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**IS THE RATIFICATION OF THE INDIGENOUS AND TRIBAL  
PEOPLES CONVENTION NEEDED TO IMPROVE SÁMI  
RIGHTS IN FINLAND?**

Bachelor's thesis

Programme HAJB - Law, specialisation European Union and International law

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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.

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## **ABSTRACT**

This thesis concentrates on determining whether the current legislation pertaining to or otherwise concerning the Sámi people in Finland is sufficient to protect the Sámi rights and their status as indigenous people, or if the ratification of ILO Convention No. 169 on indigenous and tribal people can be deemed necessary to improve their status.

This thesis will present and evaluate applicable Finnish legislation to see what legal acts regulate the Sámi and the type of rights and protection they provide. Moreover, the ILO Convention No. 169 is examined in order to see how indigenous rights are promoted under its regime and which regulatory measures it imposes on signatory states. Additionally, the Sámi's status and applicable legislation in Norway and Sweden will be provided to illustrate how their governance in the other Nordic Countries is managed.

The research question is “How would the position of the Sámi people in Finland improve if Finland ratified the Indigenous and Tribal Peoples Convention?”. This thesis aims to find out if the ratification of the Indigenous and Tribal Peoples Convention in Finland would positively affect the rights of the Sámi people in Finland.

The methodology of this thesis is qualitative. This thesis bases on Finnish legislation and ILO Convention No. 169. Moreover, the argumentation of this thesis is based on scientific articles by legal scholars.

The main findings of the thesis were that improvements for the Sámi's position in Finland can and should be made, and the best way to do this is through the ratification of the ILO Convention No. 169.

Keywords: Sámi people, Indigenous rights, ILO Convention no. 169, Sámi in Finland

## INTRODUCTION

There is no global, common definition of indigenous peoples. A “working definition” of indigenous peoples was created by United Nations (UN) Special Rapporteur José R. Martínez Cobo, and it establishes that indigenous peoples are those, who have lived in communities, which were formed before colonisation, regard themselves as separate from the current majority population, are in a marginalised position at present, are set on maintaining and cultivating their traditional lands, and regard “ethnic identity” as the foundation for pursuing to establish themselves distinct, in consistent with their traditions, “social institutions” and judicial order.<sup>1</sup>

The Sámi are the only indigenous people living in the European Union and the Nordic Countries.<sup>2</sup> Their domicile area (*Sápmi*) includes four countries and spans from Central Norway to Northern parts of Sweden and Finland all the way to the Kola Peninsula in Russia.<sup>3</sup> In Finland, the homeland area is in Northern Lapland, in the municipalities of Enontekiö, Inari and Utsjoki and the Lapp reindeer herding district in the municipality of Sodankylä. Nevertheless they have their own “homeland”, at present many Sámi reside away from their domicile area.<sup>4</sup> In Finland it is estimated that approximately 75% of the Sámi have moved away from their traditional “homeland area”.<sup>5</sup> It is estimated that the combined number of Sámi living across these four states is 90,000, which is distributed as follows; Norway has the biggest population with 50,000 to 65,000, in Sweden there are 20,000 Sámi, in Finland 8,000 and in Russia 2,000.<sup>6</sup> The Sámi have a common culture, language and history, but not their own state.<sup>7</sup> Even though it is said the Sámi share a language, it is estimated that among them more than ten different Sámi languages

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<sup>1</sup> Sanders, D. (1999). Indigenous Peoples: Issues of Definition. *International Journal of Cultural Property*, 8 (1), 4-13, 6.

<sup>2</sup> Elo, E (2012). SAAMEN KIELEN KÄYTTÄMINEN TUOMIOISTUIMISSA JA VIRANOMAISISSA – SAAMELAISTEN KIELELLISET OIKEUDET SUOMESSA JA NORJASSA. (Master’s thesis) Faculty of Law, Helsinki. 1-89, 17. Retrieved from [https://helda.helsinki.fi/bitstream/handle/10138/37213/gradu\\_VALMIS.pdf?sequence=2&isAllowed=y](https://helda.helsinki.fi/bitstream/handle/10138/37213/gradu_VALMIS.pdf?sequence=2&isAllowed=y), 10 March 2022

<sup>3</sup> *Ibid.*, 17.

<sup>4</sup> Niemivuo, M. (2015) Human and Fundamental Rights of the Sámi. In: G. Alfredsson, T. Koivurova (Eds.), *Yearbook of Polar Law*, 290-316, 290. Leiden: Brill Nijhoff.

<sup>5</sup> Joonas, T. (2020). ILO Convention No. 169 and the governance of indigenous identity in Finland: recent developments, *The International Journal of Human Rights*, 24 (2-3), 241-256, 242.

<sup>6</sup> Niemivuo (2015), *supra nota* 4, 290.

<sup>7</sup> Elo (2012), *supra nota* 2, 17.

are spoken and therefore not only one single language prevails. The most important livelihoods of the Sámi are “fishing”, “hunting” and “reindeer herding”.<sup>8</sup>

In recent years, a lot of debate has emerged concerning the position and treatment of the Sámi people in Finland. Even though their rights are specifically written in the Finnish Constitution and there is other legislation governing their position; self determination, language governance there is need for more improvement. The topicality of this thesis emerges from the fact that the status and rights of the Sámi people in Finland is part of human rights and as a universal phenomena, it is always relevant. Moreover, the safeguarding of indigenous rights forms an essential factor of the overall protection of “the international protection of human rights”.<sup>9</sup> This has been at least partly caused by indigenous peoples becoming more prominently a part of the international human rights agenda.<sup>10</sup> Furthermore, Finland is a member of the United Nations Human Rights Council in 2022-2024 and a contradiction arises, since Finland holds a seat there and nevertheless continues to undermine the position of Sámi people.<sup>11</sup>

This thesis will investigate if Finland has done legislatively enough to ensure that the treatment and position of the Sámi people is at an appropriate level or whether improvements are needed and can be made. The aim of this thesis is to find out if the ratification of the Indigenous and Tribal Peoples Convention would positively affect the rights of the Sámi people in Finland. Research question, which the thesis proposes is “How would the position of the Sámi people in Finland improve if Finland ratified the Indigenous and Tribal Peoples Convention?” In order to fulfil the thesis’ aim and find answer to the research question I will use qualitative, secondary data and thematic analysis. This thesis will base the research on previous academic publications, and other sources such as legal acts and the indigenous and tribal peoples convention, and analyse them in order to bring forth a new viewpoint in the matter.

The first part of the thesis will provide an overview of such Finnish legislation, which has the greatest impact on the Sámi. These include the Act on the Sámi Parliament and the Sámi Language Act, which solely focus on the Sámi people. In relation to the Act on the Sámi

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<sup>8</sup> Niemivuo (2015), *supra nota* 4, 291.

<sup>9</sup> Kovler, A. (2012). International Protection Mechanism of Indigenous Peoples. *Yearbook of Polar Law*, 4, 205-226, 205.

<sup>10</sup> Anaya, S. (2013). The human rights of indigenous peoples: United nations developments. *University of Hawaii'i Law Review*, 35 (2), 983-1012, 985.

<sup>11</sup> Ulkoministeriö. (2021). Suomi on valittu YK:n ihmisoikeusneuvoston jäseneksi. Retrieved from: <https://valtioneuvosto.fi/-/suomi-on-valittu-yk-n-ihmisoikeusneuvoston-jaseneksi> , 23 March 2022

Parliament, the thesis will introduce the Finnish definition of Sámi, and illustrate the critique and disadvantages the definition has received among the Sámi themselves and scholars. The other legislative acts discussed in the chapter, the Finnish Constitution, Act on *Metsähallitus* and the Reindeer Herding Act are not only applicable to Sámi, but contain provisions that are applicable to the Sámi. The demarcation of which legislation this thesis focuses on, was made based on which legislation has the most extensive effect on the Sámi.

The second part of the thesis goes over the International Labour Organisation's Convention No. 169, which is the most important international instrument concerning indigenous peoples. The Convention will be introduced, following the determination of indigenous peoples provided by the Convention, the land rights regime, as well as the supervisory mechanism of ILO Conventions. Finally, a brief overview of the two ratification attempts of the Convention in Finland will be provided at the end of the chapter.

The third chapter goes over the features of Sámi's status and applicable legislation in Norway and Sweden. As Norway and Sweden are both Nordic countries and have Sámi populations as well, it seemed adequate to include chapters on them as well. Similarly to Finland, Sweden has not ratified the ILO Convention No. 169. Norway, however, has ratified the Convention and is specifically relevant to see the major changes, which were caused by the ratification.

The fourth chapter consists of analysis. First, this thesis will analyse the legislation to which has been reviewed in the first chapter, what Finland has done heretofore. For the second, the analysis will determine how the possible ratification of the ILO Convention No. 169 would affect the Finnish legislation, what would change, and if the Sámi's rights would improve as a result.

# 1. FINNISH LEGISLATION

The main objective of the legislation governing the Sámi autonomy is to establish such an administrative and political status, founded on ethnic self governing, through which the Saami people can more effectively have an impact on the preparation and decision making taking place in public administration that concerns their language, culture and status as indigenous people.<sup>12</sup> The main objective emphasizes the idea of increasing the Sámi's possibility to influence matters that are associated with them, and secure the prerequisite to extensively conduct and administer their own economic, social and cultural development, as well as partake in the planning of the aforesaid aspects in both regional and national levels.<sup>13</sup>

## 1.1. The Finnish Constitution

In 1995 an article regarding the Sámi was included in the Finnish Constitution (*Suomen perustuslaki* 11.6.1999/731).<sup>14</sup> According to article 17 (3) of the Constitution “The Sámi, as an indigenous people ...have the right to maintain and develop their own language and culture”.<sup>15</sup> The possessors of the rights mentioned in this paragraph are specifically expressed to be a certain demographic group, which is the Sámi in this case, even though usually the possessor of basic rights is an individual. Therefore the right to maintain and develop their culture and language does not create individual rights, but is a collective right of the Sámi linguistic group.<sup>16</sup>

Article 22 of the Finnish Constitution stipulates that “The public authorities shall guarantee the observance of basic rights and liberties and human rights”.<sup>17</sup> When article 17 (3) of the Sámi

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<sup>12</sup> Guttorm, J. (2018). *Saamelaisten itsehallinto Suomessa-dynaaminen vai staattinen?: tutkimus perustuslaissa turvatun saamelaisten itsehallinnon kehittämisestä lainsäädännössä vuosina 1996–2015*. Rovaniemi. University of Lapland, 1-402, 10. Retrieved from: [https://lauda.ulapland.fi/bitstream/handle/10024/63446/Guttorm\\_Juha\\_ActaE\\_242\\_pdfA.pdf?sequence=1](https://lauda.ulapland.fi/bitstream/handle/10024/63446/Guttorm_Juha_ActaE_242_pdfA.pdf?sequence=1) , 17 March 2022

<sup>13</sup> *Ibid.*, 10.

<sup>14</sup> Perustuslaki 11.6.1999/731 art. 17.

<sup>15</sup> Perustuslaki 11.6.1999/731 art. 17.

<sup>16</sup> Elo (2012), *supra nota* 2, 27.

<sup>17</sup> Perustuslaki 11.6.1999/731 art. 22



basic rights is interpreted, it must be done by taking into account article 22 of the Constitution.<sup>18</sup> Together these articles form an obligation to the state authorities to support the development of the Sámi's culture and language.<sup>19</sup> Even though the state authorities must provide support, the main responsibility, according to the wording of article 17 (3), of the development of culture and language falls to Sámi themselves.<sup>20</sup> However, paragraph 17 (3) nevertheless provides the foundation for the state authorities to assist in developing the Sámi's living conditions with respect to their cultural heritage.<sup>21</sup>

The fundamental rights provision 17 (3) is closely related to article 121 (4) of the Finnish Constitution, which regulates the Sámi's cultural autonomy.<sup>22</sup> According to paragraph 121 (4) of the Constitution, the Sámi have autonomy over the linguistic and cultural matters according to what is prescribed in relevant legislation.<sup>23</sup> Therefore, article 121 (4) of the Constitution lays down the basis of legal protection of the Sámi cultural autonomy and it aims that other legislative acts shall more specifically define and allocate the authorities, their jurisdictional boundaries and functions, for the Sámi administration, municipal autonomy and the central government in matters concerning the Sámi aforementioned rights.<sup>24</sup> A question, which arises here is what should be understood as cultural autonomy? According to the preparatory work for paragraph 121 (4) of the Constitution, the content of the Sámi's cultural autonomy is regulated in compliance with paragraph 17 (3) of the Constitution, which regulates the Sámi's rights to maintain and develop their language and culture.<sup>25</sup> The concept of culture is to be interpreted broadly and it does not only cover the safeguarding of minorities' linguistic rights, but rather it protects extensively many kinds of different cultural aspects.<sup>26</sup>

The object of the Sámi provisions in the Finnish Constitution is to advance the realisation of de facto equality, meaning that the equality is fulfilled regardless of people's different basis and possibilities.<sup>27</sup> However, when necessary, positive special measures can also be invoked.

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<sup>18</sup> Elo (2012), *supra nota* 2, 27.

<sup>19</sup> *Ibid.*, 27.

<sup>20</sup> *Ibid.*, 27.

<sup>21</sup> *Ibid.*, 27.

<sup>22</sup> Kokko, K. T., Aikio, A., Brax, T., Hyvärinen, H., Joonas, T., Karhu, J., . . . Torp, E. (2010). *Kysymyksiä saamelaisten oikeusasemasta*. Rovaniemi: University of Lapland. 1-270, 7. Retrieved from: [https://lauda.ulapland.fi/bitstream/handle/10024/59500/Kokko\\_Kysymyksiä\\_saamelaisten\\_oikeusasemasta.pdf?sequence=1](https://lauda.ulapland.fi/bitstream/handle/10024/59500/Kokko_Kysymyksiä_saamelaisten_oikeusasemasta.pdf?sequence=1), 1 April 2022

<sup>23</sup> Perustuslaki 11.6.1999/731 art. 121.

<sup>24</sup> Kokko, K. (2010) *supra nota* 22, 20.

<sup>25</sup> Kokko, K. (2010) *supra nota* 22, 20.

<sup>26</sup> *Ibid.*

<sup>27</sup> Kokko, K. (2010) *supra nota* 22, 20.

According to the Finnish Non-Discrimination Act (*Yhdenvertaisuuslaki* 1325/2014) such a proportionate special treatment, which goal is to advance de facto equality or to prevent or eliminate disadvantages caused by discrimination, is not considered discrimination.<sup>28</sup> According to the preparatory work of the Constitution, the goal of the Sámi provisions is the preservation of the Sámi people's distinctive culture.<sup>29</sup>

## 1.2. The Act on the Sámi Parliament

The Act on the Sámi Parliament (*Laki saamelaiskäräjistä* 17.7.1995/974) is the main legislative instrument, which regulates the Sámi autonomy in Finland. The objective of the Act is laid out that the Sámi as indigenous people have autonomy over their language and culture in their homeland as is regulated by the Act and other appropriate legislation. For managing these tasks belonging to autonomy, the Sámi will elect the Sámi Parliament from among themselves.<sup>30</sup> The Sámi Parliament consists of twenty one members and four deputy members, who are elected every four years by the Sámi who are entitled to vote.<sup>31</sup> This means that only the Sámi, who are marked in the electoral register, can participate in the election and run for the Parliament.

Importantly, the definition of a Sámi is also provided in the Act.<sup>32</sup> As there has been a considerable amount of public discussion regarding the definition, the thesis will provide more insight to it in a separate sub chapter.

The main tasks of the Sámi Parliament per the Act are taking care of matters, which fall within the autonomy as well as their status as indigenous people, representing Sámi in nationally and internationally in matters concerning them, and compiling a report to the Finnish Government on developments with special connections to the Sámi.<sup>33</sup>

The Act furthermore lays down the dialogue obligation between the Sámi Parliament and public authorities.<sup>34</sup> The obligation concerns actions, which are far-reaching and significant, have a

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<sup>28</sup> Yhdenvertaisuuslaki 1325/2014 art. 9.

<sup>29</sup> Kokko, K. (2010) *supra nota* 22, 20.

<sup>30</sup> Laki saamelaiskäräjistä 17.7.1995/974, art. 1.

<sup>31</sup> Anttola, R. (2002). Sami: Indigenous Peoples of the North. *Ateneo Law Journal*, 41 (814), 814-821, 815.

<sup>32</sup> Laki saamelaiskäräjistä 17.7.1995/974, art. 3.

<sup>33</sup> Laki saamelaiskäräjistä 17.7.1995/974, art. 5,6,7.

<sup>34</sup> Laki saamelaiskäräjistä 17.7.1995/974, art. 9.

direct effect on the status of the Sámi as indigenous people and take place within the Sámi homeland.<sup>35</sup> In order to fulfil the dialogue obligation, the public authority in question must dedicate an opportunity for the Sámi Parliament to be heard and negotiate on the matter.<sup>36</sup>

### 1.2.1 Definition of Sámi

As previously stated, there has been extensive discussion among scholars and the public of the Sámi definition the Act on the Sámi Parliament lays down.

According to the Act on the Sámi Parliament there are several criteria, which need to be partially or completely fulfilled in order for a person to be considered as Sámi.<sup>37</sup> To begin with a person must consider themselves a Sámi and this is an absolute requirement laid down by the Act.<sup>38</sup> The Act also requires that one of the following criteria is met besides the aforementioned. First of all, the person or at least one of their parents or grandparents has learned one of the Sámi languages as their “first language”.<sup>39</sup> For the second, the person is a descendant of such an individual, who has been marked as a mountain, forest or fishing Lapp in a historical “land”, “taxation”, or “population” register.<sup>40</sup> The last criteria is that one of the person’s parents or grandparents was registered or could have been registered as entitled to vote in the election of the Sámi Parliament or its predecessor the Sámi Delegation.<sup>41</sup>

The definition of a Sámi is of significant importance, because when an individual is considered a Sámi on the basis of the criteria laid down in article 3 of the Act on the Sámi Parliament, it also enables that individual to be committed to the official electoral register of the Sámi Parliament.<sup>42</sup> The register defines the Sámi, who have the right to vote, and therefore also the right to run in the Parliament’s elections.<sup>43</sup> Some scholars have argued that the right to vote can be considered

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<sup>35</sup> Laki saamelaiskäräjistä 17.7.1995/974, art. 9.

<sup>36</sup> Laki saamelaiskäräjistä 17.7.1995/974, art. 9.

<sup>37</sup> Laki saamelaiskäräjistä 17.7.1995/974, art. 3.

<sup>38</sup> Laki saamelaiskäräjistä 17.7.1995/974, art. 3.

<sup>39</sup> Anttola, R. (2002). *supra nota* 31, 816.

<sup>40</sup> *Ibid.*, 816

<sup>41</sup> *Ibid.*, 816.

<sup>42</sup> Sarivaara, E. (2012). Statuksettomat saamelaiset: Paikantumisia saamelaisuuden rajoilla. *Dieđut*, 2 (12), 1-304, 52. Retrieved from:

[https://arkisto.org/wp-content/uploads/2017/08/Statuksettomat\\_saamelaiset\\_Paikantumisia\\_saamelaisuuden\\_rajoilla\\_Dissertation.pdf](https://arkisto.org/wp-content/uploads/2017/08/Statuksettomat_saamelaiset_Paikantumisia_saamelaisuuden_rajoilla_Dissertation.pdf), 7 March 2022

<sup>43</sup> *Ibid.*, 52.

as having a Sámi status.<sup>44</sup> In other words the Sámi status formalises an individual's sáminess and entitles the participation in Sámi politics.

In case an individual considers that they have not been accepted to the Sámi Parliament's electoral register without adequate reason, they can request the Election Committee of the Parliament to correct the decision.<sup>45</sup> If they are furthermore dissatisfied with the Election Committee's decision, the individual may claim for correction from the Executive Board of the Sámi Parliament.<sup>46</sup> Finally an individual may appeal to the Supreme Administrative Court if they nevertheless consider that the aforementioned decisions by the Election Committee and the Executive Board have not been well justified.<sup>47</sup> Therefore, ultimately the Supreme Administrative Court can determine whether an individual is to be considered as a Sámi.

### 1.2.2. Criticism on the Sámi Definition

There has also been criticism among scholars regarding the Sámi definition. What comes to the language criteria, it is considered problematic, because it especially disregards the descendants of forest and fishing Lapps, whose ancestors had to experience a change of language from one of the Sámi languages to Finnish, mainly as a consequence of assimilation.<sup>48</sup> What is notable from a legal point of view is that both descendants, those who lost the language and those who did not, descend from the same peoples.<sup>49</sup> The difference is that a part of these peoples had to give up their own language when the majority population occupied the traditional Sámi lands.

The second criteria, where a person's sáminess is determined through descentance from forest, mountain or fishing Lapp is considered to be the most challenging to interpret.<sup>50</sup> The criteria is widely deemed as ambiguous, since the Act on the Sámi Parliament does not specify a temporal connection to the Lapp ancestor.<sup>51</sup> Because the Act does not lay out a certain year beyond which the connection would not be traced, it is argued that essentially anyone could claim to have an ancestor from several hundred years ago and consequently demand the Sámi status and right to

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<sup>44</sup> *Ibid.*, 52.

<sup>45</sup> Laki saamelaiskäräjistä 17.7.1995/974, art. 26.

<sup>46</sup> Laki saamelaiskäräjistä 17.7.1995/974, art. 26.

<sup>47</sup> Laki saamelaiskäräjistä 17.7.1995/974, art. 26b.

<sup>48</sup> Sarivaara (2012), *supra nota* 42, 52.

<sup>49</sup> *Ibid.*, 52.

<sup>50</sup> *Ibid.*, 52.

<sup>51</sup> Laki saamelaiskäräjistä 17.7.1995/974, art. 3.

vote in the Sámi Parliament's elections.<sup>52</sup> However, the descendant of a Lapp was primarily meant to specify people who are descendants of such Sámi, who would be defined as Sámi on the current, language based criteria.<sup>53</sup> Therefore, the objective of the discussed criteria was not to substantially increase the number of people who can vote in the Sámi Parliament's elections.

The third criteria laid down by the Act on the Sámi Parliament requires a person to have a parent or grandparent who is a Sámi.<sup>54</sup> This criteria might prove to be problematic over time, since descentance only defines whether a person is Sámi regardless of their language or other connection to the Sámi people.<sup>55</sup>

The reason why the definition of a Sámi is of significant importance, because when an individual is considered a Sámi on the basis of the criteria laid down in article 3 of the Act on the Sámi Parliament, it also enables that individual to be committed to the official electoral register of the Sámi Parliament.<sup>56</sup> The register defines the Sámi, who have the right to vote, and therefore also the right to run in the Parliament's elections.<sup>57</sup> Some scholars have argued that the right to vote can be considered as having a Sámi status.<sup>58</sup> In other words the Sámi status formalises an individual's sáminess and entitles the participation in Sámi politics.

It is argued by some scholars that the Sámi Parliament upholds a rather explicit or even "arbitrary" practice on who can register on to the Parliament's "electoral register".<sup>59</sup> It has been proposed that the definition of a Sámi would be more adequate if the most distinctive importance would be given to a person's self identification and their partaking in "traditional Sámi livelihoods".<sup>60</sup> Being able to register oneself into the electoral register is important, because only the individuals in the register are recognized to be Sámi community members.<sup>61</sup> The Sámi Parliament, however, defends the strict policy being well-grounded on the basis of protecting the Sámi from "the threat of assimilation".<sup>62</sup>

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<sup>52</sup> Sarivaara (2012), *supra nota* 42, 53.

<sup>53</sup> *Ibid.*, 53.

<sup>54</sup> Laki saamelaiskäräjistä 17.7.1995/974, art. 3.

<sup>55</sup> Sarivaara (2012), *supra nota* 42, 53.

<sup>56</sup> *Ibid.*, 57.

<sup>57</sup> *Ibid.*, 57.

<sup>58</sup> *Ibid.*, 57.

<sup>59</sup> Valkonen, J., Valkonen, S., Koivurova, T. (2017). Groupism and the politics of indigeneity: A case study on the Sámi debate in Finland. *Ethnicities*, 17 (4), 526–545, 534.

<sup>60</sup> Aikio, A., Åhren, M. (2014). A reply to calls for an extension of the definition of Sámi in Finland. *Arctic Review on Law and Politics*, 5, 123–143, 124.

<sup>61</sup> *Ibid.*, 124.

<sup>62</sup> *Ibid.*, 124.

## 1.3. Sámi Language Act

### 1.3.1. The Old Sámi Language Act

The Sámi language gained official status in 1992, when the old Sámi Language Act came into force.<sup>63</sup> The Act guaranteed the Sámi the right to use Sámi language in certain public authorities, which were specifically set out in the Act.<sup>64</sup> However, the Act did not impose an obligation for state officials to know Sámi language, the linguistic rights of the Sámi were to be fulfilled through translation and interpretation, in cases where the officials did not possess adequate skills.<sup>65</sup> The objective of the Act was nevertheless to bring the Sámi to a more equal position with the rest of the population regarding linguistic rights.<sup>66</sup> The old Act increased the use of written Sámi language in state authorities, but the oral use was still diminutive especially in the authorities, which lacked adequate expertise.<sup>67</sup> The Sámi Parliament viewed that the level of linguistic rights prescribed by the Constitution and some international conventions was not obtained at the time.<sup>68</sup>

### 1.3.2. The Sámi Language Act in Force

The revised Sámi Language Act (*Saamen kielilaki* 15.12. 2003/1086) came into force in 2004 and at the same time replaced the old act. The objective of the Act is to safeguard the Sámi's constitutional right to maintain and develop their culture and language.<sup>69</sup> The Act aims to ensure the Sámi's right to a fair trial and good administration regardless of their language and to accomplish the fulfilment of linguistic rights without the need to invoke them separately.<sup>70</sup> The Sámi Language Act also prescribes the Sámi's right to use their own language in courts and other official state institutions.<sup>71</sup> Moreover, state authorities have obligations to fulfil and advance the

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<sup>63</sup> Elo, E (2012), *supra nota* 2, 29.

<sup>64</sup> *Ibid.*, 29.

<sup>65</sup> *Ibid.*, 29.

<sup>66</sup> *Ibid.*, 29.

<sup>67</sup> *Ibid.*, 30.

<sup>68</sup> *Ibid.*, 30.

<sup>69</sup> Saamen kielilaki 1086/2003, art. 1.

<sup>70</sup> Elo (2012), *supra nota* 2, 30.

<sup>71</sup> Saamen kielilaki 1086/2003, art. 2.

Sámi linguistic rights.<sup>72</sup> The state authorities covered in the Act include municipal authorities in the Sámi homeland area, courts as well as district and local government authorities.<sup>73</sup>

Central aspiration of the Act is that Sámi's linguistic rights in official context would actualise in practice and to correct the shortcomings, which were identified in the implementation of the old act.<sup>74</sup>

It is notable that the right to use Sámi language is not dependent on an individual's nationality and the right is also extended to a Sámi speaking foreign such as a Swedish or Norwegian national.<sup>75</sup> However, the right belongs to the Sámi only and another limitation is that according to paragraph 3 (1) 1 the right covers Northern, Inari and Skolt Sámi languages.<sup>76</sup> These are the Sámi languages, which are spoken among those Sámi living in Finland. Another important notion is that the constitutional right to language and culture is guaranteed in Finland as a whole whereas the Sámi Language Act is mainly applicable in the Sámi Domicile Area.<sup>77</sup> At national level the Sámi possess the overall, more general right to use their language, but on the regional level the right is dependable on the municipality and official in question.<sup>78</sup>

#### **1.4. The Act on Metsähallitus**

In 2016, the act on *Metsähallitus* was amended.<sup>79</sup> This Act has significant importance regarding the Sámi, since *Metsähallitus* “is the state enterprise responsible for managing activities in the nation's state-owned lands”.<sup>80</sup> Some of these state owned lands are those, where the Sámi practise their traditional livelihoods such as reindeer husbandry. According to the Act on *Metsähallitus*, the management, use and conservation of natural resources in the Sámi homeland area should be performed in a way, which safeguards that the conditions for Sámi practising their culture and livelihoods is fulfilled.<sup>81</sup> Furthermore, advisory boards shall be established in the

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<sup>72</sup> Saamen kielilaki 1086/2003, art. 2.

<sup>73</sup> Saamen kielilaki 1086/2003, art. 2.

<sup>74</sup> *Ibid.*, 30.

<sup>75</sup> *Ibid.*, 31.

<sup>76</sup> *Ibid.*, 31.

<sup>77</sup> *Ibid.*, 31.

<sup>78</sup> *Ibid.*, 31.

<sup>79</sup> Laki Metsähallituksesta 234/2016, art. 1.

<sup>80</sup> Laki Metsähallituksesta 234/2016, art. 1.

<sup>81</sup> Laki Metsähallituksesta 234/2016, art. 6.

municipalities of the Sámi homeland area.<sup>82</sup> The advisory boards will address matters relating to the sustainable usage of state owned land and water areas and natural resources therein.<sup>83</sup> The Act, however, does not determine how the advisory boards are composed, nor make it obligatory that Sámi are included there.

The amendment to the Act has faced plenty of criticism for multiple reasons. First of all the Act does not distinguish the position of Sámi as indigenous people and moreover fails to fulfil the constitutional requirement that the Sámi can preserve and promote their culture.<sup>84</sup> The Act before the amendment contained provisions, whose objective were to safeguard that the right of the Sámi as an indigenous people to maintain and develop their own language and culture is safeguarded in *Metsähallitus'* operations in the Sámi homeland. The amended Act, however, did not include this provision. The Government's proposal also included prohibition of the deterioration of the Sámi culture, which was not incorporated in the final version of Act.

Furthermore, the Sámi were not consulted with the ultimate version of the Act.<sup>85</sup> The Sámi Parliament also noted that the new governance model of *Metsähallitus* as a state owned enterprise would significantly complicate the ratification of the Convention No. 169 for the reason that the Sámi's rights to land and water were not resolved.<sup>86</sup> Overall, the most essential articles concerning the Sámi people, which were originally incorporated in the Government's proposal for the Act and accepted by the Sámi Parliament were withheld.<sup>87</sup>

This has also been noted by the United Nations (UN) Special Rapporteur, according to whom the Act fails to provide "specific provisions safeguarding the Sami people", especially disregarding the Sámi's right to practise "their traditional livelihoods" and hindering "their right to lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired".<sup>88</sup> The Special Rapporteur also remarks that the Sámi Parliament among other Sámi actors have a very limited possibility to affect these developments and that their ability to participate seems to be insufficient.<sup>89</sup>

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<sup>82</sup> Laki Metsähallituksesta 234/2016, art. 18.

<sup>83</sup> Laki Metsähallituksesta 234/2016, art. 18.

<sup>84</sup> Albanesi, E. (2018). Sami's Reindeer Husbandry and EU Legislation (beyond Finland and Sweden's Accession Treaty). *Yearbook of Polar Law*, 10, 23-40, 37.

<sup>85</sup> *Ibid.*, 37.

<sup>86</sup> The Finnish Government proposal of legislation on the reorganisation of Metsähallitus (HE 132/2015), Retrieved from <https://www.finlex.fi/fi/esitykset/he/2015/20150132> , 30 April 2022

<sup>87</sup> Albanesi (2018), *supra nota* 84, 37.

<sup>88</sup> *Ibid.*, 37.

<sup>89</sup> *Ibid.*, 37.



## 1.5. The Reindeer Herding Act

The Reindeer Herding Act provides the main legislative basis for reindeer herding in Finland. The current Act was decreed in 1990, five years before the Constitutional provisions regulating the Sámi's special status were prescribed.<sup>90</sup> The Act, however, does not contain provisions of Sámi's special rights for reindeer husbandry, because these rights were not yet investigated at the time.<sup>91</sup> Therefore the Act does not separately protect reindeer husbandry as a part of the Sámi's culture within the meaning of article 17 (3) of the Constitution, which, as stated, specifically applies to the Sámi.<sup>92</sup>

Reindeer husbandry is certainly one of the most important traditional livelihoods for the Sámi both culturally and economically, and it enjoys constitutional protection as part of the Sámi's cultural rights.<sup>93</sup> Nevertheless it is an important livelihood, it is estimated that approximately 900, equating to one-tenth of Sámi individuals continue to carry out reindeer herding in their traditional manner.<sup>94</sup> Regardless, the Sámi's possibilities to influence and involvement in the administrative aspects of reindeer husbandry are not sufficiently protected by current legislation.<sup>95</sup> In 2000, a special Sámi Committee set by the Ministry of Justice assessed in a memorandum that although the administration of reindeer husbandry in the Sámi domicile area is mainly composed of Sámis, the legislative, administrative, economic and research guidelines for the entire reindeer herding area are mainly based on the viewpoints adopted by the Reindeer Herders' Association.<sup>96</sup> The Sámi are a minority in the Association's administration and are hence unable to sufficiently promote the consideration of the special features of Sámi culture in reindeer husbandry.<sup>97</sup> The Committee's view was that the Reindeer Herders' Association position reflects the values, demands and benefits of Finnish reindeer husbandry, which relate to reindeer husbandry as part of agriculture.<sup>98</sup> In this respect, the Committee proposed that the role of those Reindeer Herders' Association, which are located in the Sámi Domicile Area would be

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<sup>90</sup> Guttorm (2018), *supra nota* 12, 329.

<sup>91</sup> *Ibid.*, 329.

<sup>92</sup> *Ibid.*, 329.

<sup>93</sup> *Ibid.*, 330.

<sup>94</sup> Joona, T. (2020), *supra nota* 5, 242.

<sup>95</sup> Guttorm (2018), *supra nota* 12, 330.

<sup>96</sup> *Ibid.*, 330.

<sup>97</sup> *Ibid.*, 330.

<sup>98</sup> *Ibid.*, 330.

developed by amending the Reindeer Husbandry Act.<sup>99</sup> However, this did not lead to any measures in the Ministry of Agriculture and Forestry.<sup>100</sup>

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<sup>99</sup> *Ibid.*, 330

<sup>100</sup> *Ibid.*, 330.

## 2. ILO CONVENTION NO. 169

The International Labour Organisation's (ILO) Convention No. 169, Indigenous and Tribal Peoples Convention (hereinafter, the Convention, or ILO Convention No. 169), is currently the only international convention, which is exclusively focused on indigenous peoples.<sup>101</sup> The Convention no. 169 replaced its predecessor, the International Labour Organisation's Convention no. 107 on Indigenous and Tribal Populations from 1957, which focused more on assimilating indigenous peoples and integrating them to the majority population.<sup>102</sup> The Convention is legally binding and it establishes a commitment to the states, which have ratified it.<sup>103</sup> ILO Convention No. 169 constitutes a foundation for safeguarding “the fundamental rights of indigenous peoples” in compliance with international law and determines the principal commitments directed towards the signatory states, by means of signatory states proceeding to obtain such resources that take into account special circumstances within each individual state when ratifying the Convention.<sup>104</sup>

The Convention is founded “on respect for the cultures and ways of life of indigenous peoples and recognizes their right to land and natural resources and to define their own priorities for development”.<sup>105</sup> The objective of the Convention is to overpower discriminatory customs, which have an influence on indigenous and tribal peoples lives and livelihoods and to make possible that these people are able to be involved in such decision making, which concerns them.<sup>106</sup> It is argued that “the principles of consultation and participation” create the foundation to the Convention. Moreover, the Convention addresses matters, which impose effects on the

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<sup>101</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 & Comparative Law*, 22 (1), 7-17, 9.

<sup>102</sup> Heinämäki, L. (2015). The Rapidly Evolving International Status of Indigenous Peoples: The Example of the Sami People in Finland. In: C, Allard, S, Funderud Skogvang (Eds.) *Indigenous Rights in Scandinavia; Autonomous Sami Law* (189-204). London, New York: Routledge.

<sup>103</sup> *Ibid.*, 192.

<sup>104</sup> Kryazhkov, V.A., Garipov, R.S. (2021). ILO 169 convention as a vector for the aboriginal legislation development in Russia. *The International Journal of Human Rights*, 25 (6), 1007-1031, 1010.

<sup>105</sup> Understanding the Indigenous and Tribal People Convention, 1989 (No. 169). Handbook for ILO Tripartite Constituents / International Labour standards Department. (2013). Geneva: International Labour Organization. Retrieved from

[https://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---normes/documents/publication/wcms\\_205225.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/publication/wcms_205225.pdf) , 15

April 2022

<sup>106</sup> *Ibid.*, 1.

indigenous and tribal peoples such as labour, schooling, economic assistance, legal traditions, spirituality and partnerships between indigenous peoples from different nations .<sup>107</sup>

The Convention is described as introducing a “revolutionary approach”.<sup>108</sup> This claim is justified through the viewpoint, which the Convention provides, that indigenous peoples are “a common society” that might be lost at one point because of the effects of modernization around the world.<sup>109</sup> The Convention’s revolutionary aspect that is introduced include acceptance and reverence of these peoples’ multiculturalism, strengthening their own viewpoints and preferences when it comes to their evolvement, enhance through its text “the recognition and protection of traditional institutions, traditional values, and customary laws respecting the rights of indigenous peoples”, emphasising the perception regarding the areas these peoples inhabit and takes it further from only granting the rights to live there but also providing “the rights to natural resources, indigenous lands, and to ancestral lands that they have lost”, and finally the Convention provides “the right to self definition”.<sup>110</sup>

## **2.1. Determining Indigenous Peoples under the Convention**

When the ILO 169 Convention was prepared, it was presumed that the defining of indigenous peoples would not create difficulties in practice.<sup>111</sup> Therefore it was not deemed necessary to include a specific definition of indigenous peoples in the Convention. It is notable that determining the indigenous peoples to whom the Convention applies to has not caused difficulties after the Convention came into force. It is argued that in general it is quite clear who the world’s indigenous peoples are. However, the problematic aspect here is to determine who belongs to an indigenous group at individual level. As stated before, the Convention does not provide a strictly limited definition for indigenous peoples. However, the Convention provides in its article 1 the peoples to whom it is applicable to and it follows that:

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<sup>107</sup> *Ibid.*, 1.

<sup>108</sup> Pelce, A. (2002). Overview of International Instruments Relating to Indigenous Peoples. *Ateneo Law Journal*, 47 (3), 792-798, 739.

<sup>109</sup> *Ibid.*, 740.

<sup>110</sup> *Ibid.*, 740.

<sup>111</sup> Kokko, K. (2010) *supra nota* 22, 52.

“1. This Convention applies to:

- (a) tribal peoples in independent countries whose social, cultural and economic conditions distinguish them from other sections of the national community, and whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations;
  - (b) peoples in independent countries who are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonisation or the establishment of present state boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions.
2. Self-identification as indigenous or tribal shall be regarded as a fundamental criterion for determining the groups to which the provisions of this Convention apply.
3. The use of the term peoples in this Convention shall not be construed as having any implications as regards the rights which may attach to the term under international law.”<sup>112</sup>

The Convention takes an objective and subjective viewpoint. The objective requirement indicates that a specific indigenous or tribal group or people meets the criteria laid down in Article 1 (1) and acknowledges a person as a member of their group or people.<sup>113</sup> The subjective criterion means that the individual concerned identifies as a member of this group or people, or that the group perceives to be indigenous or tribal in accordance with the Convention.<sup>114</sup> The Convention appears to be concentrated on the contemporary situation, notwithstanding the relevance of tradition.<sup>115</sup> The aim is to enhance indigenous and tribal peoples' living and working situations so that they can remain as unique peoples should they so desire.<sup>116</sup>

It is quite clear that the Sámi are indigenous peoples as defined in article 1 of the Convention. However, as it was noted in chapter 1.2.1 there are issues within Finland in determining who is a Sámi on an individual level. This can be considered an issue if the Convention is ratified in Finland, since it is important to know to whom the Convention applies to.

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<sup>112</sup> International Labour Organization (ILO), *Indigenous and Tribal Peoples Convention, C169*, 27 June 1989, C169, §1, available at: [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:55:0::NO::P55\\_TYPE,P55\\_LANG,P55\\_DOCUMENT,P55\\_NODE:REV,en,C169./Document](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:55:0::NO::P55_TYPE,P55_LANG,P55_DOCUMENT,P55_NODE:REV,en,C169./Document)

<sup>113</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, 307.

<sup>114</sup> *Ibid.*, 307.

<sup>115</sup> *Ibid.*, 307.

<sup>116</sup> *Ibid.*, 307.

## 2.2. Land Rights Articles of ILO Convention No. 169

The land rights articles of the Convention have a significant importance for the reason that most indigenous and tribal peoples regard land to be fundamental to their traditions and livelihoods.<sup>117</sup> It is frequently the foundation for their financial survival, spiritual well-being, and cultural identity.<sup>118</sup> As a result, the loss of ancestral grounds poses a serious threat to indigenous communities and indigenous people's future.

Land right matters are addressed in the second section of the Convention, in articles 13 to 19.<sup>119</sup> Article 13 of the Convention acknowledges the strong tie connecting indigenous peoples to the land “they occupy or otherwise use”.<sup>120</sup> There is a wide consensus that article 14, which regulates that the indigenous peoples shall be guaranteed the right of “ownership” and “possession” over the lands that they have historically inhabited, is regarded as the most crucial article.<sup>121</sup> Article 15 protects the indigenous peoples’ right to “...the natural resources pertaining to their lands”.<sup>122</sup> These rights consist of “the right of these peoples to participate in the use, management and conservation of these resources”.<sup>123</sup>

## 2.3. Supervisory Mechanism of ILO Conventions

Article 22 of the ILO Constitution provides “Each of the Members agrees to make an annual report to the International Labour Office on the measures which it has taken to give effect to the provisions of Conventions to which it is a party”. Furthermore “These reports shall be made in

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<sup>117</sup> Joona, T., Joona, J. (2011). Historical Basis of Saami Land Rights in Finland and the Application of ILO Convention No. 169, *The Yearbook of Polar Law*, 3, 351-388, 368.

<sup>118</sup> *Ibid.*, 368.

<sup>119</sup> Joona, T. (2010). International norms and domestic practices in regard to ilo convention no. 169 with special reference to articles and 13-19. *International Community Law Review*, 12 (2), 213-260, 216.

<sup>120</sup> Ulfstein, G. (2004). Indigenous Peoples' Right to Land. *Max Planck Yearbook of United Nations Law*, 8, 1-48, 15.

<sup>121</sup> Joona, T. (2010), *supra nota* 119, 244.

<sup>122</sup> International Labour Organization (ILO), *Indigenous and Tribal Peoples Convention, C169*, 27 June 1989, C169, §15, available at:

[https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:55:0::NO::P55\\_TYPE,P55\\_LANG,P55\\_DOCUMENT,P55\\_NODE:REV,en,C169/Document](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:55:0::NO::P55_TYPE,P55_LANG,P55_DOCUMENT,P55_NODE:REV,en,C169/Document)

<sup>123</sup> International Labour Organization (ILO), *Indigenous and Tribal Peoples Convention, C169*, 27 June 1989, C169, §15, available at:

[https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:55:0::NO::P55\\_TYPE,P55\\_LANG,P55\\_DOCUMENT,P55\\_NODE:REV,en,C169/Document](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:55:0::NO::P55_TYPE,P55_LANG,P55_DOCUMENT,P55_NODE:REV,en,C169/Document)

such form and shall contain such particulars as the Governing Body may request”.<sup>124</sup> The article constitutes the standard supervisory system, which applies to each ILO convention alike.<sup>125</sup> The Committee of Experts on the Application of Conventions and Recommendations (CEACR) evaluates the states’ reviews and afterwards the annual reports are put forth to the International Labour Conference (ILC). The Conference Committee on the Application of Standards (CAS) evaluates and gives prominence to some of the more important instances from the CEACR report at the International Labour Conference.<sup>126</sup>

It is argued that the CEACR’s work is particularly significant regarding the current topic of indigenous people, because the Experts are tasked with assessing how well the signatory states have managed to maintain and enforce ILO 169.<sup>127</sup> The CEACR makes considerations, which are a part of its reports, as well as explicit proposals, which are addressed specifically to the ratifying states. The experts may, in unusual circumstances, also provide generic propositions and instructions regarding particular subjects or issues emerging out of the ILO Conventions.<sup>128</sup> The ILO’s system of monitoring also provides particular processes based on complaints/ objections besides the aforementioned “general reporting and monitoring system”.<sup>129</sup> According to ILO Constitution article 26 (1) “Any of the Members shall have the right to file a complaint with the International Labour Office if it is not satisfied that any other Member is securing the effective observance of any Convention which both have ratified in accordance with the foregoing articles”.<sup>130</sup>

It can be argued that for indigenous peoples, “the representation procedure”, which is laid down in article 24 of the ILO Constitution, is considered to give the most significant means of impact within the ILO supervisory system.<sup>131</sup> The article follows that:

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<sup>124</sup> International Labour Organization (ILO), *Indigenous and Tribal Peoples Convention, C169*, 27 June 1989, C169, § 22, available at: [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:55:0::NO::P55\\_TYPE,P55\\_LANG,P55\\_DOCUMENT,P55\\_NODE:REV,en,C169./Document](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:55:0::NO::P55_TYPE,P55_LANG,P55_DOCUMENT,P55_NODE:REV,en,C169./Document)

<sup>125</sup> Rombouts, S.J. (2017). The Evolution of Indigenous Peoples’ Consultation Rights Under the Ilo and U.N. Regimes. *Stanford Journal of International Law*, 53 (2), 169-224, 191.

<sup>126</sup> *Ibid.*, 191.

<sup>127</sup> *Ibid.*, 191.

<sup>128</sup> *Ibid.*, 191.

<sup>129</sup> *Ibid.*, 191.

<sup>130</sup> International Labour Organization (ILO), *Indigenous and Tribal Peoples Convention, C169*, 27 June 1989, C169, §26, available at: [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:55:0::NO::P55\\_TYPE,P55\\_LANG,P55\\_DOCUMENT,P55\\_NODE:REV,en,C169./Document](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:55:0::NO::P55_TYPE,P55_LANG,P55_DOCUMENT,P55_NODE:REV,en,C169./Document)

<sup>131</sup> Rombouts (2017), *supra nota* 125, 192.

“In the event of any representation being made to the International Labour Office by an industrial association of employers or of workers that any of the Members has failed to secure in any respect the effective observance within its jurisdiction of any Convention to which it is a party, the Governing Body may communicate this representation to the government against which it is made, and may invite that government to make such statement on the subject as it may think fit”.<sup>132</sup>

“A three-member tripartite committee” can be selected to review the qualification of representation and how the state has reacted, if the representation is deemed satisfactory. The Committee then composes a report and possible suggestions to the Governing Body, which approves it.<sup>133</sup> When it comes to ILO Convention 169 the “representation procedures” have been proved to be beneficial, since 18 procedures have resulted in suggestions that have been made public.<sup>134</sup>

One of the primary shortcomings of the Convention 169 is that indigenous peoples are unable to straightforwardly appeal to “the ILO’s complaint bodies”. The reason behind this is “the tripartite nature of the ILO’s supervisory mechanism”.<sup>135</sup> However, the aforementioned does not conclude that the “supervisory bodies” of ILO would not take into account what benefits indigenous peoples.<sup>136</sup> As a part of the “regular supervisory procedure”, the indigenous peoples can deliver relevant intelligence regarding “policies”, legal acts or “court decisions” to the ILO supervisory authorities.<sup>137</sup> It is also stated that indigenous people are able to and often do cooperate with trade unions, which enable the indigenous peoples to bring forth their viewpoints and likewise, such labour unions have provided perceptions and statements in the name of indigenous groups.<sup>138</sup>

Overall, the array of supervisory methods has proved to be successful, specifically in relation to other international supervisory agencies.<sup>139</sup> “A high rate of reporting”, acceptance by all States called to participate before the Conference Committee, and a considerable amount of objections assessed by the Committee on Freedom of Association indicate to the procedure's broad regard,

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<sup>132</sup> International Labour Organization (ILO), *Indigenous and Tribal Peoples Convention, C169*, 27 June 1989, C169, §24, available at: [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:55:0::NO::P55\\_TYPE,P55\\_LANG,P55\\_DOCUMENT,P55\\_NODE:REV,en,C169./Document](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:55:0::NO::P55_TYPE,P55_LANG,P55_DOCUMENT,P55_NODE:REV,en,C169./Document)

<sup>133</sup> Rombouts (2017), *supra nota* 125, 192.

<sup>134</sup> *Ibid.*, 192.

<sup>135</sup> *Ibid.*, 193.

<sup>136</sup> *Ibid.*, 193.

<sup>137</sup> *Ibid.*, 193.

<sup>138</sup> *Ibid.*, 193.

<sup>139</sup> Swepston, L. (1997). Supervision of Ilo Standards. *International Journal of Comparative Labour Law and Industrial Relations*, 13 (4), 327-344, 341.



which is also successful in obtaining changes in legislation and policy in state parties in a vast number of nations," and is highly valued.<sup>140</sup> The ILO strengthens its "supervisory activity" by making sure that technical cooperation adheres to its requirements and that no support is provided that is in violation of those standards.<sup>141</sup>

## 2.4. Ratification attempts in Finland

The ratification of ILO Convention No. 169 has been addressed several times in Finland, and twice these discussions have led to Government's proposals for ratifying it. However, in both times the ratification did not take place.

The first ratification attempt took place already in 1990. The Government's proposal discussed the overall objective of the Convention No. 169, and noted that states must ensure to safeguard cultural and linguistic, as well as social and economic status of indigenous peoples.<sup>142</sup> In the reasoning of the proposal it was viewed that the Finnish legislation of that time sufficiently fulfilled the requirements for the ratification of the Convention in general.<sup>143</sup> However, the proposal did not analyse whether the existing legislation fulfils article specific requirements laid down in the Convention.<sup>144</sup>

The second ratification attempt took place in 2015. Though it was unsuccessful, there were important findings in the Government's proposal for ratification of the Convention No. 169. An important notion from the Government's proposal was that the current legislation in Finland did not provide any obstacles for ratification of what comes to article 7 (1) of the Convention that regulates the Sámi's right to determine their own priorities.<sup>145</sup> Further it was evaluated in the proposal that the Sámi cultural autonomy, which is regulated in the Constitution can be considered to fulfil the meaning of the Convention's article 7 (1) of governing cultural and social development.<sup>146</sup> However, the economic development, which is discussed in the same article was

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<sup>140</sup> *Ibid.*, 341.

<sup>141</sup> *Ibid.*, 341.

<sup>142</sup> Guttorm, J. (2018). *supra nota* 12, 154.

<sup>143</sup> *Ibid.*, 155.

<sup>144</sup> *Ibid.*, 155.

<sup>145</sup> *Ibid.*, 155.

<sup>146</sup> *Ibid.*, 155.

not discussed in the proposal.<sup>147</sup> It can be drawn regarding this, that in the Government's view the Finnish legislation does not fulfil that obligation arising from the Convention. Economic development in this context relates especially to the Sámi's right to govern their own traditional livelihoods and control activities, which might be contrary to them. Another reason the ratification did not take place was caused by the land rights articles of the Convention No. 169.<sup>148</sup> It was concluded that the Finnish legislation was not in accordance with them.<sup>149</sup>

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<sup>147</sup> *Ibid.*, 155.

<sup>148</sup> Joona, T. (2020), *supra nota* 5, 250.

<sup>149</sup> *Ibid.*, 250.

### 3. SÁMI IN OTHER NORDIC COUNTRIES

In Finland, Norway and Sweden, the Sámi are a minority and lack official regulatory power, even though they do still have some impact over legislative measures, which specifically concern them.<sup>150</sup> Assimilation operations in all of these states have impacted negatively on the Sámi's "culture" and "language", but most prominently on the Sámi "legal culture".<sup>151</sup> Nevertheless that Finland, Norway and Sweden possess similar attributes, among other matters in legislation, the development concerning the Sámi rights and applicable legislation has appeared to be focused quite differently in each country.<sup>152</sup> However, what is similar for most cases in these states, laws applicable to the Sami appear to be complicated, with a lack of explicit legislative rules and conflicting or ambiguous "legal sources".<sup>153</sup> Many issues are connected with the colonial history among these states, as well as the Sami's deep-rooted discrimination.<sup>154</sup> For the reason that "the oral traditions" have mainly prevailed in the Sami languages and in the absence of official interest, Sami heritage and "customary laws" have mostly remained unwritten and thus outside the range of legislation.<sup>155</sup>

Nevertheless the negative aspects regarding the Sámi in these countries, positive development has also occurred. Public international law, the ILO Convention No. 169, precedents of the European Court for Human Rights (ECHR), and European Union legislation have all embraced different approaches to respecting ethnic minorities and indigenous peoples.<sup>156</sup> In the Nordic countries and specifically their "legal cultures" this development has affected the Sámi rights in a positive manner and brought them to a more prominent position.<sup>157</sup> Besides the institutionalisation and official recognition of Sami rights, there have also been transformations

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<sup>150</sup> Allard, C. (2015). Some Characteristic Features of Scandinavian Laws and Their Influence on Sami Matters. In: C, Allard, S, Funderud Skogvang (Eds.) *Indigenous Rights in Scandinavia; Autonomous Sami Law* (49-64). London, New York: Routledge.

<sup>151</sup> *Ibid.*, 60.

<sup>152</sup> *Ibid.*, 63.

<sup>153</sup> *Ibid.*, 49.

<sup>154</sup> *Ibid.*, 49.

<sup>155</sup> *Ibid.*, 49.

<sup>156</sup> Å Modeér, K. (2015). Sami Law in the Late Modern Legal Contexts In: C, Allard, S, Funderud Skogvang (Eds.) *Indigenous Rights in Scandinavia; Autonomous Sami Law* (37-48). London, New York: Routledge.

<sup>157</sup> *Ibid.*, 39.

occurring in “state models” along with the general public’s views towards protecting indigenous peoples rights.<sup>158</sup>

### 3.1. Sámi in Norway

According to the Norwegian Constitution (*Kongeriket Norges Grunnlov* 1814-05-17) the Norwegian Government should establish such circumstances, which allow and support “the Sámi people” to maintain and advance their “language”, “culture” and “way of life”.<sup>159</sup> The Act on the Sámi Parliament implies similarly as the Constitution, with the objective to assist the Sámi to “safeguard and develop their language, culture and way of life”.<sup>160</sup>

The Norwegian Sámi Parliament (*Sameting*) was created in 1989.<sup>161</sup> The Parliament deals with all topics, which it regards to have a significant impact on the Sámi’s “rights” and “interests”.<sup>162</sup> Such administrative duties of the Sámi Parliament involve language development, managing Sámi sector’s financial resources and administering “cultural” and historical legacy as well as assisting in Sámi “education”.<sup>163</sup> Furthermore, the Norwegian State and state authorities have a mandatory consultation obligation in matters falling in the scope of the Sámi Parliament’s administration.<sup>164</sup> Overall, the Sámi Parliament has wide independence and authority.<sup>165</sup>

Similarly to Finland, there are also certain criteria for joining the Sámi Parliaments electoral register. According to the Norwegian Act on the Sámi Parliament both a subjective and an objective criteria need to be met in order for an individual to register to the electoral register.<sup>166</sup> First of all, the subjective criteria follows that an individual must consider themselves as Sámi.<sup>167</sup> The second criteria includes different options, where an individual or their “parent”,

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<sup>158</sup> *Ibid.*, 39.

<sup>159</sup> Kongeriket Norges Grunnlov 1814-05-17, art. 108.

<sup>160</sup> Sameloven 1987-06-12-56, art. 1-1.

<sup>161</sup> Saglie, J., Mörkenstam, U., Bergh, J. (2020). Political Cleavages in Indigenous Representation: The Case of the Norwegian and Swedish Sámediggi, *Nationalism and Ethnic Politics*, 26 (2), 105-125, 108.

<sup>162</sup> Shchukina, O., Zadorin, M., Savelev, I., Ershova, I., Konopleva, T. (2018). Norwegian policy on sami language learning and preservation. *Polish Journal of Educational Studies*, 1 (71), 185-194, 190.

<sup>163</sup> Saglie (2020), *supra nota* 161, 109.

<sup>164</sup> Sameloven 1987-06-12-56, art. 2-2.

<sup>165</sup> Saglie (2020), *supra nota* 161, 109.

<sup>166</sup> Sameloven 1987-06-12-56, art. 2-6.

<sup>167</sup> Sameloven 1987-06-12-56, art. 2-6.

“grandparent” or “great-grandparent” must have grown up with Sámi as home language, or an individual’s parent is currently registered or has been previously registered in the Sámi Parliament’s “electoral register”.<sup>168</sup>

However, it has in general not been considered adequate to strictly define “Sáminess” in Norway.<sup>169</sup> Essentially, an individual’s “self-identification” as Sámi is the most determining factor in this regard, especially when it is supported by indicating that the individual has an “ancestor”, whose home language is or was Sámi.<sup>170</sup> Acknowledgement by the Sámi as a whole is arguably more straightforward through language basis and therefore “Sáminess” is mostly associated with the “Sámi languages”.<sup>171</sup>

Norway was the first state, which ratified the ILO 169 Convention.<sup>172</sup> As a result of the ratification, Sámi are regarded as “indigenous people” under the Convention No. 169 regime and therefore they are recognized as indigenous peoples with particular entitlements to preservation and a significant level of control over their own way of life.<sup>173</sup>

One of the main questions in Norway was how the land right articles of the Convention No. 169 should be implemented into national legislation. In 2005, the Finnmark Act (*Finnmarksloven* 2005-06-17-85) was enacted.<sup>174</sup> The Act aims to promote the overseeing of land and “natural resources” for Finnmark county and its inhabitants through coordinated and environmentally responsible means, while specifically taking into consideration the “Sámi culture” and livelihoods.<sup>175</sup> The Finnmark Estate (*Finnmarkseiendommen*), which holds the ownership of land in Finnmark county was also established by the Act.<sup>176</sup> Besides ownership, the Finnmark Estate is responsible for managing the “land” and “natural resources” in the county.<sup>177</sup> Moreover, the

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<sup>168</sup> Sameloven 1987-06-12-56, art. 2-6.

<sup>169</sup> Heinämäki, L., Allard, C., Kirchner, S., Xanthaki, A., ...Olsén, L. (2017). Saamelaisten oikeuksien toteutuminen: kansainvälinen oikeusvertaileva tutkimus. Valtioneuvoston selvitys- ja tutkimustoiminnan julkaisusarja. Helsinki: Valtioneuvoston kanslia, 333. Retrieved from:

[https://valtioneuvosto.fi/documents/10616/3866814/4\\_Saamelaisten+oikeuksien+toteutuminen+kansainv%25C3%25A4linen+oikeusvertaileva+tutkimus/e765f819-d90c-4318-9ff0-cf4375e00688?version=1.0](https://valtioneuvosto.fi/documents/10616/3866814/4_Saamelaisten+oikeuksien+toteutuminen+kansainv%25C3%25A4linen+oikeusvertaileva+tutkimus/e765f819-d90c-4318-9ff0-cf4375e00688?version=1.0) , 15 February 2022

<sup>170</sup> *Ibid.*, 333.

<sup>171</sup> *Ibid.*, 333.

<sup>172</sup> Drange, L. (2021). Indigenous Peoples and Rights to Land and Water in 2019: How do Countries that Have Ratified the ILO-convention 169 Comply?, *Journal of Human Development and Capabilities*, 22 (4), 577-596

<sup>173</sup> Falch, T., Selle, P., Strømsnes, K. (2016). The Sámi: 25 Years of Indigenous Authority in Norway, *Ethnopolitics*, 15 (1), 125-143, 127.

<sup>174</sup> Finnmarksloven 2005-06-17-85, art. 1.

<sup>175</sup> Finnmarksloven 2005-06-17-85, art. 1.

<sup>176</sup> Finnmarksloven 2005-06-17-85, art. 6.

<sup>177</sup> Finnmarksloven 2005-06-17-85, art. 6.

Finnmark Estate is administered by a six member “board”, whose members will equally be appointed by the Sámi Parliament and municipal government of Tromsø and Finnmark.<sup>178</sup>

A positive development, which is in part a result of the Convention No. 169 as well, is that Sámi customary law is for some parts recognized in the Norwegian legal regime. The objective of the Reindeer Herding Act (*Reindrifstloven* 2007-06-15-40) is to facilitate reindeer herding in accordance with Sámi culture and traditions in an ecological, economical and cultural manner.<sup>179</sup> Furthermore, reindeer herding shall be maintained as a foundation for the Sámi culture and community.<sup>180</sup> The Act also incorporates Sámi traditions by containing provisions of the *Siida*.<sup>181</sup> The *Siida* is a traditional Sámi practice to organise reindeer herding and is associated with customary standards.<sup>182</sup> Commonly, the *Siida* consists of relatives practising reindeer herding in a particular place.<sup>183</sup>

### 3.2. Sámi in Sweden

The Swedish Instrument of Government (*Regeringsform* 1974:152), which is one of the constitutional acts, provides protection for the Sámi people’s possibility to maintain and advance their “cultural and social life”.<sup>184</sup> The Instrument of Government also stipulates that the prerogative for exercising reindeer herding shall be regulated by other legal acts.<sup>185</sup> However, in contrast to the Sámi provisions in Finnish and Norwegian Constitutions, neither the Swedish Instrument of Government nor any other legal act do not provide the indigenous people status for the Sámi in Sweden.<sup>186</sup> This is regardless that the Swedish Government considers Sámi as indigenous people and a national minority as well.<sup>187</sup>

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<sup>178</sup> Finnmarksloven 2005-06-17-85, art. 7.

<sup>179</sup> Reindrifstloven 2007-06-15-40, art. 1.

<sup>180</sup> Reindrifstloven 2007-06-15-40, art. 1.

<sup>181</sup> Labba, K. (2015). The Legal Organization of the Sami Reindeer Herding and the Role of the *Siida*. In: C, Allard, S, Funderud Skogvang (Eds.) *Indigenous Rights in Scandinavia; Autonomous Sami Law* (141-153). London, New York: Routledge.

<sup>182</sup> *Ibid.*, 143.

<sup>183</sup> *Ibid.*, 143.

<sup>184</sup> Regeringsform 1974:152, art. 2.

<sup>185</sup> Regeringsform 1974:152, art. 17.

<sup>186</sup> Kanninen, J., Ranta, K. (2019). Johdanto: “Vain tunteitamme ette voi viedä”. In: Kanninen, J., Ranta, K (Eds.), *Vastatuuleen - Saamen kansan pakkosuomalaistamisesta* (19-32). Helsinki: Kustantamo S&S.

<sup>187</sup> *Ibid.*, 21.

Similarly to Finland, the Swedish government has traditionally used legal acts to characterise and regulate “Sáminess”.<sup>188</sup> The relationship between who is considered to be a Sámi and the right to carry out reindeer herding has been reinforced as a result of these state actions to codify Sáminess.<sup>189</sup> Other benefits, namely hunting and fishing, come along with the privilege of reindeer herding. Because the Swedish state viewed Sámi rights to be entitlements, it was deemed necessary to restrict the amount of persons who may benefit from them.<sup>190</sup>

The Reindeer Herding Act is the main legislative instrument providing legal basis for the Sámi in Sweden.<sup>191</sup> The Reindeer Herding Act (*Rennäringslag* 1971:437) provides that an individual, who is of Sámi descent is permitted to utilise land and water resources for their livelihood and reindeer based on immemorial enjoyment. Furthermore, the Act stipulates that reindeer herding is the right of those who belong to a Sámi village (*sameby*).<sup>192</sup> The Sámi are essentially divided between those who are a part of a Sámi village and those who are not.<sup>193</sup> The Reindeer Herding Act stipulates that Sámi people are entitled to practise reindeer herding, although “members of Sámi village” possess that right exclusively.<sup>194</sup> As mentioned, the right for fishing and hunting comes along with the right to practise reindeer herding, and therefore these livelihoods can be practised by only Sámi village members as well.<sup>195</sup> Reindeer herders and those who are closely related to them are solely allowed to join a Sámi village. Non-members of Sámi villages are covered through other legal acts.<sup>196</sup> However, under the Reindeer Herding Act a significant number of Sámi have no additional rights beyond the option to become a “reindeer herder”, which requires permission of a Sami village.<sup>197</sup>

The creation of the Swedish Sámi Parliament (*Sametinget*) in 1993 was described as a means of ensuring cultural sovereignty for the Sámi people while also establishing an institution for “political self-determination”.<sup>198</sup> As a result, the Sámi Parliament was created as a state agency

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<sup>188</sup> Nilsson, R. (2020). The Consequences of Swedish National Law on Sámi Self-Constitution - The Shift from a Relational Understanding of Who Is Sámi Toward a Rights Based Understanding. *Ethnopolitics*, 19 (3), 292-310, 298.

<sup>189</sup> *Ibid.*, 298.

<sup>190</sup> *Ibid.*, 298.

<sup>191</sup> Bengtsson, B. (2015). Reforming Swedish Sami Legislation: A Survey of the Arguments. In: C, Allard, S, Funderud Skogvang (Eds.) *Indigenous Rights in Scandinavia; Autonomous Sami Law* (65-78). London, New York: Routledge.

<sup>192</sup> *Rennäringslag* 1971:437, art. 1.

<sup>193</sup> Bengtsson (2015), *supra nota* 191, 76.

<sup>194</sup> *Ibid.*, 76.

<sup>195</sup> *Ibid.*, 76.

<sup>196</sup> *Ibid.*, 76.

<sup>197</sup> *Ibid.*, 76.

<sup>198</sup> Josefsen, E., Mörkenstam, U., Saglie, J. (2015). Different Institutions within Similar States: The Norwegian and Swedish Sámediggi, *Ethnopolitics*, 14 (1), 32-51, 38.

with a focus on reindeer herding matters.<sup>199</sup> Moreover, the overall objective is to promote a thriving Sámi culture.<sup>200</sup> This in particular entails providing resources to different Sámi groups, supervising activities concerning Sámi languages and managing topics, which are of significant interest to the Sámi. The Sámi Parliament also has administrative responsibilities in regard to the "reindeer industry".<sup>201</sup>

Because ancestry in itself was deemed inadequate for determining who can vote in the Sámi Parliament's elections after its establishment, "a two-generation" linguistic criteria was chosen to specify individuals entitled to vote.<sup>202</sup> First of all, there is a self-identification criterion, which follows that individuals must declare that they perceive themselves as Sámi in order to register.<sup>203</sup> Moreover, there is an objective requirement contingent on language, which follows that either the individuals, or one of their parents or grandparents, must have grown up speaking Sámi.<sup>204</sup> Another option is that at least one of the aforementioned must be or must have been registered to vote.<sup>205</sup> As a result, Sweden nowadays has two separate legal acts, the Reindeer Herding Act and the Sámi Parliament Act, with two separate aims and criteria of who is considered to be Sámi.<sup>206</sup>

One explanation for why the Sámi rights in Sweden are as strongly regulated compared to Finland and Norway can be found in politics. Not one of the political parties, notwithstanding of their affiliation, have been prepared to take the chance on losing votes by proposing the enhancement of the Sami's status.<sup>207</sup> The Sweden Democrats have even expressed in their political program that no special benefits should be given to the Sami.<sup>208</sup> Other parties have acknowledged similar considerations as well.<sup>209</sup> The parties are allegedly concerned that if the Sami matters are addressed without adequate respect for local views, the possibility of decreased support by the voters might occur.<sup>210</sup> As a result, an official government report published in 2001

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<sup>199</sup> *Ibid.*, 38.

<sup>200</sup> *Ibid.*, 38.

<sup>201</sup> *Ibid.*, 38.

<sup>202</sup> Nilsson (2020), *supra nota* 188, 299.

<sup>203</sup> *Ibid.*, 299.

<sup>204</sup> *Ibid.*, 300.

<sup>205</sup> *Ibid.*, 300.

<sup>206</sup> *Ibid.*, 300.

<sup>207</sup> Bengtsson (2015), *supra nota* 191, 66.

<sup>208</sup> *Ibid.*, 66.

<sup>209</sup> *Ibid.*, 66.

<sup>210</sup> *Ibid.*, 66.



that suggested ratification of ILO Convention No. 169 did not result in any legislative changes or other measures intended at enhancing Sami's status.<sup>211</sup>

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<sup>211</sup> *Ibid.*, 66.

## 4. ANALYSIS

### 4.1. Analysing the Current Finnish Legislation

Finland has enacted a considerable amount of legislation that either directly or indirectly concerns and regulates the Sámi people. That the Sámi's linguistic and cultural rights, their autonomy regarding these and their status as indigenous peoples are protected by the Finnish Constitution, provides a strong legal basis compared to if these were regulated in minor legislation.

The Sámi have their own Parliament with a legislated mandate. A drawback is that the Parliament's autonomy only covers linguistic and cultural matters and has no say over other important aspects such as land rights. As it was seen, many times the Sámi Parliament has not been negotiated with, or their viewpoints have been disregarded in matters that have significant importance to the Sámi, such as the amendment of the Act on *Metsähallitus*. Therefore, it seems that the negotiation obligation laid down in the Act on the Sámi Parliament seems not to actualize in many instances. It is important that the negotiation obligation is fulfilled and for the Sámi Parliament to practise the mandate, they need to be given the possibility to provide their viewpoint on matters affecting the Sámi.

As expressed previously, the definition of Sámi, provided in the Act on the Sámi Parliament has been widely criticised. On one hand the Sámi Parliament considers the definition sufficient and it is understandable that the Sámi Parliament aspires to keep the accession to the Parliament's electoral register and through that gaining the legal Sámi status restricted, when looking from a historical viewpoint. The Sámi have been subjected to assimilation and understandably the Parliament sees that through tight control of the electoral register they will have a more prominent opportunity to distinguish themselves as separate people, distinct from the Finnish majority population. However, since the formal Sáminess is tied with the ability to be a part of the electoral register, this leaves people, who might otherwise be considered as Sámi, outside of it. Both Norway and Sweden have a general language and ancestry based Sámi definition and a separate criteria for determining eligibility for their respective Sámi Parliaments' electoral

registers. This could provide an option for Finland as well. Not all Sámi necessarily wish to be part of Sámi politics and governance, but merely have the possibility that they are recognized as a part of the Sámi group and enjoy other rights the Sámi status provides.

Furthemore, there has been plenty of criticism regarding the fact that the Supreme Administrative Court can make the ultimate decision of who is a Sámi. As stated, one aspect of determining who is a part of an indigenous group is the acceptance by the group in question. It reduces the legal protection of the Sámi, since the Supreme Administrative Court is not necessarily well versed specifically in Sámi matters and they consider facts and legal acts as basis for the judgements. However, the Court has had an extremely varying viewpoint over time on its judgements on who it considers to be Sámi even if the facts of the cases were similar. In accordance with the principle of legal certainty, similar court cases should be adjudicated similarly. In its judgments the Supreme Administrative Court fails to follow the principle. On one hand by having the option to appeal to the Supreme Administrative Court in cases the Sámi Parliaments organs have rejected an individual from the electoral register provides an impartial body to investigate and solve matters. On the other hand, however, this goes significantly against the principle of group acceptance, that an indigenous group itself can determine whom it accepts as a member. In this regard, the group acceptance ought to be prevailing.

The current Sámi Language Act has contributed for better protection of the Sámi languages and the linguistic regulation has improved compared to its predecessor. However, the Act might not provide sufficient enough protection for the reason that it is mainly applicable in the municipalities of the homeland area and as stated many Sámi nowadays reside outside of their homeland. As illustrated in the introduction, the use of Sámi languages is already somewhat marginal among the Sámi, it is especially important to take precautionary and additional protective measures so that the languages will not be lost. Even though the Constitutional right to use the Sámi languages is applicable in the whole of Finland, it does not provide a strong enough guarantee for a Sámi individual to actually be able to use and get services in their language in state authorities and this is a clear drawback in the legislation. Moreover, it weakens the legal protection. An adequate measure could be that the Sámi language act would be applicable in the whole of Finland. This would require additional efforts from the Government, but might propose a way to guarantee the survival of Sámi languages.

The Act on *Metsähallitus* does provide some protection for the Sámi livelihoods and culture, but fails to incorporate prohibition of deteriorating the Sámi culture. The prohibition would ensure that everything *Metsähallitus* does in the Sámi homeland is in the first place considered from the viewpoint on how such actions affect the Sámi.

The Reindeer Herding Act does not sufficiently protect reindeer herding as a Sámi livelihood. Even though a rather small number of Sámi practise reindeer herding nowadays, it requires protection as a part of the Sámi's culture. It would seem adequate to distinguish the Sámi's reindeer herding from other type of reindeer herding in the Act, since they have different means, the former is a way to maintain cultural traditions and livelihood and the latter is more focused on agricultural aspects.

Although the ratification did not take place, the two ratification attempts illustrate that the improvement of Sámi matters are considered important on some level. Similarly to Sweden, it seems that the political will to improve the Sámi's rights and status has not been strong enough. However, in Finland such strong opposition by the political parties to the improvement of Sámi rights as seen in Sweden can not be detected. This provides a good foundation for the possibility to actually improve the rights.

Overall, the Sámi's rights have improved throughout the time, as the legislation illustrates. However, it can nevertheless be seen that the current legislation does not provide enough protection for the Sámi.

## **4.2. Analysing the Effects of Ratification of the ILO Convention No. 169 in Finland**

According to the law hierarchy, international treaties are above all national legislation, constitution included. Finland would therefore have to make amendments to all appropriate legislation to ensure that the obligations of the Convention No. 169 are fulfilled. In case there was nevertheless legal acts that differed from the Convention No. 169, the Convention would prevail in a conflict of laws situation. Accordingly, differing national legislation would not

provide suitable reasons for not following the obligations provided in the Convention. In the Finnish context, this would mean that the legal acts, which directly apply to the Sámi, as well as legislation, which does not directly discuss Sámi, but which regulates matters that are laid down in the ILO Convention No. 169 would have to be amended accordingly to successfully ratify the Convention.

If Finland was to ratify the ILO Convention No. 169, it seems adequate to renew the Sámi definition laid down in the Act on the Sámi Parliament. It is essential to know whom the Convention applies to, and with the Sámi's somewhat inner conflict regarding the definition, some people who are Sámi might be left outside the scope of the Convention. The way the conflict concerning the definition ought to be solved, should above all stem from the Sámi themselves in order to follow the self-identification determined in the Convention No. 169. As for renewing the definition, one possible solution could be that both the Sámi, who fit the criteria laid down in the Act on the Sámi Parliament and those who do not, could gather together and discuss how to appropriately solve the matter. The Finnish officials could partake, but as it is important to let the indigenous group define themselves, the role of Government or other state officials ought to be advisory.

Ratification of the Convention No. 169 would also introduce the supervisory system as it is laid down in the ILO Constitution. As a result, the Finnish judicial system would not be the only institution following that the Sámi's rights laid down in legislation are fulfilled. As concluded previously, a drawback of the Convention No. 169 is that indigenous people cannot directly make complaints through the supervisory system. However, the Sámi can nevertheless deliver information to the ILO. ILO will also oversee that the signatory states comply with the Conventions and implement them to national legislation. The yearly reporting ensures the continuous observance of following the Convention's obligations and would provide incentive for the Finnish Government to make sure that the obligations are followed and the rights actualized.

Land rights articles of the ILO Convention No. 169 would provide Sámi greater control of their homeland area. It would provide the Sámi safeguards to practise their culture and especially their livelihoods and prospects that these practices can be continued to be performed for the years to come. Simultaneously it would affect other populations living in those areas. A similar approach to Norway could be suitable, as it has been established that the way land management in the

Sámi homeland area in Norway is in accordance with the standards set out in the Convention No. 169.

The Convention No. 169 also establishes the consultation obligation between the signatory state's government and the indigenous peoples in question. Even though the Act on the Sámi Parliament contains provision, which establishes consultations between the Sámi Parliament and the Finnish Government, ratification of the Convention would provide additional incentive to ensure that the consultations are indeed fulfilled.

The ILO Convention No. 169 provides flexibility regarding the ratification. Nonetheless that the convention must be ratified as such without any exceptions, the manner in which the ratification can be done can be adjusted regarding the signatory state. Therefore, relying too closely on the letter of the convention, Finland might make the ratification seem like a bigger issue than it ought to be. Certainly, the Convention would make it necessary to make notable changes in legislation, but still Finland's characteristics regarding legal culture would nevertheless be taken into consideration.

As the Convention No. 169 provides a comprehensive scale of rights for the indigenous peoples, the status of the Sámi would improve in a large number of aspects. Through ratification of the Convention, Sámi would be given more equal status compared to the majority and their special status as indigenous peoples, who ought to be protected, would actualize. Moreover, the Sámi would be given a better possibility to have an impact in matters regarding them. By ratifying the Convention No. 169, Finland would ensure that Sámi rights are in accordance with the current standards of international indigenous rights.

## CONCLUSION

Similarly to many countries with indigenous populations, the Sámi in Finland have been subject to assimilation throughout history and they have not been considered a valuable part of society. In the Finnish context, the Sámi's status as indigenous people and their rights have developed in a better direction since the 1990s, when the first legal acts, the Act on the Sámi Parliament and the old language act pertaining to Sámi were enacted. The constitutional provisions provide a high level of protection and other applicable legislation supports them. However, the legislation nevertheless seems lacking and it is widely argued that the Sámi are not as well protected as they ought to. Finland is generally considered as a strong advocate and illustration of maintaining a high standard of human rights protection, so it would be appropriate that the Sámi enjoy such protections and standards as well.

The thesis investigated if Finland has done legislatively enough to ensure that the treatment and position of the Sámi people is at an appropriate level or whether improvements are needed and can be made. The aim of this thesis was to find out if the ratification of the Indigenous and Tribal Peoples Convention would positively affect the rights of the Sámi people in Finland. In order to fulfil the aim, the thesis presented and analysed the current Finnish legislation as well as the Convention No. 169. It was found that although the Finnish judicial framework provides a number of acts pertaining to the Sámi people, the legislation was not entirely sufficient to protect the Sámi and their culture, and to ensure that the Sámi are given the opportunity to continue to develop themselves as indigenous people. Their treatment and position are not on an appropriate level. Furthermore, the research showed that improvements are needed and can be made. The main way to improve the Sámi's current status in the most far-reaching way is evidently the ratification of the Convention No. 169.

The research question, which the thesis proposed was "How would the position of the Sámi people in Finland improve if Finland ratified the Indigenous and Tribal Peoples Convention?". First of all, the analysis provided that indeed the Sámi's position would improve if Finland ratified the Convention No. 169. Through ratification of the Convention, the Sámi would better be able to determine themselves and appoint their aims as distinct peoples, maintain and further

cultivate their traditional culture, have the opportunity to more actively influence matters concerning them, gain land rights in their homeland area and the supervisory system of ILO Conventions would continue to see that their rights under the Convention No. 169 are fulfilled. Furthermore, the Finnish judicial framework, which would have to be in accordance with the Convention, would better support the protection and actualization of the Sámi and their rights as indigenous peoples after ratification.

The main justification for ratification is that, although the Convention No. 169 is not flawless, it is better and more comprehensive than the alternatives.<sup>212</sup> The reason for this is that it recognizes indigenous peoples' rights that are not determined anywhere else in international law or in many countries' domestic laws either.<sup>213</sup> As a result, ratification would provide indigenous peoples, in the Finnish context the Sámi, a wider array of rights than they currently have.<sup>214</sup>

As stated previously, improving minority rights does not mean that rights of other people would be undermined simultaneously. This is a very important notion and ought to be made widely understood. Improving Sámi rights would not be made by detriment of majority rights. Rather the general public and political actors, proposing legislation, should understand the reasons for such additional protection. This understanding that the Sámi are indeed in a more disadvantageous position could propose that the public would also understand why additional protection is needed. Through understanding why Sámi matter in Finland, the necessary political will to ratify the Convention No. 169 could also be found. More education seems to be needed for the general public as well, since they are not well-versed in Sámi matters and might not comprehend why additional measures are appropriate to protect them.

Overall, the foundation for Sámi rights has already been laid in Finnish legislation and the ratification of Convention No. 169 would be the next step to making a more comprehensive difference. Similarly to the majority population, the Sámi also develop and it must be ensured that the applicable legislation is developed simultaneously.

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<sup>212</sup> Joona, T. (2005). *supra nota* 113, 260

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