

Åbo Akademi University

European Master's Degree in Human Rights and Democratisation

Academic year 2013/2014

**The legal position of the Sami in the
exploitation of mineral resources in
Finland, Norway and Sweden**

Student: Giuseppe Amatulli

Supervisors: Prof. Markku Suksi

Dr. Mariya Riekkinen

Abstract

The situation of the indigenous peoples in the world is difficult. They have to struggle against the States in order to see their rights recognised. The right to land takes a special place among these. This is one of the most important rights for the indigenous peoples, due to the fact that one of the features that differentiate the indigenous peoples from other groups or minorities is their relationship with ancestral lands. Moreover, if we consider the amount of natural resources that can be found in indigenous areas, it is easy to understand how complex the situation of the indigenous peoples is.

The focus of this work is on the situation of the indigenous people (the Sami) of the three Nordic countries (Finland, Norway and Sweden) and how they face the exploitation of natural resources in their areas. Northern Europe is in fact, rich in natural and subsoil resources and it is not easy for the governments to reach a balance between the rights of the Sami and the rights of the other citizens of the State. By means of analysing the Mining Acts of the three above mentioned States, we will point out whether the national law safeguards the Sami rights in a satisfactory way. In order to see if there is compliance between the provisions established in national law and in international law, a comparison between the Mining Acts and ILO Convention No. 169 will be made.

This comparison is important, given the fact that one of the aims of this thesis is to point out the actions taken from the State in order to protect indigenous rights and if States are respecting the international provisions established for the protection of indigenous rights in the national legislation, also without ratification of the international instruments. The other aims of this work are to analyse: if the obligations enshrined in the Mining Acts are sufficient to guarantee a good protection of Sami rights in case of mining activities, if the Sami are involved during the decision making process as well as if there are mechanisms of participation and legal remedies for the Sami.

Table of contents

Acknowledgments	II
Abstract	III
Table of acronyms and abbreviations	IV
1. Introduction	1
1.1. General overview	1
1.2. Research questions	2
1.3. Methods, materials and delimitations	4
2. Mining in indigenous territories: between the right to land and economic gain	6
2.1. The importance of the right to land for the indigenous peoples	6
2.2. Mining in indigenous homelands: between public affairs and indigenous interests	9
2.2.1. Access to the mining process: an overview with the focus on selected Nordic States	9
2.2.2. The system of remedies and compensations for the indigenous peoples	13
2.3. The situation of the Sami in the Nordic States	17
2.3.1. Historical overview on the Sami right to land	17
2.3.2. The two main cases about the Sami right to land: the <i>Taxed mountains</i> case and the <i>Alta</i> case	20
2.3.3. The mining process in the Sami areas: between traditional and non-traditional indigenous resources	23

3. The sources of international human rights law on protection of the indigenous peoples	24
3.1. Protection of the indigenous rights under the ICCPR	24
3.1.1. The safeguards of the right to land and traditional lifestyle	24
3.1.2. The protection of the right to self-determination in the jurisprudence of the UN Human Rights Committee	29
3.2. The efforts of the ILO in the area of protecting the indigenous peoples	32
3.2.1. The establishment of the ILO to the Convention No. 107/1959	32
3.2.2. The safeguards of the right to land and the right to self-determination in ILO Convention No. 169/1989	34
3.2.3. ILO Convention No. 169 in the legal frameworks of Finland, Norway and Sweden	40
3.3. The UN Declaration on the Rights of Indigenous Peoples: a step forward to the recognition of the right to self-determination and the right to land of the indigenous peoples	45
4. Mineral Acts of Finland, Norway and Sweden: compliance with the international law standards on protection of indigenous rights	52
4.1. The Mineral Acts of the three selected Nordic States	52
4.1.1. Finland, a complete Act for the Sami rights	52
4.1.2. Norway, a focus on the Finnmark area	55
4.1.3. Sweden, a lack of provisions on the Sami rights	57
4.1.4. Horizontal Comparison of the three Mining Acts	58
4.2. Comparing ILO Convention No. 169 with the Nordic Mineral Acts	62
4.3. General comments and reflections on the international law and the national law	67

5. Legal mechanisms of indigenous participation in decision-making	70
5.1. Types of mechanisms of participation of the Sami and legal remedies	70
5.1.1. The three Sami assemblies and the three Parliamentary Acts	70
5.1.2. The Sami Council and the Sami Parliamentary Council	76
5.2. Listening the stakeholders: the opinions of the Sami, the points of view of the non-Sami groups and the reasons of the commercial companies	77
6. Conclusions	79
Bibliography	83
Table of international instruments	89
Table of national instruments	90
Official reports / UN Documents	91
Case law	93
Other documents & web-sites	95
Annexes	97