THE NORWEGIAN CRIMINAL CASES REVIEW COMMISSION

Annual Report 2007

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The Norwegian Criminal Cases Review Commission's activities and composition

The Norwegian Criminal Cases Review Commission was established by a revision of Chapter 27 of the Criminal Procedure Act. The amending legislation came into force on 1 January 2004.

The Commission consists of five permanent members and three alternate members. The chairperson, vice chairperson and one of the members must have law degrees. The chairperson is appointed by the King in Council for a period of five years while the members are appointed by the King in Council for a period of three years. The chairperson's term of office was amended in an Act dated 21 December 2007, refer to page 4.

In 2007, the Commission was composed of the following people:

Chairperson:	Janne Kristiansen
Vice Chairperson:	Ann-Kristin Olsen, County Governor of Vest-Agder
Members:	Vidar Stensland, court of appeal judge at Hålogaland Court of Appeal
	Svein Magnussen, professor of psychology at the University of Oslo
	Anne Kathrine Slungård, marketing director of Entra Eiendom
Alternate members:	Helen Sæter, district court judge at Fredrikstad District Court
	Erling O. Lyngtveit, lawyer
	Inger Thoen Nordhus, psychiatrist

Øystein Mæland, divisional director of Ullevål University Hospital, is on a leave of absence from his post as alternate member as from 1 January 2007 to 1 July 2008. Inger Thoen Nordhus has been appointed in his absence.

The Norwegian Criminal Cases Review Commission's secretariat

The Norwegian Criminal Cases Review Commission's chairperson is employed full-time as the head of the secretariat. The secretariat otherwise employs eight permanent employees. In 2007, these were four legal investigating officers, two police investigating officers, one office manager and one secretary. In addition, one legal investigating officer was hired in 2007 and a police investigating officer was hired until 1 December 2007. An additional legal investigating officer has been hired in a temporary position since September 2007.

The investigating officers have worked for the National Criminal Investigation Service (*Kripos*), the Institute of Forensic Medicine, the Access Reviewing Committee on the Norwegian Police Security Service (*Innsynsutvalget*), the Parliamentary Ombudsman, the Ministry of Justice and the Police, law firms and the courts.

The secretariat's premises are located in Teatergata 5 in Oslo.

The Criminal Cases Review Commission's financial resources

A draft budget of NOK 11,357,000 was proposed in Proposition to the Storting (St.prp) no. 1 (2006-2007) for the 2007 budget year. The Proposition states:

> "As a result of the Commission still having to deal with a considerably larger number of cases than that presumed in Proposition to the Odelsting no. 70 (2000-2001), it is proposed to increase the grant to this item by NOK 1.5 million to pay for two temporary positions in the Commission so that it can become up-to-date and as efficient as possible."

The Commission has been granted funds in accordance with the draft budget.

The Commission introduced a new electronic processing system (GJ case) in 2007, and this will improve and make more efficient the recording and processing of cases, preparation of statistics and achievement of an overview of the backlog of cases. In 2007, the Commission also acquired technical equipment in its premises so it can record interviews with people in sound and pictures.

In general about the Criminal Cases Review Commission

The Commission is an independent body which is responsible for deciding whether convicted persons who petition for a review of a final and enforceable conviction or sentence should have their cases retried in court. If the Commission decides that there should be a review, the case will be referred for retrial before a court other than that which imposed the conviction/sentence.

The Criminal Cases Review Commission determines its own working procedures and cannot be instructed as to how to apply its authority. Members of the Commission may not consider cases for which they are disqualified by reason of prejudice according to the provisions of the Courts of Justice Act. If a petition to review a conviction/sentence in a criminal case has been received, the Commission must objectively assess whether the conditions for reopening the case are present.

A convicted person may petition for a review of a final and enforceable conviction/sentence in a criminal case if:

- There is new evidence or new circumstances that may lead to an acquittal, the application of a milder penal provision or a considerably milder sanction.
- In a case against Norway, an international court or the UN Commission on Human Rights has concluded that the decision on or hearing of the convicted person's case conflicts 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 has committed a criminal offence that may have affected the conviction/sentence 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/sentence.
- The Supreme Court has departed from a legal interpretation that it has previously adopted and on which the conviction/sentence is based.
- There are special circumstances that cast doubt on the correctness of the conviction/sentence and weighty considerations indicate that the question of the convicted person's guilt should be re-examined.

A petition for a case to be reopened must be submitted in writing. There is no time limit for such a petition. The Commission has a duty to provide guidance to anyone asking to have his/her case reviewed. The Commission is responsible for ensuring that all relevant information on the case is produced. In most cases, direct contact and dialogue will be established with the individual concerned. When there are special grounds for this, the party petitioning for a case to be reopened may have a legal representative appointed at public expense. The Commission may also appoint a counsel for the victim in accordance with the Criminal Procedure Act's general rules in so far as these apply.

The Commission ensures that a thorough review of the legal and factual aspects of the case is carried out and may gather information in any way it sees fit.

The Commission may summon the defendant and witnesses for talks or formal questioning. It may hold oral hearings and petition for evidence to be recorded to be given in court. Moreover, it can petition the court for a personal background report, for a person to be subject to mental observation and for coercive measures to be applied. The Commission may make orders for compulsory disclosure, appoint expert witnesses and carry out investigations. Cases are investigated by the secretariat's own investigating officers but, in special circumstances, the Commission may request the prosecuting authorities to take specific investigatory steps.

Petitions are decided on by the entire Commission, but the Commission's Chairperson/Vice Chairperson 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 according to the law or which clearly cannot succeed.

Should the Commission decide that a conviction/sentence is to be reviewed, the case is to be referred for retrial to a court of equal standing to that which imposed the conviction/sentence. This means:

- If the conviction/sentence was imposed by a District Court (formerly a county or city court), the Commission sends the case to the Court of Appeal, which nominates a District Court for a new hearing.
- If the conviction/sentence was imposed by a Court of Appeal, the case is sent to the Supreme Court's Interlocutory Appeals Committee, which nominates a Court of Appeal for a new hearing.
- If the Supreme Court passed the sentence, the Supreme Court is to retry the case.

Amending legislation in 2007

When the Commission was established in 2004, its chairperson was appointed for a period of five years without the possibility of being reappointed, in accordance with section 395, second subsection, first item of the Criminal Procedure Act. In order to maintain continuity and expertise within the Commission, the Norwegian government proposed extending the term of office to seven years, cf Proposition to the Odelsting no. 6 (2007-2008). In amendment no. 127 of 21 December 2007, this provision was amended so that the Commission chairperson's term of office is seven years without the possibility of being reappointed. The statutory provision states that this amendment also applies to the person who is the Commission's chairperson when the Act comes into

force on 1 January 2008.

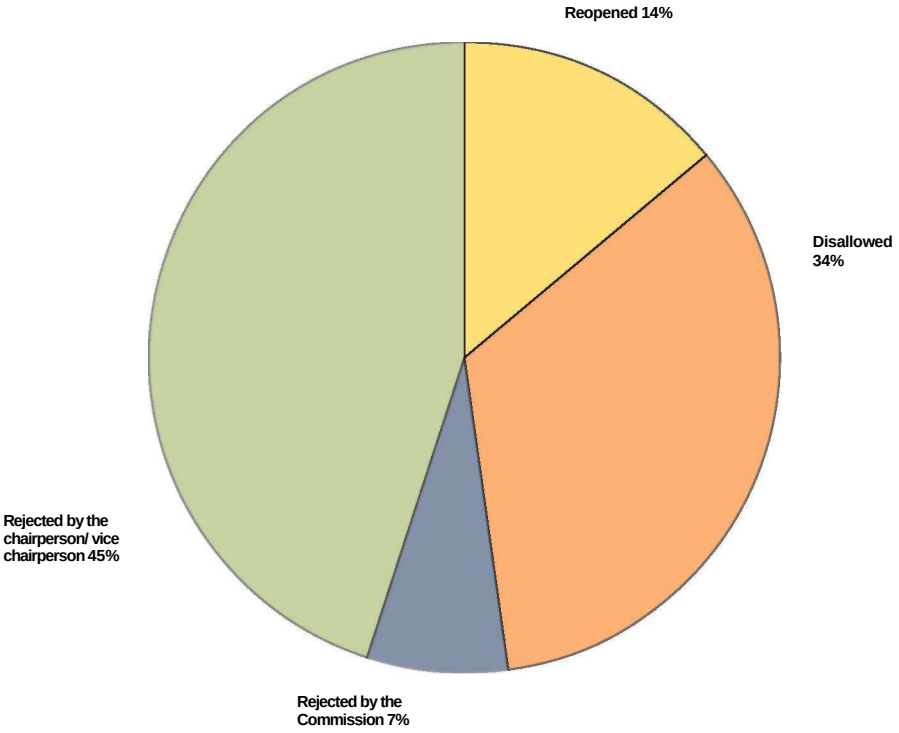
Cases and procedures

During the year, the Commission held nine meetings lasting for a total of 17 days. The Commission received 150 petitions for a review in 2007, compared to 173 in 2006, 140 in 2005 and 232 in 2004. A total of 234 cases were concluded in 2007, of which 196 were heard on their merits. Of the 196 petitions heard on their merits, 27 were referred to a court for a retrial, while 66 were disallowed. The remaining 103 cases were rejected by the Commission or its chairperson/vice chairperson as it was clear that they could not succeed. Of the 27 cases referred to a court for a retrial, the Commission's members disagreed on four, and of the 66 cases that were disallowed, the Commission's members also disagreed on four. The Commission's decisions to reject petitions were unanimous.

The other 38 cases that were concluded were dismissed on formal grounds because they did not fall within the Commission's mandate. These included petitions to review civil judgements, foreign judgments, penalties that have been agreed to, administrative decisions or petitions to reopen the investigation into cases that have been dropped, for example. Some of the petitions were also withdrawn for various reasons. A complete overview of the number of petitions received and cases concluded in 2007 is provided in the table below:

Wording	Received	Concluded	Reopened	Disallowed	Rejected by the Commission	Rejected by the chairperson/ vice chairperson	Rejected misc/ request for info
General	1	1					1
General	2	4				1	3
Sexual offences	24	42	4	15	2	19	2
Violence, threats	44	59	5	23	6	23	2
Drugs	20	25	3	8	3	11	
Property crimes	24	38	8	9	1	14	6
Miscellaneous crimes	9	17	4	5	1	7	
Misc. misdemeanours	8	25	3	6	1	13	2
Temporary rulings		0					
Discontinued prosecutions		0					
Seizure or extinguishment		0					
Inquiries	10	7					7
Fines		0					
Civil actions	9	14				1	13
Other, regarding professional cases	2	2					2
Total	150	234	27	66	14	89	38

The figure below shows the outcome of the cases heard on their merits in 2007:

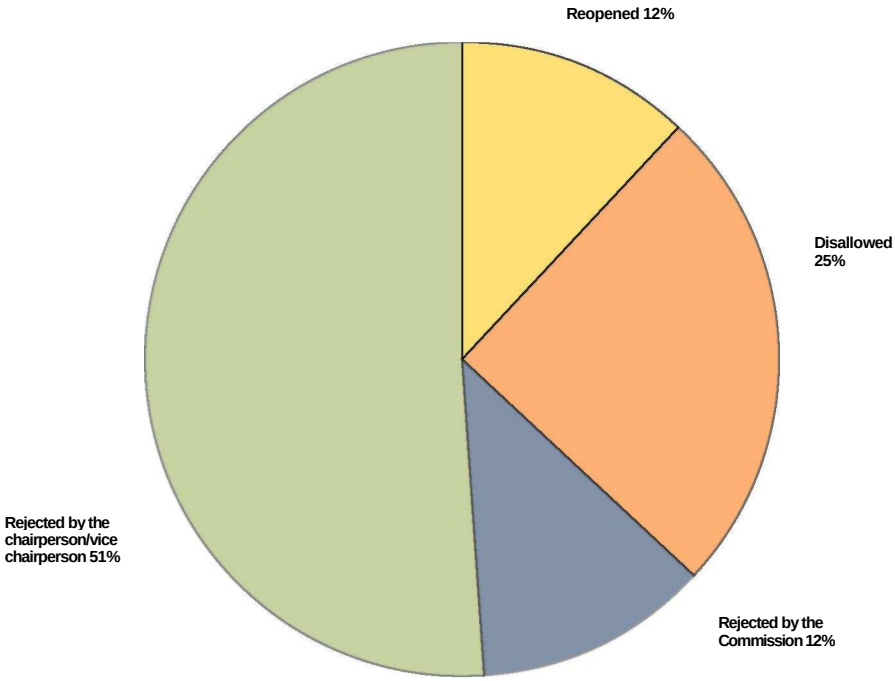


Since its formation on 1 January 2004, the Commission has received a total of 695 petitions and has concluded 568 cases. A total of 53 cases have been referred to the courts and 112 have been disallowed. 283 of the cases have been rejected by the Commission or chairperson/vice chairperson because they could obviously not succeed, while the rest - 120 cases – have been dismissed on formal grounds.

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

Wording	Received	Concluded	Reopened	Disallowed	Rejected by the Commission	Rejected by the chairperson/ vice chairperson	Rejected misc/ request for info
General	4	4					4
General	6	6				1	5
Sexual offences	125	106	12	30	10	49	5
Violence, threats	183	135	11	35	15	62	12
Drugs	83	60	7	11	6	32	4
Property crimes	100	77	12	21	7	28	9
Miscellaneous crimes	44	35	5	5	6	16	3
Misc misdemeanours	78	73	6	10	7	41	9
Temporary rulings	1	1					1
Discontinued prosecutions	10	10					10
Seizure or extinguishment	1	1				1	
Inquiries	23	23			1		22
Fines	4	4					4
Civil actions	30	30				1	29
Other, regarding professional cases	3	3					3
Total	695	568	53	112	52	231	120

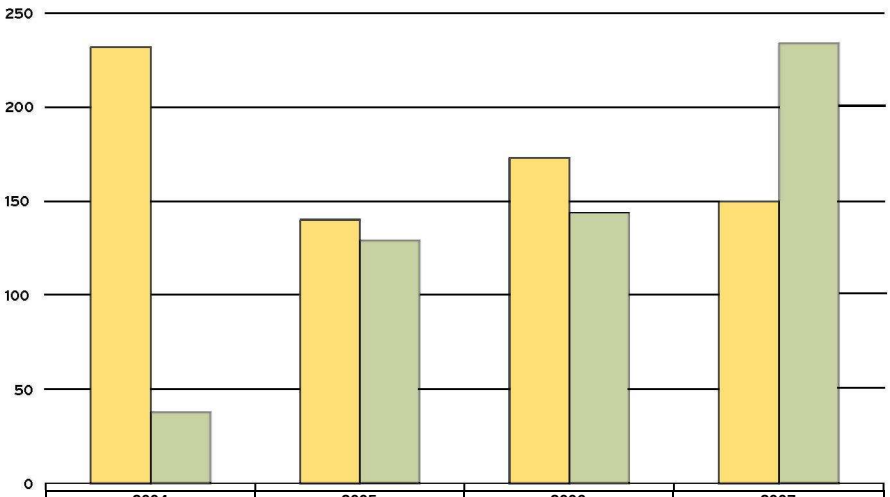
The figure below shows the outcome of the cases heard on their merits in the period from 2004-2007:



The Commission can reject any petitions that can clearly not succeed. This decision may also be reached by the Commission's chairperson or vice chairperson, and a large number of petitions were once more rejected by the chairperson or vice chairperson in 2007. This is primarily linked to the fact that the secretariat receives quite a lot of petitions for a review that are in reality appeals. In order to utilise the Commission's total resources in the best possible way to deal with cases that require more detailed investigation, the chairperson and vice chairperson must exercise their authority to reject petitions that can obviously not succeed.

The number of new cases during the first four years has been much greater than was expected when the Commission was established, and the number of petitions for a review is still much higher than that assumed by the legislature but seems to have stabilised. Getting rid of the backlog of cases is still one of the Commission's main goals. The Commission has an independent duty to investigate, which sometimes requires a lot of work to be carried out in extensive cases. This work utilises a lot of resources but is also a key part of the secretariat's tasks and was an important reason for the creation of the Commission. Several of the cases being dealt with by the Commission must be expected to still require a lot of investigatory work.

In order to reduce the backlog of cases and try to contribute to the efficient conclusion of cases, the Commission has set tentative deadlines for each part of its procedural work. However, major cases will require more time than that allowed by these deadlines, and the deadlines must under no circumstances have a negative effect on the quality of the Commission's work.



	2004	2005	2006	2007
■ Received	232	140	173	150
■ Concluded	38	129	144	234

Defence counsels/ lawyers for the victim

The appointment of a defence counsel for a convicted person can to a certain extent save the secretariat some work relating to guidance and investigation. The Act allows the Commission to appoint a defence counsel for a convicted person when there are special grounds for doing so. It must therefore be specifically evaluated in each case whether or not a defence counsel is to be appointed. In practice, the Commission has appointed a defence counsel when there is reason to assume that the convicted person may be unfit to plead, in that he will then be entitled to a defence counsel at each stage of the case. Otherwise, a defence counsel has been appointed in especially comprehensive or complicated cases, or if the convicted person lives in a remote location, so that providing satisfactory guidance to the convicted person would utilise a lot of the secretariat's resources. The appointment of a defence counsel may in such cases also make it easier to properly investigate the case. 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. Such a ceiling has also been set for large or complicated cases, but this can be reassessed as required. In 2007, the Commission appointed a defence counsel in 51 cases. A significant number of these cases concern petitions where doubt has been raised as to whether the convicted person was accountable for his actions when the matter that has been adjudicated on took place and where a defence counsel is to be appointed pursuant to section 397, second subsection of the Criminal Procedure Act, cf section 96, last subsection.

As from 1 July 2006, the Commission has been authorised to appoint a lawyer for a victim pursuant to the rules stated in section 107, et seq, of the Criminal Procedure Act. This has been particularly relevant in connection with interviewing victims in sexual offences cases. In 2007, the Commission appointed a lawyer for the victim in nine cases.

The Commission's other activities

The collaboration with the commissions in England and Scotland continued in 2007. The Commission and its secretariat attended a conference in Birmingham on 10 May 2007 to mark the 10th anniversary of the English Criminal Cases Review Commission. (CCRC). The chairperson of the Norwegian commission gave a talk on the regulations governing the review of criminal cases in Norway, with a particular focus on the main differences between the Norwegian and English regulations. The Commission's members held a tripartite seminar the next day along with representatives of the English and Scottish commissions. The secretariat had a meeting with representatives of the English secretariat at which it provided information on its work and ways of working.

The Commission's chairperson has informed the Norwegian Minister of Justice and the Police every six months about the Commission's activities and had additional contact with the Minister of Justice and the Police's political and administrative managements.

The Commission's chairperson also carried out work aimed at external parties in the form of lectures and information on the Commission's activities. This includes talks given at the Director General of Public Prosecutions' public prosecutors' meeting, at the Regional Criminal Law Conference in Rogaland and at the Norwegian Forensic Medicine Association's annual meeting. In addition, the chairperson held lectures and gave talks at gatherings arranged by the Ministry of Justice and the Police, the Courts Administration and Oslo District Court, as well as at seminars arranged together with the Justice Secretariats and Conflict Resolution Board Secretariat.

The Commission's chairman also had meetings with the Director General of Public Prosecutions to discuss general issues relating to the Commission and prosecuting authority when dealing with petitions to reopen criminal cases. The chairperson also had a meeting with the new head of the Courts Administration to provide information on the Commission's work.

A meeting was held with Professor Dao Tri Uc, who is the head of the Institute of State and Law in Vietnam. Professor Uc was on a study trip to Norway and had expressed a wish to meet Norwegian public bodies, including the Criminal Cases Review Commission. This meeting was arranged by the Ministry of Foreign Affairs, which was also represented at the meeting. The Commission's chairperson gave an account of the regulations on which the reopening of criminal cases in Norway is based and of the Commission's activities.

Other work includes the chairperson's participation at the Minister of Justice and the Police's departmental head conference and statements of views to the Ministry of Justice and the Police. The Commission has stated its views on, among other things, the Victims Board's report entitled "*Fornærmede i straffeprosessen – nytt perspektiv og nye rettigheter*" (Victims in criminal proceedings – a new perspective and new rights) (NOU 2006:10), the report entitled "*Rett til tolk – tolking og oversettelse i norsk straffeprosess*" (The right to an interpreter – interpretation and translation in Norwegian criminal proceedings) and on "*Rapport om regjeringens innbyggerkonferanse 2007*" (Report on the government's population conference 2007).

The Commission's website www.gjenopptakelse.no is continuously updated with information on the Commission and its work. A summary of the cases that are assumed to be of particular interest is published there, including cases that are referred for a retrial by a new court.

Referred cases

In its annual reports for 2004 and 2005, the Commission included brief versions of all the cases that it had referred for a retrial. In 2006, the Commission decided not to report on decisions that had been referred solely because the convicted person later proved to have been unaccountable for his actions when the matter for which he was convicted took place. The reason for this is that these cases do not raise issues of a legal or fundamental nature and are therefore of little interest to the general public.

1. (200500011)
A Somali man was – together with another person – sentenced in 2004 to 7 months imprisonment for contravening section 47, fourth subsection, cf fifth subsection, of the Immigration Act by having carried out organised activities, for the purposes of gain, aimed at helping foreigners to illegally enter Norway (human trafficking). In its decision, the majority of the Commission came to a different decision than the minority. The majority referred to the fact that the specific acts to which the conviction relates are acts that do not in themselves involve criminal liability. According to section 47 of the Immigration Act, it is only when these acts are carried out for the purposes of gain, as part of an organised activity and there is also an illegal entry or departure from the country that criminal liability arises. The requirement of the act being carried out for the purposes of gain is to be regarded as having been met if the offender is aware that he is helping others that are carrying out activities for the purposes of gain.

Based on their knowledge of the importance of clan links in Somali culture, the majority decided that the convicted person's help to the parties to enter the country seemed to be within the framework of what the travelling party could expect of assistance. The question was thus whether the convicted person knew that two of the women were travelling as part of organised human trafficking operations, cf section 47 of the Immigration Act. According to his own testimony, he did not know that the women were not travelling with valid passports until after he had taken them to the airport. He did not know of the women's arrival until after they had arrived, and no fee had been agreed on. The majority found it difficult to see what circumstances the District Court had based its conviction on, in that this conviction only related to the convicted person to a very slight extent. The Court seems to have placed emphasis on the convicted person's contact with his co-accused's former spouse. The Commission's investigations have shown that clan links are of major importance in Somali culture, and that the contact between the convicted person and co-accused's former spouse seems to be unremarkable. There does not appear to have been any evidence given by experts regarding the importance of clan links during the main hearing, and the majority also found that there were grounds to question whether – if the convicted person knew that the women did not have valid passports – it would have been natural to state a name and telephone number when contacting the police. The convicted person had a new partner now, and it could be asked whether it was natural for him to stay with the former spouse (who was not accused in this case). The majority found that there were such special circumstances that it was doubtful whether the District Court's conviction was correct. The Commission referred to the fact that the convicted person had been sentenced to immediate imprisonment and that the conviction had prevented him from obtaining work. The majority thus found that weighty considerations indicated that the case should be retried.

The Commission's minority stated that this case was in all major respects in the same position as when it had been tried in court and that the circumstances pleaded as grounds for a reopening of the case had been considered by the courts. Clan links were a factor that seemed to have been considered by the District Court. The minority could not see that there were any special factors which indicated that the conviction was incorrect and did not find that the conditions for reopening the case were present.

2. (200700097)
The convicted person was charged in 2002 with, among other things, helping to blow up the club premises of the Bandidos motorbike club in Drammen in 1997, when one person died. He was sentenced to imprisonment for eight years. This conviction was appealed against, and the convicted person was imprisoned for 12 years by the Court of Appeal in 2003. He appealed against the Court of Appeal's conviction to the Supreme Court, alleging that there had been procedural errors when the court heard the case. He stated his reasons for this allegation were that one of the Court of Appeal judges had been disqualified by reason of prejudice since she had taken part in deciding his appeal against an imprisonment order while this case was being investigated. In its decision, the Court of Appeal had applied section 172 of the Criminal Procedure Act as grounds for continued imprisonment. The Supreme Court dismissed the appeal. As regards the question of the Court of Appeal Judge's disqualification by reason of self-interest, the Supreme Court placed crucial emphasis on the fact that she was not the presiding judge.

Following this, the convicted person brought this case before the European Court of Human Rights in Strasbourg. In a ruling dated 31 July 2007, this Court found that there had been a breach of article 6, no. 1 of the Human Rights Convention, which stipulates the right to «a fair … hearing… by an independent and impartial tribunal…». The convicted person thereafter petitioned for his criminal case to be reopened, stating that if the Supreme Court had found the Court of Appeal judge to be disqualified by reason of prejudice, the Court of Appeal's conviction would have been overturned, irrespective of whether or not the Court of Appeal judge herself felt that she was not prejudiced when hearing the convicted person's case.

The Commission referred to section 391, no. 2 b of the Criminal Procedure Act and to the fact that, according to article 46 of the Human Rights Convention, cf section 2 of the Human Rights Act, countries have an obligation to comply with the European Court of Human Rights' decisions. Section 391, no. 2 b of the Criminal Procedure Act stipulates that a petition to reopen a case may be submitted "when an international court (...) has, in a case against Norway, found that the procedure on which the decision was based conflicts with a rule of international law that is binding on Norway, if there is reason to assume that the procedural error may have influenced the substance of the decision and that a reopening of the case is necessary in order to remedy the harm that the error has caused." Following an all-round assessment, with particular emphasis on the fact that this was a procedural error in the form of disqualification by reason of self-interest, that there was a reasonable chance that the error might have affected the substance of the decision and that there did not seem to be any way of remedying the harm caused other than by reopening the case.

Refer to a more detailed description of this decision on the Commission's web site, http://www.gjenopptakelse.no/index.php?id=84

The case was referred to the Supreme Court, which overturned the Court of Appeal's conviction.

3. (200700016)
A man who was convicted of contravening section 192, first subsection, second penal alternative (rape) in 1993 petitioned for his case to be reopened, stating that key new circumstances in the case created doubt about the victim's credibility. He referred to the fact that the victim was convicted of making false accusations about rape in England in 2005. In Norway, too, she had accused several people of rape since 1993. It had been decided not to prosecute any of these cases. The convicted person alleged that these cases showed a pattern in the victim's behaviour, in that she wrongly lodges a formal complaint of rape against people. The alleged rapes were supposed to have taken place in connection with the use of alcohol and sexual contact with men. In the convicted person's opinion, this was a course of action that was not unlike the acts leading up to the sexual contact which had taken place between him and the victim in 1992.

After investigating the case, including by examining witnesses, the Commission found, following an overall assessment, that the conviction in England in the summer of 2005 and the charges that had been dropped in Norway created such doubt about the victim's credibility in connection with the conviction in 1993 that the case should be retried. The Commission referred to the fact that the victim had made a striking number of accusations of rape, and at least one of them had, as stated, led to her being convicted of making false accusations. All of the other cases had been dropped, even when the offender was known. The case was reopened pursuant to section 391, no. 3 of the Criminal Procedure Act.

4. (200600184)

A taxi driver was sentenced to 30 days' imprisonment by the District Court for being violent to a passenger. The convicted person acknowledged that he had hit the passenger, but claimed that he acted in self-defence since the passenger had attacked him while the car was moving. The District Court did not believe the convicted person's explanation regarding this. The conviction was appealed against, but the Court of Appeal refused to hear the appeal.

The convicted person petitioned for a review of his case, referring, among other things, to a number of factors which made it likely that the victim had committed perjury in court. Among other things, the convicted person claimed that the layout of the taxi was such that he could not have hit the victim unless the victim had been leaning forward towards him. The convicted person and his defence counsel asked the court to take a look at the taxi during the trial, but the court refused to do so.

The Commission investigated this case. Among other things, the victim and other passengers in the taxi were contacted and a crime scene reconstruction/examination of the taxi was carried out. The investigation showed, among other things, that the victim had previously been convicted of violence against a taxi driver. The examination of the taxi and crime scene reconstruction supported the convicted person's explanation of the course of events. The taxi layout showed that the driver had little chance of hitting the victim unless the victim had leaned towards the driver as the driver claimed. The driver had also been a taxi driver for more than 30 years without having any complaints made against him.

Following an all-round assessment, the Commission found that the investigation of the case had resulted in new evidence which could have led to an acquittal if the evidence had been presented to the court that had tried the case. The case was reopened pursuant to section 391, no. 3 of the Criminal Procedure Act.

5. (200500191)

In November 2004, a man was convicted by the District Court of dishonestly handling a vehicle with a false registration plate. The indictment also included two other persons and all were found guilty as charged. The convicted person was sentenced to imprisonment for 60 days. The court based its ruling on the fact that he, together with his co-defendants, had been in possession of a stolen car with a registration plate and chassis number from a similar car that had previously belonged to him. All three appealed against the conviction, but the Court of Appeal refused to hear their appeals.

The convicted person petitioned the Commission to reopen his case in October 2005. He based the petition on the fact that one of the co-defendants that had been charged and convicted together with him had given a new, different statement to the police in September 2005. In this, the co-defendant had stated that it was he who had bought the convicted person's car and that the convicted person did not know that this car was later resold. The convicted person gave a statement to the Commission's investigating officer in June 2007 and his statement agreed with the co-defendant's new statement. The convicted person acknowledged that he had not previously stated the entire truth and

said that the reason for this was that he came from an environment in which one does not ”inform” about other people.

A new, different statement by the convicted person about his own role cannot in itself be regarded as a new circumstance or new evidence that can lead to a reopening of the case, but new statements from a co-defendant may, depending on the circumstances, provide grounds for this.

The case was sent to the prosecuting authority for its comments and the public prosecutor stated in a letter to the Commission in September 2007 that the conditions for reopening the case seemed to be present. The Commission found that the new statement by the co-defendant was a new circumstance or new evidence, so that the petition for the case to be reopened was assessed pursuant to section 391, no. 3 of the Criminal Procedure Act. The Commission decided that this statement, viewed in connection with the other information which was available, including the convicted person’s own statement to the Commission, made it reasonably likely that the convicted person would have been acquitted if the information had been available when the case was adjudicated on.

The conditions for a reopening of the case pursuant to section 391, no. 3 of the Criminal Procedure Act were present, and the case was referred to the court for a retrial in accordance with section 400 of the Criminal Procedure Act. The decision was unanimous.

6. (200400195)

In 1991, a 42-year-old man was sentenced by the Court of Appeal to imprisonment for two years and eight months for having had sexual intercourse with his daughter on several occasions when she was between the ages of five and nine years.

The Commission appointed new expert witnesses and questioned several people, including the victim. The expert witnesses state in their report that the evidence found in 1989 indicates that sexual abuse may have taken place. However, there is such great uncertainty relating to the evidence that they conclude that the evidence probably cannot be interpreted as proving that sexual abuse and sexual intercourse have taken place. The Forensic Medicine Commission stated in February 2006 that it should be assumed that the primary examination in 1989 only found ”remains of the hymen” and that the examination of the girl while lying on her back does not rule out that the examiner may have made sure that the hymen showed extensive defects. The Forensic Medicine Commission also stated that the expert witnesses ”slightly too definitely” rejected the interpretation and conclusion that the chief physician arrived at in 1989.

In this case, the Commission’s majority arrived at a different decision to the minority. The entire Commission criticised the fact that an advisor with the school psychology service had a conversation with the victim in December 1989 and then took part in the out-of-court judicial examination three days later. In the Commission’s view, it could not be ruled out that the victim’s statement during the judicial examination could have been affected by the conversation with the advisor shortly before.

The majority of the Commission’s members referred to the fact that the new expert witness report stated that there was so much uncertainty relating to the chief physician’s findings in 1989 that these could not be interpreted as proving that sexual abuse had taken place. The expert witnesses’ assessment of the findings today neither confirm nor deny that sexual abuse took place. The majority also referred to the fact that the victim had stated that she had been abused by her father and step-father. The Commission’s majority had also noted that the victim did not provide much detailed information in the out-of-court judicial examination in 1989 and that she also did not seem able to provide a more detailed description of the abuse that was supposed to have taken place when being questioned by the Commission’s

investigating officer. She did not provide details of the assaults in conversations with her general practitioner or psychiatrist either. When questioned by the Commission's investigating officer, she explained, however, that she could remember the assaults but could not talk about them.

In the majority's view, the new expert witness report and the victim's information that she was also sexually abused by her step-father must be regarded as new circumstances or new evidence which could, on the whole, have led to a different result if they had been available to the court which adjudicated on the issue. In their assessment, the majority also placed emphasis on the fact that the circumstances surrounding the execution of the out-of-court judicial examination were of such a nature that they provided grounds for questioning the evidential value of the out-of-court judicial examination.

The Commission's minority commented that the new expert witnesses had only considered the written statements provided in 1989. The minority also referred to the comments by the Forensic Medicine Commission, including the comment that the new expert witnesses had slightly too definitely rejected the chief physician's interpretation and conclusion. In the minority's view, the new expert report was not new evidence that seemed likely lead to an acquittal of the convicted person. In the minority's view, the victim's statement that she had been abused by her step-father was also not to be regarded as new evidence that seemed likely to lead to an acquittal.

The Commission's minority based its decision on the fact that the court knew that the school psychology advisor had had a prior conversation with the victim and that the advisor took part in the out-of-court judicial examination. The court assessed the out-of-court judicial examination's evidential value on this basis, among others. The judicial examination was, together with other witness statements and an expert witness statement, some of the total evidence considered by the jury and any weaknesses in the judicial examination were not enough to decide that it was doubtful that the conviction was correct.

Based on the majority's view, the case was reopened in that the conditions in section 391, no. 3 of the Criminal Procedure Act were regarded as having been met.

The Court of Appeal thereafter acquitted the convicted person without a main hearing.

7. (2004000107)

A man was sentenced to imprisonment for two years and four months in 1992 for contravening sections 195, first subsection, second penal alternative, 195, first subsection, first penal alternative, 207, first subsection, first penal alternative and 209, first sentence, by having committed indecent sexual acts with his step-daughter and son, both of whom were under 14 years of age. In relation to his step-daughter, he was also convicted of sexual intercourse. The man petitioned to have his case reopened by the Commission, among other things by referring to the fact that new medical knowledge relating to the assessment of anal and genital findings in children would be able to show that the children had not been subject to abuse.

The Commission investigated the case, among other things by appointing new medical expert witnesses and questioning his now adult step-daughter.

Following an all-round assessment of the new expert witness report compared to the other evidence that was available to the adjudicating court, the Commission found that the evidence in the case was – due to new medical knowledge – significantly different to what it was when the case was tried in 1992. At that time, the results of the medical examinations were considered to provide grounds for suspecting that the children had been subject to sexual abuse, and the conclusion was particularly clear in relation to the step-daughter. The new expert witness report, however, shows that the findings, as these are assessed by expert

witnesses today, do not in themselves either confirm or rule out sexual abuse. The Commission looked at how the suspicion of abuse first arose and how the case developed further. The Commission found that the former medical examinations had been allowed to set the terms for the out-of-court judicial examinations, so that when the medical findings later proved not to have the evidential value that had previously been assumed, the case was put in a different light. The convicted person's step-daughter, who was questioned while the Commission was investigating the case, could not help to shed further light on the case since she did not remember anything linked to the case. Following an all-round assessment of the evidence, the Commission decided that there was a reasonable chance that the case would have ended in an acquittal if the new expert witness report had been available to the court when the case was originally adjudicated on. The petition was therefore allowed pursuant to section 391, no. 3 of the Criminal Procedure Act and the case was referred to the court for a retrial. The Commission's decision was unanimous.

The Court of Appeal thereafter acquitted the convicted person without a main hearing.

8. (200700074)

A man was sentenced to imprisonment for three years in 1990 for contravening sections 195, first subsection, second penal alternative, 195, first subsection, first penal alternative, 196, 207, first subsection, second penal alternative, 207, first subsection, first penal alternative, and 209 by having committed indecent sexual acts with his two daughters who were under 14 years of age and his step-son who was under 16 years of age. In relation to his older daughter, the indecent sexual acts were considered to include sexual intercourse. The man petitioned the Commission to reopen his case, among other things with reference to the fact that new medical knowledge regarding the assessment of anal and genital findings in children would be able to show that the children had not been subject to sexual abuse.

The Commission investigated the case further, including by appointing new medical expert witnesses and questioning his now adult daughters.

The new expert witness report stated that the medical findings, as these are assessed by expert witnesses today, are in themselves not regarded as either confirming or denying sexual abuse. The Commission did not at first find any grounds for allowing the petition to reopen the case and this decision was reached with dissenting votes – 3-2.

The convicted person's lawyer thereafter returned to the case and asked the Commission to review the case again. He enclosed a letter from the convicted person's former defence counsel which showed that the medical examinations had played a key role in the criminal case and that the question of guilt was regarded as so clear, as a result of the medical statements, that the case was basically viewed as a question of sentencing.

The Commission thereafter completely reviewed the case once again. One of the Commission's members changed his views at that time. This member had been one of the majority that did not want to reopen the case the last time the case was reviewed, and by changing his mind he supported the former minority's conclusion, so that there was then a majority (3-2) in favour of reopening the case.

The member who had changed his mind referred to the minority's comments when the case had previously been dealt with and also provided an independent reason for his change of mind. He referred to the new expert witness report and the fact that the former defence counsel's letter showed that there was reason to assume that great emphasis had been placed on the expert witnesses' statements during the main hearing. In addition, there were weaknesses in the out-of-court judicial examination of the two daughters and it appeared doubtful that the court had, during the main hearing, been sufficiently aware of the weaknesses in the out-of-court judicial examinations since the medical certificate from

the chief physician who examined the girls had concluded that sexual abuse was ”overwhelmingly probable”.

The step-son’s testimony was also assumed to be weakened by the fact that he had been subject to repeated questioning over a period of time. He had been very distressed by the information he had been given about the suspicion of sexual abuse of his half-sisters, and it could also not be ruled out that he had wanted to support the girls’ testimony.

There was no reason to believe that the testimony of the convicted person’s daughters was deliberately incorrect when they were questioned in connection with the Commission’s review of the case, but their testimony had to be viewed based on the fact that their father had been convicted of sexually abusing them and that this had clearly been assumed later on.

The new expert witness statement was new evidence which seemed likely to result in an acquittal in relation to all three children. The medical certificate that was issued after the examination of the daughters in 1989 had not allowed for much doubt and seemed to have contributed to setting the terms for the further investigation of this matter, including the possible sexual abuse of the step-son.

Since there was now a majority in favour of reopening the case, the petition was allowed pursuant to section 391, no. 3 of the Criminal Procedure Act, and the case was referred to the court for a retrial.

9. (200700022)

A man was convicted of contravening section 31, first subsection of the Road Traffic Act, cf section 5, first subsection, cf second subsection, cf §8 of the sign regulations (speed – 111 km/h in a 60 km zone measured by a laser speed gun). He was sentenced to community service for 36 hours and banned from driving a motor vehicle for 14 months. He gave a full confession in court and the case was ruled on as a summary judgment based on a plea of guilty pursuant to section 248 of the Criminal Procedure Act.

The convicted person petitioned for his case to be reopened and referred to the fact that, in a later judgment relating to another driver, who was measured at the same place and time, the District Court had found that there was doubt relating to the laser measurement which had to benefit the accused. There was approximately the same percentage of error in the measurement of the convicted person as in the measurement of the other person compared to the speed they themselves believed they had been driving at. The convicted person estimated that he had been driving at 80-90 km/h.

The prosecuting authority submitted an expert statement from the Norwegian Metrology Service regarding another measurement taken during the same speed check, obtained after the judgment regarding the other driver. After examining the laser measurement, the Service had no comments to make regarding this. The expert witness statement was claimed to have the same effect on the convicted person’s case.

In the Commission’s view, the District Court’s judgment relating to the other driver, in which the evidence in the case was assessed differently, was a new circumstance in the case against the convicted person. When considering whether the new circumstance seemed likely to lead to a considerably milder penal sanction, the Commission was divided into a majority and a minority.

The Commission’s majority found that the new circumstance in the case seemed likely to lead to a considerably milder penal sanction. They referred to the fact that there was a reasonable chance that the assessments which were the basis for the assessment of the

evidence in the judgment relating to the other driver would have been important to the court's assessment of the convicted person's circumstances if these had been known to the adjudicating court when the convicted person's case was ruled on. They specifically pointed to the fact that the court had found, after a survey of the site and demonstration, that it could not be ruled out that the measurement result had been affected by circumstances at the site.

The Commission's minority found that the doubt which the District Court allowed to be crucial when setting aside the speed measurement in the judgment relating to the other driver seemed to me of a more theoretical nature. The Norwegian Metrology Service's report, which was submitted after the judgment had been handed down, further removed this doubt. The District Court's assessment of the evidence in the case against the other driver did not therefore seem likely to lead to a considerably milder penal sanction for the convicted person.

Based on the majority's view, the case was reopened pursuant to section 391, no. 3 of the Criminal Procedure Act.

A new judgment was thereafter handed down. The convicted person's acknowledgement that he had driven at 80 km/h in a 60 km zone formed the basis of the sentencing. The court placed considerable emphasis on the fact that the convicted person was not shown the results of the laser measurement at the site. This was a breach of instructions which, following a specific assessment, led to the measurement result being set aside. The court referred to the fact that the convicted person faced an accusation of a very serious speeding offence involving the risk of him being banned from driving and that he contested the results of the measurement. The rule of law and question of confidence in laser measurements were stressed in the court's assessment.

The sentence was a fine of NOK 4 200, or alternatively imprisonment for seven days. The offender was not banned from driving.

10. (200600141)

An 18-year-old man was sentenced by the District Court in August 2004 to imprisonment for 90 days, of which 30 days were suspended, for two cases of criminal fraud relating to the purchase of computer equipment and of coffee machines with accessories.

After the judgment had been handed down, it was shown that the convicted person had given his brother's name as his own during the investigation and that the indictment had been taken out in his brother's name. He also stated his brother's personal details during the main hearing, and the judgment was handed down against his brother. The judgment was, however, rectified pursuant to section 44 of the Criminal Procedure Act.

In a letter to the Oslo Police District dated 14 October 2005, the convicted person, via his defence counsel, asked for his case to be reopened as regards the conviction pursuant to item I of the indictment, which concerned criminal fraud in connection with the purchase of the coffee machines. The letter stated, among other things, that: "A acknowledges that it was he that was involved in the episode referred to in item II of the indictment prepared on 27 February 2004, but claims that it was his brother, B, who was involved in the matter described in item I of the indictment. According to the information received, B admits that this crime was committed by him."

The convicted person's petition to reopen his case was supported by the public prosecutor in a letter to the Commission dated 24 October 2006.

The Commission found that the brother's statement in which he acknowledged he was guilty of criminal fraud as regards the purchase of the coffee machines and their accessories had to be regarded as new evidence. This acknowledgement was

strengthened by other information in the case. The conditions for reopening the case pursuant to section 391, no. 3 of the Criminal Procedure Act had been met and the case was referred to the court for a new trial pursuant to section 400 of the Criminal Procedure Act. This decision was unanimous.

Following a new trial, the District Court acquitted the convicted person of the crime that had been referred for a retrial. For the crime that had been finally and enforceably determined by the District Court's judgment in August 2004, the sentence was imprisonment for 45 days, of which 30 were suspended with a probation period of two years.

11. (200500202)
A man was convicted by the District Court of contravening section 390a, section 227, first penal alternative, and section 228, first subsection of the General Civil Penal Code, cf section 49, for making threats, troublesome conduct and attempted common assault. He petitioned for his case to be reopened stating, among other things, that there was a new witness to two of the offences.

The Commission took evidence from the person concerned and this supported the convicted person's version of the events. The Commission reopened the case as regards these two factors. The Commission's review showed that the testimony from the new witness was new evidence in the case pursuant to section 391, no. 3 of the Criminal Procedure Act, in that the witness had not been known to the adjudicating court. This new evidence was likely to lead to an acquittal based on these factors, or to a considerably milder penal sanction.

12. (200600153)
Refer to decision 14.12.2006-II – www.gjenopptakelse.no
The decision in case 2006-00153 applies to person A in the same case.

13. (200600073)
A man was in 2004 sentenced to imprisonment for 90 days for contravening section 228, first and second subsections, first penal alternative of the General Civil Penal Code in that he had on one occasion hit "once or several times the face/head of the victim so that the victim broke bones in his face and received an eye injury". The charge also included a breach of section 17 of the Vagrancy Act in that he behaved as stated while in an intoxicated condition.

The petition to reopen the case referred to the fact that there was now information from a new witness in the case who had seen the episode and that this witness's statement showed that the convicted person had been far more provoked than the court had found proven. The prosecuting authority, on its part, did not believe there were grounds for reopening the case.

Although there may on a general basis be grounds for being rather sceptical about information from witnesses who come forward later on and provide statements regarding factors which took place more than one year ago, the Commission found that the new witness's statement regarding this case was new evidence in the sense of the Criminal Procedure Act.

As regards the question of whether the statement was likely to lead to an acquittal or to a "considerably milder penal sanction", the Commission found, with regard to the uncertainty regarding the acts leading up to the actual bodily harm which the District Court assumed, that there was a reasonable likelihood that the new witness's statement to the Commission could lead to an acquittal with reference to section 48 of the General Civil Penal Code or to the handing down of a "considerably milder penal sanction" to the convicted person with reference to section 56 of the General Civil Penal Code, cf

section 391, no. 3 of the Criminal Procedure Act, and it was therefore decided to reopen the case.

In a retrial in the District Court in 2007, the convicted person was once more sentenced in accordance with the indictment to a suspended period of imprisonment of 30 days.

Lawsuits against the Commission, etc

The Torgersen case

In its decision dated 8 December 2006, the Commission rejected Fredrik Fasting Torgersen's petition to reopen his case. Reference is made to the discussion of this case in the annual report for 2006. In 2007, the Commission worked on four cases linked to the Torgersen case, and an account of these is given below.

The Commission appointed a defence counsel for Torgersen in the autumn of 2004. The Commission paid the defence counsel for a total of 660 hours of work on the petition. Disagreement on the fee that was payable led to the lawyer suing the Norwegian state in the autumn of 2006, claiming that his fee claim was to be accepted. The main hearing was held in Oslo District Court on 5 March 2007. The court found in favour of the state and the lawyer was ordered to pay the state's costs. This judgment was appealed against to Borgarting Court of Appeal on 31 May 2007. The appeal is listed for hearing on 22 February 2008.

Torgersen's defence counsel made an official complaint against the Commission's members and investigating officer to the Director General of Public Prosecutions on 2 January 2007 for contravening sections 120, 325, no. 1, and 110 of the General Civil Penal Code. The Director General of Public Prosecutions decided that the matter was to be investigated by the Norwegian Bureau for the Investigation of Police Affairs, in that a formal complaint had also been lodged against representatives of the prosecuting authority. The Bureau investigated the matter and decided on 11 June 2007 that the charges were to be dropped because "no criminal offence is regarded as having been proven". The defence counsel appealed against this decision to the Director General of Public Prosecutions. Referring to the fact that there was a "lengthy friendship" between the Director General of Public Prosecutions, Busch, and the chief public prosecutor, Qvigstad, he claimed that the Director General of Public Prosecutions was disqualified by reason of prejudice and demanded that an alternative Director General of Public Prosecutions be appointed to decide on the appeal. Provided the Director General of Public Prosecutions overturned the decision not to prosecute, the lawyer accepted that there was no need to appoint an alternative Director General. The Director General of Public Prosecutions did not agree that he was disqualified by reason of prejudice according to section 60 of the Criminal Procedure Act, and this question was submitted to the Ministry of Justice and the Police pursuant to section 61, first subsection i.f. of the Criminal Procedure Act. The Ministry decided on 2 August 2007 that the Director General was not disqualified by reason of prejudice and could therefore decide on the appeal. Following this, the Director General decided on 15 October 2007 that the appeal by the lawyer was not to be allowed, and stated, i.a., that: "The complaint and appeal seem primarily to contain arguments against the Commission's decision regarding the petition to reopen the case, and appears to be an attack on this, put forward by someone who disagrees with the conclusion."

After the Commission had reached its decision on the petition to reopen the case, Torgersen, via his associate and defence counsel, submitted a claim to have access to the minutes and sound recording of a meeting that the Commission had had with a representative of the Forensic Medicine Commission in the autumn of 2004. He also submitted a claim to have access to that which was alleged to be the Commission's minutes, which showed which Commission members had attended the various Commission meetings at which the Torgersen case had been discussed. The Commission rejected this claim on grounds of principle and referred to the fact that the minutes were internal minutes of meetings which the Commission was entitled to exempt from access pursuant to section 398, fourth subsection i.f. of the Criminal Procedure Act. An appeal against the Commission's decision was then submitted to the

Ministry of Justice and the Police and the Ombudsman. This appeal was rejected. Torgersen's associate put forward a new claim for access to the Commission, which upheld its former decision. A letter dated 22 September 2007 gave notice that legal proceedings would be brought against the Commission. The defence counsel submitted a petition to Oslo District Court on 23 October 2007 claiming that Torgersen was entitled to have access to the documents stated above. At the same time, it was claimed that the lawyer was to be appointed as the defence counsel in this case. The Commission stated its views on the petition on 13 November and 5 December 2007. As at 31 December 2007, this petition is still waiting to be heard by the District Court.

In a letter dated 17 July 2007, Torgersen once more submitted a petition to have his case reopened. He also claimed that the petition was to be dealt with by new members, appointed by the King (a replacement Commission). In a letter of the same date, the lawyer asked to be appointed as Torgersen's defence counsel. A claim for a replacement Commission to be appointed was also submitted to the Ministry of Justice and the Police. The Commission reached a decision in this case on 12 October 2007 and concluded that the Commission itself was authorised to determine the question of its legal competence and that it was not disqualified by reason of prejudice from dealing with Torgersen's new petition for a reopening of the case. This decision was appealed against to the Ministry of Justice and the Police, which found that it did not have the authority to deal with the appeal. The Commission's decision is published in its entirety on the Commission's website. On 4 December 2007, Torgersen issued a claim against the Commission in Oslo District Court. He claimed that all the present members and alternate members of the Commission were disqualified by reason of prejudice from hearing the petition for a reopening of the case, and that he is entitled to appoint a defence counsel. As at 31 December 2007, this case is waiting to be heard by Oslo District Court.

Other lawsuits

In October 2006, legal proceedings were brought against the Commission by a convicted person whose petition to reopen his case had been rejected. The claimant claimed that the Commission had based its decision on the wrong facts. The convicted person did not attend the main hearing and the District Court found that the conditions for handing down a judgment in default had been met. In May 2007, the court handed down a judgment in favour of the Commission and awarded the Commission costs.

In February 2007, private legal proceedings were brought against the Commission by a convicted person whose petition to reopen his case had been rejected. The convicted person alleged that the Commission had made grossly defamatory allegations about him and that the criminal case had to be reopened due to a procedural error when the judgment was handed down. The District Court handed down a ruling in March 2007 stating that the case was to be dismissed since the deadline for bringing legal proceedings had not been met.

In February 2007, legal proceedings were brought against the Commission in a case in which a convicted person whose petition to reopen his case had been rejected alleged that the Commission had to be found to have been grossly negligent in its work and that the Commission was to pay him compensation. The District Court found it was unclear what the convicted person was basing his legal proceedings on. The court could not see that the conditions for bringing a private prosecution pursuant to section 402, no. 3 of the Criminal Procedure Act were present and, if the case was meant to be a private claim for damages, the court found that there was no general basis for indemnity. The District Court handed down a ruling in April 2007 stating that the case was to be dismissed.

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