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**THE WAYS SÁMI PEOPLE IN FINLAND CAN INFLUENCE  
THE DECISION-MAKING PROCESS: IN CONTEXT OF  
CLIMATE CHANGE AND ENVIRONMENTAL LAW**

Bachelor's thesis

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I hereby declare that I have compiled the thesis independently and all works, important standpoints and data by other authors have been properly referenced and the same paper has not been previously presented for grading. The document length is 9869 words from the introduction to the end of conclusion.

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## **ABSTRACT**

Living inside the European Union, the only indigenous peoples are the Sámi people. They live in northern parts of Europe dividing into four different countries, Norway, Sweden, Finland and Russia. This thesis's topicality comes from climate change, which affects all of us worldwide and requires urgent actions. Changing environment, losses of natural resources, and all other severe impacts it causes bring new threats to the Sámi people's whole existence.

Since the Sámi people live in the northern parts of Europe, their living area is in the most vulnerable position considering climate change. Despite this, they do not have the proper tools to directly influence environmental decision-making processes at the national and European Union levels.

The research questions are to analyse the extent of Sámi people's influence rights emerging from international human rights conventions and the constitution of Finland; in the context of climate change and environmental law. In addition, the thesis aims to analyse what potential proposals of development there could be regarding the topic. The thesis hypothesises that the Sámi people have weak possibilities to influence any environmental affair considering them since the lack of a direct influence right guaranteed in the international and domestic law. Qualitative methods are used in the thesis. The research is based on the Finnish constitution, European Union legislation, relevant international conventions and treaties, academic literature and relevant research papers.

As a result, academic sources show that domestic law and many international conventions secure a broad range of the Sámi people's fundamental rights in Finland and European Union. However, the legislation still lacks perfect and direct participation and influence rights in the decision-making process of the Sámi people.

Keywords: Indigenous people of Sámi, the Finnish constitution, the European Union, climate change

## **LIST OF ABBREVIATIONS**

EU	The European Union
FPIC	The Free Prior and Informed Consent
HRC	Human Rights Committee
ICCPR	The International Convention on Civil and Political Rights
ICESCR	The International Covenant on Economic, Social and Cultural Rights
ILO	International Labour Organization
IPCC	International Panel of Climate Change
MS	Member State of the European Union
SPC	The Sámi Parliamentary Council
TFEU	The Treaty on Functioning of the European Union
TEU	The Treaty on European Union
UDHR	The Universal Declaration of Human Rights
UN	The United Nations
UNDRID	The United Nations' Declaration on the Rights of Indigenous Peoples

# INTRODUCTION

The indigenous peoples are the richness of the world, and at the same time, they are the minority. Ironically, even they are the minority group of the world, they are usually the first to face the consequences of the majority's actions. Especially in the Nordic areas, the indigenous people are in the frontline to face severe consequences of climate change and global warming. Biodiversity loss, melting icebergs, water level rise, and rising temperature all affect the environment and natural recourses, which act as living conditions for the indigenous peoples. All their livelihoods, traditions and cultures, including languages, are at significant threat of extinction and should always be considered in the light of decision-making. Therefore, this thesis analyses topical and urgent legal matter.

The European Union (EU) is perceived as a global leader and the trendsetter in the fight against climate change. It has many directives and regulations that provide a framework for states to prevent global warming, and the "Seventh Environment Action Programme" is considered the most critical EU policy in environmental law till the year 2020.<sup>1</sup> The EU has ratified many international conventions to combat climate change, such as the United Nations Framework Convention on Climate Change and the Paris Agreement.

Every citizen of a state should be able to influence decision making in all matters that consider their lives somehow. The Universal Declaration of Human Rights (UDHR), conducted by the United Nations General Assembly, provide bases on such right for every citizen of a country. Article 21 of the declaration provides that the country shall ensure everyone's right to participate in governance either directly or by a freely chosen representative.<sup>2</sup> In Finland, 200 congressmen are elected every fourth year by direct elections. In the European Union, this right is ensured by having every Member State represented in the European Parliament. The representative is chosen by the electives in each Member State (MS) every fifth year. The European Parliament accepts or declines new proposals of the legislation and is, therefore, one of the leading bodies in the light of the decision-making process.<sup>3</sup>

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<sup>1</sup> Batricevic, A. (2018). *European Union Law and the Challenges of Climate Changes*. Collection of Papers, Faculty of Law, Nis, 79, 275-296. 282.

<sup>2</sup> United Nations. (1998). *The Universal Declaration of Human Rights, 1948-1998*. New York: United Nations Dept. of Public Information. Art 21. Retrieved from: [https://www.un.org/en/udhrbook/pdf/udhr\\_booklet\\_en\\_web.pdf](https://www.un.org/en/udhrbook/pdf/udhr_booklet_en_web.pdf)

<sup>3</sup> *About Parliament, Legislative Powers*, Official website of the European Parliament. Retrieved from: <https://www.europarl.europa.eu/about-parliament/en/powers-and-procedures/legislative-powers>

This Bachelor's thesis aims to analyse the ways to influence environmental decision-making at the Finnish and European Union level from the perspective of the European Union's only officially recognised indigenous people – the Sámi people. The research questions are to analyse the extent of the influence rights of the Sámi people emerging from international human rights conventions and the Finnish constitution in light of environmental law and climate change. In addition, the thesis aims to determine the extent to which the EU and Finland prevent the whole exercise of Sámi people's influence rights as guaranteed in international and domestic law since their weak possibilities to influence the decision-making directly. Besides, this thesis introduces a couple of possible models for improving their rights to influence in all environmental matters. The thesis will focus on the indigenous people of Sámi who lives in the area of Finland.

This thesis hypothesises that the Finnish Sámi people's rights to influence decision-making considering environmental law and climate change are prevented and impeded both at the national and the EU levels. That assumption is because of the lack of legislation that enables the direct possibility to influence decision-making process. Even many international and national section of law provides possibilities to consult with legislators, the direct tool to influence is lacking and is not guaranteed by the international or domestic law. Therefore, the Sámi people have only weak opportunities to participate and influence such processes, and their rights are seen only merely as formal rights without discernible effect.

Firstly, I will introduce more precisely the Sámi people and the Sápmi regime as well as their ways of livelihoods and culture. In addition, I will briefly introduce climate change in the Arctic and determine the impacts of climate change on the Sápmi regime and the Sámi people. In the following part, I will examine the Sámi people's ways to influence environmental decision-making at the Finnish national and the EU level. Besides, I will introduce some improvement proposals to obtain decision-making more equal and provide more effective and direct ways for the Sámi people to influence. The last chapter is for the conclusion and determining either the hypothesis was right or wrong.

# 1. THE INDIGENOUS PEOPLE OF SÁMI AND THE SÁPMI REGIME

There is no universal definition for the world's indigenous peoples, which makes the term very hard to define *per se*. However, the United Nations (UN) has created some characteristics for understanding indigenous people's term, and an American lawyer and a Special Rapporteur of the UN, S. James Anaya, summarises this thought very well. He summarises indigenous peoples as people with ancestral roots way more profound and robust than other people living in the same area. The area means a place where indigenous peoples have or would have wanted to live a very long time. Also, they have very close communities with existence and identity that link them strictly to those specific communities, tribes, and ancestor pasts. Besides S. James Anaya's definition, there are also some other definitions by different instruments, *inter alia* the World Bank. Nonetheless, despite the lack of a universal definition, many intergovernmental and non-governmental organisations have taken into discussion and practise the term "indigenous peoples" in the light of international human rights.<sup>4</sup>

Living inside the area of the European Union, the only indigenous people are the Sámi. There are an estimated 80,000 Sámi people in the world. As states borders established, they divided into northern parts of four different countries Norway, Sweden, Finland and Russia's Kola peninsula. Approximately 50,000 Sámi people live in Norway, 20,000 in Sweden, 8,000 in Finland, and 2,000 in Russia.<sup>5</sup> Together, those countries create the so-called Sápmi regime, "the land of the Saami".<sup>6</sup> Sápmi regime unites all these lands and peoples together with a similar culture, way of life, habits, and languages.

One interpretation of the Sámi people is in the Saami council's Tråante Declaration of Sámi people from 2017: "The Sami are independent people, like other people, we have the right to our lives

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<sup>4</sup> Sanders, D. (1999). Indigenous peoples: Issues of definition. *International Journal of Cultural Property*, 8(1), 4-13, 11.

<sup>5</sup> *Sami in Sweden*, an official website for facts about Sweden. Swedish Institute, Retrieved from: <https://sweden.se/society/sami-in-sweden/#>

<sup>6</sup> Jaakkola, J. J., Juntunen, S., & Näkkäläjärvi, K. (2018). *The holistic effects of climate change on the culture, well-being, and health of the Saami, the only indigenous people in the European Union*. *Current environmental health reports*, 5(4), 401-417. 402.



and to decide on matters concerning us. The basis for Sami life in Sápmi, the legacy of our mother the Sun and our father the Earth... The Sami language – the golden language – carries and consolidates our connection to our land and our people... The prerequisite for our society and our life to survive and develop is management based on our needs and values.”<sup>7</sup>

As in many cases of indigenous peoples, also the Sámi people have experienced rough assimilation. Schools and churches<sup>8</sup>, *inter alia*, were powerful instruments in the light of assimilation, leading their Sámi language and culture in a challenging position. Only after the 1960s, the situation started to change, and the recognition of the Sámi people as indigenous people and their right to self-determination begun to form.

Since Sámi people live in different countries and do not create an independent state itself, every nation’s convention has its way of recognising the Sámi people and their rights. The Finnish constitution (Suomen perustuslaki 11.6.1999/731) Chapter 2 § 17, for instance, recognises the Sámi people’s right to develop and maintain their own culture and language.<sup>9</sup> The definition of “culture” recognises reindeer husbandry, fishing and hunting as traditional sources of livelihoods of Sámi people. Administratively, the cultural form of Sámi people includes the Sámi language, culture and art together with traditional livelihoods.<sup>10</sup> According to the constitution, the state is obliged to secure and promote those rights’ full implementation.

Nowadays, roughly about ten per cent of the Sámi people practise reindeer herding as a source of income.<sup>11</sup> Nevertheless, reindeer herding, fishing and hunting act as significant parts of the Sámi people’s cultural existence. The Sámi people have a very close connection to the environment, and consequently, natural resources and the environment are vital elements in the light of their livelihoods.

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<sup>7</sup> Sámiráddi. (2017). *Tråante Declaration*. The 21. Saami conference. Tråante (Trondheim). Retrieved from: [https://static1.squarespace.com/static/5dfb35a66f00d54ab0729b75/t/5e722293aee185235a084d70/1584538266490/TRÅANTE\\_DECLARATION\\_english.pdf](https://static1.squarespace.com/static/5dfb35a66f00d54ab0729b75/t/5e722293aee185235a084d70/1584538266490/TRÅANTE_DECLARATION_english.pdf)

<sup>8</sup> Griбанова, G., & Nevzorov, M. (2017). Virtual Ethnic Communities as Political Actors–The Case of Sami People. In IMSCI 2017-11th International Multi-Conference on Society, Cybernetics and Informatics, Proceedings (pp. 77-82). 78.

<sup>9</sup> Suomen perustuslaki 11.6.1999/731, Art, 17.

<sup>10</sup> Näkkäläjärvi, K., Juntunen, S., & Jaakkola, J. J. (2020). *SAAMI–Saamelaisten sopeutuminen ilmastonmuutokseen-hankkeen tieteellinen loppuraportti*. Prime Minister’s Office. p. 24. Retrieved from: [https://julkaisut.valtioneuvosto.fi/bitstream/handle/10024/162205/VNTEAS\\_2020\\_25.pdf?sequence=1&isAllowed=y](https://julkaisut.valtioneuvosto.fi/bitstream/handle/10024/162205/VNTEAS_2020_25.pdf?sequence=1&isAllowed=y)

<sup>11</sup> Pearl, M. (2018). Human rights, indigenous peoples, and the global climate crisis. *Wake Forest Law Review*, 53(4), 713-738. 716.

## 1.2. Climate Change in the Arctic

Climate change is a global issue and affects everyone all over the world. Briefly, climate change means that carbon dioxide (CO<sub>2</sub>) emissions are released into the atmosphere, depleting the ozone layer, hence raising the temperature globally. In light of climate change, the Arctic area is the first one to face the consequences. The permafrost has decreased significantly, and icebergs are melting faster than ever, substantially rising sea level. Besides, many lakes in the Arctic area are under the threat of vanishing because of the warming temperature.<sup>12</sup>

In addition to these environmental changes, climate change also creates social impacts such as hunting culture losses.<sup>13</sup> According to the Intergovernmental Panel on Climate Change's (IPCC) report of climate change from 2019, global warming is two to three times higher in the Arctic than elsewhere.<sup>14</sup> Besides, in the central Arctic, the ice thickness has decreased by about 50% already.<sup>15</sup> Therefore, the Arctic is one of the most vulnerable regions in the world.

### 1.2.1. Impacts on Sámi people

The Sámi people live in the northern parts of the world, and their livelihood and ways of lives depend on the environment and strictly links to natural, renewable resources such as snow and ice.<sup>16</sup> For instance, reindeer herding, hunting and fishing depend on the environment's well-being and natural resources. Consequently, the Sámi people's livelihoods respect and keep the nature and environment an excellent value creating a very sustainable way of life. It is a little ironic that while the Sámi people contribute emissions and greenhouse gases very little compared to the rest of the world, they are the unfortunate ones first to face the consequences of a warming climate.

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<sup>12</sup> Archer, D. (2013). *Impacts of Climate Change. The Climate Crisis: An Introductory Guide to Climate Change*, Cambridge university press., 151-190. 167.

<sup>13</sup> Atapattu, S. (2013). *Climate Change, Indigenous Peoples and the Arctic: The Changing Horizon of International Law. Mich. St. Int'l L. Rev.*, 22, 377-408. 380.

<sup>14</sup> IPCC. (2019). *Global Warming of 1.5°C. An IPCC Special Report on the impacts of global warming of 1.5°C above pre-industrial levels and related global greenhouse gas emission pathways, in the context of strengthening the global response to the threat of climate change*, In V. Masson-Delmotte., P. Zhai, H.-O. Pörtner, D. Roberts, J. Skea, P. R. Shukla, . . . Gom (Ed.). (p. 601). Intergovernmental Panel on Climate Change. p. 4.

<sup>15</sup> *Ibid.*, 205.

<sup>16</sup> Keskitalo, A. (2017). *Shaping the arctic: The sami people and parliament*. Fletcher Forum of World Affairs, 41(1), 151-[ii]. 151.

Since the first and most significant impacts of a warming climate are seen in the world's Arctic areas, the indigenous people of Sámi are the first ones to face the consequences of a warming climate and changing environment. Therefore, it can be said that the Sámi people operate as the first human indicator of the effects of a warming climate and environmental changes.<sup>17</sup> Climate change, industry in the Arctic and biodiversity loss affects Sámi people's possibilities to exercise their rights and livelihoods. Comparing to the pre-industrial time, the temperature has increased 2-3 Celsius in the Sápmi regime.<sup>18</sup>

The most significant and visible impact of climate change in Arctic areas is the snow cover change.<sup>19</sup> Reindeer herding depends on the environment, and winter's snow cover is an essential part of the reindeer's lives in order to keep them alive. Consequently, climate change significantly affects this livelihood and reindeers' health; winters with lower snow cover prevent reindeers' possibilities of finding food under the ice layer and affecting the whole economy. Besides, melting ice raises the sea level reducing land. That creates competitions in land use and limits possibilities for the Sámi people to maintain their traditional livelihoods. Due to the warmer autumns, the reindeer separations are delayed.<sup>20</sup> That increases the number of mental health problems and stress levels for the Sámi people.

Therefore, climate change affects both to the mental health and well-being of the indigenous people of the Sámi and their culture and cultural heritage. Reindeer herding is one of the most famous Sámi peoples' livelihoods, and the roots come from far from their ancestors. Increased stress and worry for their income and the reindeers' well-being are visible impacts of climate change and shows the importance of their possibilities to influence decision-making processes.

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<sup>17</sup> Jaakkola, Juntune, Näkkäljärvi. (2018), *supra nota* 8, 401.

<sup>18</sup> Näkkäljärvi, Juntunen, Jaakkola. (2020), *supra nota* 9, 282.

<sup>19</sup> Jaakkola, Juntune, Näkkäljärvi. (2018), *supra nota* 8, 406.

<sup>20</sup> Näkkäljärvi, Juntunen, Jaakkola. (2020), *supra nota* 9, 271.

## 2. WAYS TO INFLUENCE TO THE ENVIRONMENTAL DECISION MAKING

In most cases, the indigenous people are the minority group in the State, and therefore they are in need of an extra protection to have their rights guaranteed. This “positive discrimination”<sup>21</sup> is seen, for instance, in the European Convention on Human rights (ECHR), the United Nations Declaration on the Rights of Indigenous People (UNDRIP), the International Convention on Civil and Political Rights (ICCPR) and International Labour Organization (ILO) No. 169 Convention – all of them cover fundamental rights for every human being, including indigenous people of Sámi. This list also includes the draft of the Nordic Saami convention. If the Saami Convention was implemented and ratified by the governments in concerned, the Sámi people's rights would be secured extensively. However, no any of the countries, Norway, Sweden or Finland, have ratified the Convention. In addition to these international conventions and agreements, domestic laws and constitutions secure their rights and implement them in their legislations.

Self-determination, the Sámi Parliaments and the Council, the European Union and the European Parliament all enable ways for the Sámi people to influence the environmental decision-making both at the national and at the European Union level. In the following chapter, I will introduce those instruments more precisely.

### 2.1. Self-determination

Self-determination is one of the main characters of a democratic society and part of human rights. In addition, every independent state should have self-determination against other states. Moreover, some peoples inside the state also have self-determination and, therefore, the right to determine their political status and develop and create their own social and economic beings freely.<sup>22</sup> For the

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<sup>21</sup> Kokko, K. T., Aikio, A., Brax, T., Hyvärinen, H., Joona, T., Karhu, J., . . . Torp, E. (2010). *Kysymyksiä saamelaisten oikeusasemasta*. Rovaniemi: University of Lapland. 1-270. 7.

<sup>22</sup> Guttorm, J. (2018). *Saamelaisten itsehallinto Suomessa-dynaaminen vai staattinen?: tutkimus perustuslaissa turvatun saamelaisten itsehallinnon kehittymisestä lainsäädännössä vuosina 1996–2015*. Rovaniemi. University of Lapland., 1-402. 1.

Sámi people, the first big meeting considering self-determination happened on the 6th of February in 1917 in Norway.<sup>23</sup> In 1971 in Sweden, the Sámi conference was held, and the Sámi people declared for the first time to be one united people among other peoples<sup>24</sup> having the right to develop and maintain their language and culture. That was the beginning for fully functioning self-determination.

The self-determination of the Sámi people is recognised in states' constitutions and by many international legislative instruments. Finland has ratified and agreed on many international conventions and treaties, as seen in the subsequent chapter. Due to these international instruments, Finnish legislation is obliged to promote indigenous peoples' right to self-determination in the ways listed in those conventions.

### **2.1.1. International instruments**

The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) recognises the urgent need to protect the world's indigenous peoples and promote their livelihoods and political statutes.<sup>25</sup> UNDRIP Article 3 provides self-determination for all indigenous peoples and the possibility to freely determine their political statutes and pursue their cultural, social and economic development.<sup>26</sup> In addition, Article 4 of the declaration allows them to have the right to autonomy or self-government in all matters related to their internal or local affairs.<sup>27</sup> Article 5, on the other hand, provides the right to fully participate in the state's "political, economic, social and cultural life".<sup>28</sup> Therefore, the UNDRIP provides extensive rights for the indigenous peoples to participate in the state's political affairs and accordingly influence the decision-making in matters considering them.

The United Nations has also recognised indigenous peoples' self-determination in two other multilateral treaties; The International Covenant on Civil and Political Rights (ICCPR) and The

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<sup>23</sup> *Ibid.*,

<sup>24</sup> *Ibid.*, 2.

<sup>25</sup> Assembly, U. G. (2007). *United Nations declaration on the rights of indigenous peoples*. *UN Wash*, 12, 1-18. Retrieved from: <https://wauabrafoundation.org.au/wp-content/uploads/2014/06/United-Nations-Declaration-on-the-Rights-of-Indigenous-Peoples.pdf>

<sup>26</sup> *Ibid.*, Art 3.

<sup>27</sup> *Ibid.*, Art 4.

<sup>28</sup> *Ibid.*, Art 5.

International Covenant on Economic, Social and Cultural Rights (ICESCR).<sup>29</sup> Both conventions provide self-determination for all peoples in articles 1.

The Human Rights Committee (HRC) also recognises effective participation inside the self-determination. The Committee has highlighted the importance of the ICCPR article 27 in the case of *Ominayak (Lubicon Lake Band v. Canada No. 167/1984)*.<sup>30</sup> The Committee argues that the indigenous peoples have the right to enjoy those positive legal measures of protection, including the right to positive measures that promote effective participation in decision-making processes for all the members of those minority communities.<sup>31</sup> Furthermore, HRC argues that the ICCPR article 27 should be interpreted so that the host state is obliged to secure and promote effective participation in decision-making processes that affect that specific minority community.<sup>32</sup> This case law interpreting promotes the Sámi people's opportunities to influence better in environmental decision-making. Hence, Finland is obliged to guarantee those measures of protection in domestic law and consequently secure and promote this effective participation right considering environmental decision-making processes.

The International Labor Organization's (ILO) "Indigenous and Tribal Peoples Convention" No. 169 was concluded in 1989. The convention is created for the indigenous and tribal peoples living in an independent state's territory.<sup>33</sup> Besides, the Convention is the world's only international instrument that concerns only indigenous peoples and their rights.<sup>34</sup> In addition, the Convention is the first one to recognise the rights of indigenous peoples as "peoples" and not only individuals who are part of the indigenous peoples concerned.<sup>35</sup> Therefore it is needless to say that the Convention is a crucial instrument in the light of the Sámi people's rights. The Convention aims to protect and provide tools of protection for indigenous and tribal peoples by their home-states.

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<sup>29</sup> Guttorm, J. (2018). *supra nota 12*, 45.

<sup>30</sup> *Lubicon Lake Band v. Canada, Communication.*, No. 167/1984 (1990). Retrieved from: <http://hrlibrary.umn.edu/undocs/session45/167-1984.htm>

<sup>31</sup> Wold, C. (2017). *Integrating indigenous rights into multilateral environmental agreements: The international whaling commission and aboriginal subsistence whaling*. Boston College International and Comparative Law Review, 40(1), 63-114. 90.

<sup>32</sup> Ward, T. (2011). *The right to free, prior, and informed consent: Indigenous peoples' participation rights within international law*. Northwestern University Journal of International Human Rights, 10(2), 54-84. 56.

<sup>33</sup> Anaya, J. (2005). *Indigenous peoples' participatory rights in relation to decisions about natural resource extraction: The more fundamental issue of what rights indigenous peoples have in lands and resources*. Arizona Journal of International and Comparative Law, 22(1), 7-18. 9.

<sup>34</sup> *Ibid.*,

<sup>35</sup> Anaya, S. (2013). *The human rights of indigenous peoples: United nations developments*. University of Hawai'i Law Review, 35(2), 983-1012., 1004.

Even this Convention does not mention or include the self-determination itself; it is still to be interpreted in a way that it does not prevent its being in any form.<sup>36</sup> Article 6 of the ILO Convention No. 169 provides free participation and consultation on indigenous peoples in all legislative or administrative measures that affect them directly.<sup>37</sup> That is an essential article in light of participation or influence rights. Since the changing environment crucially impacts Sámi people, they should influence all decisions considering environmental law and climate change. Therefore, the end of the sentence "...that affect them directly" concludes that the ILO No. 169 Convention should provide Sámi people tools and rights to participate and influence all matters considering the environmental law and climate change.

However, the convention's ratification is not mandatory for states which makes it very vulnerable. Inside the Sápmi regime, only Norway has ratified the ILO No. 169 Convention in 1991,<sup>38</sup> while Finland, Sweden, and Russia have still not done it. The ratification has not happened even despite several Sámi people's attempts. In Finland, the process of ratification has been numerous times in front of the government without any result.

ILO No. 169 Convention has two parts considering land rights. Article 14 of the Convention provides land rights for the indigenous people concerned. Besides, the article provides states with an obligation to take sufficient measures to safeguard the people concerned about using such lands where they have traditionally have access for their subsistence and traditional activities.<sup>39</sup> These land rights *inter alia* have been the most common reasons for Finland not to ratify the Convention. Consequently, in the early 2000s, this particular question of land rights was the most significant reason in Finland not to ratify the Convention.

The latest interrupt happened in 2015 when the Finnish government could not decide the sufficient definition for the Sámi people.<sup>40</sup> Due to the Convention's ratification, Finland must recognise the Sámi people's right to own the land under certain conditions, and by not having a clear definition of the Sámi people, the determination of land rights was not applicable. The Sámi Parliament had

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<sup>36</sup> Guttorm, J. (2018). *supra nota 12*, 47.

<sup>37</sup> International Labour Organization (ILO), *Indigenous and Tribal Peoples Convention, C169*, 27 June 1989, C169, §6, available at: <https://www.refworld.org/docid/3ddb6d514.html>

<sup>38</sup> Pratama, K. (2019). *Recognition of the customary law of indigenous peoples in the ilo convention 1989: Practices from ecuador and norway*. Indonesian Journal of International Law, 16(3), 323-346. 339.

<sup>39</sup> International Labour Organisation Convention No 169, *supra nota 14*, art 14.

<sup>40</sup> Niemivuo, M., & Viikari, L. (2016). *The Nordic Welfare State and the Development of Northern Finland*. Yearbook of Polar Law, 8, 214-246. 233.

decided beforehand that Finland should not ratify the Convention if there are no law changes relating to the definition. Consequently, the ratification process was terminated again.

The purpose was to proceed with the ratification process in the next reign. However, in January 2019, the Finnish government announced that it would not ratify ILO No. 169 Convention on this reign either. The reason for this decision was that technically, the proposal has expired due to the recent changes in laws considering the Metsähallitus.<sup>41</sup>

### 2.1.2. The Finnish Constitution

The Finnish Constitution chapter 11 § 121 ensures cultural self-determination for the Sámi people.<sup>42</sup> The definition of "culture" does not contain only the traditional means of the culture, such as the language and handicrafts. By this I mean, that the definition of the "culture" also includes traditional livelihoods such as reindeer herding, hunting and fishing.<sup>43</sup> It is also valuable to note that the modern ways to perform these traditional livelihoods are part of the culture. That means that nowadays, snowmobiles, among other things, are used in reindeer herding and do not limit their indigenous people's rights.<sup>44</sup> In addition, the Law of the Sámi Parliament (Laki Saamelaiskäräjistä 17.7.1995/974) 1 § determines the Sámi people's right to self-determination as defined in the law. According to the article, the Sámi Parliament is responsible for taking care of self-determination's operations.

The Finnish Constitution chapter 2 § 20 provides fundamental Environmental rights for every citizen. Article 20 (2) § provides that the home state shall ensure a healthy environment and nature for everyone. Besides, the section provides that the state shall enable the opportunity to influence the decision-making considering citizens' habitats.<sup>45</sup> Consequently, the Finnish constitution's environmental section provides the opportunity for the Sámi people to influence the decision-making considering their living habitat. In light of the environmental aspect, this can be interpreted

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<sup>41</sup> Ministry of Justice. (2019, January 24). The official website of the Finnish Government: *Hallitus vetää pois eduskunnasta ILO 169 -sopimuksen ratifointiesityksen*. Retrieved from Valtioneuvosto: <https://valtioneuvosto.fi/-/1410853/hallitus-vetaa-pois-eduskunnasta-ilo-169-sopimuksen-ratifointiesityksen>

<sup>42</sup> Suomen Petustuslaki 11.6.1999/731., Art 121.

<sup>43</sup> Olsén, L., Harkoma, A., Heinämäki, L., & Heiskanen, H. (2017). *Saamelaisten perinnetiedon huomioiminen ympäristöpäätöksenteossa: Sámiid árbedieđu vuhtii váldin birasmearrádušaid dahkamis*. Rovaniemi, University of Lapland, Arctic Center. 8-97. 36.

<sup>44</sup> *Ibid.*,

<sup>45</sup> Konsala, K. (2015). *Suomen perustuslain 20 §: n ympäristöperusoikeus erityisesti vaikuttamismahdollisuuksien näkökulmasta* (Master's thesis). 1-97. 1.



that the Sámi people can influence and participate in the decision-making processes in environmental law since climate change is crucially impacting their habitat. According to the article, the Sámi people should be able to directly bring their thoughts and aspects of climate change and necessary changes in environmental law since they have the knowledge of the impacts on the Arctic area.

The Finnish Act on the Sámi Parliament chapter 2 § 9 “Obligation to negotiate” provides that the Finnish authorities are obliged to negotiate with the Sámi Parliament in all relevant matters of the Sámi people’s culture and lives.<sup>46</sup> The obligation to negotiate not only promotes the Sámi people's rights to be heard but also shows that the Finnish constitution recognises and respects the Sámi people and their values. Therefore, the Finnish constitution is very advanced in the light of the Sámi people's rights to influence the decision-making process. Comparing to Sweden and Norway, Finland gives substantial statutory rights for the Sámi People in the light of the decision-making.<sup>47</sup>

However, as we will discuss afterwards, it is unfortunate that while the Sámi people's rights are determined very strongly in the Finnish constitution, the lower legislation and practise do not meet those rights as guaranteed in the law. That means that their participatory rights are formally rather extensive, but the practice of those rights is usually forgotten and not functioning. That means that there should be better conditions to practise their direct influence rights than just the constitution.

## **2.2. Sámi Parliaments and the Sámi Parliamentary Council**

In Finland in 1995, the Sámi people's legal instrument was created, the Sámi Parliament (hereinafter called "Sámediggi").<sup>48</sup> The law of the Sámi people came into force in 1996.<sup>49</sup> Sámediggi is the legal instrument in Finland, and it brings proposals, statements and initiatives in front of the Finnish authorities.<sup>50</sup> Every state, Finland, Sweden and Norway, has its Sámi parliament representing states’ Sámi people. By Sámi Parliaments, they aim to develop and

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<sup>46</sup> Laki Saamelaiskäräjistä 17.7.1995/974, Art 9.

<sup>47</sup> Josefsen, E. (2010). *The Saami and the national parliaments: Channels for political influence, Inter-Parliamentary Union (IPU) and UN Development Program (UNDP)*. Mexico: Inter-Parliamentary Union and United Nations Development Programme. p. 8.

<sup>48</sup> *The Sámi Parliament – The representative self-government body of the Sámi*, the official website of the Sámi Parliament. Retrieved February 2021, from <https://www.samediggi.fi/task/?lang=en>

<sup>49</sup> Kokko, K. (2010) *supra nota* 12, 20.

<sup>50</sup> *Ibid.*, 21.

maintain the cultural heritage of the Sámi people, including the language. Besides, Sámi Parliaments are made to protect the self-determination in the Sápmi regime and develop, create, and maintain their economic, social, and cultural ways of life.

The Sámi Parliaments have a common political framework instrument, the Sámi Parliamentary Council (SPC), which works as a co-operational body for all Sámi parliaments.<sup>51</sup> Even though the Sámi people in Russia do not have their own Sámi Parliament, they have two SPC representatives<sup>52</sup> representing Sámi people living in Russia.

Each Sámi Parliament in Finland, Sweden, and Norway lead the Council for 16 months, creating a democratic society and the leading model for the Sámi people. The SPC is also a permanent member of the Arctic Council that promotes sustainable development and environmental protection in the world's arctic areas.<sup>53</sup>

### **2.2.1. SPC EU Unit**

Besides being part of the Arctic Council, SPC has its EU Unit. The EU Unit was officially concluded in 2019, and its head is Elle Merete Omma.<sup>54</sup> Even though the EU Unit does not mean that Omma operates as a representative in Brussels *per se*, it is a growing tool in the light of the influence and participation rights of the Sámi people.

The EU Unit aims are *inter alia* to make Sámi people more visible, follow and influence all EU matters that impact the Sámi people. In addition, the EU Unit aims to create and establish sustainable tools to influence the EU decision-making processes. Therefore, this instrument is essential considering the Sámi people's influence rights at the EU level. Even though the EU Unit is a very new instrument of the Sámi people, it is notable that they have recognised the need to participate more in the EU activities long before establishing the Unit.

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<sup>51</sup> *Saamelainen parlamentaarinen neuvosto*, the official website of the Sámi Parliament., Retrieved March 2021, from Sámediggi: <https://www.samediggi.fi/sami-parliamentary-council/?lang=en>

<sup>52</sup> *Ibid.*,

<sup>53</sup> Keskitalo, A. (2017), *supra nota 10*, 154.

<sup>54</sup> The Official website of the Sámi Parliament, *EU Unit*, retrieved from: <https://www.saamicouncil.net/en/euunit>

## 2.3. The European Union

The European Union creates regulations, directives, decision, rules and recommendations for the Member States (MS) to adopt. Those regulations can be both binding or non-binding, legislative or non-legislative. The most binding and powerful legislative act from the EU is the regulation since it is binding to all institutions, MSs and citizens inside the EU. The legislative regulation is adopted jointly between the European Parliament and the Council. According to Article 294 of the Lisbon Treaty, both the European Parliament's and the Council's presidents must sign the regulation to be legislative.<sup>55</sup>

A similar procedure, arising from article 294 of the Lisbon Treaty, is for adopting the legislative directive. The difference between the legislative regulation and directive is that the legislative directive only gives the MS's compulsory result.<sup>56</sup> However, they can freely implement it in their legislation whilst the legislative regulation establishes direct tools and ways to achieve the compulsory result.

### 2.3.1. The European Parliament

In the perspective of the Sámi people's influence rights, the essential legislative instrument of the EU is the European Parliament. Democracy is one of the EU's leading fundamental principles, and every operative instrument constructs by this principle. In the heart of democracy is the European Parliament, representing altogether 446 million people.<sup>57</sup> Since the 1970s, the European Parliament has gained more power and strengthened its role in the European Union in many operative areas.<sup>58</sup>

The citizens of the MSs are represented directly in the European Parliament. Article 14 of Treaty on European Union (TEU) and articles 223-224 of Treaty on the Functioning of the European Union (TFEU) provide the European Parliament's legal basis.<sup>59</sup> Every Member State has a

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<sup>55</sup> Deac, A. (2019). *The legislative acts of the european union*. Perspectives of Law and Public Administration, 8(2), 186-191. 187.

<sup>56</sup> *Ibid.*, 190.

<sup>57</sup> *European Union, European Parliament*, the Official website of the European Union, Retrieved from: [https://europa.eu/european-union/about-eu/institutions-bodies/european-parliament\\_en](https://europa.eu/european-union/about-eu/institutions-bodies/european-parliament_en)

<sup>58</sup> Militaru, I. N. (2019). *Organization and duties of the European Union institutions*. Societatea de Stiinte Juridice si Administrative, 21-50. 33.

<sup>59</sup> *Ibid.*, 21.

minimum of six representatives in the European Parliament and a maximum of ninety-six<sup>60</sup>, depending on the MS's population.

Representatives are elected according to every MSs' constitutional law following the European Union's standard rules, such as direct universal suffrage and a five-year term.<sup>61</sup> In addition, representatives of the European Parliament are divided into groups based on their political ideologies rather than nationality.<sup>62</sup> Therefore they are operating as independent bodies.

According to the Treaty of Lisbon, Article 289 of TFEU<sup>63</sup> provides equality between the European Parliament and the Council regarding exercising the European Union's legislative functions.<sup>64</sup> New procedures' rules are adopted by a majority voting system between members of the European Parliament. Consequently, the European Parliament is a direct instrument for EU citizens to influence the decision-making process. From February 2020, Finland has had 14 seats in the European Parliament.<sup>65</sup>

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<sup>60</sup> *Ibid.*, 22.

<sup>61</sup> *Ibid.*, 23.

<sup>62</sup> *Ibid.*, 24.

<sup>63</sup> *Ibid.*, 35.

<sup>64</sup> *Ibid.*, 34.

<sup>65</sup> *European Union, European Parliament*, the Official website of the European Union, *supra* nota 17. Retrieved from: [https://europa.eu/european-union/about-eu/institutions-bodies/european-parliament\\_en](https://europa.eu/european-union/about-eu/institutions-bodies/european-parliament_en)

### 3. LEGAL PROBLEMS

As discussed above, climate change affects the Sámi people's lives in many aspects, not just to their economy but also to their mental health and cultural aspects. They have been already forced to change their reindeer husbandry methods and other business activities related to tourism because of the impacts of a warming temperature.<sup>66</sup>

From the perspective of the legislation, why is it so essential to secure and promote the Sámi people's rights to participate and influence the environmental decision-making? As for all peoples in the world, there are human rights to protect them. Since the European Convention on Human Rights applies as part of the EU law, all MSs must follow and respect its rules and principles.<sup>67</sup> Hence, the home state's legislation and international instruments are obliged to protect the Sámi people's cultures and ways of lives as stated. In the context of indigenous peoples, cultural life is part of the human rights questions<sup>68</sup>, and climate change is a threat to the whole existence of the Sámi people. Out of 7,8 billion people in the world, the indigenous peoples consists of about 370 million individuals.<sup>69</sup> Moreover, there are only about 500,000 indigenous people out of four million people living in an Arctic area<sup>70</sup>, and the Sámi people are only a tiny proportion. However, their rights are still valued within the human rights law, and they should always be consulted.

The Free Prior and Informed Consent (FPIC) protects indigenous people's rights, including proper participatory and consultation rights, while promoting the score issue of self-determination; giving consent on matters that affect them.<sup>71</sup> In other words, FPIC means that whenever consulting indigenous peoples about implementing a new policy or creating a new project that somehow affects their lands or rights, there should be a goal to have a free consent.<sup>72</sup>

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<sup>66</sup> Keskitalo, A. (2017), *supra nota 10*, 152.

<sup>67</sup> Harris, D., O'Boyle, M., Bates, E., Buckley, C. (2014) *Law of the European Convention on Human Rights*. 3rd ed. New York: Oxford University Press., 32.

<sup>68</sup> Jaakkola, Juntune, Näkkäljärvi. (2018), *supra nota 8*, 413.

<sup>69</sup> Rombouts, S. S. (2017). *The evolution of indigenous peoples' consultation rights under the ilo and u.n. regimes*. Stanford Journal of International Law, 53(2), 169-224., 171.

<sup>70</sup> Atapattu, S. (2013) *supra nota 10*, 381.

<sup>71</sup> Yaffe, N. (2018). *Indigenous consent: self-determination perspective*. Melbourne Journal of International Law, 19(2), 703-749., 748

<sup>72</sup> *Ibid.*, 704.

Taking international human rights law and international environmental law into account together with the principle of FPIC, there is an absolute obligation of states to ensure proper participatory rights for the Sámi people. That means that they should have the opportunity to be heard by specific activity in all environmental matters affecting them.<sup>73</sup> Therefore, we could consider the extent to which the domestic law, international law and the EU derogate the Sámi people's human rights since their weak possibilities to influence and participate environmental decision-making process.

Self-determination provides the right to determine their own political and economical ways of lives as well as promote their cultural development. However, it does not provide the right to create binding legislation, regulations or rules. The exact position is of the Sámi Parliament and the SPC. The Finnish constitution provides consultation rights with legislators but no direct participation in the government or in the Parliament. The EU recognises the indigenous people of the Sámi but does not have any member in the European Parliament nor has legislation to influence decision-making processes directly. Why no legislation provide direct participation rights for the Sámi people to influence the decision-making process?

In the following chapters, I will introduce some main challenges determining and developing the influence right of the Sámi people. Consequently, I will introduce the main reasons for their weak possibilities to influence emerging from the domestic and international law. Subsequently, I will present some proposals to improve their influential and participatory rights, both at the Finnish and the EU levels.

## **3.1. Challenges**

### **3.1.1. Finland**

By different interviews with the Finnish Sámi people, it can be concluded that they have relevant information about climate change and its impacts not seen anywhere else in Finland, at least not yet. Some Finnish Sámi says that they do have some development ideas to improve the legislation to be more environmentally friendly. That also includes ways to integrate and even prevent climate change and its impacts on nature. Many of the Sámi people argue that the Finnish legislation does

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<sup>73</sup> Atapattu, S. (2013) *supra nota* 10, 405.

not provide sufficient tools to be heard as a minority people, and their ideas do not proceed in any direction.<sup>74</sup>

One of the problems with this is the shape of Finland. By this, I mean that Finland is a very long country with various vegetation zones, making environmental decision-making very hard for the legislators. The need, necessity, impacts and other aspects are quite different when comparing, for instance, Inari and Helsinki. Therefore, a legislator may have some difficulties giving weight to a particular area of Finland or people's thoughts and perspectives.

Even the Finnish Act on the Sámi Parliament 9 § provides the obligation to negotiate with the Sámi Parliament with all relevant matters, the actual performance of these legal rights is minimal. There are no real connections between the Finnish Parliament and the Sámi Parliament in the light of decision-making or legislative changes, and no particular formal structures or channels have been constructed to have this right fulfilled.<sup>75</sup> Therefore, this formal constitutional obligation does not have a significant role in the decision-making process and does not secure the right to influence any environmental matter, considering the Sámi people.

There has also been discussion about the possibility to have an own Sámi representative *quota* in a home state's own Parliament. There have been many proposals of the Sámi representative during decades in Finland, Norway and Sweden, but no purpose-built actions in that direction have been taken.<sup>76</sup> In my opinion, having a representative in every nation's Parliament would work as a stepping stone to be heard better in the environmental decision-making process. However, this would need many regulatory changes.

In Finland, parliamentary elections are held using electoral districts. The country is divided into electoral districts, of which Lapland forms its own. To create a list of Sámi candidates and get a representative elected, he should collect more than 10,000 votes.<sup>77</sup> That amount is bigger than there are Sámi people living in Finland altogether. Actually, the first and the only Sámi Congressman operated during the years 2007-2011 but did not retain his place in the 2011

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<sup>74</sup> Näkkäläjärvi, Juntunen, Jaakkola. (2020), *supra nota* 9, 266.

<sup>75</sup> Josefsen, E. (2010). *The Saami and the national parliaments: Channels for political influence, Inter-Parliamentary Union (IPU) and UN Development Program (UNDP)*. p.1-27. 8. Retrieved from: <http://archive.ipu.org/splz-e/chiapas10/saami.pdf>.

<sup>76</sup> *Ibid.*, 11.

<sup>77</sup> Yle News. (2016, September 14). "*Saamelaisille oma kansanedustaja*" – Entinen pääministeri Lipponen korkean tason seminaarissa. Retrieved from Yle News: <https://yle.fi/uutiset/3-9148651>

elections.<sup>78</sup> That statistic means that the access to the Finnish Parliament is not very equal between the Sámi people and the majority. Non-discrimination is a fundamental principle and applies in all cases and to all peoples. It is hard to get other people to vote for the Sámi representative since they are not that interested in their affairs.

In Finland, this change means creating a new legislation section in the law of the Sámi Parliament ("Laki Saamelaiskäräjistä 17.7.1995/974") which provides the Sámi people with direct participation right in the Finnish Parliament. Could that be possible? If a legislator wants to create a new section to the legislation and strengthen self-determination, the extent of self-determination should define first. One of the issues of self-determination has occurred while determining the extent of the area of self-determination. That is because usually, self-determination is defined according to the living area of the people concerned. In Finland, over 70%<sup>79</sup> of the Finnish Sámi children lives already outside the traditional Sápmi regime, which means that more and more Sámi people live outside the Sámi peoples' traditional living areas. That affects the development of self-determination negatively since it is hard to develop and strengthen the power of self-determination if no people are living inside of it. In other words, it is hard to achieve functioning change since many Sámi youths move away from the traditional Sápmi regime to bigger cities because of studies or better working opportunities. On the contrary, it is hard to get youth people to stay on the Sápmi regime if the necessary change is not happening.

The Sámi people have Sámi Parliaments in order to influence decision-making processes in their home states. However, as Marget Carstens argues in her research: "Sami land rights: the Anaya Report and the Nordic Sami Convention (2016)", the autonomy and self-government of these Sámi Parliaments should be strengthened and expanded in a way that they can be part of the decision-making process in Norway, Finland and Sweden.<sup>80</sup> That argument confirms that there is no real connection between the Sámi Parliament and the Finnish Parliament. By strengthening and expanding the powers, the Sámi people would have an accurate tool to participate in the process and influence environmental issues.

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<sup>78</sup> *Ibid.*

<sup>79</sup> Kokko, K. (2010) *supra nota* 12, 116.

<sup>80</sup> Carstens, M. (2016). *Sami land rights: The anaya report and the nordic sami convention*. Journal on Ethnopolitics and Minority Issues in Europe (JEMIE), 15(1), 75-116. 78.



This Sámi Parliaments' impotence is one of the most significant issues considering their rights to influence in the decision-making process on environmental law and climate change. For instance, in Finland, the Sámi Parliament is only a body to connect with the Finnish Parliament but does not have actual or substantial power to influence any decision-making process considering them or their living habitat.<sup>81</sup>

### 3.1.2. The European Union

In addition to states' national constitutions and domestic laws, international legislative instruments should also recognise the Sámi Council more and ensure more sufficient and adequate opportunities to be heard. SPC can bring legal initiations in front of the decision-makers, but they do not have the real opportunity to influence the process directly. The SPC is a permanent member of the Arctic council, as discussed above. It works very actively in issues considering North and its livelihoods. However, like the Sámi Parliament, the Arctic Council cannot create or implement any of its guidelines or recommendations since it does not make binding legislative regulations. The responsibility to implement the Council's recommendations is in the states or international bodies responsibility<sup>82</sup>, but there is no obligation to do so.

SPC's EU Unit is an international instrument and connection between the EU and the Sámi Parliament. However, since it does not have any regulatory or legislative powers *per se*, it does not have much actual effect on decision-making processes. To conclude the problems of the EU, we can say that it does not provide any instruments for the Sámi people to really affect or influence environmental decision-making directly. The EU recognises the need for extra protection, but no direct tool to influence has been created.

The Finnish Member of the European Parliament (MEP), Sirpa Pietikäinen, argues in her post at The Finnish League for Human Rights organisation's website that the European Union should have better tools for the Sámi People to be heard in the European Union level.<sup>83</sup> It is important to note that the Sámi People's affairs are taken into account at the European Union level, but at the

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<sup>81</sup> *Ibid.*,

<sup>82</sup> *About the Arctic Council*, the official website of the Arctic Council, retrieved from: <https://arctic-council.org/en/about/>

<sup>83</sup> *Vierailijablogi: Saamelaisten oikeudet tarvitsevat vahvempaa turvaa*, Official website of The Finnish League for Human Rights (2017) Retrieved from: <https://ihmisoikeusliitto.fi/vierailijablogi-saamelaisten-oikeudet-tarvitsevat-vahvempaa-turvaa/>

moment, they are primarily about trade development relations with third countries.<sup>84</sup> Still, as we can conclude, the Sámi People's matters are considered, and the Finnish MEP recognises the need for better tools.

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<sup>84</sup> *Ibid.*,

## 4. PROPOSALS

### 4.1. Strengthening the powers of Sámi instruments

One of the proposals to get the Sámi people a direct participation and influence right to the environmental decision-making process is to strengthen the power of the Sámi Parliament and the Council. The Sámi Parliament can bring initiatives in front of the Finnish authorities and negotiate with them in matters considering them as indigenous peoples or habitats. Nevertheless, as discussed above, there is no real connection between them.

Due to that fact, I think that the Sámi Parliament's rules, regulations and recommendations should be made more binding. Nowadays, they do not have any legal obligation *per se* to be followed or implemented by the states concerned. Since the Sámi Parliament is a permanent member of the Arctic Council, they have more information and aspects about the impacts of climate change in the Arctic area, and there, can more easily influence environmental decision-making.

Citizen's initiatives need 50 000 votes from Finnish citizens to be considered in the Finnish Parliament at all. That is the standard procedure in all legislative matters and enables a democratic society. However, since there are only about 8,000 Sámi people in Finland, they are not able to bring initiatives in front of the government themselves. The Sámi Parliament works as a tool for them, but there is no real connection even with that. More power to the rules and regulations would mean that the initiatives and other proposals from the Sámi Parliament could be brought straight in front of the Finnish Parliament in the same way as citizen's initiatives. Hence, if the Sámi Parliament's proposals could be brought directly in front of the Finnish Parliament, also the Arctic Council's recommendations and ideas can have more efficacy.

## 4.2. ILO No. 169 Convention ratification

One of the most meaningful proposals to strengthen the Sámi people's rights is to ratify the ILO No.169 Convention, adopted in 1991, in every state concerned. Hence, by ratifying the Convention, Finland fully recognises the Sámi people's rights as indigenous people. The ILO No. 169 Conventions' fundamental principle is to protect all the peoples concerned by having full human rights without discrimination.<sup>85</sup> Therefore, the Convention aims for equality and non-discrimination between peoples.

ILO No. 169 Convention replaced the old Convention No. 107, which was adopted in 1957. While Convention No.107 aimed to assimilate indigenous people step by step to the majority, the new Convention No. 169 aims to promote non-discrimination and equality between all peoples by *inter alia* valuing cultural diversity. Hence, it does not aim to standardisations but to promote indigenous peoples' rights.<sup>86</sup>

By having terms as "appropriate" and "necessary", the Convention gives states concerned the flexibility to determine their measures to secure all the rights listed in the Convention. Despite this, the Convention is a crucial factor in the indigenous peoples' rights. ILO No. 169 Convention enables influence rights for the Sámi people in all matters affecting them directly. Therefore, the Convention promotes their rights to have an active role in the decision-making process in environmental law in the light of climate change and its impacts.

In Finland, the ratification process has prolonged, and the process itself has taken a very long time. That can be seen as very frustrating as well as expensive. The long legislative process always requires lots of resources *per se* and takes time from other important matters. Besides, during the decades, Finland has had several notifications and recommendations to ratify the ILO No. 169 Convention from different international instruments such as the UNHRC, the Committee of Ministers of the Council of Europe and the Council of Europe Commissioner for Human Rights.<sup>87</sup> Therefore, the Convention's ratification would help the Sámi people significantly and, at the same time, decrease the government's pressure on what they have.

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<sup>85</sup> Joona, T. (2005). *The political recognition and ratification of ilo convention no. 169 in finland, with some comparison to sweden and norway*. Nordisk Tidsskrift for Menneskerettigheter, 23(3), 305-320., 306.

<sup>86</sup> Cespedes, R. (2013). *Indigenous peoples' human right to clean environment, environmental impact assessment and ilo-convention 169*. Warwick Student Law Review, 3(1), 71-80, 73.

<sup>87</sup>The Finnish Government proposal of ILO 169 ratification (HE 264/2014 vp), Retrieved from: [https://www.eduskunta.fi/FI/vaski/HallituksenEsitys/Documents/he\\_264+2014.pdf](https://www.eduskunta.fi/FI/vaski/HallituksenEsitys/Documents/he_264+2014.pdf)

The Finnish law of the Sámi Parliament provides the obligation of the Finnish authorities to negotiate with the Sámi people in the matters that affect them as an indigenous people. Obligation to consult is also recognised in the law of the Rules of Procedure of the Parliament (Eduskunnan työjärjestys 17.2.1999/40 v. 2000) chapter 4 § 37 subsection 2. According to article 37, the Committee is obliged to allow the Sámi people to be heard, especially in the light of a new legislative proposal that directly affects the Sámi people.<sup>88</sup> Consequently, the Finnish constitution has a negotiation right for the Sámi people in the matters that affect them as indigenous people or when creating a new law affecting them. Within the ILO No. 169 Convention, the Sámi people shall have a right to influence all matters affecting them and not only matters that affect them as indigenous people. Therefore, the Sámi people shall have a way to influence the environmental law and regulations related to nature in general.

ILO No. 169 Convention would promote the Sámi peoples' participation and influence rights substantially by other articles also. Article 3 of the Convention provides non-discrimination and secures fundamental human rights for everyone. Article 6, on the other hand, is considered to be a cornerstone in the Sámi people's right to participate and influence. The article's subsection 2 provides an obligation to states to establish measures by which the Sámi people are able to freely participate by the means like the rest of the population "to all levels of decision-making in elective institutions and administrative".<sup>89</sup> The wording "*to at least the same extent*" means that the Sámi people should have the same possibility to have a representative in the Finnish Parliament.

However, it is not the case at the moment since most of the population is not interested in the Sámi peoples' matters in order to vote for them in the Finnish Parliament. Besides, cause there are only an estimated 8,000 Sámi people in Finland, it is very hard for them to have a representative in the Finnish Parliament. In addition, article 4 (1) of the Convention describes the obligation to special measures to secure the Sámi people's and their institutions' rights to property, work, culture, and environment.<sup>90</sup> Considering these articles, could it be possible that the Sámi people have their own legislative body or a quota in the Finnish Parliament?

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<sup>88</sup> *Ibid.*, 17.

<sup>89</sup> International Labour Organization (1986), *supra nota 14.*, art 6.

<sup>90</sup> The Finnish Government proposal of ILO 169 ratification. *supra nota 24, 28.*

The Finnish government's proposal to ratify the Convention in 2014 describes this special measure as a fixed-term quota in the Finnish administrative service. Since the Finnish Parliament is one of the leading bodies in Finland in light of the legislative procedure, it shall be considered that there is a need for a special measure to have the Sámi people representative in the Parliament.

Nowadays, it is tough for the Sámi people to have a representative to run their affairs in the Finnish Parliament, as described above (see 3.1.1.). By means of articles 4 and 6 of the Convention, the possibility of having a more equal system of representatives could be achieved. Moreover, the Sámi people could have better possibilities to influence environmental decision-making.

Article 5 of the Convention describes that measures that mitigate the Sámi people's difficulties to face new working and living conditions shall be adopted with the cooperation and participation of the Sámi people.<sup>91</sup> In light of environmental law and climate change, article 5 is essential. The Sámi people have information and ideas to prevent and decrease the impacts of climate change. Changing environment affects both their living and working conditions, so they should have proper influential right to affect the decision-making in the light of the environment and climate change.

Due to these facts and articles, the ILO No. 169 Convention shall substantially improve the Sámi people's rights to influence and participate in environmental decision-making processes. By ratifying the Convention, the domestic law shall guarantee such rights and implement those positive measures to make the decision-making and consultation more equal and non-discriminative.

### **4.3. Brussels representative**

As discussed in chapter 2.3., the European Parliament consists of the European Union Member States representatives. The Finnish MEP, Sirpa Pietikäinen, has also said that the Sámi People should have their permanent representative in the European Parliament.<sup>92</sup> This statement is significant in the light of recognising the lack of sufficient participation or influence possibilities

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<sup>91</sup> International Labour Organization (1986), *supra nota 14.*, art 5.

<sup>92</sup> Official website of the Finnish League of Human Rights, *supra nota 25.*,

in decision making. The Sámi representative in Brussels would operate as a tool to help Sámi people get their voices heard better in environmental decision-making.

For the European Union to have such tools, the change should start at the national level. If the EU arranges a possibility for only the Sámi People to have a special *quota* of representatives in Brussels, the principles of equal treatment and non-discrimination of all EU citizens should be maintained. The democratic society consists of free elections and citizens' freely chosen representatives. Due to these facts, the representative of the Sámi People should be elected by direct elections as every representative of the EU Parliament. Since the Sámi People live in the Sápmi regime of four independent states, the regular elections would be hard to organise in practice. Besides, Norway is not part of the EU, so shall the Norwegian Sámi People still have the same right to represent Brussels?

The European Parliament has specific standard rules in the elections and some requirements that an elected person should fulfil. For instance, Council Directive 93/109/EC article 3 provides that every citizen of the European Union shall have the right to stand as a candidate to the European Parliament in the Member State of a reside.<sup>93</sup> According to article 4, during the same elections, the person shall not stand as a candidate in more than one Member State.<sup>94</sup> Consequently, the Sámi People should stand as candidates for the European Parliament in one of the Member States. That means that the Sámi People in Finland and Sweden should stand as separate candidates in their home state and be elected that way. Hence, the Sámi people in Norway would not have a possibility to stand as a candidate.

Due to these facts and aspects, I think that the change should start at the national level and by states' co-operation. Since Norway is not part of the EU, Finland and Sweden could create, for instance, a *quota* of the Sámi representatives together. Alternatively, on the other hand, a separate organisation could operate as a connecting factor for the Sámi people. By this, I mean that the Arctic Council already allows the influence of the Sámi people on all arctic matters and provides permanent participation for the Sámi people.<sup>95</sup>

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<sup>93</sup>Council Directive 93/109/EC., (1993), Retrieved from: <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:31993L0109&from=FI>, § 3

<sup>94</sup> *Ibid.*, § 4.

<sup>95</sup> Atapattu, S. (2013) *supra nota 10*, 399.

A representative of the European Parliament from the Arctic Council could operate as a connective instrument of those Arctic states in the EU. That also enables the Norwegian and the Russian Sámi peoples to be part of the decision-making process as well.



## CONCLUSION

Climate change is a significant threat to the Sámi people's culture and livelihood. Due to this point of view, it is a threat to their whole existence. Their fundamental rights and freedoms are guaranteed by many legal instruments, both at the national and international level. The Sámi people are recognised as indigenous people in Finland as well as in the European Union. The Finnish constitution 121 § and the Law of the Sámi Parliament 1 § determine the Sámi people's right for the self-determination. This right is also recognised in various UN Conventions and is implemented in domestic and EU law.

While self-determination enables the Sámi people to create their political and economic status while maintaining and promoting their cultural development, it does not consider direct ways *per se* to influence and participate at the national level of decision-making processes. The Sámi Parliament does not have the right to create legislation or regulations at all, and hence the possibility of affecting the environmental decision-making process is very minimum. Even though the Finnish constitution provides an obligation to consult and negotiate with everyone to whom the legislative change affects, including the Sámi people, there is no real connection between the Sámi people and the national Parliament. Hence the obligation to negotiate is merely formal without any discernible effect.

In order to develop the Sámi people's influence right to be more direct and efficient, the change should start at the national level. Firstly, Finland should finally ratify the ILO No. 169 Convention and herewith recognise their rights fully as indigenous people. That would work as a stepping stone for better ways to influence environmental matters. Secondly, the Sámi Parliament's and Council's powers to affect and influence the environmental decision-making processes should be extended and strengthened in domestic laws. That means that nations concerned shall recognise the Sámi Parliaments and SPC as instruments with legislative powers. They could bring initiatives directly against the Finnish Parliament and consequently influence the decision-making more effectively. That right should also be determined by the lower legislation than the constitution and brought into practice by authorities. In addition, that means that Nordic countries in concerned

should cooperate in recognising those instruments and giving them more power and influence in general.

Besides, there is no representative of the Sámi people in Brussels at the European Parliament, which means that their affairs are not heard sufficiently enough at the EU level. At the European Union level, the affairs are represented by the states' representatives, and unfortunately, minorities' affairs are not considered as much as they should be. Brussels' representative would ensure better possibilities for the Sámi people to bring their viewpoints on climate change and environmental aspects in front of the legislatures. This change should also start at the national level and from the domestic law. One development proposal is to create a *quota* of the Sámi people's representatives in the European Parliament. That means that Finland and Sweden should allow the Sámi people to elect their Sámi representative to Brussels in the same way as other citizens of the state.

This thesis's hypothesis was correct since Sámi people do have only weak ways to influence environmental decision-making directly. Rights to influence emerging from domestic law and international human rights conventions are merely formal and are not put into practice as firmly as they should be. That is the case even they are, the only indigenous people in the European Union and face the consequences of the warming temperature first. However, the situation is going in a better direction since their rights are recognised extensively both in Finland and the EU.

The need for a permanent representative in Brussels is said out loud by the Finnish MEP, and the ratification process of the ILO No. 169 Convention is continually in front of the Finnish Government. Hopefully, necessary changes will be made, and their direct influence rights are guaranteed by the domestic law as well. That would not help only the Sámi people but also the rest of us, since climate change is an urgent issue and needs everyone's effort and viewpoints.

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