

SUNDSVALL ADMINISTRATIVE COURT OF APPEAL

JUDGMENT
17 March 2022
Issued in Sundsvall

Case no 507-21

APPELLANT

Semisjaur-Njarg Sami village, 899100-1416

Representative: Jenny Wik Karlsson
National Union of the Swedish Sami People

OPPOSITE PARTIES

1. Swedish Forest Agency
2. Arjeplogs allmänningskogor ('Arjeplog communal forests')

DECISION UNDER APPEAL

Judgment of Luleå Administrative Court of 25 January 2021 in case no. 2636-20, see Annex A

THE MATTER

Dismissed action

DECISION OF THE ADMINISTRATIVE COURT OF APPEAL

The Administrative Court of Appeal rejects the appeal.

FORMS OF ORDER SOUGHT ETC.

Semisjaur-Njarg Sami village requests that, preferably, the Administrative Court's decision be set aside and the Administrative Court of Appeal examine the Swedish Forest Agency's decision on the merits in accordance with the claims submitted in the Administrative Court. In the alternative, the Sami village requests that the decision be set aside and that the case be referred back to the Administrative Court for a new examination. The Sami village essentially submits the following in support of its application.

The Swedish Forest Agency's decision not to make adjustments to reindeer husbandry affects the Sami village in such a way that it must be possible to appeal the decision. Even if the decision pertains to the landowner, it has a direct negative impact on the Sami village's ability to conduct reindeer husbandry. In practice, this means an examination of the landowner's right to conduct logging operations in relation to the interests of reindeer husbandry and to reindeer husbandry rights. In addition, the Sami village has had the opportunity to comment on the notification of logging operations, and the decision in this matter was sent to the Sami village with instructions on how to appeal. The Sami village does not agree with the Swedish Forest Agency's assessment that the notified logging operations are compatible with Section 31 of the Forestry Act (1979:429).

The Swedish Forest Agency has not commented.

Arjeplogs allmänningskogar has no opinion on the Administrative Court's decision to dismiss the Sami village's appeal, but considers that the case should be referred back to the Administrative Court if the Administrative Court of Appeal considers that the Administrative Court's decision should be set aside.

GROUND FOR THE ADMINISTRATIVE COURT OF APPEAL'S DECISION

With some exceptions, those who own forest land are obliged to notify the Swedish Forest Agency of a planned logging operation. This is done by means of a

notification of logging. Once the notification of logging has been submitted, the Swedish Forest Agency has the opportunity to determine whether certain measures should be prohibited pursuant to Section 35 of the Forestry Act, or whether the landowner should be ordered to take certain measures needed to meet the requirements set out in applicable regulations. If the Swedish Forest Agency considers that no intervention is required, it need not take any action. In some cases, the Swedish Forest Agency takes decisions to the effect that the Agency does not impose any conditions or prohibitions. That is what has happened in this case.

Arjeplogs Allmänningskogar submitted notification of a planned logging operation to the Swedish Forest Agency and, in that notification, specified what concessions it plans to make to reindeer husbandry. During the processing of the case, the Sami village had the opportunity to comment on the logging notification and stated at the time that the planned concessionary measures were insufficient. The Swedish Forest Agency decided not to impose conditions or prohibit the notified logging operation. According to the decision, the Swedish Forest Agency considers that the notified logging operation may to some extent affect reindeer migration patterns, but that the planned concessions meet the requirements set out in Section 31 of the Forestry Act.

The question in this case is whether it is possible to appeal the Swedish Forest Agency's decision not to impose conditions or prohibitions. The question of whether the Sami village has a right of action can only be considered once it has been determined that the decision can be appealed (see cases HFD 2019 ref. 21 and HFD 2020 ref. 12).

The Administrative Court of Appeal initially notes that the Swedish Forest Agency's decision not to impose conditions or prohibit the notified measures is binding to such a degree that it constitutes an administrative decision. In addition, case-law does not question the fact that decisions not to take any measures – 'non-decisions' – constitute administrative decisions (see cases RÅ 1996 not. 190 and RÅ 2010 ref. 29). The question then is whether the decision can be appealed.

According to Section 40 of the Forestry Act, Swedish Forest Agency decisions under the Act, or under provisions issued pursuant to it, may be appealed to an

administrative court. Even if it is stated in a statute that a decision may be appealed, however, this should not be taken to mean that all such decisions may be appealed. The possibility to appeal is limited as a result of general principles that have been developed in case-law (Govt Bill 1997/98:101, p. 51). The fact that the Swedish Forest Agency called its position a decision does not in itself mean that it can be appealed. Nor does the fact that the Sami village was given the opportunity to comment before the Swedish Forest Agency issued its opinion, or that the decision sent to them included instructions on how to appeal, mean that the decision can be appealed solely on those grounds.

According to case-law, a government agency's failure to take a certain decision, and decisions not to take certain measures, cannot be appealed. For example, in case RÅ 2010 ref. 29, the Supreme Administrative Court found that it was not possible to appeal the Swedish Data Protection Authority's decision not to take any measures in connection with a notification it had received. Further, in case RÅ 1996 not. 190, the Court found that a decision to dismiss a supervisory case was not of such a nature as to be subject to judicial review.

The logging operation in this case did not require a permit. Therefore the decision not to impose conditions or prohibitions does not mean that a right to logging arises. The Swedish Forest Agency does refer to the planned measure's compatibility with Section 31 of the Forestry Act, and the decision undoubtedly affects the Sami village's opportunities to conduct reindeer husbandry. However, the Swedish Forest Agency is not obliged to take a decision, and therefore cannot be compelled to issue a decision. In light of the abovementioned case-law of the Supreme Administrative Court, the Administrative Court of Appeal finds that the Swedish Forest Agency's decision not to impose conditions or prohibit the notified logging operation cannot be appealed. It was therefore correct of the Administrative Court to dismiss the Sami village's appeal. The Sami village's appeal to the Administrative Court must therefore be rejected.

HOW TO APPEAL, see Annex B (form 1)

Anders Odmark
Judge, Administrative
Court of Appeal

Presiding Judge

Anna Bornelyck
Judge, Administrative
Court of Appeal

Amanda Hugosson
Acting Associate Judge,
Administrative Court of
Appeal
Reporting Judge