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In case no. 5787-20, **Skabersjö Gods AB** (Appellant) v. the **Swedish Board of Agriculture** (Respondent), the Supreme Administrative Court delivered the following judgment on 13 October 2022.

RULING OF THE SUPREME ADMINISTRATIVE COURT

The Supreme Administrative Court overturns the rulings of the lower courts and remands the case to the Swedish Board of Agriculture for a new examination.

BACKGROUND

1. There is a special act which is intended to eradicate epizootic diseases, i.e. animal diseases posing a danger to the public which can be spread by infection amongst animals or from animals to humans and which can constitute a grave threat to the health of humans or animals or cause major economic losses for society.
2. Pursuant to the act, the Swedish Board of Agriculture may decide, *inter alia*, to prohibit the presence of outside parties within the area in which a case of disease has occurred (declaration of quarantine), subject activity to various restrictions, and that animals are to be destroyed. A party who incurs costs or losses as a consequence of such a decision may obtain compensation from the state. Compensation is paid, *inter alia*, for losses of animals and for loss of production.
3. Compensation is paid in accordance with general principles of tort law. This entails, *inter alia*, that only the person who has been directly affected financially by a decision is entitled to compensation. Thus, compensation is not paid to the party who indirectly incurs damage as a consequence of the decision (so called third-party damage).

4. Skabersjö Gods AB had 10,000 eggs for hatching at Gamla Burlövs Viltuppfödning when avian influenza broke out in the facility. The Swedish Board of Agriculture initially decided to declare a quarantine and impose restrictions and, subsequently, that all eggs at the facility were to be destroyed. The decisions were directed to the owner of the facility, i.e. Gamla Burlövs Viltuppfödning.
5. Skabersjö Gods – which received compensation for Gamla Burlövs Viltuppfödning for the value of the eggs equal to what the Swedish Board of Agriculture paid to Gamla Burlövs Viltuppfödning therefor – applied for compensation for loss of production.
6. The Swedish Board of Agriculture rejected the application explaining that no decisions regarding restrictions relating to Skabersjö Gods had been taken and that the company thus had not been directly and primarily affected but, rather, only indirectly, and that the losses were thus third-party damage which did not give rise to an entitlement to compensation. According to the Swedish Board of Agriculture, it is only the party whose facility is subject to the declaration of quarantine and declaration of infection and who has been subject to restrictions which may obtain compensation. When property owned by someone other than the party to whom the decision is directed is destroyed, it is a matter which may be addressed by means of civil-law rules
7. Skabersjö Gods appealed the decision of the Swedish Board of Agriculture to the Administrative Court in Jönköping. The administrative court, which rejected the appeal, was of the opinion that only the party to whom the decision was directed is the party who is directly affected by the decision and who, accordingly, may obtain compensation. The company's damage and losses were to thereby be regarded as non-compensable third-party damage.
8. Skabersjö Gods appealed the judgment to the Administrative Court of Appeal in Jönköping which found that the loss of production incurred by the company was

not direct damage which arose as a consequence of the decision of the Swedish Board of Agriculture and thus could not be compensated by the state. A claim for compensation which arose as a consequence of the fact that animals or eggs were put in the care of another party could instead be resolved in accordance with civil-law rules. Accordingly, the administrative court of appeal rejected the company's appeal.

CLAIMS, ETC.

9. *Skabersjö Gods AB* claims that its application for compensation is to be granted.
10. *The Swedish Board of Agriculture* is of the opinion that the appeal is to be rejected.

REASONS FOR THE RULING

The question in the case

11. The question in the case is whether compensation for the loss of production may be paid to a company whose eggs were destroyed in accordance with a decision directed to the owner of the facility at which the company had its eggs for hatching.

Legislation, etc.

12. Section 15, first paragraph of the Epizootic Act (1999:657) provides that the state shall compensate a party who, due to a decision which has been issued pursuant to the act, incurs a loss, *inter alia*, due to the fact that domestic animals or animals other than wild living animals, are destroyed or as a consequence of a loss of production.

The Court's assessment

13. The purpose of the Epizootic Act is to effectively combat epizootic diseases (Government Bill 1998/99:88, p. 20). Accordingly, it is incumbent upon persons who have animals in their care – irrespective of the ownership arrangement – to report suspected diseases to veterinarians. Consequently, the supervision, measures and decisions taken by the Swedish Board of Agriculture will, as a rule, be directed to the party who has the relevant animals in its care.
14. The rules regarding compensation have not been linked to the animal keeper in the same way. According to section 15 of the Epizootic Act, compensation is paid to the party who incurs economic damage as a consequence of the public measures in accordance with the act to combat the spread of disease.
15. It is apparent from the preparatory works that compensation is to be paid in accordance with general tort-law principles. Therein it is further stated that only the party who is directly and primarily affected by a decision is entitled to compensation. Compensation to a third party due to consequential losses is thus not to be paid. Two examples are then provided of such damage that is not compensable. First, it is stated that an outbreak of a disease at an animal owner may entail difficulties for another animal owner in proximity to the affected area in selling his products notwithstanding that the disease has not affected him directly. Thereafter, it is stated that a producer who incurs a loss due to the fact that a promised delivery is not made is also not entitled to compensation (Government Bill 1998/99:88, p. 25).
16. The question regarding compensation is thus to be determined on the basis of tort-law principles. Accordingly, the party to whom a decision regarding measures, e.g. the destruction of eggs, is directed is thus not decisive.

17. In this case, Skabersjö Gods's property was destroyed as a direct consequence of the decision by the Swedish Board of Agriculture regarding destruction of all eggs at the facility at which there was an outbreak of avian influenza. Accordingly, as a consequence of the decision, the company has incurred direct property damage (destruction of eggs) which, in turn, according to the company, gave rise to consequential damage (loss of production). Accordingly, the company is not to be regarded as a third party in this situation.
18. Accordingly, the company may be deemed to have been affected by the decision in such a manner that the provisions of section 15, first paragraph of the Epizootic Act regarding compensation from the state is applicable.
19. The Supreme Administrative Court should not consider as a court of first instance the extent to which compensation for the loss of production is to be paid. The rulings of the lower courts are thus overturned and the case is remanded to the Swedish Board of Agriculture for a new examination of Skabersjö Gods's claim for compensation for loss of production.

Justices Jäderblom, Ståhl, von Essen, Anderson and Medin have participated in the ruling.

Judge Referee: Emelie Dahlgren.