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The basis of the Sámi reindeer herding right – in contest again

Clear territorial rights are essential for all indigenous peoples as for the reindeer herding Sámi. Land is the asset which supports the Sámi culture and responsible for its long-standing survival. This concerns the three legal systems in Sweden, Finland and Norway. A common understanding of the reindeer herding right is likewise important for the application of the Draft Nordic Saami Convention, if ratified.

By recent developments in Swedish law, notably the Nordmaling case from 2011, the character of the reindeer herding right has again become contested. The Supreme Court found here that the right to winter pastures for three Sámi villages rests on customary law, and not immemorial prescription (an old and rarely used property law doctrine) as previously held in the 1981 Taxed Mountain case. With basis in the 1981 case the Swedish Reindeer Husbandry Act was amended in 1993 to emphasise that the right was founded on immemorial prescription (and not legislation *per se*).

Even if the right is still understood as a civil law right, as a result of the two preceding cases and discussions in theory, it seems now as if reindeer herding on parts of the pasture rests on immemorial prescription, and on other parts on customary law, because in legislation the pasture is divided into year-around-areas and winter-pasture-areas. If so, and what it would mean for the future of reindeer herding, is unclear. Moreover, in an up-coming case, where a Sámi village claim exclusive hunting and fishing rights as a part of their reindeer herding right, the respondent Swedish state has interpreted the customary law roots of the right narrowly. The courts will hopefully again act as keeper of reason and fundamental rights.