improving the legal framework in the area of preserving cultural heritage.

Pepeliaev Group's comment

Any individual or legal entity may file a claim seeking to have a facility that meets the features of a cultural heritage site included in the list of identified cultural heritage sites. Such persons may initiate legal proceedings over the status of a site if they disagree with a decision of the regional body responsible for preserving cultural heritage. Practice shows that such disputes are not always conducted in good faith. Moreover, they are not infrequently aimed at causing harm to developers rather than at preserving landmarks.

What to think about and what to do

The risks increase for developers of substantial delays or of them being unable to proceed with construction in areas where historical buildings and archaeological sites are located because a court may grant provisional remedies prohibiting buildings from being demolished until their status has been determined.

Help from your adviser

Pepeliaev Group has extensive experience of providing legal support to business when construction projects are implemented.

Pepeliaev Group's specialists are ready to provide the necessary legal assistance to developers, including advising on issues of how legislation on cultural heritage should be applied.

Contact details



Elena Krestyantseva Head of Land,
Real Estate and Construction Practice

Tel.: +7 (812) 640 60 10
e.krestyantseva@pgplaw.ru