



2010-02-24

The Office of the High Commissioner
for Human Rights
CH-1211 Geneva 10
Switzerland

The Sámi indigenous people in Sweden and the Right to Participate in Decision-Making

1. Analysis of the implementation of the international human rights framework, including related jurisprudence, with regard to indigenous peoples of the right to participate in decision-making.

The Equality Ombudsman (DO) would like to begin by stating that it views Sweden's failure to ratify ILO Convention 169, or to take the necessary steps to prepare its implementation, as a serious matter. The Ombudsman finds it remarkable that the Government has neither drawn up a timetable nor embarked on structured work concerning how Sweden is to go about ratifying ILO 169. Over the past ten years, Swedish policy has been based not on the Sámis' status as an indigenous people in Sweden but, at best, on the Sámis as a national minority.

In Sweden, insufficient steps have been taken to ensure Sámi participation as required by international conventions.¹ The policies and legislation currently in place are based on structures established during the colonisation of the Sámi. Sweden has never dissociated itself from these earlier policies. Presented below are two clear, present-day examples of how, in pursuing its policies, Sweden has failed to properly implement international human rights.

The first example concern the Swedish government policy as expressed in the bill, *From Recognition to Empowerment – the Government's Strategy for the National Minorities*. The bill presents a strategy and a new law, *the Act on National Minorities and Minority Languages (2009:724)*. The strategy and the law were introduced in response to the criticism levelled at Sweden by the UN and the Council of Europe, but in the Equality Ombudsman's view further measures will be needed to improve compliance

¹ For example the International Covenant on Civil and Political Rights (ICCPR) and the Framework Convention for the Protection of National Minorities (FCNM).

with Sweden's international commitments. The law regulates the scope of Sámi influence, stipulating that administrative authorities and Sámi should consult on decisions as far as possible. In the Ombudsman's view, it is doubtful whether this law lives up to Sweden's commitments under international jurisprudence. It is an extremely weak piece of legislation. One problem in the way the law is worded is that it leaves the Sámi only limited scope for claiming their rights. Nor does it contain any direct reference to the possibility of sanction should an administrative authority fail to grant Sámi a say in matters. There is reason, therefore, to question whether the new law will have any effect on issues concerning Sámi participation. The Ombudsman's dialogue with Sámi also shows that administrative authorities violate their rights, and that discrimination is having an impact on their right to participate and exercise influence. One of the Ombudsman's current court cases concerns how the municipality of Krokomb has discriminated against the Jovnevaerie Sámi village. The Ombudsman argues that the municipality infringed the law by denying the Sámi village participation in a decision-making process concerning new construction on reindeer grazing ground. (The case is described more fully in Appendix 1.)

The second example clearly showing Sweden's failure to properly implement international human rights concerns the Government's work on developing the legislative proposals that were due to be presented in March 2010.² The part of the draft bill dealing with Sámi participation was presented in the autumn of 2009. The proposals had not been produced together with Sámi. Also, the Ombudsman questioned the relevance of the proposals and stated in its criticism of the Government that they were not far-reaching enough to ensure real Sámi influence. Following extensive criticism from Sámi and the Equality Ombudsman, the government withdrew its proposals. Moreover, the government has since announced that it will not be presenting a bill in March 2010. The Ombudsman is very concerned about this development, which in practice means that the implementation of Sámi's human rights is postponed until a future date.

2. Identification of indigenous peoples' own decision-making process and institutions as well as challenges in maintaining and developing them.

The Sámi Parliament is both a democratically elected body and an administrative authority. While it has been granted a greater degree of autonomy, it remains an authority charged with implementing government policy. This means that opportunities for Sámi to decide for themselves on decisions affecting them are still limited.

A fact that has emerged from the Ombudsman's dialogue with Sámi is that many of them find it difficult to pursue their demands and to have their

² This bill is referred to in the Concluding observation of the Human Rights Committee, (CCPR/C/SWE/CO/6), March 2009, paragraph 20.

interests met via the structures that currently exist in Swedish society. In many cases, Sámi have no access to the forums where they could put their views across. Also, many Sámi do not have a real chance to make their voices heard in comparison with the representatives of the majority society. It is debatable whether the economic support they receive is extensive enough to finance an activity capable of giving Sámi a genuine say on issues that affect them.

3. Identification of participatory and consultative mechanisms linked to both State and relevant non-State institutions and decision-making processes affecting indigenous peoples as well as challenges in their effective implementation.

The Ombudsman notes that the Sámi Parliament is the only institution available for ensuring Sámi participation at national level. As noted above, there is reason to question whether this parliament has the resources, influence and independence to enable it to significantly improve Sámi's circumstances in life. At neither local nor regional level are any sustainable structures in place to guarantee Sámi influence and participation. Also, there is reason to argue that discrimination of Sámi is affecting their opportunities and prospects for exercising influence. The following two examples illustrate Sámi experience of their relations with public authorities and of their chances of making their voices heard.

The above example involving the discrimination of the Jovnevaerie Sámi village by the municipality of Krokomb shows how, within regular structures, discrimination excludes Sámi from participating in decisions that affect them (See Appendix 1).

A further example of how Sámi express their powerlessness in their relations with public authorities is the Government's work with a Swedish-Norwegian convention regulating cross-border reindeer herding. The Swedish and Norwegian states have been using conventions of various kinds to regulate cross-border reindeer herding ever since 1751, when the border between them was established. As a result of the Government's decision on 8 April 2009 to enter into a new convention with Norway concerning cross-border reindeer herding, four Sámi villages have submitted the matter to the Government Offices for judicial review. They argue that the Government does not have the authority to negotiate and reach agreements on the Sámi villages' civil rights regarding the use of reindeer grazing round on the Swedish and Norwegian side. None of the Sámi villages in Sweden have authorised the Government to represent them.

4. Identification of key measures and challenges related to the efforts to guarantee the right of indigenous peoples to participate in decision-making.

A change of course in Sweden's Sámi policy can only be achieved if it is based on international law concerning indigenous peoples. In this connection, Sweden must ratify ILO 169.

Measures need to be taken without delay to remedy the present unsatisfactory situation concerning Sámi participation and influence on decisions affecting them. Expressed simply, it is a question of joining Sámi in establishing long-term, sustainable structures for participation at local, regional and national level, where it is the Sámi and not the majority society that defines both the problem in hand and what measures are required to deal with it.

Appendix 1

Case Summary – The Equality Ombudsman vs. the municipality of Krokom

Background

The Sami village of Jovnevaerie (Jovnevaerie sameby³) has reported the municipality of Krokom in Jämtland, northern Sweden, for discrimination of the village members.

The discrimination occurred in connection with the municipality's handling of building permit applications. Under the Planning and Building Act, Chapter 8, Section 22, anyone wishing to erect a building must apply for permission from the local municipality. Before the municipality reaches a decision in the matter, it is required to inform those affected by the building project (concerned parties) and give them the opportunity to state their views on the permit application.

The Sami village of Jovnevaerie has reported the municipality of Krokom to the Equality Ombudsman (DO) complaining that for several years the municipality has failed to notify the Sami village of building permit applications relating to land with reindeer grazing rights. Other concerned parties, for example, neighbours, have been notified of the building permit applications.

The Sami village appealed against two building permits. The government and Sundsvall Administrative Court of Appeal have handed down decisions in these cases ruling that the Sami village is to be considered a concerned party in cases which relate to both the Sami village's winter grazing land and to areas of national interest for reindeer husbandry.

The first of the above-mentioned cases concerned a permit to construct a ski-lift. The Sami village appealed the decision to the Administrative Court of Appeal and the case was later turned over to the government. In 2004, the government overturned the decision to grant a building permit and ruled that the Sami village was to be considered a concerned party. The government established that the Krokom local authority committee had failed to notify the Sami village of the building permit application. This deprived the Sami village of its opportunity to express an opinion before the building permit was granted as it is entitled to according to the Planning and Building Act. The conduct of the local authority committee was not acceptable and its decision was therefore rescinded.

The second case concerned a building permit for a wind power station. In 2005, Sundsvall Administrative Court of Appeal, rescinded the decision regarding a building permit on the land parcel. The court considered that the land area in question was part of the winter grazing land of the Sami village.

³ Sami village (sameby) is described as "a reindeer husbandry district" run by the indigenous Sami people of northern Sweden on the lines of an economic association.

The wind power station would thus affect the Sami village in such a way that the Sami village should have been treated as a concerned party during the application process. There was therefore good reason for the matter to be retried.

Reported to the Ombudsman

Even after these decisions, the municipality of Krokomb has continued to fail in its duty to notify the Sami village of building permit applications. The members of the Sami village have therefore reported the matter to the Ombudsman. The municipality has objected, claiming that it is continuing a practice based on an agreement made in 1977 stating that the local authority does not need to notify any Sami village except in specific cases. The Sami village of Jovnevaerie is not aware of any such agreement.

The Ombudsman takes the municipality to court

In January 2008, on behalf of the members of the Sami village, the Ombudsman brought a legal case of discrimination against the municipality of Krokomb before the Östersund District Court. The Ombudsman demands damages of SEK 100 000⁴ for each of the 28 members of the Sami village members.

The municipality of Krokomb argues that the Sami village has no winter grazing rights in the three locations concerned and is therefore not a concerned part in building permit application cases. Consequently the municipality claims that it is not obliged to give the Sami village an opportunity to state its view about the building permit applications in question.

This objection means that the case will now address the issue of winter grazing rights as well.

The main hearing has been provisionally scheduled for April 2010 at the Östersund District Court.

The legal grounds

The Swedish Discrimination Act

According to Section 6 of the Swedish Discrimination Act (2003:307), individuals may not be discriminated against e. g. in the granting of permits which are important to business activities.

As described above, the Sami have been treated differently than other concerned parties and businesses would have been treated in similar

⁴ 100 000 SEK is approximately 10 000 Euro (2010-02-25).

situations. The actions of the local authority are discriminatory on the grounds of ethnic background since the actions are directed only at people of Sami origins.

The local authority is thus required to pay damages for the violation suffered due to this discriminatory treatment in accordance with Section 16 of the act.

The European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR)

Article 14 – Prohibition of discrimination

The actions of the municipality of Krokombotn contravene the prohibition of discrimination set out in Article 14 of the ECHR in conjunction with both or either of the following articles.

Article 6.1 – Right to a fair trial

The actions of the local authority constitute a refusal to observe the rights of the Sami village as established by the decisions of the Swedish government and the Administrative Court of Appeal. Respect by public officials for judgments and decisions that have been passed is considered part of the right to a fair trial.

Article 1 of Protocol No. 1 to ECHR – Protection of property

The actions of the local authority constitute a lack of respect by the local authority for the reindeer husbandry rights of the members of the Sami village. They have also restricted the opportunities of the Sami of Jovnevaerie Sami village to carry on reindeer husbandry in a manner which contravenes the article on the Protection of property. Reindeer husbandry rights are just as strongly protected as rights of ownership. This may be demonstrated by reference to the law periodical NJA 1981, page 248 and it is also stressed in the preparatory work for the 1886 Reindeer Grazing Act, Proposition 1886:2. The European Court has interpreted the ECHR concept of property very widely, including rights to exploit property, permits, licences and fishing rights.