



Ministry of Climate and Enterprise

Re: Communication to the Aarhus Convention Compliance Committee concerning compliance by Sweden in connection with access to justice regarding logging activities (ACCC/C/2023/201)

1. Sweden would like to thank the Aarhus Convention Compliance Committee for the opportunity to comment on the communication from Semisjaur-Njarg Sami Village regarding access to justice and to clarify the matter.
2. The communication has been summarised by the Committee as concerning compliance by Sweden with Articles 9(3) and 9(4) of the Convention in connection with logging activities in an area allegedly used by the Semisjaur-Njarg Sami Village for reindeer husbandry.

Factual Background

3. On 30 November 2020, the Swedish Forest Agency (SFA) decided to not issue any injunction or prohibition under Section 35 in the Forestry Act (*skogsvårdslagen* (1979:429)), regarding a notified forest operation. Arjeplogs Allmänningssskogar, the owner of the land on which the forest operation was planned to take place (the property Arjeplog Allmänningssskogen S:1), had notified the SFA of the planned forest operation on 24 August 2020. The area is located within the Semisjaur-Njarg Sami Village ('the communicant').
4. The communicant appealed the SFA's decision to the Administrative Court in Luleå (*Förvaltningsrätten i Luleå*, hereinafter 'the Administrative Court'), which decided on 25 January 2021 to dismiss the appeal as inadmissible. According to the Administrative Court, the SFA's decision was

not of such a nature that it could be subject to review in an administrative court.

5. The communicant appealed the decision of the Administrative Court to the Administrative Court of Appeal in Sundsvall (*Kammarrätten i Sundsvall*, hereinafter ‘the Court of Appeal’). In its judgment of 17 March 2022, the Court of Appeal decided to reject the appeal. According to the Court of Appeal, the question in the case was whether the SFA’s decision not to impose any conditions or prohibitions was an appealable decision. The Court of Appeal referred to case-law from the Supreme Administrative Court (*Högsta förvaltningsdomstolen*, cases HFD 2019 ref 21 and HFD 2020 ref 12), and stated that it only needs to address the question of the communicant’s right of appeal if the decision is considered appealable. The Court of Appeal concluded that the SFA’s decision not to impose any conditions or prohibit the notified forest operations is an administrative decision. The Court of Appeal further stated that under Section 40 of the Forestry Act, decisions by the SFA pursuant to the Forestry Act may be appealed to general administrative courts. However, even if the legislation stipulates that a certain type of decision may be appealed, that must not, according to the Court of Appeal, be understood as meaning that all such decisions are appealable since the appealability is limited as a result of general principles that have been developed through case-law. The Court of Appeal referred to case-law from the Supreme Administrative Court, in which the Court has ruled that certain decisions of public authorities are of such a nature that they are not subject to appeal (RÅ 2010 ref. 29 and RÅ 1996 not. 190). The Court of Appeal pointed out that the planned forest operation in question does not require a permit and that the SFA’s decision not to impose any conditions or prohibitions therefore did not give rise to a right to carry out the forest operation. The Court of Appeal noted that the SFA, in its decision, did comment on the compatibility of the planned forest operation with Section 31 of the Forestry Act and that the SFA’s decision undeniably affects the communicant’s ability to conduct reindeer husbandry. However, the Court of Appeal concluded that the SFA does not have an obligation to take a decision and hence, a decision cannot be compelled. In light of the aforementioned case-law of the Supreme Administrative Court, the Court of Appeal concluded that the SFA’s decision not to impose any conditions or prohibitions regarding these notified logging activities was not an appealable decision. The Court of Appeal therefore found that the

Administrative Court's decision to dismiss the communicant's appeal as inadmissible was correct and rejected the communicant's appeal.

6. The communicant appealed the Court of Appeal's decision to the Supreme Administrative Court, which on 9 May 2022 decided to not grant the communicant leave to appeal.

7. The communicant then submitted an application to the European Court of Human Rights ('the Court'). On 1 December 2022, the Court decided that the application, which referred to Article 6(1) (right to a fair trial) and Article 14 (prohibition of discrimination) of the European Convention on Human Rights, was inadmissible. The Court found that the domestic remedies had not been exhausted as required by Article 35(1) of the Convention, since the applicant had failed to raise the complaints that were made to the Court before competent domestic authorities, the Chancellor of Justice or the general courts, either in form of or substance and in accordance with the applicable procedural requirement.

The Communication

8. The communicant argues, in summary, that Sweden does not, in this case, meet the requirements of Articles 9(3) and 9(4) of the Convention. According to the communicant, the SFA has not considered the interest of reindeer husbandry in its decision, which implies a violation of several provisions of the Instrument of Government (*regeringsformen*), the Reindeer Husbandry Act (*rennäringslagen* (1971:437)), the Environmental Code (*miljöbalken*) and the Forestry Act. By denying the communicant the right to a substantive trial of the case, Sweden has violated Articles 9(3) and 9(4) of the Convention.

Legal framework

The Aarhus Convention

9. According to Article 9(3) of the Convention, each Party shall ensure that, where they meet the criteria, if any, laid down in its national law, 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.

10. According to article 9(4) of the Convention, the procedures referred to in article 9(3) shall provide adequate and effective remedies, including injunctive relief as appropriate and be fair, equitable, timely and not prohibitively expensive. Decisions under this article shall be given or recorded in writing. Decisions of courts, and whenever possible of other bodies, shall be publicly accessible.

Sameby and reindeer husbandry

11. According to Swedish legislation, reindeer husbandry is pursued through the organisational form of a *sameby*. A *sameby* is often translated as ‘Sami village’, however the word *sameby* does not correspond to the English wording ‘Sami village’ but rather is a reindeer herding community. A *sameby* is not a non-governmental organisation. Instead, it is an economic and administrative association for the exercise of reindeer husbandry. The exercise of reindeer husbandry requires membership of a *sameby* and the granting of membership is decided by the association. The association is required by law to pursue reindeer husbandry so as to achieve the best possible economic results (Section 9 of the Reindeer Husbandry Act).

12. The right to practice reindeer husbandry is a usufructuary right that gives the members of the *sameby* the right to use land and water (within the geographical area where the *sameby* operates) to maintain themselves and their reindeer. The reindeer husbandry right applies on the same land as the landowner has a right to conduct forestry.

Forest operations and reindeer husbandry

13. The SFA is a government agency that supervises that forest operations that are carried out are compliant with the Forestry Act and regulations issued pursuant to the Act.

14. Most forest operations do not require a permit (an example of a forest operation that do require a permit is a logging activity in the subalpine forest land (*fjällnära skog*). In most cases, it is sufficient that the forest owners notify the SFA of planned forest operations on their land. Forest operations that require notification to the SFA are specified in Section 14 of the Forestry Act and Section 15 of the Forestry Ordinance (*skogsvårdsförordningen* (1993:1096)).

15. If the notification concerns a logging activity in an area where reindeer husbandry may be pursued throughout the year under the Reindeer Husbandry Act, the notification must contain information on what the forest owner intends to do to meet the interests of reindeer husbandry (Section 15 of the Forestry Ordinance).

16. The forest owner is obliged to offer a concerned *sameby* an opportunity for consultations before a logging activity takes place within an area where reindeer husbandry may be pursued throughout the year under the Reindeer Husbandry Act (Section 20 of the Forestry Act, Section 24 of the Forestry Ordinance and Chapter 4, Sections 2–4 of the SFA regulations and advice in relation to the Forestry Act (*Skogsstyrelsens föreskrifter och allmänna råd till skogsvårdslagen* (SKSFS 2011:7)). The consultation must cover the planned logging activity and subsequent forest management measures (Chapter 4, Section 4 of the SFA regulations). There are some exceptions to the duty for the forest owner to give the *sameby* an opportunity for consultations (Chapter 4, Section 3 of the SFA regulations). When notifying the SFA, the forest owner must provide documentation that shows that the *sameby* has been given the opportunity to take part in consultations (Chapter 4, Section 4 of the SFA's regulations).

17. Under Section 31 of the Forestry Act, the forest owner must adjust the size and layout of forest clearings, establishment of forest stands, retention of tree groups and the routing of forest roads if this is manifestly called for in view of reindeer husbandry. When planning and implementing the measures, the aim is to allow the *sameby* concerned has annual access to contiguous grazing areas and to adequate vegetation within areas for gathering, moving and resting the reindeer. The forest owner must also show respect for reindeer husbandry under civil law.

18. The SFA may issue such injunctions and prohibitions that are necessary to ensure compliance of the forest operation with the Forestry Act or regulations issued pursuant to the Act (Section 35 of the Forestry Act).

19. The SFA's decisions under the Forestry Act may be appealed to an administrative court (Section 40 of the Forestry Act).

20. Under Section 41 of the Administrative Procedure Act (*förvaltningslagen* (2017:900)), a decision may be appealed if the decision can be assumed to affect a person's situation in a not insignificant way. A decision may be

appealed by the person who is affected by the decision if it has gone against them (Section 42 of the Administrative Procedure Act).

Conclusions on the communication

21. Sweden would like to begin by emphasising the importance of access to justice in environmental matters.

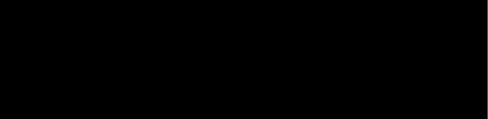
22. Sweden would like to make one observation. The communicant seems to argue that the forest operation in question requires a permit under the Forestry Act, since the communicant is of the opinion that the SFA decision violates Section 18 b of the Forestry Act, which stipulates that the SFA, when granting a permit for a forest operation, must determine what concessions are made to reindeer husbandry. However, Section 18 b of the Forestry Act is only applicable when a forest operation requires a permit due to it being located on subalpine forest land. The forest operation in question is not located on subalpine forest land, and therefore does not require a permit. Instead, the Forestry Act requires a notification to be made.

23. On 30 November 2020, the SFA decided to not issue any injunction or prohibitions.

24. As follows from the case-law of the Supreme Administrative Court, the appealability of certain decisions is limited. Sweden is of the opinion that there has been no violation of the Aarhus Convention.

25. Sweden hopes that the information in this response provides useful clarification to the Aarhus Convention Compliance Committee. However, should the Committee require any further information, please do not hesitate to contact us.

On behalf of the Swedish Government,



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Annexes

1. Decision 2020-11-30, the Swedish Forest Agency, case A 39579-2020, original language (Swedish)
2. Decision 2020-11-30, the Swedish Forest Agency, case A 39579-2020, English translation
3. Judgement 2021-01-25, Luleå Administrative Court, case 2636-20, original language (Swedish)
4. Judgement 2021-01-25, Luleå Administrative Court, case 2636-20, English translation
5. Judgement 2022-03-17, the Administrative Court of Appel in Sundsvall, case 507-21, original language (Swedish)
6. Judgement 2022-03-17, the Administrative Court of Appel in Sundsvall, case 507-21, English translation
7. Decision 2022-05-09, the Supreme Administrative Court, case 2310-22, original language (Swedish)
8. Decision 2022-05-09, the Supreme Administrative Court, case 2310-22, English translation
9. Decision 2022-12-01, European Court of Human Rights, application no. 44586/22, original language (English)
10. Decision 2020-03-06 (HFD 2020 ref. 12), the Administrative Court of Appel in Sundsvall, case 5893-18, original language (Swedish)
11. Decision 2020-03-06 (HFD 2020 ref. 12), the Administrative Court of Appel in Sundsvall, case 5893-18, English translation
12. Relevant provisions in the Forestry Act, Forestry Ordinance, the Reindeer Husbandry Act, original language (Swedish)
13. Relevant provisions in the Forestry Act, Forestry Ordinance, and the Reindeer Husbandry Act, English translation