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## **CITIZEN ENVIRONMENTAL ENFORCEMENT IN RUSSIA: THE FIRST SUCCESSFUL NATION-WIDE CASE**

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### **SUMMARY**

On February 16, 1998 the first hearings began on a suit initiated by the Ecojuris Institute to challenge illegal Russian government decrees withdrawing environmental safeguards from over 36,000 hectares of strictly protected "First Group" forest land.

The suit contested decrees signed by then Prime Minister Chernomyrdin converting large swaths of First Group forests into "non-forest" land, thereby allowing these forest parcels to be clear-cut and used for commercial or industrial development. The decrees were issued without the legally mandated Russian governmental Environmental Impact Review, or "Expertiza." The forests at risk were located across Russia, from the Moscow oblast in the west to the Khabarovsk in the Far East. Forests with important watershed protection value, riverbanks, greenbelts and endangered species habitat are classified as "First Group" forests and are strictly protected under Russian law.

### **1 THE COMPLAINT FILING**

The complaint was brought on behalf more than 100 plaintiffs from across the country, many of whom packed the courthouse on the first day of hearings. Plaintiffs included Russia's largest national environmental NGOs, the Socio-Ecological Union and the All Russian Natural Protection Society, regional groups such as the Union of Ecologists of Bashkortostan and the Tomsk Environmental Law Center, several Directors of Leskhoszy (local departments of the Federal Forestry Service), and the Chair of the Environment Committee of the Russian Parliament, Tamara Zlotnikova, among others.

When the Ecojuris Institute initially filed the complaint in April 1997, the Supreme Court refused to hear the case claiming that the decrees were "normative," or standard-setting acts that citizens had no right to challenge. Ecojuris Institute appealed to the Presidium of the Supreme Court (an appellate panel) arguing that by refusing to hear the case the Court was effectively denying Russian citizens access to justice, and that the decrees were not normative, but in fact had particular, one-time real world consequences — stripping protections from distinct critical forest habitats.

The Presidium agreed, abolishing the first decision of the Supreme Court and obliging the Supreme Court to hear the case as the Court of first instance.

### **2 THE HEARING**

During the first hearing Ecojuris lawyers offered a long series of expert testimony from across Russia documenting the unique biodiversity value of these forests, as well as the environmental damage that had already occurred — including clear cutting and even the

construction of a chemical plant on former First Group forest land in the Ural mountains. Neither the original government decrees, nor any of the subsequent commercial and industrial development, had an environmental impact review, as legally required.

The Russian Government was represented in the case by the Federal Forestry Service, the agency that had prepared all the substantiating documentation for the Chernomyrdin decrees. The Forestry Service refused to make these documents, which specify plans for the reclassified forestlands, available to Ecojuris and its clients, and the judge refused to issue an order compelling provision of documents by the Service. Moreover, both the Federal Forestry Service and the State Committee on Environment (formerly the Ministry of Environment) claimed that the issuance of the decrees, in and of themselves, caused no environmental damage and therefore did not require an environmental impact review. Yet, when questioned in court, the Federal Forestry Service itself had to admit that over 80% of the reclassified forest land in Chelyabinsk province in the Urals, for example, had already been developed!

The Ecojuris Institute was supported in the case by many local departments of the State Committee on Environment (Goskomprirordas) and regional Water Protection Agencies, as well as by the Moscow Sanitary-Epidemiological Service and the Institute of State and Law (the legal branch of the Russian Academy of Sciences). Critical support also came from the Prosecutor General of the Russian Federation, whose representative testified that a federal Environmental Impact Review was obligatory, and that clearly environmental harm could result from the issuance of these government decrees.

Although the case had the support of many government agencies and respected scientists and jurists, the prognosis looked bleak until the last moment. During the hearing the Supreme Court repeatedly — and illegally — refused many of Ecojuris' motions, including a motion to add new plaintiffs from Karelia in the North to Sakhalin Island in the Russian Far East. Additionally, the Court arbitrarily refused to allow many of the plaintiffs' expert witnesses to take the stand. Ecojuris petitioned to have the recalcitrant Justice removed, but that motion was denied as well.

Thinking the case was lost, and looking ahead to appeal, Ecojuris decided to risk a bold protest move in closing arguments. Russian civil procedure allows representative plaintiffs and key witnesses, in addition to the lawyers for the plaintiffs and defendants, to make a closing statement at the end of a hearing. So Ecojuris lawyers, the lead plaintiffs and the expert witnesses all stood up at the closing of the hearing to condemn the Justice's illegal actions. Both Ecojuris Institute and the Russian Prosecutor General's office stated that they, along with the many citizen and NGO plaintiffs in the case, had done their best to protect Russia's forests and unique biodiversity, as well as citizens' constitutional right to a healthy environment. Now it was the Supreme Court's responsibility. They reminded the Justices that citizens and press from across Russia and around the world were watching.

### **3 THE DECISION**

The Justices recessed for almost two hours to deliberate their historic decision.

And so it came to pass that after three tense days of hearings, the Russian Supreme Court ruled in favor of Ecojuris Institute, declaring illegal 12 government decrees withdrawing protections from over 18,000 hectares of strictly protected "First Group" forest land. (These decrees had been issued under the old Fundamentals of the Forest Legislation, prior to the adoption of the new Forest Code in 1996. The Court decided to consider the complaint against the later decrees, issued under the new Code, in a separate case.)

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#### 4 THE FUTURE

This case marked the first time in Russian history that a complaint against the government, brought by citizens and NGOs from across Russia, was heard and decided by the Supreme Court. Moreover the case sets important legal precedent marking the first time that a government act was declared illegal and invalidated by the Supreme Court based on failure to comply with the 1995 Law on Environmental Expertiza. The environmental expertiza is a cornerstone of Russian Environmental Law, and a critical tool both for building participatory democracy, and for addressing the potential environmental, social and economic consequences of government decisions and commercial development alike.

The Court's decision paved the way for Ecojuris and the coalition of plaintiffs to file a similar complaint to invalidate additional government decrees that would strip protection from thousands more hectares of First Group forest. This second forest protection case is currently pending. Many additional plaintiffs have joined the suit. To test new provisions of the Russian procedural law, Ecojuris filed the case on behalf of all current and future generation of Russian citizens, as authorized under the 1995 Civil Code. Having heard of the suit via the mass media, citizens from all quarters of the country have been sending telegrams and faxes authorizing Ecojuris to represent them and their progeny.

The "First Group Forest" cases, along with Ecojuris ongoing challenge to the construction of a high-speed rail link bisecting a national park and nine protected areas between Moscow and St. Petersburg, are helping to steer a new course for environmental enforcement in Russia. These cases mark a critical test both of the Russian government's commitment to environmental protection, and of the ability of the highest Russian courts to uphold the Rule of Law when the interests of critical forest habitats, endangered species, and Russian citizens are at odds with government acts and billion dollar development projects.

