

THE NORWEGIAN CRIMINAL CASES REVIEW COMMISSION

Annual Report 2013

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An independent commission for 10 years

A state based on the rule of law is an inalienable right. Not least when society uses its power system to prosecute individuals, it is important that the person concerned can be confident that the system is impartial and just.

Annually, the prosecuting authority brings 25-30,000 new criminal cases before the courts. Once they have been finally determined, the judgments become legally enforceable. All cases must come to an end and those affected need to be able to make arrangements based on a final decision.

However, sometimes the question arises of whether there are grounds for taking a second look at a legally enforceable judgment. For example, some new information may come to light after the case has been adjudicated on.

In 2004, the handling of petitions to reopen criminal cases was assigned to a newly established commission. The idea was that the Commission was to function independently of the courts and that the prosecuting authority was to play a more subordinate role. The Commission is to give a party petitioning to reopen a case the necessary guidance and itself conduct investigations to find out if the conditions for reopening are met.

During these years, 20 members and alternate members have been appointed by the King in Council to serve on the Commission. They have had different backgrounds but common to them all is that they have carried out the work they have undertaken in a thorough, independent and interested manner.

In the first 10 years of its existence, the Commission received 1,675 petitions to reopen cases. That is almost three times the number previously brought before the courts. A lowering of the threshold for submitting petitions to reopen a case was one of the intentions when the Commission was established.

During these years, the Commission reopened 197 criminal cases, which means that 15% of the petitions were allowed. That is about the same percentage as the courts had, but now based on a larger number of cases.

The reopened cases are retried by another court than the one that handed down the conviction. Of the concluded cases, almost two-thirds ended with an acquittal, while some were given a milder sentence. This may indicate that there have been good reasons to retry these cases.

In 1,455 cases, the Commission has not found any grounds to reopen them.

The Criminal Cases Review Commission believes it is important to do its best to carry out the social task it has been assigned by examining each case thoroughly with an open mind in order to find out if there are grounds for retrying the case.

[Signature]

Helen Sæter

Chair

The Commission's members as at 31 December 2013

Chair



Helen Sæter
2009 –

Members



Birger Arthur Stedal
2008 – 2013



Gunnar K. Hagen
2009 –



Bjørn Rishovd Rund
2009 –



Anne Britt Flemmen
2013 –

Alternate members



Benedict de Vibe
2009 -



Trine Løland Gundersen
2010 –



Ambreen Pervez
2012 -

Annual Report 2013 of the Norwegian Criminal Cases Review Commission

The Norwegian Criminal Cases Review Commission (the Commission) is an independent body which is responsible for deciding whether convicted persons with a legally enforceable judgment against them should have their cases retried in a different court. The Commission's work is to be objective, thorough and effective with the aim of reaching materially correct decisions within a reasonable time. The Commission's activities are regulated by chapter 27 of the Norwegian Criminal Procedure Act.

The composition of the Norwegian Criminal Cases Review Commission

As at 31 December 2013, the Commission was composed of the following persons:

Chair: Helen Sæter

Vice Chair: Gunnar K. Hagen, lawyer, Lillehammer

Members: Birger Arthur Stedal, Gulating Court of Appeal judge
Anne Britt Flemmen, professor of sociology, University of Tromsø (from 1 March 2013)
Bjørn Rishovd Rund, professor of psychology, University of Oslo and director of research at Vestre Viken Health Authority

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

The Norwegian Criminal Cases Review Commission's secretariat

The Commission's chair is employed full-time as the head of the secretariat. At the year-end, the secretariat otherwise had 12 employees - eight investigating officers with a legal background and two investigating officers with a police background as well as an office manager and a secretary.

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

Fully electronic archive and processing system

The Commission started to use a new electronic archive and processing system in 2013. Electronic processing has led to changes in the procedural routines and made it easier to have an overview of the cases. The system also makes new statistical overviews possible.

Gender equality in the Commission

The Commission is chaired by a woman and at the year-end the rest of the secretariat consisted of nine women and three men. This means that women made up 75% of the Commission's employees on 31 December 2013.

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

Planned and implemented measures to promote equality on the basis of gender, ethnicity and disability

A diversity declaration is included in job adverts.

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



The Commission's secretariat visiting Halden Prison in September 2013

The Norwegian Criminal Cases Review Commission's financial resources

Proposition to the Storting (parliamentary bill) no. 1 (2012 - 2013) for the 2013 budget year proposed a budget of NOK 14,908,000. The Commission was granted funds in accordance with the budget proposal.

In general about the Norwegian Criminal Cases Review Commission

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

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

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

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

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



The Commission conducts its own investigations

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

If a petition is not rejected and is investigated further, the prosecuting authority is to be made aware of the petition and given an opportunity to submit comments. Any victim (or surviving next of kin of a victim) is to be told of the petition. Victims and surviving next of kin are entitled to examine documents and to state their views on the petition in writing, and they may ask to be allowed to make a statement to the Commission. The victim and surviving next of kin must be told of the outcome of the case once the Commission has reached its decision. The Commission may appoint a counsel for the victim/surviving next of kin pursuant to the Norwegian Criminal Procedure Act's normal rules in so far as these are applicable. Petitions are decided on by the Commission. The Commission's chair/vice chair may reject petitions which, due to their nature, cannot lead to a case being reopened, which do not stipulate any grounds for reopening a case in accordance with the law or which obviously cannot succeed.

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

Cases and procedures

During the year, the Commission held nine all-day meetings lasting for a total of 14 days. The Commission received 152 petitions to reopen cases in 2013, compared to 163 in 2012.

Of the 152 convicted persons that petitioned for a case to be reopened in 2013, 13 were women and 139 were men.

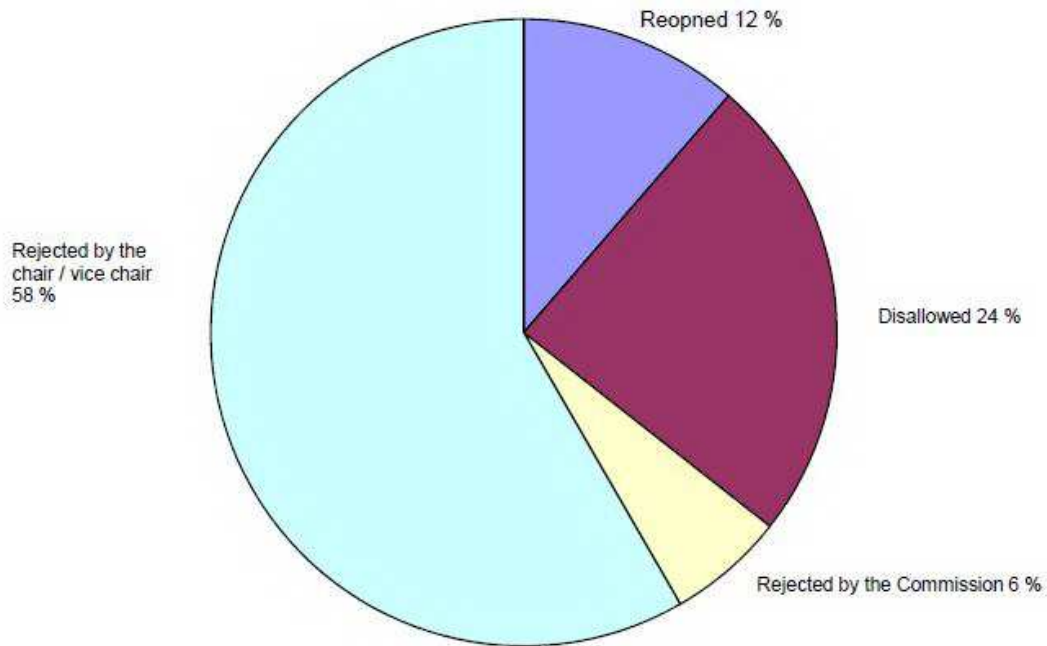
In 2013, a total of 153 cases were concluded, of which 132 were reviewed on their merits. Of these 132 petitions that were reviewed on their merits, 15 cases were reopened while 32 petitions were disallowed. The remaining 85 petitions were rejected by the Commission or the chair/vice chair because they clearly

could not succeed. There was a dissenting vote in one of the cases. The decisions to reject the petitions were unanimous.

The other 21 cases that were concluded were not reviewed on their merits as petitions to reopen cases. In 2013, this comprised one petition submitted by someone who, according to the law, is not allowed to submit a petition to reopen a case (for example the victim or a next of kin) and petitions that have for various reasons been withdrawn. There have also been general inquiries without any links to specific criminal cases or requests for information. A complete overview of the number of petitions received and cases concluded in 2013 is provided in the table on the next page:

Archive no.		Received	Concluded	Reopened	Disallowed	Rejected by the Commission	Rejected by the chair/vice chair	Not reviewed on their merits
310	General	5	6			1	3	2
311	Sexual offences	27	29	3	5	2	17	2
312	Violence, threats	58	47	3	10	3	20	11
313	Drugs	15	21	1	5	2	13	
314	Crimes of gain	20	23	3	7		11	2
316	Miscellaneous crimes	14	12	1	3		6	2
317	Miscellaneous misdemeanours	11	13	4	2		7	
32	Discontinued prosecutions							
331	Temporary rulings							
34	Seizures or annulments							
36	Inquiries							
37	Fines							
38	Civil actions							
39	Other, concerning professional cases	2	2					2
	Total	152	153	15	32	8	77	21

The figure below shows the outcome of the cases reviewed on their merits in 2013:

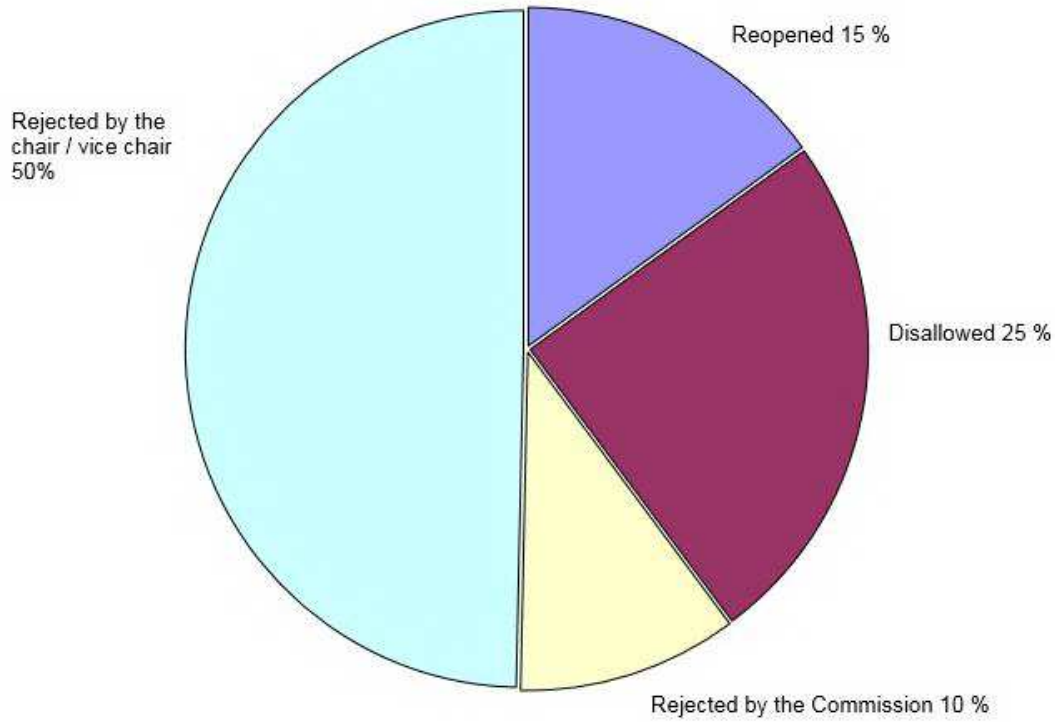


Since being established on 1 January 2004, the Commission has received 1,675 petitions and 1,552 of the cases have been concluded. A total of 197 cases have been reopened and 325 petitions have been disallowed. The Commission or chair/vice chair has rejected 789 of the petitions because they clearly could not succeed, while the remainder, 241 petitions, have been rejected without being reviewed on their merits.

The table showing the total figures for the Commission's first 10 years of operation is thus as follows:

Archive no.		Received	Concluded	Reopened	Disallowed	Rejected by the Commission	Rejected by the chair/vice chair	Not reviewed on their merits
30	General	5	5					5
310	General	34	32	1		1	9	21
311	Sexual offences	290	270	26	65	29	130	20
312	Violence, threats	487	438	45	106	40	206	41
313	Drugs	187	178	28	42	16	83	9
314	Crimes of gain	317	295	64	69	31	99	32
316	Miscellaneous crimes	104	92	13	22	9	35	13
317	Miscellaneous misdemeanours	162	153	20	21	11	86	15
32	Discontinued prosecutions	13	13					13
331	Temporary rulings	1	1					1
34	Seizure or annulment	1	1				1	
36	Inquiries	31	31			1		30
37	Fines	6	6				1	5
38	Civil actions	31	31				1	30
39	Other, concerning professional cases	6	6					6
	Total	1,675	1,552	197	325	138	651	241

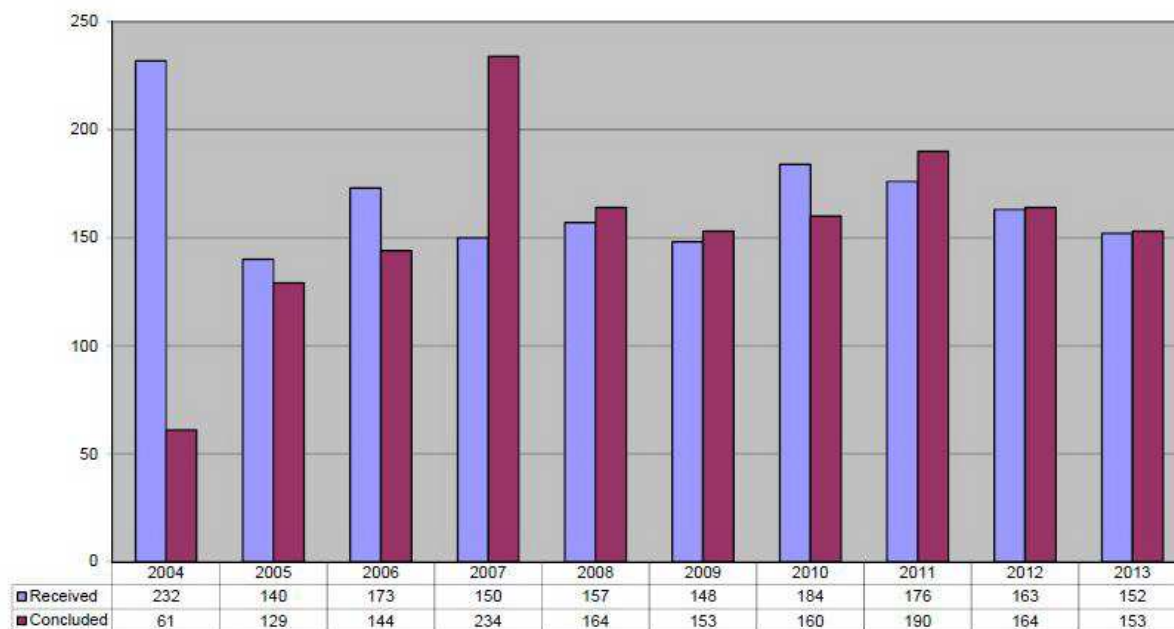
The figure below shows the outcome of the cases reviewed on their merits in the 2004-2013 period:



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

The number of petitions received during the first 10 years is more than that expected when the Commission was established. The number of petitions to reopen cases is still higher than the legislature assumed but seems to have stabilised. The Commission has an independent duty to investigate, which can entail extensive work in comprehensive cases. Although this requires a lot of resources, it was also one of the main reasons for the formation of the Commission. It is thus an important task. Several cases that the Commission has dealt with since its formation in 2004 have required extensive investigation.

Petitions received and cases concluded in 2004-2013:



Appointment of a defence counsel

The law allows the Commission to appoint a defence counsel for a convicted person when there are special reasons for doing so. A specific assessment of whether or not a defence counsel is to be appointed is conducted in each case. The Commission always appoints a defence counsel when there is reason to assume that the convicted person may not be criminally responsible, see section 397 subsection 2 of the Criminal Procedure Act, see also section 96 last subsection. Otherwise, a defence counsel may be appointed in especially comprehensive or complicated cases or if providing guidance to the convicted person would take up a lot of the secretariat's resources. The appointment is in most cases limited to a specific number of hours, for example to provide a more detailed explanation of the petition's legal and factual basis. In 2013, the Commission appointed a defence counsel in 24 cases.

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

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

In 2008, the Criminal Procedure Act was amended to strengthen the victim's and surviving next of kin's positions in criminal cases. These amendments mean, among other things, that the victim or surviving next of kin has a better opportunity to be heard, receives more information and is entitled to counsel to a greater extent than before. The Commission appointed 14 counsel for the victim/surviving next of kin in 11 cases in 2013.

Appointment of expert witnesses

Pursuant to section 398 b subsection 2 of the Criminal Procedure Act, the Commission is authorised to appoint expert witnesses in accordance with the rules stated in chapter 11. Since its formation, the Commission has appointed expert witnesses in the fields of forensic medicine, forensic psychiatry, forensic toxicology, photo/film techniques, finance, fire technicalities, vehicles, history and traditional forensic techniques, etc. In 2013, the Commission appointed 11 expert witnesses in six cases. These were experts in the fields of construction, paediatrics, handwriting, forensic psychiatry and forensic psychology.



The Commission on a study trip to the European Court of Human Rights in Strasbourg in September 2013.

The Norwegian Criminal Cases Review Commission's other activities

Contact with authorities

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

Comments on consultation documents

In 2013, the Commission commented on a report on a review of the Commission. This report was prepared by a work group appointed by the Ministry of Justice and Public Security to review on the Commission.

The Commission also commented on a report on the questioning of especially vulnerable people in criminal cases and on a common scheme for notifying censurable conditions in enterprises in the justice

sector.

International work

The contact with the criminal cases review commissions in England and Scotland was maintained.

In May 2013, the Commission received a delegation from Georgia. This delegation consisted of representatives of Georgia's ministry of justice, parliament and courts. In addition, representatives of the UN Development Programme (UNDP) and the Norwegian Ministry of Justice's "strength well" in Georgia (the Norwegian Mission of Rule of Law Advisers to Georgia (NORLAG)) took part. The head of NORLAG, Walther Wangberg, acted as the head of the delegation during the visit to Norway. The purpose of the visit was to obtain information on the Norwegian case-reopening scheme since Georgia is considering introducing a time-limited case-reopening scheme.

The Commission went on a study trip to the European Court of Human Rights in Strasbourg in September 2013.

Information activities

The Commission has a media and information strategy that is stated in a separate document.

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

- correct information on the Commission's activities, and
- clear and supplementary information and guidance on the regulations governing the reopening of cases and the Commission's procedures.

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



The Commission at a meeting

The Commission's website, www.gjenopptakelse.no, contains information on the Commission and

regulations, press releases, a downloadable form for petitions to reopen cases, the Commission's annual reports, anonymised abbreviated versions of decisions concerning the reopening of cases, etc. The information is available in the two official Norwegian languages, Sami and 12 other languages.

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

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

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

Relevant decisions

This chapter contains abbreviated versions of all the cases where the Commission has allowed a petition to reopen a case.

Abbreviated versions of all the reopened cases are also published on the Commission's website, www.gjenopptakelse.no.

30.01.2013 (2011 0002) Attempted rape, etc – Section 391 no. 3 (a new circumstance, a new expert statement).

In 2007, a district court sentenced a man to preventive detention with a timeframe of five years for, i.a., two cases of attempted rape. He appealed to the court of appeal and the appeal was heard as regards the conviction for attempted rape. The court of appeal sentenced him to four years' imprisonment in 2008.

Before the district court hearing, the convicted person had been subject to a forensic psychiatry examination and founded to be of sound mind. While he was in prison, questions were asked about his soundness of mind and a psychiatric declaration stated him to be psychotic and it was assumed that he could also have been of unsound mind on the date when the offences adjudicated on took place. The Commission appointed two expert witnesses who concluded that they assumed the convicted person had been psychotic at the time of the offences. The majority of the Norwegian Institute of Forensic Medicine disagreed with the experts' assessment that the convicted person had been psychotic at the time of the offences. The minority had no comments to make on the expert witnesses' statement and conclusion.

To the Commission, it was sufficient to ascertain that there was a new statement by experts which concluded that the convicted person had been psychotic at the time of the offences and that there was professional disagreement about the conclusion. The Commission found that the new statement was a new circumstance and that there was a reasonable chance that it might lead to acquittal, cf section 391 no. 3 .

The Commission decided unanimously to allow the petition.

30.01.2013 (2011 0112) Sexual offence. Sexual acts with a minor – section 391 no. 3 (a new circumstance, a new expert statement). Sentencing.

The court of appeal convicted a man of sexual acts with children under the age of 14 years in 2008. The sexual act was intercourse. He petitioned to have his case reopened and alleged that new examinations of him in which he was diagnosed as being slightly mentally retarded, cf section 56c of the General Civil Penal Code, had to lead to the case being reopened pursuant to section 391 no. 3 . The prosecuting authority alleged that the conditions for reopening had not been met, i.a. because the convicted person's mental functioning had been sufficiently assessed in the conviction.

The Commission did not find that the new information on the convicted person's mental retardation would lead to the sentence being reduced or remitted due to the parties' equal age and development, cf section 195 last subsection of the General Civil Penal Code. The age difference between the two (just over 5 years and 2 months) was in any case too much for that.

However, the Commission did find that the convicted person did not function as well as the court of appeal had assumed, since the court had stated that section 56c of the General Civil Penal Code "is clearly not applicable". In the Commission's view, there was a reasonable chance that the new examination, which concluded that the convicted person was slightly mentally retarded, would have led to a milder sentence if it had been available to the court when the case was adjudicated on. The Commission decided that the conditions for reopening the case had been met, cf section 391 no. 3 .

The Commission decided unanimously to allow the petition as regards the sentencing.

07.03.2013 (2012 0161) The Road Traffic Act. Driving under the influence of alcohol or drugs – section 391 no. 3 (new evidence).

In 2012, a district court sentenced a man to 21 days' imprisonment, a fine and the loss of his driving licence for driving a motor vehicle under the influence. The court found that the convicted person was the driver of the car and had had a friend with him as a passenger. Both the convicted person and his friend alleged that it was the friend who had been driving the car. The accused was convicted, among other things on the basis of a weighty witness testimony.

The friend was then charged with perjury but acquitted in that the court could not rule out that he had actually been driving the car. Before this case, a new witness had also come forward and explained that he had seen that it was the friend of the convicted person who was driving the car.

A unanimous Commission found that the judgment acquitting the friend of perjury and information from the new witness were new evidence and circumstances that provided a basis for reopening the case

pursuant to section 391 no. 3 .

The Commission unanimously decided to allow the petition.

**10.04.2013 (2012-0063) Assault – section 391 no. 3
(a new circumstance, a new expert statement)**

In 2008, a district court sentenced a woman to 60 days' imprisonment for aiding and abetting an assault with the use of a particularly dangerous weapon. She petitioned to have her case reopened and alleged that there was doubt about her soundness of mind.

The Commission appointed two forensic psychiatry experts who issued a statement concluding that there was doubt as to whether the person examined was psychotic at the time of the offence. The Norwegian Board of Forensic Medicine asked for an additional statement, referring to the fact that, according to Norwegian forensic psychiatry practice, the experts must conclude in the negative unless there is definite evidence that the person examined is psychotic. In the additional statement, the experts concluded that the convicted person was not psychotic at the time of the offence. There had been a discussion about the degree of doubt and especially one of the experts expressed considerable doubt about whether a psychosis existed.

Based on, i.a., this doubt, the Commission found that there were new circumstances in the case that were likely to lead to an acquittal pursuant to section 44 of the General Civil Penal Code, cf section 391 no. 3 .

The Commission decided unanimously to allow the petition.

10.04.2013 (2012 0135) Theft. Pilfering – section 391 no. 3 (a new circumstance, a new expert statement).

In 2010, a district court sentenced a woman to pay a fine of NOK 12,000, damages and costs for theft and pilfering. During the main hearing, the court questioned her soundness of mind and it was decided to terminate the hearing. The case was returned to the police with a request for a preliminary examination of the woman. The preliminary observation concluded that the convicted person was of sound mind and the expert could not see the need to conduct a full forensic psychiatry examination of her. Based on this conclusion, the district court convicted the accused in accordance with the indictment.

Following this, the convicted person committed a new offence but this case was dropped due to statements by her regular physician and a psychiatrist, who found that the convicted person had been of unsound mind at the time of the offence. Based on this conclusion, a petition was submitted to the Commission asking for the district court's 2010 conviction to be reopened.

The Commission appointed two forensic psychiatry experts who concluded in their statements that the convicted person had been psychotic at the time of the offence, cf section 44 of the General Civil Penal Code. The new expert statement was a new circumstance that was likely to lead to acquittal pursuant to

section 391 no. 3 .

The Commission unanimously decided to allow the petition.

22.05.2013 (2012-0092)

Actual bodily harm – section 391 no. 3 (a new expert statement)

In 2012, a district court sentenced a man to 120 days' imprisonment for causing actual bodily harm to his spouse, from whom he was separated. The convicted person petitioned to have his case reopened and submitted a letter from his regular physician containing information on his health. This stated that he had suffered from a mental illness for a long time, was diagnosed as having paranoid schizophrenia and had been admitted to hospital several times. The Commission appointed expert witnesses but the convicted person did not want to cooperate with them and did not consent to additional health information being obtained. The experts were then released from their assignment but sent a letter to the Commission in which they expressed concern about the convicted person's mental health. The prosecuting authority stated that this information should lead to the case being reopened. The Commission found that there were new circumstances in the case and that there would have been a reasonable chance of an acquittal if the information had been known to the court, cf section 391 no. 3 .

The Commission unanimously decided to allow the petition.

19.06.2013 (2012 0115) Frightening behaviour. Failure to apply for a prosecution, etc – section 392 subsection 2 (special circumstances).

In 2011, a district court convicted a man of contravening section 390a of the General Civil Code and sentenced him to a fine of NOK 8,000 or alternatively to 16 days' imprisonment. The victim was not examined during either the investigation or trial. On this basis, the convicted person alleged that there had been insufficient information on the case and that the conviction was based on procedural errors. The convicted person also alleged, i.a., that there had been no application for a prosecution from the victim. These allegations had previously been made in connection with an appeal to the court of appeal.

The Commission found that there was no application for a prosecution from the victim, something that is an absolute procedural requirement for a conviction pursuant to section 390a of the General Civil Penal Code, cf subsection 2. In the Commission's view, the lack of an application for a prosecution and the fact that the victim had not been examined in the case, cf section 294 , comprised special circumstances that made it doubtful that the conviction was correct. Weighty considerations indicated that the question of the convicted person's guilt should be retried, cf section 392 subsection 2 .

The Commission unanimously decided to allow the petition.

19.06.2013 (2012 0149) The Road Traffic Act. Exceeding the speed limit – section 391 no. 3 (a new circumstance, a subsequent conviction).

In 2010, a district court convicted a man of exceeding the environmental speed limit. He was sentenced to pay a fine of NOK 5,000 or alternatively to 10 days' imprisonment, as well as to pay costs of NOK 3,000.

The convicted person alleged that there was no legal authority for enforcing breaches of the environmental speed limits and that he should therefore have been acquitted. With reference to Borgarting Court of Appeal's judgment of 22 November 2011 (LB-2008-183829 – RG-2011-1395), which found that it was doubtful whether the special speed limit in Oslo during the winter time – the so-called “environmental speed limit” – was authorised by the Road Traffic Act, the petition was allowed. The Commission found that the Borgarting Court of Appeal decision, which was handed down after the conviction in this case had become legally enforceable, was a new circumstance pursuant to section 391 no. 3 and that it could reasonably lead to an acquittal.

The Commission unanimously decided to allow the petition.

19.06.2013 (2013 00015) The Road Traffic Act. Exceeding the speed limit – section 391 no. 3 (a new circumstance, a subsequent conviction).

In 2010, a district court convicted a man of exceeding the environmental speed limit. He was sentenced to pay a fine of NOK 10,800 or alternatively to 22 days' imprisonment, and to pay costs of NOK 2,000.

The convicted person alleged that there was no legal authority for enforcing offences against the environmental speed limits. With reference to Borgarting Court of Appeal's judgment of 22 November 2011 (LB-2008-183829 – RG-2011-1395), which found that it was doubtful whether the special speed limit in Oslo during the winter time – the so-called “environmental speed limit” – was authorised by the Road Traffic Act, the petition was allowed. The Commission found that the Borgarting Court of Appeal decision, which was handed down after the conviction in this case had become legally enforceable, was a new circumstance pursuant to section 391 no. 3 .

The Commission unanimously decided to allow the petition.

28.08.2013 (2012 0152, 2012 0153, 2012 0154) Aggravated robbery, theft, etc – section 391 no. 3 (a new circumstance, a new expert statement).

A man was convicted three times of various crimes during the 2007-2012 period. In 2012, he was subjected to a forensic psychiatry examination which concluded that he had been psychotic in the sense of the General Civil Penal Code, cf section 44 of the General Civil Penal Code, since 2007 and until the date of the examination. The convicted person petitioned to have his three convictions reopened and alleged that he should not have been subjected to a penalty.

The Commission found that the result of the forensic psychiatry examination was a new circumstance that seemed likely to lead to an acquittal, cf section 391 no. 3 .

The Commission unanimously decided to allow the petition.

23.10.2013 (2013/106) Rape of an unconscious person under the age of 16 years – section 391 no. 3 (a new circumstance, an expert statement).

A man was acquitted by the district court but convicted by the court of appeal of raping a 15-year-old boy. He was sentenced to four years' imprisonment and ordered to pay compensation to the victim. The boy was unconscious during the act and the conviction also related to causing the unconscious state by using sleeping tablets containing zolpidem. The boy had also been strongly under the influence of alcohol at the time of the offence.

The convicted person petitioned to have his case reopened and alleged several new items of evidence/circumstances, including a new expert statement linked to blood samples taken from the victim. The new expert statement assumed the same use of zolpidem as that stated in the statement from the Norwegian Institute of Public Health that was submitted in court. However, the new statement was clearer about the effects of the combination of zolpidem and a high level of intoxication. The victim's condition was described as "stuporous to comatose" and he would "most likely require assistance [possibly in the form of medical assistance]" for one to two hours after taking zolpidem. The other circumstances and the victim's statement regarding his own condition did not agree with the new expert statement.

Emphasis was also placed on the fact that the intake of zolpidem assumed by the court of appeal was rather incompatible with other circumstances in the case. The Commission found that the new expert statement created doubt as to whether the victim took zolpidem in the quantity and at the time assumed by the court of appeal and whether it was the convicted person that had given the victim zolpidem. There was therefore also doubt as to whether the convicted person had caused an unconscious state to achieve a sexual act. As a result of the close evidentiary link between the conviction for causing an unconscious state and the act of rape, the Commission found reason to reopen the case in its entirety pursuant to section 391 no. 3 .

The Commission unanimously decided to allow the petition.

14.11.2013 (2013/62)

Driving under the influence of alcohol or drugs – section 391 no. 3 (new evidence). Dissenting vote.

In 2013, a district court convicted a man of driving under the influence with a blood alcohol level of 2.11‰. In court, he denied having been the driver and stated that someone else must have driven his car home. However, he could not remember how he had arrived home or who had driven his car. The conviction was based on witness observations and circumstances relating to the driving and the car.

In his petition to the Commission, the convicted person alleged that it was his cousin who had driven the

car. The reason for this not becoming known earlier was that she had not heard about the conviction until afterwards. The petition stated that, at the time of the driving, a court had deprived her of the right to drive, a fact she had kept hidden from her family. This was also why she had not talked about the driving to anyone.

The cousin was questioned by one of the Commission's investigators and she confirmed during the questioning that she had driven the car at the relevant time. The majority of the Commission believed that the cousin's statement was likely to sow doubt about whether the conviction was correct and that the conviction was to be reopened pursuant to section 391 no. 3 .

In the minority of the Commission's view, the cousin's statement, when seen together with the rest of the evidence, did not appear to be very credible and was unlikely to lead to an acquittal.

The Commission decided to allow the petition. Dissenting vote (3-2).

12.12.2013 (2013/3) Illegal to unlawfully deprive a minor of the care of the child protection services – section 391 no. 3 (a new circumstance, a new decision by the Supreme Court).

In 2012, a district court sentenced a woman to imprisonment for 90 days, 30 of which were suspended, for i.a. having unlawfully deprived a minor of the care of the child protection services, cf section 216 of the General Civil Penal Code. There was an interim care order in accordance with section 4-6 of the Child Welfare Act.

She alleged to the Commission as a new circumstance that the Supreme Court had, in a later decision included in Rt-2013-59, stipulated that the fact that there is an interim care order pursuant to section 4-6 of the Child Welfare Act is insufficient for a conviction pursuant to section 216 of the General Civil Penal Code that.

The Commission found that the Supreme Court decision comprised a new circumstance that was likely to lead to an acquittal, cf section 391 no. 3 .

The Commission unanimously decided to allow the petition.

Former chairs, members and alternate members of the Commission

Chair

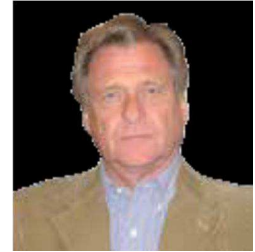


Janne Kristiansen
2004-2009

Members



Ann-Kristin Olsen
2004-2009



Svein Magnussen
2004-2009



Vidar Stensland
2004-2008



Anne Kathrine Slungård
2004-2008



Ingrid Bergslid Salvesen
2008-2012

Alternate members



Øystein Mæland
2004-2009



Anne Elisabeth Landsverk
2004



Harald Stabell
2004-2005



Helen Sæter
2004-2009



Erling O. Lyngtveit
2005-2009



Inger Thoen Nordhus
2007-2008



Ellen Katrine Nyhus
2009-2012

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.

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