

## **The protection of Sámi People's language, culture and way of life in Norwegian Constitution and other legislation<sup>1</sup>**

### **Introduction and problem to be addressed**

*The Sámi people* is traditionally living in Scandinavia, Finland and Northwest Russia. Their homeland, which in Sámi language is called *Sápmi* or *Sámiid eanan*, is thus situated in four national states, covering northern and middle Finland, Sweden and Norway, as well as the Kola Peninsula in Russia. The Sámi consists of 50,000-80,000 people, where approximately 40,000 are living in Norway (Gaski 2009). Among them there are 13,890 registered in the voting census of the Sámi Parliament in Norway.<sup>2</sup>

The history of the Sámi people in the Northern parts of Scandinavia goes further back in time than the determination of the state boundaries. This means that the Sámi, as a minority, also are *an indigenous people*. By ratifying the ILO Convention No. 169 in 1990,<sup>3</sup> this was recognized by Norway, which at the same time also undertook the responsibility to recognize and identify the Sámi traditional lands.

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<sup>1</sup> This article is developed on a presentation originally given at 1<sup>st</sup> international scientific-practical conference «Legal Systems of the Barents Euro-Arctic Region», Arkhangelsk, 27–29, April 2010, and published in the Anthology *Border Crossing Law in the North*, Arkhangelsk 2012.

<sup>2</sup> See : <http://www.sametinget.no/artikkel.aspx?Mid1=269&Aid=2962&back=1&sok=true> (accessed 10.09.10).

<sup>3</sup> ILO Convention no 169 concerning Indigenous and Tribal Peoples in Independent Countries, adopted 27 June 1989, in force 5 September 1991. Ratified by Norway 20 June 1990.

The adoption of the “Sámi Article” in the Norwegian Constitution of 1814, which is framed after the International Covenant on Civil and Political Rights of 1966 (ICCPR) Article 27, must also be seen in this light.

The adoption took place in 1988 as a constitutional amendment signed by the Norwegian Parliament. It commits the state of Norway to protect the language, culture and way of life of the Sámi people:

“It is the responsibility of the authorities of the State to create conditions enabling the Sami people to preserve and develop its language, culture and way of life.”<sup>1</sup>

In this paper I will examine the obligations imposed to the Norwegian state authorities in the Constitution and international treaties binding to Norway, including a brief review of other legislation that protects language, culture and way of life of the Sámi. Besides the examination of the legislation, the problem to be addressed is whether the Constitution provides a legal obligation to protect the Sámi culture and way of life, which the state authorities must adhere to as a binding rule of law, both in the governance and the formulation of laws related to the Sámi.

## I - The legal basis for the obligation to ensure Sámi language and culture

### A - Constitution Article 110a

In this section, I will examine to what extent the Article 110a of the constitution is a legally binding provision. Although the wording of Article 110a may indicate that its importance is of political and moral nature, the framing points out that it sets up an obligation for state authorities. The formulation is based on suggestions from the *Sámi Rights Committee*, which was a law commission established in 1980, after the turbulence surrounding the Alta hydroelectric power plant case.<sup>2</sup> The aim of the Committee was to investigate the Sámi rights and proposing new acts.<sup>3</sup> One of the main purposes of the provision was then to put an end to

<sup>1</sup> Official translation from <http://www.stortinget.no/en/In-English/About-the-Storting/The-Constitution/The-Constitution/> (accessed 06.03.12).

<sup>2</sup> About the Alta Case, see [http://www.galdu.org/govat/doc/eng\\_damning.pdf](http://www.galdu.org/govat/doc/eng_damning.pdf) (accessed 04.03.2012).

<sup>3</sup> See the mandate which, among others, included to examine (1) “the question about the Sámi people’s legal position in relation to land and water”, and (2) to evaluate and suggest “how to secure the Sámi population opportunities to utilize natural resources in their areas of habitation, while also recognizing the non-Sámi population’s interests”. The third point

old injustice against the Sámi, where the past assimilation policy should be abandoned for ever. If we look closer on the motives of the Sámi Rights Committee, it is emphasized that the provision is intended to set up a legal obligation so the Sámi language, culture and way of life will be secured and have development opportunities:

“State authorities will therefore have no legal right to pursue a policy contrary to this principle. The provision demands this both to the legislation and other regulatory actions” (NOU 1984: 18: 433).

In addition to that, it can be mentioned that the State of Norway has no tradition of framing constitutional provisions with non-binding political content, which also indicates that the provision puts up a legal obligation. In general, the Constitution sets up the duties of state power. In its section E, we also find protection of some basic human rights, such as prohibition against legislation with retroactive effect in Article 97 and protection of property in Article 105. These articles must be underlined to be very binding. The Articles 110a may have another character, but it is under all circumstances a constitutional provision issued by the Norwegian Parliament. We may note here that the first-voting judge of the Supreme Court in plenary session, in a case referred in *Norsk Rettsstidende*<sup>1</sup> (1996: 1415), expressed that the “sister article” 110c, which is a general human right provision, compared with conventions that commit Norway, establishes a minimum standard of legal protection (NRt. 1996: 1415 [1424]).<sup>2</sup>

When the human right article in the Constitution has such a legal content, indicate analogue considerations that the Sámi article also has such content.

It must also be emphasized that the *Standing Parliamentary Foreign Affairs and Constitutional Committee*, stated that by the adoption of the provision, the Parliament has:

“In the *most formal and binding form* our legal system known, recognized and drawn the consequences of the facts that during the history of Norway, there has existed a nation of Sámi people in the country” (Innst. S. nr. 147 1987-88: 2).

was to investigate the need for a constitutional protection of Sámi language, culture and way of life, see, NOU 1984: 18 *Om samenes rettsstilling [The Sámi legal position]: 43–44.*

<sup>1</sup> NRt.

<sup>2</sup> See also Skoghøy 2002: 341, who discuss the legal extend of the Norwegian Constitution Article 110a.

Of importance is also that the Constitutional Article has close connection to international human right law that protects minorities. During the preparatory work the Sámi Rights Committee intended to give the article "an understanding which is in conformity with international law requirements" (NOU 1984: 18: 438) and expressed that the proposed constitutional amendment "corresponds substantially with Norway's obligations according to the contents of the ... Convention [on Civil and Political Rights]" (NOU 1984: 18: 441).

The 2<sup>nd</sup> Sámi Rights Committee (adopted in 2001 to investigate the Sámi rights in the areas south of Finnmark County and proposing legislation) has later discuss the relationship between the Constitution Article 110a and the more detailed ICCPR Article 27. The Committee concludes then that the close link to the International Convention on Civil and Political Rights (ICCPR) Article 27, means that the Constitution's Article "must be understood in such way that it in any case shall face what is the international law requirements for Norwegian authorities" (NOU 2007: 13: 191). That there has been a trend in international law in direction to a stronger protection for indigenous peoples language and culture after Article 110a, was adopted, should therefore be emphasized in the evaluation of the provisions legal significance.

Consequently, the review shows that the Constitution's Article 110a forms a legally binding obligation of the state, not just in designing the Norwegian Sámi policy, but also by the exercising of policy and governance of the State, which in this area cannot be in contradiction with the aim of protecting Sámi language, culture and way of life.<sup>1</sup>

It can be discussed to what extend this is followed up by the state authorities. An important good example of this is the acknowledgement of the *Court Commission*, dealing with the future way of organizing the courts in Norway, which pointed out that since the Article 110a of the Constitution requires a "responsibility of the authorities of the State to create conditions enabling the Sámi people to preserve and develop its language, culture and way of life", this also imposes a "requirements of the courts and their organization and to the expertise, knowledge and attitudes of the judges" (NOU 1999: 19: 20 and 109).

Another commission, the *Commission for the structure of the first instance courts*, endorsed the evaluation (NOU 1999: 22: 71), and proposed a special court for the Core Sámi areas in Finnmark, called *Sis-Finnmarku diggegodd* (Inner Finnmark District Court). The argument for a court with specific responsibility for safeguarding the Sámi culture

<sup>1</sup> See also the discussion of Skogvang 2009: 179.

and legal tradition was, among others, the use of Sámi language, the importance of having a court in Sámi areas, the consideration to Sámi customs and legal perceptions, and interests of a broader recruitment of judges.

When the Ministry of Justice handled this case, it pointed out the need "for increased competence of Sámi customary law and tradition in the courts" after which it was shown that the situation could be:

"That the Sámi do not inquire the courts in conflicts precisely because of the judiciary lack of understanding of the Sámi culture and customs. Increased knowledge and understanding of the Sámi culture and customs, must according to the views of the Ministry of Justice, be given priority in the courts" (NOU 1999: 22: 102).

#### *B - The main international law basis*

I will not spend wide space on the obligations under international law. But since there is a close connection between the Constitutional's Article 110a, and the Article 27 of the International Convention on Civil and Political Rights (ICCPR) and since the Convention is in force as internal legislation in Norway with precedence,<sup>1</sup> it is reasonable to examine its legal protection of the Sámi People briefly. Article 27 read as follow:

"In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language."

As we can see, the Article sets up a right for minorities to use their own language and practice their own culture. Practice and statements from the *UN Human Rights Committee*, the monitoring body of the Convention, shows that the provision not only gives minorities a protection against interference in enjoying culture and using language, but that it also sets up an obligation for States to take positive action for protection. I may here refer to a statement from the Human Rights Committee from 1994 which states:

"Accordingly, positive measures by States may also be necessary to protect the identity of a minority and the rights of its members to enjoy

<sup>1</sup> Cf. the Norwegian Human Rights Act (May 21, 1999 No. 30) Section 2 and 3 which incorporate the convention with precedence.

and develop their culture and language” (Human Rights Committee 1994: Para. 6.2, see also Gauslaa 2008).

The internal importance of the ICCPR Article 27 in Norway is strengthening because of its association with Article 110a in Constitution. The 2<sup>nd</sup> Sámi Rights Committee states that the provision has a special weight “not only the precedence provision in the Human Rights Act Section 3, but also through his association with the Constitution Article 110a” (NOU 2007: 13: 191). This forms a dual obligation to protect indigenous peoples' language, culture and way of life in Norway, and at the same time the symbiosis between the provisions contributes to strengthen them both.

The commitment to protect Sámi language, culture and way of life is also strengthened by Article 26. It states that

“the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”.

If we quickly go back to the example of the court organization, Article 26, in conjunction with Article 14, implies that *lack of expertise* in the Sámi language, culture and customary law at the courts, may be in violation of these provisions<sup>1</sup>. The importance of these basic international law principles is emphasized by the fact that *the European Human Rights Convention of 1950* has similar provisions in Article 6 and 14.

Finally, it must be pointed at the ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries, which Norway ratified in 1990 as the first state, and which is partly incorporated through the Finnmark Act Section 3 and the Reindeer Husbandry Act, also Section 3. Article 8 (1) states that “In applying national laws and regulations to the peoples concerned, due regard shall be had to their customs or customary laws”. This means that Sámi Customary law is a relevant source of law in Norwegian legislation, which must be taken into account through a substantial evaluation of the relevant provisions

<sup>1</sup> In Diergaart against Namibia (UN Human Rights Committee, communication n° 760/1997), 6 September 2000, denial of use of the former colonial language Afrikaans to public authorities, under the dissent found to be a violation of ICCPR Article 26 (para. 10.10). See also in Äärejä and Näkkäläjärvi against Finland (UN Human Rights Committee, Communication n° 779/1997), February 4, 1997, and my discussion of that (Ravna 2009).

extend<sup>1</sup>. Article 8 (2) states further that “Procedures shall be established, whenever necessary, to resolve conflicts which may arise in the application of this principle”.

Here it is also natural to mention the Article 14, which in (1) says that indigenous peoples' traditional land shall be recognized. In addition, article 14 (2), the governments are imposed to take steps as necessary to identify such lands to guarantee effective protection of the indigenous people's rights of ownership and possession, including (3) establish “Adequate procedures ... within the national legal system to resolve land claims by the peoples concerned.”

### *C - Internal legislation except for the Constitution*

The review includes a short examination of other legislation that protects the Sámi culture. In the *Sámi Act*, which established the Sámi Parliament in 1989 and aims “to facilitate that the Sámi people of Norway can maintain and develop their language, their culture and way of life”<sup>2</sup>; we retrieve the commitment in the Constitution. For the Sámi language, the contents of the obligation was specified and completed by an amendment bill in 1990<sup>3</sup>. Here, among others, extended right to use Sámi language in the courts is established (Section 3-4). It is determined that the parties may submit pleadings in Sámi language, address the court orally, and bring petition proceedings in Sámi language, including opportunity to speak Sámi at the court hearings.

Concerning the rights to land and natural resources *the material bases* for the Sámi culture, the *Finnmark Act*, is of importance.<sup>4</sup> The act might be considered as a result of the “struggle” for the right to “land and waters” that accelerated during the Alta hydro-electric powerplant case, and in which the Sámi Rights Committee began investigating in 1984<sup>5</sup>.

<sup>1</sup> A unconditionally entitles to prevail in conflicts with Norwegian statutory law, however, have not Sámi customary law, see the Sámi Right Committee (NOU 2007: 13: 222).

<sup>2</sup> Act 12 June 1987 no. 56 om Sametinget og andre samiskeske rettsforhold [The Sámi Act] Section 1.

<sup>3</sup> Act 21 Des. 1990 no. 78 om endringer i sameloven [the Sámi Act] 12 June 1987 no. 56, Grunnskoleloven [the Primary School Act] 13 June 1969 no. 24 and domstolloven [the Act on Courts] 13 Aug 1915 no. 5.

<sup>4</sup> Act 17 June 2005 n° 85 om rettsforhold og forvaltning av grunn og naturressurser i Finnmark fylke (Finnmarksloven) [Act relating to legal relations and management of land and natural resources in the county of Finnmark (Finnmark Act)].

<sup>5</sup> The second Sámi Right investigation was published as NOU 1997: 4 *Naturgrunnlaget for samisk kultur*. See also supra note 5.

This Act is an interesting juridical and indigenous legal innovation, but it can also be characterized as a legal experiment we do not yet know the full results of. Although the legal expert group of the Sámi Rights Committee concluded that the state was the owner of the land in Finnmark (NOU 1993: 34: 266), the Norwegian State some years later recognized that the state ownership could not be kept in full.<sup>1</sup> Consequently, it proposed to transfer the ownership to the “people of Finnmark”.<sup>2</sup>

The basis for the transformation is partly international law obligations, more precisely the ILO convention no. 169 Article 14, and partly the acknowledgement of the Sámi historical rights to their traditional lands in Finnmark. The Finnmark Act transferred approximately 95% of the former state land in Finnmark County (45 000 km<sup>2</sup>) to a new entity, *the Finnmark Estate*, governed by a board where the Sámi Parliament elect three members and the Finnmark County council three.

The Finnmark Act Section 1 defines the purpose of the Act, which is to “facilitate the management of land and natural resources in the county of Finnmark in a balanced and ecologically sustainable manner for the benefit of the residents of the county and particularly as a basis for Sami culture, reindeer husbandry etc., use of outlying field, areas, livelihood and way of life”. Section 3 incorporates the ILO Convention No. 169 and other provisions of international law concerning indigenous peoples and minorities within area of the scope of the Act.

Particularly interesting is Section 5, which in the first paragraph states that “Sámi through immemorial usage, collectively and individually have acquired rights to the land in Finnmark”. The second paragraph shows that this also applies to other inhabitants. To determine the scope and content of the rights that Sámi and others have acquired on the basis of prescription and immemorial usage, it shall be “established a commission to investigate rights to land and water in Finnmark, and a special court to settle disputes concerning such rights ...”.

Section 29 authorizes the establishment of the *Finnmark Commission*, which “on the basis of current national law shall examine the use and ownership rights to the areas the Finnmark Estate take over [...]”. The majority of the Parliamentary Standing Committee on Justice chose the wording “current national law” to reveal that the Sámi customs and legal opinions have to be emphasized (Innst. O. nr. 80 2004–2005: 18–19). Legislator has thus made it clear that Sámi customs and interpretations of

<sup>1</sup> Ot.prp. nr. 53 (2002–2003) *Finnmarksloven [The Finnmark Act]*: 43.

<sup>2</sup> *Ibid.*:7.

the law, which is a part of the Sámi culture, have a significant place during the clarification of the land rights. The establishment of the Finnmark Commission and the Finnmark Land Tribunal (in Section 36) is also anchored in international law<sup>1</sup>. The Finnmark Commission began its work in 2009, announcing the two first investigation fields of the Commission in February that year<sup>2</sup>.

*The Reindeer Husbandry Act* of 2007 must also be mentioned. It aims to facilitate an ecological, economic and cultural sustainable reindeer husbandry<sup>3</sup>. The act places greater emphasis on Sámi culture, tradition and customs than previous laws. This is reflected in the aim of the Act (Section 1), the general rules for the practice of reindeer herding in Chapter 4, in that the Siida (the herding tribe) has a wide space in the act<sup>4</sup>, and by grazing regulations shall be drawn from “the principles of good reindeer husbandry based on Sámi traditions and customs (Section 59). Due to Section 3 the act shall be applied according to international law of indigenous peoples and minorities (*cf.* the ILO-convention n° 169).

#### D - Case law

For a long time Norwegian courts considered Sámi use of land and water as an “innocent right of use” or a *precario*, where use could not form a basis for acquiring land rights. The changes in case law came through two Supreme Court cases in 1968. In the Brekken (NRt. 1968: 394), the Supreme Court found that the Sámi use of land “during prolonged time had been so attached to the place and at its core so stuck that it cannot be equated with the exercise of an innocent right of use or a public access to land” (NRt. 1968: 394 [401]). The result was then that the Sámi rights to hunt and fish on private land was sustained.

In the Altevann Case (NRt. 1968: 429), the Supreme Court found that making a hydroelectric power plant in a Sámi area was “an intervention in a firm and concentrated use of pasture and fishing that the authority

<sup>1</sup> Especially the ILO Conv. N° 169 Art. 14 (3) (Innst. O. N° 80 (2004–2005): 28) where it is stated that after the majority's opinion is “clearly not sustainable under international law to hand over the question of which and the extent of rights acquired in Finnmark, the general courts”.

<sup>2</sup> For more reading about the Finnmark Act (in English), see Ravna 2006, Ravna 2011a og Ravna 2011b.

<sup>3</sup> Act 15 June 2007 n° 40 om reindrift (the Reindeer Husbandry Act).

<sup>4</sup> In Section 51 the term siida defined as follows: “With siida understood in this law, a group of reindeer herders who exercise herding together on certain areas.”

had to pay compensation” (NRt. 1968: 429 [438]). The Swedish Sámi that had rights to use pastures in Norway were thus given economical compensation for their loss of pastures, based on immemorial usage rights.

Although the Supreme Court acknowledged that the Sámi use of land could acquire land rights, it should still take several decades before traditional Sámi use of land got any significant effect on clarification of the right of use and ownership. The reason for this was no longer that the use was not considered to acquire rights, but that it was not regular and intensive enough to fill the terms of legal acquisition (see the cases referred in NRt. 1981:1215, NRt. 1988: 1217 and NRt. 1997: 1608)<sup>1</sup>.

In the Selbu Case (NRt. 2001: 769), the Supreme Court set aside opinions in the three former cases. It was done by emphasizing Sámi cultural characteristics, reindeer husbandry features, migration and use of the landscape when the acquisition of right should be evaluated. This implied that reindeer herders acquired grazing rights on private land within specified areas in Selbu municipality due to the immemorial usage. By virtue of being plenary decision, the verdict is a substantial source of law in disputes on acquisition of reindeer herding rights. In such way it's a norm for how the Norwegian property law should be applied, not only in reindeer husbandry disputes, but more generally in the dispute on use and ownership rights in the Sámi areas. A consequence of the fact that the special feature of the reindeer husbandry must be taken into consideration, is that the grazing patterns must be emphasized in the evaluation of the use intensity. Topography, herding conditions, weather, etc. was thus important.

In Selbu Case, the Supreme Court has adapted the rules on immemorial usage for acquiring rights, in a way that the legal norm today is that *requirements for intensity and coherence* in use, also in Sámi areas must be assessed on a standard given by *characteristics of the rights*. This has actually been a norm (see the Tydal Case (LF-2008-50209) about Sámi reindeer herders rights for fishing). Practice from Sweden shows that Selbu Case has also been taken into consideration there<sup>2</sup>.

<sup>1</sup> In these cases the Norwegian Supreme Court considered the requirements of intensity and coherence in use from a standard created by agricultural or farming way of using pastures. Rules that under other circumstances could have led to the right's acquisition, thus emerged as obstacles to this.

<sup>2</sup> See Nordmalingsmålet, case 155-06 for Court of Appeal, för Övre Norrland, Sweden and case T 4028-07, judgment 27 April 2011, The Swedish Supreme Court of Justice.

As we see, the clarification of legal basis and rules of compensation has taken place through case law. These rules are now statutory under the *Reindeer Husbandry Act* Section 4. In addition to reindeer husbandry rights, I will also point at the Svartskog Case (NRt. 2001: 1229), where the Supreme Court found that resident Sámi could acquire ownership to a registered state owned property through a certain adaptation of the rules on immemorial usage.

### *E - Policy considerations*

It may also be pointed out that actually a need to protect the Sámi language, culture and way of life exists. This justifies a policy consideration, which is a kind of source of law in Norway. The need to protect the Sámi language needs no further explanation. If we instead consider culture and way of life, we can look at the Sámi reindeer herders and their need for legal clarification in the framing of Article 110a. From the Selbu Case, we can emphasize the statement of the first voting judge, expressing that it can

“be established that both Article 110a and ILO Convention n°. 169, includes requirements for legal protection of the Sámi reindeer husbandry that were actually exercised in Norway when the rules came into force. Without clear rules of law that can be applied by the courts and in the community development at large, the Sámi reindeer husbandry could not be maintained as a continued important basis for Sámi culture and way of life, which it undisputed is today” (NRt. 2001: 769 [785]).

Actual and legal uncertainty about the right to the use of pastures, both between reindeer herders and in relation to others, is a threat to the Husbandry and this specific Sámi way of life. This has been pointed out both by the National Reindeer Husbandry Board<sup>1</sup>, the reindeer husbandry organizations and by reindeer herders. The Head of reindeer husbandry district 36, *Peer Gaup* in Kautokeino, has for example said to the newspaper *Ságat* (20 March 2009) that there is a great need for legal clarification: “It is utopian to believe that reindeer herders will be able to resolve grazing conflicts internally. It is simply an impossible task. There will be a need for court decisions [...]”. We can also note that the head of the Sámi Reindeer Herders Association of Norway, *Nils Henrik Sara*, in

<sup>1</sup> See Ot.prp. nr. 25 (2006–2007) Om lov om reindrift (the Reindeer Husbandry Act): 47.

*Sáogat* (6 May 2009) asked for a special commission in order to clarify the internal land rights within the reindeer husbandry<sup>1</sup>.

This shows that the Sámi reindeer herders are facing significant challenges as a result of unresolved legal issues regarding the right to use grazing areas. The problem is clearly illustrated when you see that reports, extrajudicial mediation attempts and several judgments, failed to clarify the overall grazing use of the Sámi winter pastures in Inner. Characterizing this as an untenable situation, as Peer Gaup does, is thus not surprising.

## II - Conclusions and some practical consequences of the obligation

The review shows that Sámi language, culture and way of life, including rights to land and natural resources as a bases for the culture, enjoys protection both constitutional provision and international conventions binding Norway. That the Constitutional provision must be interpreted within the framework of ICCPR article 27 emphasizes this and strengthen the legal significance of both provisions in Norway. The review also shows that the protection of Sámi culture and way of life, especially Sámi rights to land and natural resources, in Norway is developed through case law, which now to a huge extend have become statutory.

In this manner there cannot be any doubt that protection not only is a question of economic, political will or practical organization the state authorities relatively freely can decide over, *but a legally binding obligation*. This includes a responsibility to carry out positive measures, and to protect present way of life, too, like fishing, agriculture or husbandry with modern equipments.

One practical consequence of this is the obligation to establish courts that consider the responsibility for Sámi language, culture and customary laws. One may here note that the Ministry of Justice stated that:

“Recruitment of Sámi-speaking judges and clerks, language training, attitude change to the use of Sámi in court and better and more comprehensive interpretation service is relevant measures that can be inserted even at more courts than the proposed court in Inner Finnmark” (St.meld. nr. 23 (2000–2001) para. 11.5.2).

<sup>1</sup> The view of Gaup and Sara is supported by other reindeer herders. A survey conducted to my doctoral work, emerges that as much as 81.6% of 49 respondents expressed a need for an independent body that can resolve conflicts and help to organize use of pastures, see Ravna 2008: 449).

The ILO Convention N° 169 Article 8 also instructs Norway and especially the Norwegian courts to accept and respect Sámi customary law as a substantive source of law. To my point of view this must be seen in relation to, or as a part of, the Constitutional protection of Sámi Culture. Although it can be discussed how far the Sámi customary law reaches in conflict with Norwegian statutory law, both the emphasis on such law in the ILO-Convention, the protection of Sámi culture in the Constitution, and acceptance we must expect from the Norwegian majority legal culture, means that Sámi customary law has to be recognized as law in Norway (about Sámi legal culture [in English], see Ravna 2010). This implies that it must be given force of law according to the Sámi substantive rules. And perhaps equally important; Sámi legal culture must be strengthened through court procedures.

It is praiseworthy that the Inner Finnmark District Court is established. But when we repeatedly see that the district court's decisions are set aside by the court of appeal, it raises a question whether the competence on Sámi legal culture and customary law also have to be strengthened in the appeal instances, not to ask for a separate appeal body with competence for dealing with Sámi legal questions. The same questions can also be raised in relation to the Land Consolidation Courts<sup>1</sup> where the implementation of rules ensuring Sámi culture and language, is not obvious.

The Constitution imposed commitments as regard Sámi language, culture and way of life, raises several other issues. That the Norwegian Parliament treatment of the Mineral Act (19. June 2009 n° 101), which implies that Norway fail to following up the obligation to establish indigenous compensation according to ILO Convention N° 169 Article 15, can also be seen in this light. The same can be said about failing to follow up the proposal of Coastal Fishing Committee of a Finnmark fishing Act<sup>2</sup>.

Finally, the legal protection of Sámi language, culture and way of life in Norway is a question of whether to offer both of the two Nations the Norwegian State is based on, equal conditions for their ways of life. The fact that Norway is found on the territory of two people, mean that the state must ensure peoples language, culture and way of life in a proper way.

<sup>1</sup> See act 21 Des. 1979 no. 77 om jordskifte o.a. (Act on Land Consolidation et al) and my discussion in Ravna 2009.

<sup>2</sup> Among others, this is criticized by the UN Special Rapporteur on the rights of Indigenous Peoples, see (Anaya 2011 para. 80).

In this context I will point out that other countries that have signed the International conventions on civil and political rights, to a great extent are committed in the same way as Norwegian authorities. Analogous considerations imply that such countries are obliged to respect indigenous peoples rights to land and natural resources, as well as to carry out positive measures like establishing appropriate courts which take into account considerations of language, culture and customary law of the people involved.

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