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INTERNATIONAL JOURNAL ON MINORITY AND GROUP RIGHTS (2025) 1–24

INTERNATIONAL JOURNAL ON MINORITY AND GROUP RIGHTS

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The Karasjok Case and its Significance for the Legal Survey in Finnmark

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Received 27 October 2024 | Accepted 16 December 2024 |
Published online 26 February 2025

Abstract

On the final day of spring 2024, the Supreme Court of Norway ruled in the Karasjok case, affirming the Finnmark Estate's ownership rights. The Grand Chamber's decision, passed by a narrow 6 to 5 margin, underscored divisions surrounding national property law, international Indigenous law, legal history, and Sámi customary law, which received less attention than usual in Norwegian case law.

This article explores the judgment's impact on the ongoing legal survey in Finnmark. While the ruling emphasizes national property law, it disappoints those seeking clear guidelines for future surveys. The Court's differing opinions and explicit refusal to address potential ownership rights for individuals, village communities, or Sámi siidas create ample space for both legal disputes and further analysis. The author presents four possible outcome scenarios.

Additionally, the significant minority opposing the application of ILO Convention No. 169 adds to the uncertainty regarding international law's role in the survey process.

Keywords

legal survey in Finnmark – Karasjok case – property law – land rights – ILO Convention No. 169 – Sámi – Sámi rights

1 Introduction and the Topics of Research[1]

1.1 *The Karasjok Case and the Proceedings*

The Karasjok Supreme Court Case, referred to as HR-2024-982-S (Karasjok)[2] dealt with the question of whether the population of Karasjok collectively owns the outlying lands in the municipality, whether the ownership stays with the *Finnmark Estate*,[3] or whether it belongs to the Sámi population in the municipality.

The Case arises from the legal survey initiated under the Finnmark Act.[4] The survey, which examines the use rights, and the ownership of lands transferred to the Finnmark Estate when the Act came into force in 2006, was taken into the draft legislation following the consultations between the Sámi Parliament, the Finnmark County Council, and the Norwegian Parliamentary Committee of Justice.

The Finnmark Commission began its investigation of the Karasjok area in 2011. The investigation field of Karasjok is large, it covers a total of 5,209 square kilometers, accounting for 10.7 percent of the area County of Finnmark.[5] This contributed to the fact that the investigation took a long time.

In December 2019, the Commission, by a vote of three to two, concluded that the population of Karasjok collectively owned the previously unregistered and assumed Crown lands in the municipality.[6] This conclusion diverged

1 This article is based on Øyvind Ravna, «Karasjok-dommen og dens betydning for rettskartleggingen i Finnmark», *Lov og Rett*, vol. 63, 2024 pp. 587–602.

2 The Finnmark Estate (Finnmarkseiendommen) v. Karasjok Sámi association (Kárášjoga Sámiid Searvi), Karasjok Municipality (Karasjok kommune) et. al, and The Finnmark Estate (Finnmarkseiendommen) v. Reindeerhusbandry District 13, Reindeerhusbandry District 16 and Toralf Henriksen et. al., judgment 31 May 2024. The abbreviation HR-2024-982-S (Karasjok) is used in the Norwegian case law database *lovdata.no*. 'HR' indicates that it is a Supreme Court judgment, the numbers indicate the year and case number respectively, while 'S' stands for the Grand Chamber with 11 judges (as opposed to 'A' which stands for the Court in Chamber with five A judges). A translation of judgment is published on *lovdata.no*. It is used for quotes from the judgment in this text.

3 The Finnmark Estate, in Norwegian *Finnmarkseiendommen* abbreviated *FeFo,* is anchored in The Finnmark Act (2005). Act of 17 June 2005 no. 85 relating to legal relations and management of land and natural resources in Finnmark (Lov om rettsforhold og forvaltning av grunn og naturressurser i Finnmark) (The Finnmark Act) section 6 entitled "The legal position of Finnmarkseiendommen", which reads: "Finnmarkseiendommen (Finnmárkkuopmodat) [«the Finnmark Estate»] is an independent legal entity with its seat in Finnmark which shall administer the land and natural resources, etc. that it owns in compliance with the purpose and other provisions of this Act." Unofficial translation provided by Lovdata.no for information purposes only.

4 The Finnmark Act, *supra* note 3, section 5 and chapter 5.

5 FeFo, «Dette er Karasjok-saken», https://www.fefo.no/aktuelt-nyheter/dette-er-karasjok-saken.8629.aspx (30. September 2024). 'FeFo' is a contraction of the Norwegian and Northern Sámi abbreviations for the Finnmark Estate.

6 Finnmarkskommisjonen, Rapport felt 4 Karasjok (2019), volume 1 p. 218.

significantly from the five previous investigations,[7] as the Commission found that the investigated area was not owned by the Finnmark Estate. The result largely stems from the fact that the State of Norway's previous dispositions over the land in Karasjok were assessed differently than in earlier investigations.

The Finnmark Estate did not accept the conclusions, leading the population of Karasjok, who had been recognized as landowners, to sue the Estate to defend their property rights.[8] The Uncultivated Land Tribunal for Finnmark, by a vote of three to two, reached in April 2023 the same conclusion as the Finnmark Commission.

The Supreme Court of Norway heard the case in grand chamber in the late spring of 2024. By a vote of six to five, the court concluded that The Finnmark Estate retained its ownership (para. 211). At the same time, the majority clarified that it has not "considered whether individuals, rural societies, siidas,[9] or others in Karasjok have acquired ownership rights to 'their' areas through immemorial use"[10] (para. 205).

7 The Investigation Field 1 covered Stjernøya and Seiland in West Finnmark and was presented in March 2012. Field 1 was followed by the Nesseby municipality, Sørøya, the eastern Varanger Peninsula (the municipalities of Vadsø and Vardø), and the western Varanger Peninsula (the municipalities of Berlevåg and Båtsfjord), which were reported as fields 2, 3, 5, and 6, respectively, between 2013 and 2015. Common to all investigations, aside from the curious case of Gulgofjord (Rapport felt 6, Varanger Vest pp. 158–171, where the Commission concluded that the residents of Gulgofjord/ Vuođavuotna own an area 30 km^2 of uncultivated land when the village was abandoned in 1970), is that no collective rights beyond those already anchored in the Finnmark Act and the Act of 15 June 2007 No. 40 on Reindeer Husbandry (Lov om reindrift) were recognized.

8 The conclusions of the Finnmark Commission do not have legal force, cf. the Finnmark Act s. 32. Parties who want their rights to be legally confirmed must therefore file a lawsuit for the Uncultivated Land Tribunal for Finnmark, cf. the Finnmark Act s. 38. For the plaintiffs, see *supra* note 2.

9 *A siida* is a traditional Sámi community or organizational unit related to reindeer herding and land use in the Sámi areas in the Nordic Countries including Kola Peninsula of Russia. Today the function of the siida is mainly connected to group of families or individuals who collectively manage reindeer husbandry in the Sámi areas.

10 Immemorial usage (in Norwegian: *alders tids bruk*) is a customary set of legal rules that has evolved within the Norwegian peasant communities. According to the Supreme Court in *Norsk Retstidende* (NRt) 2001 p. 769 ff (Selbu) (at p. 789), the acquisition of rights through immemorial usage is based on three key elements: there must be a specific type of use, it must have been practiced over a long period of time, and it must have occurred in good faith. Citing S. Brækhus and A. Hærem, *Norsk Tingsrett* (Universitetsforlaget 1964), the Supreme Court notes that there are no strict criteria for determining whether these conditions have been fulfilled, and that the conditions are interdependent: "For instance, the requirement for duration may be somewhat shorter if the use has been more pronounced, and vice versa. Additionally, other factors may be considered, such as the nature and quality of the right, the burden it imposes on the servient property, and the necessity of the right for the claimant or claimants."

1.2 *The Topic of Research, the Sources and Limitations*

The topic of research in this article is to assess the significance of the judgment for the ongoing legal investigation in Finnmark. In particular, it concerns the majority's opinion quoted above, that although the population of Karasjok as a whole does not have acquired ownership rights, "individuals, rural societies, siidas, or others in Karasjok [may] have acquired ownership to 'their' areas through immemorial use".

In other words, the article will examine the scope available for the Finnmark Commission and the courts, following the Supreme court ruling, when determining use and ownership rights to the lands that were transferred from the State of Norway to the Finnmark Estate when the Act came into force. In this way, the article seeks to provide answers to the questions raised in the wake of the majority's position in para. 205 of the Karasjok ruling.

This will be done by examining the judgment in question, the Finnmark Act and its preparatory works, ILO Convention No. 169 on Indigenous and Tribal Peoples in Independent Countries,[11] as well as other relevant international law. The Reports of the Finnmark Commission, other case law, and legal literature will be used to the extent they are relevant.

Whether the judgment complies with Norway's international legal obligations is not a primarily topic of the article, although it will inevitably be discussed to some extent. The same applies to the judgment's impact on national property law. Reindeer husbandry rights are not the topic for the Karasjok Case and will thus not be given specific attention in the article.

In the following sections, Section 2 will address the background of the legal survey process and explain how the Finnmark Act incorporated provisions for such a survey, which enabled a process extending from the Finnmark Commission's start of investigation in the Karasjok field in 2011, to the Grand Chamber of the Supreme Court of Norway in 2024. Section 3 will provide an in-depth examination of the Karasjok judgment, analyzing relevant legal sources, the application of domestic property law and international law, and the Supreme Court's use of historical facts as evidence. Section 4 will offer an analysis of the Karasjok judgment, raising questions regarding the application of national property law, the role of legal history, and the interpretation of international law, such as ILO Convention No. 169. Finally, Section 5, which contains concluding remarks, will summarize the responses to the research questions presented in Section 1.2 and outline four potential scenarios for the future course of rights mapping in Finnmark.

11 C169 – Indigenous and Tribal Peoples Convention, 1989 (ILO 169), ratified by Norway 20 June 1990, into force 5 September 1991.

2 Background for the Legal Survey and thus the Karasjok Ruling

2.1 *The Legislative History, Including How the Requirements of Ilo 169 Were Met*

The legal survey in Finnmark began in 2008.[12] Through this process, the *Finnmark Commission* is tasked to investigate rights to land and waters in Finnmark, pursuant to Section 5, para. 3 of the Finnmark Act. A special court, *the Uncultivated Land Tribunal for Finnmark* (*hereinafter: Finnmark Land Tribunal*), is responsible for resolving disputes over rights that arise following the investigations, as stipulated in the same provision.

Both the Finnmark Act and the legal survey are outcomes of the development of Sámi rights and cultural identification developing after World War II. This development accelerated during the Alta case (1968–1982),[13] leading the Government of Nordli to appoint *Samerettsutvalget* (*the Sámi Rights Committee*) in the fall of 1980.[14]

The Sámi Rights committee proposed various measures to safeguard Sámi language, culture, and ways of life. Among these was the first bill for an Finnmark Act. Notably, it proposed to transfer the assumed Crown land in Finnmark to an independent ownership body named the *Finnmark grunnforvalting* (*Finnmark Land Management*). It also proposed a locally anchored governance system for the outlaying lands, established through *outlaying land boards* and possibilities to establish so-called *bygdebruksområder* (*village commons*). This was referred to as *kommuneordningen* (*the municipality arrangement*).[15]

12 Royal Decree of 14 March 2008 on the partial entry into force of the Finnmark Act and the appointment of the Finnmark Commission, cf. regulation of 16 March 2007 No. 277 concerning the Finnmark Commission and the Finnmark Land Tribunal (Kgl.res. 14. mars 2008 om delvis ikrafttreden av Finnmarksloven og oppnevning av Finnmarkskommisjonen, jf. forskrift 16. mars 2007 nr. 277 om Finnmarkskommisjonen og Utmarksdomstolen for Finnmark).

13 The Alta Case was a political conflict from around 1968 to 1982, in which Sámi interests and environmental organizations opposed a large-scale hydroelectric development in Inner Finnmark. The affair had a major impact on the development of Norwegian Sámi politics. The Alta affair was a political conflict from around 1968 to 1982, in which Sami interests and environmental concerns opposed a large-scale hydroelectric development in Inner Finnmark. The affair had a major impact on the development of Norwegian Sami politics. For more information, see Berg-Nordlie, Mikkel; Tvedt, Knut Are: *Alta-saken* i *Store norske leksikon* at snl.no. Reviewed 25 October 2024 fra https://snl.no/Alta-saken.

14 The Sámi Rights Committee was established by the Crown Prince Regent's decree on 10 October 1980, following a proposal from the Ministry of Justice, see NOU 1984: 18 *Om samenes rettsstilling* (*On the Legal Status of the Sámi*) p. 42. NOU is an abbreviation for Norway's public reports. It is usually a legislative preparatory document.

15 NOU 1997: 4 *Naturgrunnlaget for samisk kultur* (*The Natural Basis for Sámi Culture*), pp. 91–93.

In order to realize one of the main considerations in the Sámi Rights Committee's proposal, which was to strengthen the local population's ability to utilize outlaying land resources, the Committee found that it was not sufficient to merely recognize strong usage rights. The residents of the municipalities had to "through their own bodies, also be given influence over the use of their resources".[16] However, the legal survey was not part of the proposal.

While the Sámi Rights Committee considered a new governance system for the outlying lands in Finnmark and *Samerettsutvalgets rettsgruppe* (*the Sámi Rights Committee's law group*) considered who was the owner of the land,[17] Norway ratified ILO 169. This obligated Norway not only to recognize the Sámi ownership and control over the lands the Sámi traditionally occupied, cf. Article 14 (1), but also to take steps to survey and identify these areas, as stipulated in Article 14 (2) of the Convention.

Although the ratification was not based on proposals from the Sámi Rights Committee, the Committee found that the requirements of ILO 169 Article 14 (1) could be met through a kind of legal transact. Starting from the premise that Inner Finnmark was traditionally Sámi area while the coast was Norwegian, the Committee proposed that the Sámi, through representation on the board of the Finnmark Land Management, should participate in the in the ownership and governance of all the outlaying land areas of Finnmark in exchange for relinquishing ownership rights to Inner Finnmark.[18] A prerequisite for this was an establishment of the aforementioned municipality arrangement, where governance of the outlaying land areas were transferred to the local communities, and that the Sámi Parliament approved the procedure. This prerequisite was not taken further into the legislative process.

2.2 *A Legal Surveying Process Had to be Put in Place*

When the Bondevik Government presented its draft Finnmark Act in the spring of 2003, it carried forward the proposal to transfer the previously unregistered land to the Finnmark Estate.[19] It also had a governing structure roughly as the Sámi Rights Committee had proposed at the top level, where the

16 *Ibid.,* p. 222.

17 NOU 1993: 34 *Rett til og forvaltning av land og vann i Finnmark* (*Right to and management of land and water in Finnmark*).

18 NOU 1997: 4, *supra* note 15, p. 222, cf. p. 90, with reference to NOU1997: 5 *Urfolks landrettigheter etter folkerett og utenlandsk rett* (*Indigenous land rights under international and foreign law*), pp. 46–47.

19 Ot.prp. no. 53 (2002–2003) Om lov om rettsforhold og forvaltning av grunn og naturressurser i Finnmark Fylke (About the Act on Legal Relations and Management of Land and Natural Resources in Finnmark County) (The Finnmark Act) p. 7. 'Ot.prp.' is a preparatory works, a bill from the government to parliamentary committee.

Finnmark land Management was turned to *the Finnmark Estate*. However, the proposed municipality arrangement, which was a prerequisite for meeting the requirement of ILO 169, was not continued in the bill. The Sámi Parliament argued that the draft act was not fully in compliance with ILO Convention No. 169 and the UN Covenant on Civil and Political Rights.[20] Consequently, the professors Hans Petter Graver and Geir Ulfstein were appointed to assess the draft. They concluded that it did not meet the requirements of ILO 169 in key areas.[21]

After consultations with the Sámi Parliament and the Finnmark County Council, the majority of the Standing Committee of Justice concluded that legal survey had to be included as a central element in the Finnmark Act. This would be achieved by "establishing a surveying commission [the Finnmark Commission] and a special tribunal [the Finnmark Land Tribunal] to identify existing rights to land and water in Finnmark."[22] This became a part of the Act, as stated in Section 5, para. 3, and Chapter 5 of the Finnmark Act, replacing the Sámi Rights Committee's proposed municipality arrangement and locally appointed outlaying land boards.[23]

In the first five areas investigated by the Finnmark Commission, it concluded that the local population had usage rights with an independent legal basis. Although the preparatory works stated that "acquired usage rights and ownership rights will [...] fall outside the governance system envisioned by the law,"[24] the Commission concluded that governance rested with the Finnmark Estate. This was confirmed by the Supreme Court in HR-2018-456-P (Nesseby). In the Karasjok investigation, as we have seen, the outcome of the Commission's investigation quite different.

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20 Innst. O. no. 80 (2004–2005) Om lov om rettsforhold og forvaltning av grunn og naturressurser i Finnmark fylke (Finnmarksloven) p. 14. 'Innst. O.' is a preparatory works, a bill from the parliamentary committee to the Parliament.

21 Hans Petter Graver and Geir Ulfstein, *Folkerettslig vurdering av forslaget til ny Finnmarkslov* (2003), published at regjeringen.no.

22 Innst. O. no. 80 (2004–2005), *supra* note 20, p. 17.

23 Compare NOU 1997: 4, *supra* note *15*, chapter 5 and Ot.prp. no. 53 (2002–2003) *supra* note *19*, pp. 98–99. The Sámi Parliament perceived it as the local governance should be clarified through the legal survey, cf. Sven-Roald Nystø, former President of the Sámi Parliament, communication during witness taking before the Supreme Court, case HR-2018-456-P (Nesseby), Vadsø, 10 October 2017, reproduced from Ø. Ravna, *Same- og reindriftsrett,* 2nd ed. (Cappelen Damm 2024) p. 687.

24 Ot.prp. no. 53 (2002–2003), *supra* note *19*, p. 122. The five first areas investegated I published in Finnmarkskommisjonen (2012, 2013a, 2013b, 2014 and 2015).

3 The Supreme Court's Judgment in the Karasjok Case

3.1 *Background and Ruling*

The Finnmark Estate did not accept the conclusions of the Finnmark Commission in its Karasjok Report. As mentioned in section in section 1.1, the population of Karasjok was compelled to initiate legal proceedings to protect the rights identified by the Finnmark Commission. Representing the local population, the Municipality of Karasjok and *Kárášjoga Sámiid Searvi*, among others, filed a lawsuit against the Finnmark Estate, claiming ownership over the investigated area. Additionally, a group of individuals referred to as the "Guttorm Group," along with Reindeer Husbandry Districts 13 and 16, filed a lawsuit asserting that the Sámi population of the municipality only, held ownership of these areas.

The Finnmark Land Tribunal joined the two lawsuits for joint processing and, by a three to two vote, reached the same conclusion as the Finnmark Commission.[25]

On 8 May 2023, the Board of the Finnmark Estate decided, by a two-vote margin, to appeal the Tribunal's judgment to the Supreme Court.[26] The Reindeer Husbandry Districts 13 and 16 and the individuals behind the Guttorm Group also appealed, focusing on both the application of the law and the evaluation of the evidence.

On 28 September 2023, the Appeal Committee of the Supreme Court approved the appeals. On the same day, the Chief Justice decided that the case should be heard in Grand Chamber.[27] Also, the proceedings in the Supreme Court were limited not to include the subsidiary claim by Karasjok Municipality, Kárášjoga Sámiid Searvi and others regarding collective usage rights with the authority to govern natural resources in the disputed area, which was presented for the Land Tribunal case in 2022.[28] The limitations also

25 The Finnmark Estate (Finnmarkseiendommen) v. Karasjok Sámi association (Kárášjoga Sámiid Searvi), Karasjok Municipality (Karasjok kommune) et. al. UTMA-2021-86077-5, and The Finnmark Estate (Finnmarkseiendommen) v. Reindeerhusbandry District 13, Reindeerhusbandry District 16 and Toralf Henriksen et. al. UTMA-2021-86497-2, judgment 21 April 2023.

26 Finnmarkseiendommen, case 32/2023 Appeal to the Supreme Court, the Karasjok Case, case submission 2 May 2023, meeting date 8 May 2023.

27 HR-2024-982-S (Karasjok) para. 18, cf. The Act of the Courts (1915). Act 12 August no. 5 about the courts (lov om domstolene) s. 5 para. 4. The cases were also set for joint consideration in the Supreme Court.

28 HR-2024-982-S (Karasjok) para. 21, cf. jf. The Dispute Act (2005)". Act of 17 June 2005 no. 90 relating to mediation and procedure in civil disputes (lov om mekling og rettergang i sivile tvister), s. 30–14 para. 3.

included secondary claims concerning ownership and usage rights on areas, which were raised for the Land Tribunal.

A majority of six judges found that the outlaying land areas in Karasjok municipality are not collectively owned by the population but rather by The Finnmark Estate (para. 211, cf. 208). A minority of five judges assumed that the local population in Karasjok municipality has collective ownership of the disputed outlaying land areas.

3.2 *The Significance of ILO-Convention 169*

The proceeding judge, Judge Falch, representing the majority, begun by referencing that, according to Article 108 of the Constitution, the state authorities are obligated to ensure that the Sámi people, as indigenous people, can safeguard and develop their language, culture, and way of life, and that this is reflected in Section 1 of the Finnmark Act. Following this, the majority dedicates considerable attention to the significance of international law, particularly ILO Convention No. 169, in resolving the case. The question, as stated, is not the significance of ILO 169 in applying the Finnmark Act "but its significance when applying ordinary *property law*" (para. 88, emphasized by the proceeding judge). With reference to HR-2016-2030-A (Stjernøya), which held that rights could not derive rights directly from the ILO 169, whereas the majority emphasizes that "[t]he Convention is nonetheless important through the so-called *principle of presumption*" (para. 88, emphasized by the proceeding judge).[29] In this way, the majority indicates that Section 3, first sentence, of the Finnmark Act, which reads "[t]he Act shall apply with the limitations that follow from ILO Convention No. 169", does not have independent judicial significance for the legal survey. Furthermore, the majority does not find it necessary to examine the implications of the extraordinary legislative process in which the Sámi Parliament, the Finnmark County Council, and the Parliamentary Standing Committee on Justice were involved in forming the Finnmark Act.[30]

29 *The presumption principle* is the most important modification of the traditional doctrine, which holds that Norwegian law takes precedence over non-incorporated international law. The presumption principle states that Norwegian law is presumed to be in accordance with international law, especially in cases where there are multiple interpretive options for the Norwegian legal rule. The purpose of the principle is to ensure that courts and other authorities, when interpreting Norwegian legal rules, aim to avoid interpretative outcomes that result in conflicts with international legal norms, see Morten Ruud and Geir Ulfstein, *Innføring i folkerett,* 6. utg. (Universitetsforlaget 2018) p. 70.

30 Referred to by the majority of Parliamentary Standing Committee on Justice as "a constitutional innovation", cf. Inst. O. No. 80 (2004–2005) *supra* note 20, p. 15. Unlike the majority, the minority in HR-2024-982-S spends considerable space both on the process in front of the bill, the bill itself and its treatment in the Parliament, see para. 220–243.

The majority concludes that the scope of Article 14 (1) of ILO 169 with respect to Finnmark was not definitively clarified in the preparatory works of the Act. It is noted that, although the legislative proposal acknowledges that certain areas in Inner Finnmark fall within the first option of Article 14 (1), where indigenous peoples are entitled to have their ownership rights recognized, this acknowledgment does not impose limitations on how the Finnmark Commission and the courts should apply the Convention. Thus, it is left to these bodies to clarify the content and scope of the Convention to the extent necessary to resolve claims of rights.

The majority argues that the first sentence of ILO 169 Article 14 (1) raises three closely related questions: 1) whether the peoples concerned "traditionally occupy" the specific territory, 2) what it means that the peoples concerned are entitled to have 'rights of ownership and possession' recognised, and 3) who is the rights-holder referred to as "the peoples concerned" (para. 97).

The majority then points out that ILO 169 must be interpreted in accordance with Article 31 of the Vienna Convention on the Law of Treaties,[31] meaning its content should be determined on "the ordinary meaning to be given to the terms therein, in their context and in the light of its object and purpose" (para. 98). Instead of analyzing the text or the purpose of the convention, the majority emphasizes that the requirement in Article 14 (1) first sentence; that the rights shall "be recognized" by the states, establish a connection to the particular state's national property law, as well as the concepts of rights and conditions of acquisition the states otherwise operate with: "Therefore, the provision must be interpreted so as to allow adaptations in accordance with the national law of the individual State" (para. 99), something the majority also finds support for in ILO 169 Article 34 on flexible interpretation: "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" (para. 101).

Further, reference is made to the Sámi Rights Commission, which stated in NOU 2007:13, p. 233,[32] that "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

31 Vienna Convention on the Law of Treaties, Vienna on 23 May 1969. In force 27 January 1980. United Nations, Treaty Series, vol. 1155, p. 331. The convention has not been ratified by Norway but is generally regarded as customary international law.

32 NOU 2007: 13 *Den nye sameretten* (The New Sámi Law) is the Sámi Rights Committee's report for the Sámi areas south of Finnmark, and which contains several legislative proposals.

regard must be had to Sami legal opinions and customs, etc.)." On this basis, the preceding judge concluded that not only does the convention allow for national adaptation, but also that national property law is decisive in the survey of land rights ():

> [i]f 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.[33]

Thus, the majority does not clarify more than the obvious: if Norwegian property law leads to ownership, the convention does not stand in the way. However, the last sentence of the quote suggests an analyzes of the significance of ILO 169. This analyzes is limited to a brief paragraph (203), where the proceeding judge reiterates that national property law is decisive, and that Article 14 (1) cannot repair a deficiency fulfillment of conditions in national law.

When the majority addresses the last question posed above, who should be recognized as the rights-holder for any acquisition under Article 14 (1) it has not yet answered the first two questions, i.e., what the condition is for indigenous peoples to be said to traditionally occupy an area, and what it means that the indigenous people in question are entitled to have their ownership and control over this area recognized.

3.3 *Norwegian Property Law is Decisive*

Referring to Norwegian case law and Norwegian Public Investigations,[34] the majority concludes that the rights-holder should be determined "based on who has exercised the use from which rights are derived." This means 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" (para. 108). *Thus, ILO 169 Article 14 (1) is adapted to Norwegian property law*, rather than Norwegian law being interpreted "as far as possible [...] in accordance with international law," as required by the Norwegian presumption principle of international law (as the proceeding judge stated [in para. 88] that the principle should be applied).

Following this, under the Property Law Assessment, the majority finds that the claims of ownership acquisition cannot succeed because "the characteristic

33 HR 2024-982-S para. 104, emphasis added by the proceeding judge.

34 See *supra* note 32.

of *collective* use as owner over the *entire* disputed area along with associated legal opinions have […] been weak since the decline of the hunting siida culture" (para. 188, emphasized by the proceeding judge). The fact that the individual villages and siidas "right up to our time" have practically utilized "all available resources, and until after the second world war, this use has occurred largely undisturbed" (para. 185) is therefore not sufficient to recognize ownership rights for the local population. Instead, it contributes to reinforcing the ownership of the Finnmark Estate.

Despite its clear wording and the emphasis international law methods place on the wording and motive, the ILO 169 is not interpreted and understood according to its literal wording that "[t]he rights of ownership and possession of the peoples concerned over the lands which they traditionally occupy shall be recognised." Therefore, it does not lead to a different result than that of Norwegian property law. As the majority interprets the convention, Article 14 (1) does not require the recognition of ownership rights for anyone other than those who have specifically exercised control as owners in the specific areas (para. 203 and 204). Thus, according to the majority, the requirements for the acquisition of rights under the ILO 169 and under Norwegian property law align. The majority therefore sees no reason to further assess the scope of the presumption principle (para. 206).

3.4 *Evaluation of Evidence and Application of Law*

The evaluation of evidence relates to the assessment of historical conditions dating far back in time. The majority draws conclusions from this history in a manner that was dominant in the mid-1900s. Bailiff Knag's proclamation from 1693, in which he referred to "His Majesty's land and property" and "His Majesty's commons and forests in Alta", is used as evidence of the King's ownership rights, without considering if Bailiff Knag might refer to the King's prerogative or sovereignty rights (*dominium eminens*). Similarly, no consideration is given to the weight that should be placed on an isolated statement from one of the King's officials during the era of Danish absolutism.

Referring to Sverre Tønnesen,[35] the proceeding judge assumes 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" (para. 137, emphasized by the proceeding judge). In other words, the areas that came under Danish-Norwegian sovereignty were immediately turned

35 S. Tønnesen, *Retten til jorden i Finnmark: Rettsreglene om den såkalte «statens umatrikulerte grunn», en undersøkelse med særlig sikt på samenes rettigheter* (Universitetsforlaget 1972, 2nd ed. 1979) p. 122.

into the King's property, which he then could transfer to people in Finnmark through what the Supreme Court refers to as *"Jordutvisningsresolusjonen"* (*"the Allotment Resolution"*) of 1775.[36] The majority of the Supreme Court must, therefore, have considered the area comprising the Karasjok field as *terra nullius* when it was transferred from Swedish to Danish-Norwegian jurisdiction in 1751.

In the majority's view, it is "not in doubt that the resolution was based on – [and] assumed – that the King was the owner of all the land in Finnmark that has not been sold or given to others. This is most clearly shown by the fact that the King could allocate places for property and that the properties reverted to the King upon non-use" (para. 145). Instead of dismissing all doubt about whether the King was a landowner, it could have been helpful to ask whether the right of reversion and land allocations were simply a result of the absolute monarch's unrestricted control and the corresponding weak protection of property rights in the 18th century. Even though the resolution's title is "Royal Resolution regarding the division of land in Finnmark and allocation of homesteads [...]" and the population did not have to pay any purchase price for the land plots, the proceeding judge does not see any reason to explain that the reason was that the resolution only facilitated the division of common land belonging to the local communities (para. 145). Here, the proceeding judge, who otherwise extensively relies on Tønnesen as his main source for the history, chooses to depart from Tønnesen, who explicitly refers to the division of land as "a gigantic reallocation."[37]

According to the majority, the population of what was to become Karasjok municipality, did neither acquire collective ownership rights through the rules of immemorial usage during the following century. As mentioned, this was based on the absence of common use over the disputed area, and the assertion

36 The name of the resolution is "Kongelig Resolution 8. juni 1775 ang. Jorddelingen i Finmarken samt Bopladses Udvisning og Skyldlægning sammesteds", which can be translated as "Royal Resolution 8 June 1775 concerning the division of the land in Finmarken as well as distribution and valuation of plots in the same place". Up to recently the resolution was referred to as "jordutvisningsresolusjonen" ("the Land Allotment Resolution" or "the Land Grant resolution"), a term that is factually not correct or gives a correct account of what the resolution contributed to. The majority of the Supreme Court, unlike the minority, still uses this term.

37 Tønnesen, *supra* note 35, p. 146. It is correct that the resolution did not "just" facilitate for relocation of common lands, as it also allowed for the surveying and issuing of deeds on existing properties. See Ø. Ravna, 'Jordinndelingene i Finnmark: var de Norges eldste offentlige utskiftinger?', 114:1–2 *Kart og Plan* (2021) pp. 74–100 https://doi.org/10.18261/issn.2535-6003-2021-01-02-06. S. Tønnesen is also known for being the first, in the referred thesis, to question the doctrine of the state's original property rights in Finnmark.

that groups like village communities and siidas within the area could not collectively acquire ownership rights.

The majority concludes that the state's activities in the 20th century were too extensive for the population to acquire any rights. Even though the dispositions of the state were significantly less extensive in the 19th century, the population's use could not either then lead to acquisition of property rights. The proceeding judge summarizes this as follows (para. 198, emphasized by the proceeding judge):

> 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*.

The majority, however, does not reject the possibility that property rights or usage rights with governance rights (as in the subsidiary claim by Kárášjoga Sámiid Searvi et al.) may exist. The proceeding judge refers here to the fact that a key aspect of the population's usage is that it has been based on use by the distinct village or reindeer husbandry siida. The old Ávjovárri siida covered approximately the whole disputed area. But this kind of organizing finished by the end of the 18th century. As a result of changes in the livelihood, there appeared a more divided use of land:

> 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.[38]

38 HR-2024-982-S (Karasjok) para. 186. The last sentence in the quote is misleading as no reindeer herding siida has made a claim for property rights for "'their' respective parts" of the disputed area. However, 30 reindeer herding siida have made a claim for clarification of grazing boundaries and reindeer herding rights, see the Finnmarkskommisjonen, Rapport Felt 4 Karasjok (2019), volume 1, pp. 59–60. Of these, 27 have been considered on the merits, Rapport Felt 4 Karasjok. Internal legal relations in reindeer herding (2022), volume 1, pp. 84–87. Five village communities have raised collective property claims. These are *Valjok Biras*, *Iešjohtsearvi og Iešjávri omegn utmarkslag*, *Dalabogi Guovlu, Beskenjárgilisearvi* and *Anárjogaleagi biras*, see Finnmarkskommisjonen, Rapport Felt 4 Karasjok (2019), volume 1, pp. 47–59.

At the end of the assessment of whether collective property rights had been acquired, the proceeding judge, as already mentioned, found it necessary to clarify that he has not taken a position on whether individuals, village communities, siidas, or others in Karasjok have acquired ownership rights to "their" areas through immemorial usage. These subsidiary claims are not part of the case before the Supreme Court (para. 205).

The application of law and the ruling are based solely on Norwegian property law, which the majority finds to be consistent with Norway's international legal obligations (see section 3.2 above). However, the majority does not clarify how it has taken Sámi legal opinions into account. Although the majority emphasizes that Sámi customs and legal opinions should be considered (para. 67), there is little evidence of such considerations. At the same time, the legal opinion of the local population in Karasjok, which believes it collectively owns its traditional use areas, is not emphasized. This is not done despite the fact, according to both the Finnmark Commission, the Land Tribunal, and a unanimous Supreme Court, that the population has exercised extensive and relatively undisturbed use of the entire area during immemorial times.

The majority's conclusion, therefore, is that neither the local population in Karasjok nor its Sámi population in the municipality, have acquired collective ownership rights to the disputed area (para. 208). As for the subsidiary claims brought before the Finnmark Land Tribunal, the majority return these for handling in the Land Tribunal (para. 209). The Land Tribunal's previous judgment was then overturned, cf. the Dispute Act s. 30–14 para. 2.

3.5 *The Opinion of the Minority of the Supreme Court*

The minority of five judges arrived at the same conclusion as the majority of the Finnmark Commission and the Finnmark Land Tribunal, concluding that property rights of the local people was established through immemorial usage (para. 318). The reason the minority reached this conclusion is partly because they draw other conclusions from the legal history than the majority. The preceding judge for the minority, explains that the year of 1751 was by no means a "starting point" for the population of Karasjok. For the State, this was different; it could not establish any property rights based on developments before the area became Norwegian territory in 1751: "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" (para. 287).

The minority is also critical of how the majority interprets the flexibility norm in ILO 169 Article 34, stating 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'" (para. 268). Furthermore, the preceding judge of the minority states:

> 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.[39]

In contrast to the majority, the minority found that the Sámi population's use of the disputed area fulfills the criterion of "traditionally occupy" in ILO 169 Article 14 (1) first sentence. The minority further argue that this is in line with what the Ministry of Justice expressed in the bill for the Finnmark Act. The preceding judge for the minority holds that under international law, the population is entitled to have their property rights to this area recognized:

> 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.[40]

4 The Significance of the Karasjok Case

4.1 *Norwegian Property Law Pivotal for the Legal Survey Process?*

The Supreme Court ruling HR-2024-982-S (Karasjok), will as a Grand Chamber decision, have significantly influence future legal survey in Finnmark, and likely also in other parts of Sápmi where the "rights to lands and waters" may be contested.

The Karasjok ruling establishes, with immediate legal effect, that neither the population as a whole nor the Sámi in the municipality of Karasjok, collectively own the previously unregistered land in the municipality. In this regard, the Finnmark Estate won the specific dispute that the Supreme Court ruled on.

However, this is only a partial victory. The preceding judge clarifies that the majority has not taken a position on "whether individuals, rural societies,

39 HR-2024-982-S (Karasjok) para. 268.
40 Ibid., para 319.

siidas, or others in Karasjok have acquired ownership to 'their' areas through immemorial use" (para. 205). He also notes that the subsidiary claims brought before the Land Tribunal should be addressed by that court (para. 209). As a result of this, both the Finnmark Estate and the population in Karasjok have to prepare for new rounds in court. In these proceedings, it cannot be ruled out that rights of governance over natural resources or ownership of specific areas within the contested area, might be uncovered.

The most interesting aspect of the ruling is thus not what has been immediately and conclusively decided, but rather what implications the ruling will have for the remaining legal survey in Finnmark, including the renewed processes that will be take place for the field of Karasjok.

The Karasjok ruling indicates that Norwegian property law will be the central legal basis for survey rights in Finnmark, including the Sámi areas. Still Sámi customs and legal perceptions must also be taken into account. The majority specifically emphasizes that the acquisition of rights must be determined based on who has exercised the rights in question (para. 108, repeated in 204), making village communities, siidas, and similar groups as potential holders of such rights.

There will likely not be much disagreement that Norwegian property law should play a central role in future legal survey in Finnmark. However, the requirement of a *prominent feature of collective use over* the entire disputed area by the group claiming ownership rights, which the majority heavily emphasizes (para.189 and 198), although not raised by the parties or otherwise explained, will likely remain open to future discussions. For it is difficult to find legal sources to support such an application of law.

4.2 *An Historical Understanding Based on a Kind of the Terra Nullius Doctrine*

Moreover, there is reason to question whether property law principles regarding long-standing use and immemorial usage can still be applied based on a historical understanding that the King of Denmark immediately became the owner of the Karasjok area – and other similar areas – when they came under his sovereignty. There is also reason to question whether the narrative that the so called "Land Allotment Resolution"[41] was based on the idea that "the King owned all the land in Finnmark that was not sold or given to others" (para. 145) still can hold up as evidence. It is difficult to see how the courts can continue to rely on a historical understanding developed during the period of Norwegianization, based on the *terra nullius doctrine*, while ignoring new

41 See *supra* note 36.

evidence and modern understandings of legal history. Likewise, the Supreme Court cannot judge historical facts – even though, in this case, they go far back in time.

Today, it is well-documented that the King in the 18th and 19th centuries did not control the land in Finnmark as a landowner, but rather through the sovereign's right of dominion, based on royal privilege.[42] It is notable that all instances of land allocation in Karasjok in 1817 concerned "formalizing established use,"[43] and not allocation the King's property. The courts will also have to take this into account.

4.3 *Uncertainty About the Significance of International Law and Sámi Customs*

Although the Karasjok Case was decided in Grand Chamber, and the majority dedicated substantial attention to ILO Convention No. 169 (para. 85–109 and 203–206), the ruling adds to the uncertainty rather than reinforcing clarity regarding the Supreme Court's previous interpretations of the Convention's scope. It is by the narrowest possible majority that the Supreme Court concludes that Article 14 (1) cannot contribute to ownership rights when the domestic legal conditions for acquiring ownership through ancient usage are not met; even when the conditions of Article 14 (1) are fulfilled.

As shown in section 3.2 above, the scope of the ILO 169 is not applied and interpreted according to the General rules of interpretation given in the Vienna Convention on the Law of Treaties Article 31. The lack of a methodological approach contributes to uncertainty about the interpretation. As *Geir Ulfstein* writes; it cannot simply be assumed that Norwegian law complies with ILO 169,[44] and thus, as the majority argues, that there is no need to "further consider the scope of the presumption principle" (para. 206). Ulfstein also notes that the majority relies on the Sámi Rights Commission's interpretation of ILO 169 article 14 (1) rather than examining the content of the provision themselves. As also shown in section 3.2, the majority interpretation implies that ILO 169 Article 14 (1) is adapted to Norwegian property law, rather than Norwegian law being interpreted "as far as accordance with international law," as required by the presumption principle of international law. Thus, the Supreme Court also challenges Article 27 of the Vienna Convention, which stipulates that "[a] party

42 Finnmarkskommisjonen, Rapport felt 4 Karasjok (2019, volume 1, p. 199. cf. Ø. Ravna, 'Nye perspektiver på retten til jorda i Finnmark', 102:1–2, *Historisk tidsskrift* (2023) pp. 44–60. https://doi.org/10.18261/ht.102.1.4.

43 Finnmarkskommisjonen, Rapport felt 4 Karasjok (2019), volume 1, p. 164.

44 G. Ulfstein. 'Uklart om folkeretten i Karasjokdommen', *Rett24* (online), 18 June 2024.

may not invoke the provisions of its internal law as justification for its failure to perform a treaty." In general, Article 27 implies that states must adapt their national legislation to the treaty obligations, as the presumption principles say, too, and not vice versa.

It is important to note that the large minority of the court did not support the majority's position on the significance of ILO 169. Instead, as shown in section 3.5, the minority finds that if national rules "applied on Sami premises,[45] 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" (para. 319). In the same paragraph, the minority argues that "the Sámi population's use of the disputed area meets the criteria of 'traditionally occupy' in ILO 169 Article 14 (1), first sentence." Consequently, it is entitled to have ownership of this area recognized. As also shown in section 3.5, the disagreement primarily concerns the interpretation of the flexibility provision in ILO 169 Article 34.

In the future, it is likely that the minority's view may gain more impact. This is not primarily due to the significant dissent, but because Norwegian case law does not have precedent for the interpretation of international conventions. Although not directly relevant, it will also become politically pressing for Norway to answer why it ratified ILO 169 if it is not to be applied in the practical legal survey of traditional Sámi areas. The same question can be raised about the inclusion of the convention in Section 3, first sentence of the Finnmark Act.

Regarding Sámi customary law, it has not been given much space in the application of law. As noted, the majority states that indigenous customs with associated legal opinions are respected by determining the subject of the rights based on who has exercised the right-establishing use (para. 108). This means that if Norwegian property law is correctly applied, Sámi law is also safeguarded.

45 The minority illustrates "applied on Sámi premises" by referring to NRt. 2001 p. 1229 (Svartskogen) on p. 1252, where the preceding judge states: "Had a similar use been exercised by persons with a different background, it would have reflected that they believed they owned the area. The Sámi, who have constituted the dominant part of the population of Manndalen, on the other hand, with their collective resource exploitation, do not have the same tradition of thinking about property rights […]. If the fact that there are most examples of them having spoken about the right of use prevented the acquisition of rights through age-old use, their exercise of control, which in content corresponds to the exercise of property rights, would be placed in a disadvantageous special position in relation to the rest of the population."

> 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 (para. 108).

There is reason to quest if this is position is accurate.

The ruling's reliance on the more than 100-year-old Ullensvang judgment, where two municipalities in a completely different part of the country were not granted property rights (para. 202), does not either point to an emphasis on Sámi customary law. Would not a greater emphasis on the claims put forward by the Sámi population in Karasjok, based on *their* use, opinions and traditions, have been a recognition of Sámi customary law and its collective nature? For even though various groups have used different parts of Karasjok's outlying lands, as noted in section 3.4, both the Finnmark Commission, the Finnmark Land Tribunal, and a unanimous Supreme Court have affirmed that the Sámi have collectively exercised extensive and relatively uninterrupted use of the entire municipality's outlying lands up to present days.

5 Concluding Remarks on the Karasjok Case and the Legal Survey

The Karasjok Supreme Court Case has clarified that neither the population of Karasjok as a whole nor the Sámi people in the municipality, have ownership rights to the previously unregistered and assumed state land. It also demonstrates that local village groups or associations, or Sámi siidas, which have utilized all available resources relatively undisturbed, cannot easily together acquire collective ownership rights based on the respective groups' use. Without challenging this position, that collective acquisition requires collective use over the entire disputed area, the ruling implies that it might be challenging to advance such collective ownership claims in the future.

The majority's assessment of the historical evidence shows that the "doctrine of the state's original ownership" is more resilient than one would suppose. It means that the State's alleged dispositions as assumed landlord will continue to be a factor to be considered under the legal survey. At the same time, it is expected that the courts of law will take into account more recent research in legal history.

The majority places significant weight on Norwegian property law established through the culture of the farming communities. In answering the question raised in the introduction, it can be said that Norwegian property law will likely have a more prominent role in the future legal survey by Commission

and in future court proceedings. Several scenarios can be envisioned for how this will play out: A likely scenario is that The Finnmark Estate will continue as both owner and manager of the previously unregistered land.

However, since recognition of property rights is a result of exercised use, there may still be property or governance rights on other hands than the Finnmark Estate. Coupled with international law, and that Sámi customs should be given weight in the legal application, and that those who are engaged in the specific usage are able to document it, this opens other scenarios.

One such scenario, considering the proceeding judge's clarification that no determination has been made regarding whether individuals, rural societies, siidas, or others in Karasjok have acquired ownership of "their" areas through immemorial usage (para. 205), indicate possibilities for local governance and control of land and renewable natural resources, while the Estate remains the landowner. This could mean a step towards a governance model closer to the municipal arrangement proposed by the Sámi Rights Committee in NOU 1997: 4, but which was not included in the Finnmark Act. This could also be a step closer to the arrangement in the state commons in southern Norway, where locally appointed mountain boards govern renewable resources.[46]

A third scenario is that the courts, or the Finnmark Estate, recognize that collective groups or individuals own parts of the outlying land in Finnmark. This could lead to a local governance system like the one established in Svartskogen through *Čáhput Siida*, where the local population are both landowners and managers.[47] It is also possible that the Estate, with its established governance apparatus, will continue as the manager under agreements with landowners who prove their ownership through the legal survey process.

In any case, the Karasjok ruling signals a need for more detailed survey of usage and legal opinions, with more site inspections, collection of evidence, and witness testimonies. Such a detailing also means that court decisions or agreements on property and usage rights must be marked physically and surveyed, and not just appearing as dotted lines on a map or by verbal descriptions. This will require a significant increase in resources and time.

46 In Southern Norway, state commons cover approximately an area half the size of the area of Finnmark Estate, which is governed by as many as 93 mountain boards, see Ø. Ravna and Eriksen, G. K., *Allmenningsretten i Norge – ulike regler for like arealer* (Cappelen Damm 2023), pp. 21–22.

47 The *Čáhput Siida* and its governance system are a result of the Svartskogen Supreme Court Case, published in NRt. 2001 p. 1229. Although the outcome of the Karasjok Case is quite different of the Svartskogen Case, the Karasjok ruling does not overturn the Svartskog ruling. For that, the facts of the cases are too different. Furthermore, the issue of "lack of joint control" was not a topic in the Svartskog Case, which also involved only one village, tied to a much smaller and more concentrated outlying area than in the Karasjok ruling.

Another consequence of the ruling is that the surveyed areas in Finnmark should not follow municipal boundaries but rather natural, cohesive areas of use.

The ruling can be seen as a signal that, in the long term, local people in Finnmark may be allowed to manage their nearby outlying areas – similar to how people connected to the state commons in southern Norway can today, or as the Sámi Rights Committee proposed in NOU 1997: 4. For the Sámi community, however, it is likely that the dissenting opinion is the bright spot. Not only because the minority is substantial and because it assesses the consequences of both the historical facts and the significance of ILO Convention No. 169 in a more nuanced way than the majority, but also because history in Sámi law cases shows that dissent can point towards what might become the law in the future.[48]

As of this writing, the Karasjok case is back in the Finnmark Land Tribunal.[49] In this context, it is important to keep in mind that the narrow majority (6 to 5) means that the Grand Chamber ruling does not have the precedential that such a ruling generally will have. Regarding ILO 169, Norwegian case law does not create a precedent, which means it does not prevent a new assessment of the convention's significance.

The ruling also does not entirely close the door for larger communities than villages and siidas to collectively advance claims during legal survey – based on the respective villages and siidas' usage. However, the threshold for succeeding with such claims will likely be quite high. On the other hand, for a rural society or siida that can document and connect its historical usage to a specific area, it must be assumed that it will be much easier to succeed with claims for governance or ownership rights.

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48 It can be pointed out that Justice Wold's dissent in NRt. 1957 p. 860 foreshadowed the legal opinions that were to be expressed in NRt. 1968 p. 394 (Brekken) and NRt. 1968 p. 429 (Altevann), and that Judge Matningsdal's dissent in NRt. 1997 p. 1608 (Aursunden) foreshadowed what was to be expressed in NRt. 2001 p. 769 (Selbu).

49 Initially, the focus will be on the obvious subsidiary claim of the Karasjok population, namely whether they have management rights to the land they were not granted property rights over.

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