SUPREME COURT OF NORWAY

J U D G M E N T

given on 31 May 2024 by a grand chamber of the Supreme Court composed of
Chief Justice Toril Marie Øie
Justice Hilde Indreberg
Justice Kristin Normann
Justice Henrik Bull
Justice Per Erik Bergsjø
Justice Arne Ringnes
Justice Wenche Elizabeth Arntzen
Justice Ingvald Falch
Justice Espen Bergh
Justice Kine Steinsvik
Justice Thom Arne Hellerslia

HR-2024-982-S, (case no. 23-101553SIV-HRET)
Appeal against the Finnmark Land Tribunal's judgment of 21 April 2023

I.
The Finnmark Estate (Counsel Frode Andersen Innjord)

Magerøy siida
(intervener) (Counsel Brynjar Østgård)

v.

Karasjok Sami association
Karasjok municipality
Anarjok Valley welfare association
Beskenjárga local society
Dálabogi guovlu
Iešjoht searvi
Váljohk biras
A
B
C
D
E
F
G
H
I

J
K
L
M
N
O
P (Counsel Caroline Lund, Lasse Gommerud Våg)

II.
Reindeer herding district 13
Reindeer herding district16 (Counsel Erlend Andreas Methi)

Q
R
S
T
U
V
W
AA
BB
CC
DD (Counsel Jan Fougner)

v.

The Finnmark Estate (Counsel Frode Andersen Innjord)

Magerøy siida
(intervener) (Counsel Brynjar Østgård)

(1) Justice **Falch**:

Issues and background

(2) The case concerns claims for collective ownership to most of the land in Karasjok municipality. One group of parties submits that the ownership belongs to the municipality's population. Another group submits that the ownership belongs to the Sami part of the municipality's population.

(3) On 1 July 2006, *the Finnmark Estate* acquired all real estates in Finnmark county to which Statskog SF held the registered title, see section 49 of the Finnmark Act. In 1993, Statskog SF had acquired the title from the State following a reorganisation. The Finnmark Estate is an independent rightholder whose task is to manage the land and the natural resources that it owns.

(4) *The Finnmark Commission*'s task is to investigate rights of use and ownership to the land taken over by Finnmark Estate, see section 29. In 2010, the Commission declared Karasjok as field 4, see section 30. The field encompasses the land in Karasjok municipality that the Finnmark Estate acquired from Statskog SF. I will refer to this as the disputed area.

(5) *The disputed area* measures around 5,361 square kilometres and constitutes 98.3 percent of the entire land in Karasjok municipality. The rest of the municipality's land – 1.7 percent – has previously been parcelled out and sold to others by the State, Statskog SF or the Finnmark Estate.

(6) Karasjok is Norway's second largest municipality in terms of area. It is located in inner Finnmark and borders Kautokeino municipality to the west, Alta municipality to the northwest, Porsanger municipality to the north, Tana municipality to the northeast and Finland in the south and southeast. Karasjok municipality has about 2,500 inhabitants, of whom about 1,400 are registered in the electoral roll of the *Sameting* – the Sami parliament. It is reported that about 80 percent of the inhabitants speak Sami. The municipality is part of the administrative area for the Sami language, see Regulations issued under section 3-1 of the Sami Act.

(7) The landscape is a typical plateau landscape, where branching waterways wind between ridges and knolls. Most of it is located about 300 meters above sea level, with some peaks higher than 600 meters. The vegetation is dominated by birch thickets. The river valleys have birch forests and some pine forests. The settlement in the municipality is concentrated around the village of Karasjok. There are also some scattered settlements in the other river valleys.

(8) The Finnmark Commission received many notifications of possible land rights in the disputed area. Most of them concerned rights of ownership and/or rights of use in smaller areas. The Karasjok Sami association claimed collective ownership and rights of use to the entire field for the entire municipality's population. Karasjok municipality later joined the claim. The so-called "Guttorm group" also demanded collective ownership to the entire field, but only for the Sami part of the population. Reindeer herding district 13 and Reindeer herding district 16 claimed ownership to their respective areas of use.

(9) After conducting extensive investigations, the Finnmark Commission presented its report on 11 December 2019. In *volume 1,* a majority of three out of the five members concluded that the disputed area is not owned by the Finnmark Estate, but collectively owned by the local population in Karasjok municipality. Thus, the Karasjok Sami association and Karasjok municipality were mainly supported in their claims. In *volume 2*, the Commission discussed the more limited claims.

(10) The Commission's reasoning for its conclusion in *volume 1* is, in short, that the population in 1751, when the disputed area came under Norwegian sovereignty, had acquired rights to the disputed area that today would be referred to as ownership rights. These rights have subsequently not been extinguished by the State. The minority, on the other hand, found that ownership rights lie with the Finnmark Estate because the State's ownership was an established legal relation before the Finnmark Estate acquired the registered title.

(11) The Finnmark Estate's board did not approve the Finnmark Commission's conclusion. The Karasjok Sami association, Karasjok municipality and several other groups, associations, and private individuals then brought an action against the Finnmark Estate before the Finnmark Land Tribunal, with a claim corresponding to the Finnmark Commission's conclusion. In the alternative, they claimed that the population has collective rights to manage the resources in the disputed area.

(12) In addition, Reindeer herding district 13, Reindeer herding district 16, and the "Guttorm group" brought an action against the Finnmark Estate, claiming ownership for the Sami part of the population. The Finnmark Land Tribunal consolidated the actions to a joint hearing.

(13) Magerøy Siida and the Norwegian Association of Hunters and Anglers in Finnmark intervened in favour of the Finnmark Estate.

(14) On 21 April 2023, *the Finnmark Land Tribunal* handed down a judgment. I will reproduce the conclusions of the judgment but leave out the parts related to costs. Costs were awarded according to the special rule in section 43 of the Finnmark Act and are not at issue.

> "Case 21-086077TVI-UTMA The Karasjok Sami association and others v. The Finnmark Estate
>
> 1. The ownership to the area in Karasjok municipality that was transferred to the Finnmark Estate from Statskog SF when the Finnmark Act entered into force, and that has not previously been sold to private individuals or, as a result of the investigation of rights under the Finnmark Act, has been or will be considered belonging to others, belongs collectively to anyone who at any given time has registered residence in Karasjok municipality, and so that these hold an equal share in the rights.
>
> …
>
> Case no. 21-086497TVI-UTMA – The Guttorm group and others v. The Finnmark Estate
>
> 1. The Land Tribunal rules in favour of the Finnmark Estate in the claim that the Sami population in Karasjok has collective ownership to the land in Karasjok municipality that the Finnmark Estate acquired from Statskog SF when the Finnmark Act entered into force.
>
> …"

(15) The Land Tribunal thus concluded, like the majority of the Finnmark Commission, that the disputed area is collectively owned by the population in Karasjok. The reasoning was that the population through immemorial use had acquired ownership prior to the year 1900, and that the ownership has not subsequently been lost due the State's actions in the area. The argument for why ownership belongs to the entire population – and not only the Sami part of it – is that ownership is considered acquired by the entire population.

(16) A minority of two out of five judges dissented and found, like the minority in the Finnmark Commission, that the Finnmark Estate owns the area. The reasoning was primarily that the local population's prolonged use and legal opinions do not sufficiently reflect a collective ownership to the entire disputed area. The minority also emphasised the State's actions as landowner that over time have manifested ownership authority over the area.

(17) The Finnmark Estate has appealed against the Land Tribunal's judgment to the Supreme Court in the case against the Karasjok Sami association and others. Reindeer herding district 13, Reindeer herding district 16 and the "Guttorm group" have also appealed to the Supreme Court. The appeals concern the application of the law and, to some extent, the findings of fact.

(18) The Supreme Court's Appeals Selection Committee granted leave to appeal on 28 September 2023. On the same day, the Chief Justice decided to refer the cases to a grand chamber, see section 5 subsection 4, see section 6 subsection 6 of the Courts of Justice Act. The cases are heard jointly also in the Supreme Court.

(19) Máhkarávjju siida acts as intervener for the Finnmark Estate also in the Supreme Court, see the Supreme Court's Appeals Selection Committee's order of 28 September 2023, HR-2023-1787-U. The siida is one of several siidas in Reindeer herding district 16.

(20) During the preparation of the case, some changes have been made to the naming of the parties. Among other things, "the Guttorm group" has been replaced by several private individuals.

(21) On 13 October 2023, the justice presiding over the preparation decided to limit the proceedings in the Supreme Court, so that the alternative claim from the Karasjok Sami association and others for collective rights to manage the resources will not be heard for the time being, see section 30-14 subsection 3 of the Dispute Act. The Finnmark Land Tribunal has not considered this claim. The decision also covers alternative claims for rights of ownership and rights of use to limited areas, provided such claims are within the scope of the case dealt with in the Land Tribunal.

(22) On the same day, the same justice decided that the factual and legal issues for the period until 1751, when the disputed area became Norwegian, were to be heard through written submissions, see section 30-10 subsections 1 and 2. Both the parties and the intervener have given their written submissions, which are included in the basis for ruling on the case.

(23) The State represented by the Ministry of Justice and Public Security, the Sameting and the Norwegian Association of Hunters and Anglers have given written submissions to highlight public interests, see section 15-8 of the Dispute Act. These are also included in the basis for ruling on the case.

(24) In the Supreme Court, some new evidence has been presented, including the Finnmark Commission's report of 1 December 2022 *Internal legal matters in reindeer husbandry* for field 4 Karasjok, in three volumes. Nonetheless, the case is mainly similar to that heard in the Land Tribunal.

The parties' contentions

(25) The appellant in one of the cases and respondent in the other – *the Finnmark Estate* – contends:

(26) Ownership to the disputed area belongs to the Finnmark Estate as the legal successor to the State and Statskog SF. This implies that the renewable resources in the area must be managed in accordance with the rules in chapter 3 of the Finnmark Act. The Finnmark Estate is not an administrative body for the State, but a landowner body for all inhabitants of Finnmark.

(27) The settled local population have rights of use, independently acquired, to their traditional harvesting areas. Likewise, the reindeer herders have rights of use, independently acquired, to their traditional pasture areas. In their content, the rights of use correspond to sections 22 and 23 of the Finnmark Act and chapter 3 of the Reindeer Husbandry Act. The Finnmark Estate must respect these rights in its management, see section 5 of the Finnmark Act.

(28) The basis for the State's, currently the Finnmark Estate's, ownership is Finnmark's ancient status as a commons, owned by the King. The disputed area became part of the commons from 1751, when the area became Norwegian. In order for the population, or parts of it, to have acquired ownership through immemorial use, it must have controlled the disputed area for a long time as a collective owner.

(29) The Land Tribunal has not carried out the required broad assessment of the population's use and perceptions balanced against the actions of others, particularly the State's, which appear as exercise of ownership. The significance of Sami customs and legal opinions does not mean that central principles in Norwegian property law should be disregarded. The Finnmark Estate mainly agrees with the minority of the Land Tribunal.

(30) In 1751, the population in the area did not hold collective authority over the area that can be equated with ownership. The Finnmark Estate agrees with the Land Tribunal that the subsequent development is decisive for the current rights situation.

(31) The settled residents of Karasjok have used and exploited the resources in their local areas, while the reindeer herders have used the resources in their respective siida areas. The use therefore does not reflect any collective right for all of them to the entire disputed area. In addition, the residents have not held such authority that would require ownership to the land – the use is consistent with rights of use. The area has also been used by people from adjacent municipalities and villages, by non-local reindeer herders, and in the 1900s, increasingly by the public.

(32) The State's ownership authority is manifested through factual and legal dispositions that, objectively, are inconsistent with the local population being the owner. In addition, the State's ownership has been expressed in legislation, case law and legal literature. Therefore, the

State's ownership was, under any circumstances, already an established legal relation when the Finnmark Estate acquired the registered title.

(33) International law cannot be directly invoked as a basis for ownership. It is only significant to the extent it is recognised by the presumption principle. This means that the ILO Convention No.169 (ILO 169) cannot overturn established Norwegian property law, and, in any case, it does not require more than what follows from Norwegian property law. Furthermore, the people of Karasjok have been granted ownership influence through the Finnmark Estate's governing bodies.

(34) The Finnmark Estate does not defend the injustices committed against the Sami during the Norwegianisation period from the latter half of the 1800s. The Finnmark Act rectifies the outdated view that the population's use was merely "permitted", and reestablishes Finnmark as a commons. However, this does not mean that the State's actions related to the land lose significance as manifestations of ownership to the commons. The Norwegianisation policy is not an argument for dividing Finnmark into a "Sami" and a "non-Sami" part.

(35) The Finnmark Estate asks the Supreme Court to rule as follows:

> "Case 23-101553SIV-HRET – The Finnmark Estate v. The Karasjok Sami association and others
>
> The Supreme Court rules in favour of the Finnmark Estate in the claim that ownership to the unsold land (residue area) in Karasjok municipality collectively belongs to the population in Karasjok.
>
> Case 23-101689SIV-HRET – The parties under the Guttorm group and others v. The Finnmark Estate
>
> The appeal is dismissed."

(36) The intervener – *Máhkarávjju siida* – supports the Finnmark Estate's arguments and stresses the following:

(37) Since the 1700s, reindeer husbandry has been carried out in an area much larger than the disputed area. This use of the disputed area cannot be part of the use considered when determining whether local collective ownership has been acquired.

(38) Through the Finnmark Act, all unsold land in Finnmark was transferred to the Finnmark Estate, i.e. to the people of Finnmark, for holistic and unified administration. The division into municipal ownership management bodies was rejected. Ownership for others was assumed to apply only to very limited areas. Therefore, there is currently no legal basis for a judgment granting collective or private ownership to all non-cultivated land in Karasjok. The threshold for doing so would in any case be high.

(39) Máhkarávjju siida asks the Supreme Court to rule as follows:

> "Case 23-101553SIV-HRET – The Finnmark Estate v. The Karasjok Sami association and others

1. The Supreme Court finds in favour of the Finnmark Estate in the claim that ownership to the unsold land (residue area) in Karasjok municipality collectively belongs to the population in Karasjok.

2. Máhkarávjju siida is awarded costs.

Case 23-101689SIV-HRET – The parties under the Guttorm group and others v. The Finnmark Estate

1. The appeal is dismissed.

2. Máhkarávjju siida is awarded costs."

(40) The respondents – *The Karasjok Sami association and Karasjok municipality and others* – contend:

(41) The local population's collective ownership was established through occupation or immemorial use before the area became Norwegian in 1751, as concluded by the majority of the Finnmark Commission. According to the Sami customs that Swedish relied on at that time, the inhabitants of the siidas had, from ancient times, joint and exclusive authority over their respective areas. This was also the case for the Ávjovárri siida, which controlled an area largely coinciding with Karasjok municipality today.

(42) The comprehensive, intensive, exclusive and collective use continued after 1751. Regardless of the previous situation, collective ownership for the local population was established through immemorial use long before the mid-1800s, and thus before the scope of the State's actions in the area increased. In this regard, the Sami customs and legal opinions carry much weight.

(43) The collective use of all the resources continued uninterrupted in accordance with old customs after the old *veide* societies – hunting and harvesting societies – gradually developed into nomadic reindeer husbandry and the permanent settlement increased. There has been extensive cooperation and close interaction between the settled population and the reindeer herders, as well as among the settlements. The customs have persisted up to the present day, despite the Norwegianisation and discrimination policies that affected the population from the mid-1800s. Conflicts were resolved amicably.

(44) The State did not become owner of the disputed area in 1751, neither by virtue of royal regale nor as owner of commons. Nor has the State later established itself as owner in a way that has extinguished the population's ownership. The population's ownership cannot be extinguished through legislation. State actions during the Norwegianisation period carry limited weight, if any. Moreover, they were almost non-existent up until the 1900s and have not altered people's legal opinions. The local customs persisted. Also, state actions were carried out only in a very small part of the disputed area and cannot justify state ownership to the rest.

(45) The claim for ownership holds a stronger position than it did in the Supreme Court ruling Rt-2001-1229 *Svartskog*. In Karasjok, the population has held authority over the entire area since immemorial times, the use is more comprehensive, as it includes reindeer husbandry and as the state actions are more similar to public governance.

(46) The disputed area is a Sami core area where the large majority still speaks Sami as their first language. This is land that the Sami people "traditionally occupy", see ILO 169 Article 14 (1) first sentence, which was also the Ministry's basis in the preparatory works to the Finnmark Act. Thus, the population is entitled to recognition of rights of ownership. Rights of use are not sufficient. Although the Convention is not fully incorporated, it is essential for the determination of ownership. The courts must go to great lengths to avoid conflict with international law.

(47) In accordance with Sami customs and legal opinions, the circle of rightholders is the entire population of the municipality. ILO 169 does not require the circle to be limited by ethnical criteria.

(48) The Karasjok Sami association and Karasjok municipality and others ask the Supreme Court to rule as follows:

> "1. The appeal is dismissed.
>
> 2. The respondents are awarded costs."

(49) The appellants – *Reindeer herding district 13, Reindeer herding district 16 and private individuals collectively referred to as the "Guttorm group"* – contend:

(50) These parties support the arguments of the Karasjok Sami association and others as to why the Finnmark Estate is not the owner, and stresses the following:

(51) The fundament of the Finnmark Estate's arguments builds on legislation resulting from the State's racially motivated injustices against the Sami. The clarification of the Sami claim in this case therefore has a "state moral" dimension. The legislation after 1863, including the notion that Sami use was merely "permitted", was a measure to colonise Finnmark. This injustice left deep marks in legal thinking and gave the Sami an abnormal position in terms of property law. The case must therefore be decided based on a fair claim for restitution. Sami rights up until 1850 must be the starting point for the assessment.

(52) Since the rules on acquisition of rights through immemorial use are flexible, they provide freedom to rule based on Sami customs, legal opinions and international law. In addition, rights of ownership for the Sami population do not displace the rights of others. There can be no doubt that ILO 160 Article 14 (1) confer ownership rights on the Sami to the disputed area. In that context, the State's legal actions have no place. There is also no place for the doctrine of established legal relations as a basis for the State's ownership.

(53) The UN Convention on the Elimination of All Forms of Racial Discrimination applies as Norwegian law and requires, in Article 5, that States Parties prohibit all forms of ethnical discrimination. The lack of recognition of ownership rights for the local Sami would be a violation of Article 5 (d) (v).

(54) The rightholder must be limited to the Sami population in Karasjok. It is natural to link the specific delimitation to the Sami electoral register, which is publicly available. This delimitation establishes the connection to the basis for the right, which is the Sami's historical use. It also contributes to promoting Sami culture and aligns with the purpose of ILO 169, Article 108 of the Constitution and Article 27 of the UN International Covenant on Civil and

Political Rights. The Finnmark Land Tribunal's delimitation of the rightholder is contrary to ILO 169 Article 14. The delimitation currently has little relevance, but it may become significant in the future if the Sami presence in the population decreases.

(55) Reindeer herding district 13, Reindeer herding district 16 and private individuals collectively referred to as the "Guttorm group", ask the Supreme Court to rule as follows:

> "1. The Sami population in Karasjok has collective ownership to the land in Karasjok municipality that the Finnmark Estate acquired from Statskog SF when the Finnmark Act entered into force.
>
> 2. The Guttorm group and others are awarded costs."

My opinion

The law

The Finnmark Act

(56) Article 108 of the Constitution sets out that the State authorities shall create conditions enabling the Sami people, as an indigenous people, to preserve and develop its language, culture and way of life. This is reflected in section 1 of the Finnmark Act, which states that the purpose of the Act is to facilitate the management of land and natural resources in Finnmark in a balanced and ecologically sustainable manner for the benefit of the residents of Finnmark "and particularly as a basis for Sami culture, reindeer husbandry, use of non-cultivated areas, commercial activity and social life". According to preparatory works, a "primary purpose" is "to secure the natural basis for Sami culture", see Recommendation fro the Justice Committee No. 80 (2004–2005) page 32.

(57) Chapter 2 of the Finnmark Act establishes the Finnmark Estate as a separate rightholder. The board composition – Finnmark County Council and the Sameting each elect three members under section 7 – ensures that the Finnmark Estate "is rooted in local publicly elected bodies", see Proposition to the Odelsting No. 53 (2002–2003) page 97.

(58) The Finnmark Estate's task is to manage the land and natural resources "that it owns", see section 6. The management is to take place in compliance with the purpose and other provisions of the Act, see sections 6 and 21, and the Finnmark Estate is bound by the Sameting's guidelines for changes in the use of non-cultivated land, see section 10, see section 4. Further rules are provided in chapter 3 of the Act, where specific "rights" are conferred on the residents of the municipality in section 22 and on the residents of the county in section 23. In section 25, "other persons" are granted "access" to specific resources. None of these rules applies to land in Finnmark owned by others than the Finnmark Estate.

(59) Overall, the Act clarifies the "Finnmark residents' own responsibility" for the management of the Finnmark Estate's land, see the Recommendation page 38. The Proposition pages 103–104 gives the following general description:

> "Through the new landowner entity, all residents of the county jointly acquire a share in the ownership of the land and the natural resources. Based on a pure property law analysis, the Finnmark Estate, as it is now proposed established, compared to the system

> set for the management of resources from non-cultivated land, bears significant similarities to a rural commons."

(60) Section 5 subsection 1 of the Finnmark Act establishes that "the Sami have collectively and individually acquired rights" to land in Finnmark through prolonged use of land and water areas. The Act "does not interfere with" rights acquired by Sami or others through prescription and immemorial use, see section 5 subsection 2. These rights persist.

(61) In accordance with section 5 subsection 3, a commission and a special court are to be formed "to establish the scope and content of the rights held by Sami and other people" through prescription, immemorial use or on some other basis. Further rules on this investigation of rights are provided in chapter 5 of the Act. The rules were introduced during the Storting's legislative process, after the Storting's Justice Committee had consulted with the Sameting and Finnmark County Council. Both were presented with a draft Recommendation No. 80 (2004–2005). The Sameting unanimously consented to the Recommendation being submitted to the Storting "as it stands" and advised the Storting to adopt the Act. The County Council also supported the draft. The Storting adopted the Act without any changes in the Recommendation.

(62) The Finnmark Estate and Máhkarávjju siida have mentioned that the legislature rejected a proposal for municipal management of the land in Finnmark, see Proposition to the Odelsting No. 53 (2002–2003) side 98–99. In addition, the majority of the Justice Committee expressed that there is "good reason to believe that private, individual ownership to non-cultivated land will be mapped to a very limited extent", and that "[t]he dominant factor, in the majority's view, will likely be various forms of collective rights of use", see the Recommendation page 28. According to the Finnmark Estate and Máhkarávjju siida, this suggests that the courts cannot conclude that an area as vast as Karasjok municipality is privately owned.

(63) As I read the Recommendation here, it contains an *assumption* of what will be result of the investigation of rights. The intention was not to impose standards for the Commission's and the courts' assessments. The relevant paragraph in the Recommendation opens by "one should be careful" about making a statement on the outcome of the survey process, because "[t]his is a legal issue for the courts to decide with binding effect".

(64) The Finnmark Commission shall "on the basis of current national law … investigate rights of use and ownership" to the land to be taken over by the Finnmark Estate, see section 29 subsection 1 first sentence of the Finnmark Act. The meaning of this wording is described in the Recommendation pages 18–19:

> *"The majority* refers to the Sameting's proposal that the Commission, in addition to surveying which rightholders exist in the various areas, must also establish the category into which the various areas fall according to Article 14 of the ILO Convention. To *the majority*, it is somewhat unclear whether such categorisation is meant to have any legal implications apart from the consequences of investigating the rights of individuals and groups.
>
> *The majority* holds that ILO 169 does not impose any duty to make such a categorisation as long as the acquired rights are identified, recognised and protected. *The majority* expects that the Commission and the special court rule in accordance with applicable law, primarily ordinary property law, including Sami customs. The *majority* has considered specifying in the Act that the survey must be based on applicable Norwegian law but has

> instead chosen the wording 'current national law' to specify that regard must also be had to Sami customs and legal opinions. Sources of international law will be relevant to the extent they are covered by the presumption principle."

(65) In its consent decision, the Sameting writes the following:

> "The Sameting emphasises that the Finnmark Commission and the special court must rule in accordance with applicable law, and is positive to the recognition of Sami customs, legal opinions and international law as important sources of law. Such recognition of Sami customary use will contribute to ensuring a secure future for upcoming generations of Sami based on their ancestors' use of their traditional areas. The Sameting assumes that this should also have an impact on the general application of the law."

(66) Section 29 is directly aimed at the Finnmark Commission. However, as the quotes demonstrate, the application of the law is the same in the courts, see the Supreme Court ruling HR-2016-2030-A *Stjernøya* paragraph 72.

(67) The determination of whether the local population, alternatively the Sami part thereof, has acquired collective ownership to the disputed area, must therefore "primarily" be based on "ordinary property law". Here "regard must also be had to Sami customs and legal opinions", which the Supreme Court had already established in in the plenary ruling Rt-2001-769 *Selbu* and Rt-2001-1229 *Svartskog*. In addition, sources of international law will be "relevant".

(68) This means that the survey processes under chapter 5 of the Finnmark Act must be genuine. The Finnmark Act does not regulate "the *substantive rules*" based on which the rights are to be clarified, see *Stjernøya* paragraph 76. Moreover, neither the Act nor its preparatory works impose standards – in any direction – for the Commission's and the courts' assessments. Their conclusions and rulings must be exclusively based on applicable domestic law, as this term is described.

Immemorial use

(69) Both groups claiming collective ownership for the local population have done so based on immemorial use. The Finnmark Land Tribunal used this as its legal basis when ruling in favour of the Karasjok Sami association and others.

(70) This legal basis rests on three elements: "A certain *use* must be exercised, and it must have been exercised for a *long period* and in *good faith*", see the *Selbu* judgment pages 788–789 and HR-2018-456-P *Nesseby* paragraph 122. The criteria are discretionary and require a broad assessment. Other factors are also emphasised, including "the nature and quality of the right".

(71) In *Selbu*, which concerned reindeer grazing rights, the Supreme Court emphasised in its application of the law "the particular conditions within reindeer husbandry". In *Nesseby*, which concerned the local population's right to manage its collective rights of use, it is stated in paragraph 123 that general property law must be applied "on Sami terms". This is exemplified by a reference to *Svartskog*, which states on page 1252 that acquisition of ownership through immemorial use is not precluded by the fact that the Sami had used different expressions, among which "rights of use" had been the most common. The reasoning is that if "a similar use had been exercised by persons of a different background, it would have indicated that they intended to own the area".

(72) In *Stjernøya*, concerning the question of whether Sami reindeer herders had acquired ownership to parts of Stjernøya in Finnmark, Justice Arntzen presents the principles I have referenced thus far, and continues as follows in paragraph 96:

> "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 sufficiently comprehensively in terms of intensity and continuity. Central in this respect is how dominant the use has been compared to others' use of the relevant areas."

(73) In the *Stjernøya* case, like in ours, the situation was that those who claimed ownership at least had rights of use. In determining whether ownership have been acquired, it is thus central whether they have controlled the area "as if they were owners".

(74) The Finnmark Estate has also invoked Rt-1986-583 *Soknedal*, where the Supreme Court states that the requirements of prescription and immemorial use as a basis for ownership to parts of a state commons are strict. The use must in such cases "clearly" exceed what the right of use allowed, see page 593. I cannot see that such a requirement of clarity should be applied in the case at hand. The *Soknedal* case did not concern Sami rights, and the Supreme Court did not apply the requirement in *Stjernøya* and *Svartskog*. The significance of Sami customs and legal opinions would otherwise have been strongly limited.

(75) In *Stjernøya*, the Supreme Court also discusses the relevance of the State's factual and legal actions in the relevant area over the years. The Sami reindeer herders argued that the State's actions – following the adoption of the Finnmark Act – could no longer be of relevance. The Supreme Court disagreed, stating in paragraph 73 that "the State's previous legal and factual actions related to the land in Finnmark will, as they usually do, be included as elements in the assessment of claims for ownership based on immemorial use".

(76) This is followed up in *Nesseby* paragraph 147, where the Supreme Court states that "one cannot disregard the actions by the State taken on the basis of perceived ownership" when deciding whether the local population through immemorial use had acquired a right to manage the rights of use. Paragraph 149 sets out that "the allotment of land and outlying hayfields" constitutes such actions. I use the same basis for my assessments of the claims for ownership in the case at hand. The local population's conduct and perceptions must be balanced against the actions of the State and others.

(77) Against this background, I am compelled to take a *historic* approach in deciding the case. The local population argues that their ownership rights to the disputed area were acquired through immemorial use already before 1751, and that ownership under any circumstance was acquired later, during the period up to the 1900s. I will consider this after providing a chronological outline of the legal conditions, the use of the land, the different actions taken and the perceptions.

Established legal relation

(78) As a basis for claiming ownership to the disputed area, the Finnmark Estate principally contends that Finnmark was historically a commons owned by the King. I will return to this basis for acquisition in my historical outline. As an *alternative* basis for acquisition, the

Finnmark Estate contends that the State's ownership was in any case an established legal relation when the Finnmark Estate acquired the title in 2006.

(79) In several judgments, the Supreme Court's basis has been that the legal matters in an area are recognised as an "established legal relation" or similar formulations. In some cases, the parties' *collective* adaptation or perception over time has been decisive , see for example Rt-1961-1163 *Dale* page 1172. In other cases, *general* perceptions over time expressed in legislation, case law, legal literature and public administration have been sufficient, see for example Rt-1963-1263 *Vinstra* and Rt-1991-1311 *Skjerstad*.

(80) The majority of the legislative group under the Sami Rights Committee used this as its basis when concluding that the State was the owner of the unsold land in Finnmark, with particular reference to *Vinstra*. I refer to Norwegian Official Report (Norwegian Official Report) 1993: 34 *Right to and management of land and waters in Finnmark* pages 260–261 for outer Finnmark, and the following pages for inner Finnmark. One member of the group, Otto Jebens, disagreed when it came to inner Finnmark. He found that the local population's control over the area was sufficient for having acquired ownership, particularly in the light of international law.

(81) The legislative group's report faced strong criticism, primarily because the majority placed little emphasis on Sami customs and legal opinions, and on international law.

(82) The Ministry of Justice therefore initiated a research project on Sami customs and legal opinions. The results are presented in Norwegian Official Report 2001: 34 *Sami customs and legal opinions*. In addition, the Sami Rights Committee appointed an international law group upon the Ministry's consent. The group's report is presented in Norwegian Official Report 1997: 5 *Indigenous peoples' land rights under international and foreign law*. These two works are broadly discussed in preparatory works to the Finnmark Act, see Proposition to the Odelsting No. 53 (2002–2003). The Ministry writes on page 43 that it "is difficult under applicable law to conclude with certainty that the State's ownership can be fully maintained".

(83) I believe that the Justice Committee's remark in Recommendation from the Justice Committee No. 80 (2004–2005) pages 18–19, which I have already quoted, must be read in the light of this. The term "current national law" in section 29 of the Finnmark Act is specified so that "regard must be had" to Sami customs and legal opinions, and that sources of international law "will be relevant".

(84) In my opinion, this must have the consequence that the use of the legal basis "established legal relations" in Finnmark must be adapted, so that both the Sami customs and legal opinions and international law gain a rightful position under current national law. In other words, it is not sufficient to base the conclusion on the manifestation – in legislation, case law, legal literature and public administration – of the State as the owner when the Finnmark Estate acquired the registered title.

International law

(85) In the context of this case, the ILO Convention 169 on Indigenous Peoples and Tribal Peoples in Independent Countries from 1989 (ILO 169) is particularly relevant. Norway ratified the Convention in 1990.

(86) Upon a proposal from the Sameting, the Storting considered incorporating the Convention into the Finnmark Act. That did not happen, and the Justice Committee's reasoning was that "there is still much uncertainty regarding the interpretation" of the Convention, which makes it "ill-suited for incorporation", see the Recommendation page 33. The result was instead section 3 of the Act.

(87) It is written in section 3 *first* sentence that the Finnmark Act applies "with the limitations" that follow from ILO 169. In *Nesseby* paragraphs 101 and 102, this is referred to as a "partial incorporation". This means that the Convention in the event of conflict prevails over the Finnmark Act, while on the other hand, the Convention cannot be used to "expand" the Act. Section 3 *second* sentence states that the Act shall be applied in accordance with rules of international law on indigenous peoples and minorities. This means that ILO 169 will "have a significant impact on the application of the Act", see the same judgment paragraph 103.

(88) In this case, the issue is not the significance of ILO 169 when applying the Finnmark Act, but its significance when applying ordinary *property law*. In that context, the courts "cannot derive rights directly from the ILO Convention", see the Recommendation page 36 and *Stjernøya* paragraph 76. The Convention is nonetheless important through the so-called *principle of presumption*, as described in the quote I made from the Recommendation pages 18–19. This principle means that Norwegian law – in this case property law – "as far as possible must be interpreted in accordance with international law", see *Nesseby* paragraph 103.

(89) It follows from ILO 169 Article 8 (1) that in applying national law to an indigenous people, "due regard shall be had to their customs or customary laws". This requirement is met by taking Sami customs and legal opinions into account in the assessments under property law, as I have explained.

(90) The central provision in the case at hand is ILO Article 14 (1), which reads:

> "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."

(91) The first sentence imposes the States to recognise *ownership and possession* of the peoples concerned over "the lands which they traditionally occupy". The second sentence imposes the States to ensure the right of the peoples concerned *to use* "lands not exclusively occupied by them". According to the third sentence, particular attention must be paid to the situation of nomadic peoples when determining the rights under the second sentence. In other words, Article 14 (1) requires that the States recognise certain substantive rights for the indigenous people. The more detailed procedure for investigating, deciding and ensuring these rights is regulated in Article 14 (2) and (3) and implemented in chapter 5 of the Finnmark Act.

(92) The Ministry of Justice states in Proposition to the Odelsting No. 53 (2002–2003) page 86 that ILO 169 is "a central source of law when determining Sami rights to land and waters in Finnmark". The Ministry concludes on page 88 that there are "areas in Finnmark within both categories in Article 14 (1)", and that "all of or parts of inner Finnmark are covered by the

first alternative". The ownership concept in Article 14 (1) is described as "functional", the central factor being that the indigenous people must be granted "the right to exercise the most important factual and legal powers that an owner normally has". The Ministry believed that the proposed system – with the Finnmark Estate as one common landowner body for the entire county – met the requirement in the first alternative of Article 14 (1). In this way, the Sami gain "such authority over the lands that the purpose of the provisions on land rights in the ILO Conventions is fulfilled".

(93) The latter standpoint was criticised, by the Sameting among others. Upon the request of the Storting's Justice Committee, the Ministry therefore engaged Professors Geir Ulfstein and Hans Petter Graver from the University of Oslo to conduct an international law assessment of the Proposition. They concluded that the Proposition on central points did not comply with ILO 169, including because it "does not confer the rights of ownership and possession on the Sami population to which this indigenous people is entitled under Article 14 (1) first sentence".

(94) The Government disagreed and found support in a new report from the Legal Affairs Department of the Ministry of Foreign Affairs, which had been assisted by Professor Carl August Fleischer of the University of Oslo. The Ministry considered Article 14 (1) to be a "general declaration of principles", so that "the further definition of the rights shall... be formulated at a national level".

(95) The result of the various assessments was that the Storting, after consulting with the Sameting, supplemented and adjusted the Ministry of Justice's Proposition on several points. The majority in the Justice Committee stated that with these changes, "the new Finnmark Act... will clearly fulfil Norway's international law obligations". Among the changes mentioned is that existing rights "shall be investigated and recognised through a separate commission and a special court", see Recommendation No. 80 (2004–2005) p. 15.

(96) I understand this to mean that in Finnmark, the scope of ILO 169 Article 14 (1) was not finally clarified in the preparatory works. Admittedly, the Ministry stated in the Proposition that there are areas in inner Finnmark that are covered by the first alternative in Article 14 (1), but this is not repeated in the Recommendation. On the contrary, the majority states that the dominant factor will likely be various forms of collective rights of use. Therefore, in my opinion, the preparatory works to the Finnmark Act do not impose standards – in any direction – for the Finnmark Commission's and the courts' application of the Convention. It is left to them to clarify the content and scope of the Convention to the extent necessary for deciding individual legal claims. However, the Commission and the courts are not to base their results directly on ILO 169, which only gains importance through the presumption principle.

(97) ILO 169 Article 14 (1) *first sentence* raises three questions that are closely related: The first one is whether the peoples concerned "traditionally occupy" the relevant land area. If confirmed, the second is what it means that the peoples concerned are entitled to have 'rights of ownership and possession' recognised. The third question is who, if so, the rightholder is, that can be linked to "the peoples concerned".

(98) The more precise content of the Convention must be clarified based on the ordinary meaning to be given to the terms therein, in their context and in the light of its object and purpose. Here I refer to Article 31 of the Vienna Convention on the Law of Treaties of 23 May 1969, which

expresses rules of customary international law. Few other sources of international law significantly contribute to clarifying the specific meaning of ILO 169, Article 14 (1).

(99) The requirement in Article 14 (1) first sentence that the rights shall be recognised by the States establishes a connection to the individual State's national property law and the concepts of rights and conditions for acquisition with which the States otherwise operate. There is no basis for interpreting the Convention so that it, for the indigenous people, harmonises the property law of all the States having ratified the Convention. Therefore, the provision must be interpreted so as to allow adaptations in accordance with the national law of the individual State.

(100) This interpretation is supported by Article 34, stating that the nature and scope of the measures taken to give effect to the Convention "shall be determined in a flexible manner, having regard to the conditions characteristic of each country".

(101) However, this does not exempt the States from fulfilling the central purpose of Article 14, which is "that the use by the indigenous people shall be recognised and given legal status", as stated in *Stjernøya* paragraph 115. A consequence of this is that the more extensive use and authority an indigenous people has held over a land area, the more extensive land rights they have under international law.

(102) After having presented the sources, the *Sami Rights Committee* concludes that "it is reasonable to assume" that the requirements made for the indigenous people's use to have rights of ownership and possession recognised will depend on the requirements that the legal system of the respective State generally makes for the recognition of rights through prolonged use. I refer to Norwegian Official Report 2007: 13 The new Sami law volume A page 231, where the Committee also states:

> "The areas to which Norwegian Sami, under Article 14 (1), will be entitled have 'rights of ownership and possession' recognised are thus areas where, based on a perception of being rightholders, they have exercised use that has been sufficiently prolonged, intensive and dominant compared to the use by others, for them, under ordinary national principles of property law for acquisition of rights through immemorial use or prescription, to be entitled to have rights of ownership recognised."

(103) On page 233, the Sami Rights Committee states that few sources determine the lower limit of the term "rights of ownership and possession", except that it denotes "*something more*" than just the right of use as suggested in the second sentence. With reference to the flexible nature of the rule, the Committee writes:

> "In our country, the key point is whether the use exercised in a specific case has been of such a nature that it meets the requirements in national law for the acquisition of ownership through prolonged use (and where, in the individual application of the law, due regard must be had to Sami legal opinions and customs, etc.)."

(104) This implies that if the use under national property law gives rise to what in Norwegian law is referred to as ownership, the Convention requires that such ownership is recognised for the Sami. Whether Article 14 (1) first sentence requires recognition of ownership also in *other* cases is not entirely clear. I believe the Sami Rights Committee's approach is reasonable when reading the provision in context. However, as I will return to, I do not need to take a final stand on this issue to decide the case at hand.

(105) The last question under Article 14 (1) first sentence is who should be recognised as the *rightholder*. The provision uses the term "the peoples concerned". However, the rightholder cannot be derived from an abstract analysis of this term.

(106) Read in context and in the light of its purpose, the wording suggests that the use that may form the basis for recognition of rights of ownership and possession "must … be exercised by the group of people asserting the claim", see *Nesseby* paragraph 170. By "group of people", the judgment refers to the inhabitants submitting the claim, see the last sentence in the paragraph. The same mainly follows from the Sami Rights Committee's investigation in Norwegian Official Report 2007: 13 volume A page 229 and from the international law group's investigation in Norwegian Official Report 1997: 5 point 3.3.5.

(107) The international law group also mentions some other factors, including the wishes of the indigenous people. A reference is made to Article 6, which concerns the Governments' obligation to consult the peoples concerned. I cannot see that Article 6 and the indigenous people's own wishes are relevant to the *courts'* determination of the rightholder entitled to recognition of rights of ownership and possession under Article 14 (1).

(108) If the rightholder is determined based on *who has exercised* the use from which rights are derived, this will respect the indigenous people's customs and legal opinions. The consequence must be that if various groups of indigenous people each have used their parts of a large land area, Article 14 (1) first sentence does not require that the States recognise collective rights of ownership and possession over the entire area.

(109) Against this background, it must be determined on an individual basis which impact Article 14 (1) of ILO 169 has when deciding the claims for ownership in the case. Both the content of the obligations under international law and their national impact must be seen in context with national property law. I will return to this in my individual assessment. There, I will also address the significance of the UN Convention on the Elimination of All Forms of Racial Discrimination".

The findings of fact

(110) The Finnmark Commission is itself responsible for obtaining sufficient information concerning a matter, see section 32 subsection 1 first sentence of the Finnmark Act. In other words, no party is obliged to provide evidence to the Commission.

(111) The Finnmark Land Tribunal "shall of its own motion obtain the report of the Finnmark Commission and use this as a basis for its consideration of the case", see section 41 subsection 1. The parties are nonetheless responsible for "giving an account of" the factual circumstances and evidence. In doing so, they may present documents and evidence that have been received by, presented to or prepared by the Commission. Other evidence may also be presented.

(112) The assessment of evidence relates to historical conditions, some of which date far back. This creates difficulties for the Sami. For a long time, their history was not documented in any written Sami sources, and few Sami people have mastered the Norwegian language. Moreover, there are few older traces of them in the terrain, because "the Sami were nomads

largely using organic materials that decompose", see Rt-2001-769 *Selbu* pages 792–793. The State, on the other hand, has had better opportunities to document old conditions.

(113) This calls for a certain caution in the weighing of evidence, which must be adjusted to the individual circumstances. For example, it should be possible to counter or set aside contemporary evidence from the State, with reasonable assumptions about the practices, customs and perceptions of the Sami population, despite shortcomings in the evidence material.

(114) In addition, the presentation of evidence in the Supreme Court is indirect and more limited than in the Finnmark Commission and the Finnmark Land Tribunal. The Supreme Court should therefore concentrate on the objections made against the Land Tribunal's assessment of evidence, see HR-2021-1975-S *Fosen* paragraph 78. In the event of dissent in the Land Tribunal, as in the case at hand, it is particularly important to address the factual disagreement on which the dissent is based.

Historical outline

The purpose of the outline

(115) The Finnmark Land Tribunal and particularly the Finnmark Commission have thoroughly discussed the factual and legal historical development in the disputed area, from ancient times until the present. The parties mostly agree on the description of facts. The disagreement primarily relates to which legal consequences can be drawn from the material. The parties disagree on the facts only on certain points.

(116) Against this background, I will limit my historical outline to what is necessary to consider the disputes, paying particular attention to the points on which the parties disagree.

The period until the borders were drawn in 1751

(117) It is assumed that inner Finnmark has had a permanent Sami settlement at least since the beginning of the Common Era. These were hunting and harvesting – *veide* – societies, characterised by movements between seasonal dwellings. Harvesting was organised within the so-called *siida system*. As the years went by, the siida had a geographically delimited harvesting area, and its members harvested the resources in various forms of community, with "some form of joint decision-making and understanding of rules", to use the words of the Land Tribunal

(118) The disputed area, along with present-day Kautokeino municipality and the upper part of Tana municipality, was under Swedish jurisdiction until Denmark-Norway and Sweden entered the Border Treaty in 1751. Swedish jurisdiction over inner Finnmark had been gradually established and appears to have functioned from the mid-1500s.

(119) The Sami areas on the Swedish side were divided into "Lapp lands". Each Lapp land was divided into several "Lapp villages" (Sami villages). Some Sami villages were further divided into "Lapp tax lands", where private individuals had a form of individual special right. The division into Sami villages followed the Sami's own division into siidas.

(120) One of these Sami villages was *Ávjovárri*. Its harvesting area largely coincided with present-day Karasjok municipality. But to the west, the area also reached into parts of the present-day Kautokeino municipality, while the northeast parts of Karasjok municipality towards the Tana River, belonged to a different Sami village, Teno. The parties disagree whether the latter area at one point reached into Utsjok or Ávjovárri Sami village, but it is not necessary for me to consider this. Based on the tax lists, an estimated 102 persons inhabited the Ávjovárri siida in 1559. After a slight increase, the number probably decreased a little through the 1600s, only to increase again towards 1751, when some 140 persons lived there.

(121) The Land Tribunal's basis was that the harvesting in the Ávjovárri siida was most likely characterised by "the collective right". The Finnmark Commission does mention on page 114 that there were five Lapp tax lands in the Ávjovárri siida in 1737, but they had ceased to exist by 1744–1745. In Major Peter Schnitler's border examination protocols, witness testimonies from 1744 are recorded, stating that both the mountains and the fishing waters were used collectively by the members of the siida and were not divided among them. The disputes handled in Swedish courts show that the siidas protected their border and resources from others.

(122) One must therefore conclude that both case law and legal opinions in Ávjovárri were largely regulated by the old Sami customary law. Although the area was thinly populated, the people exclusively exploited the natural resources as intensively as the conditions permitted. They had a large degree of self-governance, but with limited opportunities to oppose new settlements in their area.

(123) Towards 1751, however, much suggests that the siida system of the old *veide* society had been weakened. Firstly, nomadic reindeer husbandry started as early as in the 1600s, with annual relocations along with the reindeer from the inland to the coast and back again. This activity exceeded the old siida borders, also as the Ávjovárri area in the winter was used by Migrant Sami from the outside, particularly from Porsanger.

(124) Secondly, *Kven* settlers arrived in Ávjovárri in the 1720s. The first ones settled by the riverbank near the old Karasjok church and made their living primarily from cattle husbandry and salmon fishing. With the Freedom Letter the first two families received from a Swedish court in 1724, they were permitted to settle on a property referred to as "*crono öde wid Karasjocki*" [the crown deserted by the Karasjok river]. As the Land Tribunal writes on page 54, the Freedom Letter indicates that the Ávjovárri people could not oppose the new settlements. The new settlements led to a certain competitive use of the resources.

(125) The parties disagree on how far these the changes had come upon the transition to Dano-Norwegian sovereignty in 1751. Here I find no reason to depart from the Land Tribunal's conclusion on page 59: For a long period, the population in Ávjovárri had had exclusive authority over all of the siida's resources. But due to the prevalence of reindeer husbandry, this exclusive use was probably difficult to maintain. There were nonetheless indications that protection of the resources within the siida area was still essential.

(126) The question is whether this use created rights to the area that may be characterised as ownership, as the Finnmark Commission concluded, and the local population contends in the Supreme Court. Because the area was Swedish until 1751, the question must initially be answered under old Swedish law:

(127) The Swedish Supreme Court heard a similar case in NJA 1981 page 1 *Skattefjäll*. The case concerned Swedish Sami villages' claims for ownership to specific mountain areas in Jämtland. Regarding Swedish law in the 1600s and most of the 1700s, the Court states on page 33 that one could "hardly speak of individual ownership to land in the modern sense". For the Sami, it is "rather" a question of whether they had a corresponding right "similar to that of a tax farmer (*skattemannarätt*) at that time". And the farmer's authority over the land "was indeed strongly limited in various respects". The Supreme Court then states:

> "But it was his [the tax farmer's] right that later developed into what we currently mean by ownership, most of all due to the strengthened position the tax farmers gained through legislation following the 1789 changes of the State. A key question is whether the Sami in the tax mountains, during the relevant period, had rights to the areas that could be equated with the rights of tax farmers and therefore correspondingly could develop into ownership in the modern sense."

(128) It is debated – and in our case disputed – whether the Sami villages, including Ávjovárri, had rights to their areas that were equal to the rights of private individuals to "Lapp tax lands", and whether these rights were equal to the rights of tax farmers. If so, the legal basis is immemorial prescription (*urminnes hävd*), which bears clear similarities to immemorial use in Norwegian law. The local population has also asserted occupation of ownerless land, but this legal basis does not have any independent significance in the case at hand. Without cultivation or permanent settlements, one had to assume, as stated in the judgment page 34, that "at least as much was required in terms of use of the land through occupation" as through immemorial prescription.

(129) The Land Tribunal concluded that the collective rights in Ávjovárri in 1751 were not weaker than the rights held by Swedish tax farmers at that time. The Finnmark Estate has questioned whether this is correct. However, the Swedish Supreme Court states on page 39 that the materials available "undoubtedly suggest that the Sami, at least in the northernmost parts of the country, were considered to have legal protection against outsiders similar to that enjoyed by tax farmers". Subsequent research has also been presented supporting such a conclusion.

(130) However, I do not need to take a final stand on the specifics of the rights under old Swedish law. In the light of my quote from *Skattefjäll* page 33, one could "hardly", at that time, speak of ownership to land in the modern Swedish sense. It is at least as difficult to classify the rights as ownership in the modern Norwegian sense. Therefore, the question must be as that posed by the Land Tribunal: Did the rights held by the people of Ávjovárri in 1751 later *develop* into ownership? In the first instance, the question is what happened to the rights when the area became Norwegian.

The transition to Norway in 1751 – the Lapp Codicil

(131) The Border Treaty between Denmark-Norway and Sweden from 1751, with the Lapp Codicil as an appendix, is a treaty under international law. For the sake of this case, a central factor in the Treaty is that the disputed area came under Dano-Norwegian sovereignty and jurisdiction. Along with sovereignty followed both the right of majesty ("Jura Majestatis") and other royal rights ("Regalia"), see section 30 of the Lapp Codicil.

(132) I agree with the Finnmark Commission on pages 34–35 that the use of "Regalia" in itself did not make the King the owner of the disputed area. Overall, there is no reason to interpret the

Codicil to impose limits on Sami rights already acquired, apart from in section 2, where it is established that no Sami could "own tax land or rented (*bøxel*) land" in more than one kingdom. Here I agree with the Swedish Supreme Court that the *nature* of the Sami rights cannot be derived from the use of the word "own", see *Skattefjäll* pages 28 and 57.

(133) Also in Norway, the ownership concept was unclear. One could for example own the pasture, or the logging or the forest, which we might currently classify as rights of use. It was also often unclear which authority an "owner" of land could exercise. Towards the end of the 1700s, a perception developed that ownership rights are general and in principle comprehensive, see the Sami Rights Group in Norwegian Official Report 1993: 34 pages 231–232.

(134) Overall, this implies that neither the State nor the population may derive ownership to the disputed area from the Border Treaty and/or the Lapp Codicil. The key point is that, from 1751, Norwegian legislation applied on the Norwegian side of the border. In Norwegian law, "Lapp tax lands" and "tax farmers' rights" were unfamiliar terms. The customary, private law rights acquired by the Sami under Swedish jurisdiction, persisted upon the transition to Norway. However, it is unclear how they were to be classified.

(135) The *outer* parts of Finnmark, which had gradually come under Dano-Norwegian sovereignty from the 1300s, seem to have been considered by the King and the state administration from the late 1600s as an ordinary *commons* within the meaning of private law, and not as Crown property. I refer to Sverre Tønnesen, *The right to the land in Finnmark*, 1979 page 56 and Kirsti Strøm Bull, *Land transfer legislation – A historical law review of land transfer legislation in Finnmark during the period 1775–1965*, 2014 page 5.

(136) The people in the outer parts of Finnmark were considered to have rights equival to the rights of other citizens in other commons. On page 71, Tønnesen states that the view that the State owned everything to which private individuals could not prove title had emerged after the introduction of autocracy in 1660. In Finnmark, this was expressed, among other places, in bailiff and judge Knag's announcement at the Hasvåg assembly on Sørøya in 1693, as he mentioned "his Majesty's Land and Property" and "his Majesty's commons and forests" in Alta. Knag used the same terms at the Talvik assembly in Alta the following year. As the Finnmark Commission states in Volume 1 page 34, the expression is taken from the Norwegian Law of 1687.

(137) It seems clear, Tønnesen continues on page 122, that the state administration "from the very first day" considered *the areas that became Norwegian in 1751* to be subject to the same rules that applied elsewhere in the county. Admittedly, historian Steinar Pedersen writes in his expert statement to the Land Tribunal pages 26-27 that nothing in the material from the Danish central administration from the 1750s and 1760s suggests that the King considered himself the owner of the area. According to Pedersen, some letters instead mention the ownership of the inhabitants. It is, however, not easy to draw any conclusions from such documents, see my previous comment to the use of the term "own" in the Lapp Codicil.

(138) All this must have been unknown to people in Karasjok. Neither the Border Treaty nor the Lapp Codicil had any impact on their actual use of the land. The system with annual assemblies was maintained. Until 1763, the assemblies for Ávjovárri and Kautokeino were held alternately between the church sites in Karasjok and Kautokeino, and thereafter in Alta. At the assembly in 1761, a letter from the district governor was announced, stating that pearl

fishing in Karasjok belonged to the queens, but that must have been in accordance with a decree applicable to all of Norway. The following year, a letter from the treasury chamber in Copenhagen was read out, where the King approved that trees damaged by forest fires could be allotted to the public for a charge, without it being known whether this had any practical significance in Karasjok.

(139) Against this background, it was not entirely clear how the Ávjovárri people's private law rights to their areas should be classified under Norwegian law when the area came under Dano-Norwegian sovereignty. Much suggests that the area was incorporated into the Norwegian tradition of commons. However, before I reach a conclusion on this issue, it is necessary to have a look at the further development.

The development until the Land Allotment Resolution of 1775

(140) During the 1700s, the economy in Finnmark changed dramatically. Three key factors can be mentioned: hunting declined, reindeer husbandry expanded, and agriculture began. Sverre Tønnesen describes this development in *The right to the land in Finnmark* from page 56 and believes the changes weakened the locals' earlier perceptions on exclusive and special rights to their areas. He states the following on page 100:

> "During the 1700s, these perceptions gradually weakened. The Sami lacked a complete organisation that could make legislative changes when the economy suddenly changed. This caused dissolution tendencies, and the approach emerged that help had to be sought from the public authorities, which thus became the rulers of the lands. A perception that the local population had ownership (in the modern sense) to their own lands could thus hardly be created or maintained.
>
> However, it should be noted that the situation probably remained more or less the same in large parts of the county, such as in Porsanger, Laksefjord, Varanger, Kautokeino and Karasjok. However, even there, it was not possible to develop clear customs indicating that the settlements could control the resources on their own. The organisations were lacking also there during the entire period."

(141) In a footnote, he elaborates:

> "The strengthening of the district governor's position under the autocracy was not unique to Finnmark, see Aschehoug... nor was it unique that the significance of the local assemblies diminished. However, the point is that in Finnmark, this change occurred simultaneously with dramatic changes in the internal legal relations of the rural societies, with a similar need for interventions. While the more static legal conditions in Southern Norway 'hibernated' so to say until better times after 1814."

(142) As Tønnesen mentions, Karasjok was also affected by the changes in the economy. There was a shift during this period from hunting to reindeer husbandry crossing previous boundaries, and settlers practicing farming arrived. This must have diminished the old perception of exclusive rights, which called for the public authorities' regulations of the land use.

(143) Such regulations came in the form of the "Royal Decree concerning Land Division in Finnmark and the Allotment of Plots and Taxation thereof" of 27 May 1775 (the Land Allotment Decree of 1775). It was drafted by district governor Torkild Fieldsted, who in his *Promemoria* had pointed out that those who cleared land had no other legal title to the land

than the plot certificates and land allotments from the district governor. However, this right did not extend beyond each individual's lifetime, "since all land in Finnmark is considered an undivided commons belonging to His Majesty alone".

(144) The Land Allotment Decree of 1775 establishes in section 1 that each plot shall be "allocated" as much land as needed for a family. According to section 2, the plot shall be measured in accordance with accompanying surveyor instructions and be registered. According to section 7, the allotted plots shall become "the property of people" free of charge, among others on the condition in (c) that if the plot is abandoned for three years, "such plot ... returns to His Majesty and may be transferred to others". Deeds were to be issued by the district governor after ratification by the treasury chamber under section 8. In the oldest deed templates, it was stated that the district governor, on behalf of the King, "transfers to ownership" the allotted plot.

(145) The purpose of these provisions was to ensure a better foundation for agriculture. In my opinion, however, it is clear that the Decree *presupposed* that the King owned all the land in Finnmark that was not sold or given to others. This is most visibly demonstrated by the King's power to allot plots to ownership and the fact that all unused properties would return to the King. Therefore, I cannot see that there is any basis for the perception that the Decree only facilitated reallocations of land within the population. This applies even if the people did not have to pay for the allotments.

(146) The consequence is that the land allotments that eventually occurred in accordance with the Decree were based on a perception that the State was the owner. This is established in *Nesseby* paragraphs 135 and 149.

(147) In addition, the Land Allotment Decree of 1775 contained rules on the use of unsold areas. Among the most important is that the pine forests "are still reserved for His Majesty as before", see section 5. The birch forest, on the other hand, "is designated... for specific settlements" upon requisition from the district governor, see section 4. Then it is set out in section 6 that "[t]he resources that thus far have been common for entire settlements or the common people in general...still remain for such ordinary use". The last rule legally confirmed the rural societies' right of use in the commons. The use was to remain as it had been according to old customs. These rights can be described as rights of commons.

(148) I cannot see that the Land Allotment Decree of 1775 builds on any devaluation or other direct discrimination of the Sami or the local population in general. The Sami are treated as full-fledged citizens of the kingdom with the same rights as others. In section 6, their rights were secured in accordance with their own customs, and there were no specific obstacles to obtaining land allotments. The rules, with some adjustments, were in line with those applicable in the commons further south, see section 3-12-1 of the Norwegian Law. Therefore, the regulations in Finnmark were largely brought in line with those otherwise applicable in Norway.

The development from 1775 to around 1860

(149) During this period, the population in Karasjok increased. In 1801, 210 people lived in the area, of whom 48 were settled population and 162 (77 percent) were Sami reindeer herders residing in "the mountains". In 1865, the total population had increased to 588, of whom 331

(56 percent) were Sami reindeer herders. The censuses from the 1800s show a gradual development. More land is settled, including in the Tana and Anárjohka valleys.

(150) *Reindeer husbandry* in Karasjok is the result of a merger between reindeer husbandry in Ávjovárri, Alta, Porsanger and Kvalsund, as the Finnmark Commission writes in *Internal legal matters in reindeer husbandry* Volume 1 for Karasjok 2022 page 18. Reindeer herders from Porsanger were registered under Ávjovárri from 1815.

(151) The traditional harvesting siidas were dissolved after 1751. Instead, the *reindeer siidas* emerged, which are family groups where two or more families cooperate on the herding. Aage Solbakk describes in chapter 8 of his book *Ávjovári – The history of Karasjok I. 1553–1900*, parts of which the Finnmark Land Tribunal had translated into Norwegian, that the basis for the reindeer siidas' perception of rights "in many ways" was similar to that of the harvesting siidas: "Grazing areas and districts were a common right for the reindeer siida".

(152) In other words, new rightholders developed, using their own parts of the disputed area. Regarding winter pastures in inner Finnmark, also in Karasjok, Erik Solem writes the following in *Lapp legal studies*, 1933 page 190:

> "The distribution of winter pastures between the various *siidas* is surely of old origin and has 'made itself'. It is currently considered fairly established that this and that *siida* are to have winter grazing in this and that region."

(153) The Finnmark Commission writes in its Reindeer Husbandry Report Volume 1 page 38 that the siidas "have been central in the organisation of reindeer husbandry in Karasjok for many centuries". The Commission also writes that the siida operation and the moving of reindeer take place "in certain areas, because each siida mostly has fixed grazing areas for each season". The analysis is slightly nuanced on the next page, where, with reference to information from both the 1800s and the 1900s, it is stated that the internal distribution of pastures between the siidas has been flexible and changing over time. Reindeer husbandry has been dependent on "both a certain firmness and regularity and a certain flexibility in the use of pastures and in the siida operation".

(154) This implies that during this period at the latest, a new customary system emerged, where the land rights belong to the individual reindeer siida as a joint venture. Different siidas initially used different parts of the disputed area.

(155) In addition, the *settled population* engaged in extensive use of non-cultivated land. According to B.M. Keilhaus's descriptions from a journey to Karasjok in 1828, *Travel in the Eastern and Western Finnmark and to Beeren-Eiland and Spitsbergen during the years 1827 and 1828*, published in 1831, "the residents of the village of Karasjok" engaged in cattle farming and fishing, and moved with their cattle to Ássebákti in the summer "to preserve the hayfields near the actual place of residence". There were many summer residences, mainly located in the valleys. Overall, the locals' use of non-cultivated land has been spread over most of the municipality's area, as held by the Land Tribunal.

(156) However, one cannot conclude from this that each individual family, settlement or village have used such a vast area. The starting point for their use of non-cultivated land has been the individual villages and summer residences.

(157) In Assignment Report 10/2013 from the Norwegian Institute for Cultural Heritage Research to the Finnmark Commission, the resource areas of the individual settlements are described in more detail from page 52, with focus on those living respectively at the church site, in the Karasjok, Anárjohk, Tana and Iešjohka valleys. The report shows that the individual resource areas are largely separate, although they also overlap. It is stated that in the border areas, the use among the settlements has been regulated "by informal agreements", and internally, most settlements have "practiced informal local distribution" of the various resources, see the Report page 111. The description is based on recent sources, but there is no reason to believe that the situation was much different in the 1800s, when there were fewer permanent residents.

(158) The Finnmark Commission generally argues that it lies "in the nature of the matter that the local population's use of the areas close to the settlement has been more intensive and extensive than the use of more remote areas". It is therefore "likely that much of the day-to-day use of non-cultivated land took place in the nearby areas", see the Commission's report volume 2 page 235 for the Iešjohka valley's part. Similar formulations are used for other areas, see pages 28 and 399.

(159) Therefore, in my opinion, it is adequate to say that overall, the various villages have used different parts of the disputed area.

(160) The Land Tribunal describes close contact between the Sami reindeer herders and the local settlers. A reason for the mostly amical contact is that the reindeer herders stayed by the coast during the summer. For a long time, there was a *verdde* system between the groups. Through various forms of friendly interaction, the settled population exchanged goods such as fish, milk, and butter for reindeer meat and skins. The settled population also had reindeer placed with the Sami herds (*custodial reindeer/sytingsrein*), and there could be familial ties between the groups.

(161) Initially, the Land Allotment Decree of 1775 had no specific impact in Karasjok. During the period 1811–1817 only ten properties – nine at the church site and one in Váljohka – were surveyed, taxed and registered. All of them were already in use, and one had been divided off. Belonging to the individual properties, 55 hayfields, summer residences and fenced-in areas were registered. After that, no new properties were surveyed, taxed or registered in Karasjok until 1862. But during the period 1843–1856, the district governor issued 16 certificates for a total of 105 "plots of land or hayfields". These granted exclusive use rights to surveyed land until a deed was issued.

(162) A certain attempt to regulate pine logging in Karasjok can be traced back to a court protocol from the assembly in Tana in 1776. However, no state forestry supervision was established until 1856, around the same time as forestry supervision was established elsewhere in Norway. It was not until 1856 that logging in Karasjok was subjected to allotment in accordance with the rules of the Land Allotment Decree of 1775. In 1842, the Karasjok municipal council requested detailed regulations for "the necessary preservation of the forests". This implies that the population engaged in extensive logging, but also that the council believed that the power to regulate the logging lay with state authorities.

(163) In 1824, the Storting asked the Government to provide an overview of "the properties belonging to the State and their current use". Unlike the bailiff in East Finnmark, the bailiff in West Finnmark – of which Karasjok was a part – announced that there existed "commons

belonging to the State" with various rights of use for the local population. The Ministry of Finance announced to the Storting in 1827 that in Finnmark, where registered land was scarce, "it must be so that everything else in a wide sense must be referred to as commons", i.e. state commons. The Ministry announced the same to the Storting in 1845.

(164) Also in a Proposition made by Royal Decree on 8 December 1847, *No. 21 Regarding Proposition to the Norwegian Storting on the drafting of an Act on the repeal of section 38 in Act of 20 August 1821 on the beneficed and the State's property*, it is stated on pages 23–24 that the unsold land in Finnmark "is to … be considered a commons", with reference to sections 3 to 6 of the Land Allotment Decree of 1775. The Supreme Court also referred to Finnmark as a "commons" in its ruling Rt-1852-404.

The period after around 1860

(165) In this period, the population in Karasjok grew, from 588 in 1865, to 637 in 1900 and further to 2181 in 1960. During the entire period, a good more than half lived near the village of Karasjok. The part of the population associated with reindeer husbandry, decreased.

(166) The period from the mid-1800s and until the 1960s was strongly marked by the State's Norwegianisation policy, as carefully described in the Truth and Conciliation Commission's report to the Storting from 2023. According to the Commission, the authorities' attitudes towards Sami people, Kvens and Forest Finns were "mainly positive" until the mid-1800s. Towards the end of the 1800s, this shifted to "a holistic assimilation policy" rooted in laws and instructions, see pages 17–18. Among other things, the Commission states that "[n]egative and partially racist attitudes towards the Sami, with both the authorities and the Norwegian people", resulted in the reindeer husbandry's loss of resource areas after the closing of the border with Finland-Russia in 1852, see page 213.

(167) From around 1860, there was also a shift in the view on the Sami's rights to their land areas. The theory on the State's so-called unmatriculated land in Finnmark emerged. It entailed that the State had unlimited ownership rights, and that the population neither had rights of commons nor rights of use. People's use was "permitted".

(168) Section 1 of the Land Sales Act of 1863 introduced the wording "the State's land located in Finnmark". The idea of Finnmark as a commons was abandoned in the period that followed. The new view had a weak legal grounding, partly because section 6 of the Land Allotment Decree of 1775 had not been repealed. The thinking seems to build on statements in the previously mentioned Proposition from 1847, that Finnmark "originally was only inhabited by a Nomadic people, the Laps without settled population", and that Finnmark "from ancient times has been referred to and treated as a colony", see page 23.

(169) The Land Sales Acts of 1902 and 1965, like much other legislation at the time, also built on the perception that the State was a sole landowner. Apart from a few Sami protests, this doctrine remained practically undisputed until 1972, when Sverre Tønnesen defended his doctorate *The right to the land in Finnmark*. The doctrine is now expressly repealed in section 5 subsection 1 of the Finnmark Act.

(170) The Norwegianisation policy had a direct effect on land sales regulations. The Land Transfer Regulations of 1902 required in section 1 that buyers of the State's land "can speak, read and

write the Norwegian language and use it daily". Although information suggests a lenient practice, there is no doubt that the condition created difficulties for people in Karasjok.

(171) The number of property establishments increased under the 1863 Act. Between 1869 and 1902, 144 properties were established in Karasjok. Most of them were located along the Karasjok River, but properties were also registered along the Váljohka river, in the lower parts of the Karasjok and Anárjohk valleys. The investigations by the Finnmark Commission show that, before 1880, many of these were not new establishments but formalisations of existing conditions. Many also originated from previously registered properties. In addition, the State leased out 23 outlying hayfields, most of them around 1900, 17 plots of land or residences, and four fishing waters.

(172) The relatively few land sales during this period must be seen in context with the prohibition of sales in the municipality's forest areas until 1895, although it was possible to some extent to be granted an exemption. The Karasjok district council requested the repeal or relaxation of the prohibition both in 1878 and later, see Proposition No. 95 (1895).

(173) The State established 12 mountain lodges in Karasjok, the first one in 1874. In addition, areas for gold panning were allocated in the 1870s under an Act from 1869, establishing that the right to extract gold belonged solely to the landowner.

(174) During the period 1902–1960, 771 properties were established in Karasjok, including 160 leased grounds. Some were also divided off from previously established properties, but a large portion were new establishments. At least 150 outlying hayfields and some fishing lakes were leased out. This increase must be seen in context with the population growth and, towards the end of the period, also the increasing recreational use.

(175) The State actively managed the forests. In 1869, public auctions of selected pine trees were introduced, supplementing the system of logging with special permission for a fee. The revenue went to the Finnmark Forest Fund. In the 1900s, forestry was operated under state administration. An allotment system applied to the population's logging for fuel in the deciduous forest.

(176) After 1960, the picture is roughly the same. The state actions were numerous.

(177) Therefore, the State's actions related to the land in Karasjok after around 1860 can be summarised as follows: The scope was increasing, but not substantial towards the turn of the century. In the 1900s, the scope was relatively large.

(178) During the period after 1860, Sami reindeer herders and locals generally continued the use of non-cultivated land as previously described. Particularly notable is the turf hut (*gamme*) tradition that has existed in the entire disputed area. This tradition has allowed for the geographical spread of the use of non-cultivated land and likely contributed to preserving such use although some settlements were eventually abandoned. Haymaking gradually declined, but the non-cultivated land was used for sheep grazing.

(179) Most of the locals' use of non-cultivated land could, at least until around 1960, take place relatively uninterrupted, without much interference either from the State or from visitors. Only the border areas had elements of use from settlements in the neighbouring municipalities.

Individual assessment – has collective ownership been acquired?

The legal situation until the second half the 1700s

(180) I have already concluded that the people of the Ávjovárri siida prior to 1751 had acquired certain exclusive rights to the areas it used. However, under older Swedish law, these rights had not developed into ownership. The question therefore is how the rights evolved after the area became Norwegian.

(181) I have also concluded that the rights were *rights of use and rights of commons* from the time the disputed area came under Norwegian sovereignty and jurisdiction in 1751. The classification was not certain as early as in 1751, but in my opinion, it was finally clarified with the Land Allotment Decree of 1775. It presupposed that the King was the owner of the land in Finnmark, including inner Finnmark.

(182) The conclusion that the King owned the land, and that the people had different rights of use, is based not only on the wording of the Decree and the King's perceptions. Although this was important, given the strong position of the King during the autocracy, at least as important was the economic development in the area in the 1700s. There was a shift from nomadic hunting to reindeer herding with completely different areal needs, and there were early signs of agriculture with more permanent settlements. This development most likely weakened people's perceptions of exclusive rights to all of the old *veide* siida area.

(183) Therefore, the question is whether the population, from the latter half of the 1700s, as new customs were established, have acquired ownership to the disputed land area through immemorial use. The decision must be based on ordinary property law, encompassing Sami customs and legal opinions. International law is also relevant.

The property law assessment – from the latter half of the 1700s

(184) Here I reiterate the key issue, which is whether the population in immemorial times has controlled the land "as if they owned" it, see *Stjernøya* paragraph 96. This means, I believe, that when a large community claims collective ownership to a land area, as in the case at hand, the basis for such rights must be a *collective use* as owner of this area.

(185) My outline has shown that the people of Karasjok have engaged in extensive use of non-cultivated land over the entire municipality right up to the present day. In practice, all available resources have been exploited, and up until after the last war, this use could take place relatively undisturbed. Karasjok has been located far from the central authorities and was remote and isolated for a long time.

(186) A striking feature of the population's use is, as I have demonstrated, that it has been *rooted in the individual settlements and reindeer siidas*. The old Ávjovárri siida covered nearly all of the disputed area. However, this structure ceased towards the end of the 1700s. Because of the economic changes, more fractured user communities occurred. The different rural settlements have mostly used their own parts of the disputed area, and the reindeer siidas have mostly distributed the pastures between them in accordance with Sami tradition and customs. In other words, different users and user groups have, in various ways, used and controlled different parts of this vast disputed area of more than 5,300 square kilometres. This is illustrated by the

fact that many rural societies and reindeer siidas have submitted their own claims of rights – partly also claims of ownership – to "their" respective parts of the disputed area to the Finnmark Commission

(187) The local population has pointed out the close contact and the cooperation between the reindeer herders and the settled population, highlighting the *verdde* and the custodial reindeer systems, and the amicable resolution of conflicts related to use. This practice undoubtedly strengthened the bonds between the groups. However, the exchange of goods and services can hardly be considered a collective use of natural resources, and therefore not as an expression of a collective right to the land. This must apply even if the relevant goods and services are related to nature. Therefore, I cannot see that these forms of cooperation change the assessment of the *geographical* scope of each group's use of the disputed area.

(188) In my opinion, the signs of *collective* use as owner of the *entire* disputed area along with associated legal opinions have therefore been weak since the *veide* siida culture disappeared. Local Sami customs and legal opinions do consequently not justify that the entire population of the municipality, alternatively the Sami part thereof, through immemorial use have acquired collective ownership to the entire area.

(189) On this point, I find that this case differs decisively from Rt-2001-1229 *Svartskog*, where what must be considered a single Sami rural society in Manndalen in Kåfjord municipality had used and controlled a topographically delimited river valley area of 116 square kilometres within and in the extension of the village. The signs of collective use of the entire disputed area by the group claiming ownership were therefore prominent.

(190) The Finnmark Estate also emphasises that the local population's use does not presuppose ownership, as the use is compatible with extensive rights of use. I attribute less importance to this point. *Svartskog* demonstrates that when Sami customs and legal opinions are emphasised, a local population's extensive and exclusive use of an area in immemorial times may be sufficient to acquire ownership.

(191) The local population has highlighted the large number of turf huts – *gammer* – in the area. They argue that such constructions constitute the most extensive use of real property and therefore is a typical landowner action.

(192) I generally agree with this starting point. However, the construction in itself is not a basis for acquiring ownership to more than the seized land and a limited surrounding area. Moreover, the rightsholder will normally be the person or persons responsible for the construction and use thereof. An example is the Land Tribunal's ruling of 22 June 2022, UTMA-2021-87806, where the Tribunal found that a person's descendants had acquired ownership of a turf hut site in Karasjok municipality by prescription. Therefore, when determining whether ownership has been acquired to the *entire* disputed area, I do not attach more importance to this use than to other uses of the area.

(193) The local population also argues that the State's legal actions in the disputed area, including sales and allotments of land, various leases, allotment of outlying hayfields, as well as various actions related to the forest, should not be emphasised. The reasoning is that these actions must be perceived as results of exercise of public authority, that they only occurred in a small part of the disputed area, and that most of them were carried out during the Norwegianisation period.

(194) Here I first reiterate my references to *Stjernøya* paragraph 73 and *Nesseby* paragraphs 147–149, which set out that such actions are relevant. They were carried out based on perceived ownership and thus manifested the State's ownerships to the land. This implies that the actions cannot be regarded only as exercise of public authority, at least not after 1814 when ownership rights received better protection. Moreover, particularly as they became numerous, the actions had to be perceived in such a way that the State's authority under private law was not limited to the specific plots of land that each transaction concerned.

(195) I agree with the local population that there is reason to examine the significance of the State's transactions after around 1860 when the State, on untenable legal grounds, viewed the population's use as merely "permitted". However, these actions are similar to those previously taken by the State based on the Land Allotment Decree of 1775. In other words, they are not actions granting rights to people that the State previously – before the Norwegianisation and assimilation policies – would have believed people had already acquired. Since the actions taken after 1860 therefore were not prompted by the untenable legal view that arose, I find that they cannot be disregarded, see also *Nesseby* paragraph 147.

(196) Under the Land Sales Regulations of 1902, as mentioned, the purchase of property was subject to a discriminatory language requirement. This requirement was suited to reduce the State's sales of land to the people of Karasjok, or at least delay the processes. However, I cannot rule out that the land sales that actually took place manifested ownership rights.

(197) My outline of the State's actions shows that the scope was very limited until the mid-1800s. Then it increased, and from the late 1800s all through the 1900s, the breadth and scope of the actions were so substantial that I believe the population in the 1900s could not have acquired ownership through immemorial use. The remaining question, therefore, is whether the population acquired ownership through their use during the period from the late 1700s through the 1800s, before the State's landowner actions intensified towards the end of the period.

(198) Overall, applying ordinary property law, I have concluded that the population did not acquire collective ownership to the disputed area through immemorial use even during that period. I place particular emphasis on the *lack of signs of collective use over the entire disputed area*.

(199) Thus, the local Sami customs and associated legal opinions do not justify that the municipality's residents, alternatively only the Sami residents, have acquired collective ownership to the entire disputed area. It has not been contended in the case – nor can I see – that the consideration of securing the natural basis for local Sami culture requires that collective ownership to the entire area is recognised for all, alternatively the Sami, residents.

(200) In addition, I emphasise that the State through its legal actions throughout the 1800s increasingly manifested its ownership to the area.

(201) This means that I agree with the minority of the Land Tribunal.

(202) I add that, to my knowledge, it has not previously been seen in Norwegian property law that a relatively large local population thus has acquired collective ownership to a large non-cultivated area through immemorial use. The closest is probably the attempt made by the municipalities of Eidfjord and Ullensvang when they claimed ownership to parts of the Hardangervidda plateau, see Rt-1916-1249. The Supreme Court first established that the area

was originally a state commons. It then discussed the contention that ownership had been acquired through prescription and immemorial use. The municipalities did not succeed, with the reasoning that the locals had not "held ownership authority over the commons", despite some actions having exceeded the right of commons, see page 1252. In my opinion, this supports that the claims in the case at hand cannot be justified in property law terms.

The application of international law

(203) My view is that ILO 169 does not lead to a different result. When the conditions under domestic law for acquiring ownership through immemorial use are not met, I find that it is not a requirement in Article 14 (1) that collective ownership to *the entire* disputed area must be recognised for *the entire population in Kar*asjok, alternatively the Sami part thereof.

(204) As mentioned in my general outline of the Convention, the *rightholder* being entitled to the right of ownership under Article 14 (1) first sentence must be determined based on who has *exercised* the substantive use. The local Sami customs and legal opinions will thus be respected. As I have concluded that neither the use nor the customs and the legal opinions justify collective ownership for the entire population to the entire disputed area, I cannot see that the provision requires that such ownership must be recognised.

(205) There is reason to clarify that I have not considered whether individuals, rural societies, siidas, or others in Karasjok have acquired ownership to "their" areas through immemorial use. These alternative claims are not part of the case heard in the Supreme Court. I also mention that people in Karasjok in any case have acquired extensive rights of use independently of the Finnmark Act.

(206) I add that, if Article 14 (1) first sentence were to be interpreted as indicating that a right to ownership of the entire area must be recognised for the entire population or the Sami part thereof, I would have difficulty reconciling the property law assessments with the requirements of the Convention. I reiterate that rights cannot be directly derived from ILO 169. However, as I interpret and apply Article 14 (1), I do not need to further consider the scope of the presumption principle.

(207) The local population has also invoked the UN Convention on the Elimination of All Forms of Racial Discrimination from 1965 (CERD), which is applicable in Norwegian law under section 5 of the Equality and Anti-Discrimination Act. Article 5 (d) (v) imposes the States to "undertake to prohibit and to eliminate racial discrimination in all forms", including on ethnic grounds in the exercise of the right to own property. In the light of what I have stated, I cannot see that the decision of the ownership claims in this case is rooted in any form of discrimination against the Sami. Therefore, the contention that CERD is violated cannot succeed.

Conclusion and costs

(208) My conclusion is therefore that neither the local population in Karasjok nor the Sami part of this population has collective ownership to the disputed area. This means that the Supreme Court must rule in favour of the Finnmark Estate in the appeal against Karasjok Sami

association and others, and that the appeal from Reindeer herding district 13 and Reindeer herding district 16 and others must be dismissed.

(209) Karasjok Sami association and others submitted alternative claims to the Finnmark Land Tribunal that, without being heard there, have been appealed to the Supreme Court. In my opinion, the hearing of these claims should continue in the Land Tribunal. To ensure that this will take place, the Land Tribunal's judgment is set aside, see section 30-14 subsection 2 of the Dispute Act.

(210) The intervener Máhkarávjju siida has claimed compensation for costs in the Supreme Court. The siida has been granted legal aid in the Supreme Court. I consider it clear that costs should not be awarded since compelling grounds justify exempting Karasjok Sami association and others, as well as Reindeer herding district 13 and Reindeer herding district 16 and others, from liability for costs, see section 20-2 subsection 3 of the Dispute Act. The appeal has raised an issue of principle that these parties had good cause to have tried in the Supreme Court.

(211) I vote for this

J U D G M E N T :

In appeal no. 23-101553SIV-HRET, The Finnmark Estate v. The Karasjok Sami association and others:

1. The Supreme Court finds in favour of the Finnmark Estate in the claim that ownership to the unsold land in Karasjok municipality collectively belongs to the municipality's population.

2. The Finnmark Land Tribunal's judgment is set aside.

3. Máhkarávjju siida is not awarded costs in the Supreme Court.

In appeal no. 23-101689SIV-HRET, Reindeer herding district 13 and Reindeer herding district 16 and others v. The Finnmark Estate:

1. The appeal is set aside.

2. Máhkarávjju siida is not awarded costs in the Supreme Court.

(212) Justice **Bergh**:

Dissent

My principal view

(213) I have reached the same conclusion as the majority of the Finnmark Land Tribunal. In my view, the local population in Karasjok has ownership to the disputed area. This right belongs to the entire local population, not just the Sami part thereof. I therefore find that the appeal from the Finnmark Estate against the Karasjok Sami association, Karasjok municipality, and others must be set aside. Similarly, the appeal from Reindeer herding district 13 and Reindeer herding district 16 and others should also be set aside.

(214) I largely support the factual and legal assessments made by the majority of the Finnmark Land Tribunal.

(215) On many points, I also agree with Justice Falch's outline. However, I see things differently on certain central issues.

(216) In my view, the population in Karasjok has held authority over the land in such a way that, under current national law, they have acquired ownership to the disputed area. The local population, which has mainly been Sami, has exercised *collective* use and control. In this context, my opinion differs from that of Justice Falch on both the law and on the factual assessments. This includes the significance of international law through the ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries (ILO 169).

(217) I also cannot agree with Justice Falch when he bases his individual assessment on the assumption that the King had already acquired ownership to the land in inner Finnmark from 1751. Nor can I see that the State acquired ownership at any later time. There is no reason for me to delve deeply into the State's actions in the 1900s. Before this, as I see it, the local population had in any case acquired ownership to the disputed area.

(218) Based on my view of the case, it is necessary to provide a comprehensive outline of what I consider the central basis for deciding the issues raised.

The background to the Finnmark Act and the survey process

Introduction

(219) The Finnmark Act was the result of lengthy and extensive legislative work. Justice Falch has addressed parts of this work in his opinion. It is also described in HR-2016-2030-A *Stjernøya* paragraphs 57–61 and HR-2018-456-P *Nesseby* paragraphs 4–16. As I see it, the background is essential for understanding how the law should be interpreted and how the survey process, which this case is part of, should be carried out.

The investigate work prior to the proposition for the Finnmark Act.

(220) The dispute surrounding the development of the Alta-Kautokeino watercourse in the 1970s demonstrated a strong need to clarify the Sami's rights in Finnmark. The Government appointed the Sami Rights Committee in 1980, which in 1984 issued its first report, Norwegian Official Report 1984:18 *On the legal status of the Sami people*. This Report formed the basis for the adoption of the Act concerning the Sameting and other Sami legal matters (the Sami Act) in 1987. Norway's obligations towards the Sami population were further manifested by the adoption in 1988 of Article 110a of the Constitution, currently Article 108. In 1990, Norway became the first country to ratify ILO 169.

(221) The first thorough investigation of the ownership situation in Finnmark took place through Norwegian Official Report 1993:34 *Management of Land and Waters in Finnmark*, prepared by a working group – the legislative group – under the Sami Rights Committee. In its conclusions, the legislative group distinguished between inner and outer Finnmark. When it came to outer Finnmark, the group concluded in the Report, page 261, that the State is the owner of the previously unregistered land in this part of the county, see also *Stjernøya* paragraph 88.

(222) When assessing the ownership situation in inner Finnmark, there was dissent within the group. In the Report, page 261, two important differences between inner and outer Finnmark were highlighted. It was pointed out that the population in inner Finnmark is predominantly Sami also today, and that this part of the county was under Swedish jurisdiction until 1751. Nonetheless, the majority of the group concluded, as described in more detail by Justice Falch, that the State must be considered the owner also in inner Finnmark, on the basis of an *established legal relation*.

(223) The group's member Otto Jebens had a different view when it came to inner Finnmark. He concluded that compelling reasons suggested that the population had ownership to land based on its authority over the full natural resources in this area. As he saw it, ownership could with "sufficient strength" be based on ordinary domestic sources of law and were not lost due to the State's actions. At least, this had to "be the result when domestic sources of law are interpreted based on developments in international law and the requirements it imposes on Norwegian law", see the Report page 295.

(224) As described by Justice Falch, the legislative group's conclusions were subject to discussion and criticism. This lead, among other things, to the Report from the international law group under the Sami Rights Committee, published as Norwegian Official Report 1997: 5 *Indigenous peoples' land rights under international law and foreign law*.

(225) The international law group supported the international law assessments from the legislative group's minority, Otto Jebens. The following is set out in section 3.3.3.2 of the Report:

> "In Norwegian Official Report 1993: 34, Otto Jebens states that the use exercised by the Sami population in inner Finnmark (mainly Kautokeino and Karasjok municipalities and the upper part of Tana municipality) is sufficient for the Sami population to assert rights of ownership and possession to this area under [ILO 169] Article 14 (1). We agree with this view.
>
> ...

> When drawing the lines between areas where the Sami are entitled to rights of ownership and possession and areas where they are only entitled to rights of use, emphasis must be placed on the stability and prominence of the Sami settlement in the area. Furthermore, emphasis must be placed on whether there have been other settlements in the area, or whether the Sami have primarily been alone in using it."

(226) In Norwegian Official Report 1994: 21, *The use of land and waters in Finnmark in a historical perspective*, the Sami Rights Committee had also presented historical studies from four experts. The investigations from the legislative group, the international law group, and the historical experts were part of the basis for the Sami Rights Committee's investigations in Norwegian Official Report 1997: 4, *The natural basis for Sami culture,* which formed the basis for the proposal for the Finnmark Act that the Government submitted in Proposition No. 53 (2002–2003).

(227) In Norwegian Official Report 1997: 4, the Sami Rights Committee stresses the importance of safeguarding and continuing the natural basis for Sami culture with its commercial activities and community life. In section 3.3.4, the Committee states:

> "The Committee believes that those who engage in various forms of traditional resource use and commercial activities in Sami settlement areas should have their rights and actual access to the resources strengthened, and also be provided with the security that comes with strengthened administrative authority and enhanced legal protection of their use. In Sami areas with more traditional livelihoods and conventional fishing, the population often preserves a Sami tradition, and thus also the distinctive characteristics that define a separate substantive Sami culture."

(228) In other words, the Sami Rights Committee stresses that Sami culture is linked to the various livelihoods traditionally practiced by the Sami, and that there is a need for legal protection of the use of non-cultivated land. The Committee had differing opinions on how this should be implemented, and the Report presented several suggestions.

The Proposition and the discussions in the Storting

(229) In the proposal for the Finnmark Act, Proposition No. 53 (2002–2003), the Ministry starts by presenting the main purpose of the Act, which is to clarify the uncertainty and resolve disputes over the right to land and waters in Finnmark. On page 36, it is noted that various aspects of the question of who can be considered to own the land and hold rights of use to land and waters in Finnmark have been "investigated and clarified over thousands of pages over three decades", and that an important reason for this is "that the question, in addition to the legal one, also has an ethnical, cultural, historical and political dimension".

(230) The Ministry's proposal in the Proposition was to transfer ownership to all unregistered land in the county to the Finnmark Estate. The proposal stipulated in section 5 that the Act "does not interfere with individual or collective rights based on prescription or immemorial use". However, it did not include provisions on the investigation of existing rights.

(231) On page 86 of the Proposition, the Ministry states that ILO 169 is "a central source of law when determining Sami rights to land and waters in Finnmark". The Ministry further states on page 88, as outlined by Justice Falch, that in the Ministry's view there are "areas in Finnmark within both categories in Article 14 (1) of the ILO Convention", and that "all of or parts of

inner Finnmark are covered by the first alternative, i.e. areas to which the Sami are entitled to 'rights of ownership and possession'".

(232) The Ministry thus expressed a clear point of view in terms of the ownership situation under the Convention in inner Finnmark. This must be seen in the light of the conclusion from the international law group that the Sami population's use in inner Finnmark is sufficient to assert rights of ownership and possession to the area, see Article 14 (1) first sentence of the Convention.

(233) At the same time, the Ministry built on the premise that the administrative system proposed, although ownership to land was transferred to the Finnmark Estate, would confer rights on the Sami population sufficient to meet the requirements of the Convention, also for areas covered by Article 14 (1) first sentence.

(234) The central topic of the Finnmark Act discussions in the Storting was whether this premise was correct. I refer to Justice Falch's outline and to *Nesseby* paragraphs 12–16.

(235) The final formulation of section 5 of the Finnmark Act was the result of extensive consultations between the Storting, the Sameting and Finnmark County Council. In Recommendation from the Justice Committee No. 80 (2004–2005) pages 14–15, the Committee presents the process related to the Storting's discussions. The Committee's majority emphasises the "importance of finding solutions for Finnmark that are in accordance with international law, and that are acceptable to both the Sameting and the County Council".

(236) As Justice Falch has described, both the Sameting and Finnmark County Council were presented with a draft of the majority's recommendation and endorsed it. The reason for the Sameting's and the County Council's endorsement is provided in their decisions included as appendices 3 and 4 to the Recommendation. The positions of the respective bodies are, in my opinion, central when determining the premises for the chosen solution. This applies in particular to the process of investigating and recognising acquired rights.

(237) The decision from the Sameting starts by pointing out that the Act is based on "a recognition of the need for reconciliation between the State and the Sami for past injustices, and the need to ensure that the Sami's diverse culture and way of life will persist in the future". Justice Falch has reproduced a paragraph from the decision regarding the survey process. In the preceding paragraph, it is stated:

> "It is established that the proposal recognises that the Sami, through their historical use over time have acquired rights to land and resources in Finnmark, and that these rights persist and shall be investigated and secured through separate processes. The traditional Sami use of non-cultivated land has, through this Act, "gained its first legal recognition, which has been of great significance for the Sameting."

(238) In other words, the Sameting supported the final proposal on the basis that established rights would persist, and that they would be surveyed.

(239) The decision from Finnmark County Council sets out that the Council "supports the establishment of a Commission for identification of existing rights". The County Council also maintained that the proposal had to be based on "[r]espect for international rules and conventions", and that the future administrative model had to be based on the principle of "equal rights for all ethnic groups".

(240) In the Recommendation page 15, the Justice Committee's majority states that "with the supplements and adaptations proposed by this majority in relation to the Government's proposal", the Act will "clearly meet Norway's obligations under international law". In this regard, the majority points out:

> "– It is affirmed in principle that the Sami, through prolonged use of land and waters, have acquired rights to land in Finnmark. The rights have been acquired regardless of ethnic background. This also applies to other residents of Finnmark.
>
> – Existing rights, held by the Sami as well as by others, shall be investigated and recognised through a separate commission and a special tribunal."

(241) In other words, the majority stresses that existing rights must be *investigated*, and that they must be *recognised* in line with the expectations from the Sameting and the County Council. About this process, the Committee continues on page 18:

> "*The majority* notes that the Finnmark Commission through its investigations may conclude that rights of use to the Finnmark Estate's land exist, that land of which the Finnmark Estate is the registered owner is in fact owned by others, or that there exist, in addition, rights of use for third parties to the same land."

(242) The majority emphasises that the result of the survey may be the conclusion that an area owned the Finnmark Estate according to law is in fact is owned by others. The consequence of this will be that the Finnmark Estate's administration of the relevant the area is lost.

(243) Furthermore, as quoted by Justice Falch, the Justice Committee's majority stresses that ILO 169 does not impose any duty to carry out a categorisation based on Article 14 (1). As I understand this, no general assessment is required of which areas in Finnmark fall under the categories in Article 14 (1). The survey must be concrete, i.e. tied to the claims brought before the Finnmark Commission and possibly followed by legal proceedings. In the event of such proceedings, sources of international law will be relevant, in line with the ordinary presumption principle. This aims undoubtedly at ILO 169 Article 14 (1).

Summary

(244) The extensive work I have now presented gives, in my view, important starting points for the execution of the survey process.

(245) The purpose of the Finnmark Act as it was proposed by the Ministry was – as I have described – to resolve the uncertainty and dispute over the right to land and waters in Finnmark. As for inner Finnmark, the Ministry's starting point was also that this part of the county in whole or in part constitutes areas to which the Sami may claim rights of ownership and possession under ILO 169 Article 14 (1) first sentence. This position held by the Ministry was based on the thorough investigations carried out since the establishment of the Sami Rights Committee in 1980.

(246) A possible consequence of this starting point was to legislate collective ownership for the population within certain areas in Finnmark. In Proposition to the Odelsting No. 53 (2002–2003), the Ministry discussed various models, but did not address such a solution. The

premise for the proposal as it was presented was that the administrative system proposed for all of Finnmark would confer rights on the Sami population sufficient to meet the requirements of the Convention, including for areas covered by ILO 169 Article 14 (1) first sentence.

(247) The discussions in the Storting were extensive and included a detailed review of international law and consultations with the Sameting and Finnmark County Council. On central points, the Act turned out to be much different from what the Ministry had proposed. The system of investigating and recognising acquired rights came into place as a direct result of the obligations in ILO 169 Article 14 (2). The wording of the Act and the statements in the Committee's Recommendation leave no doubt that the survey process was intended as a genuine clarification of both ownership and rights of use based on current national law.

(248) This starting point is also described by Justice Falch. To me it is essential, although there is no disagreement on this, that the Act indicates that property law must be applied on Sami terms and that it aimed to fulfil our obligations under international law.

(249) In my view, as the Act was adopted, and in the light of the extensive preceding process, it was reasonable to conclude that the survey might result in areas in inner Finnmark being owned by the local population and not by the Finnmark Estate. Although – as Justice Falch points out in support of his view – there are no examples in Norwegian property law to date of a local population being recognised rights to such vast non-cultivated areas as in the case at hand, the only way to understand the overall legislative process is that the legislature has allowed for such an outcome.

(250) At the same time, my perception is that there was hope and belief that the solution with the Finnmark Estate as a joint landowner entity would create stability and be accepted, and that there would be a limited number of claims for individual and collective rights. Several statements in the preparatory works point in this direction. However, I cannot see that such a perception or such statements can be attributed any legal significance. The same applies to assumptions during the Storting discussions of potential consequences of the survey process.

(251) For the sake of good order, I note that the interpretation of ILO 169 Article 14 (1), as expressed by the Ministry of Justice in the proposal for the Finnmark Act, naturally also has no direct legal significance for the interpretation required in this case. When I nonetheless mention this issue, it is because it was part of the basis for the final drafting of the Finnmark Act, including the rules on the survey process, which took place in the Storting.

The basis for the survey process

(252) It appears from sections 5 and 29 of the Finnmark Act and from what I have quoted from the Justice Committee's Recommendation, that the survey process must take place on the basis of current national law. As Justice Falch has accounted for, the rules on immemorial use are central in this regard.

(253) At the same time, it is emphasised that national law also covers Sami customs and legal opinions. As set out by Justice Falch, *Nesseby* paragraph 123 refers to Rt-2001-769 *Selbu* and Rt-2001-1229 *Svartskog*, where it is stressed that "any application of general national

property law to determine Sami rights must be on Sami terms". The implications of this are illustrated by a quote from *Svartskog* page 1252, which I find reason to reproduce:

> "If a similar use had been exercised by persons of a different background, it would have reflected that they intended to own the area. However, the Sami, who have constituted the majority of Manndalen's population, do not have the same tradition of thinking of ownership to land. Yet, there are, as pointed out, examples of them expressing themselves in a way that indicate a perception of ownership. If the acquisition of rights through immemorial use should be prevented by the fact that they have more often spoken of rights of use, their exercise of authority, which in substance corresponds to the exercise of ownership to land, would be placed in an unfavourable special position compared to the rest of the population."

(254) As emphasised in *Nesseby* paragraph 124, the Justice Committee stated in Recommendation No. 80 (2004–2005) page 36 that the clarification of the law under section 5 of the Finnmark Act must be based on the principles expressed in *Selbu* and *Svartskog*.

(255) Furthermore, it follows from my outline that rules of international law, in particular ILO 169, were given significant weight in connection with the preparation and adoption of the Finnmark Act.

(256) Justice Falch has accounted for the content of section 3 of the Finnmark Act. As he points out, section 3 first sentence constitutes a "partial incorporation" of ILO 169. For the survey process, this entails, as described in *Stjernøya* paragraph 76, that rights cannot be derived directly from the Convention.

(257) At the same time, section 3 second sentence generally provides that the Act must be applied in accordance with the international law provisions on indigenous peoples and minorities. In *Nesseby* paragraph 103, the following is set out regarding the significance of this provision:

> "The provision in section 3 second sentence entails that to the extent the ILO Convention is not incorporated through section 3 first sentence, it will still have significant impact on the application of the Act. This will also follow from the general presumption principle, which entails that Norwegian law, as far as possible, must be interpreted in accordance with international law."

(258) Justice Falch emphasises that the statement regarding the Convention's "significant impact" relates to the application of the Act and not to the survey to be conducted under current national property law. It can be questioned whether the survey process can be considered application of the Act, as this term is used in section 3 second sentence of the Finnmark Act. As I understand it, the quote from paragraph 103, as well as paragraphs 166–171, suggests that the Supreme Court in *Nesseby* nonetheless trusts that ILO 169 Article 14 (1) through the presumption principle may have a significant impact on the application of national property law. In this context, I reiterate that Justice Falch has quoted from Recommendation from the Justice Committee No. 80 (2004–2005), pages 18−19, regarding the term "current national law", where the Committee emphasises that "sources of international law will be relevant to the extent they are covered by the ordinary presumption principle".

(259) In this context, as emphasised in *Stjernøya* paragraph 96, it is central that the non-statutory rules on immemorial use are flexible and, to some extent, adaptable to the circumstances of the individual case. This allows for a significantly greater application of the presumption

principle than would apply, for example, in the interpretation of precisely formulated statutory rules.

The content of Article 14 (1) first sentence of ILO 169

(260) Justice Falch has reproduced Article 14 (1). The content of the provision must, as Justice Falch stresses, primarily be clarified based on the terms used therein, its context and in the light of the objective and purpose of the Convention.

(261) Article 14 (1) first sentence imposes the recognition of the "rights of ownership and possession" of the peoples concerned over "lands which they traditionally occupy". A key question is what it takes to meet the criterion "traditionally occupy".

(262) As emphasised in *Stjernøya* paragraph 82, Professors Ulfstein and Graver express in the report issued in connection with the Storting's discussions of the Finnmark Act, that an adequate translation of the "lands which they traditionally occupy" would be "*områder de tradisjonelt befolker*" [areas they traditionally populate]. I agree, although I find that a more precise translation of "lands" is "*landområder*" [land areas]. Decisive to establish rights to a land area is thus whether the group of people concerned has populated this area.

(263) There are few sources of international law suited to clarify the content of the provision. However, it is discussed in national sources, including in *Stjernøya* and *Nesseby*, with further references to the investigations of the Sami Rights Committee's investigations.

(264) In *Stjernøya* paragraph 80, the following statement is quoted from the international law group under the Sami Rights Committee in Norwegian Official Report 1997: 5 point 3.3.3.2:

> "…for a group of indigenous people to be entitled to recognition of rights of ownership and possession to an area, the group must have exercised a use of such a character that they can be considered to have acquired actual authority over the area. For this to be the case, no overly strict requirements should be made. If the group's settlement in the area has been rather permanent, and they have been alone in using it, the requirements of actual authority should normally be regarded as met. If others have also used the area, the use by the group of indigenous people must have dominated the use by others."

(265) In *Stjernøya* paragraph 81, a reference is also made to Norwegian Official Report 2007: 13 The New Sami Law volume A p. 231, from which Justice Falch also has quoted. Here the Sami Rights Committee builds on the notion that ownership to land can be acquired if the use has been "virtually exclusive" or at least "dominant" compared to the use by other groups. As I see it, this is consistent with the principle described by the international law group.

(266) As Justice Falch emphasises with reference to *Stjernøya* paragraph 115, the State is obliged to fulfil the central purpose of Article 14. This implies that the more extensive authority a group of indigenous people has held over an area, the more extensive land rights they may claim to have recognised under international law.

(267) Justice Falch further expresses that the rule allows for national adaptations in accordance with the individual State's domestic law. In that regard, he refers to the statement by the Sami Rights Committee in Norwegian Official Report 2007: 13 volume A page 231 that areas to which Sami people have rights under Article 14 (1), are areas where they, "under ordinary

principles of national property law" are entitled to recognition of ownership. I note that this at any rate must be interpreted to mean that principles of property law also cover Sami customs and legal opinions.

(268) I agree that the Convention to some extent gives the States flexibility in complying with it. This can also be linked to Article 34, as mentioned by Justice Falch. However, when applying Article 14 (1) first sentence, I find that the flexibility primarily relates to how rights should be recognised, and not the basic criterion for the application of the provision – that it involves lands that the peoples concerned "traditionally occupy". It has no support in the wording or in other sources that this criterion must be read as a reference to national rules. Such an interpretation would not maintain the central purpose of the provision – to ensure the indigenous people's right to land areas that they have traditionally occupied.

(269) As outlined by Justice Falch, the rightholder under Article 14 (1) are "the peoples concerned". The term must be understood in the light of the listing in Article 1 of which groups of people are covered by the Convention, which are defined as indigenous people therein. In other words, we are dealing with group rights – collective rights – of the indigenous people concerned.

(270) Justice Falch also refers to the international law group's investigations in Norwegian Official Report 1997: 5 point 3.3.5, where it is emphasised that the rightholder must be identified based on which group of people has exercised the use forming the basis for the right. The international law group elaborates as follows:

> "If the area has not been divided but used jointly by several members of the indigenous people, this suggests that the right should be viewed either as a right for the population group as a whole or as a group right for the members of the group of indigenous people belonging to the circle of indigenous people who has exercised the use from which the right has arisen."
>
> Another important aspect when assessing how to define the rightholder are the customs or the customary laws of the peoples concerned, see Article 8, see Article 17.
>
> Furthermore, emphasis must be placed on the wishes of peoples concerned, see Article 6. This is also maintained in preparatory works to the Convention. Here, it is set out that 'it could be left to the peoples concerned to determine their own preferential form of land holding and ownership'.
>
> Additional considerations include practical concerns, what is perceived as a reasonable and fair result and the best way to safeguard the indigenous peoples' ability to preserve and develop their way of life and culture."

(271) I base myself on these starting points. The rights under Article 14 (1) are *group rights*. When determining how to define the rightholder – the group – emphasis must be placed on customs and legal opinions and the population group's – the indigenous people's – own wishes. Due regard must also be had to the indigenous people's possibilities to preserve and further develop their way of life and culture in the best possible manner.

(272) If an indigenous people's use of a land area meets the criterion "traditionally occupy" in Article 14 (1), the effect is that their "rights of ownership and possession" to the area "shall be recognised". As I have already mentioned, one must assume that there is a certain flexibility

for the States in how to meet these obligations. This is also discussed in Proposition from the Justice Committee No. 53 (2002–2003) pages 88–89.

(273) I will not elaborate on the content of the term "rights of ownership and possession". If the criterion "traditionally occupy" is met, the requirements under the Convention must in any case be met under Norwegian law through the system prescribed by the Finnmark Act, which is to recognise ownership to land where the survey process clarifies that such rights exist.

(274) Like Justice Falch, I have limited my outline of international law to ILO 169, which is a convention binding under international law. I nonetheless stress that the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), which is not legally binding, also contains provisions on rights to land in Articles 25 to 27. As for the impact of the Declaration, I refer to *Nesseby* paragraph 97.

The individual assessment

The starting points – findings of fact

(275) As Justice Falch stresses, the Supreme Court hears this case after very thorough investigations and assessments have been carried out over many years – first in the Finnmark Commission and then in the Finnmark Land Tribunal. Overall, the parties agree on the factual description of the historical development. The disagreement is primarily linked to which legal conclusions are currently to be drawn from the historical material. At the same time, there is disagreement on certain factual circumstances.

(276) The hearing in the Supreme Court has been thorough – with more than eight court days of oral proceedings and a vast written material. It should nonetheless be apparent that the Supreme Court has not had the same possibility as the Commission and the Land Tribunal to obtain an overview of the historical facts. As pointed out by Justice Falch, the presentation of evidence in the Supreme Court has been indirect.

(277) Although the Supreme Court has full jurisdiction, caution should still be exercised in reviewing the findings of fact carried out by the Finnmark Commission and the Land Tribunal. In addition, the expertise of the Commission and the Land Tribunal imposes a certain degree of restraint in the review process.

(278) What I have now pointed out is, as I see it, consistent with the approach taken by the Supreme Court in *Nesseby*, see paragraph 129.

(279) As I understand Justice Falch, his approach is not very different. On some issues, however, our views differ as to the significance of the Finnmark Commission's and the Land Tribunal's findings of fact.

The period until 1751

(280) As Justice Falch emphasises, it is clear that the legal status in Ávjovárri in 1751 was such that the population in the area had exercised authority over all the resources for a very long time, based on Sami customs. It involved an overall, collective use, based on the old *veide* society.

(281) The Finnmark Estate contends that towards 1751, changes had occurred as the *veide* society had gradually disappeared due to the shift to nomadic reindeer husbandry. Nonetheless, I trust that, in 1751, no changes had occurred that significantly alters the picture described. This is in accordance with what a unanimous Finnmark Land Tribunal states in its judgment pages 59 and 78. However, what the minority states on page 91, seems to slightly diverge from what has previously been stated.

(282) A unanimous Land Tribunal further states on pages 59-60:

> "The Finnmark Land Tribunal will be cautious in categorising this authority based on the meaning given to the term in current legal terminology. This must at any rate be seen as a specific right that in sum entailed the disposal of resources located on land and in waters within the siida's borders for various forms of exploitation, such as reindeer husbandry, hunting, trapping, fishing, grazing, mowing etc. In practice, the siida members' rights covered all forms of exploitation of the land and its resources."

(283) The Land Tribunal does not consider whether the local population in 1751 had acquired ownership to the disputed area within the current meaning of the term. Instead, the Tribunal takes as a starting point for its further discussion "whether the rights held by the population in Ávjovárri in 1751 have evolved over time into ownership within the current meaning".

(284) It can be questioned, as the Finnmark Commission does, whether it would be most accurate to assume that the local population had ownership to land in 1751. The extensive use described by the Land Tribunal is, within the current understanding of the ownership concept and considering Sami customs, sufficient to establish ownership. Thus, it cannot be a decisive argument against recognising ownership to land that the ownership concept in 1751 had not developed in the same way as today.

(285) I will, however, not delve into this. Like the Land Tribunal, I believe, in any case, that it is the development after 1751 that determines whether there is a basis for establishing ownership today. As I understand Justice Falch, this also his starting point.

(286) For me, it is still important to highlight that the legal basis in 1751, which is central to the assessment of the subsequent development, was that the Sami population exercised a comprehensive, collective use. Thus, as stressed by Karasjok Sami association and Karasjok municipality and others, the year 1751 constitutes in no way a "zero point" for the population. For the State, this is different. The State, currently the Finnmark Estate, cannot establish ownership based on the development before the area became Norwegian territory in 1751.

(287) The fact that the disputed area came under Dano-Norwegian sovereignty and jurisdiction through the Border Treaty in 1751, also did not imply that the State acquired ownership to the area under private law. I refer to the international law group's investigations in Norwegian Official Report 1997: 5 point 1.4, summarising the significance of the Border Treaty as follows:

> "It is entirely clear that no one else had ownership to the areas of which the Sami were the only users, and that Norway or Sweden as states did not acquire ownership under private law through the Lapp Codicil. Under the Border Treaty, they obtained sovereign rights over certain areas, but ownership to land do not follow from sovereignty."

The period from 1751 until around 1900

(288) Against this background, the key question in the case is whether the local population, regardless of how one evaluates the ownership situation in 1751, through further development has acquired ownership to land based on the rules on *immemorial use*.

(289) The central period in this context is up until the year 1900. Like Justice Falch, I trust that the State's actions in the 1900s were of such a width and scope that the local population, during this period, could not acquire ownership through immemorial use. The key question is thus whether such an acquisition had taken place in the preceding period. If so, I find like the Land Tribunal's majority that the State cannot subsequently have acquired ownership based on an established legal relation or otherwise. As I understand, this is also Justice Falch's on this point.

(290) Justice Falch has described the content of the rules on immemorial use. I refer to his outline. I also agree with him that the criteria described in *Stjernøya* paragraph 96 provide a solid starting point. It must be assessed whether the population has controlled the area "as if they were owners". This must be based on the "intensity and continuity" of the use. Central in this respect is "how dominant the use has been compared to others' use of the relevant areas".

(291) The Land Tribunal's majority has clearly built on these starting points, stating the following on page 79 of its judgment:

> "In order to acquire ownership, the population in Karasjok must have used the disputed area with a sufficient level of intensity and continuity, and the use must have been dominant compared to others' use of the same areas. When assessing this, one must consider the local population's use and customary law over time, and the significance of the actions by the State and others.
>
> The Karasjok population's use of the disputed area since the early times of the Ávjovárri siida, has been stable, nearly exclusive and intensive throughout the year. Even through most of the 1800s, over half of the population was registered as 'nomadic mountain Lapps' with residence in the mountains. As late as in 1910, they constituted 340 out of 849 registered residents in Karasjok. The use by both reindeer herders and settled residents has been diverse and extensive, and includes hunting, harvesting, fishing, use of pastures and hayfields, timber harvesting, berry picking, cutting of senna gras, and gathering of lichen and moss, in addition to the reindeer husbandry's use of grazing resources and areas for moving of reindeer between seasonal pastures and within the pastures. The entire disputed area has been used by the population for several hundred years with the perception that they had the right to exploit the resources in the area.

(292) I refer to what I have quoted from *Svartskog*, Rt-2001-1229 on page 1252, on the significance of determining rights on Sami premises. The Sami, with their collective use, have not traditionally had ownership in mind. When the use described by the Land Tribunal is assessed on Sami premises, it shows in my view that the Sami population has controlled the area as if they owned it. I cannot see that there is a basis for diverging from the factual description given by the Land Tribunal's majority.

(293) Justice Falch discusses the factual and legal development in the disputed area through the centuries. As I understand him, it does not lead to significantly different result with regard to the content and the scope of the population's use than what follows from the summary provided by the Land Tribunal's majority, which I have quoted. To Justice Falch, the central

issue is whether a *collective use* and authority have been exercised, or whether this must be assessed separately under property law for different groups. I will soon return to this.

The State's actions

(294) I mainly endorse Justice Falch's description of the State's perceived ownership and of the State's actions. I also consider it clear that the State saw itself as the owner, also of the land in inner Finnmark. Until the mid-1800s, this was based on the idea of a commons. From the mid-1800s, the Norwegianisation policy manifested itself, and the idea was replaced by the view that the State had unlimited ownership, and that the population's use was "permitted".

(295) In my view, it is nonetheless difficult to see that there is sufficient basis for considering the State the owner already from the last part of the 1700s, shortly after the areas came under Dano-Norwegian sovereignty. Even ownership for the State require a basis for acquisition, beyond the State's perceived ownership. I cannot see that this is significantly different for the period up until the mid-1800s.

(296) I also consider it important that until around 1900, the State's actions were of a limited scope. Many of the actions could also be perceived as expressing state regulation and registration. The first land allotment that was paid for did not occur until around 1880, see the summary made by the majority of the Land Tribunal in the judgment page 85:

> "With this as a starting point, it must be established that there were no clear landowner actions from the State in Karasjok before the Land Allotment Decree of 1775. Until 1863, when the Resolution was effective, the State's ownership claims were barely expressed through state actions related to land and resources in the area. ...
>
> …
>
> It is only from 1880 that what from the outside appears as the exercise of state ownership authority in Karasjok gained a certain scope and firmness, but the land allotments were rather sporadic before 1902."

(297) I also find, like the Finnmark Land Tribunal's majority, that the general perception among the local population during the critical period until around 1900 was that the right to land and outlying resources belonged to the population itself. On this, the majority states the following in the judgment page 88:

> "The State's authority over the disputed area has not been exercised for a sufficiently long time, with such content and firmness necessary for a local perception to develop and solidify over time that the State has the right to exercise this authority. The actions have largely had a public law character and have not contributed to establishing sufficiently broad acceptance of the State as a private law landowner among the locals. The local perception that the right to land and outlying resources belongs to the local population and not to the State remains strong in Karasjok."

Collective use

(298) As I understand Justice Falch, his basis is that the State's actions do not in themselves rule out that the local population towards the end of 1800s may have acquired ownership to land based on their use and their legal opinions. Decisive for his conclusion is that the population's use of

and authority over the disputed area have not been sufficiently *collective*. I will therefore elaborate on this issue, which has partially a legal and partially a factual aspect.

(299) As for the legal aspect, in my view, it is significant that the rules on immemorial use must be applied on Sami terms, and that the rules in ILO 169 Article 14 (1) first sentence must be given weight based on the presumption principle.

(300) As for the factual aspect, I rely on the findings by the majority in the Finnmark Commission and the Finnmark Land Tribunal.

(301) The Finnmark Commission bases its review, among other things, on expert surveys carried out by the Norwegian Institute for Cultural Heritage Research. In the Commission's report page 121, the following is quoted from the Institute's report 10/2013 page 152:

> "The livelihoods of both reindeer herders and the settled population have originated from a common root: the *veide* society. The historical connection from this has been carried forward through the *verdde* relationship. The fact that both groups, over many generations, have been mutually dependent on each other for the exchange of goods and services must also have contributed to preventing potential conflicts."

(302) Here the *veide* society – based on hunting and harvesting – is described as a "common root" for reindeer husbandry and the settled population. The connection between them is continued through the *verdde* relationship. The term "verdde" describes a Sami tradition with the exchange of goods and services between the settled population and reindeer herders.

(303) The Finnmark Commission describes the *verdde* system as follows in volume 1 page 121:

> "The settled residents provided fish, berries, milk, and butter to the Sami reindeer herders in exchange for reindeer meat and skins. It was also commons for the settled residents to keep reindeer in the Sami's herds, and there were often familial ties between the groups."

(304) The Commission further notes that the conditions have slightly changed, for instance as the system with custodial reindeer – where settled residents kept reindeer in the Sami's herds – was discontinued in 1978. As I understand it, these changes mainly occurred in the 1900s, thus after the critical period for the assessment of acquisition through immemorial use.

(305) I further refer to the assessment by the majority in the Land Tribunal regarding the use exercised by the reindeer herders and the rest of the local population, see the judgment pages 81−82:

> "As for the latter, the majority agrees with the Finnmark Commission that both the reindeer herders' and the rest of the local population's use of non-cultivated land must be considered a collective use that may form a basis for collective rights. The reindeer siida system has been dynamic with changes, branches, arrivals and departures over time, indicating a collective element in the use of the area, while certain preferential rights may have been established through prolonged use. The settled population's use of non-cultivated land has occurred throughout Karasjok, including due to movements between summer and winter residences, the use of outlying hayfields and the use of turf huts in connection with harvesting. The settled residents have largely considered themselves to have certain preferential rights to use their traditional, nearby areas, but the use has not been limited to such areas."

(306) Here the Tribunal's assessment relates to the criterion "traditionally occupy" in ILO 169 Article 14 (1) first sentence. However, the facts described are central also to the assessment of acquisition through immemorial use.

(307) Justice Falch places great emphasis on the reindeer husbandry being organised into reindeer siidas, which have distributed pastures among themselves. Based on this, he draws the conclusion that there has not been a collective Sami use of the entire disputed area. For my part, I cannot see that the siida system has led to a fragmentation suited to change the overall picture of a collective use as described and relied on by the Finnmark Commission and the Finnmark Land Tribunal.

(308) There is no doubt that the division into siidas has been essential to the organisation of reindeer husbandry, also in Karasjok, for hundreds of years. As Justice Falch emphasises, it is stated in the Finnmark Commission's reindeer husbandry report vol. 1 that 'each siida mainly has its own permanent pastures for each season', see page 38. In line with this, the following is also stated on page 39:

> "The internal distribution of pastures among the siidas within each reindeer herding district can be described as both fixed and variable. Information from both the 1800s and the 1900s shows that the solidity of the pasture distribution has varied depending on which siida's practices are described. In a generational perspective, certain siidas will continue, branch out or cease to exist, while others will occur, and there will be greater or lesser changes in the practices of a siida, due to either internal changes or changes in a neighbouring siida.
>
> There are also many examples of siidas having established various situation-specific communities in the use of pastures of various durations, which influences the descriptions of the solidity of the use of pastures. In addition, during winter, reindeer find available pastures in slightly different places each year due to weather conditions affecting the snow layers that the reindeer must dig through to find food. This creates a need for a certain flexibility in the use of pastures."

(309) Based on such a description, in my view, there is no basis for using the division into siidas as an argument against the establishment of collective ownership based on the Sami's collective use. As expressed by the majority of the Finnmark Land Tribunal in what I have quoted, the dynamic elements of the siida system indicate that, overall, we are dealing with a collective use. As I have repeatedly stressed, this is supported by the fact that, at the time of the ancient *veide* siida, the use was generally collective. Then, the subsequent division into several siidas cannot be sufficient to remove the collective nature of the use.

(310) Similarly, I also cannot see that an original collective Sami use has ceased as a result of the permanent residents' use of non-cultivated land being rooted in individual settlements and summer residences.

(311) In my view, it has not been firmly established under national law what, within the concept of immemorial use, a requirement of collective use actually entails. Therefore, there can be no doubt that ILO 169 Article 14 (1) first sentence gains significance through the presumption principle.

(312) As I have explained, the delimitation in this provision concerns "lands which they traditionally occupy", where "they" refers to "the peoples concerned". This requires that the

use has been exercised by the circle of persons who have asserted the claim. In my view, the requirement related to the nature of the use and the connection requirement are met in this case.

(313) The claim in the case at hand is asserted on behalf of the population in Karasjok. It is based on use exercised by this population – which mainly consists of the indigenous people, the Sami. Reindeer husbandry has only been carried out by the Sami, and within the settled population, there were only minor occurrences of Norwegians and Kvens until around 1900. Throughout the period I have now considered, the disputed area has been a Sami core area.

(314) Under Article 14 (1) first sentence, I cannot see any basis for assessing the use separately for various parts of the Sami population. Here, I primarily refer to the facts I have presented. I also refer to my account regarding the content of the connection requirement under Article 14 (1) first sentence.

(315) As I have pointed out, a key starting point is that the Sami population exercised a comprehensive, collective use of the area until 1751. In my opinion, it would be inconsistent with the purpose of the Convention if natural economic changes and developments within a group of indigenous people were in themselves an obstacle to acquire ownership to land, at least as long as the group is still clearly dominant in the area.

(316) The municipality, as the representative of the population, has chosen to submit a joint claim based on what is considered a collective Sami use. The claim from Reindeer herding district 13 and Reindeer herding district 16 and others also concerns collective ownership based on collective Sami use. Although this does not mean that all inhabitants agree, there is no doubt that the claim is supported by the local population in Karasjok. As emphasised in *Nesseby* paragraph 170, it is precisely the use exercised by the population within a specific area that can form a basis for rights under Article 14 (1) first sentence.

(317) I add that it can be questioned whether a solution where the use by various Sami groups, contrary to their perception and wishes, is not considered jointly in the property law assessment of the rights issue, sufficiently respects the Sami rights that were strongly emphasised during the work on the Finnmark Act.

Overall assessment

(318) Based on my outline, I agree with the Finnmark Land Tribunal's majority that the population in Karasjok, according to the non-statutory rules on immemorial use, has acquired ownership to the disputed area. I mainly support the initial summary the majority provides for its view in the judgment page 78:

> "The majority's assessment is that the population in Karasjok, through its prolonged use, had acquired ownership to the disputed area when the State's actions, particularly after 1900, reached a level and scope that could, over time, establish state ownership. The majority bases its conclusion on the non-statutory rules of immemorial use, which are flexible and to some extent adaptable to the circumstances of the individual case. Towards the Sami population, due regard must be had to Sami customs related to collective use."

(319) I further believe that the Sami population's use of the disputed area meets the criteria "traditionally occupy" in ILO 169 Article 14 (1) first sentence. This is consistent with what

the Ministry of Justice expressed in its proposition for the Finnmark Act, and the conclusion from the international law group under the Sami Rights Committee. According to rules of international law, the population is thus entitled to recognition of ownership to this area. My view is that if national rules, applied on Sami premises, do not form a sufficient basis for acknowledging ownership, it will at least be the case when applying rules of national property law in the light of the presumption principle.

(320) In my view, the fact that this involves a very large area, encompassing all land that is not specifically assigned to others within the current Karasjok municipality, is not a decisive obstacle for recognising ownership for the local population. As long as the requirements for the use are met for the entire area, the conclusion must be that ownership encompass the whole.

(321) It is also not a decisive obstacle that private ownership to such a large area have not previously been recognised based on the rules on immemorial use. It involves a specific area in inner Finnmark where the local population's use for a long time was nearly exclusive. As the Land Tribunal emphasises, the use of outlying resources in Karasjok by anyone other than the local population was virtually non-existent until well into the 1900s.

The rightholder

(322) As I have concluded that ownership has been established for the local population, I must also address whether this right belongs to everyone with registered residence in Karasjok municipality at any given time, as the Land Tribunal's judgment suggests, or whether ownership belongs to the Sami population in Karasjok, as Reindeer herding district 13 and Reindeer herding district 16 and others contend. Since I, after the deliberations, know that I am in the minority, I will provide a brief outline.

(323) I have reached the same conclusion as the majority of the Land Tribunal. The key point for me is that collective rights have been established for the local population. During the period the rights were established, the population was predominately Sami, and the recognition of ownership to land is therefore largely based on Sami perceptions of law and legal relations. However, other residents besides the Sami have also participated in the exploitation of resources. As pointed out by the majority of the Finnmark Commission and the Land Tribunal, nothing has emerged during the survey process that suggests a widespread perception that the local rights belong only to the Sami population of the municipality. It would break with historical and legal continuity if one were now to differentiate between Sami and others regarding the right to resource use and the share in local ownership to land.

(324) I cannot see that it would conflict with the recognition requirement in ILO 169 Article 14 (1) first sentence that the non-Sami population in Karasjok also acquires collective ownership. Here I confine myself to referring to the assessment by the international law group in Norwegian Official Report 1997: 5 point 3.3.7.

Conclusion

(325) Against this background, the appeals from both the Finnmark Estate and from Reindeer herding district 13 and Reindeer herding district 16 and others should be set aside.

(326) Justice **Indreberg**: I agree with Justice Bergh in all material respects and with his conclusion.

(327) Justice **Bull**: Likewise.

(328) Justice **Steinsvik**: Likewise.

(329) Justice **Hellerslia**: Likewise.

(330) Justice **Normann**: I agree with Justice Falch in all material respects and with his conclusion.

(331) Justice **Bergsjø**: Likewise.

(332) Justice **Ringnes**: Likewise.

(333) Justice **Arntzen**: Likewise.

(334) Chief Justice **Øie**: Likewise.

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

J U D G M E N T :

In appeal no. 23-101553SIV-HRET, The Finnmark Estate v. The Karasjok Sami association and others:

1. The Supreme Court finds in favour of the Finnmark Estate in the claim that ownership to the unsold land in Karasjok municipality collectively belongs to the municipality's population.

2. The Finnmark Land Tribunal's judgment is set aside.

3. Máhkarávjju siida is not awarded costs in the Supreme Court.

In appeal no. 23-101689SIV-HRET, Reindeer herding district 13 and Reindeer herding district 16 and others v. The Finnmark Estate:

1. The appeal is set aside.

2. Máhkarávjju siida is not awarded costs in the Supreme Court.