



KOMMISJONEN FOR  
GJENOPPTAKELSE AV STRAFFESAKER

**THE NORWEGIAN CRIMINAL CASES REVIEW COMMISSION**

The Norwegian Criminal Cases Review Commission is an independent body which is responsible for deciding whether convicted persons should have their cases retried in a different court.

## THE NORWEGIAN CRIMINAL CASES REVIEW COMMISSION

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## **Annual Report 2012 of the Norwegian Criminal Cases Review Commission**

The Norwegian Criminal Cases Review Commission (the Commission) is an independent body which is responsible for deciding whether convicted persons should have their cases retried in a different court. The Commission's activities are regulated by chapter 27 of the Norwegian Criminal Procedure Act.

### **The composition of the Norwegian Criminal Cases Review Commission**

The Commission consists of five permanent members and three alternate members. The chair, vice chair, one of the other members and two of the alternate members must have law degrees. The King in Council appoints the chair for a period of seven years and the members for a period of three years. The Commission's members may be reappointed once for another three-year period.

As at 31 December 2012, the Commission was composed of the following persons:

Chair: Helen Sæter

Vice Chair: Gunnar K. Hagen, lawyer, Lillehammer

Members: Birger Arthur Stedal, Gulating Court of Appeal judge  
Ingrid Bergslid Salvesen, senior advisor at the University of Tromsø  
Bjørn Rishovd Rund, professor at the University of Oslo and director of research at Vestre Viken Health Authority

Alternate members: Benedict de Vibe, lawyer in Oslo  
Trine Løland Gundersen, lawyer with the Municipal Lawyer's Office in Kristiansand  
Ambreen Pervez, project coordinator, Oslo University Hospital

### **The Norwegian Criminal Cases Review Commission's secretariat**

The Commission's chair is employed full-time as the head of the secretariat. At the year-end, the secretariat otherwise had 10 employees - six investigating officers with a legal background and two investigating officers with a police background as well as an office manager and a secretary.

The investigating officers have experience of working for law firms, the courts, the Ministry of Justice and Public Security, the Parliamentary Ombudsman, the police, the Institute of Forensic Medicine and the tax authorities.

The Commission's secretariat moved to new premises in Tordenskioldsgate 6 (T6) in March 2012.

## **Emergency preparedness**

The Commission's secretariat was previously located in Teatergata 5 (T5), in the same building as the Norwegian Civil Affairs Authority, the Secretariat for the Mediation Services and the Mediation Service in Oslo-Akershus. These organisations had an emergency preparedness plan for T5. After the move, a new body of plans was prepared, this time for T6. Thus a new emergency-preparedness plan, safety instructions in the case of any threat or danger of violence, etc, and a notification list were prepared in May 2012. These plans were reviewed again by the secretariat in November 2012.

The commission has also prepared security rules governing the use of ICT services, a plan for a phone number that next of kin can call, relevant HSE guidelines and a plan for fire-protection measures. Regular fire practices have been held.

A risk and vulnerability analysis has been prepared.

These plans are followed up in accordance with the Commission's annual performance plan.

## **ICT projects**

The Commission had no major ICT projects in 2012.

## **Inclusive working life**

The Commission is an IA (Inclusive Working Life) company.

## **Gender equality in the Norwegian Criminal Cases Review Commission**

The Commission is chaired by a woman and at the year-end the rest of the secretariat consisted of eight women and two men. This means that women made up 80% of the Commission's employees on 31 December 2012.

The secretariat's administrative deputy head and office manager are women. This means that all the organisation's management positions are held by women. The secretariat has thus met the state's goal of a 40% share of female managers.

## **Planned and implemented measures that promote equality on the basis of gender, ethnicity and disability**

Vacant positions in the secretariat were advertised in 2012. A diversity declaration is included in job adverts.

Measures to combat discrimination, bullying and harassment are stated in the Commission's SHE plan.

## **The Norwegian Criminal Cases Review Commission's financial resources**

Proposition to the Storting (parliamentary bill) no. 1 (2011 - 2012) for the 2012 budget year proposed a budget of NOK 14,427,000.

The Commission was granted funds in accordance with the budget proposal.

## **In general about the Norwegian Criminal Cases Review Commission**

The Commission is an independent body which is to ensure that the protection afforded by the law is safeguarded when dealing with petitions to reopen criminal cases. If the Commission decides to reopen a conviction or court order, the case is to be referred for retrial by a court other than the one which made the original decision.

The Commission determines its own working procedures and cannot be instructed as to how to exercise its authority. Members of the Commission may not review cases for which they are disqualified by reason of prejudice according to the provisions of the Courts of Justice Act. When a petition to reopen a conviction in a criminal case is received, the Commission must objectively assess whether the conditions for reopening are present.

A convicted person may apply for the reopening of a legally enforceable conviction if:

- There is new evidence or a new circumstance that seems likely to lead to an acquittal, the application of a more lenient penal provision or a substantially more lenient sanction.
- In a case against Norway, an international court or the UN Human Rights Committee has concluded that the decision or proceedings conflict with a rule of international law, so that there are grounds for assuming that a retrial of the criminal case will lead to a different result.
- Someone who has had crucial dealings with the case (such as a judge, prosecutor, defence counsel, expert witness or court interpreter) has committed a criminal offence that may have affected the conviction to the detriment of the convicted person.
- A judge or jury member who dealt with the case was disqualified by reason of prejudice and there are reasons to assume that this may have affected the conviction.
- The Supreme Court has departed from a legal interpretation that it has previously relied on and on which the conviction is based.
- There are special circumstances that cast doubt on the correctness of the conviction and weighty considerations indicate that the question of the guilt of the defendant should be re-examined.

The rules governing the reopening of convictions also apply to court orders that summarily dismiss a case or an appeal against a conviction. The same applies to decisions that refuse to allow an appeal against a conviction to be heard.

The Commission is obliged to provide guidance to parties that ask to have their cases reopened. The Commission ensures that the necessary investigation into the case's legal and factual aspects is carried out and may gather information in any way it sees fit. In most cases, direct contact and dialogue will be established with the convicted person. When there are special grounds for this, the party petitioning for reopening may have a legal representative appointed at public expense.

If a petition is not rejected and is investigated further, the prosecuting authority is to be made aware of the petition and given an opportunity to submit comments. Any victim (or surviving next of kin of a victim) is to be told of the petition. Victims or surviving next of kin are entitled to examine documents and to state their views on the petition in writing, and they may ask to be allowed to make a statement to the Commission. The victim or surviving next of kin must be told of the outcome of the case once the Commission has reached its decision. The Commission may appoint a counsel for the victim/surviving next of kin pursuant to the Norwegian Criminal Procedure Act's normal rules in so far as these are applicable.

Petitions are decided on by the Commission. The Commission's chair/vice chair may reject petitions which, due to their nature, cannot lead to a case being reopened, which do not stipulate any grounds for reopening a case in accordance with the law or which obviously cannot succeed.

Should the Commission decide that a decision is to be reopened, the case is to be referred for retrial to a court of equal standing to that which imposed the conviction. If the conviction has been handed down by the Supreme Court, the case is to be retried by the Supreme Court.

## **Cases and procedures**

During the year, the Commission held 10 all-day meetings lasting for a total of 25 days.

The Commission received 163 petitions to reopen cases in 2012, compared to 176 in 2011.

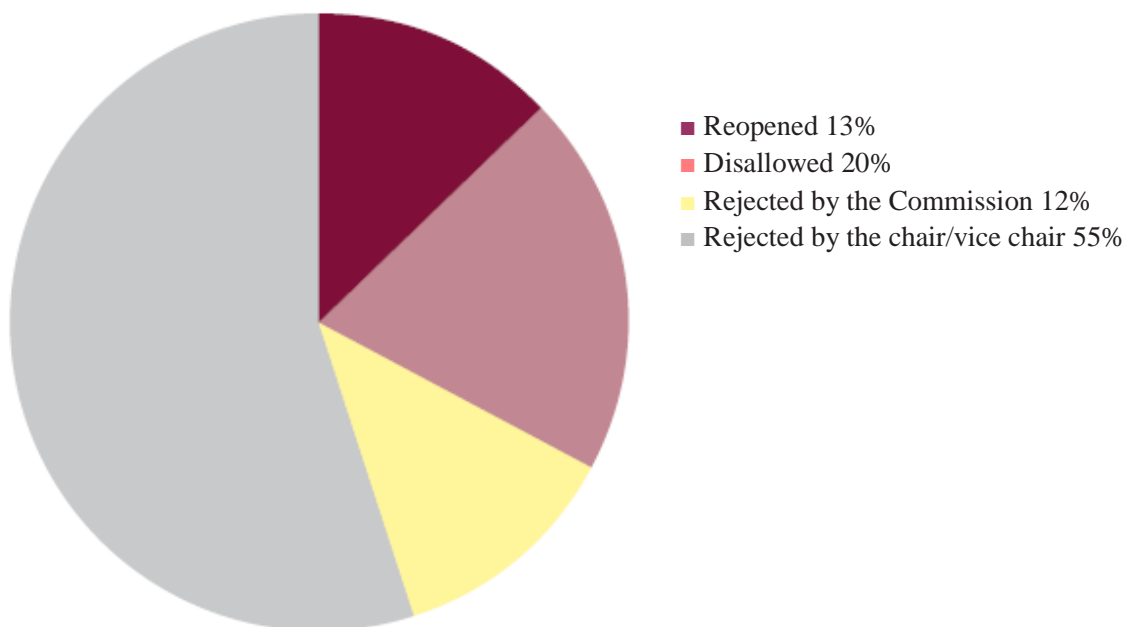
Of the 163 convicted persons that petitioned for a case to be reopened in 2012, nine were women and 154 were men.

In 2012, a total of 164 cases were concluded, of which 142 were reviewed on their merits. Of these 142 petitions that were reviewed on their merits, 19 cases were reopened while 28 petitions were disallowed. The remaining 95 petitions were rejected by the Commission or the chair/vice chair because they clearly could not succeed. There was a dissenting vote in seven of the 19 cases that were reopened. The decisions to reject the petitions were unanimous.

The other 22 cases that were concluded were rejected on formal grounds because they did not fall within the Commission's mandate. These included, for example, petitions to reopen penalties/fines that had been accepted, cases that had been discontinued or foreign convictions. In addition, some petitions were submitted by persons that are not permitted by law to submit such petitions (such as victims or the surviving next of kin of victims) or were withdrawn for various reasons. A complete overview of the number of petitions received and cases concluded in 2012 is provided in the table below:

File no.		Received	Concluded	Reopened	Disallowed	Rejected by the Commission	Rejected by the chair/vice chair	Dismissed misc/request for info
310	General	8	4					4
311	Sexual offences	32	30	4	8	4	13	1
312	Violence, threats	46	56	2	11	4	33	6
313	Drugs	21	18	5	2		9	2
314	Crimes of gain	31	37	5	5	9	14	4
316	Miscellaneous crimes	13	8	1	1		4	2
317	Miscellaneous misdemeanours	12	11	2	1		5	3
32	Discontinued prosecutions							
331	Temporary rulings							
34	Seizure or annulment							
36	Inquiries							
37	Fines							
38	Civil actions							
39	Other, concerning professional cases							
	<b>Total</b>	<b>163</b>	<b>164</b>	<b>19</b>	<b>28</b>	<b>17</b>	<b>78</b>	<b>22</b>

The figure below shows the outcome of the cases reviewed on their merits in 2012:



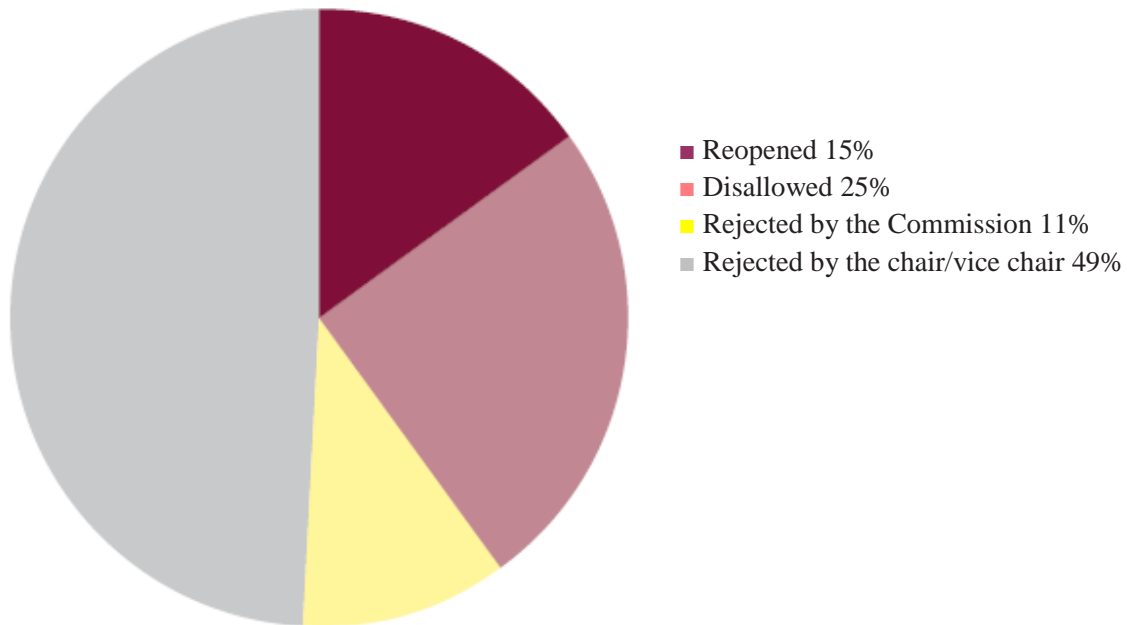
Since being established on 1 January 2004, the Commission has received a total of 1,523 petitions and 1,399 of these cases have been concluded. A total of 182 cases have been reopened and 293 petitions have been disallowed. The Commission or chair/vice chair has rejected 704 of the petitions because they clearly could not succeed, while the remainder, 220 petitions, have been rejected on formal grounds.

The table showing the total figures for the Commission's first nine years of operation is thus as follows:

File no.		Received	Concluded	Reopened	Disallowed	Rejected by the Commission	Rejected by the chair/vice chair	Dismissed/misc/request for info
30	General	5	5					5
310	General	29	25	1			5	19
311	Sexual offences	263	241	23	60	27	114	17
312	Violence, threats	429	392	42	96	37	186	31
313	Drugs	172	157	27	37	14	70	9
314	Crimes of gain	297	272	61	62	31	88	30
316	Miscellaneous crimes	90	80	12	19	9	29	11
317	Miscellaneous misdemeanours	151	140	16	19	11	79	15
32	Discontinued prosecutions	13	13					13
331	Temporary rulings	1	1					1
34	Seizure or annulment	1	1				1	
36	Inquiries	31	31			1		30
37	Fines	6	6				1	5
38	Civil actions	31	31				1	30
39	Other, concerning professional cases	4	4					4
	<b>Total</b>	<b>1,523</b>	<b>1,399</b>	<b>182</b>	<b>293</b>	<b>130</b>	<b>574</b>	<b>220</b>



The figure below shows the outcome of the cases reviewed on their merits in the 2004-2012 period:

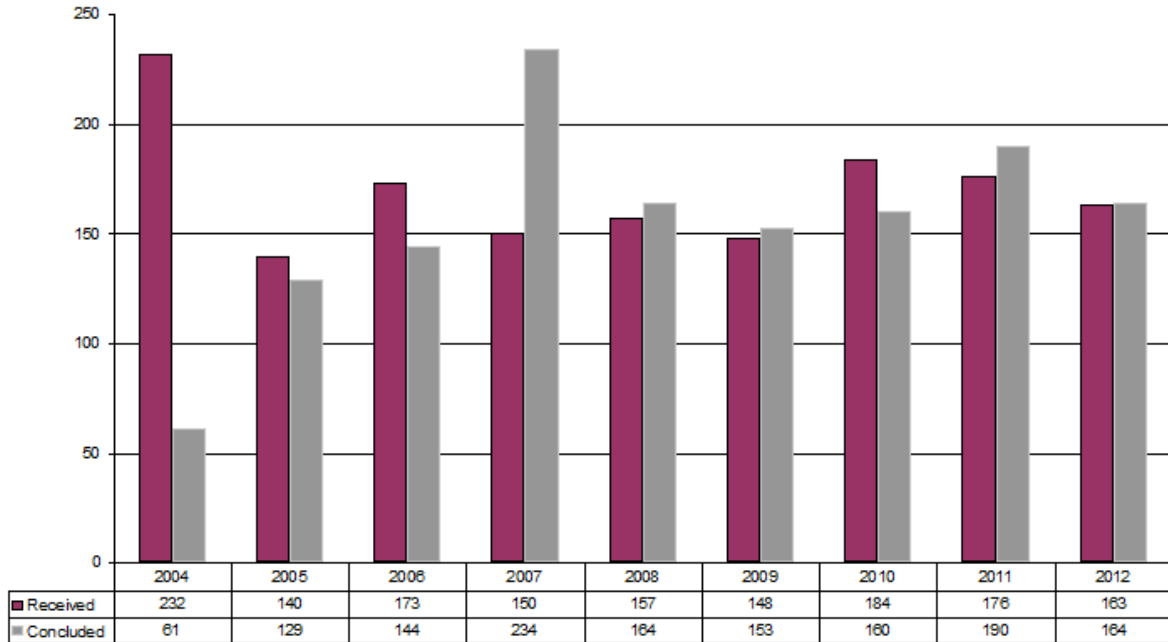


As mentioned above, the Commission may reject petitions that obviously cannot succeed. This decision may also be reached by the Commission's chair or vice chair. The chair and vice chair must use this opportunity to reject petitions in order to utilise the Commission's overall resources in the best way possible to deal with cases that require further investigation.

The number of petitions received during the first nine years is more than that expected when the Commission was established. The number of petitions to reopen cases is still higher than the legislature assumed but seems to have stabilised.

The Commission has an independent duty to investigate, which can entail extensive work in comprehensive cases. Although this requires a lot of resources, it was also one of the main reasons for the formation of the Commission. It is thus an important task. Several cases that the Commission has dealt with since its formation in 2004 have required extensive investigation.

Petitions received and cases concluded in 2004-2012:



### Appointment of defence counsel

The law allows the Commission to appoint a defence counsel for a convicted person when there are special reasons for doing so. A specific assessment of whether or not a defence counsel is to be appointed is conducted in each case. In practice, the Commission always appoints a defence counsel when there is reason to assume that the convicted person may not be criminally responsible, see section 397 subsection 2 of the Criminal Procedure Act, see also section 96 last subsection. Otherwise, a defence counsel may be appointed in especially comprehensive or complicated cases or if providing guidance to the convicted person would take up a lot of the secretariat's resources. The appointment is in most cases limited to a specific number of hours, for example to provide a more detailed explanation of the petition's legal and factual basis. In 2012, the Commission appointed a defence counsel in 30 cases, while a defence counsel was appointed in 33 cases in 2011, 28 cases in 2010, 38 cases in 2009 and 26 cases in 2008.

### Appointment of a counsel for the victim/surviving next of kin – the rights of the victim and victim's surviving next of kin

As from 1 July 2006, the Commission has been authorised to appoint a counsel for a victim/surviving next of kin pursuant to the rules stated in section 107a, et seq, of the Criminal Procedure Act. This has been particularly relevant in connection with interviewing victims in cases of indecent assault/sexual abuse.

In 2008, the Criminal Procedure Act was amended to strengthen the victim's and surviving next of kin's positions in criminal cases. These amendments mean, among other things, that the victim or surviving next of kin has a better opportunity to be heard, receives more information and is entitled to counsel to a greater extent than before. The Commission appointed 11 counsel for the victim/surviving next of kin in 10 cases in 2012. In comparison, the Commission appointed 11 counsel for the victim/surviving next of kin in nine cases in 2011 and appointed such counsel in three cases in 2010, four cases in 2009 and eight cases in 2008.

### **Appointment of expert witnesses**

Pursuant to section 398 b subsection 2 of the Criminal Procedure Act, the Commission is authorised to appoint expert witnesses in accordance with the rules stated in chapter 11. Since its formation, the Commission has appointed expert witnesses in the fields of forensic medicine, forensic psychiatry, forensic toxicology, photographic/video techniques, finance, fire technicalities, vehicle knowledge, history and traditional forensic science, etc. In 2012, the Commission appointed 15 expert witnesses in six cases. These were in the fields of forensic psychiatry and forensic psychology.

### **Subsequent check on the Commission**

The Norwegian Criminal Cases Review Commission was established when chapter 27 of the Criminal Procedure Act was revised, see Act no. 63 of 15 June 2001. When the Commission was created, it was presumed that a major subsequent check on the amendments to the Act would be conducted to assess whether these had the intended effect, refer to page 50 of Proposition to the Odelsting (parliamentary bill) no. 70 (2000-2001). The main issue was whether the scheme was likely to arouse confidence in the treatment of petitions to reopen cases and whether the Commission's work had helped to reveal factors which could indicate a case should be reopened. The subsequent checks were also intended to reveal whether there was a need to amend the regulations governing the treatment of petitions to reopen criminal cases and whether the calculations of the resources required and costs had proved to be correct or whether there was a need for adjustments to be made.

On 7 December 2010, the Ministry of Justice and Public Security appointed a working group to conduct this subsequent check. This group was led by Professor Ulf Stridbeck of the University of Oslo's Law Faculty. The deadline for submitting a report was set at 31 December 2011. The mandate was later widened and the deadline was extended. The working group submitted its report to the Minister of Justice and Public Security on 29 June 2012.

After interviewing various players and obtaining and examining diverse empirical materials, the working group arrived at the following conclusion:

The working group's conclusion is that the reform on the whole seems likely to strengthen the confidence in the treatment of the reopening issue. The Commission scheme's investigative function has particularly improved the likelihood of better decisions.

The working group's report proposed several amendments to chapter 27 of the Criminal Procedure Act. In addition, the working group gave five specific pieces of advice or recommendations to the Ministry of Justice and Public Security and 18 pieces of advice or recommendations to the Criminal Cases Review Commission.

The Ministry of Justice and Public Security has invited comments on the report by 1 February 2013.

### **The scope of the courts' authority to review the Commission's decisions**

The question of the scope of the courts' authority when reviewing the Commission's decision not to reopen a criminal case was the topic for the Supreme Court after a convicted person whose petition to reopen his case (the Baneheia case) had been disallowed had sued the Commission, claiming that the Commission's decisions were invalid. After the District Court found in favour of the Commission, the convicted person applied to be allowed to lodge an appeal directly with the Supreme Court. Such permission was given in relation to the claim that the courts have full authority to review the Commission's decisions.

In a judgment dated 29 March 2012 (Rt 2012 page 519), the Grand Chamber of the Supreme Court ruled that the Act's preparatory works did not precisely state which aspects of the Commission's decisions could be reviewed in a civil action, but that the starting point for the reform was especially the need for distance between the courts and the body that was to determine petitions to reopen cases. The legislator was therefore negative to the Commission's decisions being fully reviewed in a criminal law procedure interlocutory appeal. The Supreme Court regarded this attitude as prevailing in relation to civil law procedural cases too.

The Supreme Court found it clear that the courts could review the Commission's general interpretation of section 391 no. 3 and section 392 subsection 2 of the Criminal Procedure Act, which were the provisions pleaded in the case. If the courts were to be able to review the Commission's decisions, the general interpretation of the law had to be at the core of this review.

The courts also had to be able to examine whether fundamental procedural rules had been followed, for example that the requirements as to impartiality and the right to be heard had been met. However, other aspects of the Commission's procedures would not be covered by the opportunity to review unless there were serious and obvious errors. The Supreme Court found particular reason to mention the Commission's duty to investigate as an example of an aspect of the procedures that would not be covered by the opportunity to review in that it would be difficult for the courts to examine whether or not the Commission had fulfilled its duty to investigate without moving into the assessment-of-evidence field.

In the Supreme Court's view, the courts could not review the Commission's assessment of evidence and specific application of the law. The Supreme Court found that a different solution would have allowed the evidence to be assessed once more, which would have conflicted with the idea behind the establishment of the Commission.

These limits on the opportunity to review were not regarded as contravening either section 88 of the Norwegian Constitution, provided the curtailment was objectively justified and in a limited area, or other constitutional-law rules or principles. Nor did they entail a breach of article 6 no. 1 of the European Human Rights Convention and the fact that new procedural rules were, as in this case, applied to older facts was also not in contravention of section 97 of the Constitution.

The appeal against the District Court judgment was thereafter dismissed regarding consent to appeal directly to the Supreme Court.

## **The Norwegian Criminal Cases Review Commission's other activities, etc.**

### **Contact with authorities**

The Commission's chair attended half-yearly dialogue meetings with the administrative management of the Ministry of Justice and Public Security's civil affairs department concerning administrative aspects of the Commission's activities. The chair also attended the Minister of Justice's annual conference for heads of government departments.

### **Comments on consultation documents**

In 2012, the Commission commented on regulations to be issued pursuant to the Police Records Act no. 16 of 28 May 2010 and amendments to the Public Administration Act (concerning digital communication).

### **International work**

The contact with the criminal cases review commissions in England and Scotland was maintained. In September 2012, the Commission's secretariat received a visit from the Chief Executive and Director of Corporate Services of the Scottish Criminal Cases Review Commission (SCCRC) with a view to establishing a mutual peer review scheme together with the Norwegian and English Criminal Cases Review Commissions. This scheme will entail a kind of mutual evaluation scheme in which experience is shared by commission members and/or investigators in the secretariats monitoring employees at the same level in sister organisations.

The Commission also went on a study trip to Copenhagen in September 2012 and visited the Østre Landsret Court of Appeal and the Special Court of Indictment and Revisions (Den særlige klageret). The latter body hears petitions to reopen cases in Denmark. The study trip was particularly intended to find out more about how petitions to reopen cases and offenders who are not responsible for their acts are dealt with.

### **Information activities**

The Commission put its media and information strategy into writing during 2012.

In order to promote knowledge about the Commission's activities and give affected parties real access to the legal remedy of having a case reopened, the Commission's goals are to provide

- correct information on the Commission's activities, and
- clear and supplementary information and guidance on the rules regarding reopening and the Commission's procedures.

The Commission wants general information to be easily available to interested parties. Electronic communication is an effective channel for such information.

The Commission's website, [www.gjenopptakelse.no](http://www.gjenopptakelse.no), contains information on the Commission and regulations, press releases, a downloadable form for petitions to reopen a case, the Commission's annual reports, anonymised abbreviated versions of decisions concerning the reopening of cases, etc. The information is available in the two official forms of the Norwegian language (Nynorsk and Bokmål), Sami and 12 other languages.

The Commission's website has a "press button" so that the full text of all the Commission's decisions is available to the media for three months.

As from 2010, all the Commission's decisions based on the merits of a case are published on the Lovdata website. This concerns decisions made by the Commission and decisions made by the Commission's chair or vice chair in accordance with section 397 subsection 3 sentence 3 of the Criminal Procedure Act. Over time, all older decisions (2004-2009) will also be added to the database.

The Commission is also open and available for questions and inquiries. Requests for talks, etc, on the Commission's activities will be accommodated in so far as possible.

### **Civil actions brought against the Norwegian Criminal Cases Review Commission**

This chapter refers to civil actions brought against the Commission that have been dealt with by the courts in 2012 and where the issue that is subject to a court hearing fundamentally affects the Commission's decisions or procedures.

#### **Case 2010–0077. The Baneheia case**

Reference is made to that stated on this case above. Following the Supreme Court's clarification of the question of principle regarding the scope of the court's authority to review the Commission's decisions, the convicted person's appeal to the Court of Appeal was withdrawn and the case was dismissed.

Three lawsuits against the Commission were suspended until the Supreme Court had clarified the question of principle. Two of these were later withdrawn.

#### **Case 2010-0093. Appeal-filtering case – the question of whether it contravened a convention when the Supreme Court, in Rt 2010 p. 1170, stipulated as a condition for a review of an unsubstantiated refusal to hear an appeal that the convicted person had to have brought an appeal or interlocutory appeal against the decision to refuse to hear the appeal.**

A woman was sentenced to imprisonment in 2007 for fraud and handling stolen goods, etc. Permission to appeal against the District Court judgment was in part refused without any grounds for this being given. This decision was not appealed against in an interlocutory appeal to the Supreme Court. With reference to Supreme Court decisions stating that refusals to hear appeals must be substantiated, see decisions included in Rt 2008, page 1764 and Rt 2010 page 1170, the convicted person alleged that the unsubstantiated

refusal to hear the appeal contravened international law and provided grounds for reopening the case. She alleged that an appeal to the Supreme Court against the Court of Appeal's decision could not be a prerequisite for reopening the case, since this could not be regarded as an "effective remedy". The Commission based its decision on the Supreme Court criteria stipulated in Rt 2010, page 1170, and rejected the petition.

In a writ of summons and particulars of claim lodged with Oslo District Court on 1 November 2011, the convicted person brought a civil action against the Norwegian State, represented by the Commission, claiming that the decision was invalid. The convicted person alleged that the condition for reopening the case - that the convicted person had "*exhausted all national legal remedies*", which could be deduced from the Supreme Court decision - contravened the Convention and that the decision not to reopen the case because the convicted person had not utilised her opportunity to appeal to the Supreme Court was thus invalid.

In a judgment handed down on 16 January 2012, the District Court found in favour of the Norwegian State, represented by the Commission. The court could not see that the convicted person's opportunity to appeal prior to 2008 was not "effective" in the sense of the Convention. She had thus not exhausted her appeal opportunities in that she had failed to appeal against the Court of Appeal's unsubstantiated refusal to hear the appeal.

The claimant tried to appeal directly to the Supreme Court against the District Court judgment but this was not allowed. The case then went to Borgarting Court of Appeal which, on 21 May 2012, refused to hear the appeal in that it unanimously found it obvious that the appeal would not succeed.

The claimant appealed to the Supreme Court against the Court of Appeal decision and the Appeals Selection Committee of the Supreme Court decided to dismiss the appeal in a ruling dated 18 July 2012 in that it unanimously found that the appeal obviously could not succeed.

#### **Case 2011–0006. Appeal-filtering case**

This case raised the same issues as those above and the outcome was more or less the same.

In a judgment dated 15 July 2011, the District Court found in favour of the Norwegian State, represented by the Commission. The court mainly found that the convicted person had not utilised the opportunity to appeal to the Supreme Court against the Court of Appeal's unsubstantiated decision, and that he had thus not exhausted the national legal remedies. The court reviewed the Supreme Court judgment and could not see that the convicted person's submissions were likely to lead to a different result in this case.

The convicted person tried to appeal directly to the Supreme Court against the District Court judgment but this was not allowed. The case was then heard by Borgarting Court of Appeal which, on 25 April 2012, refused to hear the appeal in that it found that the appeal obviously could not succeed.

#### **Other civil actions**

Three civil actions against the Commission were being heard by the courts as at 31 December 2012.

## **Relevant decisions**

This chapter contains abbreviated versions of all the cases where the Commission has allowed a petition for a reopening of a case. One case where the petition was not allowed but where there was dissent within the Commission is also stated.

Abbreviated versions of all the reopened cases are also published on the Commission's website, [www.gjenopptakelse.no](http://www.gjenopptakelse.no).

### **07.03.2012 (2011 0104) Serious vandalism, burglary and theft, etc - section 391 no. 3 (new circumstance). The convicted person died – section 394 subsection 2. Dissenting vote.**

In 2007, the District Court sentenced a woman to six months' imprisonment, 120 days of which were suspended. The District Court considered the accused to be responsible for her actions in accordance with the conclusion of the forensic psychiatric examination that had been conducted. The conviction was appealed against and an additional notice of appeal questioned, i.a., the convicted person's responsibility for her actions, but no appeal to the Court of Appeal was allowed. The convicted person died and her defence counsel then submitted a petition to reopen the case. There was no written petition from the convicted person or from anyone in the circle of persons mentioned in section 389 subsection 2 of the Criminal Procedure Act, see section 308, but according to the defence counsel the convicted person had stated that she wanted the case to be reopened. The grounds stated for reopening the case referred to the question of responsibility for her actions and reference was made i.a. to new information on her mental health. The Commission's majority found that the doubt which had been raised about the convicted person's responsibility for her actions was not enough for there to be "special reasons" for reopening the case without the convicted person's petition, see section 394 subsection 2, so the case was not reopened. A minority consisting of two members believed that the seriousness of the case meant that there were "special reasons" and that it would appear offensive if the case was not reopened.

The case was not reopened. Dissenting vote (3-2).

### **07.03.2012 (2012 0020) Drugs – section 391 no. 3 (new expert opinion). Not criminally responsible.**

In 2009, the District Court sentenced a man to 45 days' imprisonment for several breaches of the drugs legislation. In a forensic psychiatric report dated 27 December 2011, the forensic psychiatry experts concluded that the convicted person was assumed to have been psychotic when the criminal offences were committed. The prosecuting authority petitioned for the case to be reopened for the benefit of the convicted person. The Commission found that the forensic psychiatric report was a new circumstance that seemed likely to lead to an acquittal, see section 391 no. 3 of the Criminal Procedure Act, in that the convicted person was not criminally responsible when the acts took place, see section 44 of the General Civil Penal Code. The part of the conviction which applied to the confiscation of drug-use equipment was not reopened in that confiscation may take place even if the offender cannot be punished because he was not criminally responsible, see section 35 subsection 1 sentence 3 of the General Civil Penal Code, see section 34 subsection 1 sentence 3.

The Commission unanimously decided to allow the petition to reopen the case.



**09.05.2012 (2012 0031) The Road Traffic Act – section 391 no. 3 (new circumstance).**

In 2011, the District Court convicted a man of contravening the Road Traffic Act several times and of causing actual bodily harm. He was i.a. convicted of not making sure that the person who he allowed to drive the car met the conditions for driving a motor vehicle, in that the person concerned was under the influence of alcohol. He was sentenced to seven months' imprisonment, of which 30 days were suspended. He was also sentenced to lose his driving licence for a period of 18 months. The petition alleged that the person who had driven the car had been acquitted of driving under the influence of alcohol in a later Court of Appeal ruling. In this, the person concerned was convicted of imbibing alcohol after the fact and this had to lead to the convicted person's case being reopened. The prosecuting authority supported the petition. The Commission found that the subsequent ruling had to be regarded as a new circumstance that seemed likely to lead to acquittal regarding the relevant part of the District Court conviction, see section 391 no. 3 of the Criminal Procedure Act.

The Commission unanimously decided to allow the petition to reopen the case.

**13.06.2012 (2010 0156) Sexual acts involving children – section 391 no. 3 (new evidence). Dissenting vote.**

In 1994, the Court of Appeal, as the court of first instance, sentenced a man to imprisonment for one year and nine months for sexual acts involving his two under-age daughters. Originally, six people were charged in the case, but an indictment was only issued against the convicted person. Later on, the daughters and a younger brother stated on several occasions that the accusations against their father were wrong and they confirmed this in interviews with the Commission's investigator. The Commission's majority found that the new statements from the aggrieved parties had to be regarded as new evidence that seemed likely to lead to acquittal, see section 391 no. 3 of the Criminal Procedure Act. This was seen together with weaknesses in the investigation material. The Commission's minority did not find that the new statements were credible enough to provide grounds for reopening the case.

The petition was allowed. Dissenting vote (3-2).

**13.06.2012 (2011 0165) Accounting Act, Tax Assessment Act – section 391 no. 3 (new evidence). Sentencing. Dissenting vote.**

In 2009, the District Court gave a man (a conviction based on a full confession) a suspended sentence of imprisonment for 54 days and a fine of NOK 11,000 for contravening the Accounting Act and Tax Assessment Act. The convicted person presented new material in support of his claim that the amount which the court had found to be withheld revenue and unreported salary was incorrect. The prosecuting authority did not contest the facts of the case but opposed a reopening of the case. The Commission's majority believed there was a reasonable chance that the convicted person would only have been given a fine if the material which had now been presented had been known when the case was adjudicated. A fine alone would have been a much milder sanction than a suspended prison sentence combined with a fine. The Commission's majority found that the conditions for reopening the case pursuant to section 391 no. 3 of the Criminal Procedure Act were present as regards the sentencing. The minority did not believe that the conditions for reopening the case were present in that it was doubtful that the convicted person would have received a milder sentence even if the court had based the sentence on the lower amount.

The petition was allowed as regards the sentencing. Dissenting vote (4-1).

**13.06.2012 (2012 0021) Protection regulations issued pursuant to the Nature Protection Act – section 392 subsection 2 (special circumstances).**

In 2011, the District Court fined a man NOK 15,000 and ordered him to pay costs for breaching the protection regulations issued pursuant to the Nature Protection Act (encroachment on a nature reserve). He petitioned for his case to be reopened because the facts he had been convicted of had taken place on his own land (leased plot on which a cabin had been built) and not in the protected zone. The Commission's investigators inspected the property together with the parties. Representatives of the Norwegian Nature Inspectorate and the County Governor were also present. During the inspection, the boundary between the nature reserve and cabin plot was marked off and it proved that the protected zone stretched into the convicted person's land in some areas. This was where the encroachments on the nature reserve had taken place. The Commission found that there were special circumstances that made it doubtful that the conviction was correct, see section 392 subsection 2 of the Criminal Procedure Act. The Commission placed emphasis on the fact that the convicted person had built on the boundary of the protected area as this was shown on the municipality's map, which erroneously showed that the boundary of the property and the boundary of the protected area were the same. Emphasis was also placed on the fact that the conviction was based on incorrect facts in that the plot was not part of the nature reserve.

The Commission unanimously decided to allow the petition to reopen the case.

**13.06.2012 (2012 0034). Fraud – section 392 subsection 1 (departure from a legal interpretation). Refusal to hear an appeal.**

In 2006, the District Court convicted a woman of fraud and sentenced her to 60 hours of community work. She was also ordered to pay compensation of NOK 62,666 to the social welfare office that was the aggrieved party in the case. The Commission found that the conditions for reopening the case were present. The Commission referred to the fact that the Court of Appeal had refused the woman leave to appeal without stating any grounds for this, that this decision was the subject of an interlocutory appeal to the Supreme Court and that, in the interlocutory appeal, she had in reality criticised the court's assessment of the question of guilt. The legally enforceable decision had been made less than five years ago. The Commission did not decide on other submissions in the case.

The Commission unanimously decided to allow the petition to reopen the case.

**22.08.2012 (2012 0049) Drugs – section 391 no. 3 (new Supreme Court judgment, new circumstance)**

In 2009, the District Court sentenced a man to imprisonment for four years and six months for various offences against the drug and pharmaceutical legislation, including the illegal acquisition of around 16,000 pills containing phenazepam, an active narcotic ingredient, and the resale of around 15,800 of these same pills. A new Supreme Court judgment stipulated that phenazepam, which was not on the Prohibited Drugs List and was also not covered by the derivative alternative stated in the Drugs Regulations, was not a drug pursuant to section 162 of the General Civil Penal Code. In the Commission's view, the Supreme Court judgment was a new circumstance that was likely to lead to acquittal for one of the counts on the indictment, see section 391 no. 3 of the Criminal Procedure Act.

The Commission unanimously decided to allow the petition.

**19.09.2012 (2012 0068 et al). Theft, receiving stolen property, drugs, etc, - section 391 no. 3 (new expert opinion). Not criminally responsible.**

A man was convicted three times during the 2008-2010 period of theft, receiving stolen property, the use and storage of drugs, driving a car under the influence of alcohol/drugs, etc. In a new criminal case in 2011, it was decided to subject him to a judicial observation, something that had not previously been done. The court-appointed experts concluded, i.a., that, during the past three-four years, the convicted person's thoughts and actions had been affected by an underlying schizophrenic disorder and that he was assumed not to have been criminally responsible during that period. Based on this report, the prosecuting authority, via the Director General of Public Prosecutions, petitioned to have all of the abovementioned convictions reopened. The Commission found that the forensic psychiatric report was a new circumstance that seemed likely to lead to an acquittal, see section 391 no. 3 of the Criminal Procedure Act.

The Commission unanimously decided to allow the petition to reopen the three convictions.

**17.10.2012 (2011 0018) Rape – section 391 no. 3 (new expert opinion). DNA analysis.**

In 2009, the District Court sentenced a man to four years' imprisonment and to pay compensation for rape, threats, bodily harm, etc. An appeal against the rape conviction was referred for an appeal hearing and the Court of Appeal convicted him again in 2010 and upheld the sentence of imprisonment. He was not allowed to appeal to the Supreme Court against the sentencing.

The convicted person petitioned for his case to be reopened. He maintained that the sexual intercourse had been voluntary and that he had withdrawn before he had ejaculated. In support of his explanation, he referred to the results of the DNA examination which were not known until after the judgment was legally enforceable. These state that samples taken from the aggrieved party's outer genitalia show a mixed result containing DNA of the same type as the aggrieved party's mixed with a smaller amount of DNA of male origin (sperm fraction) from someone other than the convicted person. No DNA of the same type as the convicted person's was observed. The aggrieved party explained that this was because the male DNA had to come from sexual intercourse she had had with a friend around two weeks earlier. After obtaining an expert statement on how long it would be possible to see sperm cells in vaginal samples, the Commission found it difficult to rely on the aggrieved party's explanation of this.

The Commission found there was a reasonable chance that the convicted person would have been acquitted if the court trying the case had known of the analysis results which showed DNA findings from another man and the aggrieved party's explanation of the reason for these findings. The Commission found that there was new evidence which provided grounds for reopening the case, see section 391 no. 3 of the Criminal Procedure Act.

The Commission unanimously decided to allow the petition.

**17.10.2012 (2011 0038 et al). Theft, vandalism, bodily harm, drugs, etc – section 391 no. 3 (new expert opinion). Not criminally responsible. Dissenting vote.**

From 2003-2007, a man was convicted five times of various criminal acts, including theft, stealing and using a car, vandalism, bodily harm and storing drugs. He petitioned to have his case reopened and alleged that doubt could be raised about whether he was criminally responsible at the time when the offences took place. The Commission appointed two forensic psychiatric experts who concluded that the convicted person was in a state that can be characterised as slight mental retardation pursuant to section 56c of the

General Civil Penal Code. During the experts' work, the Commission also appointed two psychologists to conduct a neuropsychological examination of the convicted person. They concluded that the convicted person achieved a total IQ score of 53 in the test but their discretionary assessment was that he would have been able to achieve an IQ score in the 60s - but hardly over 70 – if he had been in better shape. The Commission found that the forensic psychiatric report was a new circumstance which provided grounds for reopening the case, see section 391 no. 3 of the Criminal Procedure Act. The Commission was divided into a majority and a minority. A majority of three members agreed with the experts' assessment and found that the condition for reviewing the sentencing was present, see section 56c of the General Civil Penal Code. A minority of two members believed that doubt could be raised as to whether the convicted person was criminally responsible when the offences were committed, see section 44 of the General Civil Penal Code, and referred to the test results in which the convicted person achieved an IQ score of 53.

The petition was allowed as regards the sentencing. Dissenting vote (3-2).

**18.10.2012 (2011 0117) Sexual crime – section 391 no. 3 (new expert opinion). Not criminally responsible.**

In 2009, the District Court sentenced a man to three years' imprisonment and to pay compensation for non-pecuniary damage for the rape of and sexual acts involving a child under the age of 16 years. The conviction was appealed against and in 2009 the Court of Appeal sentenced him to imprisonment for two years and eight months and to pay compensation for non-pecuniary damage to the victim.

The convicted person petitioned for his case to be reopened and alleged that he had not been criminally responsible when the offence took place. The Commission appointed two forensic psychiatric experts who concluded that the convicted person was psychotic now, and who assumed that he was also psychotic when the offence took place. The Institute of Forensic Medicine demanded an additional report and decided that the information provided did not support the experts' conclusion that the convicted person had been psychotic in a criminal law sense when the offences took place.

The experts' provided an additional report in which they stated that they did not believe it was practically possible to obtain comparable information from the convicted person's family since they still lived in Iran. However, the experts had obtained information about the convicted person's health and examined this with special emphasis on trying to clarify when the illness started in addition to that stated in the first report. In the additional report, the experts stated that they assumed, based on the best of their professional ability, that the convicted person's illness was so advanced and serious when the offences took place that this had to be regarded as meeting the legal concept of "psychotic". After reviewing the information provided in the main report plus that included in the additional report, the Institute of Forensic Medicine stated that it disagreed with the experts' conclusion that the convicted person was psychotic in a criminal law sense when the offences took place in 2006.

The Commission found that the experts' reports were new circumstances which seemed likely to lead to acquittal pursuant to section 391 no. 3 of the Criminal Procedure Act.

The Commission unanimously decided to allow the petition to reopen the case.

**14.11.2012 (2012 0050) Drugs – section 391 no. 3 (new circumstance). New Supreme Court judgment.**

In 2008 and 2009, the District Court convicted a man of i.a. illegally importing 2 x 2 litres of GBL. A new Supreme Court judgment stipulated that GBL, which was not on the Prohibited Drugs List and was also not covered by the derivative alternative stated in the Drugs Regulations, was not a drug pursuant to section 162 of the General Civil Penal Code. In the Commission's view, the Supreme Court judgment was a new circumstance which seemed likely to lead to acquittal on the counts dealing with the import of GBL, see section 391 no. 3 of the Criminal Procedure Act.

The Commission unanimously decided to allow the petition.

**13.12.2012 (2011 0101 et al) Rape, bodily harm, theft, etc – section 391 no. 3 (new expert opinion). Not criminally responsible. Sentencing.**

In 2000-2009, a man was convicted five times of various criminal offences, most recently in the Court of Appeal where he was sentenced to imprisonment for three years and two months for rape. He petitioned to have his case reopened and alleged that, due to his mental state, he might not have been criminally responsible when the offences took place. He also petitioned for a review of the Court of Appeal's summary dismissal of his appeal against his conviction following his failure to appear in court. The Commission appointed expert witnesses who concluded that the convicted person was slightly mentally retarded. The Commission did not find that this new circumstance provided grounds for reopening four of the convictions, in that there was no reasonable likelihood that the court would have imposed a significantly milder sentence if it had known about the convicted person's mild mental retardation, see section 391 no. 3 of the Criminal Procedure Act, see section 56 letter c of the General Civil Penal Code. As regards the rape conviction, the Commission found that the conditions for reopening this were present in that there was a reasonable likelihood that the court would have imposed a sentence that was less than the minimum sentence or at least imposed a significantly milder sentence if it had known about the convicted person's diagnosis. The Commission also did not find that the conditions for reopening the summary dismissal ruling were present pursuant to section 401 of the Criminal Procedure Act, see section 391 no. 3.

The petition was allowed as regards the sentencing in the Court of Appeal conviction. Otherwise, the petition was not allowed.

Postal address: Postboks 8026 Dep, NO-0030 Oslo  
Visiting address: Tordenskioldsgate 6  
Tel: +47 22 40 44 00  
Fax: +47 22 40 44 01  
Email: [post@gjenopptakelse.no](mailto:post@gjenopptakelse.no)  
Internet: [www.gjenopptakelse.no](http://www.gjenopptakelse.no)