

Reindeer Herding Right and Mining in Finland

ABSTRACT The article examines reindeer herding as a land use right and its status, particularly in relation to mining activities, which, due to the so-called green transition, have become a significant competing form of land use in Finland. The article begins by exploring the historical development of reindeer herding legislation and the formation of the current reindeer herding area. Additionally, it briefly compares the reindeer herding legislation of Finland and Sweden, including who is entitled to practice reindeer herding. Finland's reindeer herding area is divided into three distinct regions, within which the status of reindeer herding varies. The article investigates the origins of these regions and the differences between them. A central focus of the article, however, is the relationship between reindeer herding and mining activities. This involves both legislation and legal practice. Regarding legal practice, the discussion focuses particularly on decisions of the Supreme Administrative Court in cases where environmental and mining permits granted by administrative authorities have been deemed to cause harm to the practice of reindeer herding.

KEYWORDS reindeer herding rights, green transition, indigenous peoples, Sami, Lapland border, Lapp villages, Sami land rights, property law, legal history, Finland

Introduction

Section 3 of Finland's Reindeer Husbandry Act stipulates that reindeer may graze in the reindeer herding area regardless of land ownership. Without this right in legislation, the practice of reindeer husbandry in its current form would not be possible. However, this right is quite exceptional as a property right. If the land used for reindeer husbandry is repurposed, reindeer husbandry generally has to yield.

Although reindeer grazing areas have been shrinking almost since reindeer husbandry began, these losses have not halted reindeer husbandry in any region. However, we are now facing a new situation that involves the green transition, a shift towards more sustainable and environmentally friendly production practices. In practice, this

means, for example, wind farms producing emission-free electricity or mines set up for green technology needs.

The goals behind the green transition are good and desirable in many respects. However, mines must be established where ore deposits are located. Wind farms are often planned in remote areas where they are considered to cause as little harm as possible to local residents and industries. For these reasons, many realized and planned mining and wind power projects are situated within the reindeer herding area. However, each such project takes land away from reindeer husbandry. In many cases, the land in question is important—even vital—for reindeer herding. The green transition accelerates the reduction of grazing areas.

Reindeer husbandry in Finland differs markedly from that of the two other Nordic countries in a certain respect. In Sweden and Norway, reindeer husbandry is primarily understood as a *land use right* belonging to the (reindeer herding) Sami.¹ Sweden's first Reindeer Husbandry Act already dealt with the "right of Sweden's Lapp people to reindeer herding."²

In Finland, the development has taken a different direction. Reindeer husbandry in Finland is primarily seen as a *livelihood*, and according to Section 4 of the Reindeer Husbandry Act, all permanent residents of the reindeer herding area who are citizens of a state belonging to the European Economic Area may own reindeer.

However, there is another side to this issue. Although it has not been explicitly clarified or stipulated in the current legislation, there are reindeer herders in Finland who meet the same Sami descent criteria as those traditionally required of reindeer herders in Sweden's Reindeer Husbandry Act. In Finland, there are reindeer herders of Sami origin who live in areas of the old Sami villages—that is, areas historically settled by the Sami—and their families have practiced reindeer husbandry for several generations. Should we consider the legal status of these reindeer herders comparable to that of members of a Sami village in Sweden?

This question will, however, only be mentioned in passing in this context, as the aim of this article is, firstly, to analyze and discuss the legal status of reindeer herders—both Sami and Finnish—as determined by the current legislation, contrasted with Sweden's reindeer husbandry legislation.³ Within Finland's reindeer herding region, the status of reindeer husbandry differs somewhat and the article points to the historical reasons behind these distinct areas. Secondly, the article also aims to critically analyze the mining legislation and the case law concerning the conditions for mining activities within the reindeer herding region.

¹ Swedish Reindeer Husbandry Act 1971:437, s. 1; Norwegian Reindeer Husbandry Act 2007:40, ss. 4, 9, 32; Cramér & Prawitz, *Studier i renbetesstiftning*, 1979, pp. 40–48; Bengtsson, *Samerätt*, 2004 pp. 15, 45–46, 70–71; Allard, *Two Sides of the Coin*, 2006, pp. 326–327; Skogvang, *Samerett*, 2023, pp. 306–313; Ravna, *Same- og reindrifstrett*, 2019, pp. 287–291.

² Lag angående de Svenska lapparnes rätt till renbete i Sverige 1886:38.

³ As Finland was once part of the Swedish Kingdom for 600 years, Finland and Sweden share a common historical and legal background. This applies not only to legislation and administration, but also to reindeer husbandry and ethnic groups such as settlers, farmers and the Sami people. See e.g. Allard, "Some characteristic features of Scandinavian laws and their influence on Sami matters," 2015b, pp. 50–51, 57.

The Areas Covered by Finland's Reindeer Husbandry Act

The Current Reindeer Herding Area

Finland's current Reindeer Husbandry Act dates from 1990.⁴ The law includes a map defining the reindeer herding area and the areas of the reindeer herding cooperatives. This combined area is practically the same as that defined in the first Reindeer Husbandry Act of 1932.

The regional demarcation of the reindeer herding area is discussed in the report of the committee that prepared the 1932 Act. The committee concluded that in the area north of the so-called Lapland border, which crossed the current region of Northern Finland, reindeer husbandry involves a special right to land use.⁵ According to the committee, in this area, the Sami had an exclusive right to all land use, including reindeer husbandry. Thus, in this part of Finland's current reindeer herding area, the right to practice reindeer husbandry was based on the old land use rights of the Sami, which the committee stated were also recognized by the Swedish state and its legal system.⁶

However, at the time of the enactment of the first Reindeer Husbandry Act, reindeer husbandry was also practiced south of this area. The committee noted that although reindeer husbandry practiced in this southern area may not have had "such a formal legal basis as the reindeer husbandry practiced by the Sami, an old customary and consistent practice has created a fully equivalent land use right."⁷

The current reindeer herding area in Finland thus consists of two distinct regions with different legal-historical and property law statuses. The area comprises, on the one hand, the area of Lapp villages located north of the Lapland border⁸ and, on the other hand, the area located south of this border, to which reindeer herding had expanded by 1932. Unlike in Finland, Swedish legislation still maintains this division between the area north of the Lapland border and the area outside of it, and this distinction still has significance for the content of reindeer herding rights.⁹

Although the current Finnish Reindeer Husbandry Act does not distinguish whether the area is located within the territory of old Lapp villages or not, it does not mean that the division is no longer relevant. In terms of reindeer herding, the issue may concern the legal content of the land use right, such as fulfilling the criteria for immemorial prescription. Additionally, the issue may involve other land and water use rights historically held by the Sami, such as hunting and fishing rights.¹⁰

⁴ Reindeer Husbandry Act 1990:848. Legal issues related to reindeer husbandry in Finland have been addressed in, among others, the following studies: Hyvärinen, "Kenellä on poronhoito-oikeus saamelaiden kotiseutalueella," 1981; Savolainen, "Suomen poronhoito-organisaatio ja -omistus autonomian ajan lopulla," 1984; Joona, *Poronhoidon hallinto ja hallintolainkäyttö*, 1989; Joona, *Poronhoito-oikeus maankäyttöoikeutena*, 1993; Joona, *Poronhoitolaki oikeuskäytännössä*, 2021; and Magga, *Siidan lait*, 2024.

⁵ See, for example, Joona, "Lapland border," 2005 pp. 187–189.

⁶ Committee report 1929, *Komiteanmietintö 1929:8. Erinäisiä poronhoitoa koskevia kysymyksiä selvittämään asetetun komitean mietintö I*, pp. 50–51.

⁷ Committee report 1929, *Komiteanmietintö 1929:8. Erinäisiä poronhoitoa koskevia kysymyksiä selvittämään asetetun komitean mietintö I*, p. 51. Allard, *Renskötselrätt i nordisk belysning*, 2015a, pp. 47–52.

⁸ Korpijaakko-Labba, *Om samernas rättsliga ställning i Sverige-Finland*, 1994, pp. 52–58.

⁹ Swedish Reindeer Husbandry Act 1971:437, p. 3.

¹⁰ See Supreme Court case NJA 2020:3, decision 23 January 2020 (The Girjas Case), pp. 40–54. See further Allard, *Two Sides of the Coin*, 2006, pp. 271–282.

The Area Specifically Intended for Reindeer Husbandry

In the current Finnish Reindeer Husbandry Act, two areas are defined where the status of reindeer husbandry differs from that in the rest of the reindeer herding area. One of these areas is *the area specifically intended for reindeer husbandry*, as stipulated in Section 2, Subsection 2 of the Reindeer Husbandry Act. The background of this regulation also extends to the first Reindeer Husbandry Act. The committee that prepared the act proposed that larger areas be formed of state-owned land in the central and northern reindeer herding regions. The requirement was that in these areas, reindeer husbandry could be considered to be of greater benefit than agriculture and cattle breeding. These areas would be formed *exclusively* for reindeer husbandry.¹¹ It is evident that this proposal was influenced by the cultivation boundary prescribed in Sweden in 1867, which is also referenced in the committee's report.¹²

The possibility of forming areas where only reindeer husbandry would be practiced was, however, repealed just 16 years later. The Reindeer Husbandry Act Committee of 1942 stated that the wording of the Act, according to which only reindeer herding is allowed in the area, could be considered flawed, because if the idea were "literally interpreted, all other livelihoods would be prohibited."¹³ The result was that the formation of such areas was still possible, but other livelihoods could also be practiced in these areas under certain conditions.

The current Reindeer Husbandry Act also defines a special area where the status of reindeer husbandry is more protected than in the rest of the reindeer herding area. In this area, state-owned land cannot be used in a way that causes "significant harm" to reindeer husbandry. However, the legislative preparatory works do not specify in detail what is meant by significant harm. The relevant government proposal only notes that "in practice, this restriction would mainly apply to forestry measures."¹⁴ The map below indicates the boundary of the area specifically intended for reindeer herding (thick black line). The map also shows the boundary of the Sami homeland (yellow line) and the area of the Kemin-Sompio herding cooperative, which will be discussed later.

However, the protection only applies to state-owned land within the specified area. If state-owned land is transferred to private ownership, it is no longer subject to this usage restriction. This arrangement differs from Sweden's Reindeer Husbandry Act, which stipulates that the relevant provisions apply not only to state-owned land but also to land that was owned by the state in 1992.¹⁵ Unlike in Sweden, the transfer of state-owned land to private ownership in Finland affects the legal status of reindeer herders.

The Sami Homeland

The Reindeer Husbandry Act also defines another area where the content of reindeer husbandry rights differs from that of the rest of the herding area: the Sami homeland.

¹¹ Committee report 1929, *Komiteanmietintö 1929:8. Erinäisiä poronhoitoa koskevia kysymyksiä selvittämään asetetun komitean mietintö I*, pp. 52–53, 73.

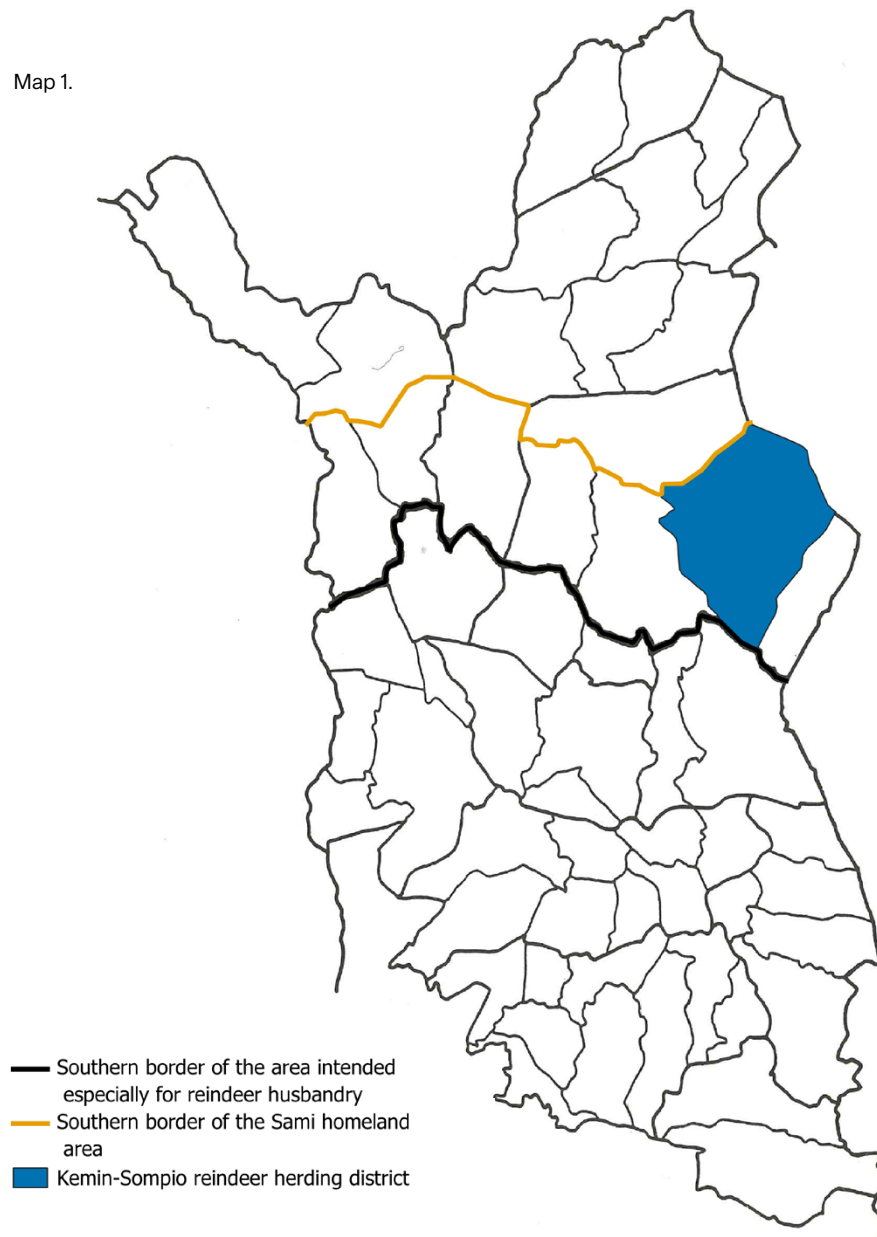
¹² Committee report 1929, *Komiteanmietintö 1929:8. Erinäisiä poronhoitoa koskevia kysymyksiä selvittämään asetetun komitean mietintö I*, p. 45.

¹³ Committee report 1942, *Komiteanmietintö 1942:8*, p. 4.

¹⁴ Government proposal 244/1989, p. 6.

¹⁵ Swedish Reindeer Husbandry Act 1971:437, s. 3.

Map 1.



The background of this area involves an interview study conducted in the municipalities of Enontekiö, Inari, Utsjoki, Sodankylä, and Kittilä. The study aimed to identify individuals, or their parents or grandparents, who had learned Sami as their first language.¹⁶ The area where these interviews were conducted became later known as the Sami homeland. According to Section 4 of the Sami Parliament Act of 1995, the Sami homeland includes the municipalities of Inari, Enontekiö, and Utsjoki, as well as the Lappi reindeer herding cooperative area in the municipality of Sodankylä.

The provisions of the Reindeer Husbandry Act concerning the Sami homeland are not particularly significant. They mainly concern the obligation to prevent reindeer

¹⁶ See, Nickul, "Suomen saamelaiset vuonna 1962," 1968, pp. 6–26.

from causing damage and the duty to compensate for damage caused by reindeer, primarily to agriculture.¹⁷ The special status of this area primarily arises from other legislation. For example, according to the Water Act, any project located in the Sami homeland must be implemented in such a way that it does not significantly impair the Sami's ability to "exercise their right as an indigenous people to maintain their culture or to engage in traditional livelihoods."¹⁸ Similar provisions are also found in the Environmental Protection Act¹⁹ and in the Mining Act, which will be addressed next.

The Legislation Regulating Reindeer Husbandry and the Establishment of Mines

Specific Protection within the Sami Homeland

The current Mining Act dates back to 2011.²⁰ According to its Section 38, Subsection 1, when processing a permit referred to in the Act, the licensing authority must

assess the effects of the activity on the rights of the Sami as an indigenous people to maintain and develop their own language and culture and traditional livelihoods, and consider measures to reduce and prevent harm.²¹

In the Skolt area, the licensing authority must request an opinion from the Skolt Village Assembly regarding the activity covered by the permit to ascertain the effects of the activity on Skolt livelihoods and living conditions.²² The Skolt area refers to the area located in the eastern parts of Inari municipality.²³

Exploration, mining, and gold panning permits cannot be granted if the activities covered by the permit, alone or together with other similar permits or other types of land use activities in the area, would significantly impair the conditions for traditional Sami livelihoods in the Sami homeland or otherwise impede the maintenance and development of Sami culture. Furthermore, a permit cannot be granted if it would significantly worsen the living conditions and livelihood opportunities of the Skolt people living in the Skolt area. However, the permit may be granted if the obstacle to granting the permit can be removed by permit conditions.²⁴

The following observations can be made from these provisions of the Mining Act. The protected legal good in these provisions does not relate to Sami property-based rights but concerns the protection of culture and livelihoods. The prohibition on im-

¹⁷ Swedish Reindeer Husbandry Act, s. 31.

¹⁸ Water Act (587:11), s. 8.

¹⁹ Environmental Protection Act (527:14), ss. 49.1, 6.

²⁰ Mining Act (621:11).

²¹ The Sami Parliament, the Skolt Village Assembly, and the local reindeer cooperative must be given the opportunity to comment on the report. Mining Act, s. 38.1

²² Mining Act, s. 38.3; See also Pölönen et al., "Finnish and Swedish law on mining in light of collaborative governance," 2020, pp. 104–105, 122; and Heinämäki "Saamelaiden oikeudet Suomessa," 2017, pp. 78–85.

²³ According to the Skolt Act (253:95), s. 9, a Skolt referred to in the Act has the right in Skolt area to take wood, obtain gravel, build structures related to hunting, fishing, and reindeer husbandry, graze cattle, and fish in state waters. See Joona, Maa- ja vesialueiden yleiskäyttöoikeudet erityisesti Pohjois-Suomen alueella, 1995, pp. 272–276.

²⁴ Mining Act, s. 50.

pairing the Sami homeland concerns not only reindeer husbandry but also other traditional Sami livelihoods, such as hunting and fishing. A permit cannot be granted if the project would impede the maintenance and development of Sami culture. This may involve not only the use of land and water areas, but also other activities related to Sami culture.

The law does not specify who should be considered as subjects of the protected rights. Section 38, Subsection 2 of the Mining Act specifically states that the purpose is to protect the living conditions and livelihoods of the Skolt people in the Skolt area. However, the prohibition on impairment concerning the Sami homeland does not explicitly point out such a subject. Although hunting, fishing, and reindeer husbandry are considered traditional Sami livelihoods, they can also be practiced by non-Sami people in Finland. Therefore, the wording of this provision does not make it clear whether the prohibition on impairment only applies to livelihoods practiced by Sami people or whether it refers to Sami livelihoods practiced in this area regardless of who practices them. Another question is, of course, who is meant by Sami people if the prohibition on impairment only applies to them.

The Sami Parliament and, if the issue concerns reindeer husbandry, also reindeer herding cooperatives have the right to appeal,²⁵ but regarding hunting and fishing, the community's right to appeal may be more ambiguous. In any case, every natural person—including individual reindeer owners—has the right to appeal if a decision violates the interests and rights of a person and if other conditions for appealing are met.²⁶

Provisions of the Mining Act Concerning the Area Specifically Intended for Reindeer Husbandry

Section 50 of the Mining Act provides that exploration, mining, and gold panning permits shall not be granted if the activities authorized by the permit would cause significant harm to reindeer husbandry in the special reindeer husbandry area. The

²⁵ However, see Supreme Administrative Court (SAC) case SAC 2013:179, where it was held that the Sami Parliament and the cooperative did not have the right to appeal a reservation decision. According to the court, a reservation decision only provides a priority right to an exploration permit. The court stated that since a reservation decision does not authorize exploration, it does not affect reindeer husbandry. See also SAC 2014:111 and SAC 2021:83.

²⁶ SAC 16.3.2018 no. 1165. The licensing authority granted the applicant a permit for mechanical gold mining on a five-hectare gold panning area. According to the permit conditions, the permit holder had to, among other things, slope the trenches in such a way that they did not pose a danger to reindeer or reindeer husbandry activities. The Sami Parliament appealed the decision. SAC dismissed the appeal. According to the reasoning of the SAC, gold panning was intended to be conducted annually only between 15 May and 30 September and furthermore, the permit was valid for a relatively short period (three years). Therefore, it was possible to review the permit conditions quite soon if there was a need to reduce harm. The court considered the granted permit not to be contrary to the Mining Act, s. 50, subsection. See also SAC 4.2.2015 no. 274; SAC 2020:124. According to the permit granted by the licensing authority, gold mining would have extended up to about 70 meters from the reindeer fence between reindeer herding cooperatives. The Sami Parliament appealed the decision. The SAC narrowed down the operating area so that there was a wider, unobstructed passage between the gold mining area and the reindeer fence, allowing access to the summer grazing area. In its reasoning, the court referred to research on the noise and barrier effects of mechanical gold mining, the terrain of the area, and the behavior of reindeer. According to the court, there was a risk that digging trenches would largely render the reindeer summer grazing area unused due to the difficulty of reindeer movement. This would result in more intensive use of the reindeer herding cooperative's (other) grazing areas, their quicker wear, disruption of the reindeer grazing cycle, and, among other things, the need to increase winter feeding of reindeer. Note that the case did not concern the interpretation of the Mining Act, s. 50.1, but the Environmental Protection Act (527/14), s. 48.1, s. 6, of which, however, is similar in content to the Mining Act, s. 50.1.

wording is thus the same as in Section 2(2) of the Reindeer Husbandry Act. In the preparatory work of the Act, it is explicitly stated that the scope of application of this provision should not be extended to other reindeer herding areas. However, the matter is not explained in more detail.²⁷

In interpreting the provision, a key component is the Sokli mining project located in Savukoski municipality. The project is unusually large in the Finnish context, with the mining concession area covering 59.3 square kilometers and comprising a total of 14 open-pit mining areas. This area belongs to the Kemin-Sompio cooperative, which is the largest cooperative in Finland in terms of both the area and the maximum allowed number of reindeer (12,000).²⁸

The reindeer herding cooperative had asserted both in the planning of land use (approval of the local master plan) and in the Mining Act proceedings (amendment of the mining concession area) that the project would cause significant harm to reindeer husbandry in the area. However, the Supreme Administrative Court (SAC) ruled in 2017 that the mining project would not cause significant harm.²⁹ This was justified, among other reasons, by the fact that the scope of the original plan involving the project had been reduced and that the area of the project was relatively small compared to the entire area of the cooperative.³⁰

However, a condition for the implementation of the project was that the company would also obtain an environmental permit under the Environmental Protection Act. In its appeal, the Kemin-Sompio reindeer herding cooperative stated that the realization of the project would fragment and destroy grazing land and disrupt the natural grazing cycle of reindeer. The ore was planned to be transported from the area by heavy trucks. In addition, the energy production of the mine was planned in such a way that a separate thermal plant would be built on the site, using annually 200,000 cubic meters of wood that would be sourced from within a radius of 100 kilometers, mainly from the grazing areas of the cooperative. According to the cooperative, such extensive logging would cause unreasonable damage to reindeer nutrition during the critical spring-winter period.

The Vaasa Administrative Court (the court of first instance) held that the mining project would cause the loss and fragmentation of grazing land and hinder the movement and transportation of reindeer, as claimed in the appeal. However, the Court also held that since the Environmental Protection Act is a general law concerning environmental pollution, it does not address these issues, which instead are dealt with under the above-mentioned Mining Act and Land Use and Building Act. Therefore, the Court considered the matter only to the extent that it concerned the noise and dust from the project affecting reindeer husbandry. According to the Court, the noise and dust from the project would not cause significant harm as referred to in Section 2(2) of the Reindeer Husbandry Act.³¹

As for the position of the Sami, the Administrative Court stated that the Sokli

²⁷ Government Proposal 126/2022, s. 2.3.12.

²⁸ See above, Map 1. The name of the Kemin-Sompio cooperative comes from the Kemin and Sompio forest Sami villages.

²⁹ SAC 15.9.2017 No. 3829 and SAC 11.1.2017 No. 34.

³⁰ Administrative Court of Northern Finland 7.4.2015 No. 15/00132/1.

³¹ Vaasa Administrative Court 5.5.2020 No. 20/0034/3, p. 174–176.

mining project is not located in the Sami homeland. According to the Court, the contested decision cannot therefore be considered illegal based on what has been presented in the legal proceedings concerning the determination and consideration of the rights of indigenous peoples.³²

The cooperative appealed to the Supreme Administrative Court. SAC repealed the decision and remitted it for renewed assessment and decision to the competent authority.³³ The Court's reasoning is interesting and summarized here. The SAC concluded that the Sami's right to practice traditional livelihoods, such as reindeer husbandry, is secured under Section 17(3) of the Finnish Constitution and Article 27 of the International Covenant on Civil and Political Rights (ICCPR). This right is protected whether or not the project is located in the Sami homeland. However, the SAC also stated that the obligations under the ICCPR are largely considered in the procedure for assessing whether the project causes significant harm as referred to in Section 2(2) of the Reindeer Husbandry Act.³⁴ According to the Court, the Sami's right under Article 27 of the ICCPR to practice their culture is thus equated with the prohibition on causing significant harm to reindeer husbandry.

In its decision, the SAC also states that the starting point of the assessment of significant harm is that the assessment is made within the framework of the permit and other procedures under different laws, considering the specific circumstances of each project. According to the Court, the assessment of harm is not limited solely to forestry measures, although forestry is mentioned as an example of significant harm.

Regarding procedural conduct, the SAC addressed the matter only to the extent that it concerned permit assessment according to the Environmental Protection Act.³⁵ In this regard, the Court notes that activities regulated under the Environmental Protection Act may cause harm to reindeer husbandry in the form of noise, dust, vibration, light, and the placement of waste areas. The matter also pertains to blasting activities, crushing, beneficiation operations and traffic. As a result, reindeer may flee to a distance of several kilometers. The SAC highlights that regarding the expulsion effect of noise on reindeer, it should be considered that the reindeer grazing in the Kemin-Sompio cooperative area are primarily unaccustomed to human activities.³⁶

Regarding harm caused by traffic, the Court refers to the fact that ore transportation by road would pass through the central and southern parts of the reindeer herding cooperative district. The route would traverse both the summer and winter grazing areas of the herding district. During production, the average traffic volume would be approximately 300 heavy vehicles per day. This would likely cause the reindeer to flee from the vicinity of the road due to noise and vibration, which would also affect the use of grazing areas. Also, the placement of waste would affect the calving areas and disrupt grazing rotation. Finally, the SAC states that "during its 20-year operation period, the extensive project may result, as assessed in advance, in harmful

³² See the decision of the Vaasa Administrative Court 5.5.2020 No. 20/0034/3, p. 179.

³³ See SAC 2022:38.

³⁴ SAC 2022:38, p. 344.

³⁵ Pölönen et al., "Finnish and Swedish law on mining in light of collaborative governance," 2020, pp. 121–123.

³⁶ SAC 2022:38, pp. 341–342.

consequences for reindeer husbandry, causing significant harm as referred to in the cited provision.”³⁷

Regarding forest logging associated with the project, the SAC notes that extensive energy wood harvesting around the mining area could have significant effects on reindeer husbandry. However, the Court also states that it may only consider the environmental impacts concerning the power plant in an environmental permit case.

Conclusions

As stated at the beginning, Finland and Sweden are quite close to each other in terms of legal history. This applies to both historical events and legislation. However, the legislation concerning the Sami and reindeer husbandry in these countries differs significantly in certain respects. In Sweden, it is assumed that there are land and water rights belonging to the Sami people who meet certain criteria. And although the content of this right has been detailed in legislation, the starting point has been that this right is based on principles of private law.

In Finland, the adopted approach can rather be described as public law-oriented. For example, the extent of the reindeer herding area is not based on whether the right to use this land (grazing rights) exists in a particular area. In practice, it was simply accepted with the first Reindeer Husbandry Act that reindeer husbandry could be practiced in the area where it was practiced at that time (in 1932). The legislator decided which area would be designated as the reindeer herding area and which would remain outside it. From a private law perspective, this did not treat all property owners equally.

Furthermore, the division of different areas in the current Reindeer Husbandry Act is not based on any specific property law principles. Although the preparatory documents of the Reindeer Husbandry Act state that the current reindeer herding area consists of two different areas in terms of property law, this difference is not reflected in the actual legislative text. A historically more justified approach would have been that—similarly to Sweden—reindeer herding north of the Lapland border is subject to different property law content than reindeer herding south of this border.

North of the Lapland border, the rights to reindeer husbandry and other use of land and water were different from the rights south of it, as stated not only in the preparatory documents of the Reindeer Husbandry Act but also in many other contexts.³⁸ If the legislator has not consciously abolished or amended these rights, the starting point must be that they still exist.³⁹

The different areas referred to in the current Reindeer Husbandry Act can also be considered problematic from the perspective of equality. According to the preparatory documents of the Reindeer Husbandry Act, reindeer herding right north of the Lapland border is based on the land rights of the Sami people. If this is taken as the starting point, reindeer herding rights should nowadays primarily belong only to

³⁷ SAC 2022:38, p. 343

³⁸ See for example NJA 1981:1 (The Taxed Mountain Case), p. 196, where the Supreme Court of Sweden states that especially in Kemi and Tornio Lappmarks, the Sami (land use) right was equated with the peasants' rights. Tornio Lappmark was located partly and Kemi Lappmark entirely in what is now Finland.

³⁹ The same opinion is expressed in Allard, *Rensköttselrätt i nordisk belysning*, 2015a, p. 52. See also Torp, “The interplay of politics and jurisprudence in the Girjas case,” 2023, p. 77.

the descendants of those Sami who practice reindeer herding in the respective area. However, according to the current legislation, the right also belongs to those who do not meet this criterion.

This becomes problematic in the context of the Sami homeland and the reindeer herding area outside the homeland area. Historically and in terms of property law, they are regarded as the same area, but under the current legislation, the position of reindeer husbandry is weaker south of the Sami homeland. The fact that the delineation of the Sami homeland is based on a study of the Sami language conducted in the 1960s does not put this area in a legally different position. The situation can be particularly problematic at the individual level. A non-Sami person who practices reindeer husbandry in the Sami homeland is in a better position than a Sami person who practices reindeer husbandry south of that area.

In Finland, the legal challenges related to the green transition and reindeer herding are connected to these issues. The current Finnish Reindeer Husbandry Act does not recognize Sami rights, nor the legal-historical and property law foundations upon which the status of reindeer herding should be based. In relation to competing land uses, such as mining and wind farms, the position of reindeer herding therefore appears weaker than it actually is. This is not a matter of public right but of a private law right. This issue has, of course, existed well before the green transition projects, but the green transition has made this matter particularly topical.

The current legislation can also be criticized for using very general terms such as “significant harm,” “substantial impairment,” or the prohibition of “detriment to the maintenance and development of Sami culture.” In many cases, it remains unclear what is prohibited and what is allowed.⁴⁰ General and open-ended legislation leaves the decision-making power to the interpreter of the law, although defining such questions should primarily be the responsibility of the legislative preparer and parliament. It is also problematic for the parties involved if the answer can only be obtained through judicial proceedings.

In the context of the Sokli environmental permit case, it was noted by the Administrative Court that indigenous rights in Finland only concern the Sami homeland, but here the SAC correctly held that the Sami people’s right to practice their traditional livelihoods, such as reindeer husbandry, is protected under the Finnish Constitution as well as Article 27 of the ICCPR. This right is safeguarded regardless of whether the impact on Sami rights caused by a project or activity occurs within the Sami homeland area. This case also clarified the interpretation of the concept of significant harm to some extent. According to the SAC, the topic is not solely about forestry but also about any other land use that may cause significant harm to reindeer husbandry.

When deciding on a permit, only the activities covered by that permit are considered, which effectively *fragments* the assessment of impact into multiple parts. Consequently, it is more likely that the threshold for significant harm is not considered

⁴⁰ The issue is not only about legislation but also about the administration related to mining. See Pölönen et al., “Finnish and Swedish law on mining in light of collaborative governance,” 2020, p. 122: “The Finnish mining authority (Tukes) has given very few case-specific conditions in these situations.” Instead, it has repeated flexible wording of the law, such as: “Mining shall not give rise to significant harm to the public or the private interest nor infringement of public or private interests,” in its decisions. This practice has been heavily criticized by both the Court and academics. See also Similä & Jokinen, “Governing conflicts between mining and tourism in the Arctic,” 2018, p. 164.

exceeded even if the project as a whole could be deemed to exceed this threshold. In theory, it is thus possible for a mining project to be deemed legal in permit procedures even if it would not pass as such when evaluated as a whole. However, the premise regarding significant harm to reindeer husbandry has been that projects are understood as a whole.

As for significant harm, exceedance of the threshold has been extremely rare in the practice of authorities and courts. Also, in the previous SAC decisions regarding Sokli (mining law, land use planning), the threshold was not exceeded. The case concerned a mining law concession covering 60 square kilometers located on the summer and winter grazing lands of the reindeer herding cooperative. As the threshold was not exceeded in this case, one may wonder whether it ever will be. However, the legal interpretation is clearly inconsistent with the preparatory documents. This can be said because according to the preparatory work for the Reindeer Husbandry Act, even a single forestry measure can cause significant harm to reindeer husbandry.⁴¹

Based on the SAC's decision regarding the environmental permit, the question of the area of the reindeer herding cooperative is not addressed at all. In previous decisions, and also in case law, the rejection of appeals related to significant harm has been justified by the fact that the area affected constitutes only a very small part of the cooperative's total area. However, it is obvious that the legislator has not considered the matter from this perspective. When referring to, for example, forestry measures, the legislator has meant the harm caused to reindeer husbandry practiced in a certain area. In interpreting the law, the starting point should be that the size of the reindeer herding cooperative has no impact on determining whether a land use project should be regarded as a cause of significant harm to reindeer husbandry.

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⁴¹ Government proposal 244/1989, p. 6.

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