

REFERRAL MEMORANDUM

**Office of the Director General of Public Prosecutions
P.O. Box 2102 Vika
0125 Oslo**

Doc no. 01,28

13994920 D 1583/18-63/RT0006

14 December 2018

**CASE NO. 18-064307STR-HRET, RAFAEL UZAKOV, DATE OF BIRTH 8 MAY 1973 AND SIA
NORTH STAR LTD – APPOINTMENT OF CO-PROSECUTOR FOR SUPREME COURT**

To be sent to the Supreme Court
in as much as

Assistant Attorney General Tolle Stabell

has been appointed co-prosecutor for the Supreme Court, cf. the convicted person's appeal against Hålogaland Court of Appeal's judgment of 7 February 2018.

As authorised in Section 77 of the Criminal Procedure Act, Attorney Stabell has been engaged by the Ministry of Justice and Public Security as an attorney for the Supreme Court, with the right to conduct cases for the prosecuting authority according to the Director General of Public Prosecution's instructions, cf. the Ministry's enclosed letter of 7 December this year.

Chief Public Prosecutor Lars Fause at the Regional Public Prosecution Office in Troms and Finnmark, who argued the case before the Supreme Court in chambers, continues as the prosecutor with main responsibility.

The prosecutors agree to the scheduling of the case for week 3 in 2019 commencing Tuesday 15 January.

Occasioned by Attorney Hallvard Østgård's letter of 7 December this year, the Supreme Court notes in its letter of 10 December this year that it is the Director General of Public Prosecution who appoints the prosecutor(s), and that impartiality objections submitted after the appointment of the prosecutor will be considered by the high court.

The Director General of Public Prosecution has assessed Attorney Stabell's impartiality and is of the opinion that there is nothing to prevent him from acting as co-prosecutor. It is assumed that there may be an opportunity to return to the question in more detail if it should become relevant and raise doubts, and the following remarks are sufficed for the time being:

The argument that Attorney Stabell cannot be a prosecutor in the case because he is employed by the state can obviously not succeed, which already must ensue from the fact that police attorneys and public prosecutors are also civil servants.

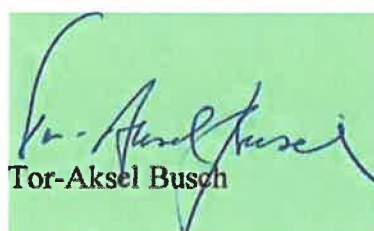
The way the appeal is delimited applies to the special nature of the individual legal issues. The issues are purely fundamental and abstract. As stated in the Director General of Public Prosecution's letter of 5 December 2018 to the Supreme Court, the purpose of the appointment of the co-prosecutor is to ensure the best possible illumination of a case that intersects criminal law,

international law and administrative law. This purpose – to provide the Supreme Court with the best possible assistance – is emphasised from the middle of page 2 in the court record from the preparatory court hearing on 30 November 2018. The task of co-prosecutor for the Supreme Court will naturally not affect the formulation of the indictment, and the main allegations of the prosecuting authority also remain in place. There is no reason to fear that Attorney Stabell, as co-prosecutor, will fail to present legal views in favour of the convicted. Neither the government's constitutional responsibility for the realm's position on international law (which is exercised in line with the Storting's view) nor the state's position on private law can be feared to influence the performance of the task. Anyone who acts as a prosecutor, including a lawyer engaged under Section 77 of the Criminal Procedure Act, is bound to act with impartiality under the requirement in Section 55 a, fourth paragraph of the Criminal Procedure Act. Lawyers are used to professional requirements for the performance of their role.

Attorney Stabell's task during the appeal proceedings will be to assist Fause. As the main prosecutor, Fause is responsible for any position that the prosecution may take. As co-prosecutor, Stabell will be subject to instruction only from the main prosecutor and the superior prosecuting authority, not from the Office of the Attorney General, as the defence counsel also states in his letter of 7 December 2018. The further division of tasks within the framework that this appointment provides will – first of all – be decided by the two prosecutors. The matter will also be discussed with them during a case preparation meeting at the Office of the Director General of Public Prosecutions.

Earlier in the case, the Office of the Attorney General – in a similar manner as the Ministry of Foreign Affairs, Ministry of Trade, Industry and Fisheries and the Directorate of Fisheries – has been consulted by the prosecuting authority. Such consultations are natural in a case of this nature and do not mean that the prosecuting authority does not exercise its authority in an objective manner, nor do they suggest that the appointment of an attorney who serves at the Office of the Attorney General is disqualified as co-prosecutor.

In the undersigned's view, Attorney Stabell is both impartial and very well suited to carry out the assignment in question.



Tor-Aksel Busch

Enclosure

CC with enclosure:

1. Attorney Hallvard Østgård
2. Chief Public Prosecutor Lars Fause
3. Attorney Tolle Stabell

(Arms of the Norwegian State)
THE ROYAL
MINISTRY OF JUSTICE AND PUBLIC SECURITY

Director General of Public Prosecutions

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(Stamp)
OFFICE OF THE DIRECTOR GENERAL
OF PUBLIC PROSECUTIONS
File no. R18-1583
12 DEC. 2018 /63
Record:
Executive officer: ABG

Your ref.
13994920 D 1583/18-63

Our ref.
18/6438 – VHSA

Date
7 December 2018

Engagement of attorney at the Supreme Court

Reference is made to the Director General of Public Prosecution's letter of 5 December 2018, with a request to engage Assistant Attorney General Tolle Stabell at the Supreme Court pursuant to Section 77 of the Criminal Procedure Act.

Stabell is entitled to conduct cases before the Supreme Court pursuant to Section 221 of the Courts of Justice Act.

Pursuant to Section 77 of the Criminal Procedure Act, the Ministry of Justice and Public Security engages Assistant Attorney General Tolle Stabell as an attorney for the Supreme Court, with the right to conduct cases for the prosecuting authority pursuant to the prosecuting authority's instructions.

It is emphasised that an attorney who is engaged to conduct cases for the prosecuting authority must personally perform such tasks.

Sincerely,

Fredrik Bøckman Finstad
Director General

Vilde Hallgren Bodal
Higher Executive Officer

The document is approved and is sent without signatures

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