

THE SAMI LAW: A CHANGE OF NORWEGIAN GOVERNMENT POLICY TOWARD THE SAMI MINORITY?

OYSTEIN STEINLIEN,
Institutt for Samfunnsvitenskap,
Universitetet I Tromsø,
Postbroks 1040,
9001 Tromsø, Norway.

ABSTRACT/RESUME

The author reviews Sami law in Norway from 1850 to the present, noting changes in accord with international trends and national interests. He reviews the concepts of formal equality and real equality, and concludes that the Sami cannot achieve real equality without political and territorial rights.

L'auteur étudie la loi Sami en Norvège depuis 1850 jusqu'à présent, et souligne des changements qui sont en accord avec les tendances internationales et les intérêts nationaux. Il passe en revue les concepts d'égalité formelle et d'égalité réelle, et conclut que les Sami ne peuvent pas atteindre l'égalité réelle sans droits politiques et territoriaux.

Introduction

Norwegian government policy towards the Sami has changed through the centuries, both in accordance with international trends, and in terms of national interests. This paper will review the situation from 1850 up to the present. I will discuss the different policies over time with an eye to the concepts of formal and real equality, and the fact that formal equality does not automatically create real equality.

Norwegian government policy was built on an ideology that does not clearly distinguish between these two concepts. Rather it was built upon an assumption that formal equality creates real equality. This kind of thinking does not take cultural factors into account, or the fact that rights and duties are not evenly distributed in a population, especially in majority/minority societies or in a majority/minority context.

The nature of minority cultures in this context is related to the assumption that the minority cultures will remain in a permanent dilemma unless a certain degree of self-determination is granted. The dilemma can be posed as follows: What is the point in learning language and culture, and of teaching children cultural skills, if the majority is going to go on defining the conditions for the future development of the culture?

Stages In Norwegian Sami Policy

To provide a context I will sketch some major trends in Norwegian government policy towards the Sami minority since 1850.

At that time, there was a change in the policy with the introduction of the so-called Norwegianization policy. This policy was active until 1959, when the government-appointed Sami Committee presented their report. Following some major trends, I will divide governmental policy into three stages: (1) Norwegianization/assimilation, 1850-1959; (2) economic and cultural integration, or integrated pluralism, 1959-1984; and (3) cultural pluralism, 1984 to the present.

Norwegianization/assimilation, 1850-1959

The Transition Period: 1850-1880

In the period preceding 1850, policy developed on the basis of cultural pluralism, a model corresponding to such European concepts as "nation", "justice" and "liberty". According to these principles, all people have both the right and the obligation to secure and develop their language and nationality.

In the late 1840's this cultural policy was much debated. In 1851 the first sign of a changing policy came with the introduction of the *Finnfondet* by the Norwegian parliament, a sort of foundation for the promotion of the Norwegian language in Sami areas.

Even if the principle of Norwegianization can be considered as having been decided upon in 1851, the period up to 1880 was really a transition phase. It was still permissible to use the Sami language in religious teaching, and local school boards were still allowed to decide whether Norwegian, both Norwegian and Sami, or only Sami, were to be used for instruction. During this transition phase, both regional and local variations were allowed as far as language was concerned, because of the high frequency of Sami monolinguals. However the tendency during this period was clearly one of *restricting* the use of the Sami language.

Establishment Of An “Infrastructure”: 1880-1905

In 1880 the implementation of cultural policy was centralized and what might be called the “hard” Norwegianization period started. Now policy was determined by a “Directive for teaching in Sami and Kvaen [Finnish-speaking immigrants] districts”. This directive put restrictions on the use of Sami and Finnish. The earlier policy, which allowed children to learn their mother tongue, was accordingly abandoned.

This policy was confirmed by an act of 1889 concerning primary schools. This legislation required that the Language of Instruction in schools was to be Norwegian, with certain exceptions for a few regions where Sami was to be allowed as a language for assistance only.

This was further confirmed by new directives in 1898, *Wexelsen-plakaten*, that turned out to be almost identical to the ones mentioned. These three statements formed the central documents in the Norwegianization policy. In spite of many changes of government over the years and regardless of major changes in political trends throughout Europe to recognize and affirm the cultural rights of minorities, there was a general political agreement on, and acceptance of, this policy in Norway until 1959. In addition to these directives, there was an Act of Parliament in 1902 concerning agriculture which required an individual to be able to read and write Norwegian in order to buy land.

By 1905 the legal infrastructure for the ideology had been fully established and the different kinds of efforts towards Norwegianization were being implemented. In this period we can also see the first tendencies to integrate these notices of cultural policy into a general governmental policy in the northern part of Norway. In that way Norwegianization was attached to policies and initiatives in other sectors of life, especially security and defence policy.

The Security And Defence Policy Argument: 1905-1930

By 1905, Norway was a “young” nation-state with the termination

of union with Sweden. The increasing Norwegian nationalism which had developed during the union gave no room for cultures other than Norwegian.

This nationalism provided the ideological basis for the security and defence policy argument, but there was also an argument of a more practical type. The Kvaen immigration into the northern part of Norway was looked upon as a problem of defence. The main weapon in attempts to try to diminish this threat was Norwegianization. As the authorities found it difficult to differentiate between the two groups, Sami and Kvaen, the solution was a concerted Norwegianization policy directed against both of these people. a policy which was explained as necessary for the security and defense of the young independent Norwegian state.

The Post War Period: 1945-1959

The post war period is characterized by a more liberal attitude towards Sami culture, fuelled in part by the experiences of the Second World War. The Act of 1898, the *Wexelsenplakaten*, however, was still in force.

In 1949 a government committee on school policy (*Samordning-snemda for skoleverket*) launched a proposition which lent some support to the recognition of Sami culture and language. This was sent to local schoolboards for comments, but all of the replies returned were negative. This clearly demonstrated, for the first time, that the Norwegianization policy had actually been effective in that it had made the Sami population look unfavorably upon their own culture. In general, Sami people wanted the existing system of Norwegianization to continue.

But after all, a change in the policy was evident in that the leader of the committee, Boyesen, stated that a new attitude towards Sami culture had developed recently. Instead of denying the Sami people their cultural heritage, he noted the duty the Norwegian state had to treat the Sami people respectfully. He also stated that the authorities were prepared to revise the Norwegianization policy, and to work instead in the best way possible to arrange for Sami cultural vitality in Norway.

Economic And Social Integration, 1959-1984

The Sami Committee: 1956

The Sami Committee was appointed by government in 1956, and the report was presented in 1959. In many ways its proposals can be characterized as the beginning of a new era. The report resulted in a broad debate on Sami questions and it marked a new will on the part of Norwegian authorities to end the earlier Norwegianization policy.

This policy has often been characterized as cultural integration or intergenerational pluralism. The manner in which the Committee tried to solve the “Sami question”, would however seem to be both contradictory and impossible. One major aim was Sami integration into the economic and social structure of the country to further economic and social equality. On the other hand, another goal was the consolidation of Sami areas through cultural and administrative efforts to prevent assimilation. The idea was to make it possible for the Sami population in Norway to maintain its integrity as a viable culture.

Accordingly, when the report talks about special efforts to maintain Sami culture, they are basically concerned with the language. A further characteristic of the proposal is that it stresses the importance of the welfare and educational sectors, noting that:

The main efforts from the authorities are efforts concerning all people in the country. The building of schools, social welfare programs, health services, social housing and general economic development of the nation provides better living conditions for the individual. Special efforts are connected to the language situation....Equality and economic development under social stability will enable the Sami-speaking people to maintain Sami culture in our country. It will then depend upon the individual, if this is going to happen.... (p.4 in the proposal, author's translation).

The Committee pointed out that equal rights do not necessarily create identical rights, and stated that cultural policy in the future had to be pluralistic. Unfortunately, the committee did not seem to be fully aware of the consequences of this statement.

Accordingly, the responsibility of the government concerning the Sami people was to be carried out through a combination of general national welfare policy and special regional political remedies. The official policy towards the Sami people was defined as cultural and political efforts to be launched in the education and language sectors only.

There was one exception to this program, the reindeer herders. The Norwegian government felt the reindeer herders to be of special concern to them, because they were all Sami-speaking and the technology and concepts of their culture were expressed in Sami only. Therefore they developed special regulations concerning trade concessions and expropriation for reindeer herding as a special Sami sphere.

Unfortunately, the committee clearly used the term “Sami-speaking persons”. The policy was clearly guided by the idea that the people concerned were only a group of Sami-speaking Norwegians, requiring special efforts to be able to continue to be Sami-speaking,

rather than a Sami people who should have the option of continuing to be Sami people living in Norway.

Thus the Committee avoided many tricky questions by using the term "Sami-speaking persons", and not recognizing them as a separate ethnic group. A further consequence of this policy was that it completely excluded all Sami who did not speak Sami, that is people who, as a consequence of the Norwegianization policy up to 1959, had lost their language. This applied especially to the south Sami areas and to the coastal Sami areas. It should be pointed out that the major part of the total Sami population lives in the coastal areas.

In sum, the Committee's report was first and foremost a very pragmatic document, where questions of principle were largely avoided in order to permit solutions for more practical issues. In general terms, however, the report can be recognized as the end of the earlier Norwegianization policy.

The Implementation Of The Recommendations

The implementation of the recommendations of the Sami Committee took place only very slowly. One reason was that many Sami rejected the recommendations. Very clearly, the Norwegianization policy had been effective. For example, a Sami meeting in Karasjok declared: "We strongly protest upon use of Sami, except as an subsidiary language" (Paskersolusjonen, 1960).

Delay was that also a result of lack of coordinating administrative bodies to assist in the implementation of the recommendations. It was assumed that existing government departments could handle the recommendations. The problem was that these were sectorized while the proposals were holistic, affecting many professions. The Committee did not itself propose an administrative body to coordinate the implementation of their program. It proposed that the Norwegian Sami Council, a Government appointed body, would do the job, but not only was that group not strong enough, it was not designed for that purpose.

How does this summary of the first two periods tie up with my point of departure, that of formal vs. real equality? The Sami Committee seemed to be aware of these two distinctions in that they talked about equal and identical rights, but their report did not seem to take into account the consequences of their recommendations.

There are two reasons for my conclusion. The first is that the Committee was not willing to use the term "Sami" which would imply that the Sami were perceived as a separate ethnic group. Instead they consistently used the term "Sami-speaking persons". Accordingly, the policy was intended to address only the concerns of a group of Norwegians who also happened to speak Sami.

The other reason, perhaps a more basic one, is that with these

recommendations the authorities defined Sami interests first and foremost as cultural, and in so doing neglected the trickier questions, those which were territorial and political.

Cultural Pluralism, 1984–present

The Establishment Of Two Commissions: 1980

As pointed out earlier, the implementation of the recommendations from the Sami Committee was only slowly taking place. Attention to Sami issues was again brought into focus during demonstrations against a new hydro-electric power plant in Alta, in the middle of Samiland. Early in the 1970's, the Government launched plans to build a dam on the Kautokeino-Alta river, which runs through what is considered to be the "core Sami area". The first plans were very extensive, and would have resulted in flooding a whole Sami community, Masi, half way between Kautokeino and Alta.

The first plans for a dam from 1979, were reduced and Masi was no longer directly effected. Nonetheless, the decision resulted in large-scale demonstrations, both in Alta and in the capital, Oslo. Norwegian environmentalists from all over the country, as well as Sami took part, and the demonstrations created international attention.

As a result of the demonstrations, two public commissions were created in 1980: the Sami Rights Commission and the Sami Cultural Commission.

The Sami Rights Commission

The mandate of the Sami Rights Commission was wide, including a duty to "examine questions concerning Sami rights to land and water and some other juridicial questions" (author's translation).

The political events in Alta resulted in a meeting between governmental representatives and Sami politicians in Kautokeino in 1981. It was decided to accelerate the work, and it was decided to give priority to the draft of a constitutional provision and an Act concerning a Sami parliament. It was also agreed that these provisions should formulate a statement of principle, and not, as originally intended, incorporate specific rights into the Constitution. The reason for this was that the commission could not put forward radical proposals for a constitutional provision dealing with any form of actual title to land and water, unless it had laid down its position on the question of rights to natural resources.

From a Sami point of view it was important to accelerate the work on the constitutional provision, because this would imply the strongest possible emphasis on the responsibilities of the Norwegian authorities for Sami culture.

The first report from the Sami Rights Commission came in 1984 (NOU, 1984:18). The parliamentary report which followed (Ot. prop 33, 1986-1987) and the guidelines established were later accepted by the Norwegian parliament in May of 1987.

The Sami Cultural Commission

The other commission, the Sami Cultural Commission, had the following mandate: "the Commission shall consider principal sides of the Sami cultural and educational policy, and discuss initiatives that can promote Sami culture and strengthen the use of Sami language" (author's translation). In 1982 the mandate was extended to consider Sami secondary education as well. The commission completed its work in 1985, *Sami Culture and Education* (NOU, 1985:14).

Provisions

The report of the Sami Rights Commission, which passed Parliament in 1987, contained two provisions. One was a constitutional provision, the other "The Sami Act", an Act considering a Sami parliament.

The constitutional provision read: "It is incumbent upon the government authorities to take the necessary steps to enable the Sami population to safeguard and develop their language, their culture and their societal life" (Nov. 1984:18:599, author's translation).

The Sami Act recommends a Sami parliament with advisory powers. The Act opens with an preamble: "The purpose of this Act is to provide for steps to be taken to enable the Sami population in Norway to safeguard and to develop their language, their culture and their societal life" (Ibid., author's translation).

The Act was designed to enable other juridical provisions concerning the Sami people to be incorporated at a later date through future legislation.

The Sami Cultural Commission put forward a proposition for a language Act which states that: "Sami and Norwegian are equal languages and must have equal status as official languages under the regulations of this Act" (NOU., 1985:14:29, author's translation).

Basic View

One of the most important principles in the constitutional proposal is that the Sami people are a separate ethnic group, a separate people, in certain respects different from the rest of the Norwegian people. It also notes that Sami culture is a threatened culture, and that the Norwegian government is responsible for maintaining the Sami culture and providing the Sami with opportunities for the

development as *Sami*.

It also states that it is important that the maintenance and further development of Sami culture in Norway be recognized as a *national* task and a national responsibility. The financial burdens imposed by the special measures called for in this initiative should be born first of all by the state, not by the individual municipality or community.

It is also made clear that the further development and maintenance of Sami culture is dependent upon special measures. Such a deviation from formal equality is necessary to secure a real equal worth between Sami culture and other cultures in Norwegian society.

And, lastly, the proposition notes that the Norwegian state has an obligation to ensure that the rules of international law are implemented by the Norwegian authorities, and the Norwegian state is obligated under international law for the implementation of special positive measures — that is, positive discrimination — towards the Sami people in Norway, to the extent that this is necessary to ensure that Sami culture is maintained.

International Law

The most effective defence of minority rights is found in Article 27 of the United Nations International Covenant of 1966 on Civil and Political Rights. It states:

In those states in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of the group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.

There was discussion in the Sami Cultural Commission on the interpretation of culture. The question concerned whether culture was to be perceived as “ideal” forms of expression, such as books, newspapers and radio, or if it was also to embrace the material prerequisites for the “ideal” (spiritual) culture.

The Commission interpreted culture in the widest sense. This interpretation has certain implications for the right of the Sami to carry on their traditional economic activities and for rights to land and water. According to this, the ethnic minority is entitled to a certain degree of autonomy (non-intervention on the part of the state), to governmental support for the maintenance of their cultural activities (positive rights) and to be allowed to participate in the rest of community life on an equal footing with the majority population (the principle of non-discrimination).

Conclusions

To sum up, I will return to the two concepts of *formal* equality and *real* equality. The report of the Sami Commission is based upon a view which recognizes that a deviation from formal equality is necessary to secure real equality. The question I wish to consider is whether or not the recommendations proposed by the Commission are enough to create real equality — and thus equal worth — between Sami people and people of other cultures in Norwegian society.

I am not sure this is going to happen, and I am going to point to a discrepancy in the proposed measures that in my opinion shows that there is a deviation between principles and implementation.

Article 1 in the United Nation International Covenant of 1966 states that all people have the right of self determination. The question for the Sami Rights Commission was whether the Sami minority, as an ethnic minority within a nation state, was embraced by the concept of “peoples” as it was used in this context. The Commission interpreted the article in such a way that the Sami minority in Norway cannot invoke any of the principles of rights to self determination in the current conventions. And the crucial argument as far as I can see it, from the Commission, was that they would not recognize the Sami people as a colonized people:

In this respect, the position of the Sami people is quite different from that of the Inuit population from Greenland — where the area and its population are distinctly separate, geographically, historically, and culturally, from the “mother country”, and where the area has, moreover, for many years had the explicit status of a colony — even though there are points of resemblance between the Sami and the Inuit in other respects. Meanwhile, it may be maintained that Article 1 supports a broad interpretation of Article 27, so that the latter, through the wording “enjoy their own culture”, authorizes a certain inner autonomy in the cultural sector of community life (NOU.1984:18:18, author's translation).

I would argue that this interpretation is not in accordance with the basic position of the Commission on the basis of the above quotation. They recommend a Sami parliament with, in principle, only advisory power. This I would argue is not in accord with a statement elsewhere in the report:

as a political principle, the right of all people to self-determination is a bearing principle both in Europe and elsewhere in the world — and the aim is to give minorities better protection (Op. cit:342, author's translation).

On the one hand the Sami are considered to be an ethnic minority, a separate people, while on the other hand they are recognized as a minority in numerical terms only. They must also, according to the Sami Commission, submit to premises held by another people — non-Sami Norwegians — in order to secure any legal protection for their cultural ideals. Thus any Sami sovereignty comes about only through the dominant majority in Norway.

Territorial Rights

Through political channels available to them, the Sami people have repeatedly tried to focus on the colonial situation. They have done this by raising, as a political issue, not only rights to language and culture, but also rights to land and water. These issues arose because the Sami people felt them to be a threat to their cultural survival, as they saw the Norwegian state gradually taking possession of what they considered to be their original areas. The state sees themselves as property owner of about 90% of Finnmark, the Northernmost county of Norway, and a major Sami area, without any formal session.

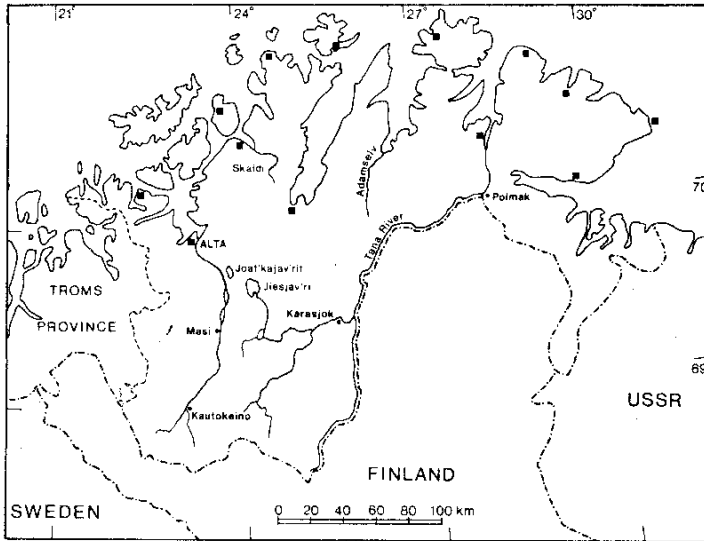
The claim of territorial rights has first and foremost been formulated as a claim that Sami livelihood interests are going to be decisive in terms of exploitation of resources and intervention in what are considered Sami areas. And further, Sami feel that if there are diverging interpretations in the future concerning the administration of these areas, they must be settled by a representative body where Sami representatives are in a majority.

In their basic view, the Sami Rights Commission recognizes the Sami people as an indigenous people. The key characteristics for this are:

- 1) it is a population group with historical continuity in relation to all or parts of a nation-state, from before the establishment of the territory in relation to all or parts of the state, without necessarily being the original population;
- 2) that the population constitutes a minority in the state, or that it is not politically dominant for other reasons; and
- 3) that it has its own culture, and that this culture is still especially closely linked to traditional primary industries (Op. cit., author's translation).

As a result of the meeting in Kautokeino in 1981, the Sami Rights commission first report does not deal with these questions. They are to be brought up in a second report. However, the aim of the propositions in the report is to create real equality of worth between

Map 1: Finnmark (some key place-names)



Legend

- principal Norwegian urban centres
- international boundary
- provincial boundary

Source: Reproduced from Robert Paine: *Dam A River, Dam a People? Saami (Lapp) Livelihood and the Alta/Kautokeino Hydro Electric Project and the Norwegian Parliament*. IWGIA Document 45, Copyright Copenhagen, 1982 by International Work Group for Indigenous Affairs.

Sami culture and other cultures in Norwegian society. I do not think that this can be obtained before the issues of territorial rights and the transfer of authority to the Sami parliament are considered. In the first report, the Sami Rights Commission does not consider territorial rights, or a transfer of authority, either on a cultural or a territorial basis.

So once again, real equality, that is equal worth between non-Sami Norwegian people and the Sami population in Norway, cannot be achieved unless the government also confers political and territorial rights, along with the right to self-government.

But there are also some bright spots concerning the transfer of authority and cultural and territorial rights. Although the Commission noted that, in principle, the representative body will have only advisory authority, their report adds: "it also shall have the authority to

make decisions in well-defined areas" (Op. cit:516, author's translation). The parliamentary bill that followed the report clarified this further by stating: "The Sami parliament has decisive power where this follows the provisions in this law, or is decided otherwise" (Ot. prop. 33, 1986-87:123, author's translation).

The report also comments elsewhere in the report upon the power of the parliament. Thus it states: "Principally the power of the [Sami Parliament] should not be decided upon once and for all, but should be extended according to the [Parliament's] own interpretation..."(Op. cit:154, author's translation).

More specifically, concerning cultural and territorial questions, the report notes:

meanwhile, it may be maintained that Article 1 supports a broad interpretation of Article 27, so that the latter, through the wording "enjoy their own culture", authorizes a certain inner autonomy in the cultural sector of community life (NOU. 1984:18:18, author's translation).

And finally, on territorial questions, the report notes that the interpretation of culture in Article 27 of the United Nations International Covenant of 1966 as also involving a national foundation for "ideal" culture is actually in favor of Sami rights and has consequences for traditional trade and for rights to land and water (Op. cit:272).

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