The Sami People’s Right to Land in Norway

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Introductory note: This Journal presented in 2001 (Vol. 8, Issue 2–3) several articles on the Sami claim to land in Norway. In the spring of 2003 the Norwegian government proposed a new Finnmark Act (Proposition to the Odelsting No. 53 (2002–2003)), whereby the disputed area should be placed under a new legal entity, the Finnmark Estate (Finnmarkseiendommen). The Finnmark Estate should have a board consisting of seven members, where the Finnmark County Council and the Sami Parliament each should elect three members, and one non-voting member should be appointed by the government. The Norwegian Parliament (Stortinget) requested an expert opinion on the international law aspects of the Act. Hans Petter Graver and Geir Ulfstein were appointed by the Ministry of Justice to undertake this task, and the opinion is reproduced here in the translation provided by the Ministry (only subject to editorial adjustments). The government has since stated that it does not concur with all conclusions in the opinion, but it has indicated a willingness to consider supplemental measures to those proposed in the Act.

1. Introduction

By letter of 19 June 2003 the Norwegian Parliament’s Standing Committee on Justice asked the Ministry of Justice to “obtain an expert, independent international-law assessment of the Bill proposing a new Finnmark Act”, i.e. Proposition to the Odelsting no. 53 for 2002–2003 entitled an Act relating to legal relations and management of land and natural resources in the county of Finnmark (Finnmark Act). The undersigned were commissioned to produce the present study by letter from the ministry of 24 July 2003.

The ministry established the following terms of reference:

“The key international-law sources are ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries and article 27 of the International Covenant on Civil and Political Rights, 1966. While the assignment is not confined to assessing the law proposal in relation to these sources, it does not take in the EEA agreement. The Standing Committee on Justice has raised this question as a separate issue which will be dealt with elsewhere. Our understanding of the Standing Committee’s request is that it is the Bill itself and not

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the process up to the introduction of the Bill in the Norwegian Parliament that
the Standing Committee on Justice wishes to have evaluated in relation to inter-
national law. What significance the Sami Parliament’s position on the law pro-
posal may have for the international-law assessment, however, is within the scope
of the assignment."

The question of the relationship between the law proposal and international law
can be examined from two vantage points. First, it may be queried whether the
State will violate Sami rights anchored in international law by implementing the
Bill. Second, it may be queried whether the Bill is sufficient to fulfil obligations
resting on the State to grant the Sami people rights to land and natural resources.
We interpret our terms of reference such that the latter issue is the relevant one.
The Finnmark Bill is worded in such a way that it is difficult to conceive of it
as representing any independent violation of rights held by the Sami people. We
refer here above all to Section 5 of the Bill dealing with existing rights. To the
extent that the Bill grants discretionary powers to the Finnmark Estate, the pos-
sibility that the act could be applied in such a way that rights based in interna-
tional law will be violated cannot of course be excluded. The very existence of
such a possibility could in itself provide a basis for asserting that the Bill does
not live up to the obligation that the state has taken upon itself to grant rights to
the Sami people.

In the following we assess the State’s obligations under international law to
grant the Sami people rights to land and natural resources, and we assess the Bill
in relation to these obligations. The obligations rest on treaties, central ones being
the International Covenant on Civil and Political Rights and ILO Convention No.
169 concerning Indigenous and Tribal Peoples in Independent Countries. Under
the International Covenant on Civil and Political Rights we consider the relation-
ship to Article 1 on self-determination and Article 27 on minority rights. Under
the ILO Convention we deal with the provisions on land rights in Article 14
paragraph 1 first and second sentence and on rights to natural resources in Article
15. We also consider what scope is given by Article 34 to depart from the oblig-
ations set forth in Articles 14 and 15 and to what degree approval from the Sami
Parliament can serve as a basis for departing from the Convention. By way of
conclusion we briefly consider the relationship to the United Nations Racial
Discrimination Convention. We also consider the relationship to Article 1 of the
supplementary protocol of 20 March 1952 to the European Convention on
Human Rights.

Human rights conventions must be interpreted on the basis of the general prin-
ciples of interpretation of treaties as set out in the Vienna Convention on the Law
of Treaties of 1969, Articles 31 and 33.1 Since the primary aim of human rights
conventions is to protect individuals, not to regulate the legal relationship
between States, special considerations act with a view to making such protection

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1 See E. Møse, Menneskerettigheter ['Human Rights'] (Cappelen Akademisk Forlag, Oslo, 2002)
p. 103.