

CNL(23)80

Fishing Cases

Indigenous Perspectives and Roles in Atlantic Salmon Conservation

Special Session of the Council of NASCO

Thursday, 8 June 2023

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SÁMEDIGGI
SÄMITIGGE
SÄÄ'MTE'GG
SAAMELAISKÄRÄJÄT

- The Sámi are the only recognized indigenous people of the European Union.
- There are about 10 000 Sámi in Finland. The total Sámi population is estimated to be over 75,000, with the majority living in Norway.
- Since 1996, the Sámi have had constitutional self-government in the Sámi Homeland in the spheres of language and culture. This self-government is managed by the [Sámi Parliament](#), which is elected by the Sámi.
- The Sámi Parliament represents the Sámi in national and international connections, and it attends to the issues concerning Sámi language, culture, and their position as an indigenous people.
- The Sámi Parliament can make initiatives, proposals and statements to the authorities. and negotiates with state authorities



Background

- The Saami are recognized in the Nordic constitutions:
 - Finland: The Sami, as an **indigenous people**, have the right to maintain and develop their own language and culture (Art 17.3).
- ⇒ The States implement the constitutional clauses by enacting legislation on Saami
 - ⇒ Separate acts: Saami Parliament, Saami language, reindeer herding acts in Norway and Sweden
 - ⇒ Sections on Saami (rights) merged into national legislation: education, social and health, mining acts, environmental, etc. acts



Sámi Rights

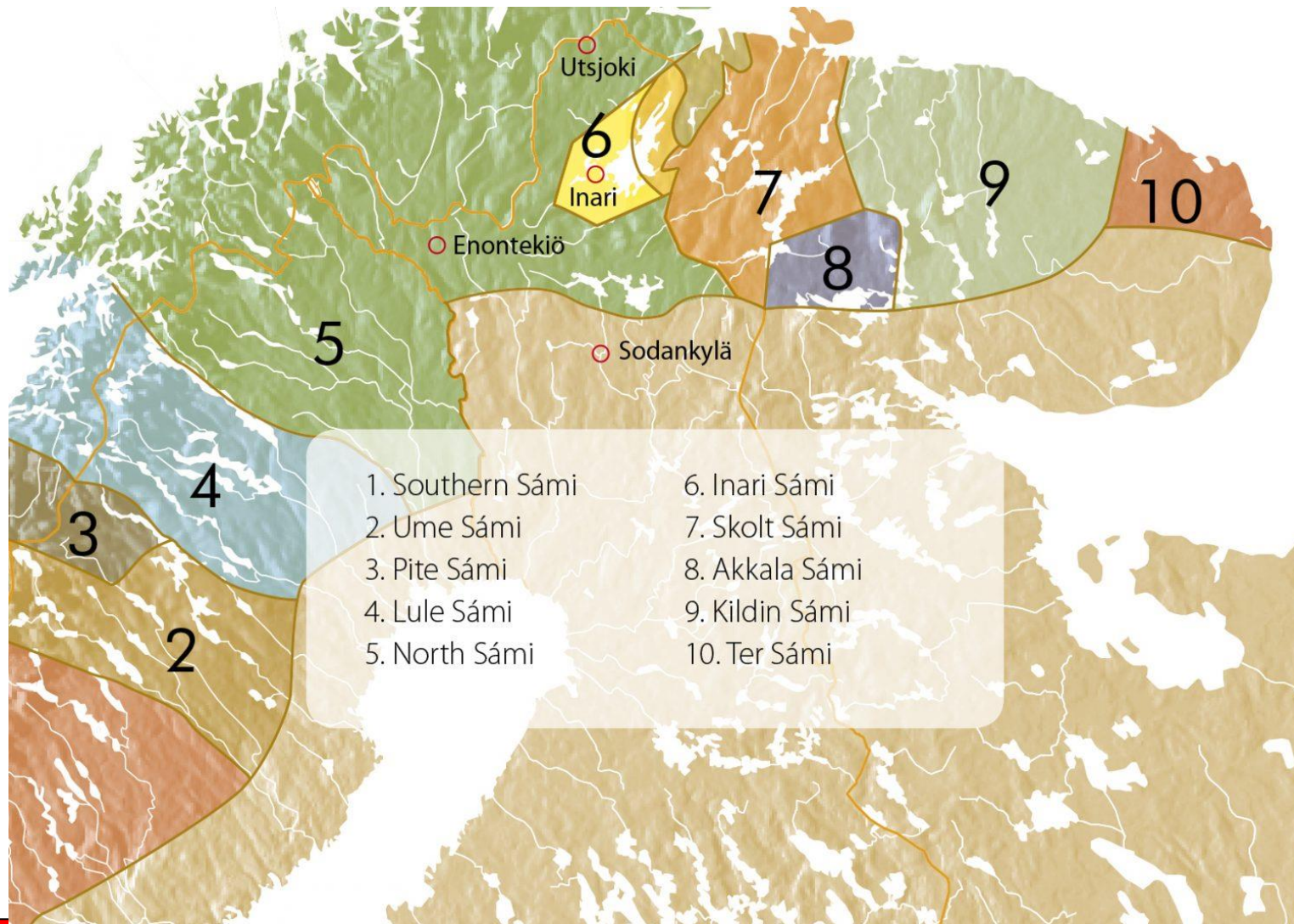
- The right to self-determination - In reality:
 - Finland: right to cultural autonomy
 - Norway: right to self-government
 - Sweden: both a publically-elected parliament and a State agency (dual role)
- Non-discrimination
- Free, prior and informed consent
 - Finland: Saami Parliament Act - the Finnish authorities have consult the Sámi Parliament in all matters that's concern the Sámi people
 - Norway: New Act Consultations Act – earlier Agreement on Procedures for Consultations between State Authorities and the Sámi Parliament (2005)
 - Based on Article 6 on ILO 169, the Indigenous and Tribal Peoples Convention
 - Sweden – 2022 new legislation – En lag om konsultation i ärenden som kan få särskild betydelse för det samiska folket



Sámi Rights (cont.)

- Recognition of right to land, territories and natural resource - two options to recognize Indigenous land rights: land claim settlements or court rulings
 - Norway: Finnmark Act 2005 (only Finnmark) + Fosen ruling 2021
 - Sweden: no recognition, just usufruct rights + Girjas ruling
 - Finland: no recognition, just usufruct rights + two Supreme Court Rulings on Fishing 2022





Traditional Saami livelihoods

- Reindeer herding, fishing, hunting, gathering and handicrafts (Sámi Duodji)
- Livelihoods have an important role in preserving and maintaining Saami culture and languages
- Livelihoods are based on sustainable use of nature
- Livelihoods support Saami language
- Both men and women practice Saami livelihoods



Fishing Case

- Sámi people have maintained continuous occupancy to their lands
- In Finland the Sámi have just usufruct rights to their lands
 - So called State owned land covers about 95 % of the Sámi homeland
- Sámi fishing rights were criminalized by the new Fishing Act 2015 in so called State waters when fishing salmon – came into force in 2017
- According to the section 10(2) of the Fishing Act, fishing of the salmon and trout migration areas had required the purchase of a separate permit, where as in other fishing are the permit was for free
- Sámi had to compete with other people for the fishing licenses because of restricted number of quata of licenses
- https://www.facebook.com/pg/samihumanrights/videos/?ref=page_internal





Strategic litigation

- Three possible court systems in Finland:
 - The General Court of the European Union
 - The Administrative Court of Finland leading to the the Supreme Administrative Court
 - The District Court leading to the Supreme Court
- International legal team
- Media plan
- Choice of advocate
 - The best criminal lawyer in Finland who has long term experience in litigating in the European Court of Human Rights
 - Did not have any knowledge of Indigenous Law
- High costs should be taken into account when planning



Fishing Case

- The public prosecutor charged four local Sámi for a game offense
- The Sámi reported themselves
- They were fishing by means of lures and rods in River Veahčajohka, a tributary to the Deatnu/Tana/Teno, which is so called state owned water area governed by Metsähallitus (national forest administration) on 29 July, 2017



Ruling – Court of 1. Instance

- District Court on 6 March 2019 acquitted the Sámi of all criminal charges
 - It had been substantiated that fishing in the manner specified in the charge in the defendants' home river is an essential element of the right of the Sámi as an Indigenous people to maintain and develop their own culture, protected by Section 17 paragraph 3 of the Constitution of Finland
 - It remained unsubstantiated that the defendants exceeded their fishing right based on the Constitution, because fishing in the manner specified in the charge, at least one's home river, represents the type of fishing to which they as Sámi have a constitutional right
 - The defendants did not fish without authorization or exceed their fishing right when fishing in the River Veahčajohka



Ruling – Court of 1. Instance

- We resorted to the constitution of Finland: the Sámi have a right to their own culture of which fishing is an important part. The Court confirmed that the accused did not commit a violation when they fished according to their customary law.
- “The restriction of basic rights must be based on acceptable criteria. In this case, no acceptable reasons for restricting basic rights have been found.”
- The UNDRIP was referred: Articles 8, 14, 20, 26, 34, 40, 43
 - Fishing is collective and part of Sámi culture



- State Prosecutor had filed on 2 April 2019 an appeal against the judgment
- The Prosecutor asked for a criminal conviction through a precedent issued by the Supreme Court in order to guide the future application of the law
- The Supreme Court granted certiorari 30th of October, 2019



Ruling of the Supreme Court

- The issue: whether four Sámi had committed a game offence, considering their rights as local Sámi under the Constitution of Finland and in international human rights treaties.
- The Supreme Court held that the separate fishing permit required for salmon migration areas under the Fishing Act in force at the material time in 2017, and the relevant permit procedure, gave rise to such severe restrictions to local Sámi that the application of the provision would be in evident conflict with their constitutionally protected rights (Section 106 of the Constitution). Also in this case, the Supreme Court declined to apply the provision in the Fishing Act and, accordingly, dismissed the charges for a game offence.



Ruling of the Supreme Court (cont.)

- The Court noted that constitutionally protected fishing rights of the local Sámi were not absolute, but that these rights could be restricted under section of the Constitution to protect migratory fish stock
- Notice – 2017



Impacts of Rulings in the Supreme Court

- Social justice struggle
- Sámi society
 - Hope
- Application of law
 - more than 30 laws enacted on Sámi livelihoods and use of nature in the Sámi Home Rule Region to implement the constitutional clause on Sámi culture
- How is a Sámi defined in the legislation?
 - The Constitutional Committee of Parliament of Finland stated that no reference to the Act of Sámi Parliament of section 3 is allowed
 - The Bill of Natural Parks - A



Giitu beroštumis



*Thank you for interest
Giitu!*