

Norwegian Criminal Cases Review Commission

## **Annual Report for 2004**

The Norwegian Criminal Cases Review Commission is an independent body which considers whether a convicted person should have his/her case retried by another court.

## Annual Report for 2004

### **The Criminal Cases Review Commission's activities and composition**

The Criminal Cases Review Commission was set up following a revision of Chapter 27 of the Criminal Procedure Act. The amendment came into force on 1 January 2004.

The Commission has five permanent members and three alternates, all of whom are appointed by the King in Council. The Chairperson, Vice Chairperson [I'm not sure whether this is the done thing in Norway – our first chairperson was female and this is the way she was designated] and one member must hold a university degree in law [LLM]. The Chairperson is appointed for a period of five years and members for a period of three years.

The Commission is made up as follows:

Chairperson: Janne Kristiansen

Vice Chairperson: Ann-Kristin Olsen, Governor of Vest-Agder County

Members: Vidar Stensland, Court of Appeal Judge at the Hålogaland Court of Appeal.  
Svein Magnussen, Professor of Psychology at the University of Oslo.  
Anne Kathrine Slungård, Director of Communications at SINTEF.

Alternates:

Anne Elisabeth Landsverk, District Court Judge at the Skien and Porsgrunn District Court (until October 2004)

Helen Sæter, District Court Judge at the Fredrikstad District Court (from October 2004)

Harald Stabell, advocate and defence counsel

Øystein Mæland, Chief Consultant/Head of Department at Ullevål University Hospital.

The Commission's Chairperson is also employed full-time as Head of the Secretariat. She has previously practised as an advocate and defence counsel. The Secretariat also comprises eight employees, six of whom are investigators. Three of the investigators have police backgrounds and three are lawyers. The investigators have experience that includes Økokrim (The Norwegian National Authority for Investigation and Prosecution of Economic and Environmental Crime), Kripos (the National Criminal Investigation Service), the Institute for Forensic Medicine, The Lund Commission, the Access Reviewing Committee on

the Norwegian Police Security Service (Innsynsutvalget), the Parliamentary Ombudsman for Public Administration in Norway, the Institute of Forensic Medicine University of Oslo, and the Ministry of Justice, as well as the courts and the prison service. The Secretariat also has two secretaries and its offices are situated at Teatergaten 5, Oslo.

### **The Criminal Cases Review Commission in general**

The Criminal Cases Review Commission is an independent body which has responsibility for deciding whether convicted persons who seek review of their conviction and/or sentence should have their cases retried in court. If the Commission concludes that there should be a review, the case will be referred for retrial before a court other than that which imposed the conviction/sentence. Under the previous system, it was the court that imposed the final conviction/sentence in a case which had responsibility for deciding whether a *res judicata* (a criminal case on which a conviction/ sentence has been imposed) should be reopened. The same court was also responsible for retrying the case if it came to that.

The Criminal Cases Review Commission decides its own working procedures. It cannot be directed as to how to apply its authority. Members of the Commission may not consider cases where they are disqualified under the provisions of the Courts of Justice Act (domstolsloven). Where a petition to review a conviction/sentence in a criminal case has been received, the Commission must make an objective assessment about whether the conditions for review are present.

A convicted person may petition for review of his conviction/sentence if:

- there is new evidence or new circumstances that may lead to acquittal, the application of a lesser penal provision, or a considerably lighter sentence.
- in a case against Norway, an international court or the UN Commission on Human Rights has concluded that the decision or hearing of the convicted person's case, is in contravention of international law, and there are grounds to suppose that a new examination of the criminal case will lead to a different conclusion.
- anybody who has had crucial dealings with the case has committed a criminal offence that may have affected the conviction/sentence to the disadvantage of the convicted person.
- there are special circumstances that cast doubt on the correctness of the conviction/sentence and where serious consideration suggests that there should be re-examination of the convicted person's guilt.

A petition for review must be submitted in writing. There is no time limit for petitioning review. The Commission has a duty to provide guidance to the person requesting his/her case to be reviewed. In most cases, direct contact and dialogue will be established with the individual concerned. The Commission itself is responsible for ensuring that all relevant information about the case is

produced. The convicted person seeking review of his case may have a legal representative appointed at public expense only where special reasons apply.

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

The Commission may call the convicted person and witnesses to informal discussions or questioning. It may hold oral hearings or apply for evidence to be heard in court. Moreover, it can petition the court for a personal background report, mental observation, and for coercive measures to be applied. The Commission may make orders for compulsory disclosure, appoint experts and hold inquiries. In special circumstances, it may request the prosecuting authorities to conduct criminal investigations. Otherwise, cases are reviewed and reported on by the Secretariat's own investigators.

The Commission's Chairperson/Vice Chairperson may turn down petitions which clearly will not succeed. In other cases, the whole Commission will decide on petitions.

If the Commission decides to review a conviction/sentence, the case will be referred for retrial to a court of equal standing to that which imposed the conviction/sentence. This means:

- If the conviction/sentence was imposed by a District Court (formerly county or city courts), the Commission will send the case to the Court of Appeal which will nominate a District Court.
- If the conviction/sentence was imposed by a Court of Appeal, the case will be sent to the Interlocutory Appeals Committee of the Supreme Court which will nominate a Court of Appeal.
- If the Supreme Court passed the sentence, the Supreme Court will reconsider the case.

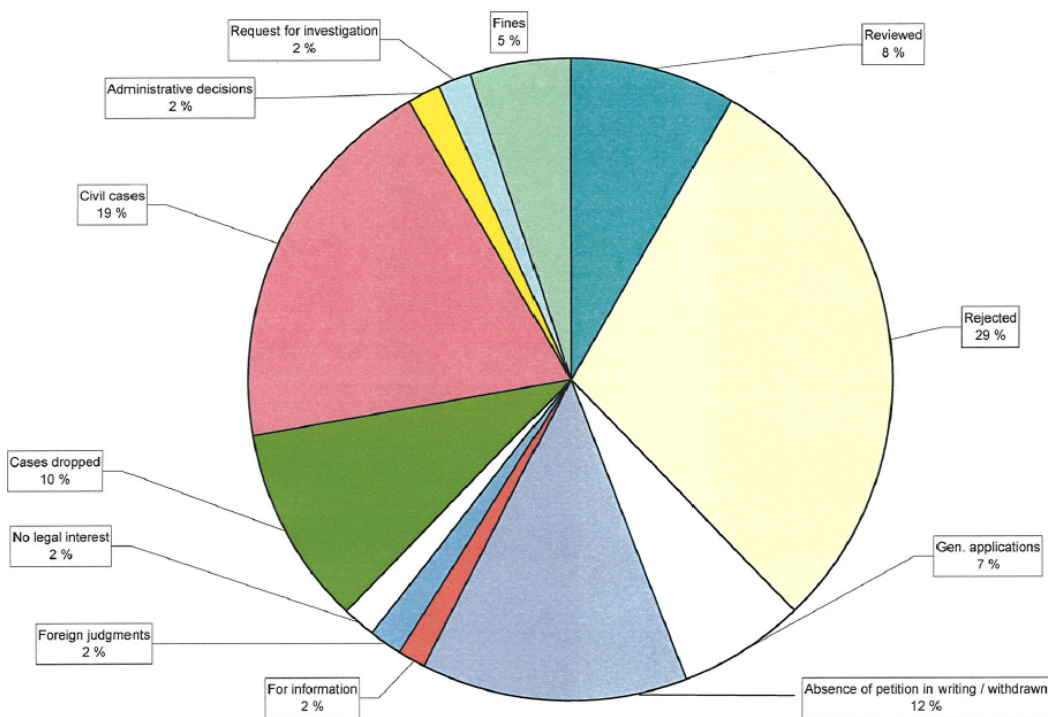
## **Cases and procedure**

The Norwegian Criminal Cases Review Commission began activities on 1 January 2004. During that year, the Commission held 8 meetings. In its first year of operation, the Commission received 232 petitions for case review. Of the petitions received, 61 were completed within the year. 23 of these were heard on their merits. Of the cases heard on merit, 5 were referred to the court for review, and 18 were rejected, as it was clear that they could not succeed. The other 38 cases concluded were formally dismissed, as they did not fall within the Commission's mandate. This applied mainly to petitions for the review of civil judgments and investigations dropped but also, for example, to administrative decisions, foreign judgments, or fines accepted (the latter group still has to be dealt with by the courts). In addition, there were cases where petitions were not in writing or were withdrawn.

The table below gives a complete overview of the number of cases as at 31 December 2004:

Text	Received	Concluded	Reviewed	Disallowed	Rejected	DISMISSED											
						Gen. applications	Absence of petition in writing / withdrawn	For information	Foreign judgments	No legal interest	Cases dropped	Civil cases	Administrative decisions	Request for investigation	Fines		
General	1	1				1											
General	2	1				1											
Sexual offences	46	9	2		5		2										
Violence, threatening behaviour	55	13			6	1	4	1								1	
Drugs	25	4			2		1		1								
Crimes of gain	28	1			1												
Misc. offences	13	3			2					1							
Misc. misdemeanours	38	6	3		2		1										
Cases dropped	6	6									6						
Applications	2	1				1											
Fines	3	3															3
Civil cases	12	12											12				
Other info re special cases	1	1												1			
<b>Total</b>	<b>232</b>	<b>61</b>	<b>5</b>	<b>0</b>	<b>18</b>	<b>4</b>	<b>8</b>	<b>1</b>	<b>1</b>	<b>1</b>	<b>6</b>	<b>12</b>	<b>1</b>	<b>1</b>	<b>1</b>	<b>3</b>	

The diagram below shows the outcome of the cases concluded:



In considering the figures, one must bear in mind that this was the start-up year for the Commission. The main feature of the first six months of 2004 was finding technical solutions. In its first year, the Commission's secretariat, working in conjunction with the Commission, focused mainly on developing proper routines and case-flow procedures that would ensure thorough and objective examination. At the same time, there has been ongoing evaluation of measures essential to the effective processing of cases. Nevertheless, such measures must not conflict with the guarantee of legal safeguards that are the very basis for setting up the Commission and its existence.

The Commission's Chairperson and Vice Chairperson have authority to reject any petitions that clearly will not succeed. In this start-up year however, most of the cases were considered by the whole Commission in order to establish the borderline between petitions that would clearly fail, and petitions that would be disallowed.

Many more cases have been received than was expected when the Commission was first established (see the section on provisional evaluation below), and that is why the Revised National Budget 2004 allocated further resources to the Commission in the form of three new posts within the Secretariat. These were filled during autumn 2004. Procedures and capacity in relation to the examination of cases therefore improved substantially in the final quarter.

One must also take into account the fact that convicted persons may themselves apply directly to the Commission, and that the Commission has a duty to advise them on their application. Previously, an advocate would in most cases have prepared a petition for case review. Since these were often complex and labour-intensive cases that were not covered by the rules of legal aid, one must assume that advocates did not initially undertake this type of assignment without taking the view that the case would be reviewed. We must assume that this in itself must have acted as a major filter to the number of petitions that were brought before the courts previously (approximately 50 a year during the last decade). The number of petitions which clearly will not succeed will therefore most likely be higher now than under the previous arrangement.

However, the Commission considers it important to establish procedures that allow greater resources to be channelled into cases that appear to contain a basis for review. As a consequence, work is constantly being carried out on procedures that will ensure that petitions which clearly will not succeed obviously groundless can be filtered out by the Chairperson or Vice Chairperson in a more efficient manner.

In connection with the development of procedures, the Commission has been particularly concerned about securing evidence. A very valuable aid in this respect is to record conversations and questioning on sound file and this has now become established procedure. The Commission also considers it very important to work actively to promote within the police and prosecuting authorities proper procedures for storing and securing evidence in closed cases.

## **Other activities of the Commission**

In 2004, the Commission and its Secretariat embarked on study tours to criminal cases review commissions in England and Scotland. These studies have been particularly useful in obtaining inspiration and suggestions as to how the Commission should operate and process cases, and particularly in respect of filtering procedures that have been developed and functioned over time.

Cooperation between the commissions in England, Scotland and Norway is planned so that we can develop the best possible methods of examining and reporting on cases in future. We aim to hold annual seminars with the other two commissions.

The Chairperson of the Commission has briefed the Justice Minister every six months about the activities of the Commission and has maintained regular contact with the Ministry of Justice's civil department concerning budget and administrative issues.

Meetings have been held with the legal department of the Ministry of Justice on matters concerning adjustments to the Criminal Procedure Act as well as to other statutes and regulations.

There has also been held several meetings with the Director General of Public Prosecutions in connection with a number of practical problems relating to the Commission's requests for case documents, statements etc. Regular meetings are planned between the Director General and the Commission in future. In addition, meetings have been held with the Ministry of Law represented by the Police Department, and the Probation and Care of Offenders Department at the Ministry of Justice, as well as with the Police Directorate.

The Commission's Chairperson has also conducted external activities in the form of lectures to the Probation and Care of Offenders Service (Kriminalomsorgen) in various regions, to the police prosecution services, to the Courts Administration and the courts, as well as to "Juss-Buss" [legal aid provided by law students] and the Defence Counsel Group of 1977.

It has been important for the Commission to maintain contact with the Storting (Norwegian Parliament's) Standing Committee on Justice, who has also paid visits to the Commission's Secretariat.

The Commission has produced its own website containing information about the Commission and its work at [www.gjenopptakelse.no](http://www.gjenopptakelse.no). A form has been prepared for petitioning case reviews that can be downloaded from the website. In addition, informative material has been printed for convicted persons and the public.

## **Provisional evaluation**

As mentioned, the Commission received 232 petitions for review in 2004; a substantially larger number than was anticipated by the Ministry of Justice in Proposition to the Odelsting no. 70 (2000-2001) and by the Norwegian Parliament when setting up the Commission. At that time it was assumed that the Commission would receive about 100 petitions per year. This would have represented a doubling of the number of cases coming in on average to the courts in the ten years prior to the establishment of the Commission. These estimates were also based on the number of cases that had been submitted to the Scottish Commission. Scotland's general and prison populations are almost the size of those of Norway. The volume of cases received by the Scottish Commission has stayed relatively constant at about 100 cases per year since it was established in 1999.

It is too early to say anything about whether the considerable number of cases received by the Commission will continue but it already seems to be a fact that staffing in the Secretariat is insufficient. This is despite increased resources represented by three extra posts that were added in autumn 2004.

In order to catch up with the backlog that has developed, it will probably be necessary to employ more investigators for a period of time. In the first instance, it seems that employing people on contract will be sensible until it becomes clear whether the large case volume will persist. It is, of course, possible for the case volume to increase further when the Commission's activities become more widely known.

The fact that a number of cases received have been very large and complex, virtually calling for a separate investigation team of legal and police experts over an extended period, has represented a challenge. This could affect the less involved cases, which, of course, are just as important to clear up quickly for the individuals concerned.

Nevertheless, the Commission is aware that it must work to make case processing procedures more effective within the parameters that already exist. This will probably be best done by developing a customised electronic case processing system, similar to that used by the Scottish Commission, which has led to a considerable reduction in outstanding cases.

In its first year of operation, the Commission became coordinated and worked well with the Secretariat. The Commission's members have become increasingly more involved in the examination of individual cases so as to best utilise the total resources of the Commission. There is however, a problem in that some of the Commission's members will already be replaced in September 2005 because of the nomination criteria applied when they were first appointed. In order to preserve continuity, consideration should be given to reappointing members who are willing to stand because emphasis must be given to retaining the Commission's composition within the framework specified by legislation.