

COURT RECORD

The document was digitally signed by the following:

- **AUDGUNN SYSE, signed 5 July 2021 with ID-Porten: BankID**

OSLO DISTRICT COURT

COURT RECORD

The main hearing was held in Oslo District Court on 21 June 2021

Case no.: 20-149327TVI-TOSL/01

Presiding Judge: District Court Judge Audgunn Syse

Subject matter of the case: Invalidity action – Rejection of application for exemption to harvest snow crab in Svalbard

SIA North STAR Ltd

Attorney Hallvard Østgård

Attorney Mads Andenæs

versus

Norwegian Ministry of Trade, Industry
and Fisheries

Attorney Marius Kjelstrup Emberland

In attendance:

Plaintiff: SIA North STAR Ltd with counsel *Hallvard Østgård* and assistant counsel *Mads Andenæs*. SIA North STAR Ltd was represented by *Peteris Pildegovics*. He attended via Videolink from Latvia.

Defendant: The State (Ministry of Trade, Industry and Fisheries), represented by attorney *Marius Emberland*. Attending on behalf of the State were *Kristian Jervell* (Deputy Director of the Legal Department of the Ministry of Foreign Affairs), *Vidar Landmark* (Director General of the Ministry of Trade, Industry and Fisheries), *Ingrid Vikanes* (Senior Advisor at the Ministry of Trade, Industry and Fisheries) and *Kristina Kvamme Nygård* (Special Advisor at the Ministry of Foreign Affairs).

The following interpreters were present during the main hearing:

Siri Fuglseth (both days), Alexandra Theresa Solaas (day 1), Katerina Sandstø (day 2).

Introduction

There were no objections to the impartiality of the judge or the interpreters.

The judge reviewed the parties' prayers for relief, the grounds for the prayers for relief and the evidence which the parties gave notice that they would present.

The following was entered in the Court Record in relation to the preparatory proceedings and Section 9-16 of the Dispute Act:

- The plaintiff submitted an amended/expanded prayer for relief on 16 June 2021 which the State protested against in the pleading of the same date. The State requested a postponement of the case. As a result of the pleading, the court handed down the following decision (by email due to time considerations) on Thursday 17 June:

Reference is made to pleadings that have been received which concern the plaintiff having submitted an amended prayer for relief, which the State has opposed, and to the conversation with both attorneys.

As I stated by telephone to both parties, the court has decided that the case shall proceed as planned on the coming Monday.

It states in Section 9-16 of the Dispute Act that, after the preparatory proceedings have been completed, a party cannot, if the opposite party objects, submit new claims, broaden the prayer for relief in respect of a claim, submit new grounds upon which to base such prayer for relief or present new evidence, unless this occurs before the main hearing and is occasioned by the opposite party's closing statement or permitted by the court. Attorney Emberland has opposed the changes and provided grounds for this. The court does not consider it necessary to cite everything from the pleadings because the parties are aware of their respective positions.

The court has sought to ascertain why the prayer for relief has been amended through contact with the plaintiff. It is the court's understanding that this was due to it being important for the plaintiff that, in the judgment, the court considers the issue of whether or not Article 2 or 3 of the Svalbard Treaty applies on Svalbard. The court notes that the original prayer for relief submitted in the closing statement makes it necessary for the court to consider this precise issue. The court's understanding is that the State (including in the closing statement) agrees that this is a principal issue in this case. In light of this, the court assumes that it is of lesser importance to maintain the amended prayer for relief, because the plaintiff requests an examination of the issue that the Supreme Court did not consider in the mentioned criminal case. However, the court would note the following:

- With regard to claim no. 2 in the amended prayer for relief, this entails a new claim and the court will exclude this. Claiming a declaratory judgment for the regulations being in violation of the Constitution of Norway is a new claim. The Constitution has not previously been invoked in this manner in the case and none of the exemptions in Section 9-16, subsection 2, (a) to (c) of the Dispute Act are satisfied. When that is said, it is the court that monitors the law and will have to refer to Article 98 of the Constitution in its legal assessments if this is considered necessary for the issues the court will have to consider. The court therefore also cannot see what specific importance it has for the plaintiff to amend the prayer for relief on this point.

- With regard to the claim that the Regulations *as a whole* are in violation of the Constitution and the Svalbard Treaty, the court cannot see that this is of importance to the present dispute. As emphasised, the court will have to consider whether it is a violation of Articles 2 and 3 of the Svalbard Treaty that only Norwegian vessels can harvest snow crab on the Norwegian continental shelf. This is again inextricably linked to whether or not the Svalbard Treaty applies in this geographical area, which is, in the view of the court, a key issue in the present dispute. Since the State will, for example, have to prepare for whether the provision in Section 4 (prohibition against engaging in harvesting activities for certain periods and intermixture with soft-shelled crab) is in violation of the treaty (without the court quite understanding the significance of this), this will entail a new claim. As mentioned, the court cannot see what importance this has for the plaintiff, since discrimination/differential treatment are the key factors, not the other provisions in the regulations. Reference is made to the following excerpt from the plaintiff's closing statement:

The key substantive issue in the case is whether the Svalbard Treaty applies outside of the territorial sea around Svalbard, i.e. outside the 12 nautical mile limit. The State appears to be in agreement that this is a key issue, cf. the following excerpt from the closing statement:

The plaintiff's claim is grounded upon Articles 2 and 3 of the Svalbard Treaty entailing that the Ministry's decision is invalid. These provisions only apply in internal waters and the territorial sea, within 12 nautical miles, and not in the area outside of this, which is the area where the plaintiff applied to harvest snow crab.

In the view of the court, the parties are thus in agreement as to what constitutes the key legal issue and, as mentioned, the court will consider this. The reference to the Constitution can be made part of the legal argumentation if the parties so desire.

In accordance with this, the court permits the following prayer for relief:

1. The decision by the Norwegian Directorate of Fisheries of 13 May 2019 and decision by the Ministry of Trade, Industry and Fisheries of 14 November 2019 are invalid.
2. Regulations 2014-12-12-1836 related to a prohibition against harvesting of snow crab are in violation of the Svalbard Treaty.
3. The Ministry of Trade, Industry and Fisheries is ordered to pay Sia North Star Ltd's costs associated with the case within two weeks.

As mentioned, it is the view of the court that this covers what the plaintiff wishes to have examined, and the State has had the opportunity to prepare for this. The constitutional provision shall be included in the legal argument relating to these claims:

The court looks forward to constructive days in court.

The court does not have time to make further preparations prior to the case and expects that the parties will attend as agreed on Monday, even if the parties disagree with the court's decision.

The court will therefore address any confusion/disagreements both at the start of and during proceedings, however hopes for a solution-oriented and agreeable attitude from the parties to ensure that the case proceeds as planned.

- In the pleading of 18 June (Friday), the plaintiff asserted for the first time that the decision did not have a legal basis, which entails that the decision was automatically invalid.

- In the pleading of 21 June (Monday, the same day as when proceedings commenced), the plaintiff further amended/expanded its prayer for relief. The prayer for relief has been included below and included in the judgment. The plaintiff stated that the reason it had not acted in accordance with the court's decision, but rather chose to further amend/expand the prayer for relief, was that the plaintiff disagreed with the court's decision. According to the plaintiff, the amendment to the prayer for relief did not entail a new claim in relation to Section 9-16 of the Dispute Act. The plaintiff further stated that this was necessary for assurance against "the State's antics" and to ensure that, as part of the action, the court considers the scope of the Svalbard Treaty (whether or not this applies on the continental shelf).

The court considers it necessary to include this in the Court Record, among other things, because there is a difference between the prayer for relief the court permitted in the above-mentioned decision and the prayer for relief/grounds for the prayer for relief the plaintiff asserted during the proceedings. There is also a discrepancy between the plaintiff's prayer for relief/grounds for the prayer for relief and what the State had prepared for. Among other things, the State barely had time to prepare the assertions relating to the decision not having a legal basis and that the decision and Regulations are in violation of the Constitution.

The court further notes that the plaintiff submitted a request to the court on Friday 18 June that three attorneys who are assisting the plaintiff in an international arbitration case against the State relating to largely the same legal issues, be permitted to attend proceedings via tolkelinken (i.e. the link that was established between the interpreter and the Latvian representative in Latvia). Since the judge for the main hearing did not have access to email on Friday 18 June (which the parties were informed of in the decision on Thursday 17 June), this was approved by the judge on Monday 21 June before proceedings commenced. The following attorneys followed the entire hearing via videolink:

- Pierre-Olivier Savoie: pierre-olivier.savie@savoielaporte.com

- Dr. Zoe Can Koray: zoe.koray@savoielaporte.com

- Lena Kim: lena.kim@savoielaporte.com

Presentation of the case

Counsel for the plaintiff was asked to present the case and he reviewed documentary evidence and other evidence that was not to be presented through testimony or inspection. The evidence documented is marked in red.

The plaintiff's prayer for relief:

In principal:

1. The decision by the Norwegian Directorate of Fisheries of 13 May 2019 and decision by the Ministry of Trade, Industry and Fisheries of 14 November 2019 are invalid.
2. Regulations 2014-12-12-1836 related to a prohibition against harvesting of snow crab and the decisions of 13 May and 14 November 2019 are in violation of Article 98 of the Constitution of Norway and Articles 2 and 3 of the Svalbard Treaty.
3. The Ministry of Trade, Industry and Fisheries is ordered to pay Sia North Star Ltd's costs associated with the case within two weeks.

In the alternative:

1. The decision by the Norwegian Directorate of Fisheries of 13 May 2019 is invalid.
2. The decision by the Ministry of Trade, Industry and Fisheries of 14 November 2019 is invalid.
3. Regulations 2014-12-12-1836 related to a prohibition against harvesting of snow crab is in violation of Articles 2 and 3 of the Svalbard Treaty.
4. Regulations 2014-12-12-1836 related to a prohibition against harvesting of snow crab is in violation of Article 98 of the Constitution of Norway.
5. The decision of 13 May 2019 is in violation of Articles 2 and 3 of the Svalbard Treaty.
6. The decision of 14 November 2019 is in violation of Articles 2 and 3 of the Svalbard Treaty.
7. The decision of 13 May 2019 is in violation of Article 98 of the Constitution of Norway.
8. The decision of 14 November 2019 is in violation of Article 98 of the Constitution of Norway.
9. The Ministry of Trade, Industry and Fisheries is ordered to pay Sia North Star Ltd's costs associated with the case within two weeks.

Further in the alternative:

1. The decision by the Norwegian Directorate of Fisheries of 13 May 2019, the decision by the Ministry of Trade, Industry and Fisheries of 13 May 2019, and the decision by the Ministry of Trade, Industry and Fisheries in the appeal case of 14 November 2019 are invalid.
2. Section 3 of Regulations 2014-12-12-1836 related to a prohibition against harvesting of snow crab is in violation of the Svalbard Treaty.

Counsel for the defendant was asked to correct and supplement the opposing party's presentation of the case. The evidence that was documented is marked in blue.

The defendant's prayer for relief:

1. The court finds in favour of the State (Ministry of Trade, Industry and Fisheries).
2. The State (Ministry of Trade, Industry and Fisheries) is awarded costs.

Testimony from the parties

Plaintiff

Name: Peter Pildegovics from SIA North STAR Ltd
Date of birth: 20 June 1976
Address: Miera Iela 87a-13, Riga, Latvia
Position: Owner, board member and director of the company
Was admonished, gave an affirmation and testified.

Defendant

Name: Kristian Jervell from the Norwegian Ministry of Foreign Affairs
Date of birth: 7 January 1970
Address: Lyngåsveien 18, 1452 Nesoddtangen
Position: Deputy Director of the Legal Department of the Ministry of Foreign Affairs.
Was admonished, gave an affirmation and testified.

Closing statements

Counsel for the plaintiff was asked to give the closing statement and maintained the prayer for relief from the opening statement.

Counsel for the defendant was asked to give the closing statement and maintained the prayer for relief from the opening statement.

The counsels were then each permitted to speak once more.

The State had a document that they wanted entered in the Court Record which largely concerned the plaintiff's case preparations in the period after the closing statement. The plaintiff protested against this being entered in the record, both because only court proceedings shall be recorded (and not the prior case preparations) and because the plaintiff therefore had to be given the opportunity to counter what was stated in the State's document.

The court took a recess for 15 minutes to investigate what can and cannot be entered in the record.

The court made reference to Section 13-6 of the Dispute Act which states that proceedings shall be recorded as they occur and not the proceedings prior to the main hearing. This does not cover objections to procedural matters (Section 13-6, subsection 1 (e) of the Dispute Act) because the State's document primarily concerned matters prior to the main hearing. In accordance with this, the court rejected the State's request to enter this in the record. The State disagreed to the decision not to enter this in the record and asked that the State's protest be recorded.

Conclusion

The counsels presented statements of costs and were permitted to comment on the opposing party's statements. The State protested against the plaintiff's statement of costs and noted that the costs were excessively high. The plaintiff was set a deadline of until Wednesday 29 May to supplement the statement of costs.

The judge declared the hearing to have concluded and the case admitted to judgment and gave notice that the judgment would be rendered by the deadline unless the parties were informed otherwise.

Court proceedings were from 9:30 am to 4:30pm on 21 June and from 9am to 4pm on the 22 June.

Court adjourned

Audgunn Syse