

NORWEGIAN SUPREME COURT

Court record

On the 30th of November 2018 at 13:00 hours a preparatory court hearing was held for case no. 18-064307STR-HRET.

I.
Rafael Uzakov (Attorney Hallvard Østgård)

v.
The Prosecuting Authority (Chief Public Prosecutor Lars Fause)

II.
SIA North Star LTD (Attorney Hallvard Østgård)

v.
The Prosecuting Authority (Chief Public Prosecutor Lars Fause)

The meeting was held remotely.

Justice: Espen Bergh

Investigator: Kristian Klem

Present: Attorney Hallvard Østgård and Chief Public Prosecutor Lars Fause

The main issue of the case, delimitation of the hearings, etc.

The preparatory judge emphasised that the delimitation of the hearings that applied to chambers also applies to the hearings in the Grand Chamber, cf. the 22 November 2018 decision from chambers on the transfer of the case to reinforced court, the referral decision of 4 June 2018 and the court record of 20 June 2018 from the previous case preparation meeting. The case thus stands, formally speaking, in the same way for the Grand Chamber as it did for the chambers. The Supreme Court will hear the issue of whether the snow crab is a sedentary species under Article 77 of the Convention on the Law of the Sea, and whether catching snow crab on the Norwegian continental shelf without the vessel having a valid dispensation from the ban is punishable regardless of whether the Svalbard Treaty applies in the area in question, and

regardless of whether the regulation prohibiting the catching of snow crab, or application thereof, is contrary to the principle of equal treatment (the Court of Appeal's solution). The hearing of the issue of the geographical scope of the Svalbard Treaty and whether the regulation, or application thereof, is contrary to the principle of equal treatment, is deferred until there is a need to take a position on it.

The possible outcomes in the case outlined in the court record of 20 June 2018 are the same today. Fause and Østgård stated that it might be appropriate for several reasons for the Court of Appeal's judgment to be set aside in the event that the issues related to the Svalbard Treaty should come to the fore. Østgård pointed out, among other things, that the relationship with the Svalbard Treaty raises several *questions of fact* which may be useful for the Court of Appeal to rule on before a possible hearing in the Supreme Court.

Following questions from Østgård, the preparatory judge stated that it should not be understood as a limitation of the questions referred to the appeal hearing that reference is made to Section 2 of the regulations in the appeal committee's referral decision of 4 June 2018. The parties' starting point should be the regulation as a whole.

The preparatory judge made it clear that there is no expectation on the part of the Supreme Court that the parties go more thoroughly or more broadly into the sedentary issue than they did during the appeal hearing in chambers. The level adopted by the parties in chambers with respect to this issue will also be proper and sufficient for the appeal hearing in the Grand Chamber.

What the Supreme Court wants the parties to go into more thoroughly in the Grand Chamber is the question of whether the relevant catch actions are punishable regardless of whether the Svalbard Treaty applies in the relevant area, and regardless of whether the regulations prohibiting the catching of snow crabs or application thereof are contrary to the principle of equal treatment (the Court of Appeal's solution). An important aspect of this, which the parties must thoroughly explore, is whether in situations where there is a question of a possible violation of international law, a similar principle applies as that for national matters which follows from the Supreme Court case law described by the parties in chambers. In this context, the significance of the provisions on the relationship to international law in Section 2 of the Penal Code and Section 6 of the Marine Resources Act must, among other things, be discussed. The preparatory judge encouraged the parties to search for national and international sources of law that can shed light on the issues that exist, as well as to give an account of the considerations that apply.

In the alternative, the prosecuting authority has asserted that the regulations as they applied at the time of the action (regulations applicable from 4 January 2017), apply and provide a basis for criminal liability even if the snow crab is *not* to be deemed a sedentary species. It is pointed out that the catch in this case has in any case taken place in a geographical area where Norway, by virtue of its status as a coastal state, has sovereign rights both in the sea (in the water column) and on (and below) the continental shelf. It is asserted that it is thus not decisive that the prohibition in the regulations is stated to apply "on the continental shelf" (in addition to Norwegian maritime territory and inland waters).

The preparatory judge stated that this issue must also be addressed in the new proceedings, and that there may be reason to delve *somewhat* more thoroughly into the issue than what was done in chambers. In this connection, it is desirable that the development of the regulations – the

history – is highlighted. The parties were also encouraged to take a closer look at and explain the relationship between jurisdiction in the water column and jurisdiction on the continental shelf.

Østgård raised the question of whether the prosecuting authority, in connection with the alternative submission, will emphasise the importance of the fact that the crab pots stand on the seabed in the Grand Chamber as well. Fause confirmed this. Østgård then gave notice that it could be relevant to present new evidence to shed light on the anchoring of other fishing gear to the seabed. The preparatory judge emphasised that this is a minor sub-question related to an alternative submission, which is not a key issue in the case. The preparatory judge suggested that the parties discuss the handling of this among themselves. If Østgård maintains that there is a need for presentation of material related to this question, it must be clarified and reasoned in pleadings.

Bundles, skeleton arguments and schedule

The parties can use the same *factual bundle* as during the proceedings in chambers. However, a *factual additional bundle* must be prepared, which in part includes new procedural documents. The deadline for submitting documents for a factual additional bundle was set for **2 January 2019**.

The parties must prepare a new *trial bundle*. The deadline for submitting this was set for **2 January 2019**. The *schedule* must also be sent to the Supreme Court by **2 January 2019**.

The deadline for submission of skeleton arguments was set for **21 December 2018**. This, in part, is so that the parties will have the opportunity to comment on each other's skeleton argument should the need arise.

Interpreter

Østgård stated that representatives from SIA North Star Ltd also want to be present during the hearing of the case in the Grand Chamber, and that they have asked for the appointment of interpreters – preferably the same as during the hearing in chambers.

The preparatory judge will clarify whether interpreters are to be appointed, and if so, how the interpretation is to take place, within a short time.

Other

The parties had no further questions. The preparatory judge encouraged the parties to contact the Supreme Court, e.g. with investigator Kristian Klem, if they should have any questions later during the preparation of the case.

The Court rose at 13:44 hours.

[Espen Bergh]

(Round seal)

Office of the Supreme Court

Espen Bergh

(Round seal)

[Kristian Klem]
Kristian Klem