The fulfillment of Norway's legal obligations to the Sámi assessed by three current examples

Oyvind Ravna, Professor Dr. juris. Faculty of Law, UiT – The Arctic University of Norway. Email: oyvind.ravna@uit.no

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ABSTRACT

Norway is established on the territory of two nations, the Norwegian and the Sámi, which imply obligations for Norway to protect Sámi culture and land rights. The obligation is i.e. ensured by the 1988 constitutional amendment and the ratification of the International Labour Organization (ILO) Convention no. 169 concerning Indigenous and Tribal Peoples in Independent Countries (1989). The adoption of the 1969 Human Rights Act are also to be mentioned. To what extent the obligations are adhered to in practice, is essential for access to natural resources, both the marine and the terrestrial, and is thus for the Sámi possibility to live, work and stay healthy in their traditional areas.

This presentation review how Norway complies with the obligations to protect natural resources of importance for the Sámi, and thus ensuring the Sámi work and healthy stay in the Arctic.

1. BACKGROUND

The Sámi rights struggle is often linked to the Alta-Kautokeino case in the 1970s and 80s. But it can easily be drawn longer back in time. In 1900, the Sámi Council for Finland stated that the Sámi live in the sure knowledge that the mountains, the roads and the islands by the coast, in which they have used from immemorial times, belonged to the Sámi.1 We may well draw the lines longer back to the dark Norwegianisation period in the early 1900s, when Norwegian culture and farming was seen as the future for the vanishing Sámi nation, where skills in Norwegian language was a condition for buying lands from the State. The Sámi policeman laks Saba raised at that time his voice against the infamous language clause in the 1902 land law by asking if the grass wouldn’t grow just as well on the meadow if you speak Sámi as Norwegian: “Isn’t it not enough that the Sámi had the boy the land which form ancient times had been theirs?"

However, the Alta case is of great significance, contributing in forming the Sámi Rights Committee (SRC) in 1988, which made a mandate to examine the need of a constitutional protection of the Sámi culture and the status of the Sámi rights to “land and waters”. In its first report, SRC proposed a Constitutional Act concerning the Sámi people (Sameretten), p. 14.

The protection was filled out with the 1987 Sami Act,2 which established the Sámi Parliament (1989) and made the Sámi language formalised as a national language. June 20, the same year, Norway ratified the 1989 ILO Convention No. 169 as the first country worldwide. During less than 10 years, Norway had thus undertaken a “battery” of legal obligations to the Sámi.

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The recognition of Collective property rights and rights of use by the Finnmark Commission

The FC has not found collective property rights in any part of the three fields. This applies both to Sámi reindeer herders and to the Sámi and non-Sámi permanent residents.

Rights

For the all the three fields, collective rights to grize live-stock, cut wood, peat, fish, hunt and trap, picking eggs, down and berries are recognized, where FC generally and similarly for the three fields, concludes that the rights of the local population has an independent legal basis: “Concerned the resident local population, these rights have an independent legal basis aside the law, as the commons right in souther Norway have, and as the reindeer husbandry rights in the areas where it have been run reindeer of elder times have been.” However, the FC conclusions do not imply any change in the actual rights of use: “Although the rights to some extent have an independent legal basis, they are codified in the Finnmark Act, and therefore subject here disposed authorized policies.”

3.2. The renewable maritime recourses and the Finnmark Fishing Act

The Sámi rights to maritime recourses, were rights the FC was mandated to investigate as a part of the “the natural resource basis for Sámi culture”. Through introduction of a new fishing regulation in 1990, the Coastal Sámi population, who mostly catch white fish, have no access to the coast, lost much of their rights established during many centuries of fishing, due to lack of “historical catch”.

3.3. The mineral resources, the extractive industry and the mineral Act

Mining activities in a controversial industry as a topical issue in the Sámi area. According to the Special Rapporteur on Indigenous Peoples rights, the laws and policies in the Nordic States with respect to natural resource extraction and development, in general do not provide sufficient protections for Sámi rights and livelihoods, and do not involve Sámi people and the Sámi parliament sufficiently in the development processes: “There is often no compensation for loss of past- use areas from natural resource extraction or other development projects, although in Norway the Mineral Act requires that compensation be given to reindeer herders for appropriation of the right to use lands for reindeer husbandry. Additionally, benefit sharing opportunities are rare, especially with respect to mining and oil and gas development.”

The Norwegian 2009 Mineral Act does not provide for benefit sharing except for property for the Finnmark Estate.

FINAL REMARKS

Norway has made great efforts to fulfill its obligations to the Sámi. However, there is still a way to go before it fully accomplished its obligations. Despite the unanimous findings of the Coastal Fishing Committee, the Coastal Sámi historical rights to marine resources, the sea outside Finnmark has yet not been acknowledged. The solutions adopted in Marine Resource Act, is probably above the international law minimum standards, as there is not recognized Sámi rights – neither of historical nor human rights.

When it comes to the mineral resources, there is reason to quote if Norway is complying with its international obligations to the Sámi in relation to the allocation of the benefit or royalty of the extraction from mineral resources. Moreover, interventions that could threaten the exercise of Sámi culture and livelihood, may also contravene the Sámi obligations, in particular ICCPR Article 27.

The Finnmark Act is an attempt to uphold the ILO commitments. When it step by step is revealed that the Finnmark Commission has conducted a rather simplified summarily investigation of the investigation files, assessing the investigation files as a whole, concluding that there are no collective rights to use or property for the Sámi in the investigation fields, it is reason to ask if the investigation fulfilled the requirements of ILO-169 Article 14.4

Acknowledgements

Adapting to Europeanising frameworks was not only future for the vanishing Sámi nation © Finnmark folketabell

Fig1: A coastal fisherman at Berlevåg @ © Bjørn Johnsen

The discussion of photo holds the life and rights and property continue © Oyvind Ravna

-footnotes

1. Recommendation of the Committee to examine the Sámi Question (Sameretten). Appointed by Ministry of Church and Education, 3 August 1912 (Doc. Nr. 281).

2. Recommendation of the Committee to examine the Sámi Question (Sameretten). Appointed by Ministry of Church and Education, 3 August 1912 (Doc. Nr. 281).


