

Small Nations of the North in Constitutional and International Law

INGWAR ÅHREN

The Saami Parliament Sweden

In 1993 the International Year of the Indigenous Peoples proclaimed by UN was celebrated. The year was inaugurated in the UN building on 10 December 1993 by Secretary General Boutros Boutros-Ghali. In his speech he underlined particularly the collective rights of the indigenous people to their own country, a right to which special considerations must be taken by the individual nations where the indigenous peoples live.

The circumstance that the year of the indigenous peoples did not develop into the manifestation expected by many, in any case among the indigenous peoples, we must probably, at least to a major extent, blame those nations for where the indigenous peoples live. In many countries, the Year of the Indigenous Peoples was completely disregarded, a fact which was also noticed by the UN which has now proclaimed the Decade of the Indigenous Peoples.

Among the population groups in the Nordic countries the Saami have a special position due to their unquestionable status as indigenous people. The Saami have populated the Norden part of Scandinavia long before the present Nordic nations developed. The formation of the Saami society has however not resulted in the formation of a state in the traditional sense, which is a situation which the Saami share with other indigenous peoples. Characteristic of the Saami nation is that it permits definition based on cultural, linguistic and occupational strength and that the Saami nation has clearly defined geographical borders which do not need defending.

It may be possible to maintain, which many also do, that only those people which have or have had a state of their own can keep a nation going. In that perspective the Saami cannot be said to be a people since they never had a state of their own. However, considering the development which we have witnessed in Eastern Europe during the last few years and in Africa some decades ago, there are numerous examples to indicate that this approach can no longer be maintained. What many seem inclined to do is to equate the nation as a political and an administrative unit whereas they are not willing to

conceive the nation as a unit intended for a group of humans with a common language, a common culture and a joint area where to settle.

Before I go on I wish to comment a little on who he or she is who constitute together with others the Saami nation, that is to say, how to define who is a Saami. In most cases this question is not put, and in any case not by questioning the identity, since whoever is a Swedish citizen is defined as a Swede, and Norwegians or Finns are defined in a corresponding manner. But who is actually a Saami, because here one cannot just answer that a Saami is everybody who is "a citizen of Lapland".

It may be difficult but also simple, depending on the way in which one conceives the problem to define who is a Saami. It may be difficult and uncertain to define words and concepts which as such have a real import since the definition will, simply by being made, obtain somewhat of the character of prediction, even if the intent has not been to predict anything, still less to distinctly declare that this is the way it is. By making a definition you create a reality for the time to come. Examples of this can be had from the reindeer pasture law.

When the first reindeer pasture law was promulgated in 1886, whoever could invoke his Saami origin was a Saami. This definition has since remained in use in the subsequent laws of 1898, 1928 and 1971. As a consequence of this, only a person able to substantiate that his father or mother, or any of their parents, have pursued reindeer-keeping as his or her permanent occupation can be regarded to be a Saami, even if that definition has only applied to persons who hold or have held a reindeer-keeping licence.

This identification approach also characterised the 1913 nomad school statute which stipulated that the children of parents pursuing mountain reindeer keeping or assisting at such, were entitled to attend nomad school. The instruction thus was intended for those pursuing mountain reindeer keeping as a result of which the Forest Saami were excluded. Their children and those of other Saami were to receive instruction in the ordinary schools. It should be noted that the school was called nomad school which easily creates the impression that the school provided instruction for instance in the Saami language and in Saami history. That this was not the case only makes the question as to what the actual purpose of the school was, still more difficult to explain.

In the Saami Parliament Act adopted by the Swedish Parliament in December 1992 the Saami is defined as a person regarding himself/herself to be a Saami (subjective criterion) and in addition makes it plausible that he/she has or has had Saami as home language (objective criterion). The language requisite is also regarded as met if one can make it plausible that either of one's paternal or maternal grandparents have or have had Saami as their home

language. Thus, two ways of defining who is a Saami have been created – one pursuant to the reindeer pasture act and another pursuant to the Saami Parliament Act, something which may appear slightly puzzling.

From what is stipulated in the Saami Parliament Act as to who is a Saami one would be apt to believe that the number of Saami in Sweden would increase. However, this is probably not the case, because as long as neither the Saami as a people nor the language they speak are afforded an official recognition in the law, no mentionable changes have taken place since the approach is the same: Saami may be allowed to be Saami but only to a certain extent. Saami as a people with its right to a language of its own and with a right to land and water is something which is not to be allowed recognition in Swedish law. It is consequently the nation state of Sweden which draws the borderlines by its way of defining who is a Saami and in this way also decides what preconditions that shall apply.

We frequently read and hear about what is in general language called the “Saami problem” However, the problem itself is rarely explained or defined. Let us for this reason take the liberty to set out from the premise that it is a problem mainly to Sweden that they are Saami, because it can hardly be a problem to ourselves that we exist, that is, disregarding the problems ordinarily present in a society, for instance that not all of us have a job or sufficient education. The problem to Sweden that there are Saami is further emphasized by the laws and regulations instituted and to be instituted which do not set out from a recognition of the basic Saami rights but concentrate more on regulating the Saami activities. This ethnocentrism is also evident in the legislation, perhaps more yesterday than today.

What has not been understood or permitted to become prominent, either when the reindeer keeping act was instituted or now when the Sami Parliament Act was adopted was that the definition of the Saami must be basically combined with Sweden’s recognition of the Saami as a people. If this is not emphasized in the legislation the resulting acts will not be fully viable which also applies to resulting decisions which actually may be in contrast to generally accepted international concepts and opinions.

When the present Constitution Act was adopted the Parliament did *per se* recognize that there exists a Saami population group in Sweden and that it holds a special position in relation to other minorities. However, what is important to emphasize is the Saami status as a people, not only as minority.

In its capacity of an indigenous people *vis-à-vis* other groups enjoying protection by international public law, the Saami hold a special position. The Saami have lived in the northern parts of Scandinavia before these areas were populated by other groups and a long time before the Swedish nation state came into being. If still we are to apply the minority perspective it may be

said that the Saami in contrast to almost all other minority groups in Sweden, cannot rely on any support of its culture and its language from any other country where, as a population group, one constitutes the majority of the population or has a stable cultural and linguistic foundation.

Ever since the Saami took the first initiatives in the beginning of the century in order to organise themselves they have strived for obtaining an influence over their own lives, since it has been the state and its authorities which have taken the decision and regulated the Saami society. The Parliament decision on 15 December 1992 to institute a Saami popularly elected institution in Sweden may therefore be regarded as a milestone in the Saami endeavours to achieve selfdetermination.

The first elections for the Saami Parliament were held in 1993 on the election day which is 25 May. On 26 August, the Saami Parliament was inaugurated by His Majesty the King. The elections for the Saami Parliament are held every fourth year.

The motives behind the instituting of the Saami Parliament can be said to be the following:

- International public law supports the Saami striving to themselves decide their cultural but also to a certain extent their economic and commercial development. This requires a certain degree of autonomy.
- For this reason the Saami need a representative popularly elected institution of public-law status. This implies a recognition of the Saami status as a people of its own.
- The safeguarding of the Saami right to land and water requires a special organ capable of contributing to community planning and empowered to ensure that Saami interests are respected.
- A popularly elected institution contributes to increase identity and feeling of togetherness among the Saami.

The Saami Parliament is an independent popularly elected organ. Its basic task is to act in the interest of a living Saami culture. In this context, culture is to be seen in a wider perspective and therefore also comprises the Saami economy and commerce. This means that the Saami Parliament shall also take part in the community planning.

The Saami Parliament is free to discuss and to present propositions on all the different issues which the Parliament may find to be of special interest for the maintaining of a living Saami culture.

The Saami Parliament is also a state administration authority but in consideration of the purpose of this authority considerable liberty has been granted the Saami Parliament when it comes to developing its own working methods and procedures.

The Saami Parliament shall

- decide on the allocation of state contributions and means out of the Saami Fund to Saami culture and Saami organisations and also of other means put at the joint disposal of the Saami
- appoint the Board of the Saami School
- head the Saami language-work
- contribute to community planning and
- inform on Saami circumstances and conditions.

In addition to this the Saami Parliament is authorised to appoint the committees required for preparing of different matters, administration and carrying into effect.

I wish to bring to attention, however – even if the institution of the Saami Parliament as such was something positive and a step in the right direction – that there were demands on the part of us Saami which were not met. The Saami Law Committee, which was the Government Committee in preparation of the Government Bill, presented a recommendation that it be entered in the Constitution that the Saami hold a special position in this country in their capacity of indigenous people. This, the Government and Parliament were not willing to accept and confirm. For this reason, I also wish to remind of the fact that it is a ruling in the Norwegian Constitution that the Saami are an ethnic group – a people of its own – with settlement traditions in that country before the Norwegian state was founded.

I now ask the Swedish Government to again reveal its attitude. Will all this end with constitutional protection being granted the reindeer and the source livelihood it represents but not the Saami as a people? The Parliament will take a decision to institute constitutional protection of reindeer-keeping when the bill comes up for decision in the Parliament for the second time during the year, possibly already this autumn.

However, what we Saami were most dissatisfied with was the confiscation of Saami hunting and fishing rights. Indeed the Swedish Parliament decided to open up the mountain areas allowing greater potential for hunting small game, such as grouse, without the Saami having any influence on the system or being able to determine where hunting should take place and when. The bill states that all traditional Saami hunting grounds should be more or less open to all Swedish citizens.

The decision has also attracted strong criticism from conservation authorities and organisations. Saami organisations were virtually excluded from the process that led to the decision, and their views were completely ignored. Hunting interests were, on the other hand, well prepared and heavily involved in preliminary work on the issue. The Saami Parliament stated unanimously that Sweden is attempting to nationalise private Saami hunting grounds and fishing rights by means of administrative measures.

I frequently hear that we Saami are so few and that for this reason it cannot be reasonable to grant us too extensive powers and that our rights cannot be allowed to be too extensive either. Thus, it is seriously contended that it is the number of Saami which is decisive and not that we, as a people, have fundamental rights. It is also contended in earnest that our right has been granted us by the state – not that it is deriving from time immemorial and ancient custom – which makes it possible to also restrict our right to utilise land and water for our sustenance, even deprive us of it.

This is wrong. The rights of the Saami and other indigenous people have not been granted us by the dominating societies in which we live, but our rights emanate from us as a people and from the community in which we live. One can consequently not deprive us of our rights, nor restrict them.

It is therefore not possible for the Parliament according to its own decision, to deprive us of our hunting rights and transfer them to others. What is maintained is that the state is the land-owner and also in consequence thereof, or on other grounds, the holder of the hunting and fishing rights. This is the state's own interpretation of the legal relationships which derive from earlier ways of conceiving the Saami rights to reindeer pasture, hunting and fishing as rights granted them by the state. This attitude emanates from the opinion that our right is a privilege, "the Saami privilege". This must be contested since it belongs to past times.

To wind up, I would like to say that the last decade has been an important one for the Saami. Norway and Sweden have established democratically and popularly elected Saami bodies and altered significant aspects of government Saami policy as a result of extensive work carried out by the Saami rights commissions in both these countries.

In Finland there are proposals to bring the Saami Parliament more in line with those in Sweden and Norway. Results of new research in the legal field have strengthened the position of the Saami.

International work is also starting to pay off with the Nordic states being forced to act and make up their minds on issues concerning their own indigenous peoples as well as other indigenous peoples around the world.

I would also like to highlight the situation of the Russian Saami, where the dissolution of the Soviet Union has had a profound effect on the Saami of the Kola Peninsula. The question of indigenous land rights in Russia is of great importance to many of the indigenous peoples of Russia including the Saami people.

Finally, I would like to emphasise that the foundation stone for a new line in Saami politics in the Nordic states is the recognition of the Saami as a people.

This may lead up to a situation where we have a joint Saami Parliament for the Saami in Sweden, Norway, Finland and Russia. Such a development must however be conceived as a process and less as an objective aiming at achieving something which is common to all Saami.