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› THE PROTECTION OF MINORITY RIGHTS IN NORWAY WITH REFERENCE TO THE SAMI PEOPLE

The Kingdom of Norway is founded on the territory of two people – the Norwegians and the Sami people. The Sami people is at the same time an indigenous people and a minority – both an ethnic minority and a linguistic minority. These aspects are so mixed concerning the Sami people that even if this conference is focusing on minority questions, I will have to say some words also concerning indigenous people.

The Sami people is the only minority protected by a special article in the Norwegian Constitution – article 110a. This article was introduced in the Constitution quite recently – in 1988 – and is part of a very important development which has taken place during the last decades – in Norway and internationally.

The Norwegian Constitution is the oldest constitution still in force in Europe and dates back to 1814, even if it has undergone amendments throughout the years. According to the Constitution **the Supreme Court** is one of the three State powers – together with the legislative and the executive. The Supreme Court is the highest court in the Norwegian judicial system and has general competence, including the function as a constitutional court exercising judicial review. In fact, the Norwegian Supreme Court has controlled the constitutionality of parliamentary legislation since about 1850 – being the first court in Europe to follow the example of the American Supreme Court.

Article 110a of the Constitution, which was adopted in 1988, reads as follows:

”It is the responsibility of the authorities of the State to create the conditions enabling the Sami people to preserve and develop its language, culture and way of life.”

Article 110a lays down a political, moral and legal responsibility on the part of the State in relation to the Sami people. The article has legal significance both as a guideline and a limitation for legislation and acts of State organs. It does not as such give individual rights. It will, however, be a guideline also for the jurisprudence of the Supreme Court when dealing with cases concerning Sami rights according to ordinary legislation or customary law.

Some words about the **Sami people** -most of the Sami are living in the Northern part of Norway- in the county (departement) of Finnmark, but there are also groups of Sami in other parts of Norway, as well as in Northern Sweden, Finland and Russia. The Norwegian Sami are the largest group, and

this places a special obligation on the Norwegian authorities towards the Sami people and their culture.

It is not possible to give an exact number of the Sami. The responsible Ministry estimates that between 50 – 80 000 persons could register as Sami for voting purposes. However, up to now about 10 000 persons are registered as voters in the electoral register for the **Sami Parliament**. The register is based on the concept of selfidentification – it is voluntary and open for persons who consider themselves to be a Sami and who either speaks the Sami language or has a parent, grandparent or great-grandparent who spoke the Sami language.

The most typical way of life of the Sami people is **reindeer keeping**, but in fact only a small part of the Sami has reindeer keeping as their living. Most of the Sami population are farmers, fishermen or have other professions in the same manner as the Norwegian population in the same area.. The reindeer keeping is, however, very important because much of the Sami culture is connected with it. The reindeer keeping uses great land territories – in the mountain plains in winter and at the coast and islands in summer. This makes the question of Sami rights to land and natural resources a very important one. Most of the jurisprudence of the Supreme Court relating to Sami questions deals with these matters. Reindeer fields cover about 30 % of the whole territory of Norway, and in the Northern county Finnmark nearly the whole county.

An important event in the recent development of Sami culture and Sami rights was the establishment of the **Sami Rights Commission** in 1980. The Commission was chaired by professor Carsten Smith, who later on was elected Chief Justice of the Supreme Court. Article 110a of the Convention, which I just mentioned, was prepared by this Commission, as well as **the act of 1987 on the Sami Parliament and other Sami matters**. The Sami Parliament with its 39 members, is the voice of the Sami people and is competent in all matters that according to its own view are of special importance for the Sami people. It has a consultative role, but it has also by delegation an growing competence within its budget, administration of institutions for Sami culture and other matters. The act of 1987 defines a core district of Sami language administration within which the Sami language may be used before municipal and State organs, including the courts. There is a duty of translating relevant laws and regulations, rights to interpretation and right to education in and on the Sami language.

In the development of Sami rights in recent decades in Norway two international textes have been of special importance: **Article 27 of the UN Covenant on civil and political rights and the ILO convention n° 169 on indigenous people**. Norway was the first state to ratify the ILO cconvention in 1990. I may also mention that Norway has signed and is going to ratify the 12th Protocol to the European Convention on Human Rights – the Discrimination Protocol. This will certainly also be of great importance in this field.

Article 27 of the UN Covenant is incorporated in Norwegian law by the Human Rights act of 1999. It follows from the Human rights act that the three general Human Rights Conventions that are

incorporated by the act, in case of conflict will take precedence over ordinary national law. It may be said that this means that these conventions have a semi constitutional character in the Norwegian legal order. Article 27 gives persons belonging to **minorities** special rights to enjoy their own culture. This applies also to the Sami people, and it is recognized that this implies also a right to natural resources when this is necessary for the development of their culture. But as regards land rights it is the ILO convention on **indigenous people** with its article 14 which is most important for the Sami people. An important legal reform is now before the Norwegian Parliament regulating the land rights and administration of natural resources in Finnmark, trying to balance the rights of the population of the county as a whole with the traditional rights of the Sami people in line with the international obligations that I have mentioned. The proposed act has been criticized by the Sami Parliament and also to some extent by the UN Committee on the elimination of racial discrimination during its examination of Norway's periodical report. The Norwegian Parliament plans to discuss the proposed act at the end of this year. To what extent this will generate cases before the Supreme Court remains to be seen.

As I mentioned most of the jurisprudence of the Supreme Court relating to Sami questions deals with land rights. It may be said that former decisions of the Supreme Court shows the difficulties of the Sami people to obtain full understanding for their special situation. In recent years there are, however, a tendency to give more weight to the traditional rights of the Sami people. The Supreme Court has in several decisions applied the general Norwegian rules on land rights, but adapted them so as to pay due regard to the Sami concepts and use. In this way, the Court has arrived at solutions that are in harmony with the ILO convention without applying it directly.

To sum up – there is an important evolution going on in Norway towards a better understanding and protection of Sami rights and culture, and also the Supreme Court has an important role to play in this respect.
