



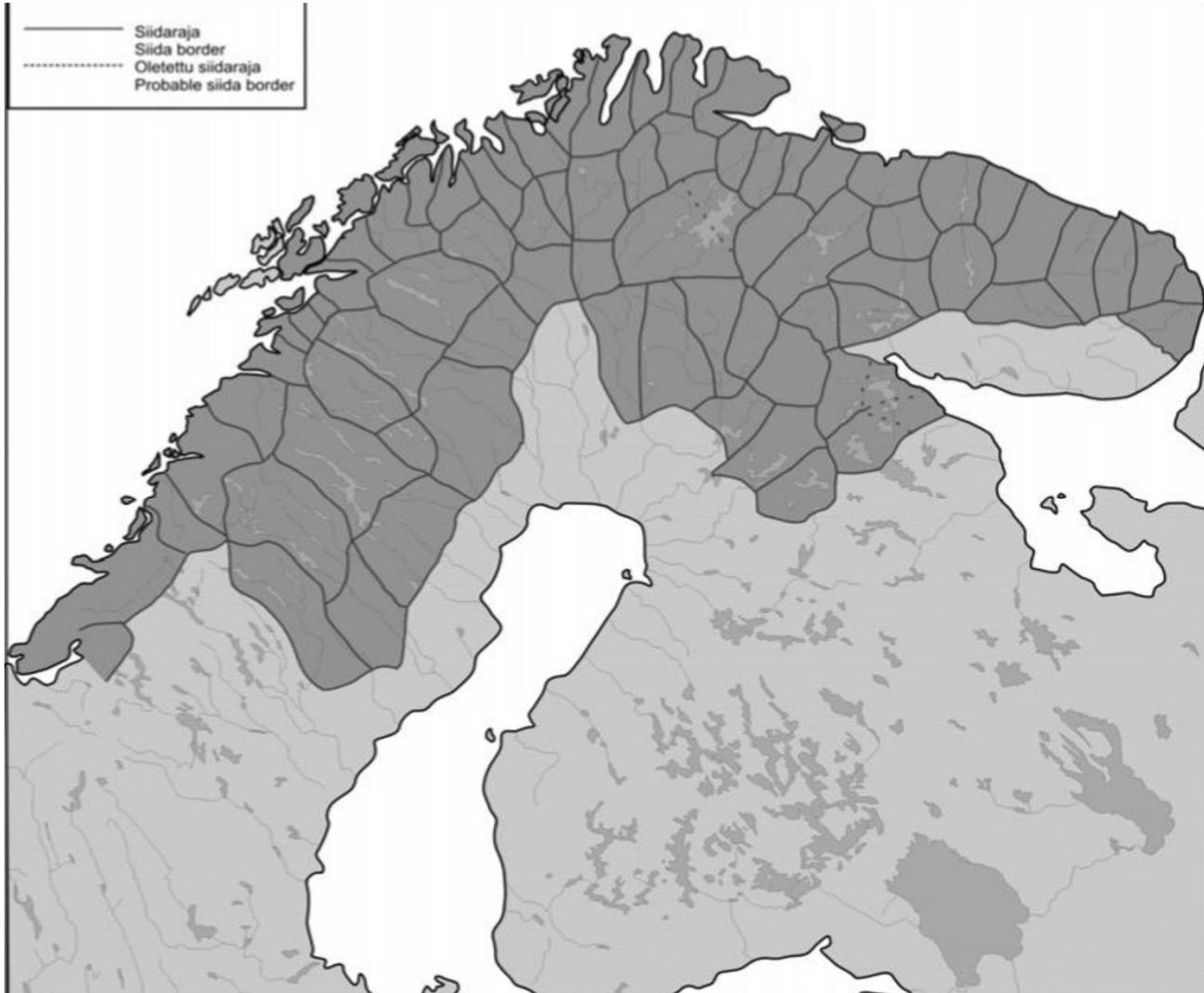
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REINDEER HERDING RIGHT IN FINLAND AND SWEDEN



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Highest Number of Reindeer

- 54 cooperative
 - 3 400 reindeerowners
 - "tragedy of commons" (Garret Harding 1968)
 - certain number of reindeer in every cooperative and every reindeer herder
 - determined by Ministry of Agriculture
 - 10 years period
 - number of reindeer shall be based on the sustainable capacity for natural winter pasture areas of each cooperative
- quantity of lichen

Reindeer Herding Right

1. "Objective" reindeer herding right:

- reindeer herding right as a part of real estate law

→ which rights to use land belongs to the reindeer herders,
which rights belongs to the landowner

2. "Subjective" reindeer herding right:

→ who is entitled to practice reindeer herding

Reindeer herding law of 1933

- Committee, prepared the first law, made an historical survey in the 16th – 18th centuries:

”Historical survey proves that the lapps were the first reindeer herders in our country and they had exclusive right to use land in their lapplands for example for reindeer herding. This right was confirmed by Kingly letters and it was based on ancient tradition”

Reindeer herding right as a land use right

- Reindeer Herding Act (1990) 3 § : "Right to graze reindeer in the reindeer herding area, regardless who owns the land"

→ exceptional right in the Finnish real estate law

→ present-day reindeer herding would not be possible without reindeer herding right

Reindeer herding right as a land use right

- temporary fences may be erected on state land for purposes of reindeer herders, but this must be reported to the authorities (39 §)
- fire wood and wood for a temporary hut may be taken from state forest free of charge and without special permit (40 §)
- state, municipality or parish has no right to compensation for damages caused by reindeer (34 §)

Cooperative's tasks and duties

1. Look after for reindeer herding in the cooperative's area
2. responsibility for those damages reindeer has caused to the agriculture or forestry in cooperative's territory

→ no negligence needed

→ joint and several liability

Interest of reindeer herding shall be taken into account

- in the 'special district for reindeer herding' it is not permitted to use land in that way that it cause '**significant**' harm to the reindeer herding (2,2 §)
- legislative material: in practice forest economy
- only state land (artificial lakes, mines)

Legal shelter in another legislation

- Water Act: Damage, harm or other kind of loss will be compensated to *reindeer herding*

→ meaning in practice artificial lakes

- Outdoor Recreation Act: Compensation shall be paid ... 1) if the area is used as a route for outdoor recreation, and 2) damage or inconvenience caused to the owner or holder of the area or to the local *reindeer herding* cooperation
- Off-road Traffic Act: (establishment of snowmobile route). Any damage or harm to the owner or holder of the property or to the *reindeer herding* shall be compensated by route maintainer

UN's Covenant on Civil and Political rights (ICCPR)

- Art. 27: Ethnic minority have right to enjoy their own culture:
 - Supreme Court of Finland: Reindeer herding is part of the Sami culture
 - Some cases in which the Sami reindeer herders have argued that forest cutting is against the covenant
- Courts: Forest cuttings have not been that extensive that the Sami could not practise reindeer herding or enjoy their culture
 - in one case local court approved the lawsuit, but court of appeal rejected
 - In another case in the court of appeal one judge approved the lawsuit but two rejected

Reindeer herding right in Sweden

- The Supreme Court of Sweden (Taxed Mountain Case 1981) and Reindeer Herding Act 1971 (amended 1993):
 - is based on private law (immemorial use, 1734 law 15 cap. 1 §
 - is protected such as ownership to land against expropriation without compensation (constitutional protection of property)

Reindeer herding right includes (state owned land):

a) right to build houses and cottages which are necessary for reindeer herding

b) for these buildings samevillage has right to take logging

c) reindeer herdes has right to take logging for house bulding

d) right to take firewood and wood for handcrafts product

e) right to cut down certain trees for food to the reindeer

f) member of a samevillage has right to fish and hunt inside the village's territory

Reindeer herding right includes (state owned land):

g) right to take sand and material for household use

h) right to make hey

i) right to herd reindeer

j) right to graze other animals than reindeer

- no right to sell sand and gravell (belongs to the landowner)

- no right to minerals (belongs to the landowner or state)

Government has power to:

- put down reindeer herding right if the area was needed for such requirements stated in law of compulsory purchase (expropriation)
 - area was needed for urban population aggregate (construction)
 - transportation or communications
 - power lines
 - land use needs of armed forces
 - establishment of national parks nature reserves
 - areas intended to exercise or fitness training and are in public use

Interests of reindeer herding shall be taken into account

- in those areas where reindeer herding is permitted all year it is prohibited to take actions, which may cause remarkable harm to the *reindeer herding*
- Natural Resources Act: To safeguard most important areas for *reindeer herding* is a public interest
 - moving routes, important calving sites and good pastoral areas
- Nature Conservation Act: Right to *herd reindeer* is a public interest which has to be taken into account in nature conservation
- Forestry Act: In forestry reindeer herding shall be taken into account

Entitled to compensation

- Water Act: a possessor of special right is entitled to compensation
 - meaning among other things right to herd reindeer
 - artificial lakes
- Road Act: a possessor of special right is entitled to compensation
 - meaning among other things right to herd reindeer
- Mining Act: a possessor of a restricted right is entitled to compensation for harm and other damages due to takin area in mining activity
 - meaning among other things reindeer herding right

Comparison between Finland and Sweden

- Same historical and legal background:

- Finland was part of Sweden until 1809 and after that same legal system

Right to herd reindeer:

- Sweden (and Norway): includes a right to herd reindeer, fish, hunt, take gravel, right to make construction needed in reindeer herding etc.
- Finland: right to graze reindeer

Legal status of objective reindeer herding right

- Sweden (areas reindeer herding is allowed all of the year):

→ protected against other land use interests

- Finland:

→ "everymans right": give way to other land use interests

→ weak legal shelter

→ entitled to compensation only exceptionally

Subjective reindeer herding right in Sweden

Reindeer herding Act 1 §:

- a person of Sami origin has right to use land and water to maintenance for himself and his reindeer
- this right (reindeer herding right) belongs to the Sami people
- a Sami has to be member of Sami village (reindeer herding cooperative/association)

Subjective reindeer herding right in Sweden

Reindeer Herding Act 11 §

1. a Sami who participates reindeer herding within villages area
2. a Sami who has participated in reindeer herding within Sami villages area and reindeer herding has been his main work and he is not transferred to other occupations
3. a spouse or a child still living at home of a person defined in subsection 1 or 2

→ reindeer herding Sami 2 500 (total number 17 000)

→ the Sami who are not members of Sami village have no special land use rights

Subjective reindeer herding right in Finland

Reindeer Herding Act 4 an 9 §:

- Entitled to own reindeer are citizens of nations of European Economic Area who are living at the reindeer herding area

→ changed 1993 due to EEA-Agreement

→ earlier Finnish citizen, who are living ...

- Reindeer owner has to live in a municipality, which entirely or partly include cooperation's area

→ open for everybody, not only for the Sami people

→ local people's right