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The Russian Constitutional Court sides with Pepeliaev Group's and Zapolyarneft's lawyers

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On 2 June 2015, the Russian Constitutional Court announced its resolution concerning the claim of ООО Zapolyarneft stating that environmental charges imposed on this company were disproportionate. One of the rules of the Russian Forestry Code and the Russian Government's resolution based on it were recognised as inconsistent with the Constitution.

Representing the claimant in the Constitutional Court were Sergey Pepeliaev, Ph.D. in law, Pepeliaev Group's managing partner, and Roman Bevzenko, Ph.D. in law and a partner at Pepeliaev Group who heads the firm's special projects practice. Petr Popov, senior associate, took part in drafting the claim.

The claimant, an oil producer, promptly performed clean up work, which to a significant extent removed the adverse consequences of an oil spillage resulting from a technology breakdown.

The legislative rules that were challenged were uncertain, and this gave rise to contradictions in court and administrative decisions. As a result, the amount charged to the claimant was of the same order as the fee that would have been imposed on it if it failed to clean up the spillage. When applied this way, the challenged rules discouraged companies from performing a clean up, because a company would lose out by doing this, incurring greater costs, when the amounts charged to it are factored in, than if it had refused to clean up. The Federal Supervisory Natural Resources Management Service and the courts that supported it took the stance that neither the level of pollution, nor the outcome of the clean up work is relevant, and that a fixed fee is to be paid for the violation that the company has committed.

Similar case law evolved with regard to other oil producing companies.

The claimant's own lawyer and Pepeliaev Group believed that such an approach was inconsistent with constitutional requirements. The claim drafted by a team of Zapolyarneft's in-house lawyers together with Pepeliaev Group's experts was submitted in late October 2014 and a court hearing relating to the case was held on 31 March 2015. The total time it took the court to consider the case exceeded 7 months, and the text of the resolution contains several dozen pages. This proves that this case has been extremely complicated.

In its Resolution, the Constitutional Court supported the main argument of the claim. The rules challenged are uncertain: they are in conflict with the concept of compensation for damage which exists in the legal system and the principles of liability. The Constitutional Court obliged authorities to take into account that the condition of the ecological system of a forest has been restored to a satisfactory level when they impose ecological charges. It also ordered that the claimant's case be revised to take this factor into consideration.

'From the legal viewpoint the Constitutional Court handed down a profoundly justified and well-balanced decision. Both the oil company, as the claimant in the lawsuit, and we as its representatives adhered to a common position that it is not only the property interest which matters in this case. It is far more important that the law should promote the restoration of the forest's ecological system. However,

what happened was precisely the opposite. Moreover, the general legal principle of proportionate liability should be observed in all the spheres, including environmental violations,' Pepeliaev Group's managing partner Sergey Pepeliaev noted.

'We are glad that the substance of our arguments was vindicated: no amount recovered may be turned into a punishment without a law clearly stating this and the specific circumstances of the case being taken into account,' added Roman Bevzenko, head of our special projects practice.

'We had very serious discussions within our team regarding the legal nature of these charges – whether they fall under civil law or public law. But everyone agreed that in no case should such charges any longer be what they have turned into. In other words, they should not penalise a responsible attitude and clean up works which were voluntarily carried. In late April, a draft law was drawn up, which removes most of the drawbacks we have identified when working with the claim. We are happy that things have at last taken a turn for the better,' remarked Petr Popov, a senior associate at Pepeliaev Group who was involved in drafting the claim.

For Pepeliaev Group this recent success in the Constitutional Court continues the long-standing track record of its employees' involvement in the thorniest of environmental law cases. Previously the firm's lawyers have been involved in the capacity of experts in cases regarding whether compulsory environmental payments corresponded to the Constitution. They also represented our clients concerning these issues in the Supreme Court. Pepeliaev Group lawyers believe that the mechanisms which have previously been established in this area are quite often too one-dimensional, put ecological systems at risk and set additional administrative barriers for business. New balanced legal solutions need to be sought.

Pepeliaev Group is a leading Russian law firm offering the full range of legal services in all regions of Russia, most former Soviet countries and abroad. Over 160 lawyers in Moscow, St. Petersburg and Krasnoyarsk, as well as in Vladivostok and Yuzhno-Sakhalinsk (within the alliance with Russin & Vecchi), provide legal assistance to over 1,500 companies operating in various industries. 50% of these are international corporations implementing long-term investment projects in Russia.