



OMBUDSMANNEN
MOT ETNISK DISKRIMINERING

Discrimination of the Sami

– the rights of the Sami from a
discrimination perspective

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Ombudsmannen mot etnisk diskriminering (DO)

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Introduction

Background

Sweden recognised the Sami as an indigenous people in 1977. As such the Sami enjoy special protection and are granted innate rights under Swedish law, as well as through international conventions and declarations. The realisation of these rights is part of Sweden's obligations to respect human rights. However, research has shown that prejudice and racist conceptions have characterised Swedish Sami policy over the years, thus indirectly influencing the Sami today.¹

There is little research and few other studies designed to illustrate the Sami people's situation in Sweden today from a discrimination perspective. In 1998 the Ombudsman against Ethnic Discrimination (DO) commissioned Professor Anders Lange of the Centre for Research in International Migration and Ethnic Relations (CEIFO) to conduct a questionnaire and interview study into ethnic discrimination of the Sami. The study investigated self-perceived discrimination among the Sami and produced disquieting information regarding the Sami experience of threats, harassment and discrimination.² The Sami have also indicated in contacts with the DO various ways that discrimination and insults linked to their ethnic background are part of their everyday life. In spite of this the Sami are hardly inclined to report discrimination.

Against this background, the DO has been conducting a project since 2007 specifically aimed at visualising the Sami perceptions of discrimination. The European Commission against Racism and Intolerance (ECRI) has emphasised the importance of identifying and exposing perceptions of discrimination and racism against indigenous peoples. The European Union requires that equal treatment agencies conduct independent investigations, publish reports on and make recommendations regarding issues concerning discrimination. The DO considers exposure of the Sami

1 Cf. for instance Amft, Andrea (2000), *Sápmi i förändringens tid: en studie av svenska samers levnadsvillkor under 1900-talet ur ett genus- och etnicitetsperspektiv*; Catomeris, Christian (2004), *Det ohyggliga arvet: Sverige och främlingen genom tiderna*.; Johansson, Peter (2008), *Samerna: ett ursprungsfolk eller en minoritet? En studie av svensk samepolitik 1986-2005*.; Lantto, Patrik (2000), *Tiden börjar på nytt. En analys av samernas etnopolitiska mobilisering i Sverige 1900–1950*.; Lantto, Patrik (2003), *Att göra sin stämma hörd. Svenska samernas riksförbund, samerörelsen och svensk samepolitik 1950–1962*.; Lundmark, Lennart (1998), *Så länge vi har marker. Samerna och staten under sexhundra år*. and Mörkenstam, Ulf (1999), *Om "Lapparnes privilegier". Föreställningar om samiskhet i svensk samepolitik 1883–1997*.

2 Lange, Anders (1998), *Samerna om diskriminering. En enkät- och intervjuundersökning om etnisk diskriminering på uppdrag av Diskrimineringsombudsmannen (DO)*.

discrimination experience as an important first step towards achieving a change. Without knowledge of their situation it is not possible to propose action that can promote the human rights of the Sami.

The principal working strategy has been *development of mutual knowledge*. The aim is to increase knowledge of rights and work against discrimination in the Sami community, while knowledge of the Sami living conditions is deepened and made visible at the Office of the Ombudsman against Ethnic Discrimination and in the rest of Swedish society. This report presents experiences from this project.

Purpose and questions

In order for the DO and other actors to work effectively to prevent and counteract discrimination of the Sami, they need knowledge of how the discrimination of the Sami is manifested. The purpose of this report is therefore to contribute knowledge of the the Sami current situation by revealing the Sami discrimination experience, and to propose action to prevent and counteract discrimination of the Sami as described by that experience. Two question areas were seen as central to achieving this purpose. The first focuses on capturing the Sami discrimination experience as revealed in the work done by the DO.

- How do the Sami perceive discrimination?
- What forms does discrimination of the Sami take?
- What indications, structures and patterns can be established from the Sami discrimination experience?

The second area deals with the measures necessary to counteract and prevent discrimination of the Sami.

- What are these measures?
- How can the DO and others work to deal with discrimination of the Sami?

Implementation

This report is based on the Sami discrimination experience as revealed in the work done by the DO. The work was carried out in close co-operation with the Sami. This is to be regarded as a first step. The report will form the foundation for the continued efforts of the DO working with the Sami to find ways to prevent and counteract discrimination of the Sami.

The Sami discrimination experience has chiefly been captured through dialogue with the Sami in three municipalities, a Sami reference group and complaints concerning ethnic discrimination received by the DO between January 2000 and June 2008. Since the purpose of the report is to describe the Sami discrimination experience, there is only a short general legal presentation of the rights that Sami have as an indigenous people and a national minority. Nor does the presentation contain an analysis of the events described as they relate to antidiscrimination legislation.

Measures that should be taken by the DO and other actors will be chosen based on the Sami experience as described in this study.

The strategy of mutual knowledge development

In 2004 there was a review of the complaints received by the DO. It showed that the DO's activities at the time, were neither reaching those who were most vulnerable to discrimination nor giving a true picture of discrimination in Sweden.³ This was the same conclusion as the one reached by the DO 2002-2003 project concerning the Roma. In order to receive complaints from those most vulnerable, the authority realised that it must become proactive. Turning outwards to reach minority groups with information, rather than waiting passively for complaints to come in. This new approach laid the foundation for a new strategy, called *development of mutual knowledge*. Evolved within the framework of the Roma project, this strategy has given good results, among these being more complaints and legal action. Today, the strategy constitute the basis of the authority's work against discrimination. This report describes how the strategy has been implemented in the authority's work against discrimination of the Sami.

The foundation for the strategy of mutual knowledge development consists of the involvement by minority groups and development of mutual knowledge. The the groups' knowledge of its rights and involvement in the work against discrimination increase, while knowledge of the groups' life conditions grows and is made visible within the authority and the rest of society are key in this strategy. The strategy is a vital force in achieving positive change and for enabling the groups to assert their rights to more actively.

With the strategy of mutual knowledge development as the starting point, the DO has carried out its work in co-operation and dialogue with the Sami. The overarching objective is equal opportunities and rights. The basic concept is that the Sami themselves are a key to positive change

3 Lernestedt, Lennart et al (2004), *Genomgång av DO:s individärenden samt förslag till förbättringar*.

processes. Thus the goal of the work is that in the long term, the Sami will develop their own capacity for counselling and for carrying out an active antidiscrimination campaign. The aim of the strategy is to establish long-term change processes aimed at enhancing the prerequisites for Sami empowerment and influence over their own life conditions. One part of this is to carry out all aspects of the work together with Sami.

To achieve this, the dialogue with the Sami has centred on discovering how the Sami themselves perceive that they are treated, if any mistreatment is connected to the Sami ethnicity and the context in which it took place. In this context it is important to be aware that the DO's work does not claim to develop a full picture of the discrimination of the Sami.

Most of the dialogue has been with a Sami reference group and with the Sami in three municipalities. The reference group represents the Sami from all over Sweden, thus broadening the geographical validity. In this way the reference group has contributed to capturing discrimination experience outside the three municipalities as well.

The reference group

The reference group consists of representatives of the Sami national organisations, regional organisations and institutions. Specifically, the group includes Peter Stålnacke from the National Federation of Swedish Sami, Lillemor Baer from the Reindeer Owners' Association (Renägarförbundet), Mariana Wiik from Sameföreningen i Stockholm, Majvor Massa Eriksson from Samer i Syd, Victoria Harnesk from the National Association Same Ätnam, Anna-Maria Fjellström from Sáminuorra, Peter Rodhe from the Sami Rights Association, Anna Skielta from the Sami Parliament and Britt Allas-Labba from the Sami Education Board. Together, they and the DO have identified discrimination experiences and the protection that is available.

Work with the reference group has been central to creating legitimacy and long-term thinking. For the DO, working with the Sami reference group has meant an opportunity to work nationally, representatively and strategically with relatively limited resources.⁴ The work of the reference group has been focused on identifying and formulating problems and solutions in order to prevent and counteract discrimination of the Sami. The Sami have thus been able to influence and be involved in the DO's work.

⁴ Gustavsson, Josefine (2007), *Effekterna av DO:s informationsinsatser riktade till grupper särskilt utsatta för diskriminering*.

Discussions have primarily centred around The Sami discrimination experience and on how special rights of the Sami are violated through discrimination. Particular attention has therefore been paid to legal protection against discrimination and special rights of the Sami as an indigenous people and national minority. Another important element in the reference group's work has been to formulate the measures needed to prevent and counteract discrimination of the Sami.

Dialogue with the Sami in three municipalities

Meetings and dialogue with the Sami in Jokkmokk, Arjeplog and Krokomb were also a point of departure for the work. To begin with, the DO contacted the approximately 25 Sami organisations, associations and institutions in the three municipalities. These were allowed to study the project plan and were invited to participate in a dialogue. All those invited agreed to attend the meetings and in preparation were given a short presentation of the DO and discussion material that included a definition of the concept of discrimination and examples of the forms that discrimination can take.

Jokkmokk and Arjeplog are municipalities in Norrbotten County and are part of the administrative district⁵ for Sami languages. The law concerning the right to use the Sami language in dealings with public authorities and courts applies within that district. This strengthens the Sami linguistic rights in this area. Krokomb Municipality in Jämtland County is in the South Sami area. The municipality is not part of the administrative district for the Sami languages, but a government commission has proposed that it be included.⁶ The Krokomb Municipality was selected because of a complaint from a Sami village there. The complaint concerns inadequate dialogue between the Sami and the municipality and raised several questions about the Sami situation in the municipality. At the same time as the work was initiated, the DO decided to pursue that matter further.

The DO has also held meetings with representatives of Jokkmokk and Arjeplog municipalities. The Krokomb Municipality was not contacted, as the DO was in the process of making a summons application against the municipality for discrimination of Sami.⁷ The purpose of the meetings was primarily to find out about the work of the municipalities concerning the Sami rights. The meetings were held in the early stages of the DO study

5 The municipalities concerned by this legislation are Arjeplog, Gällivare, Jokkmokk och Kiruna.

6 SOU 2006:19 Att återta mitt språk – åtgärder för att stärka det samiska språket p. 265ff.

7 More information is found on page Se vidare om ärendet under rubriken Anmälningar till DO. p. 16.

and were devoted to general level discussions about their efforts to combat discrimination of Sami. The municipalities have not been confronted with the Sami discrimination experience as expressed during the course of the study, which is why the content of the talks are not reported here.

Central definitions and terms of reference

The DO definition of *Sami* includes all those individuals that call themselves Sami. It is important to be aware that the Sami are a heterogeneous group, not least geographically.

In both the work and the report the DO has followed the recommendation of the European Commission against Racism and Intolerance (ECRI) to make visible perceptions of discrimination and racism within the minority group concerned. The report does this chiefly by describing the experience that has been made known to the DO through the dialogue with the reference group and the Sami in three municipalities and in complaints received by the authority from 2000 up to and including June 2008. The DO feels that exposure of Sami discrimination experiences is an important first step towards achieving a change. Without knowledge of the Sami situation it is not possible to propose action that can promote Sami human rights. On the other hand, it is important to bear in mind that in describing the Sami discrimination experiences, the report does not claim to paint a complete picture of discrimination of the Sami or of how often the Sami experience discrimination. It is also necessary to state that not everything that is perceived as discrimination fulfils the criteria required to establish that discrimination has taken place in a legal sense.

There are, however, several reasons why it is important to bring forward discrimination experiences. The Sami experience has seldom been elucidated, not least to Swedish research in the area.⁸ Research on discrimination shows that studies of perceived discrimination give a good account of the real problems experienced by minorities in their contact with the majority society. Such studies also show how experience of discrimination impacts the lives of individuals.⁹

As an indigenous people the Sami enjoy particular protection and are granted certain rights through Swedish law and international conventions.

8 The only investigation made in Sweden regarding discrimination of the Sami is the report by Lange (1998). It was commissioned by the DO.

9 Cf. for instance ECRI (1998), *ECRI general policy recommendation nr 4. National surveys on the experience and perception of discrimination and racism from the point of view of potential victims.*; Pager, Devah (2006), *The dynamics of discrimination.* and de los Reyes, Paulina och Wingborg, Mats (2002), *Vardagsdiskriminering och rasism i Sverige – en kunskapsöversikt.*

The general protection against ethnic and religious discrimination also covers both direct and indirect discrimination. *Direct discrimination* is defined as unfair treatment of an individual in relation to another person in a comparable situation, if the treatment is linked to the person's ethnic or religious background. *Indirect discrimination* is defined as unfair treatment of an individual through the application of regulations, criteria or procedures that appear to be neutral, but that in practice places persons of a certain ethnic or religious background at a disadvantage.

The DO has both an individual and a structural perspective in its work regarding the discrimination of the Sami. By an *individual perspective* is meant that the report is based on the discrimination the Sami experience in their day-to-day life. The *structural perspective* on discrimination is represented in the aim to make visible the majority society's systematic subordination and use of stigmatising definitions of groups, such as "Swedes" and "Sami". Structural discrimination in this report refers to:

"... rules, norms, accepted attitudes and behaviour in institutions and other societal structures that constitute obstacles to ethnic [...] minorities being accorded the same rights and opportunities that the majority of the population enjoy. Such discrimination may be visible or concealed and may be intentional or unintentional."¹⁰

It is important to relate individual and structural discrimination to each other, as well as to history and the distribution of power in society. Individual discrimination is created and creates the structures and the exercise of power and the subordination that is linked to stigmatising perceptions of "Swedes" and "Sami" or of "us and them". The differences we speak of are always linked to a frequently unchallenged hierarchy. In order for some people to be defined as different, there must be a norm from which to set them apart. In this case the norm is power. It is important in this context to emphasise that power is not only something that exists "up there", in politics. It exists in the way more or less everyone speaks or acts at all levels of society.¹¹

The work has primarily focused on discrimination of the Sami in relation to the majority society. Research on the State's Sami policy shows that the Sami have been subjected to institutionalised discrimination by the State for a long time.¹² This has been expressed in the State's preferential right of interpretation as to who is to be regarded as a Sami and what rights are to be linked to this. It is clear that the government's policy affects the

10 SOU 2005:56 (2005), *Det blågula glashuset. Strukturell diskriminering i Sverige*. Betänkande av Utredningen om strukturell diskriminering på grund av etnisk och religiös tillhörighet.

11 Hörnqvist, Magnus (1996), *Foucaults maktanalys*.

12 This is discussed further in chapter 3 of Hörnqvist (1996).

Sami conditions today. Several examples of this were brought to light in the DO's dialogues with the Sami. One is that the Sami living outside Sami villages can feel isolated and that their Sami identity is questioned. Another example is the Sami possibilities for becoming members of Sami villages, which among other things affects their possibilities to hunt and fish. Some Sami are even denied the right to be taken up on the electoral register for the Sami Parliament. These problems are touched upon in the DO's work, though not in any great depth.

Disposition

The report has four parts. The first part (Chapters 1 and 2) describes the points of departure for the work and the aim and structure of the report. The DO's assignment is presented together with the work done against discrimination of the Sami. The second part (Chapter 3) gives a brief review of the Swedish Government's Sami policy. The third part (Chapter 4) describes the discrimination experiences that have been brought to the attention of the DO through the authority's work with Sami rights seen from a discrimination perspective. Where similar experiences are mentioned in other studies, references are made to them. The final part (Chapter 5) contains a summary and analysis of what measures the DO, the Government and other actors ought take in order to prevent and counteract discrimination of the Sami.

The DO assignment

The Sami are covered by Swedish antidiscrimination legislation and, as an indigenous people and national minority, have certain additional rights according to national and international law. The purpose of this chapter is to describe the DO assignment and mandate as well as the particular rights of the Sami as an indigenous people and national minority.

The DO is a government authority that is commissioned to work to prevent and counteract discrimination linked to ethnic background, religion or belief.

The mandate of the DO is based on national legislation, European Union law and international conventions. The national laws protect against discrimination in working life, in pre-school, primary and secondary school and institutions of higher education and in other areas, including the social insurance system, the health services, as well as in all commercial activities, such as trade and the housing market.

A central element in the DO's work is to receive and investigate complaints of discrimination from private individuals. The DO works for redress for a discriminated person, first and foremost through voluntary agreements. If this is not successful, the DO has the authority to bring an action before a court on behalf of the individual. The authority also monitors the efforts of employers, higher education institutions and schools to prevent ethnic and religious discrimination. With equal opportunities and rights as the overarching objective and with in the conviction that minority groups are themselves a key to positive change processes, the DO has initiated long-term development work aimed at contributing to lasting change for groups that are especially vulnerable to discrimination. In accordance with the EU directive on the principle of equal treatment of all individuals irrespective of racial or ethnic origin, the DO compiles reports and submits recommendations on issues concerning how discrimination can be prevented and counteracted.¹³

The Sami rights as an indigenous people and a national minority

Protection against discrimination and the DO's mandate are both based on the requirements Sweden has accepted through its undertakings according to international law and as a member of the European Union.

¹³ Council Directive 2000/43/EG of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin article 13.

The right not to be discriminated against is a human right and fundamental to every democratic society.

The Swedish Parliament recognised the Sami as an indigenous people in 1977. This means that Sweden has obligations under international law to guarantee more rights to indigenous peoples than to other minorities, chiefly as regards land, water and self-determination. In 2007, the UN approved the Declaration on the Rights of Indigenous Peoples that among other things establishes the status of indigenous peoples as people with the right to self-determination. The declaration is not legally binding but constitutes an international standard for the treatment of these groups.¹⁴ The most important international convention on indigenous peoples is found in the ILO's¹⁵ convention number 169 dated 1989 concerning indigenous and tribal peoples in independent countries. Just as in the DO's work. The convention's starting point is that self-identification is the fundamental criterion for determining who belongs to one of the groups to which the definition indigenous people applies. The convention also establishes the rights to self-determination, land and natural resources for indigenous peoples. Sweden has not ratified the convention.¹⁶

In 1999 the Swedish Parliament recognised the Sami as one of Sweden's five¹⁷ national minorities, as covered by the Council of Europe's framework convention concerning the protection of national minorities. The Sami languages¹⁸ were also recognised and are covered by the European Charter for Regional or Minority Languages (the language charter). The purpose of the Council of Europe's conventions concerning minorities is to strengthen and support national minorities and their languages. The government bill on national minorities in Sweden states that

"It is vital for our democratic society that non-discrimination and influence apply in full as regards the country's national minority groups."¹⁹

14 UN declaration A/res/61/295.

15 ILO is the UN agency that brings together governments, employers and workers of its member states in common action to promote decent work throughout the world.

16 In its statements dnr. 305-1999, 97-2002, 347:2006 och 226-2006 to the reports SOU 1999: 25, *Samerna – ett ursprungsfolk i Sverige.*; SOU 2001:101, *En ny rennäringspolitik.*; SOU 2005:116, *Jakt och fiske i samverkan.* (including the report parts SOU 2005:17, *Vem får jaga och fiska? Rätt till jakt och fiske i lappmarkerna och på renbetesfjällen.*; SOU 2005:79, *Vem får jaga och fiska? Historia, folkkrätt och miljö.*); SOU 2006:14, *Samernas sedvanemarkar.* and the proposal for Nordic Sami Convention, the DO pointed out the importance of Sweden ratifying the ILO Convention no. 169 and expressed concern regarding the consequences of further delay on this.

17 The others are the Roma, the Jews, the Swedish Finns and the Tornedalers.

18 The Sami languages that were recognised are North, South and Lule Sami. There are, however, more Sami languages.

19 Prop. 1998/99:143 s. 11.

The rights stated in the conventions on minorities are primarily realised through decisions at national and local level. This applies for example to the possibility to receive education in the national minority languages at school, receive eldercare in one's native language in the administrative district and the possibility to use one's native language in contact with authorities. At the same time as Sweden ratified the conventions on minorities, two laws were passed concerning the right to use the Sami languages, Finnish and Meänkieli (Torne Valley Finnish) in dealings with public authorities and courts. The Act concerning the right to use the Sami languages in dealings with public authorities and courts (1999:1175) gives individuals the right to use the Sami minority languages in dealings with public authorities and courts in the specified administrative district in Norrbotten County. This district comprises the four municipalities of Jokkmokk, Kiruna, Gällivare and Arjeplog. The laws apply only to the exercise of authority in the named municipalities where the Sami languages has been used for a long time. It is also prescribed that individuals in these municipalities have the right to pre-school education and eldercare upon request.

The Compulsory School Ordinance states that Sami pupils are entitled to be taught in their native language if the native language of one or both parents or guardians is not Swedish. However, a municipality is only obliged to arrange mother tongue teaching in Sami if a suitable teacher is available and the pupil has a basic knowledge of Sami.²⁰ The rules in the Upper Secondary School Ordinance are the same as those in the rules as in the Compulsory School Ordinance. The only difference is that an upper secondary school pupil must have good knowledge rather than basic knowledge in Sami to be entitled to teaching in the Sami languages.²¹

The Sami children are allowed to attend a Sami school for the six first grades. Teaching there must be in both Sami and Swedish and the Sami subject must be taught in all grades.²² There are six Sami schools, all of them in the Norrbotten County.

Minorities and indigenous peoples are also protected by the equality and equal treatment principles laid down in the Constitution of Sweden.²³ It is also stipulated that opportunities should be promoted for ethnic, linguistic and religious minorities to preserve and develop their own cultural and

20 Grundskoleförordningen 2 kap. 9-14 §§.

21 Gymnasieförordningen 5 kap. 7-13 §§.

22 Skollagen 8 kap. 3 § and Sameförordningen 3 kap. 2 §.

23 1:2 st 1 and 1:9 RF.

social life.²⁴ The preparatory documents for the Constitution emphasise that the word culture “shall be given a broad interpretation [...]”. This enables the inclusion of reindeer husbandry, a central element in the Sami traditional way of life.²⁵

It is clear from this review that the Sami own a protection against discrimination that places special demands on the State, municipalities and county councils when it comes to realising actual equality for Sami. The realisation of the Sami cultural and linguistic rights and entitlements to land and water is a part of the rights accorded them in the conventions as well. Thus possibilities must be created for the Sami to preserve and develop their identity linguistically, culturally, historically and traditionally.

Complaints submitted to the DO

A central part of the DO’s assignment concerns the complaints about ethnic discrimination submitted by women and men alike. Studies exist that show that the inclination to report discrimination to the authorities is low.²⁶ It is not entirely unlikely that the DO’s efforts against discrimination are partly responsible for the increase in the number of complaints about discrimination of the Sami. Some ten complaints were received during the first half of 2008, as compared to around twenty between 2000 and 2007.

Of the around 30 complaints received by the DO since 2000, most concern failings related to Sami linguistic rights, such as shortcomings in mother tongue teaching in pre-school²⁷ and school²⁸, as well as a lack of information in the Sami language when dealing with authorities²⁹. The DO has also received complaints concerning the establishment of Sami pre-schools.³⁰ Other complaints concern membership in Sami villages³¹ and being entered in the electoral register for elections to the Sami Parliament³², the right of access to children that has not been arranged taking the conditions of

24 1:2 st 4 RF.

25 Prop 1975/76:209 p. 138, check also p. 21.

26 Cf. for instance Lange, Anders (1999), *Invandrare om diskriminering. En enkät- och intervjuundersökning om etnisk diskriminering på uppdrag av Diskrimineringsombudsmannen (DO) IV*; Lange (1999) and Lernestedt, Lennart et al (2004).

27 Cf. for instance DO dnr. 340-2001.

28 Cf. for instance DO dnr. 96-2002 and 81-2008.

29 Cf. for instance DO dnr. 1183-2003, 1197-2003 and 283-2008.

30 Cf. for instance DO dnr. 373-2000 and 782-2001.

31 Cf. for instance DO dnr. 1352-2002 and 420-2006.

32 Cf. for instance DO dnr. 365-2000 and 1029-2000.

reindeer husbandry into sufficient account³³, refusal of protective hunting of predators³⁴, refused applications for project support³⁵ and discrimination and harassment in working life³⁶. The DO has also received a complaint about discrimination when renting premises.³⁷

Protection of the individual rights has been strengthened in recent years by new antidiscrimination legislation. This has given the DO greater possibilities for ensuring that private individuals can practise these rights. Many of the complaints from the Sami were received before 1 July 2003 when the Prohibition of Discrimination Act (2003:307) came into force. The Act Prohibiting Discrimination and Other Degrading Treatment of Children and School Students, (2006:67) came into force on 1 July 2006. These laws have strengthened the DO's legal possibilities in seeking redress.

The DO is currently taking legal action in the courts concerning a complaint from the Sami. A Sami village has lodged an official complaint against Krokommunicipality for ethnic discrimination of the village members. The DO feels that the municipality has neglected to inform the Jovnevaerie Sami village about building permit applications on land with reindeer grazing rights. Other parties concerned including neighbours, have been informed about the building permit applications. The municipality's omission thus concerned only the Sami. According to the Planning and Building Act, anyone wishing to erect a building must apply to the local authority for a permit (building permission). Before the local authority makes a decision, it must inform those affected by the building (parties) and give them an opportunity to give their opinion of the application. Both the Government and the Administrative Court of Appeal in Sundsvall have decreed that the Sami village is to be considered a party to construction in the reindeer pasture. Even after these rulings the Krokommunicipality failed to inform the Sami village of the building permission applications and the DO has therefore decided to pursue the matter in the courts.³⁸

33 Cf. for instance DO dnr. 76-2002.

34 Cf. for instance DO dnr. 806-2002.

35 Cf. for instance DO dnr. 280-2006.

36 Cf. for instance DO dnr. 248-2008 and 282-2008.

37 Cf. for instance DO dnr. 707-2007.

38 DO dnr. 733-2005, Cas no.T 243-08.

Historical background

In order to be able to work effectively with preventing and counteracting discrimination of the Sami, it is necessary to understand the forms that this discrimination has taken historically in Sweden. This chapter provides a brief overview of the Swedish State's Sami policy and its effects on the Sami conditions in Sweden. It does not claim to give a complete account of Sami history, it is primarily intended to show how the situation for the Sami has been affected by the this policy.

The Sami have a long and unbroken historical connection to the areas where they have practised their trades and developed their culture. This dates back to the time before the colonisation of the area and the formation of the Swedish nation state. Research has shown that the Sami have lived and worked since time immemorial in an area that is today stretches over Sweden, Finland, Norway and Russia.³⁹

Historian Leonard Lundmark says that Sweden's, or more properly the Crown's, early dealings with the Sami are closely linked to the conquest of Norrland in the 14th century when colonisation began in earnest. It was during the 14th and 15th centuries that the Crown began to levy taxes on the Sami.⁴⁰ Lundmark also points out that in the 16th century the State's Sami policy was characterised by an increased interest in the riches of the Lappmark (Samiland). The levy was substantially increased and lists were drawn up of the lakes and land areas that different Sami families used. These areas became known as the Sami tax lands, and in Jämtland and Härjedalen as the tax mountains.⁴¹

This levy was increased still further during the 17th century and the State strengthened its control of the Sami and the Lappmark in other ways as well.⁴² In the 1630s the State "discovered" the first silver deposit in Nasafjäll, northwest of Arjeplog. Lundmark describes how Sami were forcibly recruited to transport the ore to Piteå since reindeer were indispensable to its transportation. Since the wages paid were not sufficient to live on, the Sami found themselves facing a crisis. Some were forced to turn to begging, others fled to Norway or further north in Sweden. The

39 Korpijaakko-Labba, Kaisa (1994), Om samernas rättsliga ställning i Sverige–Finland. En rätthistorisk utredning av markanvändningsförhållanden och -rättigheter i Västerbottens lappmark före mitten av 1700-talet, p. 17.

40 Lundmark (1998) p.18ff.

41 Lundmark (1998) p. 33f & 59 and "Swedish Saami Policy, 1550-1990" (1992), p. 63–77. p. 64ff.

42 Lundmark (1998) p. 37f.

Sami that owned reindeer were forced to enlarge their herds to be able to survive under the heavy tax burden.⁴³

In the latter half of the 17th century the State began to colonise Sami land more actively. Lundmark describes how the State tried to attract settlers from the south and the coast by introducing a 15-year exemption from taxes. However, because of the wars this tax exemption did not have the desired effect.

During the 18th century the settlers gradually forced the Sami out.⁴⁴ At this time the State also began to build churches in the Lappmark and so-called Lappmark priests were appointed. The priests were an extension of the State in the Lappmark and just like the rest of the population the Sami were obliged to attend church and were summoned to parish catechetical meetings. Religious non-conformity was not tolerated and as the Sami religion was considered heathen, it was forbidden.⁴⁵

According to Lundmark the State's dealings with the Sami were lucrative since the taxes and trade in animal skins, meat and fish gave the State excellent income. Since the State had understood the economic value of Sami activities, they had been allowed to retain relatively extensive rights to their tax lands and the Sami tax lands despite the colonisation. In the 18th century, as the settlers increased colonisation of the Sami land, other activities such as mining and farming grew in importance to the State. The courts had earlier taken the Sami rights to their tax lands and Sami tax lands into consideration, but now they began to disallow them in favour of the settlers.⁴⁶

The local courts and authorities were not the only ones responsible. The national authorities contributed to these developments as well. During the latter part of the 18th century, a royal decree granted farmers both inheritance rights for their properties on crown land and the right to redeem them. For the Sami, developments moved in the opposite direction and it became more and more common for the courts to reject Sami inheritance rights in the Sami tax lands. Towards the end of the 19th century concessions of this type were no longer being granted and the lands were increasingly seen as State property. According to Lundmark, both the colonisation itself and its effects were extensive, forcing some Sami

43 Lundmark (1998) p. 43ff and Kvist (1992) p. 65f.

44 Lundmark (1998) p. 60f, Catomeris (2004) p. 196 and Forseth, Björn (2002), *Samelandets historia*, p. 110f.

45 Lundmark (1998) p. 51ff, Catomeris (2004) p. 193 and Kvist (1992) p. 66f.

46 Lundmark (1998) p. 67ff and Kvist (1992) p. 67f.

to switch to farming, others to leave the areas to take up trading or become beggars.⁴⁷

In the mid-1800s the Swedish anthropologist Anders Retzius developed a method for measuring craniums in order to classify people into different categories. Both authorities and researchers conducted skull measurements on a large scale. Researchers not only measured living Sami, but also dug up and plundered Sami graves.⁴⁸ Sami remains and artefacts from this period can still be found in various Swedish State collections.⁴⁹ Race biology was popular in Sweden and in 1920 a unanimous Parliament decided to establish the world's first state institute for race biology in Uppsala.⁵⁰

Political Scientist Ulf Mörkenstam has shown that the Swedish Sami policy in the late 19th century was designed to resolve a problem that the State considered important, namely the conflict of interest between the reindeer husbandry industry and the resident populations.⁵¹ Parliament passed the first Reindeer Grazing Act in 1886. The law regulated the dealings between reindeer husbandry and the resident population and was based on the assumption that reindeer were causing damage to the property of the residents population. Mörkenstam says that this assumption was one of the starting points for the Sami policy that defined what good reindeer husbandry was and how it was best practised.⁵² Characteristic of most of the Sami policy of the 20th century is that a Sami is equated with the good reindeer herdsman who is assumed to be nomadic. In its assumption that Sami were nomadic reindeer herdsman the Reindeer Grazing Act created a basis and a kind of truth for its description of who are to be considered "genuine Sami". The Act gave the reindeer herding Sami a special entitlement to that industry and the right to hunt, fish and use the forest on crown land. The land that the State had allocated was thus regarded as existing exclusively for Sami reindeer herding and it was for this purpose alone that the land was allowed to be used.⁵³ The Reindeer Grazing Act of 1928 institutionalised still further the idea that only reindeer-herding Sami living in Sami villages are entitled to the innate rights of the Sami.⁵⁴

47 Lundmark (1998) p. 73ff and Kvist (1992) p. 67f.

48 Lundmark (1998) p. 86ff.

49 Sametinget (2006), *Samiska mänskliga kvarlevor i samlingar*. Dnr. 120/06.

50 SOU 2005:56 *Det blågula glashuset – strukturell diskriminering i Sverige* s. 101.

51 Mörkenstam (1999) p. 84f.

52 Mörkenstam (1999) p. 84ff.

53 Mörkenstam (1999) p. 84ff.

54 Mörkenstam (1999) p. 142 and Kvist (1992) p. 70f.

In Mörkenstam's opinion, the early Reindeer Grazing Acts had serious consequences for Sami rights. With them, the Sami lost the right to own land and the individual reindeer pasture right was turned into a collective right for the Sami villages.⁵⁵ Moreover, the rights were different for men and women. The Act not only excluded Sami that weren't nomadic reindeer herders. The Sami woman's legal status was steadily weakened following the Reindeer Grazing Act of 1886 and in particular through the 1928 Act.⁵⁶ Reindeer herding was defined as a man's job and the reindeer-herding Sami woman's rights were based on her husband's status, including whether he was defined as a Sami or not.⁵⁷ The woman's legal status was thus dependent on the man's, a system that persisted until 1971 when the concession herding system was introduced. The Act made women formally equal, but in practice subordinate to the men. Any reindeer belonging to a female member of a household were still counted as belonging to her husband or father.⁵⁸

The DO observes that research in the field shows that the State Sami policy has resulted in a great many Sami being denied their rights and that the Sami identity has been defined on the basis of stigmatising and racist conceptions of the Sami and Sami culture. The definition of the Sami as nomadic reindeer herders has created a system of different rights for different Sami. These rights have been founded in a conception of cultural inferiority⁵⁹ where policies were formed about the Sami, not with them.

One example described by Lundmark is found in 1909 report on the Sami schools where reindeer herding is considered incompatible with civilisation. The special education system for certain Sami, the Sami schools, were intended for the children of the nomadic mountain Sami. Wooden Lapp cots were built where the children lived and were taught. This effectively separated the children of the mountain Sami from those of the forest Sami. The State regarded the forest Sami as corrupted nomads, since their way of life was not considered to be as genuinely Sami as that of the mountain Sami. The children of the forest Sami and other domiciled Sami had to attend the same schools as the Swedish children. The level of teaching in the nomad schools was not the same as for Swedish children, but the teaching hours were shorter and the competence requirements for the teachers were lower. Since the Sami children were to become reindeer

55 Mörkenstam (1999) p. 94f.

56 Amft (2002) p.79 and Mörkenstam (1999) p. 108.

57 Mörkenstam (1999) p.108.

58 Amft (2002) p. 79ff.

59 Compare with Mörkenstam (1999).

herders, the State felt that they did not need extensive education. This continued until the end of the 1930s.⁶⁰

Mörkenstam observes that the State's view of reindeer herding changed after the Second World War. It was believed to be an underdeveloped industry that needed to be modernised and rationalised. Reindeer husbandry was one industry among many and reindeer herding one occupation among many other occupations. In order to be able to motivate the continuation of special legislation for the Sami, the State now stated that reindeer husbandry was a prerequisite for the Sami culture and that particular measures were necessary to preserve that culture, meaning reindeer husbandry. This meant that non-herders would continue to be excluded from their rights as Sami and would not be regarded as bearers of the Sami culture.⁶¹

A new Reindeer Herding Act came into force in 1971. According to Mörkenstam that modernized the State Sami policy and made it somewhat more democratic. The State still stipulates clear boundaries and defines who may and may not demand special rights as Sami. The result is that the State once again created a system of rights that is almost identical to the earlier laws of 1886, 1898 and 1928.⁶²

In 1977 Sweden recognised the Sami as an indigenous people. Under international law, indigenous people have particular rights in addition to the rights accorded them through their status as a national minority. In particular this concerns the right to self-determination, as well as land rights to the areas where they have traditionally lived. In Johansson's opinion, Sweden's recognition of the Sami as an indigenous people has not had any appreciable consequences as regards Sami policy. He shows that the policy is not based on the Sami status as an indigenous people. Instead, it has been based on their status as a national minority and the rights that follow from that recognition. The Sami in Sweden have thereby been denied the rights that international law grants them as an indigenous people.⁶³ The Sami have been the subject of a great many government inquiries. Between 1986 and 2006, 15 government studies were conducted concerning the Sami and the Sami rights. A number of other inquiries were conducted during the same period that concerned the Sami in other ways.

60 Lundmark (2002) p. 63ff and Mörkenstam (1999) p. 98ff.

61 Mörkenstam (1999) p. 151ff.

62 Mörkenstam (1999) p. 224ff.

63 Johansson (2008) p. 209ff.

The DO observes that these were not seriously based on the rights that the Sami have as an indigenous people.⁶⁴

The Sami Parliament was instituted in 1993 and is both a popularly elected body and a government authority. Its tasks include deciding on the allocation of funds to the Sami culture and the Sami organisations within the financial framework set by the Swedish Government. The Sami Parliament also leads the Sami language work and watches over interests and needs in matters that concern the Sami people.⁶⁵ Mörkenstam points out that the Swedish Sami Parliament has the weakest constitutional status of all the Sami parliaments in Scandinavia. In his opinion, the Sami Parliament's field of action is restricted and that it was never intended to be "...a self-governing body that would operate in the place of the Swedish Parliament or the municipal council or in competition with these bodies."⁶⁶⁶⁷ The Sami Parliament lacks real political influence as shaped through participation in decision making, the right of co-determination in legislative matters, the right of veto in administrative decisions or, the status of compulsory referral body in matters that concern the Sami interests. When the Sami Parliament was instituted, it was emphasised that it would be an authority with special knowledge of reindeer husbandry matters and that as a government authority it would observe objectivity.⁶⁸

64 Compare with Johansson (2008).

65 Mörkenstam (1999) p. 213ff.

66 SOU 2002:77 (2002), *Sametingets roll i det svenska folkstyret*. Betänkande av Sametingets utredning, p. 98.

67 Mörkenstam (1999) p. 214f.

68 Mörkenstam (1999) p. 215.

The Sami discrimination experience

This chapter describes the Sami discrimination experience as expressed in the DO's dialogue with Sami. It is evident that the Sami perceive that discrimination occurs in all areas of society, including education, exercise of authority, working life, the service sector and the media. In this presentation of the Sami discrimination experience, the reader is also referred to other studies of the Sami living conditions.

Education

The Sami often feel that the schools do not contribute to strengthening the Sami children's identity and that children who are subjected to harassment and discrimination are not given the protection that they need and to which they are entitled.⁶⁹

Sami children, young people and parents have also said that harassment connected to their ethnic background is part of their day-to-day life. It is manifested through taunts and other terms of abuse. One example of this is a Sami woman who related how her son had been physically assaulted in school by three other boys screaming "Lapp bastard!" and "Kill the Lapp bastard!" The assault was so severe that the Sami boy had to be taken to hospital. According to the mother, the headmaster made light of the incident and she feels that the school has not taken action to prevent similar events in the future.

Another example brought to the DO's attention concerns a Sami child who was harassed on the school bus. The bus driver spoke disparagingly about reindeer owners and when reindeer belonging to the child's family blocked the road in front of the bus, the driver said he would like to run them over.

Mother tongue teaching

The Sami feel that the local authorities do not take the Sami right to mother tongue teaching seriously, even to the point of openly opposing it. It is evident that a child's possibilities for receiving mother tongue teaching are in many cases dependent on the parents' involvement and knowledge of Sami linguistic rights.

⁶⁹ Cf. also Skolverket (2005), *De nationella minoriteternas utbildningssituation*. and Barnombudsmannen (2008), *Rätten till delaktighet och inflytande för samiska barn och ungdomar*. Ett samarbetsprojekt mellan Barnombudsmannen i Finland, Barneombudet i Norge och Barnombudsmannen i Sverige.

Many Sami parents feel that they have to arrange for Sami language teachers themselves. Parents who request mother tongue teaching for their children have negative experiences with the rather arbitrary term “suitable teacher”. The Sami have experienced that local authorities often claim that the proposed teacher is not suitable because the person in question lacks the formal qualifications of a teacher. In addition, local authorities have claimed that there is no suitable teacher for mother tongue teaching available despite the fact that they have not actively attempted to find one by, for example, advertising such a post.

Due to the assimilation and education policy pursued, the Sami languages have few adult language carriers to pass it on. The South and Lule Sami languages risk becoming extinct and the situation for the North Sami is precarious.⁷⁰ Thus the Sami children must reclaim the Sami languages. Many adult Sami were in school when speaking Sami in school was prohibited. The result was that many lost their native tongue. To then demand that their children must have a basic knowledge of the language is problematic, as several Sami parents have also called to the DO’s attention.⁷¹

The Sami also feel that mother tongue teaching in Sami occurs ad hoc and is neglected. The DO has received a complaint⁷² against a school regarding mother tongue teaching in South Sami that illustrates the circumstances that the Sami have frequently reported. The teaching takes place in another school than the children regularly attend and the parents are obliged to drive them there. No school transport is arranged. Because the teacher in Sami has not been allowed keys to the classrooms, the lessons are sometimes held in the corridors. In some cases the children’s textbooks have been delayed, in other cases textbooks have not been provided at all. The lessons that are 40 minutes long and held after school on Fridays, have on several occasions been hurried by other teachers wanting to lock up the school. When the parents try to address this with the headmaster, they get no reply.

Other reports confirm the picture revealed in the DO’s dialogue with the Sami. The situation does not appear to be unique. At schools where mother tongue teaching is offered, the teaching is often limited to the weekly number of teaching hours. The teaching is also arranged after school hours and at times that makes it difficult or unattractive for the children

70 SOU 2006:19 *Att återta mitt språk: åtgärder för att stärka det samiska språket*. Slutbetänkande av Utredningen om finska och sydsamiska språken p. 205.

71 Cf. also complaints made to till Skolverket dnr. 51-2003:1335, 51-2003:824 and 51-2004:824.

72 DO dnr. 81-2008.

to attend.⁷³ In the Sami opinion, the local authorities' lack of knowledge of their obligations and a perceived reluctance to offer mother tongue teaching results in a situation where many Sami children and parents are unaware of their rights and lack the strength to claim them. This situation was noted by the Council of Europe in its criticism of how Sweden lives up to its undertakings under the framework convention and the language charter.⁷⁴

Native tongue teachers in Sami and teachers at the Sami schools perceive the lack of both mother tongue training and of a special Sami teacher training programme, to be unfair. In practice it means that a teacher who wishes to teach in Sami or about the Sami in most cases have to have two degrees, one in teaching and one in the Sami language. The lack of teaching materials for Sami as a subject and in the Sami languages is considered as a crucial factor complicating possibilities to teach. Often teachers have to create the educational materials by themselves.⁷⁵ Mother tongue teachers also call attention to the circumstances under which the teaching takes place. The insecure and poor employment conditions mean that the profession of mother tongue teacher is not regarded as a career choice, a contributing factor to why so few join the profession.⁷⁶ The Council of Europe has noted this in their criticism of Sweden and is especially concerned about what these shortcomings mean for South and Lule Sami languages since these languages risk becoming extinct.

Authorities

In their contacts with authorities, ranging from Parliament, the Government and its ministries to the county administrative boards, municipalities and the police, all the Sami people find themselves in a position of dependence. This is especially striking in connection with various types of exercise of authority. Authorities, especially municipalities, have an important role and a great responsibility for ensuring that Sweden fulfils its undertakings as regards to human rights. At this time, municipalities are responsible for a great many of the societal tasks that directly concern individual citizens

73 Cf. Skolverket (2005).; Advisory committee on the Framework convention for the protection of national minorities (2007) *Second opinion on Sweden adopted on November 8 2007.*, punkt 149.; ECRML (2006) *Report of the Committee of Experts on the Charter for regional or minority languages: Application of the charter in Sweden 2nd monitoring cycle*, punkt 52 och Barnombudsmannen (2008).

74 Cf. for instance Advisory committee on the Framework convention for the protection of national minorities (2007) punkt 149 och ECRML (2006) *Report of the Committee of Experts on the Charter for regional or minority languages: Application of the charter in Sweden 2nd monitoring cycle*, punkt 52.

75 Cf. also SOU 2006:19 s. 336 f, that illuminates this problem..

76 Cf. for instance Advisory committee on the Framework convention for the protection of national minorities (2007), punkt 23, 60, 133 & 149. The situation is corroborated by Skolverket (2005).

and many of these tasks are extremely important when it comes to realising the Sami human rights. Protection against discrimination, as well as other treatment and attitude issues are therefore of the utmost importance in authorities' activities.

Involvement

The conventions on minorities clearly state that the Sami must be granted influence in matters that concern them.⁷⁷ The DO:s work with the Sami A realisation gained from the DO's work with the Sami is that contact with authorities is often characterised by the unequal relationship between the majority that holds the power, and a minority. Relationships and contacts can also be influenced by the historical experiences that many of the Sami have. It is important to remember that authorities are not unaffected by their history either. It is not entirely unthinkable that the attitude of the authority representatives might be affected by the negative attitude that has characterised Sweden historically in their contacts with the Sami. Centuries of discrimination and a policy with the objective of assimilation and/or segregation of the Sami in relation to the majority society has caused many of the Sami today to lack confidence in authorities.⁷⁸ Every specific contact between authorities and Sami is naturally determined by the circumstances of the individual meeting as shaped by the perceptions of the duties and roles of officers representing the authorities, but also by the more or less conscious preconceptions of the Sami.

In their contact with the DO, the Sami have expressed that the concept of authorities actively working to promote Sami rights, is alien to them. It is not unusual for Sami to come in contact with authorities who allow their decisions to be affected by prejudices and negative conceptions of the Sami, thereby affecting the Sami possibilities to exercise their rights. This is clearly discrimination. The complaint against the Krokom Municipality's treatment of the Sami in the Jovnevaerie Sami village described earlier is one such example. The situation in Krokom is not unique. Rather, it is a problem many Sami villages experience, one that has been noted by the International Law Commission.⁷⁹

77 Cf. Europarådets konvention om historiska minoritetsspråk (SOU 1997:192, minoritetsspråkskonventionen), artikel 15 och Europarådets konvention för skydd av nationella minoriteter (SOU 1997:193, ramkonventionen), article 7:4.

78 Cf. also Lange (1998).

79 Cf. for instance Spiliopoulou Åkermark, Sia och Talah, Miriam (2007), *Samernas rätt till deltagande och samråd*. och Torp, Eivind (2003), *Rennärningen som sakägare i bygglovsärenden*. Förvaltningsrättslig tidskrift. 2003:2, p. 363–372.

The Sami perceive a connection between authorities' current opinion of the Sami and of who is to be considered as a Sami, and the historical definition of Sami as reindeer herders made by the Government and the municipalities. That definition was chiefly motivated by the belief that the Sami functioned on a lower cultural level and thus could not make decisions in matters that concerned them. The Sami describe how this perception affects relations between the Sami and authorities today. One example of how this is manifested is that those few consultations that are in fact held are almost exclusively held with the Sami villages. The Sami villages' perception is that the county administrative boards' reindeer husbandry departments have retained much of the old Lapp sheriff mentality.⁸⁰ They feel that there is no dialogue or opportunity for real influence and that the dialogue is not conducted on Sami terms. The reindeer owners express frustration and powerlessness at not even being considered experts in reindeer husbandry matters or in matters that concern areas where they have lived for generations. Instead, they feel that their knowledge and impartiality are constantly called into question.

The lack of Sami influence in matters that concern the Sami applies not only to the Sami villages, but is also something that is reported by the Sami who do not live in Sami villages. In their contact with the DO, Sami have stated that they consider it insulting that municipalities and other authorities use the Sami culture, traditions and industries that the municipalities ordinarily try to thwart, in their marketing without the Sami themselves being involved or compensated.

The Sami relation to the State and authorities at the national level is also marked by history. One example of this is how the Sami questions are organised by the Government. Sami policy is the responsibility of the Minister for Agriculture and the Ministry of Agriculture is responsible for co-ordinating Sami affairs. The Council of Europe has noted this and commented that with this organisation, there is a risk that the Sami issues are only seen as reindeer husbandry matters. This is why the Council emphasises that it is important for the Government to guarantee that other Sami matters and the Sami involvement as a whole not only concern questions related to reindeer husbandry.⁸¹

80 In 1885 the authority Lappväsendet was formed. Lapp sheriffs were appointed to control the Sami the Lappmark. They had the task to mediate in disputes between reindeer-herding interests and agricultural interests as well as to supervise and regulate the reindeer-herding industry. They were also to represent the Sami before authorities and other institutions of power. The Sami were not allowed to represent themselves. The system of Lapp sheriffs ceased in 1971 (Lundmark (1998)).

81 Cf. for instance Advisory committee on the Framework convention for the protection of national minorities (2007), punkt 165.

Language

A problem that comes up time and again in the DO's dialogue with the Sami, is the lack of action on the part of government and municipal authorities to ensure the Sami linguistic rights. The lack of such action means that the Sami often feel that they are a nuisance when they demand their rights. This, in combination with the fact that the Sami are already in a exposed position, makes them speak Swedish instead. In addition, those of the Sami who demand their linguistic rights are often confronted by ignorance, prejudice and negative conceptions. An example of this, is a Sami man who was denied an interpreter at an information meeting in Kiruna with the Government's reindeer grazing delegation. Some of the information given at the meeting concerned the man's reindeer grazing areas and since he did not fully understand the information given, he asked for an interpreter as stipulated in the Act concerning the right to use the Sami language in dealings with public authorities and courts. The man was refused this with the motivation that as he understood Swedish he did not need an interpreter.⁸² Another example concerns the referendum of 2003 on whether Sweden should adopt the euro, when neither information nor ballot papers were available in the Sami languages. The DO remarked to the election authority that the fact that information was not available in the recognised national minority languages was a problem. The election authority stated that they had had the information on the voting cards translated into "the 17 most common immigrant languages" in a special information pamphlet. Further, they had determined that the need for information about the referendum was "greater for the foreign interest groups" than for the national minorities, among them the Sami. Their motivation for this opinion was that the minority groups had "greater knowledge of the Swedish language".⁸³

The judicial system

In their contact with the DO, the Sami have pointed out that they have very little confidence in the judicial system. The Sami often see the judicial system as one of the Government's colonisation tools and as actors who, even today, side with the majority society against the Sami. All Sami villages that the DO has been in contact with, feel that in the eyes of the police, reindeer-herding Sami are suspects when it comes to illegal hunting of predators. At the same time, they feel that the police does not pay attention to complaints from the Sami. These may concern crimes such as

82 DO dnr. 283-2008.

83 DO dnr. 1197-2003.

illegal scooter driving or reindeer poaching. Several of the Sami villages report that the police have not responded despite the fact that the poachers have been caught red-handed, with, for example a dead reindeer in their car.

In a complaint⁸⁴ to the DO in 2002, a reindeer-herding man gives another example of the attitude that authorities on the whole are perceived to have towards the reindeer-herding Sami. His complaint concerns a dispute over custody of a boy whose father is a reindeer-herder and whose mother works in eldercare. The county court took reindeer herding into consideration as a negative parameter in its ruling and argues that the father's occupation as a reindeer herder will have negative consequences for the boy as compared to his mother's since she, in contrast to the boy's father "comes home at the end of every working day, which provides valuable stability and security for the children".⁸⁵

Health and medical care

In their contact with the DO, parents of Sami-speaking children describe that when they seek medical care, they feel insulted by medical staff. Several parents have experienced situations where doctors, nurses and speech therapists have commented on the fact that the child and his/her parent speak Sami with each other. Examples of such comments include "Speak Swedish. We live in Sweden.", "Can the child only speak Sami?" and "When is this child going to learn Swedish?" The perceived insinuation is that the child is not fully functional because he or she speaks his/her mother's tongue better than Swedish.

Another reported negative experience is that health and medical services are sometimes perceived as ignorant or lacking in sympathy when it comes to the strength and importance of Sami family ties. An example of this was related by a woman who, when a close relative lay dying, heard the medical staff commenting on the family's visits with "Does the whole family really have to tag along".

84 DO dnr. 76-2002.

85 The reason why the DO has not pursued this case is that the DO does not have the mandate to take cases to court or to seek damages for people in cases where someone has been discriminated against by or within the judicial system. Furthermore, the DO does not have the mandate to change court rulings or decisions by other authorities.

Eldercare

In the administrative district for the Sami languages the municipalities must offer eldercare entirely or in part in Sami.⁸⁶ As regards to care of the elderly, these individuals are often the strongest language bearers and bearers of culture and traditions. It is therefore important for the preservation of the Sami languages and culture that the elderly who use Sami can continue to do so. It is not unusual for older persons to lose knowledge of the last language they learned, while retaining knowledge of the first one. For the elderly Sami people it is possible that Sami is the only language they can use to communicate with the world around them.⁸⁷

Sami report that municipalities in the administrative district lack both the structure and the will to work for Sami eldercare in the long term. The Sami eldercare that exists is dependent on individual Sami-speaking staff who voluntarily offer to interpret, as well as arrange cultural get-togethers and excursions with Sami themes. In those cases where there is Sami staff in eldercare, neither that staff nor the relatives feel that this resource is properly utilised. Several of the Sami relate how the need and the extra costs that Sami eldercare entails is questioned and that there is a reluctance to serve Sami food and provide Sami-speaking staff. Another example of reluctance is an incident that occurred in one of the homes for the elderly where on one of the toilet doors there was a sign reading "hivset", which is Sami for "toilet". The staff protested against the sign, claiming that the word gave associations to HIV and the sign was removed. Several of the Sami have also complained that the lack of a specific Sami eldercare means that more Sami suffering from dementia receive substandard care since their ability to communicate with the staff cease once they revert to only speaking their Sami mother tongue. Another problem that has been observed is that the right to Sami eldercare applies only within the administrative district. Considering that a large number of the Sami in need of eldercare in their native tongue live outside the administrative district, this restriction is a problem.

Working life

It is not unusual for Sami to be treated degradingly at the employment office, at employment interviews or at their places of work. Harassing comments in the workplace like "Lapp bastard" are common. The Sami point out that the prejudiced and racist picture communicated in the media

86 Lag (1999:1175) om rätt att använda samiska hos förvaltningsmyndigheter och domstolar.

87 Prop.1998/99:143 *Nationella minoriteter i Sverige*, p. 53f.

contribute to the Sami being harassed where they work and that the Sami are held accountable for prejudiced and racist conceptions of the Sami.

In dialogue with the DO, several of the Sami have also reported that they, despite having university degrees from natural science and social science programmes, have been advised to look for work as tourist or scooter guides because of their ethnic origin. One woman tells how the employment office recommended that she seek work at the ice hotel in Jukkasjärvi because “they employ Sami there”. Several Sami feel that their competence is not taken seriously, that they perceive promotion as impossible and that certain jobs or positions are not available to the Sami.

In the administrative district for the Sami languages, the authorities are obliged, among other things, to give oral answers in Sami and to endeavour to use the Sami languages in their dealings with the Sami-speaking people.⁸⁸ However, the Sami do not feel that Sami is sought after as a qualification within the administrative district. If anything, it is a disadvantage to be a Sami. Many point out that in the counties where reindeer husbandry is practised it is useless for a Sami to apply for certain jobs, especially ones at the local authorities and county administrative boards. Several people relate that they were asked at interviews for such jobs if they were Sami, if they owned reindeer and if they could then be impartial and loyal to their employer.

The rest of society

The DO's work has revealed that in their day-to-day lives the Sami must behave according to the majority society's conceptions of the Sami. Some choose to conceal their identity when they go into such places as shops or petrol stations. One specific problem that the Sami have described concerns the housing market. A woman told the DO that when she moved in to a flat and noticed that it lacked a fire detector, she contacted the municipal housing company that owned the flat. The landlord replied, “You don't need a fire detector; you're a Lapp so you're used to living in smoky environments”. When the woman moved out, she cleaned the flat thoroughly. A little while later she received a bill for cleaning. She called the housing company to say that there must be some misunderstanding, because she had cleaned the flat very carefully. The landlord replied that, “the flat had to be cleaned because a dirty Lapp had been living there.”

A reindeer-herding Sami described how the Sami in the Sami village are routinely turned away when trying to rent or buy a house from private

88 Cf. Lag (1999:1175) om rätt att använda samiska hos förvaltningsmyndigheter och domstolar.

individuals. The municipal homes are located at the edge of the reindeer herding area and are therefore not an alternative. He has experience of private individuals preferring to allow homes to stand empty for most of the year rather than rent or sell to a member of the Sami village.

Another example is a Sami woman who called a tourism company and said she wanted to rent rooms for herself and her friends. The company reacted to the woman's Sami name and declared quite openly that she could not rent the room because she was a Sami. The company also told her that their experience with the Sami was not good.

The media

The mass media have played and continue to play an important role in the growth and preservation of the majority society's attitudes to the Sami. Articles and features that many of the Sami feel are very degrading are constantly being published in mass media. Even though matters concerning the mass media lie outside the scope of the antidiscrimination legislation, the DO can still address issues of a general nature.

The picture conveyed by the press is very often perceived as degrading. The Sami feel that they are not seen as individuals, but categorised on the basis of conceptions of the Sami as a group and that these conceptions are in turn often based on perceptions expressed in the State's Sami policy. The Sami complain that it is quite legitimate to joke about the Sami on the basis of racist and prejudiced conceptions. Descriptions of the Sami are also based on such conceptions and the Sami are often depicted as an exotic, frock-wearing people or as being a reactionary group dependent on social welfare. The Sami perception is that it is legitimate to speak about or describe Sami in a derogatory manner and that this is never seriously questioned by the majority society.⁸⁹

During the course of the work, the Sami have said that the Swedish Broadcasting Commission's monitoring has not led to censure of features with prejudiced and degrading content.⁹⁰ The Sami feel that the meaning of the rule about the powerful impact of the media and the requirement that care be taken in portrayals that may be perceived as discriminatory against people of a certain ethnic background is not unambiguous. In order to be censured a broadcast must be clearly degrading. The commission can only scrutinise Swedish broadcasters, which means that channels that broadcast by satellite are not subject to the broadcasting rules.

89 Cf. for instance Justitiekanslern dnr. 4587-07-30.

90 Cf. for instance Granskningsnämnden dnr. 355/07-20.

Summary and proposed measures

The purpose of this report is to contribute knowledge of the Sami situation today by revealing the Sami discrimination experience and to propose measures to prevent and counteract discrimination of the Sami. The report is intended to serve as a basis for the continuing work of the DO, the new Ombudsman agency and other actors to prevent and counteract discrimination of the Sami.

Research shows that when problems have been formulated and solutions proposed, the Sami have been described on the basis of the majority society's conceptions and its negative opinions of the Sami and the Sami culture. Examples include the race biology research carried out on the Sami, the State's Sami policy, the reindeer husbandry legislation, the nomad schools and the Lapp sheriff system. These are expressions of structural discrimination and show how such structures can contribute to stigmatise and subordinate the Sami in relation to the majority society.

It is quite clear from the DO's dialogue with the Sami that the State's policy and the structures that have been created over the years continue to affect the Sami conditions today. The Sami have only limited possibilities for influencing their own life conditions and the discrimination means that the Sami are not treated as individuals, but are categorised on the basis of negative conceptions of the Sami as a group. The Sami have experienced discrimination in all areas of society. The Government, county councils and municipalities, who are tasked with promoting the Sami rights, are responsible for counteracting these conceptions. In order to address this, it is necessary for state and municipal authorities to facilitate Sami influence and participation in matters that concern Sami using the Sami rights as an indigenous people and a national minority as the starting point. This is necessary not only to ensure that Sweden adheres to a greater extent to its undertakings regarding Sami participation according to international human rights law, but also in that way to reduce the foundations of the discriminating structures in the long term.

Below we propose a number of measures essential for being able to address discrimination of the Sami. The DO considers that one of the most important measures needed to address the problems identified in the report is that the Sami be accorded the possibility for real influence and participation.

Real participation

The rules laid down in international law regarding the treatment of indigenous peoples, are only a kind of minimum rules that define the levels of rights that no contracting state is allowed to fall short of. In the DO's

opinion Sweden's ambitions should be to maintain at least the same level as international law on the rights of indigenous peoples. The DO therefore proposes

- that Sweden ratify the ILO Convention no. 169 concerning indigenous and tribal peoples in independent countries;
- that the Government, with the ILO Convention no. 169 concerning indigenous and tribal peoples in independent countries and the UN Declaration on the rights of indigenous peoples as a basis, remove the legal obscurities surrounding the Sami rights; and
- that the Government issue a supplementary directive to the Working Committee on Constitutional Reform to investigate how the Sami status as an indigenous people and how their inherent rights can be given stronger protection in the Constitution.

The DO observes that the lack of research and statistics is a problem when it comes to evaluating adherence to rules intended to secure the Sami rights and follow up changes over time. The DO therefore proposes

- that in order to increase knowledge of the Sami situation in Sweden, the Government allocate funds for research into the Sami situation, in particular the occurrence of discrimination of the Sami in different areas of society.

The Sami inherent rights are based on international conventions. It is evident that the problems perceived by the Sami are of a poly-national nature, and that greater international co-operation concerning the realisation of the Sami rights is therefore urgently needed. The DO therefore proposes

- that the Government take the initiative to establish a supervisory authority commissioned to monitor Sweden's adherence to the minority conventions and other international documents concerning national minorities and the Sami; and
- that the Government, within the framework of the work of the Nordic Council of Ministers, take the initiative to an exchange of experience of how to work to prevent and counteract discrimination of the Sami.

The DO considers it important that the Sami opportunities for real influence and participation in society be secured. Authorities in general and the Government and municipalities in particular have an important role in and a great responsibility for ensuring that Sweden fulfils its undertakings regarding human rights. Municipalities and county administrative boards are responsible for a great many of the societal tasks that directly concern the individual citizen and many of these tasks are extremely important when it comes to realising the Sami human rights. In the Government Bill

concerning National Minorities in Sweden (1998/99:143), it is clearly stated that it is

“...important that those who are directly concerned by those measures that are taken as a consequence of the new minority policy also be given the opportunity to put forward their views and wishes before decisions are taken. There are several reasons why national minorities should be given the opportunity to influence decisions that concern them. One central reason is that the national minorities are themselves best suited to see their own group’s needs and desires. It is therefore important that a dialogue be carried on between authorities at different levels and the national minorities when decisions are taken in matters that concern the national minorities.”

Against the background of this ambition established in the preparatory work regarding the minority policy and the problems identified in the DO’s work on the Sami rights, the DO proposes

- that the Government and the authorities concerned, in dialogue with Sami, secure the Sami participation and real influence in matters that concern them in accordance with the stipulations of the conventions on minorities;
- that the Government review the possibilities for granting support for the Sami activities and in particular provide increased support for those Sami organisations that work against discrimination and for human rights; and
- that the Government, in co-operation with the Sami organisations, provide information and education for county administrative boards and municipalities on the Sami situation and the Sami human rights.

The Sami languages

It is evident that the Sami in general are not being accorded the extended rights that the designated Sami have in the administrative district. In addition, many of the Sami live outside the administrative district for the Sami languages, which means that many of the Sami are not eligible for the linguistic rights that apply in the district. Considering the situation for the South Sami, it is extremely serious that measures are not being taken to strengthen the language’s status. The DO therefore proposes

- that municipalities in the administrative district, in dialogue with the Sami, draw up measures to secure the Sami rights in accordance with the provisions of the law;
- that the Government take the initiative to extend the geographical area so that more people become eligible for the particular rights in accordance with the proposals in the report Reclaiming my language – measures to strengthen the Sami language (SOU 2006:19); and

- that the Government take the initiative to apply measures to link linguistic rights to important societal functions to a greater extent.

As stated in the report, the Sami feel that the schools do not contribute to strengthen the Sami children's identity and that children who are subjected to harassment and discrimination are not given the protection they need and are entitled to. The DO therefore proposes

- that the Government assign the National Agency for Education to take measures to prevent and counteract discrimination of the Sami.

The assimilation and education policy have put the Sami languages under threat. The South and Lule Sami risk extinction and the North Sami language is in a precarious situation. It is therefore crucial for the Sami languages that the language shift ceases and that the Sami languages are preserved and developed. The lack of teachers in the Sami languages is a major structural problem that must be resolved in order to secure their linguistic survival and development. The DO therefore proposes

- that the Government take the initiative to apply measures to guarantee teaching both in the Sami languages as a subject and in Sami by promoting education of Sami teachers;
- that the Government commission the National Agency for Higher Education to stimulate the availability of more teachers in the Sami languages, for example by reviewing the admission criteria for teacher training programmes;
- that the Government assign the Sami Parliament to draw up criteria together with the National Agency for Education for the development of Sami teaching materials;
- that the future Schools Inspectorate be assigned in its supervision of mother tongue teaching to pay particular attention to adherence to the extended rights of the national minorities; and
- that the future Schools Inspectorate be assigned in its supervisory duties to pay particular attention to how schools work to prevent and counteract discrimination of national minorities.

Mother tongue tuition is an important measure to promote the Sami language. The Compulsory School Ordinance states that a municipality is obliged to arrange mother tongue teaching in Sami only if a "suitable teacher" is available. The DO therefore proposes

- that the "suitable teacher" requirement in the Compulsory School Ordinance be abolished as proposed in Reclaiming my language – measures to strengthen the Sami language (SOU 2006:19) and that

the municipalities be obliged to arrange mother tongue tuition. If a teacher cannot be found, the pupil must be offered distance tuition until one is found.

Due to the assimilation and education policy that has been pursued historically, there are few adult language bearers who can pass on the Sami languages. Many an adult Sami experienced the prohibition against speaking Sami in school when they were children. The result is that many lost their native Sami language and are thus unable to provide their own children with the basic knowledge required. The Sami children must therefore reclaim the Sami language. The DO hence finds that the requirement stipulated in the Compulsory School Ordinance that the pupils have a "basic knowledge" of Sami constitutes a problem and proposes

- that the "basic knowledge" requirement in the Compulsory School Ordinance be abolished as proposed in My right to my language – strengthened minority protection (SOU 2005:40).

To address the situation where many Sami children and parents are unaware of their linguistic rights, the DO proposes

- that municipalities, at the time of enrolment in pre-school class or when a pupil is enrolled in compulsory school, inform those concerned of the right to one's native language and determine which children and pupils wish to have mother tongue teaching.

The DO's work

With equal opportunities and rights as the overarching objective and with the basic idea that the Sami themselves are key to positive change processes, the aim of the DO's work is to enable the Sami to develop their own capacity to provide counselling and pursue an active antidiscrimination effort in the long term. To achieve this objective, it is important that the DO and the new Ombudsman agency continue to work according to the strategy of mutual knowledge development. In this work it is important that the following aspects be considered. Dialogue creates legitimacy and a long-term approach in the work. This is important for the Sami influence and participation. The DO therefore proposes

- that the DO and the new Ombudsman agency draw on the Sami discrimination experience through a continuing dialogue with representatives of the Sami organisations and institutions.

It is important that as many of the Sami themselves as is possible work to prevent and counteract discrimination of the Sami. In order to strengthen the Sami empowerment, the DO proposes

- that the DO and the new Ombudsman agency work with the Sami to develop their knowledge of human rights and their capacity for working against discrimination, such as by educating the Sami to educate other Sami; and
- that the DO and the new Ombudsman agency compile and develop a handbook on working for human rights that can be used by the Sami in their continuing independent work.

There is a lack of knowledge about the Sami life conditions. Furthermore, a general overview of the Sami life conditions does not exist. A more comprehensive picture of how the Sami experience discrimination and racism can be obtained through research-oriented efforts. The DO therefore proposes

- that in accordance with the EU Directive on the principle of equal treatment between persons irrespective of racial or ethnic origin the DO and the new Ombudsman agency, conduct and publish investigations into discrimination of Sami;
- that the DO and the new Ombudsman agency illuminate in particular whether the Sami women and men experience discrimination differently; and
- that the DO and the new Ombudsman agency conduct an in-depth legal analysis of the Sami special rights as an indigenous people and national minority and try these rights in a court of law against current Swedish antidiscrimination legislation.

The future

All in all, both long-term and short-term action is required on the part of the Government, other key actors, and authorities such as the National Agency for Education and the National Board of Health and Welfare, but also on the part of the Sami themselves. This presupposes a keen awareness and determination on the part of public institutions, including the DO, to continue to deepen co-operation with the Sami in these matters. Knowledge of the Sami life conditions must be deepened and made visible in society, at the same time as the Sami increase their knowledge of their rights and their own work against discrimination.

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