

Sami village defeats state in historic case concerning land use rights

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Introduction

A lawsuit between the state and a *Sami* village in the Gallivare municipality concerning hunting and fishing issues sparked strong feelings among the public. The outcome of the case is important for defining the *Sami*'s position as indigenous people and the permitted forms of hunting and fishing in northern Sweden.

The *Sámi* village requested that the Supreme Court rule that it has the exclusive right to decide whether others should be allowed to hunt and fish in its reindeer herding area. The village argued that such an exclusive right follows from the Reindeer Husbandry Act or, in any case, from custom and ancient traditions. The state opposed this, referring to the fact that it owned the land and, as property owner, held the sole rights in question.

Facts

The *Sami* village, a legal body which must satisfy its members' common interests, conducts reindeer husbandry, among other things, in a large area above the cultivation limit in Norrbotten County in the most northern part of Sweden.

The Reindeer Husbandry Act permits members of the village to hunt and fish in the area. The law also provides that neither the village nor its members may grant hunting and fishing leases to others. The regulation has essentially remained the same since the first reindeer grazing law came into force by the late 18th century.

Due to its natural value, the area is attractive for small game hunting and fishing. The county administrative board has, on behalf of the state, administered and issued small game hunting and fishing leases on state-owned land above the cultivation limit.

Supreme Court decision

The court had to rule on two main issues – namely, whether:

- an exclusive lease right for the *Sami* village followed from the Reindeer Husbandry Act; and
- such a right followed from ancient tradition.

Reindeer husbandry law does not give Sami village right to decide on hunting and fishing leases

The Supreme Court first dealt with the question of whether the *Sami* village has an exclusive right to grant hunting and fishing leases under the Reindeer Husbandry Act. The court found that the text of the law does not give the village any unambiguous right of lease. Nevertheless, some older preparatory statements could be understood to mean that the legislature considered that the *Sami* and the *Sami* village are the actual holders of the hunting and fishing rights.

However, after a review of, among other things, the preparatory work for the Reindeer Husbandry Act and previous reindeer grazing laws, the court concluded that the act and previous laws are based on the view that the rights to hunt and fish belong to the state.

Sami village has right to decide on hunting and fishing leases due to ancient traditions

As to whether the *Sami* village could establish a right to lease small game hunting and fishing from time

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immemorial, the Supreme Court's assessment was based on the historic conditions in the area in question. A certain ease of proof was considered necessary for the village to have reasonable opportunities to take advantage of the rights that may be attached to the areas that the *Sami* have traditionally used. In this context, the court referred to rules of international law on the rights of indigenous peoples.

Based on the conditions that could be assumed to have prevailed in the area from the 16th century to the mid-18th century, the court concluded that only the *Sami* who had been in the area during this period had the right to hunt and fish, including the right to grant hunting and fishing leases.

The court noted that the state's later actions questioned, in several ways, the *Sami*'s decision-making power. However, this did not mean that such a clear and definitive use of the *Sami*'s right to hunt or fish had been required for their already established rights to cease. Therefore, when the first reindeer grazing law was introduced in 1886, it was still only the *Sami* who worked in the area that had the right to decide who could hunt and fish there.

The court also stated that the *Sami*'s sole right to decide on hunting and fishing in the area passed to the members of the village through the first reindeer grazing law and the following laws. The court determined that this right can be exercised only by the *Sami* village and includes a right to grant hunting and fishing leases. One consequence of this is that the state, in the area in question, does not hold the right to hunt and fish which normally accompanies the ownership of land and water.

Comment

This ruling, which runs counter to how the law has previously been interpreted, means that the *Sami* village in question will control who can fish and hunt small game in its reindeer herding area, which covers some 5,500 square kilometres. It could also mean that similar rights apply to all other *Sami* villages in Sweden. The ruling will also have consequences for *Sami* who are not part of *Sami* villages and for citizens who have an interest in fishing and small game hunting. There is, especially from the hunting side, a concern that the ruling could mean that small game hunting will be limited or become more expensive due to *Sami* decision-making rights. The government has analysed the ruling and realised that a direct consequence of it is that the Reindeer Husbandry Act must be reviewed.

The ruling is as likely to give rise to new complications – including with regard to the state's approach to indigenous people and hunting and fishing rights – as it is to put an end to them.

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