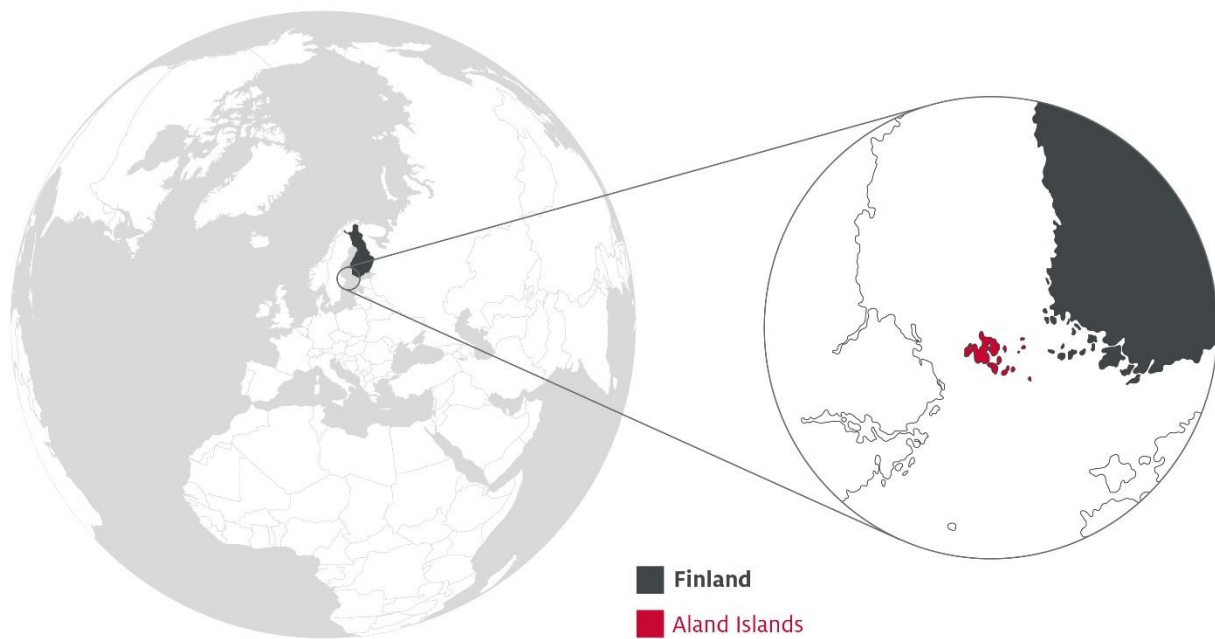




## Åland Islands

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#### **Recommended citation:**

Spiliopoulou Åkermark, Sia et al. 2019. "Åland Islands". In *Autonomy Arrangements in the World* ([www.world-autonomies.info](http://www.world-autonomies.info)).

## 1. Essential Facts and Figures

### 1.1. Finland – a constitutionally bilingual country with several minorities

According to the official statistics, Finland had in 2015 a population of 5.487.308 people, out of which 88.7% were registered as Finnish speakers and 5.3% as Swedish speakers.<sup>1</sup> Speakers of languages other than Finnish and Swedish constituted a share of 6% out of which 1.957 individuals were registered as Sámi-language speakers. The population of Finland is growing, but the number of persons speaking Finnish, Swedish or Sámi as their native tongue went down by nearly 4,000 persons, while the number of persons with other first languages grew by 19,000 persons. The three largest foreign languages spoken in Finland in 2016 were Russian, Estonian and Arabic.<sup>2</sup>

The Constitution of Finland recognizes the Finnish and Swedish languages as the two national languages. The Constitution also protects the right of the Sámi and Roma and “of other groups” to maintain and develop their culture and language.<sup>3</sup> In addition to the above-mentioned languages and groups, also Jews, Tatars, Karelians and so-called “Old Russians” are considered as minority groups in Finland and the status of these groups is reported upon by the Finnish government, for instance under the Framework Convention for The Protection of National Minorities of the Council of Europe (Finnish Government 1999, 7–8).<sup>4</sup>

The Swedish language has a long history in Finland. Between the 14<sup>th</sup> century and up until 1809, Finland was a part of the Swedish Kingdom, and Swedish was the official language, as well as the main language of education. Since the 13<sup>th</sup> century, Åland had been governed administratively from Turku, the main city of southwest Finland.

As Sweden lost Finland to Russia in 1809 and Finland gained status as a Grand Duchy within the Russian empire, the Finnish language slowly gained a stronger position. By contrast, the Swedish language gradually lost in influence during the Russian period and until the declaration of independence by Finland in December 1917. Swedish nevertheless maintained its status as an official language, alongside and on an equal basis with Finnish, in the Constitution adopted in July 1919 for the recently proclaimed independent Republic of Finland (Modeen 1973, 13–14; Stephan

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<sup>1</sup> Statistics Finland, *Population structure 2015*, Appendix table 2. “Population according to language 1980 – 2015”. Data available online at [https://www.stat.fi/til/vaerak/2015/vaerak\\_2015\\_2016-04-01\\_tau\\_002\\_en.html](https://www.stat.fi/til/vaerak/2015/vaerak_2015_2016-04-01_tau_002_en.html) (accessed November 15, 2018).

<sup>2</sup> Statistics Finland, *Population structure 2016*, Appendix figure 2. “The largest groups by native language 2006 and 2016”. Data available online at [http://www.stat.fi/til/vaerak/2016/vaerak\\_2016\\_2017-03-29\\_kuv\\_002\\_en.html](http://www.stat.fi/til/vaerak/2016/vaerak_2016_2017-03-29_kuv_002_en.html) (accessed November 15, 2018).

<sup>3</sup> Section 17 of the 1999 Finnish Constitution. An unofficial English translation is available online at <http://www.finlex.fi/en/laki/kaannokset/1999/en19990731.pdf> (accessed November 15, 2018).

<sup>4</sup> See also Okan, Hannikainen and Heikinheimo-Pérez (2016).

2011, 29; Suksi 2011, 142–46). As a Grand Duchy, Finland held an autonomous position within Russian empire, until it gained independence in 1917.

A majority of Swedish speakers in Finland live in the coastal areas and on the Åland Islands. Besides the constitutional principle regarding the use of the Swedish language in Finland, there are certain legal guarantees that apply only to the population of Åland. Most of the Swedish speakers on the mainland of Finland live in bilingual municipalities,<sup>5</sup> whereas municipalities on Åland are Swedish-speaking by law.<sup>6</sup>

## 1.2. The Åland Islands

The Åland Islands are an archipelago in the opening of the Gulf of Bothnia of the Baltic Sea, between mainland Finland and Sweden and consist of about 6,500 islands and skerries. The territory of Åland is defined by an international border with Sweden in the west and an administrative border with the rest of Finland in the east. The border to Sweden is rather clearly defined in the Åland Strait, and dates back to an 1810 agreement between Sweden and Russia. Since the 1921 settlement of the League of Nations of the Åland question (see section 3 below), the societal, legal, and administrative language in the Åland Islands has remained Swedish.

The autonomous region includes sixteen municipalities, some of which have fewer than 100 inhabitants. The city of Mariehamn is the largest municipality on Åland. The current coalition government on the Åland Islands (comprised of liberals, social democrats and conservatives) has proposed a fusion of municipalities, down to a number of four or five such municipalities with reference mainly to reasons of efficiency of services and personal integrity. Even though there is considerable popular support for such reform, options remain divided and the proposal remains controversial in certain political circles.<sup>7</sup>

According to official statistics, Åland had 29,489 inhabitants in 2017, of which approximately 11,600 resided in Mariehamn.<sup>8</sup> After the declaration of independence of the Republic of Finland, and for some 50 years on, the population of Åland remained constant. The growth rate was only 1%, as compared to 46% on mainland Finland. During the 1950s and 1960s, many Ålanders emigrated to Sweden. In the 1970s, however, a modern ferry industry developed on Åland, laying the foundation for a continuous growth in population lasting until today. Since that decade, the population growth on Åland has

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<sup>5</sup> Section 5 of the Language Act (423/2003).

<sup>6</sup> Section 36 of the Act on the Autonomy of Åland (1144/1991) [hereinafter the “1991 Autonomy Act”], which entered into force on 1 January 1993. An unofficial English translation is available online at <http://www.finlex.fi/en/laki/kaannokset/1991/en19911144.pdf> (accessed November 15, 2018).

<sup>7</sup> Åland government’s draft proposal for a reform of municipal structures on Åland (*Ålands landskapsregering “Reform av kommunstrukturen på Åland”*, Remissversion 28.02.2018) and Statistics and Research Åland, *The future municipal*.

<sup>8</sup> Statistics and Research Åland, *Population by municipality 1910–2017*. The data is available online at <http://www.asub.ax/en/statistics/population/size-and-structure-population> (accessed November 15, 2018).

exceeded that of Finland. Overall, during the last 200 years, native-born Ålanders have been prone to emigrate, and the population growth on the islands has instead come from immigration (Palmer 2009, 30–32). Most of the persons moving to Åland have come from mainland Finland or Sweden, but in recent years immigration from other countries has increased as well. In the year 1990, 5.5% of Åland's inhabitants had another language than Swedish as their first language (Kinnunen 2009, 42). In 2017, this share had increased to 12.8%. In total, 87.2% of the population had Swedish, while 4.7% of the population had Finnish, as their first language. In other words, the number of Finnish speakers on Åland has remained rather stable over the years. The speakers with other first languages were in 2017 at the level of 8.1% of the population and the largest foreign language groups are Romanian, Latvian and Estonian. Immigrants come also from other parts of the world, including Iran and Thailand.<sup>9</sup>

## 2. Autonomy and State Structure

The Åland Islands as an autonomous region hold an exclusive sphere of competences. Thereby, the region enjoys an asymmetric autonomy in Finland which is a unitary state (see further below section 6). According to the Finnish Constitution, “[t]he Åland Islands have self-government in accordance with what is specifically stipulated in the Act on the Autonomy of the Åland Islands.”<sup>10</sup>

The Finnish constitutional system recognizes also other types of self-government, such as municipal and regional self-government. Such other forms of self-government do not entail an exclusive legislative competence. Regional self-government is defined by the following section in the Constitution as “self-government in administrative areas larger than a municipality.” Most notably, the Sámi people have linguistic and cultural self-government in their homelands (that is, certain areas of northern Finland).<sup>11</sup> The legal hierarchy of Finland is, in principle, as follows: Constitution, acts, decree, other regulations.

On Åland, the legal hierarchy originates in the Constitution but differs somewhat from the hierarchical order on mainland Finland. Namely, the Finnish Constitution stipulates the following:

The right of the Legislative Assembly of the Åland Islands to submit proposals and the enactment of Acts passed by the Legislative Assembly of Åland are governed by the provisions in the Act on the Autonomy of the Åland Islands.<sup>12</sup>

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<sup>9</sup> Statistics and Research Åland, *Population by language 2000-2017*. The data is available online at <http://www.asub.ax/en/statistics/population/size-and-structure-population> (accessed November 15, 2018).

<sup>10</sup> Section 120 of the 1999 Finnish Constitution.

<sup>11</sup> Section 4 of the Act on the Sámi Parliament (974/1995). Also, this act is currently under revision.

<sup>12</sup> Section 75 of the 1999 Finnish Constitution.

The Finnish Constitution is valid on Åland only with respect to the parts that are not covered by the Autonomy Act. Although the Autonomy Act itself is by some authors not considered to have the full status of a constitutional law, it is considered to possess a status comparable with that of the Constitution (Suksi 2005, 461–84). The Autonomy Act together with the law regarding the right to acquire real estate in the Åland Islands<sup>13</sup> are often described as constituting a *sui generis* level in the Finnish legal order.<sup>14</sup> The autonomy of the Åland Islands has also been described as a classic example of territorial autonomy which, due to geographic and historical reasons, is conceived “as the exclusive instrument for group protection, representation and participation within a broader national framework” (Palermo 2015, 15).

The 1991 Autonomy Act provides that the official language of Åland shall be Swedish, which is the language to be used in State administration, Åland administration as well as municipal administration.<sup>15</sup> However, citizens of Finland have the right to use Finnish before a court and with other State officials on Åland.<sup>16</sup> The Autonomy Act further proclaims that the language used in contacts between Åland officials and state officials should be Swedish, as a rule,<sup>17</sup> and that “[t]he language of education in schools maintained by public funds or subsidized from the said funds shall be Swedish, unless otherwise provided by an Act of Åland.”<sup>18</sup>

### 3. Establishment and Implementation of Autonomy

Soon after 1809, the Russian authorities started to build what was meant to become a great fortress in Bomarsund in the eastern part of the main island of Åland. However, the fortress was never fully completed. During the Crimean war (1853-1856), Great Britain and France attacked the fortress in Bomarsund and destroyed it almost completely. As part of the Paris Peace Treaty of 1856, the great powers of the time agreed that the Åland Islands should become demilitarized following the desires and efforts of Sweden, even though Sweden never signed the 1856 agreement on the Åland Islands (Modeen 1973, 13–14; Åland Culture Foundation. 1993, 5-13; Robins, Skogsjö and Öljans 2004, 75-89, 101-106). This was the first time that the Åland Islands featured prominently on the international agenda and became a major topic of international regulation. The demilitarization agreement of 1856 created the basis for further discussions regarding the international status of the islands at the end of the First World War (Spiliopoulou Åkermark 2011, 50).

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<sup>13</sup> Act on the right to acquire real estate in the Åland Islands (3/1975).

<sup>14</sup> The discussion on the *sui generis* nature of the Åland regime is also found in the formulations chosen by the Bilateral Finland – Åland Committee for the revision of the Åland Autonomy Act. See Finnish Ministry of Justice (2017, 202-203).

<sup>15</sup> Section 36 of the 1991 Autonomy Act.

<sup>16</sup> Section 37 of the 1991 Autonomy Act.

<sup>17</sup> Section 36 of the 1991 Autonomy Act.

<sup>18</sup> Section 40 of the 1991 Autonomy Act.

In the early 20<sup>th</sup> century, a popular movement for what was described as “reunion with Sweden” was growing on Åland in parallel with Finland’s quest for independence. There was turmoil all around, with the First World War evolving, revolution(s) and then a Bolshevik take-over in Russia, and a little later, following Finland’s declaration of independence in late 1917, also a civil war in Finland. This made prospects for the future very unclear. Among other risks, the Ålanders feared the Finnish nationalist movement in an independent Finland and decided to put forward and claim the right to self-determination. On Åland, secret meetings were held, two petitions (December 1917 and June 1919) and other messages were sent to the Swedish king and state organs, and a self-constituted Ålandic Assembly was formed. The leaders of the Åland movement established bilateral contacts with several countries and also engaged in various ways in the Paris Peace Conference of 1919 to promote their cause (Barros 1968; Bring 2002, 9–11; Stephan 2011, 29).

While Sweden promoted the right of Ålanders themselves to decide their future status, in line with the principle of self-determination, Finland demanded that its sovereignty over the Åland Islands be recognized. In 1920, Finland proposed that Åland should become autonomous, and the Finnish parliament even passed a law on autonomy.<sup>19</sup> This law was however rejected as insufficient by the Ålanders. In the end, and after many and various turns, both domestically as well as internationally, it was agreed that the matter be conveyed to the Council of the League of Nations; both Finland and Sweden agreed to this British proposal. First, a Commission of Jurists established that the matter laid within the jurisdiction of the League of Nations, after which a Commission of Rapporteurs was established, with the mandate to find a solution to the dispute (Stephan 2011, 29; Spiliopoulou Åkermark 2009a; Hannikainen 1997, 57).

The Commission of Rapporteurs found the Ålanders’ fear of a tangible threat from the Finnish nationalist movement to the traditional language and culture in the islands to be legitimate. However, when summing up all facts and arguments, the Commission of Rapporteurs came to the conclusion that the status quo should be upheld, and Finland should retain the sovereignty over the islands. According to the rapporteurs, there was no reason for a minority to secede if the state guarantees the preservation of the social, ethnic and religious character of the minority population. Subsequently, on 24 June 1921 the Council of the League of Nations decided that Åland should remain a part of Finland, that Ålanders should be given guarantees to protect their language and culture and that the islands should remain a demilitarized and neutral territory (League of Nations 1921a).

Finland and Sweden were assigned the task to agree on how to formulate the details of the guarantees. The agreement between the two parties was presented to the Council on 27 June 1921.

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<sup>19</sup> Act on the Self-Government of the Åland Islands (124/1920) [hereinafter the “1920 Autonomy Act”].

According to this so-called “Åland Agreement” (League of Nations 1921b), Finland was to introduce six additional guarantees into the 1920 Autonomy Act. The new provisions regarded the language of instruction in the schools of Åland, land ownership linked to domicile,<sup>20</sup> the governor’s appointment, Åland’s revenues and monitoring of autonomy implementation by the League of Nations (Stephan 2011, 30–31; Hannikainen 1997, 58–59). The six guarantees shall be discussed further below (see section 4).

A separate, international convention regulating the demilitarization and neutralization of the Åland Islands was negotiated and signed originally by ten countries in the autumn of the same year (League of Nations 1921c).

In 1922, the still informal regional assembly on Åland, approved the Autonomy Act as it had been amended and expanded also by a proposed Guarantee Act to be adopted by the Finnish parliament. After general elections had been held, the first legally and formally constituted Parliamentary Assembly of Åland convened on 9 June 1922. This is still today celebrated as the self-government day of Åland. The Finnish Parliament, in turn, introduced the guarantees in the Guarantee Act, passed in August 1922, as a complement to the 1920 Autonomy Act. The Guarantee Act<sup>21</sup> incorporated into the Finnish legal system the six guarantees mentioned above.

During the first decades of the autonomy, the implementation of the Autonomy Act was not particularly smooth, and the autonomous region and the state could not always agree on how the autonomy should be interpreted and implemented. On Åland there was originally a sense of disappointment and frustration as a consequence of the compromises on the Autonomy Act and the failure of the idea of unification with Sweden (Holmén 2015). At the same time, new challenges lay ahead since the Ålandic political elites lacked experience to deal with the administrative, legislative and communicative requirements and needs posed by the autonomy (Bring 2002, 21–22; Modeen 1973, 58). Those processes started developing in the difficult interwar years at times when mainland Finland was also struggling with extremist and Fennomans<sup>22</sup> movements and anti-democratic forces (Meinander 2011).

In 1945, after the defeat of Finland in the Second World War, and during the difficult negotiations of the peace treaty, the Åland parliament raised again the question of a reunion with Sweden, claiming that the protection of the “Swedish nationality” (in this case meaning identity, language or culture) did not function satisfactorily and that Finland lacked interest for the matter. Sweden issued a statement on the issue, where it was clear that Sweden wanted to retain the status quo. After discussions with Finland, a major revision of the Åland Autonomy Act was instead initiated. The

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<sup>20</sup> However, the right of domicile was only implemented fully through the revised Autonomy Act of 1951.

<sup>21</sup> Åland Guarantee Act (189/1922).

<sup>22</sup> A nationalist movement that advocated the use and cultivation of the Finnish language.



revised Autonomy Act of 1951 might be considered a turning point, since after this, Ålanders have focused on developing the self-government, rather than aiming at reunification with Sweden. In the 1951 revision, language and culture provisions were strengthened and the right of domicile as well as conditions for the right to establish business on the Åland Islands were introduced (Modeen 1973, 62–64). A second substantial revision of the Autonomy Act took place in the years leading up to 1991 (Stephan 2011, 32) addressing mainly the financial system of the autonomous region. Today, it is the 1991 Autonomy Act which although amended safeguards the autonomy of the islands. A third major revision is currently underway, with the aim to be enacted in 2022, i.e., the centenary of the first Autonomy Act for Åland (Finnish Ministry of Justice 2017). Such a timeframe is considered rather tight by today, i.e., the end of 2018 and with elections coming up on Åland and in Finland.

## 4. Legal Basis of Autonomy

### 4.1. Entrenchment of autonomy in international law and domestic law

As was outlined above, the decision taken by the League of Nations on 24<sup>th</sup> of June 1921 created an overall framework deciding that the Åland Islands would remain under Finnish sovereignty and also that the demilitarized status would be complemented by neutralized status in times of conflict.

The compromise achieved between Finland and Sweden was annexed to the League of Nations decision of 27<sup>th</sup> June 1921 and had the following guarantees:

- The municipalities of Åland do not have the obligation to support any other schools than those in which the language of instruction is Swedish. Finnish can be taught only with the consent of the interested commune.
- The persons who are legally domiciled on the Åland Islands have a stronger right to own property than those who are not domiciled.
- The right of domicile may be granted to those who have stayed in Åland for five years legally. Prior to that they are to be considered immigrants.
- The governor of the Åland Islands shall be nominated by the president of Finland in agreement with the speaker of the parliament of Åland. If an agreement cannot be reached, the Finnish president shall choose a governor from a list of five candidates nominated by the Åland parliament. Candidates should all possess the qualifications necessary for the good administration of the islands and the security of the state.
- The Åland Islands shall have the right to use for their needs 50% of the revenue of the land tax, besides the revenues mentioned in section 21 of the 1920 Autonomy Act.

- The Council of the League of Nations shall watch over the application of these guarantees.

This decision still lays the foundation of the Ålandic autonomy in international law. The exact legal character of the obligations of 1921 has been debated in legal literature. Are the obligations unilateral, bilateral or based on decisions of an international organization (originally the League of Nations)? Who are the holders of the rights and obligations? According to Hannikainen, the so called Ålandic guarantees did not form a bilateral binding treaty in international public law between Finland and Sweden, mainly because both parties were of the opinion that no binding bilateral treaty had been concluded amongst themselves (Modeen 1973, 169–75; Hannikainen 2004, 72). There is, however, no doubt in the legal literature that Finland holds obligations under the Ålandic regime and vis à vis different actors, as was also made evident through the adoption of a protocol to Finland's accession treaty to the European Union (hereinafter EU) concerning to the special regime for the Åland Islands and referring to the "special status that the Åland Islands enjoy under international law".<sup>23</sup> The role of the Soviet Union, later the Russian Federation, in relation to Finland and Åland remains beyond the scope of the present overview, but it is clear that it has also influenced the status of the Åland Islands a number of times, including during and after the complex events of the Second World War and the setting up of the United Nations. These major changes internationally were in fact taking place while a revision of the autonomy arrangements of 1920–1922 was under consideration by the Åland and Finnish parliaments (Modeen 1973; Häggblom 2011).

Furthermore, Hannikainen and other international lawyers argue that there are good grounds for arguing that the special status of Åland should be considered as (binding) customary international law (Hannikainen 2004, 60; Linderfalk 2011). Under international law, the basic requirements for international customary norms to be recognized is that a state follows a certain practice and, in addition, considers the practice to be based on international obligations. Given that Finland, the state that holds the main rights and responsibilities concerning the Åland Islands, has since 1921 *bona fide* respected the agreement(s) and that the Finnish governments and parliament as well as Finnish diplomatic representatives have on numerous occasions unilaterally declared that Finland respects its international obligations toward Åland, this level of uniformity of praxis thus confirms a customary norm concerning the Autonomy of Åland (Modeen 1973, 175). Close cooperation between Finland and Sweden has become a permanent feature, in particular after the simultaneous entry of both countries in the EU (Spiliopoulou Åkermark, Heinikoski and Kleemola-Juntunen 2018, 65–95). Sweden and other countries around the Baltic Sea have shown similar respect for the special standing of the Åland Islands.

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<sup>23</sup> Accession Treaty of Finland to the European Union, Protocol No. 2 on the Åland Islands, OJ C241, 29 August 1994.

As mentioned in section 2, the autonomy of the Åland Islands is not only entrenched in international law. It is also entrenched domestically through the Constitution of Finland.<sup>24</sup> The more detailed regulation is based on the 1991 Autonomy Act.<sup>25</sup> Furthermore, the special status of the Åland Islands in relation to Finland has been reconfirmed also in other situations, such as in the membership negotiations of Finland and Åland with the EU in the early 1990s. In Protocol No. 2 to Finland's accession treaty, exceptions to EU law concerning to the special regime of the Åland Islands as concerns the right of domicile, the right to acquire real property and the right to establish business were endorsed and were made part of primary EU law.

#### 4.2. Procedures to amend the legal bases require the involvement of the autonomous entity

The changes in international obligations of the Republic of Finland are, of course, subject to the general principles of international law. In addition, with regard to the Åland Islands, any international agreement that would limit or fall within the competences of the Ålandic autonomy would need to be accepted by the Ålandic legislative assembly.<sup>26</sup>

The Finnish Constitution establishes a demanding procedure for constitutional amendments. There are two possibilities; one option requires a 2/3 majority supporting the new constitutional change in two consecutive parliaments, i.e., with general elections taking place in between. According to the second option there needs to be a 5/6 majority in a single Finnish parliament, if no general elections take place.<sup>27</sup> Furthermore, any amendment to the Autonomy Act of Åland needs approval of both the Finnish and the Åland parliament.<sup>28</sup> The Finnish parliament decides in this case according to the procedure for a constitutional amendment, meaning that the amendment is adopted only with a qualified majority of two thirds of the votes cast. Subsequently, the respective amendment must, similarly, be approved in the parliament of Åland with at least two thirds of the votes cast. This has led to a view of the Åland Autonomy Act as a quasi-constitutional legal act in the Finnish legal order (Suksi 2011, 156–58).

In the legislative process by the Åland parliament, the Finnish Supreme Court has a special advisory and interpretative status. The opinions of the Åland Delegation (see section 5.6. below) and the

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<sup>24</sup> Sections 120 and 75 of the 1999 Finnish Constitution. See also section 25 which provides concerning the election of members of Finnish parliament that “the Åland Islands shall form their own constituency for the election of one Representative” and section 58 concerning the power of the Finnish president on deciding on matters pertaining to the Åland autonomy, even without a motion from government.

<sup>25</sup> The 1991 Autonomy Act includes 11 chapters with the following headings: 1. General provisions; 2. Right of domicile in Åland; 3. The Åland Parliament and the Government of Åland; 4. Authority of Åland; 5. Authority of the State; 6. Language provisions; 7. Financial management of Åland; 8. The Governor and the Åland Delegation; 9. International Treaties (including Chapter 9a on European Union Affairs); 10. Miscellaneous provisions; and 11. Entry into force and transitory provisions. All in all, 79 more or less lengthy and complex articles.

<sup>26</sup> Section 59 of the 1991 Autonomy Act.

<sup>27</sup> Section 73 of the Finnish Constitution.

<sup>28</sup> Section 59 of the 1991 Autonomy Act.

Supreme Court may then serve as the basis for the president to annul an act of the Åland parliament that is in conflict with the status of Åland as a self-governing region. This arrangement is unique for Åland, as otherwise the legality and constitutionality of legislation in Finland is generally only supervised *ex ante* by the Constitutional Law Committee in the Finnish parliament, as Finland does not have a special Constitutional Court for *ex post* review.

## 5. Autonomous Institutions

The autonomous institutions have been the outcome of continuous negotiation and adaptation between, on the one hand, the government and parliament of the Åland Islands, and, on the other hand, the government and parliament in Finland. One characteristic feature of the Åland autonomy is the establishment and availability of organs that bring together Ålandic and Finnish state authorities (Stephan 2011, 33). In addition to the legislative, executive and judicial institutions on Åland the president of Finland, the governor of Åland and the Åland Delegation have important institutionalized roles within the Ålandic autonomy. Within the Finnish government there is one minister holding the portfolio of Ålandic matters, in addition to other tasks.<sup>29</sup> However, it has been argued occasionally by Ålandic politicians that Ålandic matters should be part of the prime minister's portfolio.

### 5.1. The Parliament

The Åland parliament represents “the people of the Åland Islands in matters relating to its autonomy”.<sup>30</sup> It consists of 30 members that are elected for a four-year term and its working language is Swedish. Only persons who hold the right of domicile have the right to vote, and to stand as candidate in the Åland parliamentary elections.<sup>31</sup> The suffrage is universal and equal, and members of the Åland parliament are elected by direct and secret ballot.<sup>32</sup> The elections are further regulated by an act of the Åland parliament, and the mandates are allocated according to the d'Hondt method.<sup>33</sup> Another Ålandic act sets the legal framework for the sessions of the Åland parliament, which are open to the public, unless the parliament due to weighty reasons decides it should be closed.<sup>34</sup> The parliament elects a speaker and two deputy speakers by secret ballot for

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<sup>29</sup> In the present coalition government of Finland, the Minister of transport and communication holds also the portfolio of Ålandic matters.

<sup>30</sup> Section 3 of the 1991 Autonomy Act.

<sup>31</sup> Section 9 of the 1991 Autonomy Act.

<sup>32</sup> Section 13 of the 1991 Autonomy Act.

<sup>33</sup> Section 62 of the Provincial Act (1970:39) on parliamentary elections and municipal elections (1994/63) [*Landskapslag (1970:39) om lagtingsval och kommunalval (1994/63)*]. Elections to the Åland parliament are held at the same time as elections to the municipal bodies.

<sup>34</sup> Section 46 of the Åland Lagting Act (2011:97) [*Lagtingsordning (2011:97) för Åland*]. This act regulates the procedure at the Åland parliament (Lagting).

one year at the time.<sup>35</sup> After the elections of 2015 there are seven political parties in the Åland parliament.<sup>36</sup> The party system on Åland is not a replica of the party systems in Finland and Sweden but it has its own dynamics. Since the issue of a revision of the 1991 Autonomy Act is an important issue at the moment (ahead of 2021/2022), the maintenance and development of the autonomy of the Åland Islands remains high on the agenda of all parties.

The parliament is organized in three permanent special committees: The Law and Culture Committee, the Finance and Business Committee, the Social and Environmental Committee.<sup>37</sup> Committee work on Åland, as in Finland, is important because it is often here that interparty negotiations take place and compromises are found. It is also here that experts and other voices, such as interest groups representatives, are heard when preparing legislative changes. In contrast to the sessions of the Åland parliament, the committee meetings are not open to the public and it is difficult for citizens to always know what positions are held by politicians in committee meetings as opposed to the public parliamentary debates.

The Autonomy Committee is a special consultative body of the Åland parliament established in the early 1970s. Its role is to oversee questions relating to the constitutional position of the Ålandic legislation and Åland's external relations, i.e., to the EU.<sup>38</sup> The Åland parliament, its permanent committees, as well as the government of Åland can consult the Autonomy Committee in EU matters (Stephan 2011, 35). Moreover, this committee regularly discusses the demilitarization and neutralization of the islands. The Ålandic government presents an annual report on autonomy matters which is discussed in the Autonomy Committee before being dealt with and approved by the Åland parliament as a whole. In practice, therefore, discussions and understandings developed in the Autonomy Committee are of crucial importance in the development and interpretation of the Åland self-government.

Once the Ålandic government, the parliament speaker's conference,<sup>39</sup> a member of parliament or a citizen's initiative has raised a matter before the Åland parliament; it is submitted to a suitable committee.<sup>40</sup> The committees are obliged to take on all the matters they receive. Bill proposals and international agreements that need the parliament's approval, requires two readings in the

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<sup>35</sup> Section 17 of the Åland Lagting Act (2011:97).

<sup>36</sup> The two largest parties are the liberals (*Liberalerna*) and the Centre Party (*Åländsk center*) with seven seats in parliament each. The conservative party (*Moderat Samling på Åland*) and the Social Democrats (*Ålands Socialdemokrater*) hold five seats each. The three smaller parties currently in the Åland parliament are: *Obunden Samling* (three seats); *Ålands framtid* (two seats) and *Åländsk demokrati* (one seat).

<sup>37</sup> Section 20 of the Åland Lagting Act (2011:97).

<sup>38</sup> Section 21 of the Åland Lagting Act (2011:97).

<sup>39</sup> The parliament speaker's conference consists of the speaker, the two deputy speakers, the chairpersons of the permanent committees and one member of every parliament group that otherwise wouldn't be represented in the conference.

<sup>40</sup> Sections 28, 29 and 31 of the Åland Lagting Act (2011:97).

parliament. Simple majority is required to make decisions. However, a change in the Autonomy Act or in the land acquisition law requires a qualified majority.<sup>41</sup> Five members of parliament can initiate a vote of no confidence in the government.

The sessions of the Ålandic parliament are opened and closed by the Finnish president, otherwise by the governor of Åland.<sup>42</sup> The speeches of the president of Finland or the governor of Åland are often perceived as thermometers of the relations between the central state and the autonomy and they offer useful updates and insights about crucial aspects in this relationship. The president has the power to dissolve the legislative body of Åland, in consultation with the speaker of the Ålandic parliament.<sup>43</sup> The president is also responsible for appointing the governor of Åland, again in consultation with the speaker of the Ålandic parliament. Finally, the president of Finland also has the right to present proposals to the parliament of Åland.

## 5.2. The Government

The executive body of the Åland Islands is responsible for all areas of governance that belong to the authority of Åland in accordance with the Autonomy Act. It participates actively in the legislative process, by presenting draft bills to the regional parliament and cooperates closely with the Finnish authorities on all matters of common interest. The Åland government maintains a permanent communication and information office in Helsinki. Good and tight contacts are also maintained with the Swedish government, parliament, business environment and society not only through the Swedish consulate on Åland which has been in place since 1871 (Spiliopoulou Åkermark 2018, 25). The formation process of the government starts with the groups of the Åland parliament negotiating the government program and the composition of the executive. After these discussions, the speaker of the parliament announces the candidate for prime minister, normally the chairperson of the largest political party (Suksi 2011, 294). If the candidate wins the majority vote by open ballot in the parliament, he or she is appointed prime minister, otherwise, a new candidate must be elected through the same procedures. If the second candidate does not receive a majority of votes, an open election is organized. The person who receives most votes is appointed prime minister.<sup>44</sup>

The prime minister is the head of the government of Åland, which may have up to eight members in total. One of them is the deputy prime minister who takes over the prime minister's duties in his or her absence.<sup>45</sup> Besides the ministries, several specialized bodies such as the legislative counsel

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<sup>41</sup> Section 32-35 of the Åland Lagting Act (2011:97).

<sup>42</sup> Section 14 of the 1991 Autonomy Act.

<sup>43</sup> Section 165 of the 1991 Autonomy Act.

<sup>44</sup> Section 24 of the Åland Lagting Act (2011:97).

<sup>45</sup> Section 1 of the Provincial Act (1971: 42) on the Åland provincial government (2008/11) [Landskapslag (1971:42) om Ålands landskapsregering (2008/11)].

office, the internal audit unit, the statistics and research office, the data protection office and the Ombudsman belong to the government of Åland (Stephan 2011, 38).

### 5.3. The Judiciary

Finland has a centralized judiciary system but all courts in the country are required to have knowledge of Ålandic legislation, since they might be required to apply it (Stephan 2011, 33). Åland has a District Court and an Administrative Court that share certain staff functions. The system with such merged courts is unique for Finland. The Administrative Court has been set up to secure access to judicial protection in administrative matters, something which is a state responsibility, while respecting the characteristics of the autonomous Åland legislative authority.<sup>46</sup> The Administrative Court applies both Ålandic and Finnish legislation. The chief judge in the District Court is also the head of the administration for the Administrative Court. While the administrative judge of the Administrative Court is the chairperson of the sessions of the Administrative Court, all District Court judges participate in it too. A judgment of the Administrative Court can be appealed before the Supreme Administrative Court in Helsinki while the decisions in the Åland District Court can be appealed before the Court of Appeal in Turku/Åbo. Finnish citizens have the right to use Finnish in the courts on Åland.<sup>47</sup> Opinions by the Supreme Court regarding the interpretation of the Autonomy Act and the constitutionality of proposed Åland legislation are written in Swedish.<sup>48</sup>

### 5.4. The Governor

The governor represents the government of Finland in Åland.<sup>49</sup> This institution was included already in the 1920 Autonomy Act as strengthened by the 1922 Guarantee Act and is therefore a result of the League of Nations decision (Johansson 2006, 46). The Finnish president appoints the governor after reaching an agreement on this matter with the speaker of the Åland parliament. In case of disagreement, the president appoints the governor from among five candidates nominated by the Åland parliament.<sup>50</sup> As mentioned above, the governor opens the sessions of the Åland parliament in the president of Finland's absence and delivers the president's proposals and statements to the parliament. The governor has the right to be present during the Åland parliament's sessions and has also the right to express his or her opinion on matters regarding the relations between Åland and Finland.<sup>51</sup>

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<sup>46</sup> Section 26 of the 1991 Autonomy Act. More details about Åland Administrative Court are available online at <http://www.ambetsverket.ax/statlig-verksamhet-pa-aland/alands-forvaltningsdomstol> (accessed November 15, 2018).

<sup>47</sup> Section 37 of the 1991 Autonomy Act.

<sup>48</sup> Section 36 of the 1991 Autonomy Act.

<sup>49</sup> Section 4 of the 1991 Autonomy Act.

<sup>50</sup> Section 52 of the 1991 Autonomy Act.

<sup>51</sup> Sections 4, 14 and 52-54 of the 1991 Autonomy Act, and Section 28 of the Åland Lagting Act (2011:97).

The governor is the head of the state administration on Åland and therefore also attends to state security (Stephan 2011, 41; Suksi 2011, 515). It is important that the governor has the necessary qualifications and knowledge about Åland and its autonomy system. Therefore, the appointed governors usually have working experience on Ålandic questions and/or personal relations with the region or are Ålanders themselves (Stephan 2011, 40). As mentioned earlier, the governor is appointed by the president of Finland after an agreement with the speaker of the Åland parliament has been reached (Ibid.). There are also numerous other forms and institutions for facilitating contact between the state and the autonomous entity (see section 8 below).

### 5.5. The Åland Delegation

The Åland Delegation is a joint body of the state and the autonomous region that was established already under the autonomy system of 1920-1922, with the primary task to ensure “a fair determination of the tax equalization rate” necessary for financing the autonomy system (Stephan 2011, 41). However, the tasks of the Åland Delegation have expanded substantially over time and today it plays an important role in the legislative process and acts as a consultative body to both the Finnish and the Åland governments and judiciary.<sup>52</sup> The involvement in legislative process regards mostly the supervision of legislation stemming from the Ålandic parliament as the Åland Delegation gives an opinion to the Ministry of Justice before a decision on the adoption of any Ålandic law is presented to the Finnish president.<sup>53</sup> The chairperson of the Åland Delegation is the governor of Åland, or other person appointed by the president of Finland in agreement with the speaker of the Ålandic parliament. The state and Åland have equal representation in this expert body, which consist of four members.<sup>54</sup> The communication language within the Åland Delegation is Swedish.<sup>55</sup> The current drafts for a revision of the 1991 Autonomy Act include proposals to expand the powers and role of the Åland Delegation with respect to laws adopted by the Åland parliament (Simolin 2018).

The Åland Delegation has an important function of controlling the realization and integrity of the Autonomy Act. When necessary, they may request for an authoritative interpretation from the Supreme Court (Stephan 2011, 41–42).

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<sup>52</sup> Section 56 of the 1991 Autonomy Act.

<sup>53</sup> Section 19 of the 1991 Autonomy Act.

<sup>54</sup> Section 55 of the 1991 Autonomy Act. The Finnish government appoints two members and the parliament of Åland appoints the other two. The Åland Delegation has quorum only when all members are present.

<sup>55</sup> Section 36 of the 1991 Autonomy Act.



## 6. Autonomous Powers

The Åland self-government arrangements regarding the distribution of autonomous powers are designed to fit Åland's particular needs while remaining within the Finnish constitutional order. The parliaments of Åland and of Finland adopt legislation in their own exclusive areas of competence while the governments of Åland and Finland hold corresponding executive roles. The roles of the president of Finland, the governor of Åland and the Åland Delegation are less clear-cut, but they remain crucial (Stephan 2011, 33).

The legislative autonomous powers are described in Section 18 of the Autonomy Act. According to Section 23 of the Autonomy Act, the executive powers correspond and run parallel to the legislative powers. The legislative authority of the Finnish state is described in Section 27 of the Autonomy Act.

### 6.1. Legislative powers

The Åland parliament has legislative powers over matters listed in Section 18 of the 1991 Autonomy Act. Over these matters, the parliament's legislative powers are exclusive and not concurrent with those of the parliament of Finland. Even if the Åland parliament fails to enact legislation in some area, Finnish laws do not automatically apply (Stephan 2011, 35). The legislative competence of Åland is broad and includes *inter alia* municipal administration and municipal elections, public order and security, building and housing, protection of environment and cultural heritage, health care and social welfare, education and culture, farming and forestry, hunting and fishing, road and boat traffic employment and trade.<sup>56</sup> Taxation is under Ålandic competence to a limited extent only (see section 7 below), something which is very much under consideration in the ongoing revision process of the 1991 Autonomy Act (Simolin 2018, 28). The list of the Ålandic competences is definite but non-exhaustive since Åland has "implied powers" in other matters considered to be falling within the ambit of the legislative competence following the principles underlying the 1991 Autonomy Act (Suksi 2011, 295–314; Stephan 2011, 36).<sup>57</sup>

The 1991 Autonomy Act specifies matters over which the state has exclusive legislative powers, *inter alia* the right to reside in the country, foreign relations, marriage and family relations, associations and companies, insurance contracts, merchant shipping, aviation, the Church and other religious communities, armed forces, taxes and dues.<sup>58</sup> Certain legislative powers of the state (e.g. population registers, banking and credit services) may be delegated to the Åland parliament with

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<sup>56</sup> There are various exceptions for some of these competences (e.g. public order and security, health care, trade). These exceptions are listed in Section 27 of the 1991 Autonomy Act, which deals with state exclusive legislative powers.

<sup>57</sup> Section 18 (27) of the 1991 Autonomy Act.

<sup>58</sup> Section 27 of the 1991 Autonomy Act.

its consent.<sup>59</sup> State legislation that would impact on the principles governing the right of a private person to own real property or business property in Åland require the consent of the Åland parliament.<sup>60</sup> The Åland parliament may also submit initiatives on matters within the legislative competence of the state to the government and parliament of Finland.<sup>61</sup>

In case of shared competences between Åland and the state, Åland legislation may contain provisions on matters relating to the legislative powers of the state, provided that in their substance they agree with the corresponding provisions of state law.<sup>62</sup> Hence, regional laws may contain Ålandic and Finnish legislation and require “special attention on the side of autonomy since such laws need to be revised following amendments of the State legislation and require a certain degree of coordination with the central level” (Stephan 2011, 36; see also Suksi 2005, 175). Sometimes the legislative assembly chooses to enact a “template-law” or “act of reference”, which is a reference to a Finnish law acquiring applicability on Åland but still falling within the competence of the Åland Islands (Suksi 2011, 305).

The Finnish Supreme Court assists in ensuring that the overall system of the Ålandic self-government works successfully and in agreement with the constitutional framework of Finland (Koskelo 2009, 9–12). It is an obligation for the Supreme Court to give opinions on Ålandic legislation when requested by the Finnish Ministry of Justice. These opinions function then as guidance for the president of Finland when he or she decides to promulgate Ålandic legislation or to use the president’s right to veto. The opinions of the Supreme Court are not binding for the president. Throughout the years however, the president of Finland has followed the opinions of the Supreme Court. If the president finds that the parliament of Åland has exceeded its legislative competencies, or that such legislation would negatively affect the state’s internal or external security, the president can decide to block that law, after receiving the opinions of the Supreme Court and the Åland Delegation. The respective Ålandic law is annulled in full or in part within four months of the date when the Åland parliament has informed the Ministry of Justice about it. This means that the president can act within the legislative domain (Stephan 2011, 40).

As mentioned, a revision of the 1991 Autonomy Act is under way, and preparations have been conducted by a parliamentary committee chaired by former Finnish president Tarja Halonen and including representatives from both Åland and Finland.<sup>63</sup> One of the main aims of a revised autonomy act would be to provide a basis for more flexible development of the autonomy, including

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<sup>59</sup> Section 29 of the 1991 Autonomy Act.

<sup>60</sup> Section 28 of the 1991 Autonomy Act.

<sup>61</sup> Section 22 of the 1991 Autonomy Act.

<sup>62</sup> Section 19 of the 1991 Autonomy Act.

<sup>63</sup> This body called the Åland Committee 2013 published its final report in 2017. See Finnish Ministry of Justice (2017).

a more flexible transfer of areas of competence to the Åland parliament. Subsequently, the division of competences could be expected to take a new shape in the proposed autonomy act if eventually approved by both parliaments of Åland and Finland (Simolin 2018), something which remains uncertain by the end of 2018.

## 6.2. Executive powers

On Åland two distinct executives are in operation: the state executive (see above on the role of the governor) and the Ålandic government. The executive powers of the Åland government correspond to its wide legislative powers. State officials on Åland conduct the administration of matters within the legislative power of the state according to the 1991 Autonomy Act “with due regard to Åland’s special status” (Stephan 2011, 38). Duties belonging to the state administration may in agreement with the government of Åland be transferred by a “consentaneous decree” (*överenskommelseförordning*) to an Åland official for a fixed period or until further notice.<sup>64</sup> Upon request from the Åland government, state officials are obliged to aid Åland officials in the performance of duties related to autonomy.<sup>65</sup> Before the president or another executive authority in Finland issues provisions that exclusively affect Åland or otherwise are of a special significance to Åland, they must request the opinion of the Åland government on the matter.<sup>66</sup>

Appeals against decisions by the government of Åland should in general be brought directly to the Supreme Administrative Court, but decisions that are based on powers transferred through consentaneous decrees may be appealed to Åland Administrative Court. If the decision concerns pensions, the appeal should be directed to the Insurance Court.<sup>67</sup> Decisions concerning appointments are not open to appeal. Appeals against decisions of authorities subordinate to the government of Åland may be brought to the Åland Administrative Court.<sup>68</sup>

## 7. Financial Arrangements

The general powers to tax and collect fees are within the state’s sphere of competence.<sup>69</sup> Thus, like elsewhere in Finland, the state collects taxes, tariffs and other fees. However, Åland has legislative power regarding municipal tax, an additional tax on income and a provisional extra income tax,

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<sup>64</sup> A recent example is the consentaneous decree concerning the rights and duties of the border guard on Åland (309/2017) [*Överenskommelseförordningen om gränsbevakningsväsendets uppgifter i landskapet Åland* (309/2017)].

<sup>65</sup> Section 31 of the 1991 Autonomy Act.

<sup>66</sup> Section 33 of the 1991 Autonomy Act.

<sup>67</sup> The Insurance Court is an independent and impartial special court of law dealing with income security matters. For details, see the website of the Finnish Insurance Court at <https://www.vakuutusoikeus.fi/en/index/theinsurancecourt-aspécialcourtoflaw.html> (accessed November 15, 2018).

<sup>68</sup> Section 25 of the 1991 Autonomy Act.

<sup>69</sup> Sections 27-36 of the 1991 Autonomy Act.

trade and amusement taxes, as well as the bases of the dues levied for Åland. Municipal tax levels vary across the sixteen municipalities of Åland.<sup>70</sup> As the autonomy currently – at least in the current taxation framework – cannot finance all its activities, budget funds are transferred back from the central government to the autonomous region.

### 7.1. Financial transfers from the central government

The taxes paid by Ålanders to the Finnish state are partly returned to Åland every year through the equalisation amount paid by the Finnish government to the government of Åland.<sup>71</sup> The equalization amount represents 0.45% of the accounted incomes of the Finnish state for the respective year, excluding the loans taken by the state. In 1991 when this level was set in the negotiations for the then revised Autonomy Act, the 0.45% ratio corresponded roughly to the population ratio of Åland in the total Finnish population. In 2016 the equalization amount was 220 million EUR.<sup>72</sup> Currently, the equalization amount, also known colloquially as “the lump sum” (*klumpsumman*) is equivalent to approximately three quarters of the total income of the government of Åland.<sup>73</sup> A part of it is paid in advance to the autonomous region. In the recent proposals for the revision of the 1991 Autonomy Act, the Ålandic side had proposed an increase of the percentage to be the basis of the calculation, since the population of the islands has increased markedly since early 1990s. This proposal is, however, not endorsed in the final report ahead of the parliamentary discussions (Finnish Ministry of Justice 2017; Simolin 2018).

If the income and property taxes levied in Åland during a fiscal year exceed by 0.5% the level of the corresponding taxes in mainland Finland, the taxes collected exceeding this threshold are returned to Åland.<sup>74</sup> There is in practice a delay of two years after the end of the fiscal year before any such possible returns can be paid to Åland. This delay is due to the accounting system for the state finances. This tax retribution has been paid ever since the current Autonomy Act entered into force. As an example, in 2016, the tax retribution paid back to the budget of the Åland government was

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<sup>70</sup> Source. Statistics and Research Åland, “Tax rate 1998-2018”. The data is available online at <https://www.asub.ax/en/statistics/public-finance> (accessed November 15, 2018).

<sup>71</sup> Section 45 of the 1991 Autonomy Act. Details are available online (in Swedish) at <http://www.regeringen.ax/ekonomi/finansiering-offentliga-aland/statens-roll-alandska-samhallsekonomin> (accessed on 15 November 2018).

<sup>72</sup> See the “Budget for the province of Åland 2017” (*Budget för landskapet Åland 2017*). Details are available online (in Swedish) at [http://www.regeringen.ax/sites/www.regeringen.ax/files/attachments/page/lt\\_budget\\_2017.pdf](http://www.regeringen.ax/sites/www.regeringen.ax/files/attachments/page/lt_budget_2017.pdf) (accessed November 15, 2018).

<sup>73</sup> Details are available online (in Swedish) at <http://www.regeringen.ax/ekonomi/finansiering-offentliga-aland/statens-roll-alandska-samhallsekonomin> (accessed November 15, 2018). According to Suksi (2011, 167), the equalization amount was at the level of 54% of the total budget for the islands in 2009. Together these figures seem to confirm the importance of the increase of the population on Åland and the relatively strong economic performance on the islands, leading to an increase of the equalization amount from half of the budget to three quarters of the total budget.

<sup>74</sup> Section 49 of the 1991 Autonomy Act.

around 9 million EUR.<sup>75</sup>

For particularly heavy non-recurring expenditure that could not reasonably be financed by the ordinary incomes of the Ålandic autonomy, the Åland parliament may propose that the state gives an extraordinary grant.<sup>76</sup> Such grants concern major infrastructural needs and projects. In the case of such extraordinary investments, while the decision on the investment itself falls within the Ålandic sphere of competence, its implementation depends on whether the central government of Finland gives a grant or not. This is a case where the need for good communication and coordination between the governments of Åland and Finland becomes apparent.

## 7.2. The budgetary power of Åland

The budget of Åland is adopted by the Åland parliament<sup>77</sup> and the state authorities have no power to interfere in the budgetary processes. Åland has considerable financial independence as concerns spending decisions and there is a separate audit office within the Åland government as an equivalent to the state audit office (Suksi 2011, 166). The Åland parliament aims to ensure “at least the same level of social benefits for the people of Åland as enjoyed by the people in the State.”<sup>78</sup>

As mentioned above, Ålandic representatives argue for an improved status concerning the right to taxation referring to the increased population and thus increased costs for services provided. In addition, a reform of the social- and health care system on the mainland, which has earlier fallen within the competence of municipalities, may have an impact on taxes and financial transfers also on Åland (Finnish Ministry of Justice 2017; Simolin 2018).

## 8. Intergovernmental Relations

Since 1948, Åland constitutes one electoral constituency for parliamentary election, in which Ålanders elect one member of the Finnish parliament (Stephan 2011, 37).<sup>79</sup> The member of parliament (MP) representing the Åland constituency is often seen as an ambassador of Åland on the mainland, even though his or her parliamentary role is rather to ensure the representation of the population of Åland in all matters falling within the competence of the parliament of Finland.

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<sup>75</sup> See the “Budget for the province of Åland 2017” (*Budget för landskapet Åland 2017*). Details are available online (in Swedish) at [http://www.regeringen.ax/sites/www.regeringen.ax/files/attachments/page/lt\\_budget\\_2017.pdf](http://www.regeringen.ax/sites/www.regeringen.ax/files/attachments/page/lt_budget_2017.pdf) (accessed November 15, 2018).

<sup>76</sup> Section 48 of the 1991 Autonomy Act.

<sup>77</sup> Section 44 (1) of the 1991 Autonomy Act.

<sup>78</sup> Section 44 (2) of the 1991 Autonomy Act.

<sup>79</sup> Åland has had representation in the legislative organs of Finland already in the 19<sup>th</sup> century. In the 1863 Diet of Finland (*Lantdag*), Åland was represented in two estates, that of farmers and of priests. Åland has also had elected representative in the Lantdag after 1906 under the revised constitutional order. Julius Sundblom served as Åland’s representative in this Lantdag during many years between 1907 and 1917. In the Finnish parliament of 1933, there were two elected MPs from Åland, Hermann Mattsson and Johan Sjöblom.

Thus, the MP's areas of work are in fact located outside the powers of the Åland autonomous region. The MP is a member of the Constitutional Law Committee of the Finnish parliament and has been by longstanding practice allowed to also attend the meetings of its Grand Committee<sup>80</sup> when dealing with EU-matters. The MP is an important contact between the state and Åland and meets with the government of Åland on a regular basis (Stephan 2011, 37).

The veto powers given to both the Finnish and Ålandic legislative assemblies, as well as the president of Finland, are part of a system of checks and balances that foster constructive dialogue and arbitration, when disputes arise. Often the president of Finland has acted as a guarantor for the Ålandic autonomy vis-a-vis the state (Ibid. 2011, 40). A Contact Group between the Finnish Ministry of Foreign Affairs and the government of Åland was established in 1998. Its members have a mandate for an indefinite period. The tasks of the Contact Group are to increase the use of the Åland example in international contexts and to strengthen the communication between the governments of Finland and Åland (Ibid. 2011, 44). The Åland information office in Helsinki has a role in transferring information in between the state-level and the autonomy, both at an official and a public level.

Both Finland and Åland are involved in the so-called Nordic cooperation governed today by the Helsinki Treaty of 1962.<sup>81</sup> The two political bodies that coordinate this cooperation between five countries (Denmark, Norway, Sweden, Finland, Iceland), and three autonomous territories (the Åland Islands in Finland as well as Greenland and the Faroe Islands in Denmark) are the Nordic Council and the Nordic Council of Ministers. Åland, as the two other autonomous regions of the Nordic cooperation, holds two seats in the Nordic Council parliamentary assembly.<sup>82</sup>

The Nordic Council of Ministers is the institutionalized forum for the cooperation of the governments of the Nordic countries, in which also the governments of the Nordic autonomies participate. According to Stephan (2014, 14), while the Nordic autonomies are "represented" in the Nordic Council, where their delegates cooperate with their peers representing the national parliaments, the legal framework of the Nordic Council of Ministers employs a clear linguistic distinction and uses the term "participation" with respect to the autonomies. In the context of the Nordic Council of Ministers formal cooperation is reserved for the high contracting parties, i.e., the

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<sup>80</sup> The Grand Committee expresses Finnish parliament's stance on legislative, budget and treaty issues being decided by the EU. Unlike the other committees, the Grand Committee is thus an organ that makes decisions instead of preparing them. For details, see [https://www.eduskunta.fi/EN/lakiensaaminen/valiokunnat/suuri\\_valiokunta/Pages/default.aspx](https://www.eduskunta.fi/EN/lakiensaaminen/valiokunnat/suuri_valiokunta/Pages/default.aspx) (accessed November 15, 2018).

<sup>81</sup> The Treaty of Cooperation between Denmark, Finland, Iceland, Norway and Sweden was signed on 23 March 1962 and entered into force on 1 July 1962.

<sup>82</sup> For details, see <http://www.norden.org/en/nordic-council> (accessed November 15, 2018). In 2017, the Ålandic politician Britt Lundberg became president of the Nordic Council, after being elected with the support of and as part of the Åland delegation within the delegation of Finland.

member states. Decisions of the Council of Ministers made under the Helsinki Treaty of 1962 are binding on the Åland Islands, Faroe Islands and Greenland only insofar as they accede to the decision in accordance with their statutes of self-government. The autonomous regions, however, participate in the decision-making process, and are involved in the work of various Nordic cooperation committees.<sup>83</sup> The position of the autonomous regions in Nordic institutions has been an issue debated and studied within the Nordic Council and Nordic Council of Ministers since the late 1960s, but it was only after 2005 and upon a Faroese initiative, that a formal overview was published by the Secretary General (Nordic Council of Ministers 2006). Integration and participation in the Nordic co-operation and institutions has always been seen as important in Åland's political life, perhaps even more important than for the Faroe Islands or Greenland. This is particularly so at times when the fates and priorities of the EU are perceived by many citizens and politicians as uncertain (Wetterberg 2010).

## 9. Inter-group Relations within the Autonomous Region

At least since the establishment of a strong Swedish kingdom in the late medieval era (15<sup>th</sup> century), the population of the Åland Islands has been ethnically, linguistically and religiously rather homogenous, with Swedish as the dominant language. Ålandic dialects exist in a continuum of Swedish language varieties stretching across the east and west coasts of the Baltic Sea. For centuries there was a continuity of Swedish language contacts, commercial and cultural encounters across the coasts of much of this sea. Thus, in contrast to many other autonomous areas, the Åland regime has not been designed to balance inter-group interests within a certain area, but rather to recognize and protect the interests of the Swedish speaking population on the Åland Islands in relation to the predominantly Finnish speaking mainland, once Finland became an independent Republic. However, the Åland autonomy forms a part of the Finnish constitutional order, which secures the bilingual character (Finnish-Swedish) of the state and the constitutional equality of the two languages. The provisions in the Autonomy Act on the language use of state and local authorities reflect a balance struck not only between authorities in Finland and on Åland but also between the Finnish- and Swedish speaking population of Finland at large (Öst 2011, 74).

As mentioned previously, Swedish is the official language of Åland. It is used in state administration, Åland administration as well as municipal administration.<sup>84</sup> Moreover, as a rule, Swedish is the language used in contacts between Åland officials and state officials.<sup>85</sup> However, citizens of Finland

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<sup>83</sup> For instance, Åland is represented in the Nordic Committee of Senior Officials for Legislative Affairs, a body composed of senior officials responsible for legislative work in the Ministry of Justice in their respective governments.

<sup>84</sup> Section 36 of the 1991 Autonomy Act.

<sup>85</sup> Section 38 of the 1991 Autonomy Act.

have the right to use Finnish before a court and with other state officials in Åland.<sup>86</sup> Finally, it could be noted that there has always been considerable mobility between the Swedish speakers on the Åland Islands and mainland Finland, especially from the region of Ostrobothnia.

While the whole Åland regime can be seen as an implementation of a human rights system to protect the rights of a minority, significant development has occurred in the field of international law and international human rights standards since the Ålandic autonomy was established. Questions about the balance between human rights and the mechanisms for protecting the language and culture on Åland have arisen in the public debate from time to time, not the least when Finland has ratified various international declarations and conventions. For example, in connection with Finland's ratification of the 1960 UNESCO Convention against Discrimination in Education, questions arose with respect to the language guarantees for schools on Åland, and whether the rights of Finnish speaking pupils, as well as other language groups on Åland, are restricted, or not, by the guarantee (Öst 2011, 78–81). The 1991 Autonomy Act provides that the language of education in schools maintained by public funds or subsidized from the said funds, shall be Swedish, unless otherwise provided by an act of Åland (Nelson 2016).<sup>87</sup>

It has also been questioned whether restrictions in the right to conduct a business and the right to purchase real estate are conflicting with EU law and the principle of non-discrimination. The so called "Åland Protocol" annexed to Finland's treaty of accession to the EU (see section 4.1. above) states that Åland can keep current restrictions as of 1 January 1994, but that they might not be expanded and should be implemented on a non-discriminatory basis (Sjölund 2008, 31; Granholm 2009, 72). After the EU accession, several adjustments have been implemented in the 1991 Autonomy Act, for example voting rights have changed so that persons not holding the right of domicile on Åland (see section 10.1. below) may also participate in municipal elections after only one year of residence (Granholm 2009, 68).<sup>88</sup> The debate around these specific features of the Ålandic autonomy will continue, since minority protection and special regimes need always to be finetuned with reference to evolving societal conditions, such as globalizing forces, ecological and societal sustainability demands, regional integration, universal human rights and international law (Palermo, 2015). The particular difficulties in the Ålandic case lay in the multilevel and multifunctional complexity of the regime with regulations affecting constitutional, regional and international relations on Åland, in Finland and its surrounding environment.

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<sup>86</sup> Section 37 of the 1991 Autonomy Act.

<sup>87</sup> Section 40 of the 1991 Autonomy Act.

<sup>88</sup> Section 67 of the 1991 Autonomy Act, Provincial Act (1970:39) on parliamentary elections and municipal elections (1994/63), [*Landskapslag (1970:39) om lagtingsval och kommunalval (1994/63)*] and Provincial Act (2007:10) on changes of 1§ of the Act on the right to vote and the right to be elected in elections for local authorities for persons without the right of domicile (unofficial translation by the authors) [*Landskapslag om ändring av 1§ landskapslagen om rösträtt och valbarhet i kommunalval för personer som saknar åländsk hembygdsrätt (2007:10)*].



A topical issue for the Åland society in an era of globalization and migration flows is how to balance the needs of more recent immigrants on Åland with the mechanisms protecting the Swedish language and culture. The share of people speaking another mother tongue than Swedish (or Finnish) has increased considerably both in Finland as a whole and on Åland over the past 20 years (see sections 1.1. and 1.2. above). In Finland as a whole, in 1980, 0.2% of the population, and in 2015, 6% of the population were registered as speakers of another language than the two national languages.<sup>89</sup>

## 10. Regional Citizenship and Special Rights

### 10.1. The right of domicile on Åland

The Autonomy Act aims to protect the Swedish language and culture on Åland and to preserve the demographic balance through the *right of domicile*, a form of regional citizenship based on the guarantees afforded to the Ålanders in the Åland Agreement of 1921 (Öst 2016; Williams 2018; see also section 3 above). The meaning and origin of the right of domicile and the rights associated with it are continuously debated and the rules have evolved over time in concert with the development of the Åland autonomy (Spiliopoulou Åkermark 2009b; Öst 2011, 81–85).<sup>90</sup>

Persons who have the right of domicile in Åland can vote and stand as candidate in elections of the Åland parliament, own land and do business on Åland Islands. A person without the right of domicile will in most cases need to apply for permission from the Åland government to acquire land or set up a business on Åland in accordance with the special laws adopted by the Åland parliament on the right to do business and to acquire real estate (Williams 2009, 99).<sup>91</sup> The system has not remained completely the same over time. For instance, in 1938, a law was passed regulating in detail the right of “redemption” of land purchased by non-Ålanders.<sup>92</sup> This law, which can be seen as part of the uneasy atmosphere and insecurities prior to the Second World War, provided that where property on Åland was purchased by non-domiciliaries who were unwilling to transfer it to persons domiciled on Åland, the latter individuals as well as the municipality where the property was located, enjoyed a right to redeem this property, following a procedure of submission of a written claim within a

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<sup>89</sup> Statistics Finland, *Population structure 2015*, Appendix table 2. “Population according to language 1980 – 2015”. Data available online at [http://www.stat.fi/til/vaerak/2015/vaerak\\_2015\\_2016-04-01\\_tau\\_002\\_en.html](http://www.stat.fi/til/vaerak/2015/vaerak_2015_2016-04-01_tau_002_en.html) (accessed November 15, 2018).

<sup>90</sup> The 1991 Autonomy Act contains detailed regulations on the right of domicile in Sections 6-12 and 72.

<sup>91</sup> Act on the Right to Conduct Business (1996:47), [*Landskapslag om rätt at utöva näring* (1996:47)]; Act on Land Acquisition (1975:7) [*Jordförvärvslagen för Åland* (1975:7)]; Act on the Right to Acquire Land and on Permit to Acquire Land (2003:68) [*Landskapslag om jordförvärvsrätt och jordförvärvstillstånd* (2003:68)].

<sup>92</sup> Act on the purchase of real estate (140/1938).

specified timeframe. This system prevailed largely until 1975 when a new law on land acquisition was adopted.<sup>93</sup>

Persons without the right of domicile, who have not resided on Åland for five years in sequence, as well as legal persons (enterprises) need a permission from the Åland government to start a business on Åland. No such permission is needed, however, for other small family businesses. With respect to performing military service in the Finnish army, persons who have the right of domicile are exempted from military service. This rule does not apply to a person who has taken up residence in Åland after having reached the age of 12 years.<sup>94</sup>

## 10.2. Acquiring and losing the right of domicile

The right of domicile – similarly to the right to citizenship – can be acquired at birth, i.e. persons under 18 years old, who are citizens of Finland and resident on Åland and whose father or mother have the right of domicile are automatically granted the right of domicile.<sup>95</sup> Finnish citizens who have been resident on the Åland Islands for at least five years and have sufficient command of Swedish can be granted the right of domicile upon application to the Åland government.<sup>96</sup> The government can, however, grant exemptions e.g. for persons wishing to conduct business on the islands. The right of domicile is lost with the loss of Finnish citizenship as well as if one lives outside Åland for more than five years.<sup>97</sup>

## 11. General Assessment and Outlook

As has been argued by politicians, authors and commentators over a long period of time, the international legal status of the Åland Islands is based on three pillars, namely the sovereignty over the islands, the population's linguistic and cultural position and the region's security and military-political position (Björkholm and Rosas 1990, 15). The regime as a whole is sometimes referred to as the *Åland Example*, a term which, however, alludes also to the local as well as international expectation and hope that the Åland experience can be useful in solving other ethno-territorial disputes. The longstanding demilitarization and neutralization of the islands, the autonomous political and constitutional position and the cultural and linguistic guarantees form a conceptual and political *package*, even though their legal bases are multiple and found in different legal instruments. This package was intimately linked to the start of the international life of the Republic

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<sup>93</sup> Act on the right to acquire real estate in the Åland Islands (3/1975).

<sup>94</sup> Section 12 of the 1991 Autonomy Act.

<sup>95</sup> Section 6 of the 1991 Autonomy Act.

<sup>96</sup> Section 7 of the 1991 Autonomy Act.

<sup>97</sup> Section 8 of the 1991 Autonomy Act.

of Finland, which in 1920-1921 was still a newly proclaimed state in a precarious post-conflict situation (Spiliopoulou Åkermark 2013; Koskenniemi, 2016). This original settlement not only dealt with security considerations and linguistic guarantees as well as with the political power distribution between the central state and the autonomous region; as we have been able to see above, it also attended to the importance of the economic viability of the autonomy.

The autonomy of the islands is thus doubly entrenched. Firstly, in the constitutional legal and political order of Finland and, secondly, through the international settlement(s) under the auspices of the League of Nations. The Autonomy Act of the Åland Islands has a special status in the Finnish constitutional order, as it cannot be modified or repealed without the consent of both the Finnish parliament as well as of the Åland parliament. It is sometimes mentioned as a quasi-constitutional or as a *sui generis* act (Simolin 2018). It is also an autonomy regime guarded by several guardians; in addition to the Åland parliament and government, the integrity of the Autonomy Act is to be safeguarded first of all domestically by the president of Finland, who has a role in the promulgation of legislation adopted by the Åland parliament, by the Supreme Court which gives its opinion on the constitutionality of Ålandic legislation, as well as by the Åland Delegation which examines the mutual compatibility of Ålandic, Finnish and EU legislation. The international dimensions are thus seldom activated.

The double entrenchment and the combination of an international and a national character of the regime applying to Åland is both a strength and a complicating factor. It is a strength as it offers a framework within which the two sides – the central government and parliament on one side and the Åland government and parliament on the other – can continue future (re-)negotiations while relying on some firm and undisputed ground. It also alleviates some of the asymmetry between the state and the region, since the region does not stand completely alone vis-à-vis the central authorities. The Åland parliament and government can rely on the international legal system in arguing about the survival of the autonomous system and even on issues such as the status of the Swedish language on mainland Finland. The vitality of the Swedish language on the mainland is, indeed, understood on both sides as a factual precondition for the smooth functioning of autonomy. The international element can at times be a complicating and obstructing factor as it may entail that there is a possibility for intrusion in the internal affairs of Finland and of Åland, as was done for instance by the Soviet Union in the late 1940s during the process of the then ongoing revision of the Autonomy Act (Hägglom 2011, 1).<sup>98</sup> The prudence and caution of neighboring countries, kin-states and great powers in minority situations is a precondition for their peaceful and positive

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<sup>98</sup> The Soviet Union opposed the guarantee clause and put pressure on the Finnish government to withdraw it. The 1951 Autonomy Act made no reference to international guarantees.

development (Venice Commission 2001; OSCE 2008). The good and close relationship between Finland and Sweden and their mutual respect of the settlement of 1921 has been a contributing factor to the prosperity of the Åland Islands (Palmer 2015, 27–50). Both Finland and the Åland Islands have been active proponents of European integration and have tried to maximize their impact and advantages not only in the EU, but also, among others, in the Council of Europe, the OSCE and the Nordic Council. Autonomy development and regional integration have proceeded hand in hand in the case of Åland.

Since the early 20<sup>th</sup> century, the Åland Islands have prospered through the development of sectors such as international trade, shipping, tourism, banking, global high-tech companies and e-gambling, through an experimental and rich literary, art and music life, and through a multifaceted civil society. None of these things could be taken for granted during the turbulent years of the First World War, the years of revolutions and civil war that followed, or during the fearful years of the Second World War and its aftermath.

The ongoing revision of the 1991 Autonomy Act is still another test for the democratic ability of an autonomous regime, and of a state which has an autonomous region, to withstand and adapt to contestations and manifold agendas and interests on the mainland and on the islands. Such regular reassessments function not only as avenues for future new directions, but also as re-confirmations by all sides of the wish to stick to the basic tenets of the system achieving the difficult but desired balance of continuity and change, distance and contact.

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\* The present text is the result of a collective effort at the Åland Islands Peace Institute ([www.peace.ax](http://www.peace.ax)). Many persons have contributed to it over a long period of time, in particular Susann Simolin, Elias Vartio, Vanessa Westerlund, Mirna Aho and Aune Sanz. Heidi Öst, Petra Granholm, Nicklas Böhm, Hasan Akintug and professor Kjell-Åke Nordquist have offered valuable comments at various points of time. Simolin has written considerable parts of sections 1, 2, 3, 9 and

10; Vartio of sections 4,7, 8; Westerlund of section 5 and Aho of section 6. Aune Sanz has contributed to the statistical information available in the study. Lauren Stevens has done the linguistic proofreading. It has been the task of Spiliopoulou Åkermark to bring coherence and comprehensiveness to the collective wisdom represented in the text and to draw the conclusions and prospects in the final part of the study.

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