THE SUPREME COURT OF NORWAY

On 28 September 2016, the Supreme Court gave order and judgment in

HR-2016-2030-A
2015/2370, civil case, appeal against order and
2015/2155, civil case, appeal against judgment,

Stjernøy reindeer grazing district Per Mikkelsen Bals Per Mikkelsen Buljo Aslak Henrik Henriksen Buljo Anders Mikkelsen Buljo Mikkel Klemetsen Gaino Klemet Anders Mikkelsen Bals	(Counsel Geir Haugen Counsel Andreas Brønner – qualifying test case)
v.	
Finnmarkseiendommen	(Counsel Knut Helge Hurum Counsel Kristin Bjella)

2015/2369, civil case, appeal against order and
2015/2153, civil case, appeal against judgment,

Johan Johansen Sara Jørgen Johansen Sara Per Olav Johansen Sara Mikkel Johansen Sara Anne Britt Sara Johan Mathis Johansen Sara Klemet Johansen Sara	(Counsel Andreas Larsen – qualifying test case Counsel Anja Jonassen – qualifying test case)
v.	
Finnmarkseiendommen	(Counsel Knut Helge Hurum Counsel Kristin Bjella)

O P I N I O N :

(1) Justice **Arntzen**: The case concerns the right of ownership to parts of the island Stjernøya in Finnmark. The question is whether the Sami reindeer herders' usage of the island for summer grazing implies that they have acquired a right of ownership to the land. In addition, the case questions the competence of the Uncultivated Land Tribunal for Finnmark to decide on derivative money claims.

(2) Through the Act of 17 June 2005 no. 85 relating to legal relations and management of land and natural resources in the county of Finnmark (the Finnmark Act), Finnmarkseiendommen (FeFo), a separate legal entity, was established. When the Act entered into force on 1 July 2006, FeFo acquired the real properties in the county of Finnmark to which Statskog SF previously held the registered title or owned without holding the registered title, see section 49. Large parts of Stjernøya have been acquired by FeFo pursuant to this provision.

(3) The Finnmark Act does not interfere with existing collective and individual rights acquired through prescription or immemorial usage, see section 5. A commission has been established – the Finnmark Commission – to investigate the rights of usage and ownership to the land FeFo has taken over pursuant to section 49, see section 29. Furthermore, a special court – the Uncultivated Land Tribunal for Finnmark – has been established to consider disputes concerning rights that arise after the Finnmark Commission has investigated a field, see section 36.

(4) The Finnmark Commission establishes the fields for investigation and decides the order of investigation, see section 30. Potential right holders to the field must be notified. After investigating a field, the Commission shall issue a report on the rights of usage and ownership to the land. Fefo shall without undue delay assess the Finnmark Commission's conclusions. Parties that disagree with the conclusions may request the Commission to mediate, or they may bring an action. The procedures of the Finnmark Commission are regulated in chapter 5 I of the Finnmark Act.

(5) As mentioned, the Uncultivated Land Tribunal for Finnmark (the Uncultivated Land Tribunal) considers disputes concerning rights that arise after the Finnmark Commission has investigated a field. Unless otherwise set out in the special provisions on the procedures of the Uncultivated Land Tribunal in chapter 5 II, the Courts of Justice Act and the Dispute Act apply insofar as they are applicable, see section 46 subsection 2.

(6) On 30 October 2008, the Finnmark Commission decided that Stjernøya and Seiland were to be proclaimed as Field 1.

(7) Stjernøya, which this case concerns, lies outside of Altafjorden in outer Finnmark. Its area is approximately 248 km^2, divided between the municipalities Alta, Hasvik and Loppa. The island is rocky with rather high mountains with steep slopes along the coast both on the southern and northern side. The northern side of the island consists of several peninsulas separated by long fjords. Parts of the island have lush vegetation. Stjernøya has a substantial deposit of the rock nepheline syenite. On the south-western part of the island, this rock has been exploited since the early 1960s.

(8) In 1892, Stjernøya was made available for reindeer summer grazing upon the order of the county governor. The island was formally established as a reindeer grazing district in 1934 with a grazing area of 246 km^2. Today, the island is a summer grazing area for reindeer belonging to herders in grazing district 25, Stjernøy reindeer grazing district. The Sara family had summer grazing pastures on the island from the mid-1860s until 1992.

(9) The Finnmark Commission notified potential right holders to the island through an announcement regarding the field, with 1 June 2009 as a preliminary deadline for filing claims.

(10) Stjernøy reindeer grazing district filed a claim for ownership and a right of usage to large parts of Stjernøya. Johan Johansen Sara et al (the Sara group) filed a claim for ownership to a more limited area south-east, and a right of usage. Both groups' claims were based on long-term usage. There were also other claimants, but they are not included in the case at hand.

(11) On 20 March 2012, the Finnmark Commission issued a report on the rights pertaining to Field 1 Stjernøya/Seiland. The Commission concluded as follows as regards the claims from Stjernøy reindeer grazing district:

> **"The holders of Siida[1] interests in Reindeer grazing district 25 have not acquired any right of ownership to the entire or parts of the FeFo land on Stjernøya. On the other hand, based on immemorial usage, a general right of usage has been acquired for reindeer husbandry in which the herders in the district have ownership interests. The right to practice reindeer husbandry is by nature an independent right of usage with content as regulated in the Reindeer Herding Act section 19 to section 26, see section 4. The right can be exercised within the scope of the law, and cannot be regarded as an exclusive right for the relevant family groups. It applies to all FeFo land on Stjernøya that is regarded as Sami reindeer grazing areas within the meaning of applicable reindeer husbandry legislation."**

(12) As for claims submitted from the Sara group, the Commission concluded as follows:

> **"The Commission concludes that the Sara group has not acquired a right of ownership to the area on Stjernøya which the group's claim concerns. However, in 1992, the group had an interest in the general reindeer husbandry right that based on immemorial usage has been acquired for the FeFo land on Stjernøya, see the above in item 7.2.6.11. The right can be exercised within the scope of the Reindeer Herding Act and is not exclusive for the relevant family groups. It has not lapsed due to non-usage."**

(13) In 2013, Stjernøy reindeer grazing district et al, a total of six reindeer herders from Kautokeino, and the Sara group, a total of seven successors of reindeer herders from Bossekop in Alta, brought an action to the Uncultivated Land Tribunal. The Uncultivated Land Tribunal consolidated the cases for joint consideration and joint decision, see the Finnmark Act section 40 subsection 1 a.

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[1] Translator's remark: An ancient Sami community system within a designated area.

(14) During the main hearing, the reindeer grazing district, alternatively the claimants 2 - 7, submitted a prayer for relief containing the following elements: right of ownership to the entire or parts of the land FeFo manages on Stjernøy, conveyance and issuance of deed in accordance with granted right of ownership, and per-tonne compensation[2] and lease income received by FeFo in connection with extraction of nepheline syenite in the disputed area during the three last years before the action was brought. The members of the Sara group submitted a prayer for relief containing the same elements, but the claim for ownership was limited to the core area for their previous reindeer husbandry. FeFo, having accepted the Finnmark Commission's conclusions, see the Finnmark Act section 34, submitted that the Tribunal should dismiss the claimants' prayers for relief in both cases.

(15) On 20 August 2015, the Uncultivated Land Tribunal gave judgment and order with the following conclusion in the case Stjernøy reindeer grazing district et al v. Finnmarkseiendommen:

> **"1. The action is dismissed as concerns the claim for per-tonne compensation and lease income. Otherwise, Finnmarkseiendommen is found for.**
>
> **2. The state pays NOK 1 906 564.10 – onemillionninehundredandsixthousandfivehundredandsixtyfour 10/100 to the claimants for necessary costs in the case. Prepayment to Counsel Haugen and other prepaid costs are deducted in the amount of NOK 944 040.10 – ninehundredandfortyfourthousandandforty 10/100. The remaining NOK 962 524 – ninehundredandsixtytwothousandfivehundredandtwentyfour is paid to the claimants represented by Counsel Geir Haugen.**
>
> **3. The state pays NOK 1 086 399 – onemillioneightysixthousandthreehundredandninetynine – to Finnmarkseiendommen for necessary costs in the case. Prepaid costs of NOK 7 776 – seventhousandsevenhudredandseventysix – are deducted. The remaining 1 078 623 – onemillionseventyeightthousandsixhundredandtwentythree is paid to Finnmarkseiendommen represented by Counsel Knut Helge Hurum."**

(16) In the case Johan Johansen Sara et al v. Finnmarkseiendommen the conclusion reads as follows:

> **"1. The action is dismissed as concerns the claim for per-tonne compensation and lease income. Otherwise, Finnmarkseiendommen is found for.**
>
> **2. The state pays NOK 574 141 – fivehundredandseventyfourthousandonehundredandfortyone – to the claimants for necessary costs in the case. Prepayment to Counsel Larsen and other prepaid costs are deducted in the amount of NOK 188 978.50 – onehundredandeightyeightthousandninehundredandseventyeight 50/100. The remaining NOK 385 162.75 –**

[2] Translator's remark: Norwegian *tonnøre*. A percentage of the value of produced tonnage, used as compensation for extraction of minerals.

threehundredandeightyfivethousandonehundredandsixtytwo 75/100 is paid to the claimants represented by Counsel Andreas Larsen.

3. The state pays NOK 552 713.50 – fivehundredandfiftytwothousandsevenhundredandthirteen 50/100 – to Finnmarkseiendommen for necessary costs in the case. Prepaid costs of NOK 7 776 – seventhousandsevenhudredandseventysix are deducted. The remaining 544 937.50 – fivehundredandfortyfourthousandninehundredandthirtyseven 50/100 is paid to Finnmarkseiendommen represented by Counsel Knut Helge Hurum."

(17) Both Stjernøy reindeer grazing district et al and the Sara group have appealed the judgment and order of the Uncultivated Land Tribunal to the Supreme Court. The appeals against the order concern the application of the law in terms of the Uncultivated Land Tribunal's competence to consider derivative money claims. These appeals are referred to hearing by the Supreme Court in chambers. The appeals against the judgment concern the application of the law and the assessment of evidence.

(18) The claims for ownership are limited to areas within specific claimed borders that are drawn on a map presented to the Supreme Court. The claim from Stjernøy reindeer grazing district et al concerns an area stretching over the entire island except for certain areas along the sea and peninsulas in the north. The Sara group's claim concerns an area on the south-western side of the island. The Sara group's claim is in competition with the claim of Stjernøy reindeer grazing district.

(19) Also in the Supreme Court, the cases are consolidated for joint hearing, see the Dispute Act section 15-6.

(20) The appellants in the cases 2015/2155 and 2015/2370 – *Stjernøy reindeer grazing district et al* – have briefly contended the following:

(21) Upon the adoption of the Finnmark Act, the Storting decided that the prevailing view on the state's ownership of land in Finnmark could no longer be sustained. The transfer of the right of possession as owner from Statskog SF to FeFo was meant as a transitional arrangement until the issues concerning rights in Finnmark were clarified in line with section 5, see chapter 5 of the Act. This entails that one must discard the state's previous claims of ownership as owner and powers upon the determination of the Sami claim to the island under property law. Established arrangements can also not be asserted as an argument for FeFo being owner of the disputed land on Stjernøya.

(22) In any case, there is no reason to assume that the state has been the original owner of Stjernøya. On the other hand, there are specific indications that the reindeer herders from Kautokeino used Stjernøya for summer grazing already in the 17th century. No exercise of ownership on the state's hand had manifested itself at that time. The reindeer grazing district thus has an originally acquired right of ownership on a par with occupation.

(23) Stjernøy reindeer grazing district has in any case acquired a right of ownership to Stjernøya through immemorial usage. In this assessment, one must place emphasis

on the ILO Convention no. 169 (the ILO Convention) article 14 no. 1 first sentence regarding indigenous peoples' right of ownership based on traditional usage of land. The provision is incorporated in Norwegian law through the Finnmark Act section 3, and thus constitutes an independent legal basis for acquiring a right of ownership.

(24) The right of ownership is a collective right belonging to the reindeer grazing district. Also under international law, it is primarily a question of recognising collective rights of Sami groups. The early reindeer husbandry of the Coast Sami must also be included in the assessment of the usage of Stjernøya. The same applies to the Sara group's century-old reindeer husbandry from the mid-1800s. Alternatively, the ownership right belongs to the reindeer herders of Stjernøy reindeer grazing district.

(25) The Sami usage of the island has comprised all available natural resources except for the nepheline syenite, and has consequently been sufficiently extensive. The state has only to a small extent exercised rights of possession as owner and has not manifested its ownership position towards the Sami reindeer herders on the island. In any case, it would be contrary to the object of the Finnmark Act to attach weight to the state's ownership powers. The reindeer herders have established fixed facilities without the state's permission or protest. And no locals or other private individuals have used the island in such a manner that the reindeer herders' usage cannot be deemed to have been clearly dominant. This concerns, at least, the usage of the areas within the claimed border.

(26) Both when applying the traditional internal law rule on immemorial usage and when directly applying the ILO Convention article 14 no. 1, the conditions for acquiring ownership must be adjusted to the culture of the Sami. The ILO Convention does not require that the right was exercised in the belief that one was the owner. To the extent a requirement of good faith must be made, the Sami have considered their possession of the island as justified.

(27) The Sara group's competing claim for ownership to parts of the island cannot succeed. By abandoning reindeer husbandry in 1992, they abandoned their right to carry out reindeer husbandry in the reindeer grazing district.

(28) The Uncultivated Land Tribunal had no basis for dismissing the derivative money claims relating to ground rent and per-tonne compensation. The wording of the law and efficiency concerns imply that all claims arising from the Sami right of ownership must be considered.

(29) There was also no basis for reducing the compensation for the legal costs of the reindeer grazing district in the Uncultivated Land Tribunal.

(30) Stjernøy reindeer grazing district et al have submitted the following prayer for relief:

"In case no. 2015/2155:

1. Stjernøy reindeer grazing district repr. by Manager Per Mikkelsen Bals, alternatively Per Mikkelsen Bals, Per Mikkelsen Buljo, Aslak Henrik Henriksen Buljo, Anders Mikkelsen Buljo and Mikkel Klemetsen Gaino, is to be granted a right of ownership to the part of Finnmarkseiendommen's property on Stjernøy that is marked by a solid black line on the map, presented as auxiliary document no. 1.

2. Finnmarkseiendommen is to be ordered to divide off and issue a deed on the land that is granted to the appellants. The costs of this are to be paid by Finnmarkseiendommen, insofar as they are not covered pursuant to the Finnmark Act section 45.

3. The state is to cover the costs of Stjernøya reindeer grazing district et al in the Uncultivated Land Tribunal by NOK 2 745 649 including VAT.

4. The public authorities are to be awarded costs in the Supreme Court.

In case no. 2015/2370:

1. The Uncultivated Land Tribunal's order of 20 August 2015 is to be set aside.

2. The public authorities are to be awarded costs in the Supreme Court."

(31) The appellants in the cases 2015/2153 and 2015/2369 – *Johan Johansen Sara et al* – have briefly contended the following:

(32) The Sara group has acquired a right of ownership to the core area on the south-western side of Stjernøya based on immemorial usage.

(33) The Sara family's usage of the area has been going on continuously for at least 130 years from the 1860s until 1992. The requirement for period of usage is thus met. Stjernøya reindeer grazing district cannot be entitled assume the Sara group's position in terms of period of usage and any acquired rights in the core area.

(34) The Sara group's usage of the core area has also been dominant and intensive throughout the entire period of usage. This applies not only to the reindeer husbandry, but also to a number of other activities. They have built constructions such as turf huts, cottages, fences, fish flakes and mooring places for boats without the state's permission. These constructions have given the state an incentive to intervene, which it has not. The usage is versatile and reflects the required right of ownership. Except for the nepheline syenite activities, all available resources in the area have been exploited.

(35) The threshold for determining when the usage can be regarded as dominant must be low. Central elements are the length, the scope and the stability of the usage.

(36) It cannot be required that the usage creating a right "clearly" exceeds the usage right which the right to reindeer grazing involves. The non-registered land in Finnmark cannot be treated as equal to state-owned commons in South Norway in this respect. A material difference is that the entire basis of the Sara family's existence comes from the core area.

(37) The ILO Convention no. 169 article 14 is incorporated in Norwegian law through the Finnmark Act section 3. The provision does not include a requirement of good faith. If the provision were not to be deemed to be incorporated, it must nevertheless apply by virtue the presumption principle[3], so that the requirement of good faith is

[3] Translator's remark: See definition in para (77).

diminished. The Sara family has in any case been in sufficient good faith with respect to its right of ownership to the relevant area on Stjernøya.

(38) Also derivative money claims, in this case a claim for per-tonne compensation and ground rent from the mining industry, fall within the subject-matter jurisdiction of the Uncultivated Land Tribunal, see the Finnmark Act section 36. The wording and the concern for efficient proceedings support this.

(39) The Sara group et al have submitted the following prayer for relief:

> **"The Uncultivated Land Tribunal's judgment:**
>
> **1. Johan Johansen Sara, Jørgen Johansen Sara, Per Olav Johansen Sara, Mikkel Johansen Sara, Anne Britt Sara, Johan Mathis Johansen Sara and Klemet Johansen Sara are to be awarded, individually, and at the Supreme Court's discretion, a right of ownership to the entire or parts of the area that Finnmarkseiendommen manages as marked on the joint map.**
>
> **2. Finnmarkseiendommen is to be ordered to convey the area in item 1 specified at the Supreme Court's discretion. The costs of the conveyance are to be paid by Finnmarkseiendommen.**
>
> **3. Finnmarkseiendommen is to be ordered to issue a deed of the divided-off area stated in item 2 to the appellants stated in item 1 with one undivided share each. The costs of the registration of the deed are to be paid by Finnmarkseiendommen.**
>
> **4. Finnmarkseiendommen is to be ordered to pay the costs of Johan Johansen Sara, Jørgen Johansen Sara, Per Olav Johansen Sara, Mikkel Johansen Sara, Anne Britt Sara, Johan Mathis Johansen Sara and Klemet Johansen Sara or the costs of the public authorities in the Supreme Court.**
>
> **The Uncultivated Land Tribunal's order:**
>
> **1. The Uncultivated Land Tribunal's order of 20 August 2015 item 1 is set aside as concerns the claim for per-tonne compensation and lease income.**
>
> **2. Finnmarkseiendommen is ordered to pay the costs of Johan Johansen Sara, Jørgen Johansen Sara, Per Olav Johansen Sara, Mikkel Johansen Sara, Anne Britt Sara, Johan Mathis Johansen Sara and Klemet Johansen Sara or the costs of the public authorities in the Supreme Court."**

(40) The respondent – *Finnmarkseiendommen* – has briefly contended the following:

(41) The state was the original owners of the non-registered areas in outer Finnmark. The state's ownership and management were in any case constituted through established arrangements. The ratification of the Finnmark Act implies that one must disregard the state as potential owner when assessing the collective and individual rights. Private individuals' usage of an area must thus be contrasted with the state's actual and legal dispositions.

(42) The ILO Convention is not incorporated in Norwegian law in general. The Convention is incorporated insofar as it concerns the provisions of the Finnmark Act. It is not the Finnmark Act that provides the substantive conditions for the acquisition of rights of usage and rights of ownership; this is based on general property law, see

the Finnmark Act section 5. The presumption principle, however, makes the ILO Convention a relevant interpretation factor.

(43) Even if the Convention's Article 14 were to be regarded as incorporated through the Finnmark Act section 3, no other conditions can be derived for acquiring a right of ownership than those provided in Norwegian law. The appellants' extensive right of usage in the area sustains the basic concerns behind the ILO Convention's rules on land rights.

(44) There is nothing to indicate that the Sami reindeer herders' continuous usage of Stjernøya originates from the 17th century. When the Sara family settled with its summer reindeer husbandry, there had been permanent settlement on the island for hundreds of years already. The permanent settlers exploited all the resources on the uncultivated land. The state exercised control as owner of Stjernøya from the 18th century by dividing off properties to private individuals. In any case, the state's right of ownership has been constituted by established arrangements for much more than 200 years. For these reasons alone, Stjernøy reindeer grazing district cannot succeed in its claim for original right of ownership based on occupation.

(45) The reindeer herders' usage of Stjernøya for summer grazing does not correspond to an owner's usage of the area. Neither Stjernøy reindeer grazing district nor the Sara group has demonstrated an exclusive or dominant usage of the island compared to that of the permanent settlers. This applies irrespective of whether the entire island is considered as a whole, or whether an individual assessment is made of the areas within the claimed borders of the parties. Additionally, the state has exercised control of the island, among other things by dividing off property to private individuals and by leasing a substantial area to mining industry within the claimed borders of the appellants.

(46) In order for usage to entail an acquisition of a right, the rightful owner must have been given a reason to intervene against the usage. The reindeer herding right is an independent right of usage, and the reindeer herders on Stjernøya have not exercised any usage beyond the usage supported by the reindeer herding right.

(47) To the extent fences, herder's cabins etc. are built without the reindeer herding authorities' permission, this is not the landowner's concern. The right to engage in reindeer husbandry on a property also entails a right to build such facilities. Like the permanent settlers, the Sami reindeer herders have dealt with the state as the landowner by purchasing properties, among other things.

(48) The ILO Convention Article 14 may entail that the good-faith requirement must be adjusted in cases concerning Sami parties' claims for rights, as was done in the Svartskog judgment. However, there is no reason for disregarding the claim.

(49) A potential right of ownership belongs to – and must be acquired by – the individual owner of a siida interest. The reindeer grazing district as such cannot be granted a right of ownership. This entails that the Coast Sami and the Sara family's previous usage of the island cannot be ascribed to the current members of the Stjernøy reindeer grazing district.

(50) There is no support in the Finnmark Act or in its preparatory works that pure money claims fall within the subject-matter jurisdiction of the Uncultivated Land Tribunal.

(51) The Uncultivated Land Tribunal's reduction of Stjernøy reindeer grazing district's fees has been thoroughly and correctly assessed.

(52) Finnmarkseiendommen has submitted the following claim:

> **"Case 2015/2153, Johan Johansen Sara et al – Finnmarkseiendommen, appeal against judgment:**
>
> **1. The appeal is to be dismissed.**
>
> **2. Finnmarkseiendommen is to be awarded costs in the Supreme Court.**
>
> **Case 2015/2155, Stjernøy reindeer grazing district et al – Finnmarkseiendommen, appeal against judgment:**
>
> **1. The appeal is to be dismissed.**
>
> **2. Finnmarkseiendommen is to be awarded costs in the Supreme Court.**
>
> **Case 2015/2369, Johan Johansen Sara et al – Finnmarkseiendommen, appeal against order:**
>
> **1. The appeal is to be dismissed.**
>
> **2. Finnmarkseiendommen is to be awarded costs in the Supreme Court.**
>
> **Case 2015/2370, Stjernøy reindeer grazing district et al – Finnmarkseiendommen, appeal against order:**
>
> **1. The appeal is to be dismissed.**
>
> **2. Finnmarkseiendommen is to be awarded costs in the Supreme Court."**

(53) *I have come* to the same conclusion as the Uncultivated Land Tribunal and largely endorse its grounds.

(54) Like the Uncultivated Land Tribunal, I will first consider the *dismissal for lack of subject-matter jurisdiction.*

(55) The Uncultivated Land Tribunal dismissed a claim for per-tonne compensation and ground rent in connection with the mining activities in the disputed area, with reference to the fact that this type of derivative money claims fall outside the statutory jurisdiction of the tribunal. The tribunal did not exercise its discretionary competence pursuant to the Finnmark Act section 39 to dismiss cases that "are not suited for hearing in the Uncultivated Land Tribunal". When the dismissal is not based on this provision, which requires that the tribunal as a starting point *is* competent, the limitations in the right to appeal in section 39 subsection 2 third sentence are also not applicable.

(56) Being a special court, the Uncultivated Land Tribunal only hears cases ascribed to it by law. When assessing the Uncultivated Land Tribunal's statutory jurisdiction, I find it appropriate to give a short account of the background of the Finnmark Act.

(57) In the wake of the political dispute regarding the regulation of the Alta-Kautokeino river course in the 1970s, the Sami Law Commission was established in 1980. The Commission submitted its first report in 1984. This report was the starting point for the Act of 12 June 1987 no. 56 relating to the Sameting[4] and other Sami legal matters (the Sami Act) and the Constitution Article 110a – the current Article 108 – on Sami language, culture and society.

(58) The Sami Law Committee continued to work on the legal issues and the usage of land in Finnmark. Various working groups were established and experts were appointed to examine issues relating to rights of ownership, rights of usage and management arrangements. The relationship to international law was also examined. In this round, I will confine myself to referring to the overview of this examination work in Proposition to the Odelsting no. 53 (2002-2003) pages 11-12. In 1997, the Sami Law Committee also presented in Norwegian Official Report NOU 1997:4 The natural resource base of the Sami culture. The work on the Finnmark Act is based on this report along with the statements of the consultation bodies.

(59) In Proposition to the Odelsting no. 53 (2002–2003), the proposal for the Finnmark Act was presented. The draft contained provisions on Finnmarkseiendommen in chapter 2 and on its management of renewable resources in chapter 3. Despite an express provision in section 5 subsections 1 and 2 stating that the Act did not entail any interference with private or collective rights acquired through prescription or immemorial usage, the draft did not contain any rules that could contribute to clarifying the scope of such rights.

(60) The bill generated much debate, as many found that the proposed ownership and management model was not sufficient to comply with, among others, the ILO Convention Article 14. Upon the request of the Parliamentary Standing Committee of Justice, the Ministry procured an independent review of the bill, see Recommendation to the Odelsting no. 80 (2004-2005) page 14. In the autumn of 2003, the professors Geir Ulfstein and Hans Petter Graver, both at the Faculty of Law in Oslo, presented the report "International law review of the proposed new Finnmark Act". Their conclusion was that the government's bill was not sufficient to comply with the provisions in the ILO Convention's Article 14 no. 1 on indigenous peoples' land rights. This could, however, be rectified by implementation of procedures for identifying the Sami rights on the FeFo land in Finnmark in line with Article 14 no. 2. The Ministry of Justice also agreed, in a letter of 6 April 2004 to the Standing Committee of Justice, that it might be appropriate to assess supplementary measures to realise "the goals of the Convention to identify the acquired individual and collective rights" to land.

(61) The outcome of this process was the adding of chapter 5 on "Survey and recognition of existing rights" to the Finnmark Act with the establishment of the Finnmark Commission and the Uncultivated Land Tribunal. The Finnmark Commission's task is to "investigate rights of usage and ownership to the land to be taken over by

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[4] Translator's remark: The Norwegian Sami Parliament

Finnmarkseiendommen pursuant to section 49", see section 29, while the task of the Uncultivated Land Tribunal is to "consider disputes concerning rights that arise after the Finnmark Commission has investigated a field", see section 36. The fact that section 36 refers to disputes over rights to land and water, is reflected in section 5 to which a subsection 3 was added regarding this survey procedure. The wording and background of the Act strongly suggest that disputes over money claims – even if they arise from rights to land and water – fall outside the subject-matter jurisdiction of the Uncultivated Land Tribunal.

(62) Nor is there anything in the preparatory works of the provision regulating dismissal in section 39 that suggests that disputes arising from derivative money claims, as a starting point, should be referred to the Uncultivated Land Tribunal. On the contrary, the comments to the provision refer to the comments to section 30 regarding the Finnmark Commission's right to refrain from dividing off fields, see Recommendation to the Odelsting no. 80 (2004–2005) page 23. It is undisputed that the only task of the Finnmark Commission pursuant to section 29 is to investigate the rights of usage and ownership to the land.

(63) Consequently, I cannot see that the Uncultivated Land Tribunal's dismissal is based on incorrect application of the law, and the appeals in this respect must be dismissed.

(64) I will now turn to the *questions concerning rights*, and first review the appellants' submissions in connection with certain central legal starting points.

(65) The appellants have contended that the legislator, through the Finnmark Act, intended to set aside the state's previously declared right of ownership to the land in Finnmark. Consequently, they argue that no weight can be attached to the state's actual and legal control over the areas when assessing the Sami historical rights acquired through immemorial usage.

(66) I do not share this view.

(67) Pursuant to the Finnmark Act section 6, FeFo "shall manage the land and natural resources, etc. that it owns". The provision relies on an express assumption that FeFo can be the owner of the real properties in Finnmark that were transferred from Statskog SF upon the entry into force of the Act, see section 49.

(68) These provisions must be seen in context with section 5 of the Act, which contains an express recognition of the Sami potential rights under property law to the land in Finnmark which is not yet surveyed.

(69) The provision reads as follows:

> **"Section 5 Relationship to established rights**
>
> **Through prolonged usage of land and water areas, the Sami have collectively and individually acquired rights to land in Finnmark.**
>
> **This Act does not interfere with collective and individual rights acquired by Sami and other people through prescription or immemorial usage. This also applies to the rights held by reindeer herders on such a basis or pursuant to the Reindeer Herding Act.**

> **In order to establish the scope and content of the rights held by Sami and other people on the basis of prescription or immemorial usage or on some other basis, a commission shall be established to investigate rights to land and water in Finnmark and a special court to settle disputes concerning such rights, cf. chapter 5."**

(70) Considered in context, the wording in section 5 shows that it is *rights already acquired* that are to be surveyed in accordance with the procedures in subsection 3.

(71) In Recommendation to the Odelsting no. 80 (2004–2005) page 28, the Standing Committee of Justice discusses whether this survey process involves a "privatisation of Finnmark". The majority commented as follows:

> **"… The Finnmark Commission and the Uncultivated Land Tribunal shall base their work on applicable law. This means that giving away rights to land in Finnmark is out of the question. The task of the Commission and the tribunal is exclusively to identify rights acquired by groups and individuals, but of which they so far have not received any documentation.**

(72) The Finnmark Commission's task of investigating rights of usage and ownership based on "applicable national law", is expressly stated in section 29 of the Act. As for the Uncultivated Land Tribunal's decisions, the same is set out in section 46 subsection 2, see the Dispute Act section 11-3. It is also set out in the special comments to section 5 on page 36 of the Recommendation that the decisions must be based on applicable law.

(73) This entails that the state's previous legal and factual dispositions regarding the land in Finnmark will, as customary, be included as aspects in the assessment of claims for ownership based on immemorial usage.

(74) The appellants have also contended that the ILO Convention Article 14 was incorporated in Norwegian law through the Finnmark Act section 3, which in the first sentence states that "the Act shall apply with the limitations that follow from ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries".

(75) When interpreting section 3, my starting point is that the incorporation is partial. In Recommendation to the Odelsting no. 80 (2004–2005) page 33, the majority of the Standing Committee of Justice states the following on the scope of the incorporation:

> **"The majority refers to the persistent vagueness in terms of interpretation of the ILO Convention no. 169. In the view of the majority, this makes it unsuitable for incorporation.**
>
> **The legislator's task is to present good solutions in the law which are also in accordance with international law. The ILO Convention will, incorporated or not, be an essential source of law in the application of the Finnmark Act. This is based on the presumption principle and on the fact that Norway has ratified the Convention and is thus obliged under international law to comply with it.**
>
> **However, the majority has apprehended that including a statutory reference to the ILO Convention no. 169 in the Act is important to the Sameting. After thorough deliberations, the majority therefore deems it appropriate to propose a limited incorporation of the Convention by adding a rule in section 3 that the Act shall apply**

> **'with the limitations' that follow from the ILO Convention. This will also make the international law background of the Act visible in a good way.**
>
> **The wording 'with the limitations' entails that the ILO Convention takes precedence over the Finnmark Act if it should turn out that provisions in the Act are in conflict with provisions in the ILO Convention. On the other hand, if one should find, based on the ILO Convention, that the Act lacks provisions with a certain content, this would be a task for the legislator. In other words, the tribunal is not to use the ILO Convention to expand the Finnmark Act. It will be easier to predict the consequences of such a limited incorporation than if the ILO Convention was to be given general priority over all Norwegian legislation."**

(76) The statement that the ILO Convention is not to be used "to expand the Finnmark Act" stresses that the incorporation was meant to be limited to the Finnmark Act's own provisions. Although the Act regulates the procedures for clarifying rights, it does not regulate the *substantive rules* based on which the rights are to be clarified. Moreover, the fact that rights cannot be derived "directly from the ILO Convention" is expressly stated in the majority's comments to section 5 of the Act on page 36 in the Recommendation.

(77) However, in the application of property law provisions on the acquisition of rights, the Convention's Article 14 will be important through the so-called presumption principle. This principle entails that Norwegian law, as far as possible, must be interpreted in accordance with international law.

(78) Article 14 no. 1 has the following wording in the English original text:

> **"The rights of ownership and possession of the peoples concerned over the lands which they traditionally occupy shall be recognised. In addition, measures shall be taken in appropriate cases to safeguard the right of the peoples concerned to use lands not exclusively occupied by them, but to which they have traditionally had access for their subsistence and traditional activities. Particular attention shall be paid to the situation of nomadic peoples and shifting cultivators in this respect."**

(79) The Article's first sentence concerns rights of ownership and possession, while the second and third sentence concern rights of usage. The correlation between the provisions shows that the scope of the acquisition of rights will depend on whether the control of the relevant area has been exclusive.

(80) In several public reports, it has been assumed that no absolute requirement exists that indigenous peoples' *usage* of an area must have been exclusive to satisfy the control requirement in the Convention's Article 14 no. 1 first sentence. The International Law Group under the Sami Rights Commission relied on the following in NOU 1997:5 item 3.3.3.2:

> **"… for a group of indigenous peoples to be entitled to recognition of rights of ownership and possession to an area, the group's usage must have been of such a character that they can be deemed to have acquired actual control of the area. For this to be deemed to be the case, no overly strict requirements can be made. If the group's settlement in the area has been fairly permanent, and they have been the only users of the area, the requirements for actual control will normally be regarded as met. If others have also used the area, the usage by the indigenous peoples must have dominated the usage by others."**

(81) The Committee that issued the report NOU 2007: 13 The new Sami law, endorsed this. In item 5.6.5.4 it is set out that a right of ownership may be acquired if the usage has been "*virtually exclusive* or at least *dominant* compared to the usage by other groups".

(82) In the report of Ulfstein and Graver, which I have mentioned earlier, they discuss the requirement of exclusivity on page 12:

> **"In other words, it is not so that the possession is only exclusive if no one else has used the area based on limited rights or sustained usage. An adequate translation of the term 'lands which they traditionally occupy' will thus be *områder de tradisjonelt befolker* [lands which they traditionally inhabit]. In that respect, there is reason to emphasise that the term *occupy* comprises both inhabiting and exploiting an area. The fact that also others have used the area, will thus not in principle imply that the inhabitation of the area has not been exclusive, unless others have also inhabited the area by both inhabiting and exploiting it."**

(83) Also under Norwegian property law, it is assumed that a limited usage by others does not prevent acquisition of land through the exercise of control as owner through immemorial usage. In the Supreme Court judgment included in Rt. 2001 page 122 (Svartskog), a permanent Sami agricultural population acquired a right of ownership to adjacent uncultivated areas although Sami nomads had practiced reindeer husbandry in the area. This acquisition was in short characterised "by continuity, by being universal and intensive, and by flexibility" (page 1244).

(84) As set out in Recommendation to the Odelsting no. 80 (2004–2005) page 36, the Supreme Court's application of the law in the Svartskog case regarding the right of ownership and in Rt. 2001 page 769 (the Selbu case) regarding the reindeer herders' right of usage, will constitute important sources of law in the assessment of traditional Sami usage as a basis for acquisition of rights. As for the judgments' relationship to international law, the majority of the Standing Committee of Justice refers to the following statement in Proposition to the Odelsting no. 53 (2002–2003):

> **"As regards issues under property law, we note that the conditions for acquisition through immemorial usage were generally assessed in the usual manner. What one may derive from these judgments is that the Supreme Court applies well-known principles under property law, but on Sami terms and in line with international law. In the Svartskog case, the Supreme Court seems to have applied the legal standard a reading of the texts of international law provides in the specific analysis under property law. As a consequence, the Sami usage and the Sami view on and attitude towards ownership position were considered in the decision. In the Selbu judgment, this was especially obvious in the assessment of nomadic usage, and in the Svartskog judgment, this was reflected in the assessment of good faith and in relation to traditional Sami legal perception of the concept of property."**

(85) I agree with this summary of the two judgments. The application of property law principles on Sami terms is in line with the ILO Convention Article 8 no. 1 that "In applying national laws and regulations to the peoples concerned, due regard shall be had to their customs or customary laws".

(86) Bearing this in mind, I will now turn to considering the *factual basis* for the appellants' claim for rights of ownership.

(87) Firstly, Stjernøy reindeer grazing district deems itself entitled to ownership based on *original historical usage* under the principles of occupation of ownerless land. The submission is based on the fact that the Sami were the first to inhabit Stjernøya.

(88) In its discussion of this submission, the Uncultivated Land Tribunal provides an introductory presentation of Sverre Tønnesen's doctoral thesis from 1972 "The right to the land in Finnmark" and Otto Jebsen's doctoral thesis from 1999 "On the right of ownership to the land of Inner Finnmark". Both theses suggest that the state's ownership position is stronger in outer Finnmark than in inner Finnmark. Furthermore, the judgment accounts for the unanimous conclusion from the legal division of the Sami Law Commission in NOU 1993:34 Right to and management of land and water in Finnmark page 261, that the state in outer Finnmark is the owner of what has been referred to as the non-registered land in Finnmark. In the report, outer Finnmark is also referred to as "the Norwegian privative zone".

(89) As pointed out by the Uncultivated Land Tribunal, such a starting point does not rule out that Sami and others in outer Finnmark too may have acquired a right of ownership based on property law.

(90) The Uncultivated Land Tribunal thoroughly reviewed various sources showing that there had already been an almost two hundred years old permanent settlement on Stjernøya, primarily Coast Sami, when the Sara family established reindeer husbandry on the island in the 1860s. The reindeer herders of the current Stjernøy reindeer grazing district did not establish a continuous usage of the island until around 100 years later. As regards the question of who originally owned the island, the following is set out in the Uncultivated Land Tribunal's judgment:

> **"As for the question of who has been the original owner, the Finnmark Commission states on page 43 in its report from field 1, Stjernøya/Seiland, that it cannot be ruled out that assumptions that the state was not the original owner of the uncultivated land may have been true. However, the Finnmark Commission states that it is not necessarily so that the reindeer herders were the original owners even if assuming that the state was not the original owner of Stjernøya. According to the Commission, it is just as likely that the island's permanent settlers had such a position. The Uncultivated Land Tribunal shares this view."**

(91) I cannot see that what is stated here is in conflict with the sources of that time asserted by the reindeer grazing district. In the Fjeldfin Commission's recommendation from 1875, the following is stated regarding the reindeer herders from Kautokeino:

> **"Since old times, the summer grazing areas have, by a tacit agreement between the mountain Finns, been distributed among them in such a way that …. the Kautokeino Sami partially sought summer grazing for their animals on the last-mentioned peninsula [the peninsula between Altafjorden and Porsangerfjorden], but not north of Ripperfjord on Kvalø, Seiland and Stjernøya, or on the peninsula between Altafjorden and Kvænangen, where many also in the summer have settled in the northern part of the current county of Tromsø. 20-30 years ago, however, the Kautokeino Sami gradually expanded their summer grazing on Vuorjenjarg …".**

(92) True enough, it is set out here that Sami reindeer herders from Kautokeino had used Stjernøya for summer grazing since "old times". However, it is also stated that they

later sought summer grazing elsewhere. When the Commission then lists named areas where the "Kautokeino Finns' animals" grazed in the summer of 1869, Stjernøya is not mentioned.

(93) This seems to be in accordance with the first Finnmark Commission's report from 1826, in which it is stated that "many mountain Finns, without permission from the authorities, transfer their reindeer to Stjernøya and Seiland, which should be prevented in the future".

(94) In my view, the information about the Kautokeino Sami's partial usage of Stjernøya for summer grazing since "old times" – grazing that was later moved to other areas close to the coast – is not sufficient to establish a right of ownership to the island based on the principles of occupation. I agree with the Uncultivated Land Tribunal that the early Coast Sami settlement on the island can also not be ascribed to the appellants in this context. I will revert to the Sara family's usage of Stjernøya.

(95) I will now turn to considering the submissions regarding the right of ownership based on immemorial usage.

(96) The non-statutory rules on immemorial usage are flexible and may to some extent be adjusted to the circumstances of the case at hand. Towards the Sami people, one would, among other things, have to consider Sami custom regarding collective usage. The main question of the case is whether the appellants and their legal predecessors have controlled parts of Stjernøya as if they owned them. For this to be the case, they must have used the island in a sufficient scope in terms of intensity and continuity. Central in this respect is how dominant the usage has been compared to others' usage of the relevant areas.

(97) Although the appeals against the Uncultivated Land Tribunal's judgment also concern the assessment of evidence, few objections have been raised against the description of the various groups' usage of Stjernøya. In line with the Finnmark Act section 41 subsection 1, the Uncultivated Land Tribunal bases its judgment on the Finnmark Commission's report, which in turn is based on the expert report included in NIKU Assignment Report 42/2011, Field 1, Stjernøya and Seiland. During the main hearing in the Uncultivated Land Tribunal, eight litigant party statements were given, five witnesses were examined and an on-site inspection was carried out. In other words, the Uncultivated Land Tribunal's assessment of evidence is based on solid material, on which I will rely on from this point.

(98) The topography divides Stjernøya naturally into two reindeer grazing zones, one in the east and one in the west. The appellants' claims are in competition on the west side of the island.

(99) As already mentioned, the Sara family used the western part of Stjernøya for summer grazing from the mid-1860s until 1992, when they abandoned their reindeer husbandry. The Sara group's claim for rights of ownership is limited to a core area of around 30 km^2 on the south-western side of the island. The claimed border is specified in the Uncultivated Land Tribunal's judgment, and stretches from the coastline in the south to the mountain areas. It is set out that also areas outside the

marked core area were used, for calving and for bringing reindeer ashore, among other things.

(100) As for the reindeer husbandry as such, the Uncultivated Land Tribunal summarises the number of reindeer summer grazing on the western and eastern side of Stjernøya as "fairly stable from 1875 and until the period around the Second World War, varying each year from 300 to 700 reindeers". The Uncultivated Land Tribunal also describes places for bringing reindeer ashore, roads to the grazing pastures, the various grazing areas as well as places for calving and castration. In certain areas, reindeer and the permanent settlers' sheep grazed together. The Sara family's fixed facilities included turf huts, cottages and fences. The summer houses were in the area of Lillebukt/Outer Simavik.

(101) In addition to the reindeer husbandry, the family kept goats and sheep until the 1950s, in limited cooperation with the locals. They exploited uncultivated land resources, such as turf, timber, hay, senna grass and seagull eggs. They also engaged in freshwater fishing and saltwater fishing, the latter for own consumption and for sale.

(102) The current reindeer herders of Stjernøy reindeer grazing district took over the Sara group's western summer grazing pastures in 1992, while their usage of grazing areas on the eastern part of the island only goes back to around 1960.

(103) The reindeer grazing district's claimed border covers an area of around 165 km^2, which stretches mainly from the coastline to the central mountain areas except for the peninsulas in the north and the north-east. Areas outside the claimed border are also used as places for bringing the animals ashore and as "ventilation areas".

(104) Like the Uncultivated Land Tribunal, I find that the reindeer husbandry to a great extent has been carried out like the one described for the Sara group. During the period 2001 to 2009, the number of animals is stated to have varied between almost 800 and 1 770. According to testimonies given in the Supreme Court, the number has been nearly 2 000 at the most. The current maximum allowed number is 1,450. The district has pastures and places for bringing animals ashore on both the western and the eastern part of the island. Herder's cabins are built on various places on the island and cottages are built in Outer Simavik, which is the main area for the current reindeer husbandry. Fences have been built for various reindeer husbandry purposes. The district has also exploited the uncultivated land resources in the same way as the Sara family.

(105) The appellants' usage of Stjernøya must first be considered in contrast with the state's dispositions. The Uncultivated Land Tribunal states the following in this respect:

> **"After the Land Conveyance Resolution of 1775, the state conveyed several properties on Stjernøya. In 1783, five properties were conveyed in Stjernvåg (Nordfjord) and Sørlifjorden on the northern side of Stjernøya, see NIKU Assignment Report 42/2011 page 97 et seq. But other properties were also conveyed on the island towards the end of the 18th century; three established in 1778, one established in 1779 and five established in 1794. In the 19th century, properties were also divided off in Simavik, established in 1844, and in Davaluft, established in 1845, areas which the appellants' legal**

> **predecessors exploited in connection with their reindeer husbandry. A total of 288 conveyances are registered on Stjernøya, according to an overview presented to the court by Finnmarkseiendommen. Out of these, nine were conveyed during the first 20 years after the Land Conveyance Resolution and 18 during the 19th century."**

(106) With effect from the Land Sale Act of 22 June 1863, land in Finnmark is supposed to have been transferred to private individuals against payment. For instance, the state sold a property on Stjernøya to reindeer herder Johan Jørgensen Sara in 1936.

(107) Furthermore, the state has been the registered lessor of an area within the core area of the reindeer husbandry on the western side of the island. The area, to which both appellants claim ownership, has been exploited by private entities for extraction of nepheline syenite since 1961. The appellants' claims for per-tonne compensation and ground rent currently received by FeFo derive from these activities.

(108) The early permanent settlers on Stjernøya consisted mainly of Coast Sami. As set out in NIKU Assignment Report 42/2011, during the period 1865 to 1939, there was permanent settlement along the coast on large parts of the island, varying between 30 and 49 households. In Outer Simavik, which has been a central area for both the Sara family and the current reindeer grazing district, five permanent settlers were registered in 1875 and 15 in 1910. During the interwar period, there was a growth in the population on the island with new settlers also in this area. After 1950, there was a period of depopulation, and from the 1970s, the population was concentrated on the north-eastern side of the island.

(109) As regards the permanent settlers' usage of Stjernøya, the Uncultivated Land Tribunal states that the number of winter-fed sheep during the period from 1865 to 1939 increased from 246 to 625, while the goat husbandry increased from 85 to 195 animals. During the period between 1865 and 1875, permanent settlers are registered with around 40 reindeer. Until the period after the Second World War, also the permanent settlers occasionally used the core area to which both appellants claim ownership, for grazing among other things.

(110) The Uncultivated Land Tribunal summarises the permanent settlers' usage of Stjernøya as follows:

> **"Both the permanent settlers and the Sami reindeer herders have made extensive usage of available natural resources on the island. The permanent settlers' usage of the uncultivated land resources are not limited to the vegetation belt along the coastline. Also rocky areas previously used for reindeer husbandry have been included as a part of the permanent settlers' accessible resources and usage of uncultivated land for hunting, fishing berry picking and as grazing pastures. This multiple usage of the area has been overlapping in time as both the reindeer herders and the locals have made use of partially the same areas and uncultivated land resources during the bare ground periods."**

(111) Although the appellants have not had material objections to the Uncultivated Land Tribunal's assessment of evidence, they have contended that their respective usage of the areas *within* the claimed borders has clearly dominated that of the permanent settlers. I cannot see any reason for such an approach. As emphasised by the Uncultivated Land Tribunal, both the reindeer herders and the permanent settlers

have made use of large parts of the island. Also the permanent settlers have used the areas within the claimed borders, though perhaps to a smaller extent than the areas along the coast. Furthermore, the total exploitation of resources asserted in support of the claims for ownership is not limited to the areas within the claimed borders. Under these circumstances, it is difficult to apply a distinction between the various groups' usage within and outside the claimed borders.

(112) Like the Uncultivated Land Tribunal, I find that neither the Sara group nor the reindeer herders of Stjernøy reindeer grazing district can be ascribed a usage of the relevant areas that is sufficiently intensive and dominant for acquiring a right of ownership. The permanent settlers, who previously outnumbered the Nomad Sami summer settlers, have exploited the same uncultivated land resources and even kept animals in some of the same grazing areas. In any case, the period after the permanent settlers started moving from the island in the 1950s and their usage of the uncultivated land resources decreased, is not long enough for granting the appellants rights of ownership based on dominant immemorial usage.

(113) The state, on the other hand, has ownership control of the island manifested through legal arrangements in the form of conveyance, sale and leasing of land.

(114) As for the state as a potential owner of the land, the appellants have contended that the Sami reindeer herders have not obtained permission to build fences, turf huts and cottages. Also, the state has supposedly not objected to such installations. To this, I will comment that the right to engage in reindeer husbandry as a right of usage also comprises building of installations that are necessary for the reindeer husbandry. Already in the judgment in Rt. 1862 page 645, the Supreme Court stated that the reindeer herders are "entitled to such usage of land and timber that is necessary for their way of living". The right to build fixed installations is also assumed in the subsequent reindeer husbandry legislation starting with the Joint Lapp Act of 1883. To which extent the appellants or their legal predecessors have acted beyond applicable limitations under private law or official legal requirements for such installations, I have no cause to consider.

(115) In continuation of this, I note in conclusion that the central object of the ILO Convention's Article 14 on the rights to land, is that the usage by the indigenous peoples shall be recognised and given legal status. The appellants' reindeer husbandry on Stjernøya is finally clarified through the Finnmark Commission's report. It is beyond doubt that this right of usage finds support in property law, and that it thus enjoys strong protection under private law.

(116) Consequently, I do not find it necessary on a general basis to consider FeFo's submission that a right of ownership cannot be acquired based on practice permitted under the right of usage. Nor is it necessary for me to consider the question of good faith and of who would have been the rights holder.

(117) My conclusion is that neither the Sara group nor Stjernøy reindeer grazing district et al has acquired a right of ownership to parts of Stjernøya.

(118) Finally, Stjernøy reindeer grazing district has contested the Uncultivated Land Tribunal's determination of legal costs, where the total fee for counsel and assisting counsel was reduced from NOK 2 622 500 to NOK 1 625 000 both including VAT.

(119) Pursuant to the Finnmark Act section 43, the state is to cover the costs of the case, but my interpretation of this provision is that the costs are to be determined in the Uncultivated Land Tribunal's judgment. I thus find that the appeal against the costs can be heard pursuant to the rules of the Dispute Act section 20-9 subsection 1, see the Finnmark Act section 46 subsection 2.

(120) The Uncultivated Land Tribunal has given very thorough arguments for the reduction of fees, and has referred, among other things, to the unnecessarily extensive presentation of documentation and to the counsel's previous work on the case in 2004. I cannot see that the conclusion that the legal fees "materially" exceed what has been necessary to carry out the proceedings is based on an error giving the Supreme Court reason to change the determination of costs.

(121) Consequently, the appeals against the Uncultivated Land Tribunal's judgment must be dismissed.

(122) FeFo has won all the cases, and should in principle be awarded costs in the Supreme Court, see the Dispute Act section 20-2 subsection 1. Weighty grounds speak in favour of exempting the appellants from liability, see section 20-2 subsection 3. It concerns a review of the first set of cases heard on their merits by the Uncultivated Land Tribunal, and the cases have raised questions of principle.

(123) I vote for this

O R D E R A N D J U D G M E N T :

Case 2015/2370, Stjernøy reindeer grazing district et al v. Finnmarkseiendommen, appeal against order:

1. The appeal is dismissed.

2. Costs in the Supreme Court are not awarded.

Case 2015/2369, Johan Johansen Sara et al v. Finnmarkseiendommen, appeal against order:

1. The appeal is dismissed.

2. Costs in the Supreme Court are not awarded.

Case 2015/2155, Stjernøy reindeer grazing district et al v. Finnmarkseiendommen, appeal against judgment:

1. The appeal is dismissed.

2. Costs in the Supreme Court are not awarded.

Case 2015/2153, Johan Johansen Sara et al v. Finnmarkseiendommen, appeal against judgment:

1. The appeal is dismissed.

2. Costs in the Supreme Court are not awarded.

(124) Justice **Indreberg**: I agree with the justice delivering the leading opinion in all material aspects and with her conclusion.

(125) Justice **Bergsjø**: Likewise.

(126) Justice **Bergh**: Likewise.

(127) Justice **Stabel**: Likewise.

(128) Following the voting, the Supreme Court gave this

O R D E R A N D J U D G M E N T :

Case 2015/2370, Stjernøy reindeer grazing district et al v. Finnmarkseiendommen, appeal against order:

1. The appeal is dismissed.

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Case 2015/2369, Johan Johansen Sara et al v. Finnmarkseiendommen, appeal against order:

1. The appeal is dismissed.

2. Costs in the Supreme Court are not awarded.

Case 2015/2155, Stjernøy reindeer grazing district et al v. Finnmarkseiendommen, appeal against judgment:

1. The appeal is dismissed.

2. Costs in the Supreme Court are not awarded.

Case 2015/2153, Johan Johansen Sara et al v. Finnmarkseiendommen, appeal against judgment:

1. The appeal is dismissed.

2. Costs in the Supreme Court are not awarded.