

THE AUTONOMY OF ÅLAND: A REFLEXION OF INTERNATIONAL AND CONSTITUTIONAL LAW

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1. The historical background of the autonomy of Åland

Åland has had a Swedish population at least since the sixth century A.D. For this reason Åland, when the Kingdom of Sweden was formed, from the very beginning was a part of that country. The population of the Finnish mainland however was probably already at that time of Finnish origin. Only after the Swedish conquest of Finland during the thirteenth century Swedes started to settle in the coastal regions of Finland.

When the Swedish domination in Finland had been consolidated and Finland been made a part of the Kingdom of Sweden Åland was in some administrative, judicial and ecclesiastical respect made a part of the Åbo (Turku) region. The reasons for this were purely practical and had no constitutional significance since Finland was an integrated part of the Kingdom of Sweden.

In the seventeenth century Sweden was a superpower in the Baltic region. During the eighteenth century its significance diminished. Eventually Finland and Åland were lost to Russia through the peace treaty of Fredrikshamn (Hamina) in 1809. During the Crimean War 1853-56 the Russian fortress Bomarsund in Åland was destroyed by English and French fleets. At the peace negotiations Sweden who had stayed neutral during the war claimed Åland back to Sweden. However, Russia refused to give up Åland. On the other hand Russia was forced to commit itself not to build any fortifications in Åland (the so-called Åland Islands Servitude). Thus Åland through the Paris Treaty of 1856 obtained a military-politically neutral position that still exists.

Russia took part in World War I on the side of the Allies. The Allies gave Russia permission to fortify Åland and at times there were up to 6,500 Russian soldiers in Åland. When the Russian Empire after the Russian defeat began to break up, many of the "colonies" of the Empire saw a possibility of obtaining independence. In Åland the collapse of the Russian Empire resulted in the activities for a reunion with Sweden.

Exactly how and when the aspirations for a reunion with Sweden first were materialized and the so-called "Åland Movement" arose is not possible to determine. Its first outward manifestation took place on 20 August 1917 when representatives of the rural districts and the town of Mariehamn held a meeting to discuss the political situation. The representatives unanimously decided to send a deputation to the Swedish government with the message that the Ålanders wanted the Åland Islands to be reunited with Sweden. To give more weight to the demand an address was made at Christmastime 1917. About 95 per cent of the adult population signed the address. The address was presented to King Gustav V on 3 February 1918 at the Royal Palace of Stockholm.

In order to pursue the work of reuniting Åland and Sweden the representatives of the rural districts and Mariehamn elected a county council called *Landsting*, consisting of 29 members. The *Landsting* held its first general meeting on 8 June 1918. After the end of the war the *Landsting* made appeals to get the demands for a reunion with Sweden discussed at the peace conference in Paris. In January 1919 a delegation of Ålanders were given an opportunity to put forward the opinion of the Ålanders at the conference. On 27 September 1919 the French Prime Minister George Clemenceau in a statement made clear that the Swedish interests concerning Åland were to be satisfied. The statement increased the Åland hopes of a favourable solution of the Åland question. At the same time the Finnish government, as a countermove, worked out a bill concerning autonomy for Åland. The bill was passed by the Finnish Parliament and on 6 May 1920 was confirmed by the President of the Republic.

However, the Ålanders refused to accept autonomy as a substitute to reunion with Sweden. The *Landsting* called on the King and the government of Sweden at the Palace of Stockholm on 31 May 1920 and expressed the Ålanders' loyalty to the idea of a reunion of Åland and Sweden. As a countermove the Finnish government called a meeting with all municipal representatives of Åland which was held on 4 June 1920. At the meeting the Prime Minister gave a presentation of the new Autonomy Act and threatened the Ålanders with drastic measures if they went on with their work for a reunion with Sweden and refused to accept the Autonomy Act. The meeting ended abruptly when the councillors as a protest against the speech of the Prime Minister left the premises. A few hours later two of the leaders of the Åland Movement were detained.

The detention of the Åland Movement leaders made the relations between Sweden and Finland very strained. In this situation the Åland-question, on the proposal of England, was submitted to the League of Nations, which had recently been established. The fact that the meeting on 20 August 1917 had been held *after* the Russian Empire had ceased to exist but *before* the new Republic of Finland had been constituted made the League of Nations declare itself competent to deal with the question whether Åland was to belong to Finland or to Sweden. The Council of the League of Nations made its decision on 24 June 1921 after a commission of lawyers had analysed the legal aspect of the question and a Commission of Inquiry had made a proposal for a solution.

Through the decision of the Council the sovereignty over Åland was given to Finland. However, some further guarantees for the Ålanders should be inserted in the Autonomy Act. In a few days Finland and Sweden came to an agreement about the guarantees, the so-called Åland Agreement, which was confirmed by the Council on 27 June 1921. With that decision the question of the sovereignty over Åland was settled.

2. *The Autonomy Act of 1920 and laws connected to it*

As a consequence of the decision of the Council of the League of Nations the Ålanders had to accept the autonomy that was offered by Finland. Elections to the Parliament, *Landstinget*, were held on 8 May 1922, and on 9 June same year *Landstinget* held its first meeting.

Through the Autonomy Act of 1920, the county of Åland was transferred into an autonomous region called "*landskapet Åland*". The autonomy that Åland was to enjoy was organized in the following way.

The legislative powers were exercised by the regional Parliament *Landstinget*, consisting of 30 members. The executive power was vested in a regional government, *Landskapsnämnden* (after 1951 *Landskapsstyrelsen*). The chairman of the Government, *Lantrådet*, held his office as long as he had the confidence of the Parliament while the other members of the Government were elected for fixed periods on a proportional basis.

The administration of justice was the responsibility of the courts of the State and other governmental authorities.

In the Autonomy Act of 1920 there was no list of matters regarding the Parliament's right to exercise legislative powers. On the other hand there was a list of matters that were to be regulated by State authorities. Thus the legislative powers of Åland were indirectly defined.

The Parliament of Åland could exercise legislative powers in i. a. the following matters:

Communal administration, maintenance of public order and security, building regulations and fire protection, social services, schools, health and medical services, road-construction, expropriation, lease of land, water-use, agriculture, hunting, fishing, and economic activity.

In some of the matters mentioned the legislative powers were divided between the Åland Parliament and the State authorities in the sense that the State authorities had the legislative powers regarding the principles of some items. Together with the mainly material division in the purpose to classify those matters that could be regulated through legislation there was a more formal division, the purpose of which was to give the authorities of the Republic the right, with some exceptions, to make norms belonging to civil law even regarding those matters that were in principle to be regulated by the Åland Parliament. Furthermore the State authorities had the legislative powers in matters that were not covered by legislation when the Autonomy Act came in force and in matters that were regulated by international treaties.

An Åland law, "*landskapslag*", did not come into force before the president of the Republic had been given an opportunity to check that the Parliament of Åland had not exceeded its powers of legislation.

The President was, after having called for the Supreme Court's opinion, entitled to declare a "*landskapslag*" invalid if it concerned questions covered by state legislative powers or if the law was contrary to the general interests of the Republic. The Presidential veto was an explicit manifestation of will which had to be announced within three months from the day the President was informed about the law. If there was no reaction from the President the law would come into force when three months had passed.

On the other hand the President was entitled to declare that he would not use his veto, in which case the law would come into force before the expiry of the three months period.

The administration was to be financed in the following way: Åland was entitled for its own requirements to use i. a. the revenues from the taxation of business and

entertainment. The Parliament had decisive power concerning such taxes. Furthermore the Parliament was entitled to impose supplementary income taxes and to apply temporary extra taxes. All other revenues went to the State. Åland was, however, entitled to grants from the State if the taxation for its own requirements proportionally was on a higher level than the average taxation in other parts of the country, provided that the benefits of the population of the Province were on the same level as in other parts of the country. The sum of the grant was to be fixed afterwards for three fiscal years at a time by the so-called Åland Delegation; of the seven members three were appointed by the Regional Parliament and three by the Finnish government. The State's Governor of Åland was chairman of the delegation.

Moreover, Åland was entitled to grants necessary to meet so-called extra-ordinary costs, i. e. major non-recurring expenditures. It was understood that the approval of extra-ordinary expenditures generally would take place in advance. The decision of the Åland Delegation did not come into force until it had been confirmed by the President of the Republic.

After the decision of the Council of the League of Nations and the signing of the Åland Agreement between Finland and Sweden, the Finnish Parliament adopted a law consisting of the guarantees for preserving the Swedish culture in Åland that were stipulated in the decision and the agreement. The law prescribed i. a.

1. that the State's Governor for Åland was to be nominated by the President of the Republic in agreement with the speaker of the Åland Parliament,
2. that all schools would give instruction in Swedish only,
3. that immigrants would not get the right to vote in communal and Parliament elections before they had lived five years in Åland,
4. that Åland had the right to use for its needs 50 percent of the land tax revenue in addition to other revenues mentioned in the Autonomy Law,
5. that real estate that was sold to a person living outside Åland could be bought by the regional or municipal authorities or by an individual Ålander,
6. that the Parliament had the right to make claims to the Council of the League of Nations in respect of the application of the law.

The Autonomy Act was completed in 1938 with a law concerning the procedure that was to be followed when real estate that had been sold to a non-Ålander was bought back by an Ålander.

3. The Autonomy Act of 1951 and laws connected to it

The Autonomy Act of 1920 had been drawn up in a hurry without using any models and without any analysis as to the practical possibilities of the realization of the law. It soon became evident that the vague expressions concerning the division of the legislative power between State and Regional authorities would cause differences of opinion. It also became evident that it was practically impossible to finance the Åland administration in accordance with the system of financing that was scheduled in the law.

Generally the President of the Republic settled the disputes concerning the interpretation of the rules of the Autonomy Act in accordance with the opinion of the

Supreme Court. (Almost from the beginning the President also called for the opinion of the Åland Delegation when checking Åland laws.)

The Supreme Court's comments on Åland laws reflected the general opinion at that time among legal scholars in Finland that it follows of the exceptional character of the autonomy that priority must be given to national legislation when there is uncertainty regarding the legislative powers. The Åland authorities did not approve of this opinion. They maintained on the contrary that in the case of uncertainty the interpretation of the Autonomy Act must be done in accordance with the purpose of the law and the purpose of the law was to give Åland a very far-reaching autonomy; besides Finnish governmental spokesmen had declared that there would be a broad-minded interpretation of the Autonomy Act.

Irrespective of which opinion one may have of the Supreme Court's methods of interpretation it is an indisputable fact that the autonomy as regards the legislation powers did not become as extensive as the Government of Finland initially had promised.

As to the costs of the Åland administration the discrepancy between theory and reality was still more obvious than was the case of the legislation powers. When drawing up the Autonomy Act, the general assumption was that the administration easily could be paid for with the income from taxation and from the other sources of income that had been reserved for the needs of Åland. Thus it was considered likely that taxation in Åland only occasionally would reach the level when governmental grants would be needed. However, it soon became obvious that the Regional sources of income were totally insufficient and that a considerable yearly deficit could not be avoided.

To avoid disproportional taxation the deficit from the very beginning had to be met with governmental grants.

The difficulties of interpretation and application mentioned above soon made the Åland authorities demand amendments of the Autonomy Act. The demands resulted 1938 in the first one of the lawdrafting committees, whose work would be the foundation of the Autonomy Act of 1951.

The Autonomy Act of 1951 is, with few exceptions, on the whole only a more detailed version of the Autonomy Act of 1920. Technically the foremost difference is that both the National and the Åland legislative powers are specified in the law and not just the National legislative powers as in the Autonomy Act of 1920.

Regarding the material contents of the Autonomy Act of 1951 it can well be stated that the legislative powers in general are divided in the same way as in the Autonomy Act of 1920, taking into consideration the practice that was established during the Twenties and the Thirties. Some vague expressions have been rejected. Spheres of activity not covered by legislation when the law came into force are no longer automatically to be considered as governmental responsibility. Instead there is to be a division of powers on the basis of the general principles followed when dividing the legislative competency between State and Åland authorities. International treaties concerning spheres of activity covered by the Åland legislative powers do not come into effect in Åland unless the Åland Parliament has approved the (national) law that renders the treaty effect in Finland. The President of the Republic is entitled to veto an Åland law only in two cases: when the law concerns matters covered

by national legislative powers and when the law relates to the internal or external security of the country;¹ thus the general interest of the Republic no longer can be a cause for vetoing an Åland law.

Of course, in many cases more clarity regarding the division of the legislative powers was achieved through the new law. Still there are grounds to some critical remarks. For instance the following factors cause difficulties when the law is applied.

1. There are no uniform principles in defining the matters that can be covered by legislation. In some cases there is an explicit reference to the respective phenomenon (real or imagined) occurring in daily life, in other cases the definitions are made by using concepts from legal theory and from legislation with no reference to daily life. Some of the concepts are used categorizing the rules of law to achieve a legal system and they have no practical significance except as means to determine the extension of the regional legislative powers.

2. The division of law in public law and civil law is still there.

3. The legislative powers regarding several extensive spheres of activity are divided in such a way that the powers belong to the Åland Parliament with the exception of a few specifically mentioned matters. This method of dividing the legislative competence derives from the mid-forties when the law was finally drawn up; then there was a wish to have all matters considered as being of special national interest to be covered by national legislative powers.

4. Especially matters covered by national legislative powers are described with great exactitude on the basis of the legislation in the country as it had developed in the mid-forties; this state of affairs has caused, besides difficulties in determining which the guiding principles are, difficulties also in applying the law when the conditions are changing.

As regards to meeting the costs of the Åland administration, the Autonomy Act of 1951 meant a total reorganization as compared with the earlier law. Through the new law the practice that had been established earlier was legalized. The essential features of the financing system are the following.

To avoid separate taxation caused by the discrepancy between income and expenditure, Åland is entitled to State allocations on a yearly basis. The sum of the allocation is fixed through the so-called fiscal adjustment, which is carried out by the Åland Delegation. However, not all kind of expenditure is taken into account at the adjustment. The following three conditions must be fulfilled before a cost is taken into consideration:

1. The item of expenditure must be referable to the Åland sector of administration.

1. The security of the country as a cause for vetoing a provincial law has been referred to only once – when it was considered that the proposed Åland flag resembled the Swedish flag too much. The right to a flag for Åland is acknowledged in the Autonomy Act of 1951.

2. The expenditure must serve a purpose that is in other parts of the country financially supported by the State.
3. The allocation must be proportional to the allocation elsewhere in the country.

The rules above are called the competency, the reciprocity and the proportionality principles. The rules are not strict; exceptions (from rules number 2 and 3) are allowed when called for by the special circumstances of the region.

At the fiscal adjustment income from Regional taxation (that covers less than 1 per cent of the budget) are being calculated on the basis of nationally established principles.

Advance payments of reasonable amounts of the State allocations are made annually.

The rules of the so-called Guarantee Law were embodied in the new Autonomy Act with one essential exception. Due to the dissolution of the League of Nations and for some other reasons there are no rules concerning rights to make complaints to international organizations to be found in the law. As a substitute for this weakening of the protection against denationalization a Regional citizenship was introduced. Ålan Regional citizenship can be acquired either by birth or by application to the Regional Government.

In the latter case the general precondition is that the applicant has been a resident of Åland for five years. Possession of Regional citizenship is a condition for the right to vote in municipal and Parliament elections for carrying on business in Åland² and (from 1975) for acquiring and leasing real estate in the Province. A person who does not possess Regional citizenship may on application be granted right to carry on business and to acquire or lease real estate by the Åland Government. A person who possesses Regional citizenship does not have to carry out military service, provided that he has not moved into Åland after reaching the age of twelve.³

As you can see the regional citizenship constitutes an improvement of the guarantees of the Åland Agreement and the Guarantee Law.

It has been said about the Autonomy Act of 1951 that it, as regards the legislative powers, makes the competency of the Åland Parliament wider than before. The statement is correct if you take into consideration only the way that the Autonomy Act was applied in practice by the national Authorities. On the other hand, if you attach importance to what was promised about application of the law of 1920, it seems fair to state that the law of 1951, by legalizing the practice that had been followed, in reality restricted the competence of the Åland Parliament and thus the Åland autonomy.

The solution of the financial questions means, of course, better security than the system that was scheduled in the law of 1920. It is for that reason undoubtedly from the financial point of view an improvement. On the other hand the strong ties to the national budget means less freedom of movement for the Åland authorities.

In connection with the Autonomy Act of 1951 a new law concerning the Ålanders' right to buy real estate that is sold to non-Ålanders was adopted. In 1975 the law was

2. A person who has been a resident of Åland for five years (without interruption) is also entitled to carry on business.

3. As regards military service generally the same rules have been valid since 1920.

substituted by a law that makes it impossible for persons who do not possess Regional citizenship to buy or lease real estate unless permission is granted by the Åland Government.

4. Plans of reforming the Åland autonomy legislation

Since 1972 the Åland authorities are working on a renewal of the autonomy legislation. The aim is to obtain a totally revised autonomy law. To the authorities it is of special importance to achieve more clarity as regards Åland's legislative and administrative powers. Also it is essential to find a financial system that offers better possibilities than the system now applied to take the special problems of Åland into account. At the time being it seems likely that the new system that will be proposed implies that revenue from taxation related to Åland after deduction of the costs caused by national administration in Åland will go to the Åland authorities to be used according to their own choice.