

Abridged and translated from the Russian full text
By PE staff (SM 19 August 2005)
Russian original follows English translation

Case No. 33-1154

Judge: E. B. Iool'

Speaker: G. M. Azarov

Appellate Decision

July 26, 2005

City of Yuzhno-Sakhalinsk

The Judiciary Panel

On Civil Cases of the Sakhalin Regional Court, Consisting of:

Chair: I.V. Usoltseva

Judges: N.I. Akinina and G. M. Azarov,

considered in an open court proceeding the civil case regarding the petition of Elena V. Rashupkina-Lopukhina, Svetlana G. Gridasova, Alexander T. Kuznetsov, Vladislav A. Lesnoy, Vasiliy A. Kazak, Alexander I. Zarchikov, and the Regional Community Organization "Sakhalin Environment Watch," on the recognition as illegal the orders of the Department of Natural Resources and Environmental Protection of the Ministry of Natural Resources of the Russian Federation of the Sakhalin Region No. 433 from July 10, 2003, "On the organization and completion of the state environmental impact assessment [tr.: expertiza] of the materials of the work project *Temporary construction for unloading materials in Aniva Bay*;" No. 459 from July 25, 2003, "On the assertion of the opinion of the expert commission of the state ecological impact assessment on the materials describing the work project *Temporary construction for unloading materials in Aniva Bay*;" and on the recognition as invalid the opinion of the expert commission of the state environmental impact assessment of the materials of the work project *Temporary construction for unloading materials in Aniva Bay*, /the Construction of the LNG Plant/, and the duty of the interested party to eliminate in full the violations committed against the rights of the petitioners by way of the revocation of the aforementioned orders from the moment of their issuance;

on the appeal of the representatives of the company "Sakhalin Energy Investment Company, Ltd." and the Department of Federal Service for Inspection Related to Nature-Use (Rosprirodnadzor) for Sakhalin Region against the decision of the Yuzhno-Sakhalinsk municipal court of January 17, 2005, by which it was decreed:

"To partially grant the petition of E.V. Rashupkina-Lopukhina, S.G. Gridasova, A.L. Kuznetsov, V.A. Lesnoy, V.A. Kazak, A.I. Zarchikov, and the Regional Community Organization 'Sakhalin Environment Watch.'

"To recognize as invalid the orders of the Department of Natural Resources and Environmental Protection of the Ministry of Natural Resources of the Russian Federation for Sakhalin Region No. 433 from July 10, 2003, 'On the organization and completion of the state environmental impact assessment of the materials of the work project *Temporary construction for unloading materials in Aniva Bay*;' No. 459 from July 25, 2003, 'On the assertion of the opinion of the expert commission of the state ecological impact assessment on the materials describing the work project *Temporary construction for unloading materials in Aniva Bay*.'

"To recognize as invalid the opinion of the expert commission of the state environmental impact assessment of the materials of the work project *Temporary construction for unloading materials in Aniva Bay*, /the Construction of the LNG Plant/, No. 132-03/04 from July 24, 2003, from the moment of its assertion.

“To impose a penalty on the Department of Federal Service for Inspection Related to Nature-Use (Rosprirodnadzor) for Sakhalin Region of paying the court costs of E.V. Rashupkina-Lopukhina (the sum of 15 rubles).

“In granting of the demands of E.V. Rashupkina-Lopukhina, S.G. Gridasova, A.L. Kuznetsov, V.A. Lesnoy, V.A. Kazak, A.I. Zarchikov, and the Regional Community Organization ‘Sakhalin Environment Watch’ on the duty of the Department of Federal Service for Inspection Related to Nature-Use (Rosprirodnadzor) for Sakhalin Region **to eliminate** the violations committed against the rights of the petitioners by way of the revocation of the orders of the Department of Natural Resources and Environmental Protection of the Ministry of Natural Resources of the Russian Federation of the Sakhalin Region No. 433 from July 10, 2003, ‘On the organization and completion of the state environmental impact assessment of the materials of the work project *Temporary construction for unloading materials in Aniva Bay*,’ No. 459 from July 25, 2003, ‘On the assertion of the opinion of the expert commission of the state ecological impact assessment on the materials describing the work project *Temporary construction for unloading materials in Aniva Bay*’ to dismiss from the moment of issuance.”

[Tr.: Starting here, text abridged:]

Having heard the report of the judge G. M. Azarov, having heard the supporters of the appeal (representatives of the Department of the Nature-Use Inspector of Sakhalin Region and Sakhalin Energy Investment Co., Ltd.) and representative of Sakhalin Environment Watch, objecting to the appeal’s arguments, the judiciary panel has established:

On March 12, 2004, the seven petitioners came to the court with the petition on recognizing as illegal the orders of the Department of Natural Resources and Environmental Protection of the Ministry of Natural Resources of the Russian Federation of the Sakhalin Region (hereafter “Department of NREP-Sakhalin”) No. 433 and No. 459, recognizing as invalid the opinion of the expert commission on the state environmental impact assessment on the *Temporary construction for unloading materials in Aniva Bay* (tr: hereafter where abridged *Temporary Jetty*), and the duty of the interested party to eliminate in full the violations committed against the rights of the petitioners by canceling the orders. The petitioners indicated as the grounds of their demands the fact that on July 10, 2003, the Department of NREP-Sakhalin, with its order No. 433, made a decision regarding the organization and completion of the state environmental impact assessment on the Temporary Jetty. With its order No. 459 on July 25, 2003, the “Department of NREP-Sakhalin asserted its approval of the completed environmental impact assessment of the Temporary Jetty – an approval that expires in two years. The petitioners believe that this assessment did not meet the requirements of law on state environmental assessments and environmental protection, inasmuch as it did not follow the legally established procedural order of a state environmental assessment, it was done with incomplete information and out of step with the principles of transparency and thoroughness, there were no discussions with local stakeholders, and the project lacked approval by the inspection agency of the Federal Fishing Department of Sakhalin, and also it was done with an expert commission that lacked a marine biology specialist to evaluate impact on commercially-important fish and invertebrates in the bay, as well as marine mammals. Furthermore, the state impact assessment did not adhere to the principle of independence of expert commission members: this commission included E.G. Zolotukhin, an employee of the Sakhalin Department of Hydrometeorology and Environmental Monitoring, who had done a variety of research projects for Sakhalin Energy, the company which ordered the assessment.

On March 26, 2004, the petitioners submitted an addendum to their suit in which they indicated that the local community’s populace and organizations were not informed about the commencement of the assessment, in so doing violating the rights of the petitioners and the NGO “Sakhalin Environment Watch,” inasmuch as they were deprived of the chance to provide arguments on the ecological aspects of the Temporary Jetty, to see fulfilled their right to a state environmental assessment, and to carry out public control in the assessment process. As such, the disputed decisions of the Department of the NREP-Sakhalin, formalized in orders No. 433 and No. 459, are illegal and are to be cancelled, and also the approval of the state environmental assessment of the Temporary Jetty is to be invalidated.

The representative of the six individual petitioners Irina B. Bogdan and the representative of Sakhalin Environment Watch D.V. Lisitsyn pressed for the petitioners' demands.

The representatives of the Department of Federal Service for Inspection Related to Nature-Use (Rosprirodnadzor) for Sakhalin Region (tr: hereafter where abridged *Sakhalin Department for Nature-Use Inspection*) O.A. Ermakova and Z.V. Revyakina and the representatives of the third party Sakhalin Energy E.V. Shubin and A.V. Barnashov did not recognize the petitioners' demands.

Not appearing at the judicial session were the six individual petitioners or a representative of the third party Federal Fishing Department of Sakhalin, having presented petitions asking that the suit be considered in their absence.

The representatives of Sakhalin Energy and the Sakhalin Department for Nature-Use Inspection appealed the court's decision, asking that it be overturned.

As a basis for the appeal, Sakhalin Energy's representative indicates that the court didn't establish what exactly constitutes a violation of the petitioners' right to a healthy environment and didn't explain by exactly what illegal actions that right was violated. The judge avoided a thorough investigation of all the case's circumstances and didn't account for the fact that the materials of the regional assessment were based on and are completed by the federal assessment. Also, the judge didn't pay attention to the evidence presented by the Sakhalin Department for Nature-Use Inspection that the work plans for the Temporary Jetty include an environmental impact review. This review (hereafter *EIR*) of the Temporary Jetty, was carried out in the framework of a technical-economic basis (hereafter *TEB*); went through a public review process; and this project's impact is the same as that of a project assessed in the *TEB* materials; and new negative impacts on the currently-reviewed structure were not presented as evidence by the petitioners-- in violation of article 56 of the Russian Federation's Civil Procedural Code. The court didn't consider that the opinion of the regional state impact assessment No. 132-03/04 is dated July 24, 2003, and the federal opinion was finished June 26, 2003, but approved by order No. 600, dated July 15, 2003. Moreover, the court was not correct in considering it noteworthy that the opinion by the Federal Fishing Department of Sakhalin was absent given the date of the order No. 433 (July 10, 2003), and didn't give value to the arguments of Sakhalin Energy and the Sakhalin Department for Nature-Use Inspection that the absence of the Fishing Department's opinion was not a barrier to the issuance of an approving opinion to the regional state impact assessment.

In the appeal, the representative of the Sakhalin Department for Nature-Use Inspection points out that the court didn't pay attention to the fact that the Temporary Jetty was carried out on the basis of the plans from the *TEB* materials of the integrated construction of the second-stage Sakhalin II projects at Piltun-Astokhskoe and Lunskoye. The Temporary Jetty is part of the *TEB* materials, as shown by the presented evidence. The *TEB* materials went through a state environmental assessment and received approval on the federal level (July 15, 2003) while the *EIR* on the Temporary Jetty was carried out as part of the *TEB* materials. The environmental impacts of the Temporary Jetty were approved on the federal level. The *EIR* of the *TEB* included public discussion, in agreement with law. The judge's decision not to allow the approval of order No. 600 is not well-founded, inasmuch as it can't be declared such on the basis of Article 67, Paragraph 7 of the Russian Federation's Civil Procedural Code. The Federal Fishing Department of Sakhalin gave approval to the project August 8, 2003 (letter No. 17-4352) prior to the start of work on the Temporary Jetty. Therefore the judge's overturning of the approval by the state environmental assessment is not well-founded, inasmuch as the fact that agreement was received after the assessment's conclusion doesn't imply that there will be negative impacts, given that the Fishing Department gave approval August 8, 2003.

Opposing the appeal by Sakhalin Energy, A.N. Kulikov of Sakhalin Environment Watch asks that the decision stand without changes.

Having examined all the case materials, having discussed the arguments and objections, the Judiciary Panel does not find any basis to change the court's decision.

In accordance with the Russian Federal Law on Environmental Protection Article 3, economic and other activity of the Russian Federation's agencies and those of the RF's subjects, local administrations, judicial and physical bodies which have impact on the environment, must be carried out on the following principles:

Respect of the human right to a healthy environment;

Provision for healthy conditions for human life-activities;

A scientifically-based harmonization of ecological, economic, and social interests of individuals, society, and the state towards ensuring sustainable development and a healthy environment;

Protection, reproduction and rational use of natural resources as indispensable to a healthy environment and ecological safety;

The responsibility of the Russian Federation's agencies and those of the RF's subjects, and local administrations to ensure a healthy environment and ecological safety on their territories;

The requirement of a financial charge for using natural areas and for damages to the environment;

The independence of control in the sphere of environmental protection;

The presumption of ecological danger in planned economic – and other- projects;

The requirement of an environmental impact review (EIR) in planning economic – and other- projects;

The requirement of a state environmental impact assessment of project materials and other documentation that form the basis for economic – and other- projects which may have negative impacts on the environment, or may threaten human lives, health, or property;

The accounting for the natural and socio-economic qualities of territories in planning and carrying out economic – and other- projects;

The prioritization of the protection of ecosystems, landscapes, and natural complexes;

The permissibility of impact by economic – and other- projects on the environment originating from demands in the sphere of environmental protection;

Provision for environmental harm-reduction in developing economic—and other- projects in accordance with environmental protection norms which are achieved through using the best available technology (with consideration for socio-economic factors);

Requirement of the participation of the Russian Federation's agencies and those of the RF's subjects, local administrations, community and other nonprofit organizations, and judicial and physical bodies in environmental protection activities;

The preservation of biodiversity;

Provision for avenues of redress of individual complaints in the sphere of environmental protection to the enactors of economic—and other- projects, whether they be carrying out the project or planning it;

Prohibition of economic—and other- projects whose consequences for the environment are unknown, and also on projects which may degrade ecosystems, change and/or destroy the genetic wealth of plants, animals and other organisms, exhaust natural resources or cause other negative environmental changes;

Respect of every person's right to receive reliable information on the state of the environment and also to participate in decision-making which affects the person's right to a healthy environment in accordance with law;

Culpability for breaches of environmental law;

Organized environmental education and the cultivation of ecological upbringing and culture;

Civil and non-profit-organizational participation in decision-making on the steps to environmental protection; and

International cooperation in the sphere of environmental protection.

In accordance with the Russian Federal Law on Environmental Assessments [Expertise] Article 1, the state environmental assessment is the assertion that an economic or other project is in

agreement with environmental demands and the definition of the permissibility of the realization of a project with a goal toward environmental—and also socio-economic- and other- harm-reduction.

In accordance with the Russian Federal Law on Environmental Assessments Article 3, the state environmental assessment is based on the principles of:

- The presumption of potential ecological danger in any planned economic – or other- project;
- The requirement of the completion of a state environmental assessment before making decisions on the realization of the project;
- The thoroughness of an EIR of any economic – or other- project and its impacts;
- The requirement of consideration of ecological safety demands during the assessment;
- The reliability and fullness of information presented for the assessment;
- The independence of experts participating in the assessment;
- Scientific bases, objectivity, and legality of the assessment’s conclusion;
- Transparency, participation of community organizations, the consideration of public opinion;
- The responsibility of the assessment participants and interested parties for the organization, completion and quality of the assessment.

In accordance with the Russian Federal Law on Environmental Assessments Article 12, the state environmental assessment may require other kinds of documentation which form a basis for an economic—or other- project, the realization of which may have a direct or indirect impact on the environment.

In accordance with the Russian Federal Law on Environmental Assessments Article 14, Paragraph 1, the assessment is carried out with the materials required by the law:

- Documentation pertaining to the assessment in compliance with Articles 11 and 12 of the law;
- Approvals and/or agreements from agencies of the federal inspection and control agencies and local administrations, approvals and/ or agreements between these agencies and the local administration;
- The opinions of federal agencies of executive power, if such an agency has looked at the project; also any opinions from any public environmental impact reviews, if they have been completed;
- Materials related to the public discussion of the project with the community and community organizations, organized by the local administrative agencies.

As asserted by the court and is upheld by the case materials, on the basis of the order of the Department of NREP-Sakhalin No. 433, a state environmental assessment was made of the materials related to the Temporary Jetty.

The opinion of the expert commission performing the assessment on the Temporary Jetty project was asserted in the order of the Department of NREP-Sakhalin No. 459.

[Tr.: Starting here, text unabridged:]

It follows from the case materials, that in the completion of the state environmental assessment of the materials describing the project *Temporary construction for unloading materials in Aniva Bay* the established principles of the Federal law “On the state environmental impact review” Article 3: the presumption of potential ecological danger in any planned economic – or other- project; the thoroughness of an Environmental Impact Review of any economic – or other- project and its impacts; the reliability and fullness of information presented for the state environmental impact assessment; and transparency, the participation of community organizations, and the consideration of public opinion.

And at the same time, materials from the Environmental Impact Review of the planned economic – and other- project – which is subject to the state environmental impact assessment-- were not among the materials presented at the state environmental impact assessment; also omitted were the materials

related to the public discussion of the project being assessed with the community and community organizations, organized by the local administrative agencies.

Furthermore, at the moment that the state environmental assessment issued its approval of the project *Temporary construction for unloading materials in Aniva Bay*, the opinion of the Federal Fishing Department of Sakhalin was missing.

Under such circumstances the court came to the correct conclusion on the invalidity of the orders of the Department of Natural Resources and Environmental Protection of the Ministry of Natural Resources of the Russian Federation of the Sakhalin Region No. 433 from July 10, 2003, “On the organization and completion of the state environmental impact assessment of the materials of the work project *Temporary construction for unloading materials in Aniva Bay*,” and No. 459 from July 25, 2003, “On the assertion of the opinion of the expert commission of the state ecological impact assessment on the materials describing the work project *Temporary construction for unloading materials in Aniva Bay*,” and also the opinion of the expert commission of the state environmental impact assessment of the materials of the aforementioned work project.

It is impossible to agree with the arguments of the appeal by virtue of the following.

Finding grounds for noncompliance with the existing procedural order of the state environmental assessment, disputed by the petitioners, the representatives of the company “Sakhalin Energy Investment Company, Ltd.” and the Department of Federal Service for Inspection Related to Nature-Use (Rosprirodnadzor) for Sakhalin Region refer to the fact that the work project *Temporary construction for unloading materials in Aniva Bay* was carried out on the basis of TEB materials of the integrated development of the licensed plots at Piltun-Astokhscoe and Lunscoye, which underwent a state environmental assessment on the federal level.

However, the current law does not uphold the norm of changing materials for the procedural order of a state environmental assessment between different projects mentioned in a TEB, when such a state assessment is required.

The requirement of the completion of the state environmental assessment of the materials related to the aforementioned work project is confirmed by the very presence of the actions under dispute, and also by the letters of the Ministry of Natural Resources of the Russian Federation from January 22, 2001, the Main Administration for the Protection and Reproduction of Fish Reserves and Fishing Regulation from June 24, 2003, and the Federal State Office on the Central Control on State Environmental Impact Assessments of fisheries and on the Norms Relating to the Protection and Reproduction of Fish Reserves and Acclimatization from November 10, 2003, and June 18, 2003 (see I.d. 22-26, t. 3).

Consequently, in the completion of the state environmental impact assessment, independent from the level on which it takes place, the project being assessed, the duplication, or the scope of the changes made in the project, the standing legal procedural order by which a state environmental impact assessment is completed must be complied with in full.

It is impossible to find as well-founded the argument of the appeal that the disputed actions did not violate the petitioners’ right to a healthy environment.

The presumption, as set forth in law, of potential ecological danger in any planned economic – or other- project with the noncompliance with established procedural order of an environmental impact assessment presumes a violation of the constitutional right to a healthy environment.

Under such circumstances, when the court’s decision is presented in accordance with the law and circumstances of the case as they were presented, the judiciary panel does not find a basis to change the court’s decision.

Guided by articles 360, 361, 366 of the Civil Procedural Code, the judiciary panel

determined:

to leave unchanged the decision of the Yuzhno-Sakhalinsk municipal court of January 17, 2005, and the appeal ungranted.

Chair: I.V. Usoltseva

Judges: N.I. Akinina and G. M. Azarov