



COUR EUROPÉENNE
DES
DROITS DE L'HOMME

CONSEIL DE L'EUROPE
STRASBOURG

EUROPEAN COURT
OF
HUMAN RIGHTS

COUNCIL OF EUROPE
STRASBOURG

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THIRD SECTION

ECHR-LE4.1bR
AM/kh

23 March 2007

Application no. 39013/04
Handölsdalen's Sami Village and Others v. Sweden

Dear Sir,

I write to inform you that following a preliminary examination of the admissibility of the above application on 22 March 2007, the President of the Chamber to which the case has been allocated decided, under Rule 54 § 2 (b) of the Rules of Court, that notice of the application should be given to the Government of Sweden and that the Government should be invited to submit written observations on the admissibility and merits of the case.

The Government have been requested to deal with the questions set out in the annex to this letter.

The Government have been requested to submit their observations by 10 July 2007. These will be sent to you in order that you may submit written observations in reply on behalf of the applicants.

I would inform you that at this stage of the proceedings, according to Rule 34 § 3, all communications of applicants or their representatives shall as a rule be made in one of the Court's official languages, English or French.

I enclose for your information a statement of facts prepared by the Registry.

J..

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Lastly, I would inform you that at this stage of the proceedings free legal aid may be applied for under the Court's legal aid scheme by applicants who have insufficient means to pay for legal representation. I enclose a copy of the relevant chapter of the Rules of Court for your information. You should let me know as soon as possible whether an application for legal aid will be made in the present case. The necessary forms will then be sent to you.

Yours faithfully,



Santiago Quesada
Section Registrar

Encs: Statement of facts and Questions
Chapter X

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THIRD SECTION

Application no. 39013/04
by HANDÖLSDALEN SAMI VILLAGE and Others
against Sweden
lodged on 29 October 2004

Statement of Facts

THE FACTS

The applicants are the following four Swedish Sami villages (*samebyar*): Handölsdalen, Mittådalen, Tåssåsen and Ruvhten Sijte (formerly Tännäs). They are all situated in the municipality of Härjedalen in the county of Jämtland. They are represented before the Court by Mr J. Södergren and Mr C. Crafoord, lawyers practising in Stockholm.

The facts of the case, as submitted by the applicants, may be summarised as follows.

The Samis have since ancient times inhabited the northern parts of Scandinavia and the Kola Peninsula. Originally living by hunting, fishing and collecting, the Sami activities changed over time to concern mainly reindeer herding. Their historical use of the land has given rise to a special right to real estate, the reindeer herding right. Presently regulated in Sweden by the Reindeer Herding Act (*Rennäringslagen*, 1971:437), it comprises the right to use land and water for the Sami's own maintenance and that of his reindeer. The right belongs to all Samis but it may only be exercised by those who are members of a Sami village. The village is a geographical grazing area as well as an economic entity. The object of a village, which may acquire rights and undertake commitments, is to manage, in accordance with the Act, the reindeer herding within the pasture area of the village to the common benefit of its members. The reindeer herding area comprises approximately one-third of the surface of Sweden and is divided into all-year land and winter grazing land. In so far as the county of Jämtland is concerned, section 3 of the Act stipulates that reindeer herding may be conducted throughout the year on the so-called "reindeer grazing mountains" (*renbetesfjällen*) and in those areas within the county which, at the end of June 1992, belonged to the State and were made available specifically for reindeer grazing. Winter grazing may be carried out from October to April in such areas outside the reindeer grazing mountains where, since a long time past, reindeer herding has been conducted during certain times of the year. Within certain parts of the reindeer herding area the borders are controversial and have never been defined, especially as concerns the winter grazing land. If there is a dispute whether a particular piece of land has traditionally been used for herding during certain times of the year – and thus may be used for winter grazing – the issue has to be

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decided by the courts (see the report by the Reindeer Herding Policy Committee, SOU 2001:101, p. 169).

On 20 September 1990 a large number of private owners of land in the municipality of Härjedalen instituted proceedings against five Sami villages, the four applicants and the Idre Nya Sami village, before the District Court (*tingsrätten*) of Sveg. On 4 June 1991 and 11 September 1995 further suits were instituted. The three cases, comprising 571 pieces of property, were examined together. The landowners sought a declaratory judgment that there was no right of the Sami villages to reindeer grazing on their land without a valid contract to that effect concluded between the landowner and the village. The Sami villages, on the other hand, claimed that they had the right to winter grazing within their respective areas based on (1) prescription from time immemorial (*urminnes hävd*), (2) the provisions of the reindeer grazing and reindeer herding acts of 1886, 1898, 1928 and 1971, (3) custom, or (4) public international law, more specifically Article 27 of the UN Convention on Civil and Political Rights, as compared with chapter 1, section 2 of the Instrument of Government (*Regeringsformen*).

The District Court held four preparatory meetings and an oral hearing which took place on 18 September – 25 October 1995. It heard a large number of experts and witnesses and had regard to substantial documentary evidence. Having examined the developments of the Sami culture and the reindeer herding right since prehistoric times, the court issued a 192-page judgment on 21 February 1996. It found that, from the 16th to the late 19th century, there had not been any winter grazing which had established a right for the Samis to such grazing on the relevant properties and that, from the late 19th century, the actual winter grazing, as annually recorded by the so-called Lapp bailiffs (*lappfogdar*), had not lasted long enough in the respective parishes to create a right to grazing on those properties based on prescription from time immemorial, such prescription requiring at least 90 years' use of the land. For these reasons, the Sami villages could not claim a right to use the properties under the various laws, including the Reindeer Herding Act presently in force. Moreover, the court found that a right to real property could not legally be established through "custom" and that a right to winter grazing on the properties in question could not be based on the provisions of the UN Convention and the Instrument of Government. The court therefore concluded that there was no right of the Sami villages to reindeer grazing on the plaintiffs' land without a valid contract and accordingly gave judgment in favour of the landowners. The court ordered the Sami villages jointly to pay the plaintiffs' legal costs, amounting to approximately 4 million Swedish kronor (SEK; about 430,000 euros (EUR)).

The five Sami villages appealed to the Court of Appeal (*hovrätten*) of Nedre Norrland. On 22 September 1997 they claimed that there was a procedural hindrance (*rättegångshinder*) as they lacked the capacity to act as parties in relation to the issue concerned by the proceedings in question. The appellate court should therefore quash the District Court's judgment and dismiss the landowners' action. By a decision of 4 November 1997, the court rejected the villages' claim, stating that, under the provisions of the Reindeer Herding Act, they had the necessary legal capacity. On

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18 February 1999 the Supreme Court (*Högsta domstolen*) refused leave to appeal against the appellate court's decision.

Idre Nya Sami village later withdrew its appeal and, on 16 November 2001, the Court of Appeal struck out the case in this respect. It also ordered that that Sami village was not responsible for the legal costs in the District Court.

By a judgment of 15 February 2002, the Court of Appeal upheld the District Court's judgment. The appellate court held an oral hearing and had regard to the same evidence as the District Court and some additional written evidence introduced by the applicants. It initially referred to the conclusion by the Supreme Court in the so-called "Taxed Mountains Case" (*Skattefällsmålet*, NJA 1981, p. 1), that the rights pertaining to reindeer herding are exhaustively regulated by the Reindeer Herding Act, and noted that, consequently, the right of winter grazing is dependent on the conditions for prescription from time immemorial being met. Having examined the evidence presented, the appellate court found, in agreement with the District Court, that, before the 20th century, there had not been such winter grazing outside the reindeer grazing mountains which, together with the grazing that had taken place during the 20th century, could create a right to use the relevant properties on the basis of prescription from time immemorial. The applicants were ordered to pay the plaintiffs' legal costs in the Court of Appeal, amounting to approximately 2.9 million SEK (about EUR 310,000).

On 29 April 2004 the Supreme Court refused the applicants leave to appeal.

COMPLAINTS

1. The applicants complain that their right to use land for winter grazing, constituting a possession within the meaning of Article 1 of Protocol No. 1 to the Convention, was violated, as the limitations resulting from the Court of Appeal judgment were not prescribed by sufficiently clear and precise domestic law, as the grazing areas remain undefined, and did not strike a fair balance between the demands of the public and the rights of the Sami villages.

2. They also claim that they were faced with an insurmountable burden of proof, as the Court of Appeal's judgment shows that very specific evidence on the frequency and location of the reindeer grazing during several hundred years was required. As the burden of proof was virtually impossible to meet, the applicants were placed at a substantial disadvantage vis-à-vis the opponent landowners and cannot be considered therefore to have had a fair hearing within the meaning of Article 6 of the Convention.

3. Further under Article 6, the applicants assert that they did not have effective access to court. They refer to the fact that, while they did not introduce the legal proceedings in question, they had to pay the plaintiffs' legal costs. Together with the applicants' own legal costs, the total costs of the proceedings allegedly amounted to 15.1 million SEK (more than 1.6 million EUR). In order to pay those costs, the Sami villages had to take

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loans which they might not be able to repay. Allegedly, in some similar land right disputes, other Sami villages have concluded that they could not afford to defend their rights. Moreover, this might have been the reason for the Idre Nya Sami village to withdraw from the domestic proceedings in the present case.

4. The applicants further maintain that the length of the domestic proceedings was not reasonable under Article 6. While the period of approximately five and a half years in the District Court could partly be explained by the extensive material that had to be examined for the first time, there was no justification for the six years spent in the Court of Appeal or for the period of more than two years spent in the Supreme Court on the issue of leave to appeal.

5. Should the circumstances invoked in relation to the complaints under Article 6 not amount to violations by themselves, the applicants finally submit that the overall effect of the burden of proof, the legal costs and the length of the proceedings involved a denial of an effective remedy, in breach of Article 13 of the Convention in conjunction with Article 1 of Protocol No. 1.

THIRD SECTION

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Questions to the parties

1. Has there been an interference with the applicants' peaceful enjoyment of possessions, within the meaning of Article 1 of Protocol No. 1? If so, has there been a violation of that provision?
2. Did the applicants have a fair hearing in the determination of their civil rights, in accordance with Article 6 § 1 of the Convention? In particular, was the principle of equality of arms respected as regards the burden of proof?
3. Having regard to the legal costs involved in the domestic proceedings, did the applicants have effective access to court, within the meaning of Article 6 § 1 of the Convention?
4. Was the length of the proceedings in the present case in breach of the "reasonable time" requirement of Article 6 § 1 of the Convention?

Chapter X

Legal Aid

Rule 91

1. The President of the Chamber may, either at the request of an applicant having lodged an application under Article 34 of the Convention or of his or her own motion, grant free legal aid to the applicant in connection with the presentation of the case from the moment when observations in writing on the admissibility of that application are received from the respondent Contracting Party in accordance with Rule 54 § 2 (b), or where the time-limit for their submission has expired.

2. Subject to Rule 96, where the applicant has been granted legal aid in connection with the presentation of his or her case before the Chamber, that grant shall continue in force for the purposes of his or her representation before the Grand Chamber.

Rule 92

Legal aid shall be granted only where the President of the Chamber is satisfied

- (a) that it is necessary for the proper conduct of the case before the Chamber;
- (b) that the applicant has insufficient means to meet all or part of the costs entailed.

Rule 93

1. In order to determine whether or not applicants have sufficient means to meet all or part of the costs entailed, they shall be required to complete a form of declaration stating their income, capital assets and any financial commitments in respect of dependants, or any other financial obligations. The declaration shall be certified by the appropriate domestic authority or authorities.

2. The Contracting Party concerned shall be requested to submit its comments in writing.

3. After receiving the information mentioned in paragraphs 1 and 2 of this Rule, the President of the Chamber shall decide whether or not to grant legal aid. The Registrar shall inform the parties accordingly.