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In case no. 4683-22, **AA** (Appellant) v. the **Swedish Agency for Marine and Water Management** (Respondent), the Supreme Administrative Court delivered the following judgment on 17 June 2024.

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## **RULING OF THE SUPREME ADMINISTRATIVE COURT**

The Supreme Administrative Court finds that the captain of a fishing vessel is the one who lands the catch and is accordingly the person who is to pay the special fine for landing unauthorised catches notwithstanding that the business is operated by a limited company.

The Supreme Administrative Court does not otherwise grant leave to appeal in the case. The ruling of the administrative court of appeal is thereby affirmed.

## **BACKGROUND**

1. In commercial fishing, it happens that the catch consists of species other than the one or those intended to be caught, so-called bycatch. The EU law fishing regime limits the share of permitted bycatch of herring in conjunction with directed fishing for sprat in designated areas within the Baltic Sea conducted with a certain type of fishing equipment.
2. Pursuant to fishing legislation, the Swedish Agency for Marine and Water Management may decide to impose a special fine in conjunction with the landing of unauthorised catches, so-called landing fines. Landing is the first unloading of fishing product from a fishing vessel on to land.
3. AA was employed by a limited company which conducted fishing operations. He worked as the captain of a fishing vessel which was used to fish for sprat by means of floating trawls in the Baltic Sea during a fishing trip. Because the bycatch limit was exceeded for herring, the Swedish Agency for Marine and

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Water Management decided to impose on AA a special fine in the amount of approximately SEK 160,000.

4. AA appealed the decision to the Administrative Court in Gothenburg which rejected the appeal. He appealed further to the Administrative Court of Appeal in Gothenburg which also rejected the appeal.
5. AA claimed in the administrative court of appeal that he was the wrong person on whom to impose the fine since the revenues from the catch did not inure to him but, rather, to the limited company which conducted the commercial operation. However, the administrative court of appeal was of the opinion that it was reasonable that the captain, who is the person who has the possibility to affect fishing during the fishing trip, was also the person on whom the special fine was to be imposed.

#### **CLAIMS, ETC.**

6. AA claims that the decision to impose on him a special fine is to be overturned and states the following. The purpose of the landing fine is to deprive the fisherman of the undue profit resulting from the sale of an unauthorised catch. The fine shall equal the value of the catch and it is clearly intended for the person who receives the value of the landed catch. The revenues from the catch have inured to the limited company which conducts the commercial operation.
7. *The Swedish Agency for Marine and Water Management* is of the opinion that the appeal is to be rejected and states the following. The captain is the person who has overall responsibility in conjunction with the catch, including the unauthorised bycatch, being offloaded from the fishing vessel and taken on to land. Accordingly, it is the captain who lands the catch. It is apparent from statements in the preparatory works that a special fine may be presumed to have as a consequence that fishing is steered to fishing methods and choice of

fishing locations by which unauthorised bycatches are minimised. The intention is thus that the fine has a control function and induces the responsible person to fish in compliance with applicable legislation. A legal person has no possibility to directly affect the fishing in the manner exercised by the captain. The purpose of the provisions is thereby not fulfilled if the fine is imposed on someone other than the captain.

## **REASONS FOR THE RULING**

### **The question in the case**

8. Leave to appeal in the Supreme Administrative Court may be limited pursuant to section 36(a) of the Administrative Court Procedures Act (1971:291) to apply to a particular question in the case the determination of which is of importance for the guidance of the application of law (precedential issue).
9. The Supreme Administrative Court has granted leave to appeal in so far as pertains to the question whether the captain of a fishing vessel is the person who lands the catch and is thereby the one who shall pay a special fine for landing an unauthorised catch, so-called landing fine, when the operation is conducted by a limited company.
10. The question regarding the grant of leave to appeal otherwise involving the case has been declared stayed.

### **Legislation, etc.**

11. Pursuant to section 59 of the Fisheries Act (1993:787), the Government or the public authority determined by the Government may issue regulations according to which a person who lands an unauthorised catch is to be ordered to pay a special fine. The fine shall be decided by the Swedish Agency for

Marine and Water Management and shall be established in an amount equal to the value of the unauthorised catch.

12. Chapter 6, section 2(a), first paragraph of the Fishing, Aquaculture and Fishing Industry Regulation (1994:1716) provides that the person who lands an unauthorised catch shall pay a special fine. The fine shall be comparable to the value of the unauthorised catch and shall be calculated on the basis of the price of the actual sales price or the market price, whichever is higher, at the time of landing in the area of landing of catches of comparable sort.
13. According to Regulation (EC) No 1224/2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy, *landing* means the initial unloading of any quantity of fisheries products from on board a fishing vessel to land (Article 4(22)).

#### **The Court's assessment**

14. Of central importance to the precedential issue is who is to be regarded as “the person who lands” an unauthorised catch. The term is used both in section 59 of the Fisheries Act and in Chapter 6, section 2(a) of the Fishing, Aquaculture and Fishing Industry Regulation.
15. The preparatory works for the relevant provision in the Fisheries Act state the following.
16. In conjunction with unauthorised bycatches, significant evidentiary difficulties arise given that it is often not possible to show that the bycatch could be avoided. The unauthorised catch is sold and often generates substantial income for the fisherman. At the same time, the landed quantity of fish affects Sweden's quota and may result in a reduction of the quota available to Sweden during the following year. Against the background of the aforementioned, the

National Board of Fisheries has proposed that a fine system should be implemented according to which the fisherman is deprived of the undue profit entailed in a sale of the unauthorised catch. According to the board, the fine should be charged irrespective of whether it can be demonstrated that the fisherman intentionally or negligently exceeded the fishing provisions. For the purpose of a fine decision, it is sufficient to observe that a certain quantity of fish which may not be caught has been brought to land. A fine such as that proposed may be expected to have as a consequence that fishing is steered to fishing methods and choice of fishing locations by which unauthorised bycatches are minimised. Thus, the Government shares the position of the National Board of Fisheries that there should be a possibility to charge a fine for unauthorised landings (Government Bill 2002/03:41, p. 30 f.).

17. The Supreme Administrative Court notes that, on the basis of the wording in the provisions regarding landing fines, it is not evident that the “person who lands” means the captain. The captain, however, is the person who is responsible for the manner in which the fishing is conducted and is the person who chooses the catching methods and fishing locations. Accordingly, it is the captain in the capacity as the responsible fisherman who has the possibility to minimise unauthorised bycatches. Furthermore, it is the captain who actually lands the relevant catch after a fishing trip.
18. In light of this background, the Supreme Administrative Court finds that it is the captain of a fishing vessel who shall be deemed to be the person who lands a catch in the sense now relevant. This should apply irrespective of the form in which the fishing operation is conducted and irrespective of who receives the value of the landed catch. The fact that, as in the current case, the fishing operation was conducted by a limited company is thus immaterial to the question regarding who is to be deemed to have landed the catch.

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19. The precedential issue in respect of which the Supreme Administrative Court has issued leave to appeal shall thus be answered as follows. The captain of a fishing vessel is the person who lands the catch and is thereby the person who shall pay a special fine for landing unauthorised catches even when the activity is conducted by a limited company.
  
20. The Supreme Administrative Court finds that there is no cause to otherwise grant leave to appeal in the case.

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Justices Henrik Jermsten, Thomas Bull, Mahmut Baran (dissenting), Marie Jönsson (dissenting) and Linda Haggren participated in the ruling.

Judge Referee: Sandra Zetterdahl.

## DISSENTING OPINION

Justices Mahmut Baran and Marie Jönsson dissent and state that the Supreme Administrative Court should have formulated the ruling as well as the Supreme Administrative Court's assessment as follows.

The Supreme Administrative Court finds that when the fishing operation is conducted by a limited company, it is not the captain of the fishing vessel who lands the catch and, thus, the captain shall not pay the special fine for landing an unauthorised catch.

The Supreme Administrative Court otherwise grants leave to appeal in the case and overturns the rulings of the lower instances.

### The Court's assessment

1. Since 2003, a special fine has been imposed on persons who land unauthorised catches. According to then applicable fishing legislation, commercial fishing could only be conducted by someone who possessed a fishing licence. Persons other than natural persons could not hold such licences. Since then, fishing legislation has changed in several respects. Commencing in 2014, the requirement of a fishing licence has applied in accordance with the EU legal regime which entails, *inter alia*, that legal persons may also be granted a fishing licence and thereby conduct commercial fishing with a fishing vessel at sea.
2. It is not apparent either from section 59 of the Fisheries Act or Chapter 6, section 2(a), first paragraph of the regulation or preparatory works for the provision in the Fisheries Act what is meant by *the catch is landed*. Furthermore, it cannot be gleaned on whom the special fine is to be imposed. According to Regulation (EC) No 1224/2009, *landing* means the initial

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unloading of any quantity of fisheries products from on board a fishing vessel to land (Article 4(22)). Furthermore, this provision provides no detailed guidance regarding who it is who lands the catch.

3. In addition, it may be mentioned that as early as when the fine was implemented, it was expressly stated in certain provisions of the Fisheries Act that the captain would be responsible for certain violations. Thereafter, additional rules have been implemented and clarified such that the captain has been identified as being responsible where deemed justified. The provisions now relevant, however, have been left unchanged.
4. Thus, it can be established that the captain was not designated in the provisions nor the preparatory works as the person on whom the special fine is to be imposed. The formulation of the regime also provides no support for the notion that the captain is to be held responsible at all times for the unauthorised catch in accordance with the now relevant provision.
5. The provisions in section 59 of the Fisheries Act and Chapter 6, section 2(a), first paragraph of the Fishing, Aquaculture and Fishing Industry Regulation have, rather, been formulated on the basis that the special fine is to eliminate the profit obtained from the unauthorised catch since the fine, as a main rule, shall be equivalent to the value of the unauthorised catch.
6. It is also stated expressly in the preparatory works for section 59 of the Fisheries Act that the fine has been implemented in order to deny the fisherman the undue profit entailed in the sale of an unauthorised catch. In order to take a decision regarding a fine, it is sufficient that a certain quantity of fish has been brought to land. The extent to which the catch is a result of unauthorised fishing is not considered. At the same time, it was stated that the fine could be presumed have as a consequence that fishing is steered to fishing methods and choice of fishing locations by which unauthorised bycatches are minimised.



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(Government Bill 2002/03:41, pp. 30 f.). The fact that the special fine has the stated purpose was also expressed in conjunction with the implementation of the system involving administrative sanction charges in 2008 (Government Bill 2007/08:107, p. 21). Even if the special fine is presumed to have a control effect, it is thus hardly possible to reach the conclusion that the primary purpose is to be a sanction for unauthorised catches. Taking measures against unauthorised fishing is instead covered by both the administrative and penal sanction fee system in the Fisheries Act.

7. Thus, it may be gleaned from the formulation of the provisions regarding the special fine and the explanation that the principal purpose of the special fine is to deprive the fisherman of an undue profit. It thus does not involve a sanction charge – which has the character of a penal-like sanction – directed at anyone who commits an act but, rather, a fine which is to be charged to someone who would otherwise have made an undue profit.
8. The aforementioned entails according to the Supreme Administrative Court that the claim regarding the fine should be directed towards the trader who conducts the fishing operation irrespective of whether the trader is a natural or legal person. Even if a captain on a vessel has the overall responsibility in conjunction with unloading the catch, the profit inures to the trader who thus makes an undue profit which the special fine is intended to eliminate.
9. The fact that it is not the captain who is at all times subjected to the special fine does not further entail that its control effect is eliminated. Special fines which are charged to a trader irrespective of whether they are natural or legal persons also have such an effect (*cf.* Government Bill 2021/22:83, p. 414).
10. To be added to the aforementioned is that it appears unreasonable to charge a fine which has the principal purpose of eliminating an undue profit on an actor who makes no such profit.

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11. In light of the above, the precedential question for which the Supreme Administrative Court has granted leave to appeal is to be answered in the following manner. When a fishing operation is conducted by a limited company, it is not the captain of the fishing vessel who lands the catch. The captain shall accordingly not pay the special fine for landing the unauthorised catch.
  
12. It follows from the answer to the precedential question that it was incorrect of the Swedish Agency for Marine and Water Management to impose on AA, who is the captain of a fishing vessel and employee of the limited company which conducted the fishing operation, a special fine. Accordingly, there is cause to grant leave to appeal in the case in those respects in which the question regarding leave to appeal has been stayed and to overturn the rulings of the lower courts.