THE NORWEGIAN CRIMINAL CASES
REVIEW COMMISSION

Annual Report 2008

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

THE NORWEGIAN CRIMINAL CASES
REVIEW COMMISSION

Table of contents

Annual Report 2008

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

The composition of the Norwegian Criminal Cases Review Commission

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 seven years while the members are appointed by the King in Council for a period of three years. The chairperson's term of office was extended from five to seven years by an Act dated 21 December 2007.

As at 31 December 2008, the Commission was composed of the following:

Chairperson:	Janne Kristiansen
Vice Chairperson:	Ann-Kristin Olsen, County Governor of Vest-Agder County
Members:	Svein Magnussen, professor of psychology at the University of Oslo
	Birger Arthur Stedal, Gulating Court of Appeal judge
	Ingrid Bergslid Salvesen, research and study director at the University of Tromsø
Alternate members:	Helen Sæter, Halden District Court judge
	Erling O. Lyngtveit, lawyer
	Øystein Mæland, psychiatrist and divisional director of Ullevål University Hospital

Øystein Mæland was on a leave of absence from his post as alternate member until 1 July 2008. Inger Thoen Nordhus, a psychiatrist, was appointed an alternate member 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 has otherwise employed eight permanent employees - four legal investigating officers, two police investigating officers, one head clerical officer and one secretary. In addition, the Commission hired two legal investigating officers on temporary assignments. The position of head clerical officer was changed to that of principle officer in March 2008, and the two temporary assignments were converted into permanent positions in the autumn of 2008.

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

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

The Norwegian Criminal Cases Review Commission's financial resources

A draft budget of NOK 12,725,000 was proposed in Proposition to the Storting (St. prp.) no. 1 (2007-2008) for the 2008 budget year. The Proposition states the following:

> "The grant to this item is to cover remuneration to the Commission's members, the salaries of the secretariat's staff and other operating expenses linked to the Commission's secretariat. The secretariat's staff consisted of 11 man-years as at 1 March 2007. It is proposed to increase the grant to this item by NOK 0.9 million in order to maintain two temporary posts until the end of 2008 and to further develop an electronic processing tool. In connection with the follow-up of Official Norwegian Report (NOU) 2006:10 *Fornærmede i straffeprosessen - nytt perspektiv og nye rettigheter* (Victims in criminal proceedings – a new perspective and new rights), it is proposed to increase the grant under chapter 468, item 01, by NOK 0.25 million as from 1 July 2008 as a result of increased victims' rights in connection with any reopening of the criminal case. For further details on the follow-up of NOU 2006:10, refer to item 4.1.1."

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

In general about the Norwegian Criminal Cases Review Commission

The Commission is an independent body which is responsible for deciding whether a convicted person who petitions for the reopening of a case that has been determined by a legally enforceable judgment should have the case retried in court. If the Commission decides to reopen the case, 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 exercise 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. Should a petition to reopen a criminal case be received, the Commission must objectively assess whether the conditions for reopening the case are present.

A convicted person may petition for the reopening of a criminal case on which a legally enforceable judgment has been pronounced if:

- there is new evidence or a new circumstance that seems likely to lead to an acquittal, the application of a more lenient penal provision or a substantially more lenient sanction;
- in a case against Norway, an international court or the UN human rights committee has concluded that the decision 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 judgment 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 judgment;
- the Supreme Court has departed from a legal interpretation that it has previously adopted and on which the judgment is based;
- there are special circumstances that cast doubt on the correctness of the judgment and weighty considerations indicate that the question of the guilt of the defendant should be re-examined.

A petition to reopen a case 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 reopened. 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. Where 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 Norwegian Criminal Cases Review 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. If a petition is not rejected and is examined further, any victim (or next of kin of a victim) is to be told of the petition. The victim and next of kin are to be entitled to view documents and to state their views, and they may ask to be allowed to give a statement to the Commission. The victim and next of kin must also be told of the outcome of the case once the Commission has reached its decision. The Commission may also appoint a counsel for the victim pursuant to the Norwegian Criminal Procedure Act's normal rules in so far as these are appropriate.

The Commission may hold oral hearings and petition for the taking of evidence in court. Moreover, it can petition the court for a personal background report, for a person to be subject to mental observation and for enforcement 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 case is to be reopened, the case is to be referred for retrial to a court of equal standing to that which imposed the judgment. This means that:

- If the judgment was imposed by a District Court, the Commission sends the case to the Court of Appeal, which nominates a District Court for a new hearing.
- If the judgment was imposed by a Court of Appeal, the case is sent to the Appeals Committee of the Supreme Court, which nominates a Court of Appeal for a new hearing.
- If the judgment was imposed by the Supreme Court, the Supreme Court retries the case.

Amending legislation in 2008

In Act no. 90 of 17 June 2005, which came into force on 1 January 2008, the name of the legal remedy "review" was changed to "reopening". The reason for this was changes resulting from the major Disputes Act reform, as well as a desire for the identical use of concepts in civil and criminal cases. As from 1 January 2008, therefore, the concept of "reopening" is used, but this change has not led to any substantive changes to chapter 27 of the Criminal Procedure Act relating to the reopening of criminal cases. The Commission has retained the name the Norwegian Criminal Cases Review Commission (the Review Commission).

In Act no. 5 of 7 March 2008, which came into force on 1 July 2008, changes were made to the Criminal Procedure Act in order to strengthen the victim's and victim's next of kin's positions in criminal cases. Reference is made to that mentioned above, which states the main features of the changes to the victim's and victim's next of kin's positions in cases for which a petition to reopen has been submitted.

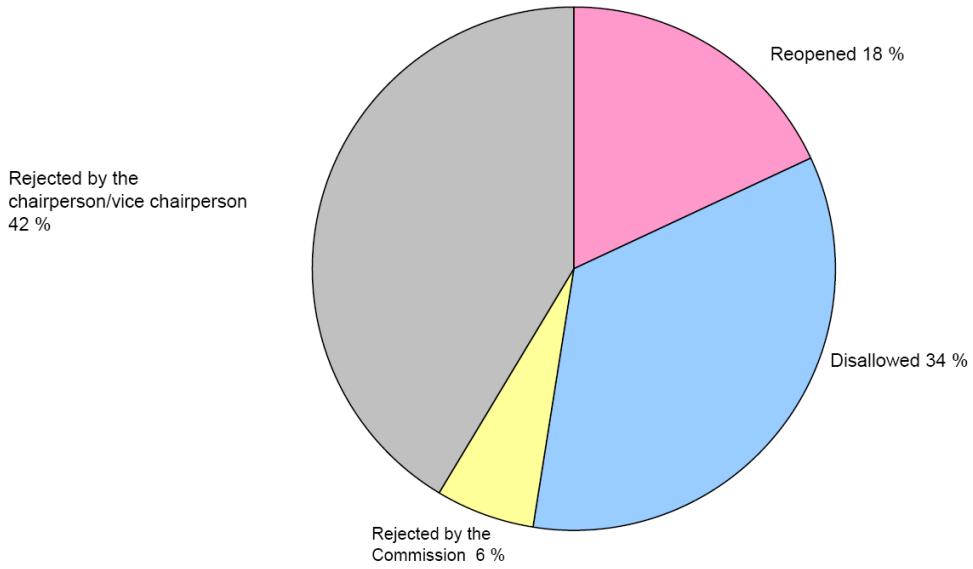
Cases and procedures

During the year, the Commission held 15 meetings lasting for a total of 29 days. The Commission received 157 petitions to reopen cases in 2008, compared to 150 in 2007, 173 in 2006, 140 in 2005 and 232 in 2004. A total of 164 cases were concluded in 2008, of which 143 were heard on their merits. Of these 143 petitions heard on their merits, 26 were referred to a court for a retrial while 49 were disallowed. The remaining 68 cases were rejected by the Commission or its chairperson/vice chairperson as it was clear that they could not succeed. Of the 26 cases referred to a court for a retrial, the Commission's members disagreed on two, and of the 49 cases where the petitions were disallowed, the Commission's members disagreed on three. The Commission's decisions to reject petitions were unanimous.

The other 21 cases that were concluded were dismissed on formal grounds because they did not fall within the Commission's mandate. These included petitions to reopen civil judgments, foreign judgments, penalties/fines that had been agreed to, administrative decisions and investigations into cases that had been dropped. Some of the petitions were also withdrawn for various reasons. A complete overview of the number of petitions received and cases concluded in 2008 is provided in the table below:

	Received	Concluded	Reopened	Disallowed	Rejected by the Commission	Rejected by the chairperson/vice chairperson	Dismissed misc/request for info
General							
General	1	1				1	
Sexual offences	17	23	2	8	2	10	1
Violence, threats	45	56	11	21	2	17	5
Drugs	19	20	5	4	1	9	1
Property crimes	42	37	7	10	3	15	2
Miscellaneous crimes	8	8	1	4		1	2
Miscellaneous misdemeanours	14	10		2	1	6	1
Temporary rulings		0					
Discontinued prosecutions	1	0					
Seizure or extinguishment		0					
Inquiries	8	6					6
Fines	2	2					2
Civil actions		1					1
Other, regarding professional cases		0					
Total	157	164	26	49	9	59	21

The figure below shows the outcome of the cases heard on their merits in 2008:

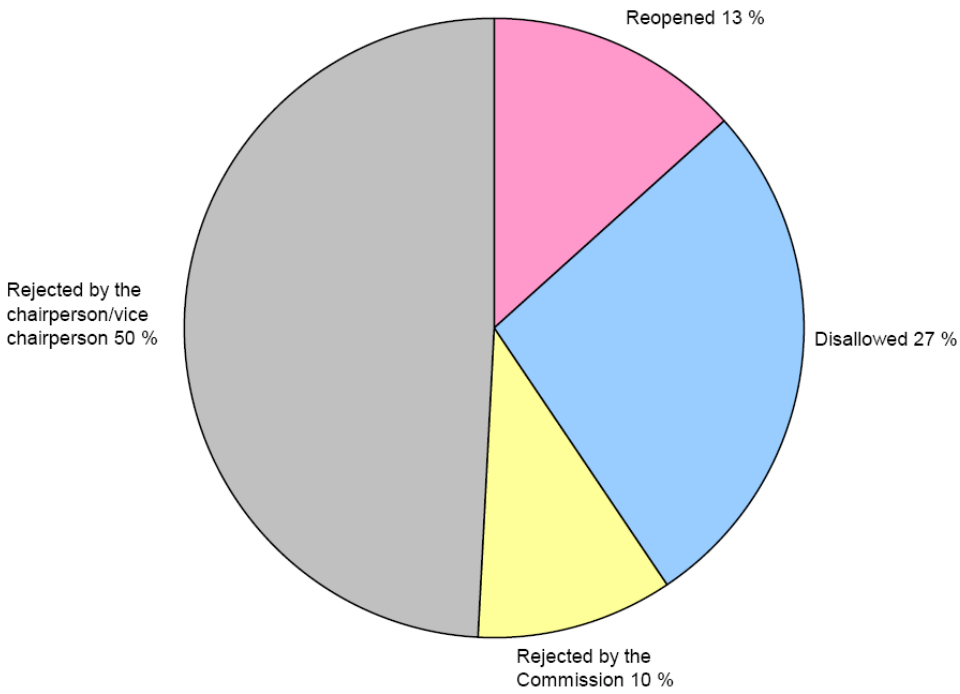


Since its formation on 1 January 2004, the Commission has received a total of 852 petitions and has concluded 732 of these. A total of 79 cases have been referred to the courts and 161 have been disallowed. 351 of the cases have been rejected by the Commission or its chairperson/vice chairperson because they could obviously not succeed, while the rest – 141 cases – have been dismissed on formal grounds.

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

	Received	Concluded	Reopened	Disallowed	Rejected by the Commission	Rejected by the chairperson/vice chairperson	Dismissed misc/request for info
General	4	4					4
General	7	7				2	5
Sexual offences	142	129	14	38	12	59	6
Violence, threats	228	191	22	56	17	79	17
Drugs	102	80	12	15	7	41	5
Property crimes	142	114	19	31	10	43	11
Miscellaneous crimes	52	43	6	9	6	17	5
Miscellaneous misdemeanours	92	83	6	12	8	47	10
Temporary rulings	1	1					1
Discontinued prosecutions	11	10					10
Seizure or mortification	1	1				1	
Inquiries	30	29			1		28
Fines	6	6					6
Civil actions	31	31				1	30
Other, regarding professional cases	3	3					3
Total	852	732	79	161	61	290	141

The figure below shows the outcome of the cases heard on their merits in the period from 2004 - 2008:

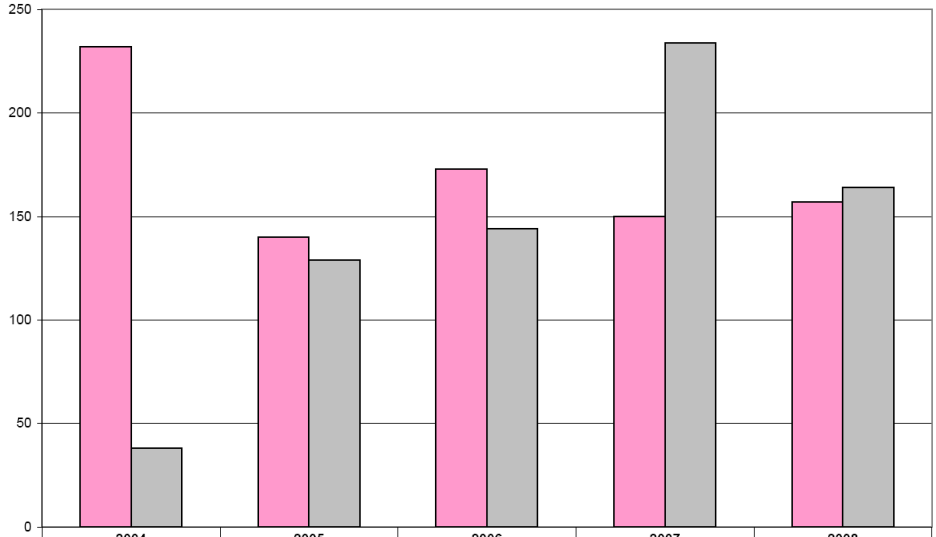


The Commission can reject any petitions that can clearly not succeed. This decision may also be reached by the Commission's chairperson or vice chairperson, and far fewer petitions were rejected by the chairperson or vice chairperson in 2008 than in previous years. The reason for a number of petitions being rejected by the chairperson/vice chairperson is primarily that the secretariat receives many petitions to reopen cases which are in reality "appeals". In order to use the Commission's total resources in the best possible way to deal with cases that require further investigation, the chairperson and vice chairperson must exercise their authority to reject petitions that obviously cannot succeed.

The number of new cases during the first five years has been much greater than was expected when the Commission was established. The number of petitions to reopen cases is still much higher than that assumed by the legislature but seems to have stabilised. Eliminating the backlog of cases is still an important goal. 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.

The figure below shows that many more cases were dealt with in 2007 than in 2008. This is linked to the planned reduction in the backlog of cases in 2007, when a large proportion of the cases were rejected by the chairperson/vice chairperson. This has led to a larger percentage of the cases being dealt with by the Commission in 2008 than in 2007.
The Commission put a lot of work into dealing with the Treholt case in 2008, and this affected the number of cases dealt with during the year. Reference is made to the report on this case below.



	2004	2005	2006	2007	2008
Received	232	140	173	150	157
Concluded	38	129	144	234	164

Appointments of defence counsels

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 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 2008, the Commission appointed a defence counsel in 26 cases, while a defence counsel was appointed in 51 cases in 2007. A lot of these cases concern petitions where doubt has been raised as to whether the convicted person was accountable for his/her 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.

Appointment of a lawyer for the victim/next of kin – the victim's and victim's next of kin's rights

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.

As mentioned above, the Criminal Procedure Act was amended in 2008 in order to strengthen the victim's and victim's next of kin's positions in criminal cases. These changes mean, among other things, that the victim and next of kin have a better opportunity to be heard, receive more information and are entitled to a lawyer to a greater extent than before. The Commission appointed a lawyer for the victim/victim's next of kin in eight cases in 2008, while such a lawyer was appointed in nine cases in 2007. The amendment, which came into force on 1 July 2008, has thus so far not led to any increase in the number of lawyers being appointed for victims/victims' next of kin.

Appointment of expert witnesses

Pursuant to section 398 b, second subsection of the Criminal Procedure Act, the Commission is authorised to appoint expert witnesses in accordance with the rules stated in chapter 11. Since its formation, the Commission has appointed expert witnesses in the fields of forensic medicine, forensic psychiatry, forensic toxicology, photogrammetry, finance, fire technicalities, vehicle knowledge and traditional forensic science, etc. Expert witness statements are obtained from both Norwegian and foreign specialist environments. In 2008, the Commission appointed expert witnesses in only six cases. These were in the field of forensic medicine, forensic psychiatry and forensic science.

The Commission's treatment of the Treholt case

On 18 February 2005, Arne Treholt petitioned for a review of Eidsivating Court of Appeal's judgment of 20 June 1985, according to which he was sentenced to imprisonment for 20 years for espionage. The Commission later received a letter supporting the petition from the defence counsel, and the prosecuting authority issued a statement regarding the petition on 5 March 2008.

The Commission used a lot of resources on the Treholt case in 2008. Of a total of 29 days spent on meetings (cf above), 16 were spent solely on discussing this case. In addition, the Commission's members have spent a lot of time reading the case documents and preparing for the discussions in the Commission. Since much of the investigation documents are still classified according to the Security Instructions, all the members had to read through many of the case documents in the premises of the Norwegian Police Security Service (PST) and in the Commission's premises. One of the secretariat's legal investigators has on the whole only worked on this case in 2008.

Reference is made to further mention of the Commission's decision below.

The Commission's other activities

Contact with other authorities and organisations, etc.

The Commission's chairperson has informed the Norwegian Minister of Justice about the Commission's activities every six months. The chairperson has also had additional contact with the Minister of Justice's other political and administrative managements and attended the Minister of Justice's annual head of government department conference. The chairperson has also had a meeting with the Norwegian Director General of Public Prosecutions to discuss general issues between the Commission and prosecuting authority relating to the treatment of petitions to reopen criminal cases.

In October 2008, the Commission's chairperson and investigators had a meeting with two working groups appointed by the Norwegian Police Directorate. Their respective mandates are to consider regulations governing the storage of electronic traces and of evidence, including biological traces. The Commission explained how important the storage of evidence is to later being able to assess whether or not there is new evidence or circumstances that can provide a basis for reopening a criminal case.

The Commission has also carried out work aimed at external parties in the form of lectures and information on the Commission's activities. This includes the

Commission's chairperson giving a talk on the Commission's activities at the Police Academy and investigators from the Commission giving talks on the importance of storing evidence at the annual meeting of the Norwegian Forensic Science Forum.

Comments on consultation documents
In 2008, the Commission submitted comments in response to the Ministry's invitation to submit comments regarding Official Norwegian Report (NOU) 2007:7 Fritz Moen and the Norwegian criminal justice system dated 30 June 2008. The Commission has also submitted comments to the Ministry of Justice on proposed rules concerning the approval of judges' external interests.

International work
The collaboration with the commissions in England and Scotland continued in 2008, and the Commission hosted a conference at Holmenkollen Park Hotel in Oslo on 4 September 2008. In addition to a general exchange of experiences, the Scottish commission gave an account of how it had dealt with the Lockerbie case, which led to this case being reopened. The Norwegian commission gave an account of how it had followed up Official Norwegian Report (NOU) 2007:7 Fritz Moen and the Norwegian criminal justice system, and an English translation of the Ministry of Justice's invitation to submit comments of 30 June 2008 was distributed and discussed.

Internal factors
In 2008, the Commission improved and changed its processing system "GJ case" and made preparations for changes to the use of archive codes. The objective of this was to achieve a better basis for issuing more detailed statistics as regards those that petition for a reopening, the type of cases that are petitioned to be reopened, the police district that has investigated the case, the court that has handed down the judgment, and how the case is dealt with by the Commission, including the appointment of a defence counsel, counsel for the victim/next of kin and expert witnesses, etc. Through this material, the Commission will gain a better overall insight into the cases that are dealt with and will be able to provide external players, such as the Ministry of Justice, Public Prosecutor's Office, media, etc, with better and more detailed information on its activities.

As a result of amendments to the Criminal Procedure Act relating to the position of victims and their next of kin, the Commission has revised the form for petitioning to reopen a case and the information brochure given to convicted persons. A person petitioning to reopen a case will be informed that the victim/victim's next of kin will be told of the petition and of the rights that the victim/victim's next of kin has in the reopening case. The Commission has also prepared a separate information brochure for the victim/victim's next of kin. These changed have also been made to the information published on the Commission's website.

The Commission has also had the form and information brochures for the convicted person and the victim/victim's next of kin translated into New Norwegian. In addition, a New Norwegian version of the Commission's website also became available in 2008.

The Commission's website (www.gjenopptakelse.no) is regularly updated with information on the Commission and its work. Summaries of the cases that have been referred to courts for a retrial and cases that are assumed to be of particular interest are also published there.

Lawsuits against the Commission

The Torgersen case
In its decision dated 8 December 2006, the Commission disallowed Fredrik Fasting Torgersen's petition to reopen his case. Following this decision, three lawsuits have been brought against the Commission, which the Commission calls the "fee case", "the right of inspection case" and the "disqualification by reason of prejudice case". Regarding the decision on the petition and the reasons for the three lawsuits, the

Commission refers to the annual reports for 2006 and 2007. A brief account of the decisions on the three lawsuits is given below.

The Commission paid Torgersen's appointed defence counsel's fee for 660 hours of his work on the petition. The disagreement on the determination of the fee led to the defence counsel suing the Norwegian state, and an Oslo District Court judgment of 4 May 2007 found in favour of the state and ordered the defence counsel to pay costs of NOK 34,000. The defence counsel appealed against this judgment. In Borgarting Court of Appeal's judgment of 1 July 2008, the defence counsel's claim that the state was to pay him a fee of NOK 1,090,027 plus lost interest and interest on overdue payments was rejected. The Court of Appeal upheld the District Court's judgment, and the defence counsel was ordered to pay costs of NOK 35,000. The defence counsel appealed against this judgment to the Supreme Court, and the Supreme Court Appeals Committee decided on 2 October 2008 that the appeal was not to be heard. The defence counsel was ordered to pay the state's costs of NOK 3,000.

Fredrik Fasting Torgersen petitioned Oslo District Court asking to be allowed to inspect stipulated documents which the Commission regarded as internal documents that were exempt from the right of inspection. Torgersen's defence counsel also requested to be appointed as a public defence counsel. In Oslo District Court's ruling of 20 February 2008, the petition for inspection was disallowed in that the court found it did not have the legal capacity to overrule the Commission's assessment, cf section 395, third subsection of the Norwegian Criminal Procedure Act. The petition for appointment was also disallowed in that the court found that there were no "special grounds" for the appointment. This decision was appealed against to Borgarting Court of Appeal which, in a ruling dated 24 June 2008, decided that the petition for inspection was not to be heard pursuant to the Criminal Procedure Act's rules. The Court of Appeal also ruled that the defence counsel was not to be appointed as a publicly paid defence counsel. This ruling was appealed against to the Supreme Court, and the appeal was rejected in the Appeals Committee's ruling of 2 October 2008. The appeal from the defence counsel against not being appointed a public defence counsel was dismissed.

In a letter dated 17 July 2007, Torgersen once more submitted a petition to have his case reopened. He also asked for the petition to be dealt with by a replacement commission in that the Commission's members were disqualified by reason of prejudice. His lawyer also asked to be appointed as Torgersen's public defence counsel when dealing with the new petition. The Commission decided on 12 October 2007 that it was not disqualified by reason of prejudice from dealing with the petition, and the petition from the defence counsel to be appointed as a public defence counsel was thereafter disallowed. The defence counsel brought a civil action in Oslo District Court, claiming that the Commission was disqualified by reason of prejudice and that he was entitled to be appointed as a public defence counsel. In Oslo District Court's judgment of 20 June 2008, both these claims were rejected and Torgersen was ordered to pay the state's costs of NOK 25,000. Torgersen appealed against this decision and the appeal was rejected in a ruling by Borgarting Court of Appeal on 25 September 2008. The case was appealed against to the Supreme Court, which handed down a ruling on 19 November 2008. As regards the question of disqualification by reason of prejudice, the Appeals Committee stated, i.a., that the question of disqualification by reason of prejudice is "*emphatically of a procedural nature and is close to the competence questions. A court of other dispute resolution body must itself decide on such questions. The Committee cannot see that such a decision can be made the object of a separate civil action*." The appeal was on this point rejected by the Appeals Committee of the Supreme Court. As regards the question of being appointed as a public defence counsel, the Appeals Committee stated that the case had not been prepared in such a way for the Supreme Court that the Appeals Committee had any basis for deciding on the defence counsel issue on its merits. This part of the District Court's and Court of Appeal's rulings was therefore set aside and this question must be examined once more by the District Court. The Appeals Committee stated, i.a., that the Commission can appoint a public defence counsel "*when special grounds indicate that this is appropriate*", cf section 397, second subsection of the Criminal Procedure Act, and that a refusal to do so is not emphatically of a procedural nature. The Appeals Committee found that this

was a decision concerning rights factors in public administration, and that there is no opportunity for review in the public administration system. The Appeals Committee found that it must be possible to bring such a refusal before the courts as a separate lawsuit, but that the opportunity for review will be "*extremely limited*". Since the appeal had in part succeeded, the Appeals Committee decided that the state was to pay the convicted person costs of NOK 22,820. Following this, the defence counsel has raised the defence counsel issue once more with Oslo District Court.

Topical decisions

This chapter contains brief versions of all the cases that the Commission has referred for a retrial. Cases that were referred solely because the convicted person has later been proved to have been unaccountable for his actions when the matter for which he was convicted took place are not, however, reported. 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. The brief versions of these are published on the Commission's website, www.gjenopptakelse.no.

This chapter also contains cases that have not been referred for a retrial if they are cases that have been of great public interest. In 2008, this applies to the decision in the Treholt case.

****

1. 05.03.2008 (2007 00050) Violence - section 391 no. 3 (new witness)
In 2006, a woman was sentenced to 30 days' imprisonment for violence against her husband. She claimed she had acted in self-defence but the court did not believe her, despite a witness supporting her testimony. She petitioned for the case to be reopened, pleading, i.a., a new witness.

The Commission examined the said witness, who supported the convicted person's and the other witness's version of the course of events. The Commission obtained additional information from the local women's aid refuge which illustrated the conditions under which the woman lived.

The Commission referred to the fact that the witness 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 was not known to the court that had imposed the conviction. This new evidence was likely to lead to an acquittal or to a substantially more lenient sanction.

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

The District Court thereafter acquitted the defendant.

2. 29.05.2008 (2005 00031) Fraud - Section 391 no. 3 - (new circumstances)
In 2000, a man was sentenced to imprisonment for 20 days for social security fraud. He petitioned to have the criminal case reopened in 2005. It was alleged, i.a., that the convicted person should not have stated the hours he worked for a company in 1997 on his notification card to Aetat (the Labour Market Administration) since the work was to be regarded as business activity while establishing his own company.

In the District Court judgment, the nature of the convicted person's work was described as switchboard and secretarial services. The convicted person had applied for – and

been granted – the right to retain his daily unemployment benefits while establishing his own business.

Statements from the convicted person's employer during the period in question regarding the nature of his work for the company, as well as a tax office decision reclassifying the convicted person's incomes during the period from earned income to income from self-employment, were submitted to the Commission. There was also some, partially new, more general material from the labour market authorities concerning the scheme involving the right to retain daily unemployment benefits while establishing one's own business.

The Commission based its decision on the fact that the legal situation was such that the hours that the convicted person had spent on establishing his own business – irrespective of whether or not these generated self-employment income – were not to be stated on the notification form to the job centre (Aetat). It is clear that the convicted person worked for a company from May to September 1997. It was also clear that there is now a statement from the company describing the convicted person's work as consulting activities consisting of purchase planning and cost control for two specific projects. The Commission did not find it necessary to decide whether this fell within that which could reasonably be classified as "corporate advice to the target group" when seen in connection with the other activities which the convicted person intended to carry out as he had described these in his application to Aetat. This was because it apparently had to be stated that the work was not of the nature assumed by the District Court (secretarial and switchboard services), and that the nature of the work in any case was far closer to that which the convicted person himself had described in his application to Aetat.

The Commission also found – on the basis of the tax office decision – that it had to be assumed that the convicted person's activity in the company was in reality business activity, and that the way in which the formal aspects of his connection with the company was organised did not prevent the work from being considered as self-employment activity.

The Commission otherwise understood the prosecuting authority and convicted person as stating that they agreed that, if his work for the company was covered by the description of his business activity (as this is stated on the application to Aetat), he would have had an opportunity to have self-employment income from the work during the period in question, so that there would not be any "purpose of obtaining for himself or another an unlawful gain", cf section 270 of the General Penal Code, when the work for the company was not stated on the notification cards. Thus, when the question to be determined by the Commission was whether the convicted person's work for the company was actually covered by the rather vague description of the work, and if so thereafter whether his possible ignorance regarding this point would be of importance, cf Rt 1994, page 1274, the Commission found that the new information on the nature of the convicted person's consulting work for the company was such a new circumstance that it seemed to be "likely to lead to an acquittal or to the application of a milder penal provision or a substantially more lenient sanction", cf section 391, no. 3 of the Criminal Procedure Act.

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

The District Court thereafter acquitted the defendant without a main hearing.

3. 06.06.2008 (2007 00036) Theft/embezzlement Section 391 no. 3 (new circumstances and evidence) - dissent

A rural policeman was in 1995 convicted of the gross embezzlement of a total of around NOK 220,000 from an elderly woman during the period from 1987-1992. The matter was reported to the police after the victim's death. He was given a suspended prison sentence of six months. The policeman was also removed from office by court order. The judgment was handed down with dissenting votes (3-2).

A petition to reopen this case had been submitted twice before, to the court and Commission, but had not been allowed.

Prior to this, private investigation work had been carried out, initiated by the convicted person himself. For the reopening question, it was not necessary to differentiate between that which had been discovered due to the private investigation work and due to the Commission's own investigations into the case.

It was undisputed in the case that the policeman had withdrawn money from the victim's post office and bank accounts. He claimed he had done this at the request of the victim, and that he did not know what she spent the money on after he had given it to her. An authorisation from the victim to the convicted person existed for most of the withdrawals, either as copies or original documents. There were corresponding receipts showing that the victim had received the money from the convicted person.

One of the main questions for the court at the time was what had happened to the money. Following the presentation of extensive evidence, the court found that the convicted person had embezzled the money. For the Commission, too, the question of what had happened to the money was a key one. The Commission's perspective was whether, during the period after the conviction, any evidence had appeared that shed light on this and which meant that it was reasonably likely that a different decision on the question of guilt would have been reached if the information had been available to the court which convicted the policeman.

The Commission's investigation did not lead to any specific information on what had happened to the money. However, some new information did become available, including regarding considerable anonymous gifts (NOK 140,000) for the building of a church hall during the period in question. It also appeared that the victim had told the parish priest that she was positive to the idea of giving money for this purpose. Documentation of four small gifts given anonymously to charity was also found. It also became clear that the victim had rented a safe-deposit box during the period in question, so that she had had a possible storage place for the cash. There had also been a theft from the victim's home.

The majority of the Commission (four members) referred to the fact that the conviction was based on a chain of circumstantial evidence, according to which the court had, following a specific assessment, eliminated the possibility that the money had gone anywhere apart from into the convicted person's pocket. In the majority's view, the new evidence obtained during the investigation into the case weakened the arguments in favour of eliminating other alternatives on several points.

Emphasis was also placed on the fact that the victim was lucid and well informed right up to the end and had normal, good insight into her financial circumstances.

In the majority's view, a number of new circumstances and evidence had become known in this case. In that there was a reasonable possibility that this would have led to a different decision if the information had been known to the court which imposed the sentence, the case was reopened pursuant to section 391, no. 3 of the Criminal Procedure Act.

The Commission's minority (one member) to a large extent agreed with the presentation of the facts given by the majority, but meant that the new evidence and circumstances that had become known in the case were not likely to lead to an acquittal. The minority referred to the fact that the factors that were revealed did not directly touch on the issue of guilt. There were no clear new indications that the victim had used the money herself. The new evidence and circumstances were only indications in an overall picture of evidence that neither individually nor in total were sufficiently weighty to provide grounds for reopening the case pursuant to section 391, no. 3 of the Criminal Procedure Act. Section 392, second subsection of the Criminal Procedure Act was also considered but was also not found to be applicable.

The Commission's majority decided to allow the petition to reopen the case.

The convicted person died shortly after the case was reopened. Agder Court of Appeal thereafter delivered a judgment of acquittal pursuant to section 400, fifth subsection of the Criminal Procedure Act.

4. 19.06.2008 (2005 00148) Criminal fraud - Section 391 no. 3 (new circumstances)
A man (born in 1950) was convicted by the Court of Appeal on 23 March 1990 of contravening section 272, first subsection, second penal alternative of the General Penal Code, cf third subsection (three cases of insurance fraud).

The convicted person was the chairman of the board of a company that owned 1/3 of a fishing boat. In the judgment, it was assumed that he had submitted a claim for indemnification, based on a marine casualty (average) report, to the insurance company for an insurance event which he knew was fictitious and despite the fact that he knew that the marine casualty report was false. The report was signed by the vessel's captain. He was sentenced to imprisonment for six months, of which 60 days were immediately custodial.

Following the marine casualty, antagonism had developed between the ship's captain and the shipping company's management. This conflict culminated in the company reporting the captain to the police for threats. The captain responded to this by reporting the company to the police for insurance fraud, and he claimed that he had not signed the marine casualty report and that there had not been any marine casualty at all.

The court to a large extent accepted the fishing boat captain's testimony, and the company's chairman of the board and technical manager were convicted of insurance fraud.

The convicted man appealed to the Supreme Court but was refused permission to appeal on 28 June 1990. In 2001, a petition to reopen the case was submitted to Frostating Court of Appeal, but this petition was disallowed. In 2005, the convicted man petitioned the Norwegian Criminal Cases Review Commission to have the case reopened.

The new circumstances pleaded to the Norwegian Criminal Cases Review Commission were that it could be proven that the captain had been mentally ill and suffering from delusions when he reported the matter and when the case was heard by the court. The Commission obtained medical records which showed that he had been forcibly admitted to a psychiatric ward and that he may have been more strongly affected by his illness, including delusions that may have affected his perception of reality, than previously assumed. The medical records now provided grounds for questioning the correctness of his testimony.

The Commission found that the conditions for reopening the case were present, cf section 391, no. 3 of the Criminal Procedure Act.

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

5. 10.09.2008 (2008 00119) Violence, Section 391 no. 3 (new circumstances)
A man (born in 1943) was convicted in 1990 of assault causing bodily harm under aggravating circumstances. He was sentenced to imprisonment for one year and to pay NOK 78,040 to the victim.

The woman who had reported the matter explained to the police that she had been assaulted by an unknown man. She picked out the convicted man in a photo identification parade and the convicted was charged and indicted.

The convicted man denied any knowledge of the case right from the start, but was not believed. According to the indictment, he had apparently followed the woman into a courtyard. Completely without provocation, he had apparently put an arm around her neck and pulled sharply, with the result that her legs and left arm were paralysed. No

damage to her spine or other injuries of a somatic nature were ever ascertained, but the court based its decision on medical statements regarding so-called functional paralysis.

In 2005, the woman was admitted to X University Hospital's emergency psychiatric department. While being admitted, she suddenly stood up and began to walk, to the amazement of those present. She told a psychiatric nurse in the department that there had never been any assault and that she had arbitrarily pointed out the convicted man as the assailant from the police's picture archive. A chief physician was summoned, and the woman told him that she had also stood up and walked before being admitted to hospital, while she was alone at home. X University Hospital chose to exercise its right to breach the duty of confidentiality and reported the information supplied by the woman to the police.

The prosecuting authority started to investigate the case and petitioned the Norwegian Criminal Cases Review Commission to reopen the case on 21 August 2008. The convicted man agreed to the petition.

Like the prosecuting authority, the Commission considered that the conditions for reopening the case pursuant to section 391, no. 3 of the Criminal Procedure Act were present. The new information seemed likely to lead to an acquittal.

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

The District Court thereafter acquitted the defendant without a main hearing.

6. 23.10.2008 (2006 00083) Robbery and deprivation of liberty - Section 392, second subsection (special circumstances and weighty considerations) - dissent

In 2005, Borgarting Court of Appeal sentenced a 33-year-old taxi driver to imprisonment for nine months for complicity in the robbery and deprivation of liberty of one of his passengers.

The taxi driver was at work in the early hours of Wednesday 26 March 2003. At one time, there were four passengers in his car. During the taxi trip, one of these was robbed. He was threatened with a knife by another passenger and ordered to take money out of various ATMs in Oslo, to which the taxi driver drove. The taxi driver was acquitted of complicity in the District Court but found guilty in the Court of Appeal.

The new circumstances pleaded to the Norwegian Criminal Cases Review Commission were that the taxi driver was in a 'principle of necessity' situation. When he saw the knife, he was scared stiff. He tried to say what he thought but was told to 'shut up'. He did not dare to protest any more and drove where he was told to drive. Nor did he dare to press the robbery alarm, since the others in the car were also taxi drivers so that they would have discovered this. He did not state this in court since he had been instructed what to say. He pleaded that there was a witness who could confirm that he was under pressure prior to the trial.

The Norwegian Criminal Cases Review Commission found that the new information did not seem likely to lead to an acquittal. The new witness could not shed much light on that which had actually happened during the taxi trip. The Commission also found that there was no principle of necessity situation either. The driver's acts were not justifiable taking into consideration the act of robbery and the deprivation of liberty, and he had alternative ways of getting out of the situation.

However the Commission's majority found that doubt could be raised as to the taxi driver's complicity. The situation had arisen suddenly and unexpectedly, and was unclear and with limited alternative courses of action. The majority found therefore that there were special circumstances which made it doubtful whether the judgment was correct. Based on the seriousness of the case, the majority found that weighty considerations indicated that the case should be retried.

The minority were of the opinion that there were no special circumstances which indicated that the judgment was incorrect, and did not find that the conditions for reopening the case were present.

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

7. 23.10.2008 (2008 00052) Sexual offence - Section 391 no. 3 (new circumstance)
In December 2006, Borgarting Court of Appeal sentenced a 66-year-old man to imprisonment for three years for several cases of sexual assault on girls under 16 years of age and under 14 years of age.

He petitioned for the case to be reopened in 2008, based on the fact that the court-appointed psychiatric expert witness had been prejudiced during the case, and that the conditions for reopening the case pursuant to section 391, no. 1 of the Criminal Procedure Act were present. As a new circumstance pursuant to section 391, no. 3 of the Criminal Procedure Act, it was stated that, after the trial, it became publicly known that the expert witness and counsel for the victims in the case had moved in together as lovers in a house they had bought together in March 2007. The convicted person also claimed that this lovers' relationship had been established at least as early as in the late summer of 2006. It was the counsel for the victims who had proposed appointing the psychiatrist as an expert witness. The convicted person also claimed that the case had to be reopened because the expert witness's prejudice had to be assumed to have affected the content of the judgment, since the expert witness's report was the direct reason for the prosecuting authority amending the indictment during the main hearing.

The prosecuting authority stated that even if the expert witness was regarded as prejudiced, it found it difficult to see that this matter can have affected the content of the judgment. In addition to the expert witness's report, other evidence of the harmful mental effects on the victims had been produced. In conclusion, it was alleged that there were other circumstances that would increase the penalty and that the acts had serious consequences for the victims. The sentencing would therefore be unaffected by the provision that the circumstances were subsumed under.

The Commission questioned the expert witness and counsel for the victims, as well as a third witness. Following an overall assessment, the Commission found that there was a new circumstance which gave grounds for reopening the case pursuant to section 391, no. 3 of the Criminal Procedure Act, and that it was therefore unnecessary to decide whether the conditions for reopening the case pursuant to section 391, no. 1 (prejudice) were present. The Commission found it to have been proven sufficiently probable that, at least when the case was tried by the Court of Appeal, such a close relationship had been established between the expert witness and the counsel for the victims that the expert witness was disqualified due to prejudice. The Commission also found that there was no doubt that both the District Court and Court of Appeal placed crucial weight on the expert witness's reports and testimony in court, and that this was what to a great extent led to the re-subsumption and grounds for the conviction.

In the Commission's view, the conditions for reopening the case pursuant to section 391, no.3 had been met, since there was a reasonable possibility that the new information which had been discovered was likely to lead to the application of a milder penal provision or a substantially more lenient sanction.

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

8. 23.10.2008 (2008 00067) Homicide -Section 392, second subsection (special circumstances)
On 20 September 1990, Agder Court of Appeal sentenced the convicted person to imprisonment for seven years and up to 10 years' preventive supervision for assault occasioning bodily harm and homicide. The convicted person, who is mentally retarded, had for several years stated that he had a strained relationship with his neighbour, while the court found that the neighbour only wanted to help and guide the convicted person

when necessary. According to the conviction, the convicted person had unlocked and entered one of the neighbour's farmhouses on 10 February 1990, since he knew where the key was hidden. The neighbour came home and understood that there had to be someone in the house since the main door was unlocked. When the neighbour came up to the first floor, the convicted person took a brick and hit him on the head so that the neighbour fell to the floor and started bleeding heavily. The neighbour went down to the kitchen on the ground floor, probably to wash the blood off. The convicted person, who was afraid of being reported to the police, found a shotgun, took up position behind the neighbour and shot him at close range.

The convicted person petitioned for the case to be reopened pursuant to section 391, no. 3 of the Criminal Procedure Act (new evidence) and section 392, second subsection (special circumstances).

The Commission found that the conditions for reopening the case pursuant to section 392, second subsection, were present. It referred initially to the fact that the Court of Appeal conviction was handed down before the court of first and second instance reform was implemented, so that the question of guilt was only determined by the Court of Appeal, which gives no reasons for its decision.

The Commission also commented that there was no technical evidence linking the convicted person to the actual homicide act. The homicide weapon has not been found, and it is not known with certainty which weapon was used, apart from the fact that it was a shotgun. Nor were there any witnesses to the actual homicide act. The Commission referred to the fact that technical examinations, analyses and questioning of witnesses had been carried out which indirectly shed light on the case. In the Commission's view, this evidence cannot, either individually or in combination, provide sufficient evidence of who perpetrated the homicide act. In the Commission's view, the evidence was of interest when assessing the convicted person's testimony, in that his testimony must have been key to the Court of Appeal's assessment of the question of guilt. The Commission noted that, when assessing the convicted person's testimony, there is particular reason to look at his mental health. Reference was made to the fact that the Court of Appeal had appointed two expert witnesses to carry out a psychiatric assessment of the convicted person. In its decision, the Commission gave a further account of the expert witnesses' assessments and of later expert witnesses' examinations, including statements from the Institute of Forensic Medicine. The Commission also described blameworthy factors related to the interrogation situation that the convicted person was in. Based on the doubt linked to the convicted person's mental state and criminal-law responsibility for his actions on the date when the homicide took place, the Commission found no grounds to place crucial emphasis on the convicted person's statement to the police concerning his knowledge of the crime scene and/or of what he had allegedly seen.

In its decision, the Commission also considered other factors and, following an overall assessment, found that there were special circumstances which made it doubtful that the conviction is correct and that weighty considerations indicate that the question of the convicted person's guilt should be retried.

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

This decision has in its entirety been published on the Commission's website, www.gjenopptakelse.no.

9. 15.12.2008 (2005-00028 Arne Treholt) Espionage – not referred

On 20 June 1985, the then Eidsivating Court of Appeal sentenced Arne Treholt to imprisonment for 20 years for espionage for the Soviet Union and Iraq. Treholt has petitioned for the case to be reopened twice before. These petitions were rejected by the Appeals Committee of the Supreme Court in 1988 and 1992.

The Commission discussed three grounds for reopening the case:

- Whether there is any new evidence or circumstance which seems likely to lead to an acquittal or substantially more lenient sanction, section 391, no. 3 of the Criminal Procedure Act
- Whether any police officer has been guilty of a criminal offence or whether false evidence has been given in the case, section 391, no. 1 of the Criminal Procedure Act
- Whether there are special circumstances which make it doubtful whether the conviction is correct, section 392, second subsection of the Criminal Procedure Act.

The Commission assessed the new circumstances that are pleaded since the conviction in 1985, and concluded that there was no new evidence or circumstance which seemed likely to lead to an acquittal. Nor were there any grounds for stating that a police officer had been guilty of a criminal offence in connection with searches, etc.

One of the Commission's main tasks was to reanalyse the chain of evidence which led to the conviction. The question the Commission asked itself was whether such a review made the conviction appear in a doubtful light. The Commission had critical comments to make regarding several aspects of the case and conviction, but the majority nonetheless found that an overall, new analysis of the chain of evidence did not provide any grounds for stating that the result of the evidence was wrong. There was thus no special circumstance which made it doubtful whether the conviction was correct. The Commission's minority found that the weak parts of the chain of evidence were in total so strong that they had to be assigned crucial weight in favour of reopening the case.

The Commission decided not to allow the petition to reopen the case.

This decision has in its entirety been published on the Commission's website, www.gjenopptakelse.no.

10. 7.12.2008 (2008 00132) Storage of amphetamine - Section 391 no. 3 (new circumstances)

In March 2008, Frostating Court of Appeal sentenced the convicted person to imprisonment for nine months for storing 74 grams of amphetamine.

When the convicted person's home was searched, a consignment of 74 grams of amphetamine was found in his garage, divided into two parcels in a zipped bag. The convicted person's DNA was found on the zipped bag.

The new circumstances which were pleaded to the Norwegian Criminal Cases Review Commission were that a friend of the convicted person had admitted to the police in July 2008 that it was he who had placed the amphetamine in the convicted person's garage, without the convicted person being aware of this. He had used a zipped bag he had found in the convicted person's home to pack the amphetamine in.

The prosecuting authority has commented to the Commission that it would not have charged the convicted person if it had known of his friend's confession. The prosecuting authority agreed with the petition to reopen the case.

The Norwegian Criminal Cases Review Commission found that there was new information in this case and that this was likely to lead to an acquittal.

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

11. 17.12.2008 (2008 00139) Criminal fraud, contravention of the accounting legislation - Section 391 no. 2b (decision by the UN's human rights committee)

In 2006, Sarpsborg District Court sentenced the convicted person to imprisonment for one year and eight months for criminal fraud, handling stolen goods and several contraventions of the accounting legislation. The convicted person appealed against

this conviction to the Court of Appeal. In a decision on 1 June 2006, Borgarting Court of Appeal refused to hear the appeal, referring to section 321, second subsection, first sentence of the Criminal Procedure Act. No grounds were given for this refusal, other than that the Court of Appeal summarily stated that it found it "clear" that the appeal would not succeed. The Court of Appeal's decision was appealed against. The Appeals Committee of the Supreme Court rejected the interlocutory appeal on 19 July 2006.

The case was brought before the UN's human rights committee, which allowed the appeal to be heard. On 17 July 2008, the human rights committee decided that Norway had infringed the convicted person's right to have his conviction and sentence tried by a court of higher instance. The Committee concluded that there had been a breach of the UN Convention on Civil and Political Rights, article 14, no. 5. With reference to the committee's decision, the convicted person petitioned to have the case reopened and alleged that the conditions for reopening the case pursuant to section 391, no. 2, letter b of the Criminal Procedure Act were present.

The Director General of Public Prosecutions agreed with the petition, with the comment that it had to be the Appeals Committee of the Supreme Court's ruling of 19 July 2006 which was to be reviewed.

A reopening pursuant to section 391, no. 2 of the Criminal Procedure Act can be requested when the UN's human rights committee has found, in a case against Norway, that "the procedure on which the decision is 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."

The Norwegian Criminal Cases Review Commission placed emphasis on the fact that the Director General of Public Prosecutions agreed that the case should be reopened since the conditions pursuant to section 391, no. 2, letter b of the Criminal Procedure Act seemed to have been met. The Director General of Public Prosecutions found no reason to make a problem of whether or not the lack of grounds "may have influenced the substance of the decision". The Commission also referred to the Director General of Public Prosecutions' comments in 1996 on the Ministry of Justice's proposed changes to the Criminal Procedure Act, included in Proposition to the Odelsting no. 70 (2000-2001), which states, i.a.:

"Should these bodies find that the procedure has contravened the convention, there will probably often be a presumption that the deviation may have influenced the decision."

With this as its starting point, the Commission found that the error could have influenced the substance of the decision. There did not seem to be any other way of remedying the harm which had occurred other than reopening the case.

The Appeals Committee of the Supreme Court's ruling of 19 July 2006 was thus reopened for review.

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

A brief version of the decision, which is published on the Commission's website, contains quotes from the decision of the UN's human rights committee and a slightly more detailed account of the Commission's decision. Reference is made to this.