Federal *Arbitrazh* Court, Northwestern District, 25 July 2007,
Case No. A05-4274/2007[1]

Parties: Petitioner: Collective Fishing Farm Krasnoye Znamya (Russian Federation)
Respondent: White Arctic Marine Resources Ltd. (Norway)

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Articles: IX (1)

Subject matter: - applicability of the Convention
- possibility of setting aside a foreign arbitral award in the state under the law of which, the award has been made
- European Convention of 1961
- New York Convention 1958

Excerpt

[1] "Collective Fishing Farm Krasnoye Znamya (the 'Collective Farm') appealed to the *Arbitrazh* Court of Arkhangelsk Oblast' with an application to set aside an arbitral award made on 08.12.2006 by a tribunal with a seat in Oslo (Norway) … regarding a claim of White Arctic Marine Resources Ltd. (the 'Company') against the Collective Farm to levy from the Collective Farm in favour of the Company a debt in the amount of USD 1,168,838, fixed payments for the period from 30.06.2002 to 27.03.2005 in the amount of USD 16,082, and the following fines for payments in arrears which are provided for in the law: USD 270,577 for the period from 29.03.2004 to 18.10.2006 inclusively, USD 2,302 for the period from 28.03.2005 to 18.10.2006 inclusively, and fines in the amount of 9.75% for the period beginning 19.10.2006 until the payment in the amount of USD 1,457,799 is made, as well as NOK 202,384.86 for the legal costs of the case and interest provided for in the law for a payment in arrears at the rate of 9.75% for the period of arrears. In addition, NOK 158,655 for fees and other expenses connected with the arbitration was levied from the Collective Farm.
[2] "With the [lower court] ruling dated 16.05.2007, the case was closed.

[3] "In the cassation appeal, the Collective Farm, referring to the violation of the norms of procedural and substantive law and the non-conformity of the [lower] court's conclusions to the actual circumstances, requested setting aside the arbitral award and sending the case for a new judicial examination [to the lower instance] with the aim of re-considering the application of the Collective Farm.

[4] "As grounds for the appeal, the Collective Farm indicated that since the arbitral tribunal…, when giving the award, examined the claimant's arguments that the members in a partnership hold joint liability pursuant to Russian legislation, then in the given case … the norms of the Russian legislation were applied, which in turn provides the Collective Farm the right to challenge … the arbitral award by virtue of Article 230.5 of the *Arbitrazh* Procedure Code of the Russian Federation ('*Arbitrazh* Procedure Code') [in Russian courts]…

[5] "In addition, the Collective Farm submits that the [lower] court's conclusion that Norway is not a contracting state of the European Convention on International Commercial Arbitration (1961) ('European Convention') was based exclusively on the Company's explanations.

[6] "No response to the cassation appeal was provided.

[7] "The parties were duly informed on the place and time of the proceedings, yet they did not send representatives to the judicial session, whereat the appeal was considered in their absence.

[8] "The legality of the contested judicial act was examined in a cassation procedure.

[9] "Pursuant to the case materials, the arbitral award was rendered in the city of Oslo (Norway) concerning a dispute between the Collective Fish Farm Krasnoye Znamya (Russia) and White Arctic Marine Resources Ltd. (Norway) … in favour of which [latter] the arbitral tribunal levied moneys.

[10] "Not agreeing with said award, the Collective Farm, on the basis of Article 230 of the *Arbitrazh* Procedural Code, appealed to a competent *Arbitrazh* court with an application to set the award aside.

[11] "When closing the case on the ground of Article 150.1.1 of the *Arbitrazh* Procedure Code, the court of first instance proceeded from the premise that conditions stipulated in Article 230.5 of the *Arbitrazh* Procedure Code, which permits challenging a foreign arbitral award in the Russian Federation, were not present.

[12] "The court of first instance came to such a conclusion, having established that Norway is not a contracting state of the European Convention and that the arbitral award dated 08.12.2006, which was rendered in Oslo, does not contain references to specific norms of Russian legislation.

[13] "The cassation court considers the contested ruling [of the lower instance] as being made in line with the law and facts of the case and does not find any grounds for reversing.

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[1] Prepared by Roman Zykov, Hannes Snellman Attorneys, Moscow/Helsinki.

[14] "According to Article 230.5 of the *Arbitrazh* Procedure Code, … a foreign arbitral award may be contested when norms of Russian law were applied in the award...

[15] "The court of first instance correctly considered the European Convention and the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958) as international agreements of the Russian Federation …

[16] "According to paragraph 1 of Article IX 'Setting Aside of the Arbitral Award' of the European Convention, the setting aside of an arbitral award coming within the purview of the convention in one of the contracting states of the convention will only constitute a ground for the refusal of recognition or enforcement of this award in other contracting states of the convention only upon the condition that the setting aside of the arbitral award took place in the state in which, or under the law of which, the award was made, and only for one of the reasons listed in the convention.

[17] "Article IX of the European Convention does not touch upon issues connected with the possibility, grounds, and method for setting aside arbitral awards by states which are not contracting states of the convention. Such issues are regulated by domestic legislation of the corresponding states and international agreements.

[18] "Therefore, by implication of said legal norms for considering an application to contest a foreign arbitral award in an *Arbitrazh* court of the Russian Federation, the following two conditions necessarily must be present: [1] the contested award must be made in a contracting state of the European Convention … and [2] when adopting the contested foreign award, the norms of Russian laws were applied.

[19] "Having established that, when making the contested award, the arbitral tribunal did not apply the norms of Russian laws to the merits of the dispute, the court of first instance justifiably proceeded from the absence of grounds provided for in Article 230.5 of the *Arbitrazh* Procedure Code which permit challenging a foreign arbitral award in the Russian Federation.

[20] "In view of the stated argument of the appeal's submitter that Norway is a contracting state of the European Convention may not be taken into consideration by the cassation court since, as already indicated above, to consider an application to contest a foreign arbitral award, both conditions necessarily must exist simultaneously [meaning that the condition of the applicable law was not met].

[21] "The Collective Farm's argument that the norms of Russian law were applied when rendering the award was not confirmed in the case materials insofar as, when resolving the dispute, the arbitral tribunal [actually] examined the arguments of the Company on the possibility of applying Russian laws, however, this did not attest to applying Russian laws when rendering the contested arbitral award.

[23] "The Collective Farm's reference to the provisions of the UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958) is unsound as this convention does not

govern issues of setting aside foreign arbitral awards, but only contains criterion for a refusal to recognize and enforce foreign arbitral awards which may be used by an interested entity to protect its interests against corresponding requirements.

[24] "Governed by Articles 286, 287, 289, and 290 of the Arbitration Procedure Code, the Federal Arbitratzh Court of the North-Western District decided:

[25] "to leave the ruling of the *Arbitrazh* Court of Arkhangelsk Oblast' dated 16.05.2007 concerning case No. A05-4274/2007 intact and to dismiss the cassation appeal of the Collective Fishing Farm Krasnoye Znamya.