



**ANTONSSON ÖBERG  
ADVOKATER**

To

The Aarhus Convention Compliance Committee

e-mail: aarhus.compliance@un.org

Stockholm 4<sup>th</sup> of May 2023

**Communication regarding Sweden's non-compliance with the Aarhus Convention  
article 9 (3) and (4)**

**I. Information on correspondent submitting the communication**

Attorney at law Johan Öberg, Antonsson Öberg Advokater HB, [REDACTED]

SWEDEN

Phone no: [REDACTED]  
[REDACTED]

**II. Party concerned**

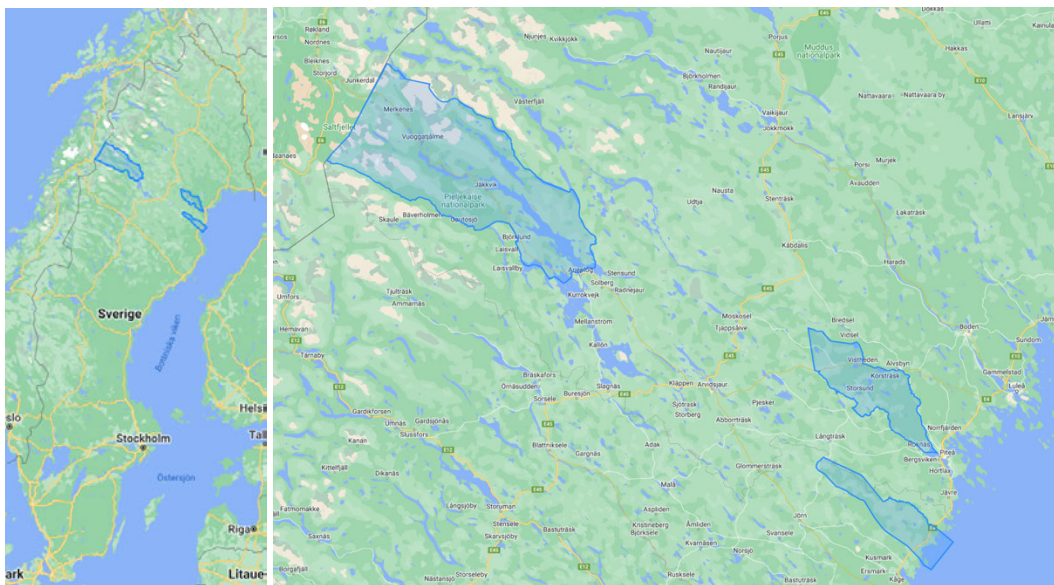
Semisjaur-Njarg Sami Village, c/o Anders Erling Fjällås, [REDACTED] SWEDEN

**ANTONSSON ÖBERG ADVOKATER HB**  
[REDACTED]  
[REDACTED]

### III. Facts of the communication

#### Background

Semisjaur Njarg Sami Village was formed in 1946. However, Sami reindeer husbandry has existed in the area for a very long time. The Sami Village's bare land area is about 3,800 km<sup>2</sup>. The year-round pastures are within Arjeplog municipality, while the two winter pastures, during 1st of October – 30th of April, are situated in the lowland area close to the cities Älvsbyn and Piteå, (see maps below).



Semisjaur-Njarg is one of 51 Swedish Sami villages and has a right to keep 9000 reindeer. The business is divided among about 30 reindeer husbandry members with families and reindeer herders.

The right to conduct reindeer husbandry is defined in domestic Swedish laws, including the Form of Government (constitutional law), the Environmental Code and the Reindeer Husbandry Act. Besides these more general legislations, there are numerous of laws and regulations defining Sami rights in specific situations related to competing land uses, such as the Forest Protection Act.

#### The decision by the Forestry Agency

On the 24st of August 2020 the landowner Arjeplog Allmänningsskogen S:1, notified the Forestry Agency of a planned 25,5 hectare logging on lowland used by Semisjaur-Njarg Sami Village for reindeer husbandry. In a following consultation with the Sami Village the Forestry Agency was informed about the vast negative consequences that logging would have on the reindeer husbandry in the area.

According to §18b in the law of Forestry (SVL), the Forestry Agency, when permissions to carry out logging are given, must decide what considerations to be taken into account regarding the interests of the reindeer industry.

If logging is planned on lowland a permit is not required. In such case a notification from the landowner to the Forestry Agency is sufficient. The authority then has six weeks to respond. The decision shall be based on several rules including SVL 31§, stating that the choice of size and layout of the forest management shall consider leaving behind collections of trees and that the route of forest roads must be adapted with regards to reindeer husbandry.

Referring to Sami rights according to (i) the Constitution, (ii) the Environmental Code, (iii) the Reindeer Husbandry Act and (iv) the Forest Protection Act, the Sami Village primarily asked the Forestry Agency for a total prohibition of logging in the area. Secondary, if prohibition was not decided, the Sami Village demanded a decision stating necessary terms and conditions for the logging activities in order to limit the negative consequences for reindeer husbandry in the area.

After considering the letters from the Sami Village, the Forestry Agency concluded that the planned logging would affect the migration patterns of the reindeer, but that the functions of the area for stopping and collecting reindeer would not be harmed. Consequently, the Forestry Agency decided that the planned logging fulfilled necessary considerations related to reindeer husbandry. The decision not to implement any restrictions or prohibitions was followed by an instruction of how to appeal.<sup>1</sup>

### **Consequences for the Sami village**

As the forest has been felled, the grazing conditions have changed. The ground- and hanging lichen that was available decreases or disappears due to the large change that the logging entails. The remaining ground lichen will largely be unavailable for reindeer grazing, due to logging residues and the changed snow conditions that occur when a bare surface is created.

When forests are felled, the reindeer's movement and behavior patterns change. Intact forests give the reindeer grazing peace, resulting in a more stationary behavior. Logging results in fragmented grazing areas which make the reindeer bypassing in search for food. The consequences of the logging therefore result in a loss of the area's functions as collection and storage area. Consequently, the

---

<sup>1</sup> Decision with translation of significant part enclosed as [appendix 1a and 1b](#)

functionality between the area as a collection area and the adjacent working paddock is also lost, resulting in the disappearance of the area's function for the Sami village. Overall, the consequences of the logging mean that the Sami village will lose a key area and the costs and work for the Sami village will increase significantly.

### **Administrative court**

The decision was appealed by the Sami Village to the Administrative Court of Stockholm, claiming prohibition, alternatively regulations limiting the harm for reindeer husbandry in the area. On January 25<sup>th</sup> 2021, the court decided to reject the appeal, implying that the Sami Village was denied a decision based on a substantive review of the case. The court explained its decision by referring to previous rulings by the Supreme Administrative Court, stating that all decisions from authorities are not appealable. The Administrative Court declared that the appealed decision was made by the Forestry Agency in its capacity of a supervisory authority, and that the authority has decided not to impose new conditions or to prohibit the notified measures about the reindeer husbandry. Further, the Administrative Court explained that the Forestry Agency did not have a duty to submit such terms or to declare prohibitions when notified about planned logging activities. The Administrative Court consequently ruled that if the authority assess that a decision is not required, it does not have to take any actions at all. The Administrative Court thereafter concluded that the Forestry Agency formally had made a decision by not taking any actions, but that such a decision was not appealable according to previous decisions by the Supreme Administrative Court.<sup>2</sup>

### **Administrative Court of Appeal**

The decision was appealed by the Sami Village. On the 17<sup>th</sup> of March 2022 the Administrative Court of Appeal announced its decision to reject the appeal, in line with the previous decision by the Administrative Court. The court stated that the logging would have effect on the reindeer husbandry in the area, but that the decision by the Forestry Agency not to take any action was not appealable.<sup>3</sup>

### **Supreme Administrative Court**

The Sami Village appealed the decision to the Supreme Administrative Court. On 9<sup>th</sup> of May 2022, the Court decided not to grant a trial permit.<sup>4</sup>

---

<sup>2</sup> Decision with translation of significant part enclosed as enclosed as [appendix 2a and 2b](#)

<sup>3</sup> Decision with translation of significant part enclosed as enclosed as [appendix 3a and 3b](#)

<sup>4</sup> Decision with translation of significant part enclosed as enclosed as [appendix 4a and 4b](#)

## **European Court of Human Rights**

The Sami Village reported the decision to the European Court of Human Rights, stating that it constituted an infringement of article 6 of the European Convention of Human Rights. On August 31st, 2022, the ECHR declared that the domestic remedies had not been exhausted as required by Article 35§ 1 of the convention, and that the application therefore was inadmissible.<sup>5</sup>

## **The Sami Village is a subject owner**

The Sami Village of Semisjaur-Njarg has a lawful right to conduct reindeer husbandry on the property in question. It is further declared by the Forestry Agency and the Administrative Court of Appeal that the logging would have substantial negative effects, causing harm on the reindeer husbandry in the area. Consequently, the Sami Village is to be considered a subject owner affected by the decision.

## **IV. Provisions of the Convention with which non-compliance is alleged**

According to article 9 (3) each party of the convention shall ensure that members of the public have access to administrative or judicial procedures to challenge acts and omissions by private persons and public authorities which contravene provisions of its national law relating to the environment. Article 9 (4) states that the procedures referred to in paragraphs 1, 2 and 3 shall provide adequate and effective remedies, including injunctive relief as appropriate, and that the procedures shall be fair and equitable.

By denying the Sami Village the right to a substantive trial of the case, Sweden has violated Article 9 (3) and 9 (4) of the Convention.

## **According to article 9**

### **V. Nature of alleged non-compliance**

The decision by the Forestry Agency not to consider the interest of reindeer husbandry in the area, implies a violation of following domestic provisions, translated into English. (The original provisions in Swedish language are enclosed together with the decision from the Supreme Court, referred to as NJA 1981 s. 1).

---

<sup>5</sup> Decision enclosed as [appendix 5](#)

**1. Regeringsformen (the Form of Government - Constitutional law) chapter 1 2§, section 6<sup>6</sup>**

*Opportunities for the Sami people and ethnic, linguistic and religious minorities to maintain and develop their own cultural and community life must be promoted.*

**2.a Regeringsformen (the Form of Government – Constitutional law), chapter 2, 15§<sup>7</sup>**

*Everyone's property is secured because no one can be forced to give up their property to the public or to any individual through expropriation or any other such disposal, or tolerate that the public restricts the use of land or building, except when it is required to significant public interests.*

*Anyone who is forced to give up their property through expropriation or any other such disposition must be ensured full compensation for the loss. Compensation must also be ensured for those who the public restricts the use of land or building in such a way that ongoing land use, within the affected part of the property is significantly hindered, or that damage occurs that is significant in relation to the value of this part of the property. The compensation must be determined according to grounds specified by law.*

*However, in the case of restrictions of the use of land or buildings that occur for health protection, environmental protection or safety reasons, what follows by law applies regarding the right to compensation.*

*Everyone must have access to nature according to the law of Right of public access, regardless of what is stipulated above. Law (2010:1408).*

**2.b Supreme Court, NJA 1981 s. 1<sup>8</sup>**

According to the decision by the Supreme Court referred to as NJA 1981 s. 1 ("Skattefjällsmålet"), exercised Sami rights are protected by said Form of Government, chapter 2, section 15, along with the protection of ownership of property. 9.4, paragraph 22 in the decision states the following:

*Regarding the Sami's right of use, the following can be added. A civil law based permanent right of use, of the kind that applies here, is, according to ch. 2 section 18<sup>9</sup> of the Instrument of Government, is, in the same way as the right of ownership, protected against compulsory*

---

<sup>6</sup> Enclosed as [appendix 6](#)

<sup>7</sup> Enclosed as [appendix 7](#)

<sup>8</sup> Enclosed as [appendix 8](#)

<sup>9</sup> Today referred to as the Form of Government, chapter 2 section 15

*disposal without compensation. The circumstance that the right in this case is regulated by law, does not mean that it would lack such protection. The right can well be revoked by legislation, but as long as it is exercised, it cannot be taken away from the holders, whether by law or in another form, without compensation according to ch. 2 section 18 the Form of Government.*

**3. Rennäringslagen (the Reindeer Husbandry Act), 1§<sup>10</sup>**

*Whoever is of Sami origin may, according to the provisions of this law, use land and water for maintenance for themselves and their reindeers.*

*The right according to the first paragraph belongs to the Sami population and is based on time immemorial.*

**4. Rennäringslagen (the Reindeer Husbandry Act), 23§**

*A Sami Village has the right to move the village's reindeer between different parts of the village's grazing area.*

**5. Miljöbalken (the Environmental Code) chapter 3, 5§<sup>11</sup>**

*Areas of land and water that are important for reindeer husbandry or commercial fishing or for the use of water must be protected as far as possible against measures that can make it significantly more difficult for the commercial activities to operate.*

*Areas that are of national interest for reindeer husbandry or commercial fishing must be protected against measures referred to in the first paragraph.*

**6. Skogsvårdslagen (The Forest Protection Act), 18b§<sup>12</sup>**

*When a permit for logging is granted, the Forestry Agency must decide what considerations are to be taken into account related to ... the interests of reindeer husbandry.*

**7. Skogsvårdslagen (The Forest Protection Act), 31§**

*In the management of forests, the size and layout of deforestations, establishment of timber, leaving behind sections of trees and the route of forest*

---

<sup>10</sup> Relevant parts enclosed as [appendix 9](#)

<sup>11</sup> Enclosed as [appendix 10](#)

<sup>12</sup> Enclosed as [appendix 11](#)

*roads, must be adapted as is clearly called for with regard to reindeer husbandry. When planning and implementing the measures, it must be sought that the Sami village concerned, has annual access to contiguous grazing areas and to vegetation that is needed within areas for gathering, moving and resting the reindeer. Law (1993:553).*

In summary, the decision by the Forestry Agency is a denial of the Sami Village's right to conduct reindeer husbandry. The decisions by the Administrative Court, the Administrative Court of Appeal and the Supreme Administrative court, deny the Sami Village's right to access to justice.

#### **VI. Use of domestic remedies**

Referring to above, all administrative actions available have been taken by the Sami Village. It is yet to be decided if the Sami village will file a civil case claiming compensation from the state of Sweden for damages due to the decision from the Forestry Agency and/or the denial of right to appeal. However, the Swedish civil right system is based on the loser pays rule, which has a strong inhibiting effect on the willingness to file a tort case.

#### **VII. Use of other international procedures**

The Sami Village has filed a complaint at the European Court of Human Rights, (see appendix 5).

#### **VIII. Confidentiality**

The Sami Village does not request any information to be kept confidential.

#### **Appendixes**

1. Decision 30th of November 2020 by Forestry Agency,
2. Decision 25th of January 2021 by Administrative Court
3. Decision 17th of March 2022 by Administrative Court of Appeal
4. Decision 9th of May 2022 by Supreme Administrative Court
5. Decision 31st of August 2022 by European Court of Human Rights
6. The Form of Government, Chapter 1, section 2, par. 6
7. The Form of Government, Chapter 2, section 15
8. Decision by Supreme Court (Skattefjällsmålet), NJA 1981 s. 1, chapter 9.4 paragraph 22
9. Reindeer Husbandry Act, section 1, 3 and 10
10. Environmental code, Chapter 3, section 5



11. Forest Protection Act, section 18b and 31.

12. Power of attorney

13. Registration certificate

Antonsson Öberg Advokater HB

Johan Öberg

Attorney at law