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Finland's Specific Obligations Relating to Åland's Autonomy under International and National Law: Suomen Ahvenanmaan itsehallintoa koskevat velvoitteet kansainvälisen ja kansallisen oikeuden mukaan

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2024-08-20

http://hdl.handle.net/10138/591783

Hannikainen, L 2024, Finland's Specific Obligations Relating to Åland's Autonomy under International and National Law. in G Alfredsson & G Lindholm (eds), The Autonomy of the Åland Islands : Constitutional and International Challenges. Studies in International Minority and Group Rights, no. 18, Brill , pp. 52-58. https://doi.org/10.1163/9789004691117_007

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CHAPTER 5

Finland's Specific Obligations Relating to Åland's Autonomy under International and National Law

Lauri Hannikainen

1 The Creation of Åland's Autonomy in Legal Terms

The international legal basis of Åland's autonomy is formed by the decisions of the Council of the League of Nations on 24 and 27 June 1921. A dispute had developed between Finland and Sweden on the future of Åland. The newly-emerged, independent state, Finland, was of the opinion that Åland, which had been a part of the Finnish Grand Duchy in the Russian Empire, should naturally remain as a part of Finland. The great majority of the Swedish-speaking Ålanders were of the opinion that the Åland people should have the right to decide their future status, i.e. to become a part of Sweden. Sweden argued in favour of the right of Ålanders to determine their future status.

When those Nordic States were not able to settle their dispute, they agreed to submit the case of Åland to the League Council – ultimately for its binding decision. In order to improve its chances before the Council, Finland enacted an Act on the Autonomy of Åland (No. 124/1920), which provided for a regional parliament with limited legislative powers and for a regional government. In addition, Swedish was made the sole official language in Åland.

The League Council's decision was favourable for Finland: Åland was to remain under the sovereignty of Finland. However, Finland was to agree to certain guarantees in support of the autonomy and Swedish character of Åland:

> The new guarantees to be inserted in the autonomy law should specially aim at preservation of the Swedish language in the schools, at the maintenance of landed property in the hands of the Islanders, at the restriction, within reasonable limits, of the exercise of the franchise by new-comers, and at ensuring the appointment of a Governor who will possess the confidence of the population.[1]

1 Resolution of 24 June. LNOJ 699, IV Geneva (1921).

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The Council was of the opinion that the guarantees would most likely achieve their purpose, if they were agreed by the parties to the dispute – Finland and Sweden. Indeed, after a few days, the negotiators of these states reached an agreement which was then added to the Council's Resolution of 27 June. According to the agreement, Finland undertook to introduce the following guarantees to the Autonomy Act:

- Åland was in no case obliged to support any other schools than those in which the language of instruction was Swedish. In the state schools, instruction was to be given in Swedish. The Finnish language could not be taught in those primary schools which were supported or subsidised by the state or by the municipalities, without the approval of the municipality concerned.
- When real property situated in Åland was sold to a person who was not legally domiciled in Åland, any person legally domiciled in Åland, or the Åland Government or the municipality in which the estate was situated, had the right to redeem the estate.
- Immigrants to Åland who had Finnish citizenship could acquire provincial and municipal franchise of Åland only after five years' legal domicile therein.
- The Governor of Åland was to be nominated by the President of Finland in agreement with the Speaker of the Legislative Assembly of Åland.
- Åland had the right to use for its own needs 50 per cent of the revenue of the land tax.

Finland faithfully incorporated the agreed text, not in the Autonomy Act, but in a specific Åland Guarantees Act.[2]

The Act on the Autonomy of Åland is of course the basic national legal source of the autonomy. In the first decades, the Guarantees Act was the second basic source, but since 1951, when the second Act on the Autonomy of Åland replaced the acts of 1920 and 1922, the Autonomy Act was the sole basic source.

2 The New Autonomy Acts of 1951 and 1991

The League of Nations was dissolved in the 1940s. With regard to the minority regimes created by the League, the United Nations did not become the League's successor as supervisor. Knowing this, Finland could have tried to weaken Åland's autonomy but it did not do so. On the contrary, the 1951 Autonomy Act[3]

2 FFS 189/1922.

3 FFS 670/1951.

reinforced the autonomy and preservation of the Swedish character of Åland, as compared with the settlement of the early 1920s.

First, the jurisdiction of the Legislative Assembly was enlarged and specified. Second, a specific regional citizenship – right to domicile – was created for persons who had acquired the right of permanent residence in Åland.[4] Only people with the right to domicile had full rights – i.e. voting rights, freedom of enterprise, and the right to own real property. Third, according to a new rule, if a treaty ratified by Finland contained a provision which was in conflict with the Autonomy Act, the provision was to enter into force only if the Legislative Assembly gave its consent.[5]

The Autonomy Act of 1991 replaced the Act of 1951. The new Act continues the same trend as seen with the previous Act: it further develops Åland's autonomy. First, in order to acquire the right to domicile the applicant also needs to be sufficiently proficient in the Swedish language.[6] Second, the right of persons not having the right to domicile to acquire and own real property is further restricted. Third, new provisions concerning the appointment of the Governor are made more favourable to Åland than before.[7] Fourth, Åland can have a role in Finland's treaty negotiations with other states.[8]

However, there is one provision in the 1991 Act which deviates from the 1921 settlement formally to the detriment of Åland. Namely, Section 40 improves the position of the Finnish language in schools. Originally, Finnish could not be taught in those primary and secondary schools which were supported or subsidised by the Åland administration or by the municipalities, without the approval of the municipality concerned. Section 40 no longer subjects all teaching of Finnish to such an approval procedure.

The modification created in Section 40 has a pertinent ground: the trend in Europe is towards multicultural societies with increased use of different languages. Åland has a greater need than before to have persons able to master Finnish. A great majority of Åland's pupils nowadays study Finnish at school as a foreign language. Besides, there was substantial opposition in the Finnish Parliament towards the strict attitude to teaching Finnish. Thus, I submit that the provision of Section 40 is actually not detrimental to Åland.

4 *Ibid. §§ 3–5.*
5 *Ibid. § 11:19.*
6 *Ibid. § 7.*
7 *Ibid. § 52.*
8 *Ibid. § 58.*

3 The Division of Competences between Åland and the State

The purpose of granting autonomy to Åland was to enable it to control its Swedish language and culture in a long-term manner. The division of competences is naturally a matter of prime importance.

In the list of the competences of Åland, there are 26 items in the Autonomy Act (Section 18). They include municipal administration and taxation, local public order and security, lease of land, protection of nature and the environment, health care and medical treatment, social welfare, education, culture and sport, hunting and fishing, the postal service, the right to broadcast by radio and cable in Åland, and trade (with certain exceptions).

The list of competences of the State includes 41 items (Section 27). This list makes it plain that the sphere of Åland's autonomy is not broad. The state list includes foreign relations, national defence and security, the right to reside and move in Finnish territory, company law, shipping lanes for merchant shipping, nuclear energy, labour law, criminal law, the judiciary and judicial proceedings, citizenship, passport, legislation on aliens, civil defence, taxes and dues (with certain exceptions).

At the end of the Åland and State lists there is a general clause according to which Åland/the State has legislative competence in other matters deemed to be within the legislative power of Åland/the State in accordance with the principles underlying the Autonomy Act.

It should be pointed out that the division of legislative power between the State and Åland is exclusive in principle in the sense that a state law or a treaty ratified by Finland is not in force in Åland if Åland has legislative power in that particular matter, not even subsidiarily in force.

When Finland became a member of the EU, it surrendered a part of its powers to the EU and the same was done by Åland when it joined Finland's membership.

4 The Opinion of the European Union

When Finland was negotiating with the EU on becoming a member of the EU, it was recognised that Åland was entitled to decide for itself whether it wanted to join Finland's membership or not. When Finland had agreed to join, Åland decided to join Finland's membership. A special protocol was added to Finland's membership treaty Protocol 2 on the Åland Islands in the Accession Treaty to the European Community 1994 of Finland, Sweden and Austria.

This short protocol begins by recognising that the Åland Islands have a special status in international law. During the negotiations Finland also recognised the special status of Åland. Thus, there was full agreement in this matter.

According to Article 1 of the Protocol, the provisions of the EC Treaty shall not preclude restrictions on the right of natural persons who do not enjoy regional citizenship (*hembygdsrätt*) and for legal persons, to acquire and hold real property in Åland without permission. A similar statement follows concerning the right of natural persons to provide services.

Article 2 states that the territory of Åland being considered as a third territory shall be excluded from the territorial application of the EC provisions in the fields of harmonisation of the Members on turnover taxes, and on excise duties and other forms of indirect taxation. This derogation is aimed at maintaining a viable local economy. Depending on future developments, this derogation may be only of limited duration.

The last Article 3 obligates Finland to ensure that the same treatment applies to all natural and legal persons of the member states.

5 Taxation Powers

An autonomous territory's legislative autonomy would be very limited if the territory did not have a given economic autonomy. In the past, Åland's use of its finances was strictly controlled by the state. The 1991 Autonomy Act brought a radical extension to Åland's economic autonomy; Åland now has significant powers to decide how it uses the finances it has acquired.

However, Åland does not have any extensive powers of taxation, the Åland authorities having the right to levy only municipal and some minor taxes. With those exceptions, the state levies taxes in Åland as in other parts of Finland. These taxes are 'returned' to Åland in the form of an equalisation sum from the state budget. The amount of equalisation is at present 0.45 per cent of the Finnish state budget. This system gives a certain economic security to the small economic entity that Åland is – especially during times of economic recession. However, Åland is a prosperous region that has managed its economy well, even in times of recession. Åland and the region of Uusimaa, where Helsinki is located, are the most prosperous regions in Finland.

Åland would like to have a more diversified tax legislation. Åland's joining in Finland's membership of the EU has increased its autonomy in tax matters. It may well be that in future Åland's autonomy in the field of taxation will continue to increase.

6 Strong Factors of Åland's Autonomy

When one compares the autonomy of Åland with other existing regional autonomies, the outcome is that Åland's autonomy is not a very broad one. One reason appears to be that the population of Åland is relatively small – about 30,000. One hundred years ago, when the autonomy system was established, the number was about 20,000. Those years were turbulent years in Europe and the newly independent Finland preferred to agree to a limited autonomy.

However, when speaking about the scope of the Åland autonomy as a limited one I do not mean that as a whole it is relatively modest. There are several aspects in this autonomy which are strong. The reader has already learned from previous chapters that the constitutional guarantees of Åland's autonomy are strong. There are also certain other factors which appear to successfully implement the goal of the Åland autonomy, namely to preserve the character of Åland as a Swedish-speaking community – which includes, beside the Swedish language, even the Swedish culture.

Those strong factors are the right to domicile and the clear predominance of the Swedish language. Concerning the right to domicile, only persons having it are full-powered members of the community; only they have full rights in the regional elections, to own and possess real property, and to exercise a trade of profession. A Finnish citizen is free to move to Åland but without the right of domicile it might not be easy to earn a living there . He/she has to live in Åland for five years before being able to acquire the right of domicile. The other requirement – to be satisfactorily proficient in the Swedish language – should not be difficult for a Finn who has lived five years in Swedish-speaking Åland.

In Finland there are two national languages, Finnish and Swedish, equal before the law. However, in fact the Swedish-speaking population of some five per cent is only a national minority. The Finnish and Swedish languages are structurally very different from each other, belonging to different language 'families'. Åland makes a monolingual difference since it has only one official language – Swedish. This is the case in all organs of the Åland autonomy. However, before State authorities in Åland, for example, before the courts, everyone is entitled to also use Finnish.

A telling example of the strong position of *the Swedish language* in the case of Åland is the provision in the Autonomy Act according to which the language used in communication and correspondence between the State and Åland authorities shall be Swedish. This is an indication that, in its relations with Åland, Finland displays a bona fide attitude.

As regards the school languages, the position of Swedish is strong and the position of Finnish is weak. Since the number of Finnish-speaking persons

in Åland is relatively low, they have not demanded the establishment of a state-funded school where the language of instruction should be Finnish. Nor have they established a private Finnish-speaking school. It appears that Finnish-speaking pupils have managed quite well in the Åland school system.

In any case, the rules concerning the right to domicile and the strong position of the Swedish language in Åland have achieved their purpose. In the 2020s, one hundred years after the establishment of the autonomy system in Åland, in the population of circa 30,000 persons the number of Swedish-speaking persons is about 90 per cent. Finnish-speaking persons make up about five per cent, as also the number of persons having other mother tongues.

It should be pointed out that of the 200 seats in the Finnish Parliament one seat is reserved for Åland. The Åland parliamentarian is elected by the Åland voters in the course of Finland's parliamentary elections. However, Åland has not succeeded in getting a seat in the European Parliament. It has been considered to be too small to have a seat.

7 Concluding Observations

The circumstances have been favourable to Åland's autonomy. As an archipelago Åland is a distinct geographical entity with a homogenous population of about 90 per cent Swedish-speakers. Åland is a part of the Nordic region where the states have well-functioning democracies. From its beginning, the Åland autonomy has been a democracy with legislative assembly, government and regular, fair elections.

The guarantees for Åland's autonomy are strong in Finland's constitutional law, and in international law Åland's autonomous status has not been challenged. Its basis is the decision of the Council of the League of Nations, recognized by the EU.

During its hundred years' existence the Åland autonomy system has established itself in practice and has functioned quite smoothly. There have been disagreements between the Åland authorities and State authorities but they have been solved within the existing procedure of settling disputes – primarily according to legal criteria.

It can be presumed that either a new autonomy law will be enacted during the coming decades or further amendments meeting societal developments will be made to the existing Autonomy Act. A notable example of the need for amendments would come from developments within the EU system. Another example could come from the demilitarised and neutral status of Åland, i.e. if it were subjected to changes.