KOMMISJONEN FOR
GJENOPPTAKELSE AV STRAFFESAKER

Norwegian Criminal Cases Review Commission

Annual Report 2011

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

THE NORWEGIAN CRIMINAL CASES REVIEW COMMISSION

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Annual Report 2011 of the Norwegian Criminal Cases Review Commission

The Norwegian Criminal Cases Review Commission is an independent body which is responsible for deciding whether convicted persons should have their cases retried in a different court. The Commission's activities are regulated by chapter 27 of the Norwegian Criminal Procedure Act.

The composition of the Norwegian Criminal Cases Review Commission

The Commission consists of five permanent members and three alternate members. The chair, vice chair, one of the other members and two of the alternate members must have law degrees. The King in Council appoints the chair for a period of seven years and the members for a period of three years.

As at 31 December 2011, the Commission was composed of the following persons:

Chair:	Helen Sæter
Vice Chair:	Gunnar K. Hagen, Lawyer, Lillehammer
Members:	Bjørn Rishovd Rund, Professor at the University of Oslo and Director of research at Vestre Viken Health Authority Birger Arthur Stedal, Judge Gulating Court of Appeal Ingrid Bergslid Salvesen, Senior advisor at the University of Tromsø
Alternate members:	Ellen Katrine Nyhus, Professor at the University of Agder Benedict de Vibe, Lawyer in Oslo Trine Løland Gundersen, Lawyer with the Municipal Lawyer's Office in Kristiansand

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 nine employees - five 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 the Police, the Parliamentary Ombudsman, the police, the Institute of Forensic Medicine and the tax authorities.

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

Emergency preparedness

In addition to the Commission's secretariat, the Norwegian Civil Affairs Authority, the Norwegian Secretariat for the Mediation Services and the Mediation Service in Oslo-Akershus also have offices in Teatergata 5 (T5). These organisations have prepared a joint emergency preparedness plan for T5. This plan was last updated on 26 February 2009 and is to be revised at least every four years.

A notification list for T5, safety rules governing the use of ICT services, a plan for a phone number that next of kin can call, relevant HSE guidelines and a plan for fire-protection measures have also been prepared. Regular fire practices have been held, most recently on 25 March 2011.

A risk and vulnerability analysis has been prepared.

These plans are followed up in accordance with the Commission's annual performance plan.

Inclusive working life

A new Inclusive Working Life (IA) agreement was entered into with effect from 1 April 2011.

Based on the IA agreement's requirements that the sickness absence rate must be reduced, the number of employees with disabilities must increase and the length of time that employees work after 50 years of age must be extended by six months, the Commission's chair together with the employee representatives and safety representative decided on an action plan that was applicable as from the same date.

The Commission's sickness absence rate is low. In relation to the agreement's goal of reducing sickness absence, the Commission therefore stipulated a goal of maintaining its low sickness absence rate of 1.1% based on the absence figures for 2010. Activities intended to support this were individual adaptations and the follow-up of those on sick leave in accordance with the Norwegian Working Environment Act and IA agreement, an exercise agreement, active efforts to improve the working environment (refer to the annual performance plan) and the development of expertise, for example through Labour and Welfare Administration (NAV) courses. The sickness absence rate has risen slightly in 2011 but is still low.

Regarding the agreement's goal of increasing the number of employees with disabilities, the Commission stipulated a goal of making conditions suitable for the employment of persons with disabilities. As a result, a diversity declaration has been included in job adverts. No one with a disability applied for a job with the Commission's secretariat in 2011.

Regarding the agreement's goal of encouraging employees over 50 years of age to stay in work for six months longer, the Commission stipulated a goal of motivating and making arrangements so that older employees would manage to stay in work for longer. Activities intended to support this work were older-employee measures (refer to the Norwegian state's personnel handbook), courses, interviews with older employees and the adaptation of work, from both an organisational and content viewpoint, to match the employee's capacity. None of the Commission's employees over the age of 50 left the Commission in 2011.

User survey and subsequent check

The Commission did not conduct a user survey in 2011.

When the Commission was established in 2004, it was presumed that a subsequent check would be carried out in order to assess whether or not the statutory amendments had had the presumed effect, see Proposition to the Odelsting no. 70 (2000-2001). It was recommended that those affected by the amendments, i.e. persons charged with a crime, defence counsels, judges and representatives of the prosecuting authority, should reply to questionnaires or be interviewed in depth in such a subsequent check. According to the proposal, the Ministry of Justice and the Police was to have the overall responsibility for carrying out this subsequent check.

In the autumn of 2010, the Ministry appointed a working group, led by Professor Ulf Stridbeck of the University of Oslo's Law Faculty, to carry out this subsequent check. In brief, the assignment was to describe the procedural rules in review cases and the Commission's work methods and procedural routines. The working group was also to assess the Commission's and secretariat's manpower and composition.
At the same time, a subsequent check was initiated within the Ministry in order to assess other aspects of the Commission's activities. In short, this work involved assessing the opportunity to bring civil actions concerning the Commission's decisions, the Commission's professional work area, the relationship between section 391, no. 2 and section 392 of the Criminal Procedure Act and the question of reopening old cases. This subsequent check was originally to be carried out by Georg Fredrik Rieber-Mohn, a special advisor, but was later transferred to the aforementioned working group.
The working group had a deadline of 1 April 2012 for reporting to the Ministry.

Apprentices working for the state

The Commission's secretariat is a small organisation with no room for apprentices.

Statistics showing the number of employees

The number of secretariat employees has increased from five on 1 January 2004 to nine on 31 December 2011.

Disclosure of public data

The Commission has no raw data that it is relevant to publish.

Gender equality in the Norwegian Criminal Cases Review Commission

The Commission is chaired by a woman and at the year-end the rest of the secretariat consisted of seven women and two men, after two men left during the year. This means that women made up 77.7% of the employees on 31 December 2011.

The secretariat's administrative deputy 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.

All the employees work full-time. As at 31 December 2011, three female employees had applied for and been granted reduced working hours in order to care for children. During the year, one male employee had reduced working hours in order to care for a child, and another male employee was on parental leave.

As the above data is not very extensive, it is difficult to see whether there are unintentional or undesirable differences between the sexes.

The secretariat generally makes little use of overtime and normally does not have anti-social working hours.

The Commission's sickness absence rate does not seem to be related to gender differences.

All the employees are urged to give notice of their interest in measures/courses to increase their expertise.

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

One vacant job in the secretariat was advertised in 2011. A diversity declaration is included in job adverts.
The attitudes to and measures to combat discrimination, bullying and harassment are stated in the Commission's SHE plan.

The Norwegian Criminal Cases Review Commission's financial resources

Proposition to the Storting no. 1 (2010-2011) for the 2011 budget year proposed a budget of NOK 14,149,000. The Proposition stated that amounts granted for operating expenses were to cover the remuneration to the Commission's members, the salaries of the secretariat's staff and other operating expenses linked to the Commission's secretariat. 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 allow a petition relating to a conviction or court order, the case is to be referred for retrial by a court other than the one which imposed the original conviction.
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 review a conviction in a criminal case is received, the Commission must objectively assess whether the conditions for such a review are present.

A convicted person may apply for the review 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 review of convictions also apply to court orders that dismiss a case or dismiss an appeal against a conviction. The same applies to decisions that refuse to allow an appeal against a conviction to be heard.

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 applying for a case to be reopened 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 or 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 or 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 clearly cannot succeed.

Should the Commission decide that a case is to be reopened, the case is to be referred for retrial to a court of equal standing to that which imposed the 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 17 all-day meetings lasting for a total of 31 days.

The Commission received 176 petitions to reopen cases in 2011, compared to 184 in 2010.

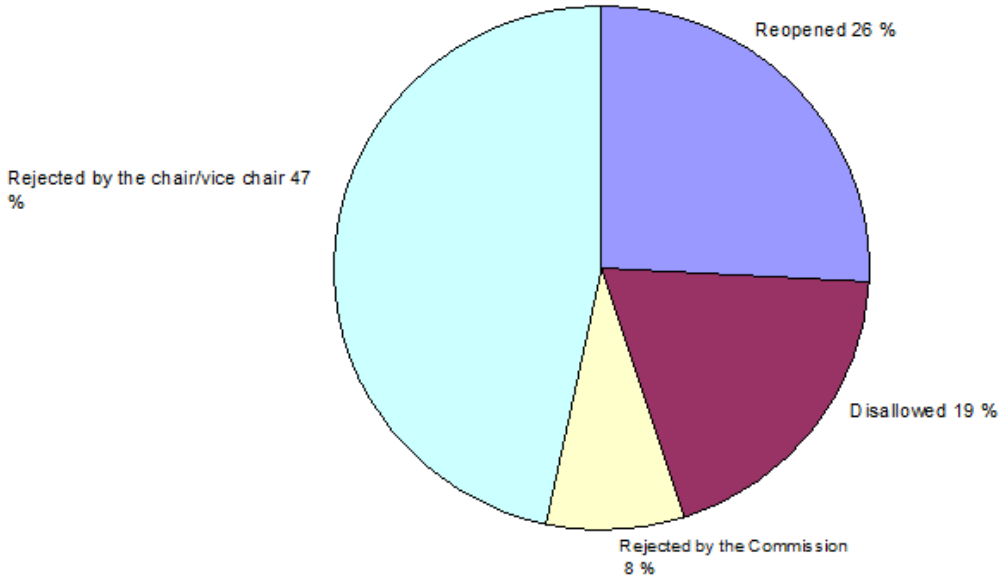
Of the 176 convicted persons that petitioned for their cases to be reopened in 2011, 11 were women and 165 were men.

In 2011, a total of 190 cases were concluded, of which 167 were reviewed on their merits. Of these 167 petitions relating to cases that were reviewed on their merits, 43 were reopened while 32 petitions were disallowed. The remaining 92 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 43 cases that were reopened. The decisions to reject the petitions were unanimous.

The petitions for the other 23 cases that were concluded were dismissed on formal grounds because they did not fall within the Commission's mandate. These were, for example, petitions to review penalties/fines that had been accepted, restraining orders or civil judgments. In addition, some petitions were submitted by persons that are not permitted by law to submit such petitions (such as victims or the surviving next of kin of victims) or were withdrawn for various reasons. A complete overview of the number of petitions received and cases concluded in 2011 is shown in the table:

File no.		Received	Concluded	Reopened	Disallowed	Rejected by the Commission	Rejected by the chair/vice chair	Dismissed misc./request for info
30	General							
310	General	3	4	1			1	2
311	Sexual offences	24	25	1	4	3	13	4
312	Violence, threats	61	58	13	6	7	26	6
313	Drugs	16	19	3	2	2	11	1
314	Crimes of gain	44	55	18	15	1	15	6
316	Miscellaneous crimes	11	11	4	3		2	2
317	Miscellaneous misdemeanours	17	18	3	2	1	10	2
32	Discontinued prosecutions		0					
331	Temporary rulings							
34	Seizure or mortification							
36	Inquiries							
37	Fines							
38	Civil actions							
39	Other, concerning professional cases							
	Total	**176**	**190**	**43**	**32**	**14**	**78**	**23**

The figure below shows the outcome of the cases reviewed on their merits in 2011:



Since it was established on 1 January 2004, the Commission has received a total of 1,360 petitions and 1,235 of the cases have been concluded. A total of 163 cases have been reopened and 265 petitions have been disallowed. The Commission or chair/vice chair has rejected 610 of the petitions because they could clearly not succeed, while the remainder, 197 petitions, have been dismissed on formal grounds.

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

File no.		Received	Concluded	Reopened	Disallowed	Rejected by the Commission	Rejected by the chair/vice chair	Dismissed misc/request for info
30	General	5	5					5
310	General	21	21	1			5	15
311	Sexual offences	231	211	19	52	23	101	16
312	Violence, threats	383	337	40	85	34	153	25
313	Drugs	151	139	22	35	14	61	7
314	Crimes of gain	266	234	56	57	22	74	25
316	Miscellaneous crimes	77	72	11	18	9	25	9
317	Miscellaneous misdemeanours	139	129	14	18	11	74	12
32	Discontinued prosecutions	13	13					13
331	Temporary rulings	1	1					1
34	Seizure or mortification	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	4	4					4
	Total	**1360**	**1235**	**163**	**265**	**114**	**496**	**197**

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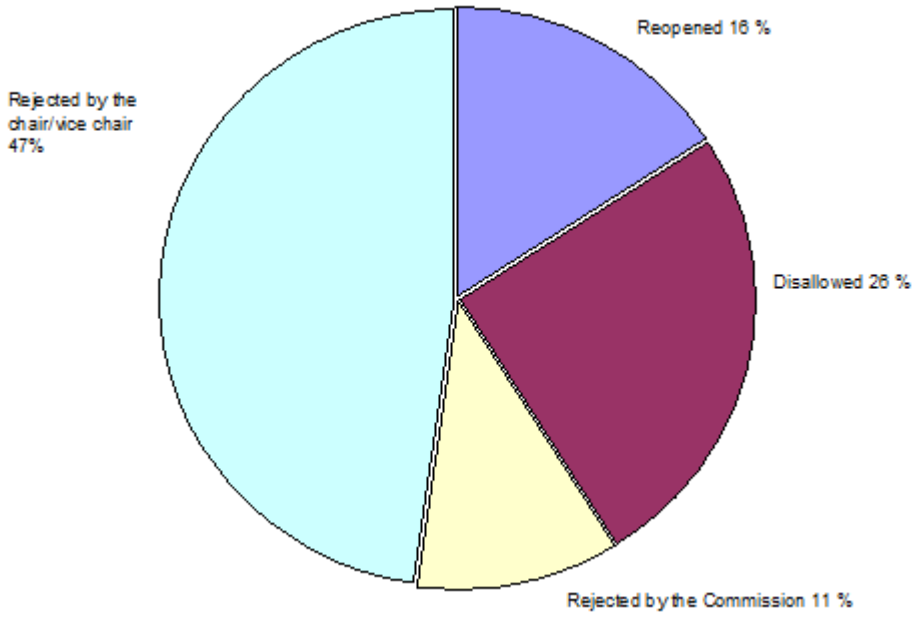
The figure below shows the outcome of the cases reviewed on their merits in the 2004-2011 period:



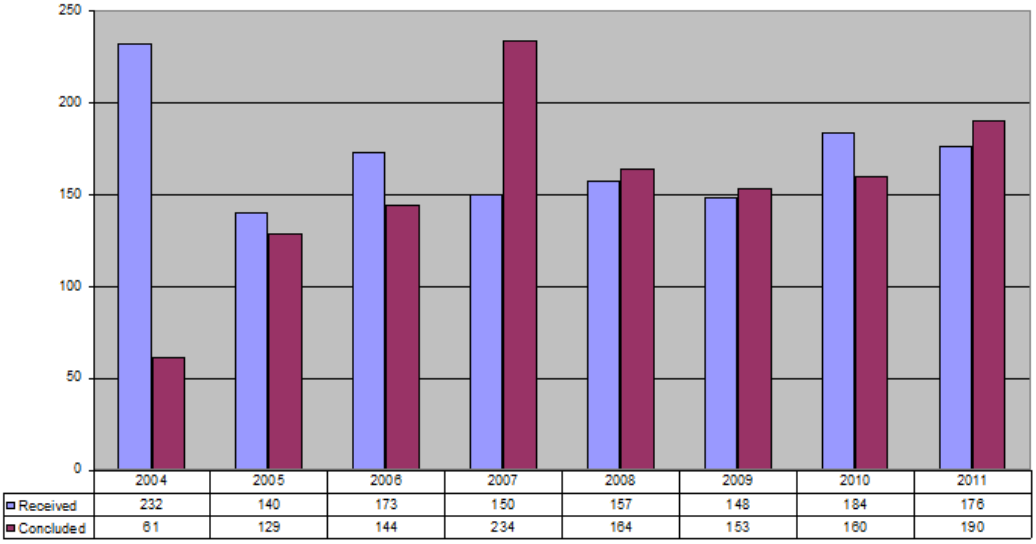
As mentioned above, the Commission may reject petitions that clearly cannot succeed. This decision may also be reached by the Commission's chair or vice chair. The reason for the chair/vice chair being able to reject petitions is primarily that the Commission receives quite a lot of petitions to reopen cases which are in reality simply "appeals". Therefore, in order to utilise the Commission's overall resources in the best way possible to deal with cases that require further investigation, it is sometimes necessary for the chair and vice chair to exercise their authority to reject petitions that clearly cannot succeed.

The number of petitions received during the first eight 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. However, the so-called appeal-filtering cases in particular led to an increase in the number of petitions received, particularly in 2010 but also in 2011.

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 and is thus an important task.

Several cases that the Commission has dealt with since its formation in 2004 have required extensive investigations.

Petitions received and concluded cases in 2004-2011:



	2004	2005	2006	2007	2008	2009	2010	2011
Received	232	140	173	150	157	148	184	176
Concluded	61	129	144	234	164	153	160	190

Appointment of 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. In practice, the Commission appoints a defence counsel when there is reason to assume that the convicted person may be unfit to plead, see section 397, second subsection 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 use 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 2011, the Commission appointed a defence counsel in 33 cases, while a defence counsel was appointed in 28 cases in 2010, 38 cases in 2009 and in 26 cases in 2008.

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 107 a, et seq, of the Criminal Procedure Act. This has been particularly relevant in connection with interviewing victims in cases of indecent assault/sexual abuse.

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 11 counsel for the victim/surviving next of kin in nine cases in 2011. In comparison, the Commission appointed counsel for the victim/surviving next of kin in three cases in 2010, four cases in 2009, and eight cases in 2008.

Appointment of expert witnesses

Pursuant to section 398 b, second subsection of the Criminal Procedure Act, the Commission is authorised to appoint expert witnesses in accordance with the rules stated in chapter 11. Since its formation, the Commission has appointed expert witnesses in the fields of forensic medicine, forensic psychiatry, forensic toxicology, photographic/video techniques, finance, fire technicalities, vehicle knowledge, history and traditional forensic science, etc. In 2011, the Commission appointed 13 expert witnesses in six cases. These were in the fields of forensic psychiatry, neuropsychology and psychology.

New assessment of the Treholt case

In 2005, Arne Treholt petitioned the Commission for a review of his conviction by Eidsivating Court of Appeal on 20 June 1985. The Commission decided to disallow this petition on 15 December 2008.

The book entitled *Forfalskningen* (The Falsification), which was published at the beginning of September 2010, contained allegations stating that the police had fabricated evidence in the Treholt case and that police officers had committed perjury in court. The book also contained information which indicated that the Commission had previously been shown pictures by the Norwegian Police Security Service which were not the pictures it had asked for.

The Director General of Public Prosecutions started to investigate the matter himself but decided on 21 September 2010 to ask the Commission to review once again Treholt's previous petition for a reopening of the case.

With the consent of Arne Treholt and his lawyer Harald Stabell, the Commission once more reviewed Treholt's previous petition for a reopening of the case.

During the autumn of 2010 and spring of 2011, the Commission examined a number of witnesses and obtained statements from experts in the fields of photographic and video techniques. The Commission found no evidence to support the allegations that the police had fabricated evidence in the case or committed perjury in court. The Commission therefore decided on 9 June 2011 not to reopen the case.

The appeal-filtering cases

In three Grand Chamber decisions on 19 December 2008 (Rt 2008, page 1764 et seq), the Supreme Court stipulated as a general requirement that the appellate courts were to state grounds for their decisions to refuse to hear an appeal pursuant to section 321, second subsection, first sentence of the Criminal Procedure Act.

This was a change to the Supreme Court's previous interpretation of this provision, and the reason for it was that the UN's Human Rights Committee had, in a decision dated 17 July 2008, concluded that a failure to state individual grounds for an appeal being unable to succeed represented a breach of the UN Covenant on Civil and Political Rights, article 14, no. 5.

In Rt 2009, page 187, the Appeals Selection Committee of the Supreme Court decided that the requirement of grounds which followed from article 14, no. 5 of the Covenant also had to apply to the Appeals Selection Committee's refusal to allow an appeal against a Court of

Appeal conviction to be heard if the person convicted had been acquitted by the District Court.

The Commission has received several petitions to reopen the so-called appeal-filtering cases since 2009. Although the Supreme Court had decided on the requirement of grounds in the Grand Chamber decisions, the question remained about a possible retroactive effect on decisions on criminal cases that were legally enforceable before the Grand Chamber decisions.

A convicted person whose petition to reopen his case had not been allowed by the Commission brought an action against the Commission alleging that the Commission's decision had to be ruled invalid. The convicted person did not win in the District Court, but he appealed against this judgment directly to the Supreme Court. The appeal was on the basis of the application of the law and the Appeals Selection Committee allowed the direct appeal and referred the case for appeal. At the same time, it was decided that the case was to be heard by the Grand Chamber of the Supreme Court.

The Supreme Court Grand Chamber stated (Rt 2010, page 1170) that, through its amended interpretation of section 321, second subsection of the Criminal Procedure Act, the Supreme Court had departed from an interpretation of the law that it had previously adopted and on which the decision was based, so that the basic condition for reopening the case stated in section 392, first subsection of the Criminal Procedure Act had been met.

In the further application of section 392, first subsection of the Criminal Procedure Act to the appeal-filtering cases, the Supreme Court looked to the appeals scheme pursuant to the UN Covenant on Civil and Political Rights and the relationship between the national authorities and Covenant bodies. The Supreme Court emphasised that it is a requirement that national legal remedies must have been exhausted before an appeal can be submitted to the Human Rights Committee. The Supreme Court thus found that in order for there still to be a right to appeal to the Committee, the convicted person must have exercised his/her right to appeal, previously lodge an interlocutory appeal, against the Court of Appeal's refusal to allow the appeal to be heard. The Supreme Court also stated as a guiding norm that, if more than five years had elapsed since a legally enforceable judgment, the right to appeal to the Committee and thus also the opportunity to have the case reopened must be regarded as no longer existing unless there were special circumstances which indicated otherwise. The Supreme Court stated that a convicted person who is still serving the sentence for the offence to which the unsubstantiated refusal to hear an appeal applied was an example of special circumstances.

As at 31 December 2011, the Commission had received a total of 56 petitions to review decisions concerning a refusal to hear an appeal. As grounds for the petitions, it was alleged that the refusal to hear the appeal was unsubstantiated and that the conditions for a review were thus present pursuant to section 392, first subsection of the Criminal Procedure Act, see Rt 2010, page 1170.

Of the 52 cases concluded by the Commission as at 31 December 2011, 36 have been reopened. The other petitions have either been rejected or disallowed since the conditions for reopening stipulated in the Supreme Court judgment were not present.

Of the 36 reopened cases, six have been dealt with by the Appeals Selection Committee of the Supreme Court. This led to a substantiated refusal to hear the appeals concerning three of these. In one case, the Court of Appeal judgment was set aside, while the appeal was permitted to be heard in one case and the appeal was heard and the District Court conviction set aside in another case.

Of the 36 reopened cases, 13 have been dealt with again by a different appellate court appointed by the Appeals Selection Committee of the Supreme Court. Nine of these cases led to substantiated refusal to hear the appeal while the appeal was allowed to be heard in two cases. In one case, part of the appeal was heard and a new conviction was handed down, while in another case the appeal was heard and the District Court conviction was set aside.

Of the 36 reopened cases, 17 had still not been dealt with by the courts as at 31 December 2011.

The Norwegian Criminal Cases Review Commission's other activities, etc.

Contact with authorities

The Commission's chair has informed the Minister of Justice and the Police about the Commission's activities. The chair has also had contact with the Ministry of Justice and the Police's administrative management and has attended the Minister's annual conference for heads of government departments.

Comments on consultation documents

The Commission did not comment on any consultation documents in 2011. In the spring of 2011, the Commission's chair and two of the secretariat's investigators attended a meeting with the Jury Committee, which submitted a report to the Ministry of Justice and the Police on 15 June 2011 (Official Norwegian Report (NOU) 2011:13)

International work

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

In August 2011, the Commission went on a study trip to Stockholm and visited Stockholm's District Court and Svea Court of Appeal. This study trip was especially in order to study the use of sound and video recording in Swedish courts.

Information activities

The Commission's new website was launched on 1 January 2011. This has a "press button" so that the media can read the Commission's full decisions for up to three months.

As from 2010, all the Commission's decisions based on the merits of cases are published on the Lovdata website. This concerns decisions made by both the Commission and the Commission's chair or vice chair in accordance with section 397, third subsection, third

sentence of the Criminal Procedure Act. Over time, all older decisions (2004-2009) will also be added to the database.

Civil actions brought against the Norwegian Criminal Cases Review Commission

This chapter refers to civil actions brought against the Commission that have been dealt with by the courts in 2011 and where the issue that is subject to a court hearing is of fundamental interest to the Commission's decisions or procedures.

Case 2010–0077. The Baneheia case
One of the persons convicted, who was sentenced in 2002 to a 21-year custodial sentence with a minimum imprisonment period of 10 years for murder and rape, petitioned to have the Court of Appeal conviction reviewed in 2008. The Commission decided to disallow the petition on 17 June 2010 in that it did not believe the conditions for reopening the case were present. The convicted person submitted a new petition to have the case reopened on 18 June 2010 and the Commission decided to disallow this petition too on 24 September 2010.

In a writ of summons and particulars of claim lodged with Oslo District Court on 30 December 2010, the Norwegian State, represented by the Commission, was sued, alleging that these decisions were invalid. The main hearing was held in Oslo District Court on 8-12 August 2011 and the Court found in favour of the Commission in a judgment dated 1 September 2011(11-000612TVI-OTIR/06).

The convicted person appealed against this judgment and applied to the Supreme Court for permission to bring the appeal directly before the Supreme Court. The Appeals Selection Committee of the Supreme Court reached the following conclusion in a decision dated 15 December 2011:

> "A direct appeal to the Supreme Court is permitted as regards the claim that the courts have the full authority to review the Norwegian Criminal Cases Review Commission's decision. Otherwise, no direct appeal is permitted.
>
> Regarding the issue that is permitted to be brought directly before the Supreme Court, the Supreme Court hearing is restricted to apply to the question of what authority the courts have pursuant to the law to review the Norwegian Criminal Cases Review Commission's decisions."

On 15 December 2011, the Chief Justice of the Supreme Court decided that the appeal was to be determined by the Grand Chamber, see section 5, fourth subsection of the Courts of Justice Act, see section 6, second subsection, first sentence. This case is listed for hearing on 28 and 29 February 2012.

The Commission's decisions in the Baneheia case are briefly stated on the Commission's website and reference is made to this.

Case 2010-0093. Appeal-filtering case
A woman was sentenced to imprisonment in 2007 for fraud and handling stolen goods, etc. Permission for an appeal against the District Court judgment to be heard was in part refused without any grounds for this being given. This decision was not appealed against to the Supreme Court. With reference to Supreme Court decisions stating that refusals to hear appeals must be substantiated, see decisions included in Rt 2008, page 1764 and Rt 2010 page 1170, the convicted person alleged that the unsubstantiated refusal to hear the appeal contravened international law and provided grounds for reopening the case. She alleged that an appeal to the Supreme Court against the Court of Appeal's decision could not be a prerequisite for reopening, since this could not be regarded as an "effective remedy". The Commission based its decision on the Supreme Court criteria stipulated in Rt 2010, page 1170, and rejected the petition.

In a writ of summons and particulars of claim lodged with Oslo District Court on 1 November 2011, the Norwegian state, represented by the Commission, was sued with the claim that the decision was invalid. The convicted person alleged that the condition for reopening the case that the convicted person has "exhausted all national legal remedies", which can be deduced from the Supreme Court decision, contravenes the Convention and that the decision not to reopen the case because the convicted person had not utilised her opportunity to appeal to the Supreme Court is thus invalid.

In a judgment handed down by Oslo District Court on 16 January 2012, the court found in favour of the Norwegian State, represented by the Commission. The court could not see that the convicted person's opportunity to appeal prior to 2008 was not "effective" in the sense of the Convention. She had thus not exhausted her appeal opportunities in that she had failed to appeal against the Court of Appeal's unsubstantiated refusal to hear the appeal. The Commission had thus correctly found that the conditions for reopening were not present. (11-176957TVI-OTIR/01).

Case 2011–0006. Appeal-filtering case
In 2005, the District Court sentenced a man to imprisonment for serious fraud. He was refused permission to appeal to the Court of Appeal without any grounds for this being stated. The refusal to hear the appeal was not appealed against to the Supreme Court. The convicted person petitioned for his case to be reopened and alleged that the condition stated in a Supreme Court judgment of 12 October 2010 that all the national legal remedies had to be exhausted contravened international law. The restriction stipulated by the Supreme Court means that, in hindsight, a distinction is being drawn between those that utilised all the national legal remedies and those who did not. According to the Supreme Court judgment, it is only the former that are entitled to have their case reopened. Since there was not really any encouragement to try out all the national legal remedies earlier, this distinction appears to be random and is assumed to be in contravention of Art. 6 of the European Convention on Human Rights.

The Commission found that the Supreme Court had stipulated as a condition for reopening that all national legal remedies had to have been exhausted. The convicted person had not appealed to the Supreme Court against the Court of Appeal's unsubstantiated refusal to hear the appeal, and the conditions for reopening the case were thus not present. The petition was rejected.

In a writ of summons and particulars of claim lodged with Oslo District Court on 14 April 2011, the convicted person alleged that the restrictions on the opportunity to reopen a case that the Supreme Court has stipulated contravene section 392, first subsection of the Criminal Procedure Act as well as the UN Covenant on Civil and Political Rights and the European Convention on Human Rights. Since the Commission has adopted the Supreme Court's view, the decision must be regarded as invalid.

In a judgment dated 15 July 2011, the District Court found in favour of the Norwegian state, represented by the Commission (11-064735TVI-OTIR/02). The court mainly found that the convicted person had not utilised the opportunity to appeal to the Supreme Court against the Court of Appeal's unsubstantiated decision, and that he had thus not exhausted the national legal remedies. The court reviewed the Supreme Court judgment and could not see that the convicted person's submissions were likely to lead to a different result in this case.

The convicted person has appealed against the District Court judgment. He was refused the right to appeal directly to the Supreme Court and the appeal is to be heard by Borgarting Court of Appeal.

Other civil actions
Three civil actions against the Commission have been suspended while waiting for a legally enforceable decision in the Baneheia case. This is because one of the key issues in these cases is what right the court has to review the Commission's decisions.

Relevant decisions

This chapter contains abbreviated versions of all the cases where the Commission has allowed a petition for a reopening of a case. An exception has been made for purely appeal-filtering cases or cases that have been reopened solely as a result of the convicted person being regarded in hindsight as having been unfit to plead when the offence was committed. Some of these and some other cases where the petition was either rejected or disallowed are nonetheless stated if they are assumed to be of general interest.

Abbreviated versions of all the cases regarding which the Commission has allowed a petition are published on the Commission's website, www.gjenopptakelse.no.
All the decisions are sent to the Lovdata (Lawdata) Foundation to be published in an anonymised form.

2.03.2011 (2010-0021) Attempted robbery, etc - section 391, no. 3 (new expert opinion)

In 2009, the District Court sentenced a man to imprisonment for five months for attempted robbery, assault, vandalism, etc. The crimes were committed in June 2008 and January 2009. He alleged that he had been insane at the time of the crimes and a forensic psychiatric report was submitted after the District Court's conviction. The Commission appointed the same experts, who in an additional expert opinion, concluded that the convicted person had been psychotic when the crimes were committed in January 2009, but

not in June 2008. Doubt was expressed about the latter date. The prosecuting authority agreed with the petition as regards the crimes committed in January 2009. The Commission decided that the expert opinion was new evidence that was likely to lead to an acquittal pursuant to section 391, no. 3 of the Criminal Procedure Act. As regards the crime committed in June 2008, the Commission placed emphasis on, i.a., the fact that relatively little time had elapsed between the conviction and the expert opinions, as well as on the closeness in time and similarity between the modus operandi of the indictment counts. The Commission unanimously allowed the petition.

04.05.11 (2010-0164) Handling stolen goods -section 392, first subsection (unsubstantiated refusal to hear an appeal)

In 2003, the District Court sentenced a man to 18 months' imprisonment for, i.a., handling stolen goods. He was refused permission to appeal to the Court of Appeal, without any grounds for this being stated. Principally, a petition was submitted for the reversal of the decision and, alternatively, the decision was appealed against to the Supreme Court. The Court of Appeal decided that the decision not to hear the appeal was not to be reversed and stated grounds for this decision. The appeal to the Supreme Court was rejected. The sentence had not been served. The convicted person alleged that the unsubstantiated refusal to hear the appeal had to be reviewed. Since the sentence had not been served, no emphasis could be placed on the fact that the sentence was more than five years old. The prosecuting authority alleged that the conditions were not present, in that any procedural error which existed due to no grounds being stated for the refusal to hear the appeal had to be regarded as having been remedied by the Court of Appeal's substantiated decision concerning the reversal. Under any circumstances, there was no opportunity to reopen the case since the judgment was more than five years old and the fact that the sentence had not been served could not be regarded as "special circumstances". In light of the Supreme Court's decisions of 19 December 2008 (Rt 2008, page 1764) and 12 October 2010 (Rt 2010, page 1170) stating that unsubstantiated refusals to hear appeals are in contravention of international law, the decision of the Appeals Selection Committee of the Supreme Court was reviewed, see section 392, first subsection of the Criminal Procedure Act. The Commission did not find that the reason stated in the reversal decision could be regarded as an individual ground for the refusal to hear the appeal which showed that the Court of Appeal had carried out a real review of the District Court judgment. The Commission also found that the fact that the sentence had not been served was a "special circumstance" which meant that the five-year rule could be waived.

The Commission unanimously decided to allow the petition for a reopening of the case.

04.05.2011 (2010-0171) Drugs - section 392, first subsection (unsubstantiated refusal to hear an appeal)

In 2005, the Court of Appeal sentenced a man to four years' imprisonment for buying amphetamines. The Supreme Court refused to hear the appeal against the Court of Appeal's conviction, without stating any grounds for this. A petition to reopen the case was submitted more than five years after the legally enforceable conviction, and the convicted person had been released on parole. He referred to the decision stated in Rt 2010, page 1170, in which the Supreme Court found that there was no longer any opportunity to reopen a case if more than five years had elapsed since a legally enforceable conviction, unless there were special circumstances which indicated otherwise, for example that the convicted person was still serving the sentence. The convicted person alleged that being

released on parole had to be regarded as still serving the sentence, and that there was therefore still an opportunity to have the refusal to hear the appeal reviewed, see section 392, first subsection of the Criminal Procedure Act. The Commission found that being released on parole did not provide grounds for reopening the case if more than five years had elapsed since a legally enforceable conviction.

The Commission unanimously decided to disallow the petition.

16.06.2011 (2010 0128) Road Traffic Act - section 391, no. 3 (criminal offence, new evidence). Dissent

In 2004, the District Court sentenced a man to pay a fine of NOK 4,500 and costs for having driven a light motorbike without a valid driving licence or helmet. The convicted person alleged that another person had admitted later on that it was he who had driven the motorbike, that the police committed an offence by not doing anything about this new information, and that the police officer had committed perjury in court. The alleged witness, the police officer who had given evidence in court and the rural policeman at the site were interviewed. The entire Commission was critical of the police work, but found no evidence that anyone had committed a criminal offence in relation to the case, see section 391, no. 1 of the Criminal Procedure Act. However, the majority of the Commission did find that the new witness's statement was likely to lead to an acquittal, see section 391, no. 3 of the Criminal Procedure Act. A minority of the Commission did not find that the new witness's statement altered the evidence on which the court had based its decision or that the conditions for reopening the case had been met.

The petition was allowed. Dissent (4-1).

22.09.2011 (2011 0093) Attempted actual bodily harm - section 391, no. 3 (new witness)

In 2011, the District Court sentenced a man to 90 days' imprisonment for attempted actual bodily harm using a particularly dangerous instrument. The convicted person had alleged to both the police and court that it was another person who had committed the criminal offence. After the conviction, a new witness contacted the police and explained that it was he who had harmed the injured party using a bottle. On the basis of this statement, the convicted person petitioned to have his case reopened. The prosecuting authority stated that the new witness statement did not agree with the other evidence in the case and alleged that the conditions for reopening were not present. The Commission found that the new statement could have led to a different result if it had been known to the court that had handed down the conviction and that the witness statement was new evidence that was likely to lead to an acquittal, see section 391, no. 3 of the Criminal Procedure Act.

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

23.09.2011 (2010-0086) Breach of the Sexual Offences Act - section 391, no. 3 (new circumstance – diagnosis determined)

In 2008, the District Court sentenced a man to 10 months' imprisonment and to pay compensation to the injured party for having had sexual intercourse with a person by exploiting her mental illness or mental retardation. He alleged that a diagnosis he had now been given, Asperger's syndrome, had to lead to his case being reopened. The Commission's chair found that the convicted person's specific knowledge of the injured

party and the level at which she functioned meant that his diagnosis was not likely to change the assessment that he had acted with intent in such a way that the conditions for reopening the case were present. Nor was the case covered by sections 44 or 56c of the Penal Code. The Commission's chair found that the diagnosis was not a new circumstance that meant the conditions for reopening the case pursuant to section 391, no. 3 of the Criminal Procedure Act had been met. Nor did the Commission's chair find that there were any special circumstances which made it doubtful that the conviction was correct, see section 392, second subsection of the Criminal Procedure Act.

The Commission's chair rejected the petition.

19.10.2011 (2011-0057) Drugs - section 392, first subsection (unsubstantiated refusal to hear an appeal, confiscation)
A man who had been sentenced by the Court of Appeal in 2005 to 11 years' imprisonment for several offences against the drugs and alcohol legislation had been acquitted of a claim for extended confiscation in the District Court but sentenced to this by the Court of Appeal. The Appeals Selection Committee of the Supreme Court refused to allow his appeal to the Supreme Court to be heard, without stating any grounds for this. The convicted person only petitioned for a reopening of his case in relation to the confiscation claim and alleged that the Appeals Selection Committee's failure to state any reasons provided grounds for reopening the case with reference to section 392, first subsection of the Criminal Procedure Act, interpreted in the light of Rt 2008, page 1764, and Rt 2010, page 1170. The petition was rejected, in that the conditions for a separate reopening of a confiscation decision follow from the Disputes Act's rules, which do not have any provisions that are equivalent to section 392 of the Criminal Procedure Act.

The Commission unanimously decided to reject the petition.

14.12.2011 (2009-0146 et al) Aggravated theft, actual bodily harm, drugs, etc – section 391, no. 3 (new circumstance – slight mental retardation)
A man had received 11 convictions for various criminal offences between 1996 and 2008. In 2009, he was subjected to a forensic psychiatric examination which concluded that he was slightly mentally retarded. He petitioned to have all his previous convictions reviewed and alleged that section 56, letter c of the Penal Code should have been taken into consideration when he was sentenced, and that he would in such case have been given much more lenient sentences. In the last conviction, he had received a community sentence but, due to a breach of this, it was later decided that he was to serve some of the alternative imprisonment sentence. Section 56, letter c of the Penal Code was then taken into account, and the petition to reopen the case was withdrawn in relation to this conviction. The Commission found that the result of the forensic psychiatric examination was a new circumstance which seemed likely to lead to a substantially more lenient sanction, see section 391, no. 3 of the Criminal Procedure Act.

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

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