

16 November 2016

Chancellor of Justice
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Matter: Summary of complaint 508/D.a.3/2016 by the Sámi Parliament concerning deficiencies and negligence with respect to the negotiating process for the Tenojoki fishing agreement and the related act enforcing the agreement.

Introduction

The Sámi Parliament rejects the manner in which the negotiations begun in the summer of 2012 for the Tenojoki fishing agreement were conducted, particularly the fact that negotiations on the Tenojoki fishing agreement and regulation were not arranged in the appropriate manner or with the right timing as required by Section 9 of the Act on the Sámi Parliament. The Sámi Parliament is of the view that the legislation enacting the Tenojoki fishing agreement cannot remedy the fundamental deficiencies and irregularities referred to in the statement by the Sámi Parliament, because the Tenojoki fishing agreement and regulation violate the protection of the Sámi culture, the protection of the property of the Sámi, the principle of non-discrimination, and the right to self-determination provided in Section 17, paragraph 3 of the Constitution. Notwithstanding this, on 11 November 2016 the Ministry of Agriculture and Forestry announced that it had placed a Government proposal before Parliament for the agreement's entry into force at national level. Although the Sámi Parliament was represented on the delegation negotiating the agreement, no account was taken of the Sámi Parliament's proposals with respect to the legality of the contents or negotiations. In addition to the shortcomings in the actual content of the agreement, major deficiencies and unconstitutional conduct arose in the actions of the Finnish state during the agreement negotiations, due to which the Sámi Parliament has drafted a complaint for submission to the Chancellor of Justice on the actions of the Ministry of Agriculture and Forestry as a representative of the Finnish state.

In its complaint, the Sámi Parliament requests that the Chancellor of Justice:

Take note of the absence of the opportunity, as provided in Finnish law, for an indigenous people to participate in decisions affecting said people, which provided the general basis for the violations of basic rights in this instance and enabled the proposal for a legislative amendment in this respect, and

Propose to the Ministry of Agriculture and Forestry that the latter rectify the errors it has made and remedy any drawbacks, and

Should the Chancellor of Justice suspect that any errors and negligence by public officials of the Ministry – which resulted in violations of basic rights – fulfil the definitional elements of an offence in public office, or a related offence, that it consider raising charges or presenting the police with a request for an investigation with respect to the matter.

Deficiencies in the Tenojoki fishing agreement negotiations with respect to the fulfilment of basic rights

It is beyond dispute that the signed Tenojoki fishing agreement and the new fishing regulation which it entails have far-reaching and broad implications for the region from the viewpoint of the Sámi. It is therefore clear that the Ministry preparing the amendment of the agreement should have reserved the Sámi Parliament a genuine opportunity, as provided in Section 9 of the Act on the Sámi Parliament, to negotiate and thereby influence the content of the agreement before representatives of the Finnish state were, in practice, given a

mandate to finalise the content by its signature. Notwithstanding this, the Ministry of Agriculture and Forestry of Finland reserved the rights of the Sámi Parliament to negotiate in accordance with Section 9 only after the agreement had been signed and the contents therefore finalised in practice. By acting in this manner, the Finnish state by-passed the key, statutory opportunity currently guaranteed by law to the Sámi to have a say in any decisions affecting them as an indigenous people.

The interpretation given in Section 9 of the Act on the Sámi Parliament has become established in statements issued by the Constitutional Law Committee. With reference to Section 52 a of the parliamentary reform, the Committee has regarded it as self-evident that an opportunity should be reserved for the Sámi to be heard in the preparation of matters that particularly concern them. The signed agreement and the fishing regulations drawn up on its basis will markedly limit traditional Sámi fishing activities in the area, and no attempt has been made to obtain the free prior and informed consent of the indigenous people concerned (under the FPIC principle), based on accurate and sufficient information, or even to reserve the official representative body of the Sámi, the Sámi Parliament, a genuine opportunity to be heard and influence decision-making on the matter. The circumstances arising from the actions of the Finnish state should be regarded as a clear violation of Section 17, paragraph 3 and Section 121, paragraph 4 of the Constitution. The seriousness of the shortcomings in the Ministry's conduct are also highlighted by the fact that the obligation of the public authorities to take active measures to guarantee the observance of basic and human rights in this matter, under Section 22 of the current Constitution, was knowingly by-passed during the negotiation of the agreement.

Acceptability of the restriction of basic rights

Should it be deemed necessary, on acceptable grounds, to temporarily restrict the constitutional rights of the Sámi inhabiting the area, such restrictions must be in accordance with the proportionality principle. Furthermore, the restrictions must be necessary to fulfilling an acceptable purpose. The restriction of a basic right is only permitted if the related aim cannot be achieved by means which interfere less with basic rights, i.e. in practice, by means other than restricting fishing rights protected by the Constitution.

From the perspective of the Finnish state, in amending the Tenojoki fishing agreement and the related fishing regulation, its representatives should have taken particular account of the protection of several basic rights that are guaranteed by the Constitution. The public authorities' obligation to protect basic rights is explicitly provided in Section 22 of the Constitution, which states that "The public authorities shall guarantee the observance of basic rights and liberties and human rights."

Previous statements by the Constitutional Law Committee on the content of the constitutional fishing rights of the Sámi

In recent decades, the Constitutional Law Committee has considered the legal grounds of the so-called free-of-charge fishing rights of residents of Northern Lapland in particular, when assessing fishing in accordance with the Sámi culture – which is ultimately protected under Section 17, paragraph 3 of the Constitution – and the legal grounds for restricting such fishing. In its statement on the reform of the Fishing Act (PeVL 30/1993 vp), which would have made fishing subject to a permit and charge for Sámi living in the municipalities of Enontekiö, Inari and Utsjoki, the Constitutional Law Committee stated the following:

The Committee is of the opinion that this amendment should not be implemented, even under the procedure for constitutional enactment. As background to its statement, the Committee referred to the Indigenous and Tribal Peoples Convention (no. 169) of the International Labour Organization ILO, ratified in 1989, and the other international agreements mentioned by the Committee in statement no. 3/1990 vp.

If targets for the sustainable exploitation of fish stocks cannot be achieved by restricting other fishing and it is necessary to intervene temporarily, through legislation, in the constitutionally guaranteed fishing rights of the Sámi, such a restriction of constitutional rights must be performed under the procedure for constitutional enactment.

Inconsistencies in the State of Finland in complying with its binding human rights obligations

In its statement, the Ministry for Foreign Affairs of Finland has interpreted the proven instances of negligence in the agreement negotiations performed by the Ministry of Agriculture and Forestry, and their consequences, in a manner which corresponds to the interpretation by the Sámi Parliament, and has issued statements such as the following:

A key principle with respect to the rights of indigenous peoples, that of free, informed, prior consent, should apply, where applicable, to the eventual implementation of the draft agreement and fishing regulation now under consideration, after their entry into force.

The current situation, in which the Finnish state is neglecting compliance with the obligations set under its own constitution and by international human rights conventions, without even duly assessing and recognising – as required by the Constitution – the related impacts on the fulfilment of the rights of the Sámi as an indigenous people, is unacceptable and is jeopardising the continuity of the Sámi culture, while undermining the credibility of the Finnish state as a western constitutional state and a defender of basic and human rights. The Sámi Parliament therefore urges the Chancellor of Justice to take the above-mentioned steps to end the violation of rights.