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TROMSØ, 31 May 2019

APPEAL AGAINST DECISION - SIA NORTH STAR

1. Introduction

Reference is made to the Directorate of Fisheries' decision of the 13 of May 2019, where vessels from the Sia North Star company were refused a license for crab fishing on the Norwegian continental shelf.

The appeal deadline is three weeks from the 13 of May 2019. An appeal is hereby submitted to the Ministry of Trade, Industry and Fisheries within the appeal deadline. The basis for the appeal is that the decision breaches the appellants' rights under the Svalbard Treaty.

2. The Directorate's grounds

Rules regarding permits to fish for snow crab can be found in the Regulations on a prohibition against harvesting snow crab of 19 December 2014.

The Directorate has justified the appeal on the grounds that SIA North Star's vessels do not have a license which, according to Section 2 of the Regulations, is necessary in order to grant a crab fishing permit to a vessel.

It is stated in the decision that the condition for obtaining a permit to harvest snow crab is that a vessel must have an acquisition permit pursuant to the Act of 26 March 1999. Section 5 of the Participant Act states that an acquisition permit for the relevant vessel group will only be granted to owner and vessel if the owner is a Norwegian citizen or a company with Norwegian majority ownership and control.

3. Grounds of the appeal

3.1 The decision breaches the shipping company's rights under the Svalbard Treaty

3.1.1

Pursuant to Articles 2 and 3 of the Svalbard Treaty, citizens of all treaty states have the right to fish and hunt on Svalbard's continental shelf. The right applies without any form of discrimination or differential treatment, cf. Rt 2014/272. Any discrimination or differential treatment based on nationality is in breach of the Svalbard Treaty.

As formulated, the snow crab regulations set conditions for granting permits that only Norwegian vessels meet. It is therefore obvious that the regulations are both formally and genuinely in breach of the Svalbard Treaty's prohibition against discrimination and differential treatment.

The Directorate has not proved any objective grounds under the Svalbard Treaty for refusing the shipping company a permit.

Without it affecting the legitimacy of the appeal, I add that the Directorate has stated that all Norwegian vessels that have applied for a permit to harvest snow crab have had their application approved. Correspondingly, no foreign vessels have been granted a permit. Discrimination thereby also exists in the way the regulations are practiced, without any objective grounds having been proven under the Svalbard Treaty for such differential treatment.

3.1.2

The company is aware that Norway believes the Svalbard Treaty is not applicable in relation to the continental shelf. Norway is alone in believing this, and such an understanding of the Treaty is incorrect.

3.1.3

The company is aware that Norway claims that Svalbard does not have its own continental shelf. This is an untenable point of view. In relation to the UN's recognition of the continental shelf around Svalbard, the Svalbard Archipelago formed the basis for the Norwegian claim. The part of the Norwegian continental shelf that is based on Svalbard as land territory is thereby encompassed by the Svalbard Treaty and the rights the Treaty's citizens have pursuant to the Treaty.

3.1.4

Latvia has acceded to the Svalbard Treaty. The Sia North Star shipping company thereby receives the rights stated in the Treaty, including protection against discrimination and differential treatment.

3.1.5

Although, in the company's opinion, it is irrelevant to the appeal, I add that the vessel meets all technical requirements to obtain a permit. It is solely the requirement of nationality to obtain participant access which prevents the approval of the application.

The Directorate has otherwise not established any circumstances in relation to the vessel that provide objective grounds for rejecting the application.

3.1.6

We can therefore conclude that the refusal to grant a permit such as the shipping company has applied for, entails a breach of the shipping company's rights under the Svalbard Treaty.

3.2 Prohibition on the harvesting of snow crab does not exist

The Supreme Court of Norway has ruled that snow crab is sedentary pursuant to the Convention on the Law of the Sea, cf. the judgement included in Rt 2019/282. The shipping company is of the opinion that this is a misunderstanding of the Convention on the Law of the Sea. Snow crab is not sedentary, and therefore belongs to the water column and not the continental shelf.

The prohibition in Section 1 of the Regulations is limited to the continental shelf only and not the water column. Therefore, there is no prohibition on the harvesting snow crab in the Fishery Protection Zone around Svalbard. The shipping company should therefore have been granted a permit to harvest snow crab for this reason alone.

4. Conclusion

I hereby request that the decision is reversed by the Directorate of Fisheries and that the application is approved so that Norway's obligations under international law are complied with.

Otherwise, it is requested that the appeal is sent to the administrative appeal body for further processing.

Yours sincerely,
Advokatfirmaet Østgård DA

(signature)

Hallvard Østgård
Lawyer