1. (200500127)
In 2004, a man was sentenced to jail for 75 days for assault occasioning actual bodily harm and the wilful destruction of property. A petition was submitted for the conviction for actual bodily harm to be reviewed after a person who had previously not been involved in the case claimed to have hit the victim at the time in question. The Commission questioned this person, who admitted to hitting the victim. In addition, the medical records were obtained and these showed that the person concerned had been treated for injuries compatible with the stated course of events during the period in question. Other witness observations that had been obtained earlier in the case also supported his explanation.

The prosecuting authority was told of the results of the Commission's investigation and agreed to the petition for a new trial.

The Commission felt there was new evidence that seemed likely to lead to the convicted person being acquitted of actual bodily harm, cf section 391, no. 3 of the Criminal Procedure Act. The case was referred to court for a new trial.

Following a new trial, the District Court acquitted the convicted person of the charge of occasioning actual bodily harm.

2. (200400070)
One of those convicted in the so-called Karoli case – the valuer – petitioned the Commission for a retrial. He had been sentenced to jail for two years and six months in 1991 for complicity in criminally defrauding a bank. He had also been sentenced to pay damages of NOK 21 million. The petition for a retrial, alternatively an appeal, and a later petition for a retrial were not allowed.

The conviction was for criminally defrauding the bank of a total of NOK 25,100,000. Four persons were convicted of complicity in these frauds, or in parts of them. One of the accused was acquitted of complicity in criminal fraud, but convicted of forging documents. However, his conviction was quashed following an appeal, and he was later convicted of complicity in criminal fraud and forging documents.

The bank had given a loan by issuing bank drafts to several of the convicted persons. These loans were given in part without security, and in part with security in precious stones. The valuer had issued a valuation certificate stating that the precious stones were worth a total of NOK 149,090,000. The court found that he had issued the valuation papers independently of the precious stones that were obtained and provided as security for the loans. In addition, the conviction was based on the facts that the valuation certificates formed the basis for the issuance of bank drafts worth a total of NOK 21 million, that the convicted person was aware that the valuation certificates were to be used to take out a charge on the precious stones, and that they were to be used to criminally defraud the lender.

The Commission investigated the case in further detail by questioning the then main investigator and the person responsible for the prosecution and the prosecutor in the case. In addition, the valuer's former spouse was questioned. The petition also referred to the fact that questioning a lender in Sweden, with whom one of the other convicted persons in the Karoli case had been in contact prior to the offence that had

been adjudicated on, might shed new light on the case relating to the valuer. For this reason, this lender was also questioned, as was a Swedish valuer who had valued precious stones that were to be provided as security for this loan in Sweden. Investigations regarding this lender's alleged formal complaint against the Swedish valuer were also carried out in Sweden. This lender had taken out a loan with a company that had later gone into liquidation and information on the precious stones was obtained from the liquidation proceedings relating to this company.

In making its decision, the Commission was divided into a majority and a minority.

The Commission's majority found that there were grounds for a retrial. The majority placed emphasis on the fact that following the conviction it became known that, while the main proceedings were taking place in Norway, the Swedish police had twice questioned the Swedish lender, with whom one of the co-defendants had previously been in contact regarding a loan. The lender's statements to the police indicated that this co-defendant in the case had on one occasion been involved in an episode where relatively inexpensive precious stones had been linked to higher valuations. The convicted person, the valuer in the Karoli case, had claimed ever since he was first shown the seized precious stones that these were not the precious stones he had valued, so that someone must have swapped the precious stones after the valuation. In addition, he claimed that the precious stones could have been swapped while he was valuing them. The lender's statement to the police could thus be an indication that swapping was this co-defendant's modus operandi and had, therefore, to be of interest to the convicted person's defence, in the majority's view.

The majority also referred to the fact that the Swedish valuer had valued the precious stones that were submitted when the loan was raised in Sweden as being worth approx. SEK 30 million, and that this showed that the other convicted person had access to precious stones that were extremely valuable, which was a prerequisite for the convicted person's swap theory. When being questioned by the Commission's investigator, the Swedish valuer said that it was possible to obtain consignments of precious stones of a size such as that described in the convicted person's valuations for as little as 25%, perhaps even 20%, of their stated appraised value if large consignments were bought at source. In the majority's view, this was a circumstance which might enable the other convicted person to have at his disposal precious stones that were very valuable.

The majority found that if the defence counsel had during the main proceedings been given access to the police questioning of the Swedish lender, this might have led to more evidence being presented in relation to the convicted person's – the valuer's – swap theory. This, together with the fact that the convicted person's circumstances were part of an extremely extensive and complex case, in which the evidence presented relating to his circumstances seemed, relatively speaking, to have been slight and very few grounds had been given for his conviction, especially with regard to the subjective liability to punishment conditions, led the majority to find that the lack of presentation of this questioning was a new factual circumstance that meant the conditions for a retrial pursuant to section 391, no. 3 of the Criminal Procedure Act had been met. Since the Commission's majority had decided there were grounds for a retrial pursuant to section 391, no. 3, the majority found it unnecessary to decide whether the conditions were met pursuant to section 392, second subsection, of the

Criminal Procedure Act.

The minority referred to the fact that the importance of the new information and circumstances had been pleaded in the former petition for a retrial that had been submitted to the court and on the whole agreed with the Court of Appeal's reasons for why these did not provide grounds for a retrial. The minority also referred to the fact that the Commission's investigator had re-interviewed the lender with whom the other convicted person had been in contact, and that the lender had then explained that he had been criminally defrauded by the other convicted person and that the Swedish valuer had, in his opinion, also been involved in this. Although questions could no doubt be raised regarding the lender's new evidence, the minority found that it did at least not strengthen the grounds for a retrial.

The minority found in any case reason to comment on some circumstances relating to the valuation that was prepared in connection with the loan raised in Sweden. In part, differing information had been provided regarding the value stated in the Swedish valuation. At one time when the police questioned the lender, the sum of around SEK 36 million was mentioned. In a later letter from the Swedish valuer to the convicted person, the amount of approx. SEK 30 million was mentioned. In the documents the Commission obtained in connection with the liquidation proceedings relating to the company in which the lender himself raised a loan, it was stated that the Swedish valuer had in seven valuation certificates valued the precious stones at SEK 35,663,250. The minority found it very doubtful that the precious stones on which a charge had been created could have had such a value. If the stones that were provided as security for the loan were worth more than SEK 35 million, the minority found it difficult to understand why the co-defendant did not put more effort into realising the charge that had been granted when it was seen that the repayment contract was not being complied with. According to the lender's explanation, the loan was for SEK 4 million, so that the sale of precious stones worth approx. SEK 35 million should have fully covered the amount due to the lender and, even with interest and costs, the sale should have meant that the co-defendant would also make a sound profit. Instead, he seems to have allowed the charge to pass to the estate in liquidation. If the precious stones had been bought for 20-25%, the other convicted person's gross loss from not managing to sell these stones might be SEK 7-8.75 million. The documents taken from the liquidation proceedings in Sweden also show the attempts made to sell the precious stones. The sales attempts seem to show that the precious stones were difficult to sell and do not seem to support the fact that the stones were worth anywhere near the Swedish valuation of, in total, SEK 35,663,250. Following anoverall assessment, the minority could not see that there were any new circumstances or evidence that seemed likely to lead to an acquittal, summary dismissal or the application of a more lenient penal provision or substantially more lenient sanction, cf section 391, no. 3 of the Criminal Procedure Act. The convicted person's claims based on section 392, second subsection of the Criminal Procedure Act seemed to be linked to the same factors as those related to the petition pursuant to section 391, no. 3. The Commission's minority therefore referred to the discussions relating to section 391, no. 3 of the Criminal Procedure Act and stated that the minority could not see that there were any grounds for a retrial pursuant to section 392, second subsection either.

The case was thereafter referred to the court for a retrial relating to this convicted

person, the valuer.

Following a new trial, the District Court upheld the conviction. At the time of writing, this judgement is not final and enforceable.

3. (200500047)
In 1992, Agder Court of Appeal sentenced a man to jail for two years and six months for unlawful sexual intercourse with two children under the age of 14 years: a foster daughter and a daughter. In addition to being convicted of unlawful sexual intercourse with children under the age of 14 years, cf section 195 of the Norwegian Penal Code, he was also convicted under section 207 of the then Penal Code for having had unlawful sexual intercourse with a relative in a direct line of descent.

In April 2005, the convicted person petitioned for a retrial regarding that part of the conviction which related to the sexual abuse of his daughter. The convicted person referred to the fact that a new paternity test showed that he was not her biological father. In addition, the convicted person alleged, inter alia, that the case concerning his daughter had been poorly investigated and that there were no signs that she had been subject to sexual abuse.

The Commission found that the conditions for a retrial pursuant to section 391, no. 3 of the Criminal Procedure Act were present in relation to the infringement of section 207 of the Penal Code. The fact that the convicted person was not the child's father was a new factor.

The case was therefore reopened so that the question of guilt could be retried as regards this count. The rest of the petition was not allowed, since the Commission could not see that there were any new circumstances or evidence that were likely to lead to an acquittal or any other special circumstances which made it doubtful whether the rest of the judgement was correct.

After the Commission's decision had been announced, the convicted person withdrew his petition for a retrial and the Supreme Court's Appeals Committee adjourned the case. The conviction was therefore upheld.

4. (200500169)
In 2004, the District Court found a man guilty of contravening section 162, first and second subsections of the Penal Code, cf fifth subsection (aggravated drug trafficking offence – storage of heroin) and contravening section 162, first subsection of the Penal Code, cf fifth subsection (drug trafficking crime – supplying heroin). The sentence was imprisonment for a term of one year and eight months.

The convicted person appealed against the District Court's conviction to the Court of Appeal, where only the most serious offence was allowed for an appeal hearing. The Court of Appeal also found him guilty of aggravated drug trafficking. He was sentenced to imprisonment for a term of two years, a sentence which included the matter that had been finally and enforceably determined by the District Court's judgement.

The convicted person's father, who was also convicted in this case, was later

acquitted. He was acquitted without a main hearing after the Supreme Court had overturned the Court of Appeal's conviction relating to the father and after the prosecuting authority had decided to drop its prosecution of the father for the matters that were overturned by the Supreme Court.

With reference to the prosecuting authority's dropping of the prosecution and the later acquittal of the father, a petition was submitted to retry the son's case. It was stated that this was a new circumstance that seemed likely to lead to the acquittal of the son, cf section 391, no. 3 of the Criminal Procedure Act. It was also stated that the Court of Appeal stated in its charge to the jury that it would be difficult to find the son guilty if the father was acquitted of the crime.

The Commission investigated this case further by contacting the Court of Appeal and the other defence counsel relating to the content of the charge to the jury. The investigations indicated that the court administrator had expressed views on the link between the assessment of the evidence against the father and son. The Court of Appeal's ruling also contained statements of such a link between the father's and son's drug trafficking operations and stated that the father had a "leadership position and a controlling influence".

In the Commission's view, the Supreme Court ruling and the later acquittal of the father was a new circumstance in the case. When considering whether this new circumstance was likely to lead to an acquittal of the son, the Commission was divided into a majority and a minority part.

The majority found that the question of guilt relating to the aggravated drug trafficking crime that had been adjudicated by the Court of Appeal should be retried. The majority presumed that the prosecuting authority had previously evaluated the evidence in the case against the father before dropping the criminal proceedings against him. The importance of this was that, when assessing the question of the son's guilt, the connection between the father's and son's circumstances on which the Court of Appeal based its assessment of the evidence had to be completely disregarded. This again led to there being a reasonable possibility that the son would also be acquitted of this crime.

The Commission's minority did not agree with the majority that the connection between the father and son had to be entirely disregarded now that the father's conviction had been quashed. The minority referred, inter alia, to the fact that the father had still been found guilty of not inconsiderable trafficking in drugs.

5. (200600062)
A man had been asked by a neighbour to transport a vehicle abroad. The vehicle proved to have been stolen and the man was convicted of handling stolen goods. He claimed in court that he did not understand that the vehicle his neighbour had asked him to take abroad was stolen, but the court did not believe him. He was therefore sentenced to imprisonment and ordered to pay damages to the insurance company that had insured the vehicle.

The neighbour was also charged with handling stolen goods relating to the same vehicle, and this case was determined in a later trial. The neighbour had been asked by

a person to find someone to take the vehicle out of the country. However, the neighbour was acquitted since the court found he was in good faith in that he did not understand that the vehicle was stolen when he passed the driving assignment on to the convicted person.

The Commission found that the acquittal of the neighbour was a new circumstance, cf section 391, no. 3 of the Criminal Procedure Act. The fact that the court found that the neighbour was acting in good faith when he passed on the driving assignment to the convicted person meant that there was a reasonable chance that the convicted person, who was given the assignment by the neighbour, was also acting in good faith.

The Commission therefore allowed the petition for a retrial.

6. (200400218)
A man was a part-owner of a company that had a subsidiary and a subsidiary of the subsidiary. He lent money to the subsidiary of the subsidiary and demanded a tax allowance for this expense in his tax return. He claimed that the money had been lent to the parent company, which had then lent the money to the subsidiary of the subsidiary. The loans were later converted into share capital. The person concerned later sold the shares at a loss, for which he claimed a tax allowance.

The tax office claimed that the money had been lent directly to the subsidiary of the subsidiary, which had gone into liquidation. Bad debts cannot be deducted as a tax allowance, while a loss on the sale of shares can be. The case was heard by the tax assessment board and the tax appeal board. Both decided that the money had been lent directly to the subsidiary of the subsidiary and was thus a receivable for which no tax allowance could be claimed.

For this and other matters, the man was sentenced to jail for 120 days, of which 90 days were suspended with a suspension period of two years.
The man then brought a civil action against the Norwegian state, represented by the county tax office. In the civil action judgement, the court found in his favour, ie, it came to the opposite conclusion to that of the tax assessment board, tax appeal board and criminal court. The court found that the money had been lent to the parent company and then lent further to the subsidiary of the subsidiary.

The Commission found that a “new circumstance” did exist in this case, namely a new judgement that assessed the evidence differently to a previous ruling. If the assessment of the evidence in the civil action was adopted, the Commission found this likely to lead to an acquittal or summary dismissal or to the application of a more lenient penal provision or a substantially more lenient sanction in a new criminal case.

The Commission therefore allowed the petition.

7. (2006000152)
Three men, A, B and C, were convicted by Oslo District Court in March 2002 of being in possession of 48.41 kg of amphetamine in a hotel room in Kiel and of attempting to import the drug consignment on the ferry from Kiel to Oslo. Oslo District Court convicted D of the same drug trafficking offences in October 2002. All the convicted persons submitted an appeal to Borgarting Court of Appeal, which

decided to combine the cases and hear them as one. D appealed against the sentencing, while the others appealed on all counts. The other three gave evidence in court, while D did not wish to give evidence. The court then allowed the prosecutor to read aloud D's statements to the police. Following this, B's defence counsel asked to be allowed to question D. The presiding judge reminded the defence counsel that D had exercised his right not to give evidence, so that no direct questions could be asked of him. However, the presiding judge did ask D if he now wished to give evidence, in whole or in part. D stated that he still did not wish to give evidence, including answering the specific question from B's defence counsel. In a judgment on 23 May 2003, the Court of Appeal acquitted C and sentenced B and D to imprisonment for nine years. A was sentenced to imprisonment for 11 years. A and B appealed to the Supreme Court, which dismissed their appeals in a ruling dated 22 January 2004 (Rt-2004-97).

A and B brought the case before the European Court of Human Rights, alleging that the way in which the case had been dealt with by the Court of Appeal infringed their rights pursuant to the Human Rights Convention's articles 6(1) and 6(3)(d).

In the European Court of Human Rights' ruling dated 9 November 2006, the Court started off by stating its views on the reasons for the authorities' obligation to make every reasonable effort to ensure the presence of a witness. With reference to previous rulings, the Court stated that the presence of a witness is a prerequisite for the defence counsel's opportunity to confront the witness. However, it pointed out that there must also be a proper and adequate opportunity to question the witness.

The Court referred to the fact that, until the prosecutor had read aloud D's statements to the police, the appellants had not been given any opportunity during the trial to cross-examine D. It also referred to the fact that, although the presiding judge had, after the reading aloud of the statement, acted as an intermediary between B as the accused and D – here as a witness, it could not be said that B had been given a real opportunity to confront D. In addition, the Court believed that D's right to refuse to answer incriminating questions could have been safeguarded even if the appellants had been given an opportunity to question him directly.

The Court also commented on the Court of Appeal's interpretation of articles 6(1) and 6(3)(d), since this seemed to have influenced the Court of Appeal's treatment of the case. The Court referred to the fact that the Court of Appeal had decided that since D was a co-defendant he could not be a witness in the sense of article 6. The Court of Appeal's treatment therefore seemed to be based on the assumption that the limitations stipulated by the Convention relating to the reading aloud in court of statements to the police were not applicable to statements to the police made by a codefendant.

The Court commented that such an interpretation does not correspond to the autonomous meaning of the concept of witness that follows from the Court's case law. According to this, it is not relevant whether the statement to the police was given by a witness or a co-defendant. The Court referred to the fact that if a statement to the police provides a crucial contribution to a basis for a conviction, it is to be regarded as evidence for the prosecuting authority which means that the guarantees in articles 6(1) and 6(3)(d) are applicable. This applies irrespective of whether the evidence is given

by a witness in the real sense of the word or a co-defendant. The Court referred to the fact that the Supreme Court's statements in its ruling had to be interpreted as saying that D's statements to the police were of crucial importance to the outcome of the case.

The Court thus found that the appellants had not been given a proper and adequate opportunity to contradict the statements which formed the basis for the convictions. It therefore found that the appellants had been denied a fair trial and concluded that an infringement of articles 6(1) and 6(3)(d) had taken place.

B petitioned for his criminal case to be reopened in November 2006. He referred to the Court of Human Rights' ruling and claimed that Norway had, as a result of this, a clear international law obligation to ensure that the case was retried.

The prosecuting authority alleged that there was no new evidence in the case to indicate a retrial, but that the actual breach of the Convention meant that the convicted persons had to have their cases retried.

The Commission commented that section 391, no. 2b) of the Criminal Procedure Act states that a case may be required to be reopened "when an international court (….) has in a case against Norway found 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.", and that it is clear here that the Court of Human Rights found, in its ruling dated 9 November 2006, that the procedure in the Court of Appeal's treatment of the cases against A and B was in contravention of the Convention's provisions regarding a fair trial, in that the defendants' right to cross-examine was infringed. As regards the question of whether there is reason to believe that the procedural error may have influenced the substance of the decision, the Commission referred to paragraph 55 of the European Court of Human Right's ruling on this case, where it is stated that "it must be presumed that D´s depositions had a decisive influence on the outcome of the case". In that it also had to be assumed that neither the defendant nor his defence counsel were given any real opportunity to cross-examine D, the Commission found that the procedural error could have influenced the substance of the decision, and that, in this case, there could not be seen to be any other opportunities to remedy the damage that had been caused than to reopen the case. The Commission thus decided to allow the petition.

8. (200500121)
A man was convicted by the District Court of aiding and abetting in the robbery of two petrol stations in 2004. Based on evidence given by a couple who were his acquaintances, the District Court found that the convicted person kept watch while the couple carried out the robberies. There was no other evidence against the convicted person.

The convicted person petitioned to have the case reopened. He presented documentation showing that the area where he was supposed to have been sitting in a parked car keeping watch during the first robbery had been locked up.

The Commission investigated the case. Among other things, two new witnesses were questioned. The witness testimony, a survey and other investigations showed that it was correct that, in the first robbery, the convicted person could not have been in a parked car keeping watch at the location shown by the couple. This provided grounds for questioning this part of the couple's evidence. Another witness's evidence meant that the Commission could not rule out that the convicted person had been somewhere else entirely when the second robbery took place, as the convicted person himself claimed. Technical evidence (telephone data, movements in a bank account, etc) also supported the witness's and convicted person's evidence regarding this. There were also circumstances which could have made it possible for the couple to coordinate their statements, something that the District Court had not considered as a possibility.

The Commission's majority (three members) found that the Commission's investigation of the case had resulted in new evidence that could have led to an acquittal if it had been presented to the court. The case was reopened pursuant to section 391, no. 3 of the Criminal Procedure Act. Particular emphasis was placed on the fact that a new witness statement compared to technical evidence supported the convicted person's own evidence that he was somewhere else when the second robbery took place. This indicated that this robbery case should be reopened. In that the conviction was based on the couple's statements regarding the convicted person's participation in both robberies, the case regarding the first robbery was also reopened. The Commission's minority (two members) found that the conditions for reopening the case were not present because the new information on the case was not of such a nature that it could have led to an acquittal.

9. (200400044)

In 2003, the Court of Appeal sentenced a man to preventive custody for 17 years, with a minimum term of nine years, for murder. The conviction also related to other factors that were finally and enforceably ruled on in the District Court's judgement. Following an appeal by the prosecuting authority, the Supreme Court sentenced him to preventive custody for 21 years with a minimum term of 10 years.

The convicted person petitioned to have the murder conviction retried in February 2004, referring, inter alia, to there being "false evidence, false police reports and false witness testimony".

The murder charge was based on the convicted person killing an acquaintance by giving him an overdose of heroin intravenously or by deceiving him into giving himself such a dose, after which he died from heroin poisoning. It was noted that the deceased had taken 1.7-1.8 grams of heroin and that an exceptionally high level of morphine was measured in his body. This was 10-100 times more than in heroin addicts who had died from an overdose. The Court of Appeal found that the deceased had unwillingly been given an overdose that was so strong that he relatively quickly understood that he would die if he did not receive help. As a result of this, he attacked the convicted person, who stated during this event that "You've made a great mistake". The Court of Appeal found reason to believe that this statement could have been meant to relate to the deceased's possible provision of information on the convicted person to the police. The Court of Appeal did not believe the convicted person's explanation that he had injected himself with heroin so that he fell asleep, and that he had woken up after a few minutes and seen that there was something

wrong with the deceased, who was blue in the face. The convicted person explained to the court that he understood that the deceased had taken an overdose, and that he therefore took hold of him and tried to raise him up. At the same time, the convicted person shook the deceased hard, shouted and hit him on the ear. When the deceased person understood that he was dead, he decided not to call for an ambulance because he had drugs in the flat and was afraid that the police would come.

The convicted person claimed, inter alia, that he had no motive for killing the deceased, as the Court of Appeal had assumed, and that it was also not correct that there was any antagonism between them. He also felt that the court placed too much weight on the testimony of a witness who was present in the flat when the act took place, and who the court believed was credible. The convicted person also referred to the fact that the person concerned had taken a very strong overdose and that it must be questioned whether he was at all able to take part in a fight as the court had assumed.

During its investigations, the Commission questioned the main witness and the person who had supplied the witness with heroin. Both had given evidence to the Court of Appeal. Two persons in the deceased's circle of acquaintances, including his girlfriend, were also questioned. These had not been questioned previously. In addition the prosecutor who had prosecuted the case in the Court of Appeal and the convicted person's then defence counsel were questioned. The Commission also obtained a statement from experts at the Swedish Forensic Medicine Institute (*Rättsmedicinalverket*). The key question was whether the deceased had any opportunity for physical activity after taking an overdose of heroin in volumes such as those in this case.

The Commission considered whether the conditions for reopening a case pursuant to section 391, no. 3 of the Criminal Procedure Act were present. It found that neither the new statement from the Swedish Forensic Medicine Institute nor the new witness statements were to be regarded as new circumstances or evidence that seem likely to lead to an acquittal or to the application of a more lenient penal provision or a substantially more lenient sanction. It was then considered whether the conditions for reopening a case pursuant to section 392, second subsection of the Criminal Procedure Act were present. This provision allows a case to be reopened "when special circumstances make it doubtful whether the judgement is correct, and weighty considerations indicate that the question of the guilt of the person charged should be tried anew." The Commission made it clear at the start that this provision is meant as a safety valve, and that even though it was amended in 1993 by the word "very" being deleted in front of "doubtful", the provision is still intended to be applied with caution. In this case, however, there were several circumstances indicating that the judgement could be incorrect.

In its assessment, the Commission placed considerable emphasis on the statement from the Swedish Forensic Medicine Institute that had been obtained in connection with the Commission's investigation. This statement states, inter alia, that "It can be questioned whether any physical activity at all is possible after taking a dose of heroin that results in a concentration like that measured." This statement agrees with the convicted person's statement that he understood that the deceased had taken an overdose and that he took hold of him, shook him and hit his ear in order to wake him up. The witness who was present stated that the convicted person and the deceased sat

and were talking to each other when the convicted person suddenly and without cause "jumped on" the deceased and exclaimed "... you've made a fool of yourself." The Commission notes that the convicted person was an experienced heroin addict and that he had to understand that death would occur quickly after taking a heroin dose of around 1.7 grams. If he wanted to kill the victim, his subsequent actions were incomprehensible, in that he had to know that he would achieve the desired result by remaining completely passive. If the convicted person had wanted to kill the deceased it was also, in the Commission's view, strange that he chose to do so with a witness present and in his own home, with the result that he had to borrow a large car from a third party to get rid of the body.

The Commission otherwise did not find there was any information proving it probable that the convicted person had a motive for killing the deceased. Based on the main witness's statement, there was nothing in the previous atmosphere between the convicted person and the deceased to indicate there was any conflict brewing that would end in a murder. In the Commission's view, it was more likely that the convicted person's statement to the deceased that he had "made a great mistake" referred to the fact that the convicted person understood that the deceased had taken an overdose than to the fact that the deceased had informed on him. The Commission also referred to new witness statements that the deceased had said he could not bear the thought of starting to serve a prison sentence. In this connection, it is clear that the deceased was due to serve an unconditional prison sentence of 1 year and 6 months, and that the police had summoned him to serve this sentence three days before he died.

Based on the above, the Commission found, following an overall assessment, that the requirement of "special circumstances" in section 392, second subsection of the Criminal Procedure Act had been met, and that the sentence of 21 years preventive custody was a sufficiently weighty consideration which meant that the convicted person's guilt should be retried. The case was referred for a retrial in the Court of Appeal, in which the jury gave a verdict of not guilty. The jury's ruling was set aside by the Court of Appeal judges. At the time of writing, this case has not been finally adjudicated.

10. (200400198 – Fritz Moen)
Fritz Moen petitioned in 2004 for the reopening of the so-called Torunn case, which he had previously not managed to have reopened. While this case was being investigated by the Commission, a person confessed – shortly before his death – to committing both this and the so-called Sigrid murder, which Moen was acquitted of in 2004.

The Commission investigated the new confession in the case with the help of the National Criminal Investigation Service (Kripos), as described above under the heading "investigative assistance". The prosecuting authority thereafter stated it found no grounds for opposing the reopening of this case.

The Commission investigated the new confession in the case and found that the confession, together with the results of the investigations regarding it, was undoubtedly new evidence in the sense of the Criminal Procedure Act. The Commission also found that the new evidence and circumstances that existed in the

case in connection with this confession, together with the existing evidence in the case, were likely to lead to the acquittal of Fritz Moen for the murder of Torunn Finstad in 1977, and it decided to allow the petition.

Since Fritz Moen had died, the court was to deliver a judgement of acquittal without a main hearing, cf section 400, fifth subsection of the Criminal Procedure Act. This took place in Borgarting Court of Appeal's judgement dated 21 August 2006.

11. (200400071 – Fredrik Fasting Torgersen)
On 16 June 1958, Eidsivating Court of Appeal sentenced Fredrik Fasting Torgersen to imprisonment for life and, if he were released, to a 10-year period of preventive supervision. Torgersen's appeal was dismissed by the Supreme Court on 1 November 1958. He applied to have the case reopened in 1973. The Court of Appeal rejected the petition on 27 June 1975. The Supreme Court's Appeals Committee dismissed Torgersen's appeal on 31 May 1976. Torgersen petitioned for the case to be reopened in 1997. This petition was rejected by the Court of Appeal on 18 August 2000, and an appeal from Torgersen was dismissed by the Supreme Court's Appeals Committee on 28 November 2001. Torgersen petitioned the Criminal Cases Review Commission to have the case reopened on 25 February 2004, and provided final grounds for this on 5 April 2005. The prosecuting authority issued a statement on 2 December 2005. The Commission decided on 8 December 2006 that this case should not be reopened.

The Commission examined and considered all the case documents from 1957 until the decision was reached. As part of the case preparation work, the Commission held a four-day oral hearing regarding some of the technical evidence in the case, the toothbite evidence, the faeces evidence and the pine-needle evidence.

The Commission considered three main grounds for reopening the case:

- Whether there was new evidence or circumstances that seemed likely to lead to an acquittal, section 391, no. 3 of the Criminal Procedure Act.
- Whether there were special circumstances that made it very doubtful that the judgement was correct, section 392, second subsection of the Criminal Procedure Act.
- Whether a police officer or official in the prosecuting authority, prosecutor or expert witness had been guilty of a criminal offence or whether false evidence had been given, section 391, no. 1 of the Criminal Procedure Act.

As regards the conditions for reopening the case pursuant to section 391, no. 3, the Commission found that the many experts' partially conflicting interpretations and conclusions relating to the toothbite evidence created uncertainty regarding the extent to which the evidence links Torgersen to the act.

The Commission did not find that the faeces evidence provided grounds for reopening the case, and particularly referred to the total evidence relating to this, the faeces found at the scene of the crime, on the victim and Torgersen's canvas shoes, in his pocket and on his box of matches, in addition to the similarities between the various samples.

The pine-needle evidence also did not provide grounds for reopening the case.

Although no genetic identity could be stated, the Commission found it clearly most likely that the pine needles that were found on Torgersen came from the scene of the crime.

The Commission also considered allegations relating to some witnesses, what the crime scene had looked like, traces at the scene of the crime, on the victim and Torgersen, the time of the murder, a possible alibi and other witnesses' observations regarding Torgersen and the victim's movements. None of these circumstances provided grounds for reopening the case. The Commission pointed out, inter alia, that Torgersen's explanation of what he was doing at around the time of the murder is contradicted by witness testimony that the Court of Appeal obviously believed. During the trial in 1958, Torgersen also pointed out a witness as being the unknown Gerd who apparently went home with him on the night in question. He has admitted many years later that this was not true. The Court of Appeal has obviously found that Torgersen lied about this during the trial and that this has been in his disfavour. The Commission found no grounds to judge this differently than in 1958.
The Commission concluded that there was no new evidence or circumstances that seemed likely to lead to an acquittal if all the evidence in the case is looked at as a whole.

The Commission also concluded that when the evidence is assessed as a whole, there are no particular circumstances that make it very doubtful that the judgement was correct, cf section 392, second subsection of the Criminal Procedure Act. Nor are there grounds for stating that a police officer or official in the prosecuting authority, prosecutor or expert witness has been guilty of a criminal offence, or that anyone deliberately gave false evidence during the trial in 1958, cf section 391, no. 1 of the Criminal Procedure Act.