

SAMI PEOPLE AND THE RIGHT TO SELF-DETERMINATION

Adrian Liviu IVAN
Ruxandra Emanuela NUT^{*}

Abstract. Currently, one can observe the trend of a global manifestation of what we call the right to self-determination of indigenous peoples, which is also one of the central goals of the United Nations. Self-determination refers to varied and complex issues, including indigenous peoples' right to choose their political status and their economic and social development, to maintain their culture, language and confessional freedom, their customs, traditions and values, having as ultimate goal the progress as a nation, the identity preservation and the recognition and respect from others. One of the most interesting cases of devotion to traditions and struggle for recognition and self-determination is that of the Sami population. The present study intends to analyze its status in the Northern European countries and the cross-border collaboration between them, in order to respect this principle.

Keywords: self-determination, indigenous peoples, the Sami minority, Nordic Sami Convention, Nordic Sami Council

Sami people in the countries of Northern Europe and the idea of self-determination

Throughout the 20th century, indigenous peoples were subjected to assimilation practices and the Sami people were no exception. But this was modified and regulated in some Northern states in the '70s. The Sami were pioneers in establishing policies of resistance against assimilation, inspiring indigenous peoples around the world. Their declared purpose is to demonstrate that they are not a population of the past, but of the present and future, a model of coexistence with the majority population, based on understanding and mutual respect.

The concept of minority has never been an easy one to define. The main European and international organizations have failed to agree on the establishment of a generally accepted definition, because of some objective reasons. This phenomenon is a complex one, requiring different solutions for a variety of cases, situations and interests. Also, some states have been reluctant in recognizing minorities for fear of consequences, such as separatist movements.

^{*} Babeş-Bolyai University, Department of International Studies and Contemporary History, M. Kogalniceanu 1, Cluj-Napoca, Romania, e-mails: adrian_ivan2007@yahoo.com; nut_ruxandra@yahoo.com

One of the relevant definitions regarding minorities is that of Professor André-Louis Sanguin, who asserts that:

Ethno-politology distinguishes two categories of ethnic minorities: national minorities and stateless ethnic groups. 'National minority' is a community living in the border area of a state A, but whose ethnicity, language, customs and national sympathies relate to state B. For example, the Danish Schleswig Germans, the Serbian Kosovo Albanians, those from Montenegro and Macedonia, Hungarians from Romania, Romanians from Moldova etc. 'Stateless ethnic group' defines a small community in isolated form, that has to defend a language which is not spoken anywhere else. Without having a sovereign state, the community cannot be based either on a homeland neighboring country or a linguistic hinterland, often evolving in a difficult context (see the cases of the Sami, Frisian, Welsh, Corsicans, Occitan, Bretons, Catalans, Basques, and Sardinians etc.)¹

In the case of the Northern European states, national minorities include Jews, Roma and Kvens, who became minorities due to the migration phenomenon. Regarding ethnic minorities, the Sami minority, recognized as indigenous people too, is the only representative one, subjected to harsh policies over time.²

Regarding indigenous peoples, there isn't a clear definition of this concept, but the version accepted as representative is that offered by Jose R. Martinez Cobo, Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities of the United Nations, in Study on the Problem of Discrimination against Indigenous Populations:

Indigenous communities, peoples and nations are those which, having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from other sectors of the societies now prevailing on those territories, or parts of them. They form at present non-dominant sectors of society and are determined to preserve, develop and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal system.³

The Constitutions of Norway and Finland recognize the Sami as indigenous people, not just a minority. The Swedish Sami are treated as an ethnic minority and/or indigenous people. In the Constitution of the Russian Federation, the Sami is just one of many small indigenous peoples.⁴

After the Second World War, some discussions on the rights of the Sami as an ethnic minority and indigenous people started to become obvious. The idea of equality among peoples was established in the Declaration of Human Rights of 1948 and was reiterated by Article 27 of the UN Covenant on Civil and Political Rights of 1966, which has as goal the protection of minorities, prohibiting differential treatment

and supporting the variety of cultures. This is also the purpose of the ILO Convention 169 on indigenous peoples, Norway being one of the few countries in the world to ratify it. All these regulations have given legitimacy and justified the orientation towards a separate Sami cultural activity, illustrated by the establishment of their own organizations in the three Northern European countries.

The Sami cooperation began in 1956, when they established the Nordic Sami Council, a non-governmental organization, which includes organizations from Norway, Sweden and Finland.

Its aims are to promote the rights and interests of the Sami population locally, nationally and internationally, to consolidate a sense of affinity among the Sami, to obtain the recognition of their rights and to maintain these rights in the legislation of the three states.⁵

Furthermore, the Nordic Sami Council was the one that took the initiative of developing an international convention that addresses the status and rights of the Sami, relying on the fact that the Sami are one people, living in different states, having the right to self-determination.

The Business Dictionary defines self-determination as:

a fundamental right of all people to freely decide their own political status and to freely pursue their own cultural, economic, and social development. The concept of self-determination was embodied first in the American Declaration of Independence (1776) and then in the France's Declaration of the Rights of Man (1789). It is embodied also in the UN charter. ⁶

The idea of self-determination first appeared during the Enlightenment, with the promotion of people's sovereignty. Through the establishment of the UN in 1945, it was transformed into a right of all peoples, mentioned in the UN Charter, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights etc.⁷ The International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights state the same thing:

1. All peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.
2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefits, and international law. In no case may a people be deprived of its own means of subsistence. ⁸

Initially, self-determination has been quite limited, mostly referring to the process of decolonization and the formation of new states. Gradually, however, its

meaning has been broadened, so that a group that not necessarily represents the majority in a territory or lives on the territory of several states has the right to self-determination. The best example are the indigenous peoples, among which we can include the Sami people. In the Indigenous Peoples Declaration, the Northern European states have recognized the right to self-determination of indigenous peoples.⁹ However, under international law, this self-determination is limited by the state territory, which cannot be divided, and whose integrity cannot be affected. Consequently, the indigenous peoples do not have the right of secession and formation of their own state as long as they endanger the state borders.

Self-determination is also based on two essential dimensions, the internal one and the external one. The internal one refers to the decision-making process in the internal governance, decisions that directly affect the indigenous population and their pursuit of interests, such as: cultural, economic and social development, control over natural resources, traditional land, customs and crafts. The external dimension refers to the establishment of international connections, such as representation in forums, associations and international organizations.

The right of Sami people regarding self-determination

The text of the Nordic Sami Convention clearly illustrates the desire to respect the right to self-determination. The Preface of the Convention mentions the responsibility assumed by the three Northern countries, Norway, Sweden and Finland concerning the Sami people, recognizing that they are a single indigenous people, living on the territory of several states, having their own culture and lifestyle and the right to self-determination.

Chapter I, Article 3 is entitled "The right to self-determination" and stipulates as follows:

As a people, the Sami has the right of self-determination in accordance with the rules and provisions of international law and of this Convention. In so far as it follows from these rules and provisions, the Sami people has the right to determine its own economic, social and cultural development and to dispose, to their own benefit, over its own natural resources.¹⁰

The internal dimension of self-determination is outlined in Chapter I, Article 6, noting that states must ensure the necessary conditions for the Sami people to preserve and develop their language, culture, society and lifestyle. Also, Chapter II, Article 14 regulates the activity of the Sami Parliament, the representative body of the Sami population, with the role of supervising the realization of the right to self-determination. It may conclude local, regional and national agreements in order to strengthen the Sami society and has the right to participate and to be consulted in any activity that aims directly at the Sami interests.

The internal aspect of self-determination emerges also from Chapter III that specifies the right to use their mother tongue in public or private, and the access to education in their own language. Article 32 of the same chapter, entitled "Sami cultural heritage", states that:

Sami cultural heritage shall be protected by law and shall be cared for by the country's Sami parliament or by cultural institutions in cooperation with the Sami parliament.¹¹

Chapter IV is devoted entirely to land, water and access to resources, as one of the main aspects of internal self-determination:

If the Sami, without being deemed to be the owners, occupy and have traditionally used certain land or water areas used for reindeer husbandry, hunting, fishing or in other ways, they shall have the right to continue to occupy and use these symbols to the same extent as the before.¹²

Article 36 regulates the access to resources issue, the authorities having the obligation to negotiate with the Sami people if they want to exploit the resources of the area occupied by them.

Chapter I, Article 11 refers to the external dimension of self-determination and provides the implementation of measures for the Sami people to carry out economic and cultural activities across borders. Similarly, Article 19 refers to the international representation of the Sami:

The Sami parliaments shall represent the Sami in intergovernmental matters. The states shall promote Sami representation in international institutions and Sami participation in international meetings.¹³

If the Sami people are a model of integration of indigenous peoples in Europe, we find a similar case overseas, on the American continent, namely the aboriginal peoples of Canada. There are many similarities between them in terms of recognition of the principle of self-determination. As we know, Canada is a multicultural state, a member of the UN and a signatory of the UN Charter, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. Accordingly, Canada recognizes the right to internal self-determination of aboriginal peoples, as stated by the Canadian delegation of the 53rd session of the Commission on Human Rights:

The Government of Canada accepts a right of self-determination for Indigenous peoples which respects the political, constitutional and territorial integrity of democratic states. In that context, exercise of the right involves negotiations between states and the various Indigenous peoples within these states to determine the political status of the Indigenous peoples involved, and the means of pursuing their economic, social and cultural development.¹⁴

Moreover, the "Gathering Strength: Canada's Aboriginal Action Plan" report of the Canadian government reiterates this idea, stating that before the formation of the Canadian state, indigenous peoples were self-governing, based on their values,

traditions, customs and beliefs, closely related to nature and environment and assimilation practices were a wrong method of approach. Therefore, the state

Must continue to find ways in which Aboriginal people can participate fully in the economic, political, cultural and social life of Canada in a manner which preserves and enhances the collective identities of Aboriginal communities, and allows them to evolve and flourish in the future.¹⁵

Thus, indigenous people's rights and freedoms are respected, including the right to internal self-determination, without affecting the territorial integrity of the Canadian state.

As one can see, the two models have many similarities in terms of guaranteeing the right to self-determination. Both of them are members of the UN, are signatories to the above-mentioned conventions and recognize self-determination as a basic principle of human rights. Moreover, both regret the injustice committed against the indigenous peoples through assimilation policies and intend to compensate this. However, both countries promote the internal dimension of self-determination, being reluctant to the external dimension which would endanger their territorial integrity. A notable difference between the two states is that Norway has clear references in its Constitution and the Sami Law, that the Sami people are the only indigenous people on their territory and the state guarantees them all the rights and freedoms. Canada, however, does not specify the people who enjoy these rights, but use the generic term "aboriginal peoples".

This brief comparison between the two ways of integrating indigenous peoples, their cultures and identities demonstrates that there are successful projects which are viable and can be a starting point for other states and nations facing the same problem, offering answers and relevant solutions.

Conclusion

Developing a Nordic Sami Convention is not only an attempt to balance the relations between the majority population and the indigenous minority, but it is also a role model for other nations. The Sami are promoters of such an action, and the fact that there is a precedent may be a positive influence and an important step towards the transnational status of indigenous peoples and the recognition of the right to self-determination.

The impact of the Convention is a durable one and goes much further than we can imagine. It manages to overcome the idea that the state represents the center, leaving the impermeable borders behind, and moving towards another dimension, focusing on cultural, economic and social development, jointly conducted internally by the majority and minority and externally by states, in the spirit of cooperation, understanding and good neighborhood, following one of the fundamental contemporary rights, the right to self-determination.

References

- ¹ Ivan, A. L., *Stat, majoritate și minoritate națională în România* [State and national majority and minority in Romania](Cluj-Napoca: CA Publishing, 2011), 109.
- ² Hylland, Eriksen, T., *Immigration and National Identity in Norway* (Migration Policy Institute, 2013), 3.
- ³ Available via: <http://indigenouspeoples.nl/indigenous-peoples/definition-indigenous> , cited April 2014.
- ⁴ Koivurova, T., “The Draft Nordic Saami Convention: Nations Working Together”, *International Community Law Review* 10 (2008): 281.
- ⁵ Available via: www.saamicouncil.net , cited April 2014.
- ⁶ Definition given by the Business Dictionary, Available via: <http://www.businessdictionary.com/definition/self-determination.html>, cited April 2014.
- ⁷ Henriksen, J.B., Scheinin, M., Åhrén, M., “The Nordic Sami Convention: International Human Rights, Self-Determination and other Central Provisions”, *Journal of Indigenous Peoples Rights* 3 (2007): 53.
- ⁸International Covenant on Civil and Political Rights, Available via: <https://treaties.un.org/doc/Publication/UNTS/Volume%20999/volume-999-I-14668-English.pdf>; International Covenant on Economic, Social and Cultural Rights, available via: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>, cited April 2014.
- ⁹ Henriksen, J.B., Scheinin, M., Åhrén, M., (2007): 57.
- ¹⁰ The Nordic Sami Convention, Chapter I, Article 3, Available via: https://www.regjeringen.no/globalassets/upload/aid/temadokumenter/sami/sami_samekonv_engelsk.pdf, cited April 2014.
- ¹¹ The Nordic Sami Convention, Chapter III, Article 32.
- ¹² The Nordic Sami Convention, Chapter IV, Article 34.
- ¹³ The Nordic Sami Convention, Chapter II, Article 19.
- ¹⁴ Dalton, J. E., *International Law and the Right of Indigenous Self-Determination: Should International Norms be Replicated in the Canadian Context?* (Queen’s University, 2005), 15.
- ¹⁵ Dalton, J. E., (2005), 16.