On 15 June 2006, the Norwegian Criminal Cases Review Commission reached the following decision regarding

Case no.: 200400198

The Commission's members:

Janne Kristiansen
Helen Sæter
Svein Magnussen
Anne Kathrine Slungård
Erling Lyngtveit

Parties:

Fritz Yngvar Moen, date of birth 17.12.1941

versus

The public prosecuting authority

The Commission reached the following

DECISION:

In an indictment dated 11 April 1978, Fritz Moen was charged by Frostating Court of Appeal with the murder and rape of Torunn Finstad, section 233, first and second subsections, and section 192, first subsection, second penal alternative of the General Civil Penal Code. The charge also included several other criminal offences.

In a judgment handed down by the Court of Appeal on 29 May 1978, Fritz Moen was sentenced to imprisonment for 20 years. The

prosecuting authority was also authorised to implement preventive supervision for up to 10 years. Following an appeal to the Supreme Court, the term of imprisonment was reduced to 16 years.

In an indictment dated 15 September 1981, Fritz Moen was once more charged by Frostating Court of Appeal with the murder and attempted rape of Sigrid Heggheim, section 233, first and second subsections, and section 192, second penal alternative of the General Civil Penal Code, cf section 49.

In the judgement handed down by the Court of Appeal on 18 December 1981, Fritz Moen was sentenced to imprisonment for five years in addition to the punishment he had been sentenced to by the Supreme Court on 15 September 1978, cf Frostating Court of Appeal's judgment dated 29 May 1978. This judgment was appealed against to the Supreme Court, but the appeal was rejected in a Supreme Court Appeals Committee decision dated 21 January 1982. In a judgment handed down by Trondheim District Court on 6 October 1999, the prosecuting authority was authorised to continue to implement preventive supervision for up to five years.

Fritz Moen – represented by his lawyer John Christian Elden – filed a petition on 2 January 2000 asking for both the murder cases to be reopened. In the Hålogaland Court of Appeal ruling dated 12 February 2002, this petition was dismissed in relation to both cases. This ruling was appealed against to the Supreme Court Appeals Committee.

In a ruling dated 14 October 2003, the Appeals Committee allowed one of the cases to be reopened – the Frostating Court of Appeal judgment dated 18 December 1981 (the Sigrid case). The Appeals Committee found that the conditions for reopening the case according to section 392, second subsection of the Criminal Procedure Act were present and stated the reason for this to be that the biological traces (semen and blood) found at the crime scene could most probably not be traced back to Moen, and that the criminal law standard of proof did not seem to have been fulfilled unless the biological traces came from someone other than the perpetrator. At the same time, there were in the Committee's view strong indications that the biological material could not come from

anyone other than the perpetrator.

As regards the Frostating Court of Appeal judgment of 29 May 1978 in the Torunn case, the Appeals Committee found that the conditions for reopening the case were not present. The Appeals Committee especially referred to the fact that Fritz Moen's repeated confessions in the case corresponded well with the finds made at the crime scene. As regards Moen's statements, reference was also made to the fact that these had developed in a different way in the two cases. Regarding the facts on which the Appeals Committee based its decision and the assessments that were made, refer to the ruling in Rt 2003, page 1389.

In a judgment handed down by Borgarting Court of Appeal on 7 October 2004, Fritz Moen was acquitted of the murder and attempted rape of Sigrid Heggheim.

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In a petition to the Criminal Cases Review Commission dated 13 October 2004, Fritz Moen once more petitioned for the Torunn case to be reopened. The petition was stated to be a preliminary one, and that the aim was to initially give the Commission a provisional overview of the case.

On 3 November 2004, the Commission appointed the lawyer John Christian Elden as Moen's defence counsel, cf section 397, second subsection of the Criminal Procedure Act, cf section 96, i.f. to prepare a final petition to reopen the case. In a letter dated 23 February 2005, Elden petitioned for German police specialist Alexander Horn to be appointed as an expert witness in order to assess the probability of the murders of Sigrid Heggheim and Torunn Finstad being committed by the same perpetrator. In a letter dated 17 March 2005, Elden was told that the Commission would decide on the issue of appointing an expert witness or witnesses once the final grounds for the petition to reopen the case had been presented by him.

Following this, the Commission did not deal any further with the petition while waiting for the final grounds for the petition to be submitted.

Fritz Moen died on 28 March 2005. In a letter dated 2 April 2005, Fritz Moen's brother stated that he wanted the Committee to continue dealing with Moen's petition to reopen the case.

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Shortly before Christmas 2005, it became known through the media that a person in Trøndelag county, Tor Hepsø, had apparently confessed to the murders of Sigrid Heggheim and Torunn Finstad shortly before he died on 20 December 2005.

As a result of this information, the Commission contacted the Trøndelag public prosecuting authority and Sør-Trøndelag police district to obtain more information and a clarification. After discussing the situation that had arisen, it was decided, in consultation with the chief public prosecutor and police district, that the further investigation into Tor Hepsøs's confession was to be conducted by the Commission.

Following this and in consultation with the Director General of Public Prosecutions, the Commission requested the National Criminal Investigation Service (Kripos) for its help to investigate, and much of the Commission's investigations into Tor Hepsø's confession have been carried out by a chief investigator and an investigator seconded to the Commission by Kripos, under the authority of the chairperson of the Commission.

In addition to the investigatory steps that have been taken with the aim of further clarifying Tor Hepsø's confession, the Commission has conducted investigations based on the original investigation material in the Sigrid and Torunn cases, in addition to the material that was prepared in connection with Fritz Moen's petition to reopen the case in 2000. Among other things, investigations have been conducted with the aim of clarifying factors linked to Fritz Moen's statements to the police and the court in the Torunn case in 1977 and 1978. In connection with this, the Commission has

appointed Arnfinn Muruvik Vonen, a professor in special education, as an expert witness. In an expert opinion dated 19 May 2006, he replied to the Commission's questions regarding interpreting for the hearing impaired and the linguistic understanding of the hearing impaired, mainly on a general basis. The Commission has also questioned, among others, the psychiatrist who treated Fritz Moen from 1986-89, Inger Thoen Nordhus.

In accordance with section 398 of the Criminal Procedure Act, the results of the Commission's investigations have been presented to the prosecuting authorities. The material in question has also been presented to the lawyer John Christian Elden.

A private investigator, Tore Sandberg, who also helped Fritz Moen to prepare the petition to reopen his case in 2000, has in a report dated 27 April 2006 submitted additional documentation for the petition.

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The Director General of Public Prosecutions has in an endorsement dated 13 June 2006 stated that the prosecuting authority has not found any grounds for opposing Fritz Moen's petition to reopen the case. The Director General of Public Prosecutions especially refers to Tor Hepsø's deathbed confession and the special circumstances surrounding this – and also agrees in this connection with the more detailed grounds stated in the public prosecutor in Trøndelag's endorsement dated 29 May 2006.

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The Norwegian Criminal Cases Review Commission dealt with this matter at a meeting on 15 June 2006.

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The Norwegian Criminal Cases Review Commission comments:

Introduction

According to section 389, first subsection of the Criminal Procedure Act, a case that has been decided by a legally enforceable judgment may be reopened for a new trial on the petition of one of the parties when the conditions prescribed in sections 390 to 393 are fulfilled.

The provisions which may be applicable in this case are sections 391, no. 3 and possibly 392, second subsection of the Criminal Procedure Act.

In general regarding section 391, no. 3 of the Criminal Procedure Act

According to section 391, no. 3 of the Criminal Procedure Act, the reopening of a case in favour of the person convicted may be required "when a new circumstance is revealed or new evidence is procured which seems likely to lead to an acquittal or summary dismissal of the case or to the application of a more lenient penal provision or a substantially more lenient sanction." A reasonable likelihood has been regarded as sufficient, a preponderance of the evidence is not required.

Regarding the issue to be assessed, the Supreme Court Appeals Committee's ruling in Rt 2001, page 1521, which is also referred to in the ruling in this case dated 14 October 2003 (in Rt 2003, page 1389) states:

In the decision, the importance of new circumstances and evidence must be assessed in conjunction with the importance of the other evidence in the case. It is only when an acquittal, etc, seems a reasonable possibility after such a combined assessment of the evidence that the new circumstances provide grounds for reopening the case pursuant to the provision.

Circumstances and evidence are new when they have not been submitted to the court which ruled on the case and have therefore been unable to influence the content of the judgment. The issue to

be assessed will be the importance of the new circumstances or evidence if these had been available to the court when the case was ruled on, seen in conjunction with the other evidence and circumstances that the court which ruled on the case was aware of. New expert assessments of the evidence which existed when the case was ruled on have also been regarded as providing grounds for reopening a case pursuant to section 391, no. 3, see for example Rt 2002, page 860, and Rt 2000, page 2142, with reference to previous case law. Such a new declaration has been regarded as new evidence even when not based on new material, cf Rt 1994, page 1149, with further references.

The fact that the circumstances which are pleaded have been submitted in connection with a former petition to reopen the case does not in itself prevent the reopening of a case pursuant to section 391, no. 3 of the Criminal Procedure Act, cf Rt 2005, page 1665.

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The Commission starts off by discussing whether there are new circumstances or evidence, and thereafter discusses whether these are likely to lead to an acquittal, cf section 391, no. 3 of the Criminal Procedure Act.

Are there new circumstances or evidence?

Tor Hepsø, who was born in 1938, died at Namsos Hospital on 20 December 2005. It is clear that, on 18 December 2005, he told three of the nurses in the hospital department where he was a patient that he had killed two women. In consultation with Tor Hepsø himself, the hospital employees contacted a clergyman and the local police as a result of this information.

Both the clergyman, dean Inge Torset, and two representatives of the local police had talks with Tor Hepsø on 19 December 2005. All the witnesses experienced Tor Hepsø to be very ill at this time, among other things he found it difficult to talk and became

tired easily. However, his statements about the murders were perceived to be credible. This also applies for the dean who was summoned, who was the person with whom Tor Hepsø had the most in-depth conversation before he died. In his testimony, the dean describes Tor Hepsø as being focused and wanting to tell him about the burden he "carried within him", and Torset also had the impression that it was important for Hepsø to "settle this before he died". As regards Torset's specific opinion of Hepsø's credibility, Torset describes Hepsø's situation as: "by that time one has so few layers left, the core is so small, that it is not natural to stage circus entertainment".

In this context, the Commission mentions that, together with Tor Hepsø's other property at the hospital, there were several bibles in which some texts were marked, including Proverbs chapter 6, verse 12-15 and chapter 16, verse 27-30 regarding "a scoundrel", "a mischievous man" and a "man of violence".

In summary, that which characterises the information on the cases in question received from Tor Hepsø before he died is that he confessed to murdering two women in Trondheim in the 1970s and that he mentioned the names Torunn and Sigrid. He also mentioned the names Finstad and Heggheim. He was apparently drunk when he committed both murders, and in connection with the Sigrid case he mentioned that Fritz Moen had been convicted. However, little specific information was provided, the information that was provided was in part vague, and Tor Hepsø also apparently mixed up some of the information relating to the two murder cases. Nor did his statements to the witnesses contain any information that was not already generally known.

The Commission's investigations in order to clarify whether Tor Hepsø's confession could be correct have discovered that he lived in Mellomveien in Trondheim in 1976 and 1977 while he worked 14-day shifts on a drilling platform in the North Sea. The Commission's investigations have also discovered that Tor Hepsø was probably in Trondheim when both murders were committed. It has been impossible to obtain duty rosters for the drilling platform for the periods in question but, by "cross-bearing" times when it is known with certainty or a high degree of probability that Hepsø was

not on the platform (including dates when he personally paid his rent, attended medical examinations, was issued with a new driving licence, attended a wedding), it has been possible to reconstruct his work roster.

Several witnesses have stated that Tor Hepsø at times drank a lot of alcohol during the period when he was not at work on the platform. The Commission's investigations have also discovered that Tor Hepsø struggled with considerable mental problems throughout his life. This also seems to apply to the period before 1976-77, in that he was first admitted to hospital for mental illness in Spain in 1973. One of Tor Hepsø's former close colleagues on the drilling rig states that a marked change took place in Tor Hepsø's behaviour towards his colleagues in the period from August 1976 until he met Hepsø again in the autumn of 1977. The colleague in question took further education during this period and explains that Tor Hepsø had become much more introverted during the period that the witness had been absent from the rig, and that his speech was sometimes also difficult to understand.

In 1979, Tor Hepsø was admitted to a psychiatric institution in Norway for the first time after he had what must be described as a mental breakdown on board the platform. The medical records that have been obtained show that Tor Hepsø was on the whole bothered by anxiety and depression after this and until his death in 2005.

In a conversation with his general practitioner in February 2005 in which the underlying reasons for Tor Hepsø's mental problems were discussed, Hepsø stated that he was still bothered by his experiences in a ship collision in 1971 in which several sailors died. On the same occasion, he stated that "there's something else too", but he would not talk about it.

In December 1986, Tor Hepsø was reported to the police for violence and attempted murder by the partner he had lived with from 1983-1986. The following is an extract of the formal complaint:

The aggrieved party says that the accused has on several occasions

put his hands around her neck and then throttled her so that she has almost fainted. He has also on several occasions threatened that he will kill her. The aggrieved party has also been hit on the head and thrown against the wall.
The aggrieved party says that, in connection with these episodes, the accused also forcibly had sexual intercourse with the aggrieved party. The aggrieved party did not dare to oppose the accused and allowed him to have sexual intercourse.

Tor Hepsø was examined by the court on this matter in Trondheim court of examination and summary jurisdiction on 21 October 1987. He did not admit to using any kind of violence against his former cohabitant and the complaint was dropped by the public prosecutor in 1988 due to the lack of evidence. However, a note in the medical records of Trøndelag psychiatric hospital that was entered in October 1987 and which refers to the cohabitant relationship shows that Tor Hepsø – apparently according to his own statement – "had ended the relationship by being violent to his cohabitant and has been charged with this". The medical records contain no further details.

From other information discovered due to the Commission's investigations, it is clear that Tor Hepsø's blood type was A. Due to a mistake made by the hospital when taking a blood sample of Tor Hepsø after his death, however, the Commission has been unable to discover whether Tor Hepsø was a so-called secretor. The biological material found at the crime scene in the Sigrid case came from a person with blood type A who was a secretor.

Is the new information likely to lead to an acquittal of Fritz Moen?

The fact that, on his deathbed on 18 and 19 December 2005, Tor Hepsø confessed to the murders of Sigrid Heggheim and Torunn Finstad to a total of six people is undoubtedly new evidence in the sense of section 391, no. 3 of the Criminal Procedure Act.

As stated above, the fact that there is new evidence or circumstances is not sufficient in itself, the new evidence or

circumstances must also “seem likely to lead to an acquittal”, with regard to the other evidence in the case.

Based on the information which the Commission’s investigations have revealed, it must be assumed that Tor Hepsø was very probably in Trondheim when the murders of Sigrid Heggheim and Torunn Finstad were committed. Although Fritz Moen was acquitted of the murder of Sigrid Heggheim in 2004 and this case is not being dealt with by the Commission, the Commission has nonetheless to a certain extent found reason to look at the evidence in this case too when assessing the information in connection with Tor Hepsø’s deathbed statements. The Commission will return to the reason for this in further detail below.

Based on the information that has been discovered, the Commission is of the opinion that there can hardly be any doubt that, when he gave statements to the hospital personnel, the policemen that had been summoned and, not least, the dean, Tor Hepsø himself believed that he had committed both the murders and wanted to confess to these before he died. It appears that all of the witnesses he talked to about this perceived him to be fact-oriented and credible.

The Commission’s investigations have not discovered any information that Tor Hepsø suffered from delusions which would indicate that he would be inclined to admit to crimes he had not committed. Nor is there any information that he at any time has shown a special interest in these two murder cases or in any other criminal case.

The Commission also finds grounds to assume that, in 1986, Tor Hepsø was violent to his former cohabitant and that Hepsø’s violence – as this is described in the former cohabitant’s formal complaint – has similarities with the injuries caused to Sigrid Heggheim and Torunn Finstad. In this connection, reference is made to the fact that both had been subject to head injuries, strangling and sexual abuse.

Tor Hepsø had the same blood type, A, as was found at the crime scene in the Sigrid case. It has been impossible to ascertain whether or not he was a so-called separator. It must thus be concluded that

his blood type – according to present knowledge – does not exclude Tor Hepsø as the perpetrator in the Sigrid case. Blood type A is the most common blood type in the Norwegian population – with a share of approx. 48%.

As regards other evidence in the Sigrid and Torunn cases, it is clear that biological materials were found at both crime scenes in 1976 and 1977. In the Sigrid case, this was, as mentioned above, traces of blood and semen, while hair was found in the Torunn case. In connection with dealing with Fritz Moen's petition to have his case reopened in 2000, the police attempted to trace the biological materials from the two cases but were unable to do so. The Commission, too, has conducted investigations to, if possible, find the biological materials which existed in the Torunn case, but these investigations have been unsuccessful. Based on the investigations carried out, the Commission finds it has to assume that the biological materials were destroyed after a final and enforceable judgment had been handed down in the cases, without it being possible today to determine when or where this happened.

As regards the evidence as this appeared to be for the court trying the case in 1978, it is generally difficult to say anything certain about this, in that there are no sound recordings of the main hearing and the jury also does not state the grounds for its decision. The details of the facts which the jury found proven and the jury's assessment of the individual pieces of evidence are thus not known to the Commission. As also referred to in the Supreme Court Appeals Committee's ruling dated 14 October 2003, however, Fritz Moen's own statements and the findings that were made at the crime scene must have played a key role in the jury's assessment – in that there was neither technical evidence nor witness statements that linked Moen directly to the murder. The Commission therefore finds reason to link some comments to the content of Moen's statements and to the manner in which these were obtained.

Fritz Moen's statements in the Torunn case vary from denying that he was at all in the vicinity of Stavne Bridge on the night in question, via admitting that he attacked a woman near/on the bridge, to admitting that he attacked a woman, raped her and then kicked her into the river. Moen's statements vary between

admitting to the murder and totally denying that he had anything to do with the case. Both these views were sometimes stated in the same interrogation. The first statement in which he admits to having killed a woman on the bridge was given on 9 October 1977. This statement deviates considerably from his later statements and from the facts that were assumed by the police, prosecuting authority and court trying the case. In his statement given on 16 October 1977, Fritz Moen admitted for the first time to having attacked a woman and then carried her over the grassy plain between the bridge and the river and to the river bank.

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Despite the fact that Fritz Moen also provided detailed statements in the Sigrid case, it must be assumed, due to the other evidence in the case, that he could not have murdered Sigrid Heggheim. This is primarily because Moen's blood type does not match the biological material found at the crime scene, in addition to the fact that he also had an alibi for the night when Sigrid was probably killed. A key question when assessing Fritz Moen's petition to have his case reopened will thus be (and has been) whether and if so how it has been possible for Moen to provide such detailed statements and confessions in the Sigrid case, and if there may also be reason to believe that his statements and confessions in the Torunn case are incorrect too.

It is not currently possible to have any certain view on how Fritz Moen could provide detailed statements in the Sigrid case about a murder he did not commit. However, the Commission finds it must assume that this was what actually happened, and agrees in this connection with the Supreme Court Appeals Committee's discussion of this issue in the ruling dated 14 October 2003.

As regards the question of Fritz Moen's knowledge of the Torunn case, it is clear that Torunn Finstad was found murdered on 6 October after being missing since Tuesday, 4 October 1977. Her disappearance was first referred to in the newspapers on Thursday, 6 October, the same day as Torunn Finstad was found murdered. Fritz Moen was arrested on 7 October 1977. It is clear that Fritz Moen knew the area around Stavne Bridge, in that he had stayed there on

several occasions. The police questioning of Fritz Moen on 14 October 1977 shows that Moen had bought and read newspapers in the period from 5-7 October, and it must also be assumed that he read newspapers while he was remanded in custody from 7 October, in that the ruling prohibiting him from reading newspapers was not handed down until 18 October. In this regard, the police questioning on 14 October shows that Moen, when he read the newspaper, had among other things seen an aerial photo in which "traces" had been drawn in and a photo of the place where the body had been found and of Stavne Bridge "where the accident happened". No further details of Moen's newspaper reading during the period or of the knowledge that he may have gained about the case through the newspapers are known. The fact that Moen undoubtedly would both have been able to acquire knowledge from the newspapers and remember this later on must, however, be assumed. Moen was – according to the forensic psychiatric statements in this case – of normal intelligence and also had a very good memory. Based on the information obtained in the questioning of Fritz Moen on 14 October 1977, it must at least be assumed that, as a result of a combination of local knowledge and newspaper reading, he knew about the site where the body was found and the relationship between Stavne Bridge and this site.

As regards Fritz Moen's other statements, the Commission finds grounds to comment that, in his statements, Moen has not mentioned the fact that Torunn was found with the cord from her rain jacket around her neck. Nor has Moen stated anything about her bag, even though it appears likely that the perpetrator must at least have seen this. The Commission also finds reason to point out that, in his statements until he took part in the reconstruction on 24 October 1977, Moen did not describe the fence at the bottom of the slope below Stavne Bridge as anything other than the remains of an old fence, while it was in reality intact. Especially considering Moen's handicap, it is unlikely that Moen could have crossed the fence with an unconscious Torunn Finstad without noticing this.

In the Commission's view, there is also reason to question whether Fritz Moen's statements to the police and the court were understood correctly, at least if by correctly is meant what Moen

wanted and intended to state. In this connection, the Commission refers to Professor Arnfinn Muruvik Vonen's expert statement to the Commission dated 19 May 2006, both the general statements relating to the major communication challenges which exist in relation to a person with Moen's handicap and Professor Vonen's review of Moen's statement to Hålogaland Court of Appeal on 17 December 2001. The Commission also refers to the misunderstandings which actually arose in connection with Fritz Moen's statement to Hålogaland Court of Appeal in connection with the petition to reopen his case in 2000 – even with two interpreters for the hearing impaired present.

As regards the evidence situation otherwise, the Commission finds grounds to point out that there are clear similarities (the same modus) between the Sigrid and Torunn cases: both victims were young women on their way home from the students' union in Trondheim at night, they were closely related in time, the two crime scenes are located not far from each other, there was sexual abuse and both victims had suffered head injuries. Both victims were also found with the cord of their own outer jackets around their throats. In the Commission's view, these are factors which indicate that the perpetrator is the same in both cases. These factors were also pointed out by the prosecuting authority when the petition to reopen the case was dealt with in 2000.

The Commission therefore finds grounds for concluding that the new evidence and circumstances which exist in the case in connection with Tor Hepsø's confessions on 18 and 19 December 2005, together with the remaining evidence in the case, are likely to lead to the acquittal of Fritz Moen for the murder of Torunn Finstad in 1977.

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The Norwegian Criminal Cases Review Commission has accordingly not found it necessary to discuss whether the conditions for reopening the case pursuant to section 392, second subsection are present.

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The Commission has thus decided to allow the petition as regards the circumstances referred to in items I and II of the indictment of 11 April 1978 taken out by the public prosecutor in Trondheim on the orders of the Director General of Public Prosecutions.

Since the convicted person is now dead, the court must hand down a judgment of acquittal without holding a main hearing, cf section 400, fifth subsection of the Criminal Proceedings Act.

This decision is unanimous.

Conclusion:

The petition to reopen case 200400198 is allowed.

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Janne Kristiansen Helen Sæter

Svein Magnussen Erling Lyngtveit Anne Kathrine Slungård