

HANDOLSDALEN SAMI VILLAGE V SWEDEN

The European Court of Human Rights (Casadevall P, Fura, Bîrsan, Gyulumyan, Myjer, Ziemele and Power JJ)

30 March 2010

[2010] ECHR 418

Civil proceedings – access to court – Indigenous land rights – rights of Sami Villages – unreasonable length of proceedings – excessive costs – Convention for the Protection of Human Rights and Fundamental Freedoms – legal aid

Facts:

This case arose in the context of a dispute over the rights of the Sami, the First Nations peoples of northern Scandinavia, to use private land in Sweden for grazing reindeers during winter. In Swedish law reindeer herding rights were regulated by the *Reindeer Husbandry Act 1971* (Sweden), which gave the Sami the right to use land and water for their own sustenance and that of their reindeer. Private landowners initiated proceedings against the Sami alleging that the Sami villages had no right to graze on their land without a valid contract.

Between 1990 and 2004, proceedings between the parties involved multiple submissions, appeals and extensions. Finally, the Swedish Sami Villages made an application to the European Court of Human Rights, against the Swedish Government, claiming that the excessive costs and unreasonable length of proceedings contravened art 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms ('the Convention'). Article 6 § 1 of the Convention provided, amongst other things, that in the determination of civil rights and obligations everyone is entitled to a fair hearing within a reasonable time by a tribunal. Article 41 provided that if the Court finds that there has been a violation of the Convention or Protocols, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.

The first issue that the European Court of Human Rights had to decide in this case was whether the Sami villages' costs of proceedings meant they did not have effective access

to court, in violation of Article 6 § 1 of the Convention. The second issue for the Court to determine was whether the length of the national proceedings had been unreasonable, thus in violation of Article 6 § 1 of the Convention.

Held, that there is no violation of Article 6 § 1 of the Convention in regard to effective access to court:

1. The Convention is intended to guarantee practical and effective rights, but it is up to the States to decide the means of guaranteeing those rights. It is central to the concept of a fair trial, that litigants are not denied the opportunity to present their case effectively before the court and that they are able to enjoy equality of arms with the opposing side: [51].

2. Whether legal aid is necessary for a fair hearing must be determined on the facts and circumstances of each case, the importance of what is at stake, the complexity of the relevant law and the applicants' capacity to represent themselves effectively. It is not incumbent on the State to seek to ensure total equality between the parties, as long as each side is afforded a reasonable opportunity to present their case under conditions that do not place them at a substantial disadvantage in relation to the adversary: [51]; *Steel and Morris v United Kingdom* (no. 68416/01, ECHR 2005-II), cited.

3. The proceedings concern winter grazing rights on property belonging to 571 landowners, so the issue is of great importance and complex in nature. The Sami villages are legal entities with a certain number of members, so their situation is not comparable to an individual litigant. The Sami were

granted loans from the Sami Fund and were represented by legal counsel. There is nothing to indicate that they are unable to present their case properly, therefore there is no such inequality as to involve a violation of art 6 of the Convention: [54]–[57], [59].

Held, that there is a violation of Article 6 § 1 of the Convention in regard to the length of the proceedings:

4. The reasonableness of the length of proceedings must be assessed in reference to the circumstances and complexity of the case, the conduct of the applicants and the relevant authorities, and what was at stake for the applicants. Although the case is of great complexity, the Court finds that the overall duration of the proceedings – 13 years and 7 months – indicates that the proceedings were not sufficiently expeditious and that there were unnecessary delays. The Court considers that the length of the proceedings was excessive and fails to meet the ‘reasonable time’ requirement: [63], [65]–[66]; *Frydlander v France* [GC], no. 30979/96, § 43, ECHR 2000-VII, cited.

Held, that the respondent State is to pay the applicants the following amounts:

5. With respect to the legal costs of the opposite parties, the Court accepts there is a causal link between the violation and the alleged pecuniary damage, as the length of the proceedings increased the costs. However, the excessive length only caused a minor part of the costs, because most of the delay was before the Supreme Court when there was not much action between the parties. Ruling on an equitable basis, the Court awards the applicants jointly EUR 25,000 under this head: [70].

6. The Court awards the Sami villages costs for non-pecuniary damage. By way of costs and expenses the Court awarded the applicants the global and joint sum of €15 000 corresponding to the costs that were actually and necessarily caused in relation to the excessive length of the proceedings: [73]; *T.P. and K.M. v the United Kingdom* [GC], no. 28945/95, 10 May 2001, § 120, cited.

Held, per Ziemele J, in agreement with the majority on the violation of Article 6 § 1 in relation to the length of proceedings, but dissenting on the issue

of effective access to court, holding that there was a violation of art 6 § 1 in this respect:

7. In the last ten to twenty years, significant developments have taken place in international human rights law of Indigenous peoples, to try and achieve equal rights. However, in 2008 the UN Committee on the Elimination of Racial Discrimination (‘CERD’) expressed concern about the limited progress achieved in resolving Sami rights issues. Concern was raised about de facto discrimination against the Sami, as the burden of proof for land ownership rests exclusively with the Sami, and about the lack of legal aid provided to Sami villages: [2], [7]; UN Doc. CERD/C/SWE/CO/18, §§ 19-20, cited.

8. The standard of effective access to court is that parties are afforded a reasonable opportunity to present their case under conditions that do not place them at a substantial disadvantage with respect to the adversary. Where one party by definition is disadvantaged, adopting safeguards that enable the party to enjoy the same opportunities ensures proper access to court. The burden of proving the land right rests exclusively with the Sami, because the system presumes that the landowners have the right. Therefore, this should have been seen as a case of ineffective access to court: [8], [10].