



KOMMISJONEN FOR  
GJENOPPTAKELSE AV STRAFFESAKER

# THE NORWEGIAN CRIMINAL CASES REVIEW COMMISSION ANNUAL REPORT 2021

## I. The Chair's report

The Criminal Cases Review Commission is an important part of the criminal justice system and helps to ensure we live in a state governed by the rule of law. Our goal is for our case work to be objective, thorough and efficient. It must ensure substantively correct decisions within a reasonable of time.

2021 was a busy year. The Commission received 263 applications to reopen cases – the highest number of applications since the Commission was formed in 2004. In 2020, the figure was 200, which was also high. The Commission reached a decision on 223 applications, which is the second-highest number of decided cases in the Commission's history. By comparison, 161 applications were decided on in 2020.

A total of 82 cases/convictions were reopened in 2021. On average, approximately 18% of the cases dealt with by the Commission over the years have been reopened. Apart from the Labour and Welfare Administration (NAV) cases (46) and Refugee Convention cases (2), 31 of 34 cases/convictions were reopened based on new expert reports about the convicted person's mental state at the time of the offence. Unfortunately, I am still very concerned about these cases and the people involved. Otherwise, 23 applications were disallowed. The Commission or Chair/Vice Chair rejected 73 applications. Abbreviated versions of the reopened cases have been included in the annual report.

Other cases also required a lot of work and resources. The Baneheia case was reopened in February. The Torgersen case was dealt with in June. This application did not succeed. The Commission has previously discussed both cases several times. The secretariat also spent a lot of time on the Orderud case.

The COVID-19 pandemic, which led to working from home and in unusual ways, meant that, in 2021 too, individual cases took longer than they probably would have done in normal circumstances. Many guidance meetings and interviews were postponed, and expert reports were delayed. Physical Commission meetings are clearly best, but the opportunity to meet digitally has also in some cases allowed quick clarifications and decisions. In addition, we reduce our travelling time and expenses, and there is an environmental gain. In future, we will arrange both types of meetings.

In September we concluded the digitalisation project and the Commissioners also started to use the digital solution. We save time and money on copying and sending out documents, and – even more importantly – we can now deal with sensitive documents in a more secure manner. We receive documents from the police digitally via Altinn, but so far we cannot send documents to the police via Altinn. For the Commission, it is therefore still a goal to be able to use Justishub - a technical platform that enables electronic communication between the police and the prosecuting authority, courts and correctional services. This will also make the Commission's work simpler and more efficient.

For the 2021 budget year, the Commission had NOK 20 405 000 at its disposal and spent NOK 20 284 411. Most of the money was spent on fixed expenses such as ICT costs, rent, secretariat employee salaries and remuneration to the Commissioners. This amount also included an extra appropriation due to the higher workload.

The Commission's lease on Tordenskiolds gate 6 expires in 2022 and we spent a lot of time on finding suitable premises, with the assistance of the Norwegian Directorate of Public Construction and Property (Statsbygg). We finally decided on premises at Brynsalleen 4. These will be specially adapted to our needs, and we look forward to moving in there in mid-March.

In August, the Commission's Vice Chair, the lawyer Sven Ole Fagernæs, the psychiatrist Tor Ketil Larsen (Commissioner) and lawyer Arne Gunnar Aas (alternate Commissioner) had been members of the Commission for six years and their fixed term of office expired. I would like to thank them all for their strong involvement, good discussions and clear opinions.

Three new members were appointed in September. Trude Wold, a lawyer from Sortland, is the Commission's new Vice Chair, Erik Rønneberg Hauge, a psychiatrist from Bergen, is a new Commissioner and Bendik Falch-Koslung, a lawyer from Oslo, is a new alternate Commissioner. The members of the Commission and secretariat employees at the year-end are presented later in this annual report.

The steadily increasing number of cases means our workload is high. The extra appropriation we received in 2021 enabled us to deal with and decide on a considerable number of cases. However, it is clear that our backlog of cases is constantly increasing.

In my opinion, it is clear that the Commission will require increased funding in the years to come.

Oslo, 15 February 2022

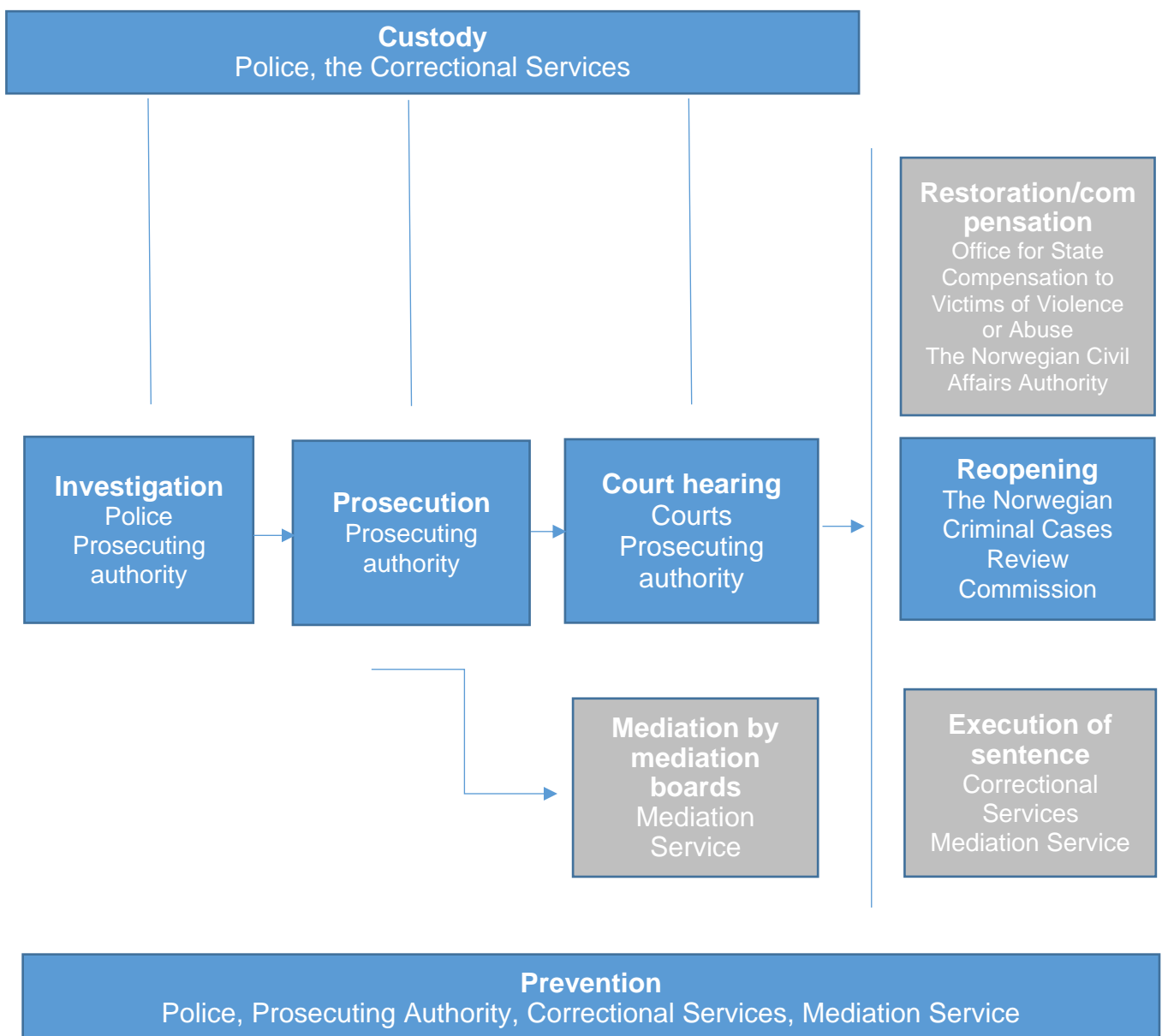
Siv Hallgren  
Chair

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## II. Introduction to the activities and main figures

### The Norwegian Criminal Cases Review Commission's place in the criminal justice chain

The figure below is intended to be a simplified illustration of the Commission's place in the criminal justice chain. The Electronic Interaction between Players in the Criminal Justice Chain (ESAS) project has established a common digital component (Justishub) for the exchange of data within the criminal justice chain. Justishub is intended to be an efficient, secure and robust solution that enables electronic communication between the police, prosecuting authority, courts and correctional services, and several key agencies are considering a link to Justishub. The Commission is one of these. The Commission's digitalisation project is described in further detail below in the section headed "The Commission's other activities".



### Description of the activities and public service role

The opportunity to reopen cases is important for safeguarding the legal protection afforded to individuals. The Commission is an independent administrative body whose public service role is to deal with applications to reopen criminal cases which have been determined by the courts in legally enforceable convictions.

The Commission is administratively subject to the Ministry of Justice and Public Security. The Ministry cannot tell the Commission how to exercise its authority in individual cases.

The Commission was established by the Act of 15 June 2001 no. 63 and started to operate in January 2004. The goal was to create increased confidence in the treatment of applications to reopen criminal cases by allowing an independent commission to deal with these cases. Previously, this task had been assigned to the court that had imposed a conviction in the case. The reason for the change was that there had been several controversial cases in the 1980s and 1990s. The Commission was to provide guidance to convicted persons and investigate and decide on cases. The reform also led to the prosecuting authority playing a less prominent role.

The Commission received 232 applications to reopen cases in its first year. Later, the Commission received 150-170 applications each year up to 2020, when 200 applications were received, and in 2021 it received 263 applications. From its beginning in 2004 until the end of 2021 the Commission reviewed 2 380 cases on their merits.

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

- 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 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 and there is reason to believe that this may have affected the decision.
- The Supreme Court has departed from a legal interpretation that it 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 Commission is obliged to provide guidance to those who ask to have their cases reopened. Unless he/she is represented by a lawyer, the convicted person will usually be offered a guidance meeting. Such a meeting may take place over the phone or as a physical meeting on the Commission's premises. If the convicted person is in prison, the meeting may take place there.

When there are special grounds for this, the party applying to reopen a case may have a defence counsel appointed at public expense.

The Commission ensures that the necessary investigation into the case's legal and factual issues is carried out and may gather information in any way it sees fit. When the Commission was established, it was regarded as desirable to create a body that could conduct an independent investigation into the cases. Since its formation in 2004, the Commission has dealt with several cases requiring major investigations.

If an application is not rejected and is investigated further, the convicted person and prosecuting authority are to be made aware of the Commission's investigation and given an opportunity to comment. Aggrieved parties and surviving next of kin are to be informed of the application. Aggrieved parties and surviving next of kin are entitled to examine documents and state their views on the application in writing, and they may ask to make a statement to the Commission. The Commission may appoint a counsel for an aggrieved party pursuant to the Criminal Procedure Act's normal rules in so far as these are applicable.

Applications are decided on by the Commission. The Commission's Chair/Vice Chair may reject applications to reopen decisions which, due to their nature, cannot be reopened by the Commission, applications which do not stipulate any grounds for reopening in accordance with the law, or applications which obviously cannot succeed.

If the Commission decides that an application is to be allowed, the case is to be referred for retrial to a court of equal standing to that which made the original ruling. If the ruling was made by the Supreme Court, the case is to be retried by the Supreme Court.

### The organisation

The Commission consists of five permanent Commissioners and three alternate Commissioners. The Chair, Vice Chair, one other Commissioner and two of the alternate Commissioners must have a Master of Laws or Master of Jurisprudence degree. The Chair is appointed by the King in Council for a seven-year period and the Commissioners and alternate Commissioners are appointed by the King in Council for a three-year period. The Commissioners and alternate Commissioners may be reappointed once for another three-year period.

### **Presentation of the Commissioners as at 31 December 2021**

#### **Siv Hallgren** (2017 – 2024 fixed term)

##### *Chair of the Norwegian Criminal Cases Review Commission*

Work experience with the Ministry of Justice and Public Security, executive officer with the Norwegian Labour Inspection Authority, police intendant II, prosecutions manager and acting head of the CID in Asker and Bærum Police, head-hunter with ISCO Group AS, trainee lawyer/lawyer with the law firm of Lea, Haavik & Helland and lawyer and partner in Advokatfirmaet Elden DA. She was head of the Norwegian Bar Association's Legal Counsel for Aggrieved Parties' Committee for six years, and a member of the Health Personnel Appeal Board for three years. She has been a member of the Work Group for Increased Use of the Mediation Service, the Criminal responsibility Committee and the Special Courts Committee.

**Trude Marie Wold** (2021 - 2024, Vice Chair)

*Lawyer, Sortland*

Wold obtained a Master of Laws degree from the University of Tromsø in 1996. She has run the law firm of Advokatfirmaet Wold in Sortland since 2002. Wold has been the vice chair and a member of the Main Board of the Norwegian Bar Association since 2020, the chair of the Control Commission for the hospitals in Lofoten and Vesterålen since 2019, and a permanent legal counsel for aggrieved parties at Vesterålen District Court/Midtre-Hålogaland District Court and Hålogaland Court of Appeal since 2011.

**Elin Ramleth Østli** (2019 – 2022, Commissioner)

*State-authorized public accountant, Trysil*

Østli obtained a master's degree in auditing in 1986. Since 1994, she has been a privately practising auditor and a partner in Revisorsenteret Trysil DA. In 2004-2007 and since 2010, she has held quality-control posts with the Norwegian Institute of Public Accountants. In 2012-2016, she was a member of the appeal board for complaints against auditors and accountants.

**Dag Jodaa** (2017 - 2023, Commissioner)

*Rana District Court judge, Mo i Rana*

Jodaa obtained a Master of Laws degree in 1996. He was a deputy judge from 1996-1999, an advisor to the Ministry of Justice and Public Security from 1999-2000 and a privately practising lawyer and partner in Advokathuset Helgeland DA from 2000-2015. Since then, he has been a Rana District Court judge.

**Erik Rønneberg Hauge** (2021 - 2024, Commissioner)

*Head of the Psychiatric Health Care Division, Helse Bergen Regional Health Authority, Bergen*

Hauge has cand. med and cand. scient. degrees from the University of Bergen. He was authorised as a physician in 1987 and obtained a PhD in mathematics and computer science in 1994. He is a specialist in neurology and psychiatry and has further education in forensic psychiatry, cognitive therapy and group therapy. Hauge has extensive experience as a court-appointed expert in both criminal (judicial observations) and civil cases, and as an expert lay judge in district courts and courts of appeal. He teaches forensic psychiatry and expert knowledge to physicians and psychologists.

**Hanne Helle Arnesen** (2016 - 2022, alternate Commissioner)

*Agder Court of Appeal judge, Skien*

Arnesen obtained a Master of Laws degree in 1986. She has previously been an executive officer/researcher with the Ministry of Justice and Public Security and a deputy judge at Larvik District Court, and she was a privately practising lawyer for 12 years. Arnesen has been a Court of Appeal judge since 2004.

**Bendik Falch-Koslung** (2021 – 2024, alternate Commissioner)

*Lawyer, Oslo*

Falch-Koslung obtained a Master of Laws degree from the University of Oslo in 2006. He has had his own legal practice in Mette Y. Larsen & Co since 2013, after previously being employed as a lawyer. Falch-Koslung is a permanent defence counsel at Oslo District Court and Borgarting Court of Appeal and has Supreme Court right of audience. He is also the chair of the Norwegian Bar Association's Solitary Confinement Group and a member of the board of the Norwegian Bar Association's Defence Counsel Group. He is also linked to the University of Oslo's

law faculty as a tutor and external examiner with regard to criminal law, criminal procedure and human rights.

**John Brennen** (2019 – 2022, alternate Commissioner)

*Professor of psychology at the University of Oslo, Oslo*

Brennen has a bachelor's degree in psychology (University of Exeter, 1986) and a PhD (University of Nottingham, 1989). He conducts research into people's mental processes regarding topics such as personal identification, false memories and the effect of traumas on how people remember and think about things. He has several times been a court-appointed expert testifying on memory and related topics. He previously worked at the universities of Tromsø, Savoie and Grenoble, and has been head of research at the Department of Psychology and research dean at the Social Sciences Faculty of the University of Oslo.

### **Presentation of the Commission's secretariat as at 31 December 2021**

The Commission's secretariat is located in Oslo. The Commission's Chair is employed full-time as the head of the secretariat. The secretariat otherwise had 15 employees at the year-end: 11 investigating officers with a legal background, three investigating officers with a police background, one of whom worked on retiree conditions, an office manager and a senior secretary. Three of the investigating officers with a legal background were employed in temporary positions.

**Elisabeth Kjærheim**

*Administrative deputy head and senior advisor since 2004*

Master of laws degree from the University of Oslo in 1987. Work experience with the Parliamentary Ombudsman's Office as a senior advisor and deputy head, and from Drammen District Court as a deputy judge and acting district court judge.

**Knut Jan Nielsen**

*Senior advisor since 2004*

Graduated from the Norwegian Police University College in 1979. Work experience as a police officer in Oslo Police District, the National Criminal Investigation Service and the Ministry of Justice and Public Security. Police attaché at the Norwegian embassy in Madrid and advisor to the Document Access Committee.

**Magne Svor**

*Senior advisor since 2004*

Master of laws degree from the University of Oslo in 1985. Work experience with the Police Department in the Ministry of Justice and Public Security, as a police lawyer - Oslo police headquarters and as a deputy judge and acting judge at Drammen District Court.

**Hildegunn Sandhalla**

*Office manager since 2004*

Work experience with Heidenreich AS, the Ministry of Justice and Public Security - the Document Access Committee, and Grohe AS.

**Louise Olsrud**

*Senior advisor since 2005*

Master of laws degree from the University of Oslo in 1987. Work experience with the County Governor, as a deputy judge, police intendant II and trainee lawyer, and of

statute work in the Ministry of Justice and Public Security and for the Building Act Committee.

**Sonny Folkenborg**

*Senior advisor since 2008.*

Master of laws degree from the University of Oslo in 2000. Work experience as a lawyer with Advokatfirmaet Staff and as a deputy judge at Sandefjord District Court.

**Helene Cecilie Røer**

*Senior advisor since 2008*

Master of laws degree from the University of Oslo in 1988. Work experience with the Labour Inspection Authority, as a legal advisor with the Ministry of Finance, deputy judge at Trondenes District Court and senior advisor with the Directorate of Taxes.

**Hilde Hermansen**

*Senior secretary since 2009*

Secretarial education from Treider and the Mercantile Institute. Work experience as a secretary with the law firms of Advokatfirmaet Schjødt AS and Advokatfirmaet Torkildsen, Tennøe & Co AS.

**Ksenija Nilsen (on leave)**

*Senior advisor since 2019*

Master of laws degree from the University of Bergen in 2009. Work experience as a lawyer with the Matrix law firm, the Ministry of Justice and Public Security, and as a senior advisor with the Norwegian Civil Affairs Authority.

**Tonje Brunvand Hauge**

*Senior advisor since 2019*

Master of jurisprudence degree from the University of Bergen in 2012. Work experience as a senior advisor with the Norwegian Civil Affairs Authority.

**Eva Bergman Kvamme**

*Senior advisor since 2020*

Master of laws degree from the University of Oslo in 2003. Work experience as an advisor to the Ministry of Justice and Public Security, a police lawyer and a deputy judge/acting district court judge.

**Silje Andreassen Lind**

*Senior advisor, temporary position, since 2020*

Master of jurisprudence degree from the University of Oslo in 2013. Work experience as an advisor in the Customs and Excise Directorate and as a lawyer with the law firms of Arntzen de Besche Advokatfirma and Deloitte Advokatfirma.

**Stine Gahre (on leave)**

*Senior advisor since 2021*

Master of jurisprudence degree from the University of Oslo in 2012 and Master of Laws (LL.M) from the American University Washington College of Law in 2012. Work experience as a senior advisor in the Ministry of Justice and Public Security and as the secretary for the State Compensation to Victims of Violence or Abuse Committee and the Intimate Partner Murder Committee



**Mira Christine Marcussen**

*Advisor, temporary position, since 2021*

Master of jurisprudence degree from the University of Oslo in 2021. Work experience as a scientific assistant at the Scandinavian Institute of Maritime Law, student trainee member of Norway's permanent delegation to the Council of Europe, member of Jussbuss, and trainee with, for instance, the Office of the Attorney General and Kommuneadvokaten (Municipal Attorney's Office) in Oslo.

**Dag Eirik Ekeli**

*Senior advisor, temporary position, since 2021*

Norwegian Police University College 1990. Work experience from Asker & Bærum and Oslo police districts.

### Presentation of selected main figures

Parliamentary bill (Proposition to the Norwegian parliament (Storting)) no. 1 S (2020-2021) for the 2021 budget year proposed a draft budget of NOK 17 540 000. Following the parliamentary budget decision on 18 December 2020, the Commission was given funding of NOK 17 540 000. In addition, the Commission was given an additional appropriation of NOK 2 300 000 to handle the increased caseload, was allowed to transfer unused funds of NOK 194 000 from 2020 and was given salary compensation of NOK 371 000. The total appropriations granted for 2021 came to NOK 20 405 000.

Some of the Commission's secretariat are working part-time for a temporary period and some are on a leave of absence. The total number of full-time equivalents (FTE) in the secretariat was 12.62 in 2021.

The Commission's operating expenses came to NOK 20 284 411 in 2021. Employees' salaries and Commissioners' remuneration amounted to NOK 16 162 318, including pension costs and employer's National Insurance contributions. In addition to the appropriations relating to chapter 468, some operating expenses are debited to chapter 466 Special Criminal Case Expenses.

### **III. The year's activities and results**

The Commission is to deal with cases objectively, thoroughly and efficiently in order to reach substantively correct decisions within a reasonable time. The Commission's aim is for the number of decisions it makes to be no fewer than the number of applications it receives so that the backlog does not increase.

#### The cases and procedure

##### *Applications received and cases concluded*

During the year, the Commission held 11 meetings lasting for a total of 18 days. The meetings were held as both physical and digital meetings.

The Commission received 263 applications to reopen cases in 2021, compared to 200 in 2020. These figures represent the number of convictions the Commission has been asked to reopen, not the number of convicted persons who have applied to have their case reopened.

Of the applications to reopen a case that the Commission received in 2021, 30 concerned women and 233 concerned men. Some people applied to have several convictions reopened and are therefore registered as having several cases.

A total of 223 cases were concluded, of which 178 were reviewed on their merits. Of these 178 applications, 82 cases were reopened.

Of the 82 cases reopened in 2021, 31 were reopened on the grounds that an expert report had later been obtained and raised doubt about the convicted person's mental state at the time of the offence. These cases consist of 13 applications, in that several of the convicted persons are registered as having several cases. Three cases were reopened on the grounds of new evidence or circumstances (section 391 no. 3 of the Criminal Procedure Act). Forty-six "NAV cases" were reopened, and it was among other things found that the convictions were based on an incorrect application

of the law so that there were special circumstances that made it doubtful whether the judgment was correct (section 392 (2) of the Criminal Procedure Act). Two “Refugee Convention cases” were reopened pursuant to the same provision in that several of the Convention’s provisions had not been considered by the court making the conviction. Read more about these cases below.

The Commission disallowed 23 applications.

The remaining 73 applications were rejected by the Commission or the Chair/Vice Chair because they obviously could not succeed.

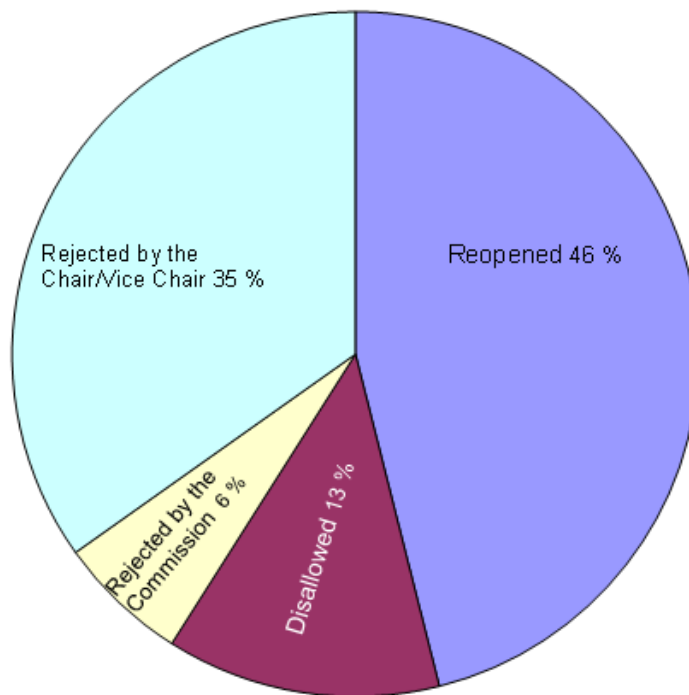
The other 45 cases that were concluded were not reviewed on their merits. These were, for example, applications to review civil cases, applications that lacked a legal interest, and applications that were withdrawn.

The Commission also worked on cases that were extensive and time-consuming and were thus not concluded in 2021. In some cases, large volumes of documents have to be examined by the Commissioners and investigators and the case must be discussed at several meetings. Investigative steps have been taken in some cases, and in others the question of starting investigative steps has been discussed by the Commission. Examples of cases that were to a greater or lesser extent discussed at several meetings in 2021 are the Baneheia case and Torgersen case.

The table below provides a complete overview of the number of received applications and concluded cases in 2021:

	Received	Concluded	Reopened	Disallowed	Rejected by the Commission	Rejected by the Chair / Vice Chair	Not reviewed on their merits
General	7	4					4
Sexual offences	26	26	3	1	2	20	
Violence, threats	53	37	8	5	1	18	5
Drugs	12	9	2	2	1	3	1
Crimes of acquisition	66	79	51	5	7	9	7
Miscellaneous crimes	84	58	18	8		8	24
Miscellaneous minor offences	15	10		2		4	4
Discontinued prosecutions							
Interim rulings							
Seizures or annulments							
Inquiries							
Fines							
Civil cases							
Others concerning professional issues							
<b>Total</b>	<b>263</b>	<b>223</b>	<b>82</b>	<b>23</b>	<b>11</b>	<b>62</b>	<b>45</b>

The figure below shows the outcome of the cases reviewed on their merits in 2021.



### 2004 - 2021

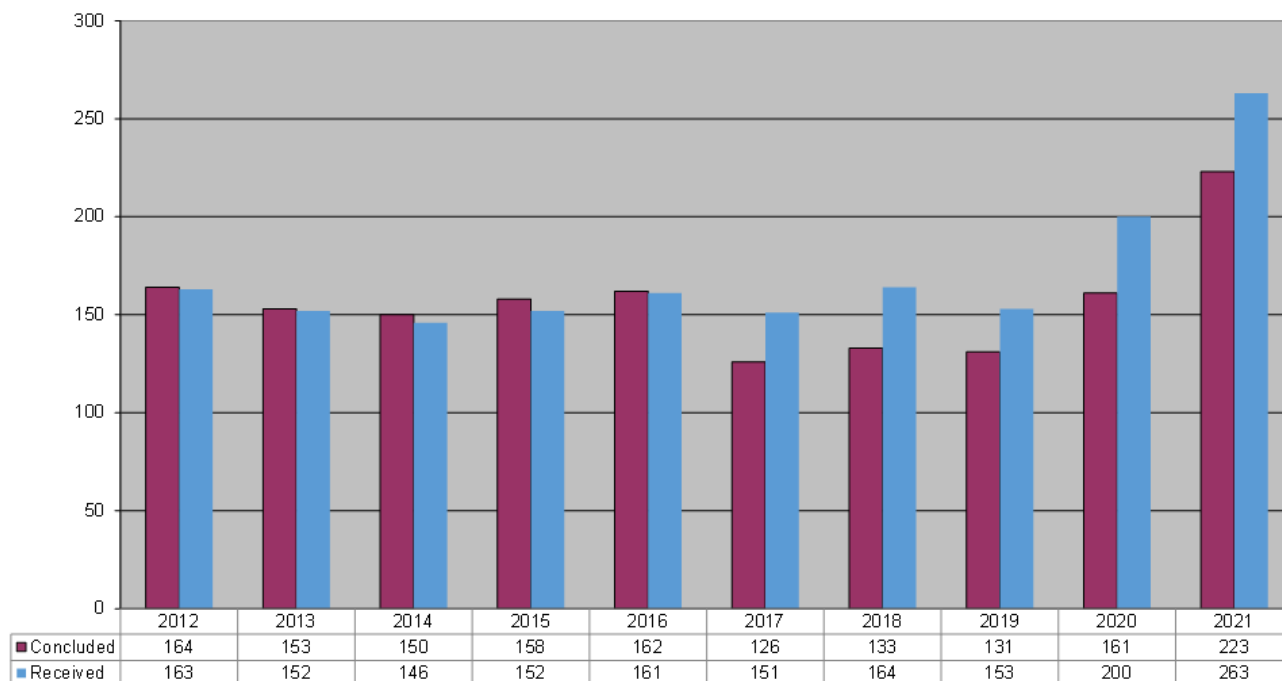
Since being established on 1 January 2004, the Commission has received 3 065 applications and concluded 2 797 cases. In total, 433 cases have been reopened and 497 applications have been disallowed. The Commission or Chair/Vice Chair has rejected 1 177 of the applications because they obviously could not succeed, while the remainder, 417 applications, have been rejected without being reviewed on their merits.

Table showing the total figures for the Commission's first 18 years in operation:

	Received	Concluded	Reopened	Disallowed	Rejected by the Commission	Rejected by the Chair / Vice Chair	Not reviewed on their merits
General	83	80	4	1	3	14	58
Sexual offences	530	490	42	90	61	268	29
Violence, threats	869	798	105	163	82	376	72
Drugs	279	260	40	63	28	113	16
Crimes of acquisition	581	542	167	100	54	167	54
Miscellaneous crimes	391	308	46	45	30	110	77
Miscellaneous minor offences	242	229	29	35	14	126	25
Discontinued prosecutions	13	13					13
Interim rulings	1	1					1
Seizures or annulments	1	1				1	
Inquiries	31	31			1		30
Fines	6	6				1	5
Civil cases	31	31				1	30
Others concerning professional issues	7	7					7
<b>Total</b>	<b>3065</b>	<b>2797</b>	<b>433</b>	<b>497</b>	<b>273</b>	<b>1177</b>	<b>417</b>

## 2012 - 2021

The applications received during this period varied from 146 (in 2014) to 263 (in 2021).



### Appointment of a defence counsel

The law allows the Commission to appoint a defence counsel for a convicted person when there are special reasons for doing so. A specific assessment of whether or not a defence counsel is to be appointed is conducted in each case. The appointment is often limited to a specific number of hours, for example to provide more detailed arguments for the application's legal and factual grounds. The Commission always appoints a defence counsel when there is reason to assume that the convicted person may not have been responsible for his/her acts at the time of the offence, see section 397(2) and section 96 last subsection of the Criminal Procedure Act.

In 2021, the Commission appointed a defence counsel for 45 convicted persons, compared to 33 in 2020, i.e., a defence counsel was appointed in around 17% of the cases.

### Appointment of a counsel for an aggrieved party/next of kin – the rights of aggrieved parties and surviving next of kin

The Commission is authorised to appoint a counsel for an aggrieved party/surviving next of kin pursuant to the rules stated in sections 107(a), et seq, of the Criminal Procedure Act. This is particularly relevant when interviewing aggrieved parties and witnesses in cases involving sexual assault and violence.

The Commission appointed two counsel for aggrieved parties/surviving next of kin in two cases in 2021.

### Appointment of experts

Pursuant to section 398 (b) (2) of the Criminal Procedure Act, the Commission is authorised to appoint experts in accordance with the rules stated in chapter 11. Since its formation, the Commission has appointed experts in the fields of forensic medicine, forensic psychiatry/forensic psychology, forensic genetics, forensic toxicology, economics, history, photo/film techniques, fire technicalities, vehicles and traditional forensic techniques, etc.

In 2021, the Commission appointed 18 experts in cases concerning 10 convicted persons. These were experts in the fields of forensic psychiatry, forensic psychology, auditing and weapons technology.

### Use of interpreters/translators

The Commission used interpreters in two cases. These concerned interpretation from/to Arabic and Persian. The Commission has used a translator in one case. This involved translations from/to English.

## **Relevant decisions by the Commission in 2021**

### *Labour and Welfare Administration (NAV) cases*

In the autumn of 2019, it became known that the Norwegian Labour and Welfare Administration (NAV) had for many years practised the National Insurance Act's requirement of a presence in Norway for recipients of sickness benefit, attendance allowance and work assessment allowance in a way that was in contravention of the EU Social Security Coordination Regulation and other EEA law. This apparently took place without the prosecuting authority or courts assessing the relationship between the National Insurance Act and EEA law

Common to these cases is that the convicted person was in other EEA countries while receiving a cash benefit from the Labour and Welfare Administration. This was considered to be illegal, which is assumed to be a misinterpretation of the EEA rules. The convicted persons had not notified the Labour and Welfare Administration or applied for permission to travel out of Norway, and the employment status cards sent to the Labour and Welfare Administration also contained no information that they were living abroad. The recipients were charged and convicted of defrauding the Labour and Welfare Administration, and in several cases they were also convicted of giving a false or incorrect statement to the Labour and Welfare Administration because they had submitted an employment status card without revealing that they were abroad.

In 2020, the Commission allowed 18 applications from the Director General of Public Prosecutions for the reopening of a case in favour of the convicted person on these grounds.

In 2021, the Commission reopened 46 so-called NAV cases. The applications to reopen the cases were mainly made by the Director General of Public Prosecutions in favour of the convicted person, but in some cases the application has been submitted by the convicted person him/herself. The Commission found that there were special circumstances which made it doubtful whether these convictions were correct and that weighty considerations indicated that the question of the guilt of the convicted person should be re-tried, see section 392 (2) of the Criminal Procedure Act. The cases contained several EEA-law questions that had not been considered by the court and which made it doubtful whether the strict liability conditions for fraud and making a false statement had been met.

### *Refugee Convention cases*

In 2021, the Commission reopened two cases in which asylum seekers, who had come directly to Norway, had been convicted of illegally entering the country, using false travel documents and/or giving a false statement to Norwegian authorities in connection with entering the country. These convictions were reopened with reference to the prohibition against imposing penalties on refugees in article 31 no. 1 of the Convention Relating to the Status of Refugees (Refugee Convention). It is particularly relevant to reopen convictions where the court has not considered freedom from prosecution pursuant to the Refugee Convention. The international law issues had not been considered by the court, and the Commission found there were special circumstances which made it doubtful whether the conviction was correct, see section 392 (2) of the Criminal Procedure Act. Weighty considerations indicated that the question of the guilt of the convicted person should be re-tried.

### Criminal responsibility cases, etc.

For several years, a large percentage of the cases reopened by the Commission are because it has been shown, following a legally enforceable judgment, that the convicted person was not responsible for his/her acts when the offence took place so that he/she could not be punished (section 44 of the General Civil Penal Code (1902) and section 20 of the Penal Code (2005)) or that he/she had a mild intellectual disability so that a less severe penalty should have been considered (section 56(c) of the General Civil Penal Code (1902) and section 80 of the Penal Code (2005)).

What is typical in these cases is that the convicted person has previous convictions, and it is not until a new criminal case arises that his/her mental state is questioned. Based on this, forensic psychiatric experts are appointed, and their conclusions may lead to the prosecuting authority discontinuing the case or the defendant being acquitted by the court or given a reduced sentence. Following this, the defendant's mental state at the time of the offences covered by the previous conviction(s) will be called into question and it may be relevant to apply for these cases to be reopened. If new expert reports conclude that, at the time when the previous offences were committed, the convicted person lacked the capacity to incur criminal responsibility or was in a state that could result in a lesser penalty, this will be a new circumstance that may provide grounds for reopening a conviction pursuant to section 391 no. 3 of the Criminal Procedure Act.

In 2021, 31 of the 82 applications to reopen cases/convictions that were allowed were reopened on these grounds. These 31 cases were divided among 13 applications to reopen convictions, in that some convicted persons had been convicted several times over the years. Seven of these applications were submitted by the Director General of Public Prosecutions, who applied for the cases to be reopened in favour of the convicted person.

In 2020, 11 of the 37 applications to reopen cases/convictions that were allowed were reopened on these grounds. These 11 cases were divided among three applications to reopen, in that two of these people had been convicted several times. If, for 2020, we disregard the NAV cases (18) and Refugee Convention cases (4), three of seven applications to reopen convictions were allowed because of new expert reports regarding the convicted person's mental state at the time of the offence.

Thus, compared to the total number of cases reopened, a large number of applications to reopen cases/convictions are still allowed because subsequent doubt about the convicted person's mental state at the time of the offence provides grounds for reviewing the question of guilt or the sentencing issue.

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Below are abbreviated versions of all the cases where the Commission has allowed an application to reopen a case.

Abbreviated versions of all reopened cases are also published on the Commission's website, [www.gjenopptakelse.no](http://www.gjenopptakelse.no).

All the Commission's decisions, both to reopen or not reopen cases, are published in full on the Lovdata website in an anonymised form.

**27.01.2021 (2020/68) Robbery, driving a motor vehicle without a valid driving licence, etc. - section 391 no. 3 of the Criminal Procedure Act (new expert report, criminal responsibility). Application submitted by the prosecuting authority**

In 2018, a district court convicted a man of one count of robbery, two counts of carrying replica firearms in a public place, and one count of driving a motor vehicle without a valid driving licence. The convicted person was sentenced to imprisonment for six months, to have the replica firearms confiscated and to pay litigation costs of NOK 8 000.

In later criminal proceedings against the convicted person, he was subjected to a forensic psychiatric assessment in the spring/summer of 2019. This concluded that the convicted person was psychotic. On this basis, the public prosecutor decided to obtain an additional report that covered the date of the 2018 offences. The experts concluded that the convicted person had also been psychotic at the time of the offences covered by the conviction that is the subject of the application to reopen here.

The Commission found that the additional expert report was a new circumstance that seems likely to lead to an acquittal, see section 391 nr. 3 of the Criminal Procedure Act.

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

**28.01.2021 (2020/57) Uttering a forged document. Making a false statement - section 392 (2) of the Criminal Procedure Act (special circumstances). The Refugee Convention**

In 2010, a district court sentenced an Eritrean man to imprisonment for 45 days for contravening section 166 (1) of the General Civil Penal Code (1902) (making a false statement to a public authority). He had shown a Norwegian refugee travel document to a border guard and used this to prove his identity when entering the country. The passport was not his. On the day he was arrested and interviewed, he admitted that the passport had been bought in Greece. At the same time, he revealed his real name and that he had come to Norway to seek asylum.

The convicted person applied to have his case reopened with reference to the prohibition against imposing penalties on refugees in article 31 no. 1 of the Refugee Convention, and the Supreme Court ruling stated in Supreme Court law reports (Rt.) 2014 page 645. Freedom from prosecution pursuant to the Refugee Convention had not been considered by the district court.

In the Commission's view, the Convention's condition "...present themselves without delay", as this has been further explained in the Supreme Court ruling stated in Rt. 2014 page 645, should be considered by the court in order to clarify whether the convicted person was protected by the freedom from prosecution rule according to the Refugee Convention art. 31 no. 1. The convicted person's admission that he used false documents/a false identity and information that he came to Norway to seek asylum were so interwoven and close in time that the Commission believed it had to be up to the court to consider whether the condition "without delay" had been met.

The other conditions stated in the Refugee Convention art. 31 no. 1 had also not been considered. On this basis, the Commission believed there were special circumstances that made it doubtful whether the conviction was correct, see section 392 (2) of the Criminal Procedure Act. International law issues had not been considered. These should be considered and finally resolved by the court. Weighty considerations also indicated that the question of guilt should be re-tried.

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

**11.02.2021 (2020/112) Unlawful imprisonment, physical assault etc.  
- section 391 no. 3 of the Criminal Procedure Act (new evidence and  
circumstances, criminal responsibility)**

In 2017, a district court committed a man to psychiatric care for, among other things, unlawful imprisonment and physical assault. He applied to have the district court judgment reopened, alleging that he was not unaccountable for his acts or psychotic at the time of the offences appealed against. He referred to a subsequent conviction in 2019 and to subsequent statements by medical personnel who had treated him. The prosecuting authority alleged that the conditions for reopening had not been met.

The Commission found that the material presented meant there were new circumstances or evidence in the case. Following a concrete assessment, the Commission also found it was reasonably likely that, in light of the new circumstances and evidence, the convicted person would have been sentenced to imprisonment for a limited period, and that in this case that would have been regarded as a substantially more lenient sanction than being committed to psychiatric care. Since the district court judgment in 2019 entailed the continuation of the committal to psychiatric care that he had been sentenced to in the 2017 judgment, the 2019 district court judgment was also reopened. The Commission found that the conditions for reopening the two judgments had been met in accordance with section 391 no. 3 of the Criminal Procedure Act.

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

**18.02.2021 (2020/82) Murder and rape - section 391 no. 3 of the Criminal  
Procedure Act (new expert reports, DNA). Dissenting vote. The Baneheia case**

In 2002, a court of appeal sentenced a man to preventive detention for 21 years, with a minimum period of 10 years, for rape and murder. Three previous applications to reopen the conviction had been disallowed by the Commission, and one application had been rejected by the Chair of the Commission.

The convicted person applied to reopen the case once again, alleging, among other things, that there was new evidence in the case pursuant to section 391 no. 3 of the

Criminal Procedure Act, especially relating to the DNA evidence and mobile phone evidence. He also alleged that his co-accused had given a false statement about the convicted person's participation in the offences, and presented reports substantiating weaknesses in the police interviews of him. He also alleged that criminal offences had been committed in relation to the case, see section 391 no. 1 of the Criminal Procedure Act, and that there were special circumstances which made it doubtful whether the conviction was correct, see section 392 (2) of the Criminal Procedure Act.

In brief, the majority of the Commission, three Commissioners, believe that, since the conviction in 2002, new expert reports and reports that weaken the DNA evidence have been presented, and that this is of importance to the weight given to the other evidence which indicated that the convicted person was guilty when the case was tried by the court of appeal. The majority believe there is, on the whole, a reasonable likelihood that he would have been acquitted if the court of appeal had known of the new evidence that is now available, see section 391 no. 3 of the Criminal Procedure Act.

A minority of two Commissioners do not believe that the conditions for reopening have been met. Even if the new expert reports on the DNA evidence, etc, had been known to the court in 2002, there is nonetheless no reasonable likelihood that these – when considered together with the other evidence presented to the court – would have changed the overall evidence in such a way that it would have led to the acquittal of the convicted person. The minority found that the conditions for reopening had not been met.

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

This decision was reached with a dissenting vote (3-2).

### **10.03.2021 (2020/261) Uttering a forged document - section 392 (2) of the Criminal Procedure Act (special circumstances). The Refugee Convention**

In 2013, a district court convicted a man from Somalia of an offence under section 182 (1), second alternative penalty, of the General Civil Penal Code (1902) (uttering a forged document). He had shown a false Italian passport to a border guard and used it to prove his identity when entering the country. The passport was not his. On the same day as he was arrested, he admitted that the passport was false and had been bought in Italy. That same day, he also stated that he had come to Norway to seek asylum. He was sentenced to imprisonment for 45 days.

The convicted person applied to have his conviction reopened with reference to the prohibition against imposing penalties on refugees in article 31 no. 1 of the Refugee Convention, the ruling stated in Supreme Court law reports (Rt.) 2014 page 645, subsequent case law and the circular issued by the Director of Public Prosecutions. Freedom from prosecution pursuant to the Refugee Convention had not been considered by the district court.

In the Commission's view, it appeared that the Convention's condition "... present themselves without delay", as this has been further explained in Rt. 2014 page 645, should have been considered by the court to clarify whether the convicted person was protected by the freedom from prosecution rule in article 31 no. 1 of the Refugee Convention. The convicted person's admission that he had used false documents and his statement that he had come to Norway to seek asylum were so interwoven

and close in time to each other that the Commission believed it had to be up to the court to consider the question of whether the condition of “without delay” had been met.

The other conditions stated in art. 31 no. 1 of the Refugee Convention had also not been considered. On this basis, the Commission believed there were special circumstances which made it doubtful whether the conviction was correct, see section 392 (2) of the Criminal Procedure Act. International law issues had not been considered. These should be clarified and finally resolved by the court. Weighty considerations indicated that the question of guilt should be re-tried.

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

**10.03.2021 (2020/75, 2020/77, 2020/272, 2020/274, 2020/275) Violent offences and crimes of acquisition etc. - section 391 no. 3 of the Criminal Procedure Act (new expert report - criminal responsibility)**

Between 2014 and 2020, a man was convicted five times of violent offences, crimes of acquisition, breaches of the peace, and contraventions of the Road Traffic Act, Medicines Act, Police Act and Execution of Sentences Act. The offences took place between September 2012 and June 2018.

He applied to have his convictions reopened and stated that he was not criminally responsible at the time of the offences. The Commission arranged for a forensic psychiatric assessment of the convicted person, and this showed that he had been psychotic since 2012.

The Commission found that the expert report was new evidence of importance to the assessment of the convicted person’s accountability at the time of the offences and was likely to lead to an acquittal, see section 44 of the General Civil Penal Code (1902) and section 20 b of the Penal Code (2005), see section 391 no. 3 of the Criminal Procedure Act.

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

**11.03.2021 (2020/24) Sexual activity with a child under 14 years of age - section 391 no. 3 of the Criminal Procedure Act (new evidence – new expert report)**

In 1990, a court of appeal sentenced a man to imprisonment for one year and two months for contravening section 195 (1), first alternative penalty of the General Civil Penal Code (1902) (sexual activity with a child under 14 years of age). His appeal to the Supreme Court regarding procedural errors and sentencing was not allowed to be heard.

The convicted person applied to have his conviction reopened after obtaining a new expert report based on current knowledge of the interpretation of anogenital findings in children. The expert report concluded that the findings were in part unspecific findings that could have many causes, and in part findings that were very uncertain. The Commission assumed that the findings described in the expert report neither confirmed nor denied that abuse had occurred.

The Commission found that this was new evidence which, together with the other evidence and circumstances available to the adjudicating court, seemed likely to lead to an acquittal or to a substantially more lenient sanction, see section 391 no. 3 of the

Criminal Procedure Act. The Commission also placed emphasis on there having been insufficient right to comment in the case.

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

**25.03.2021 (2020/95) Threats - section 391 no. 3 of the Criminal Procedure Act (new expert report, criminal responsibility)**

In 2016, a court of appeal convicted a man of using threats or other illegal means to try to prevent the King and prime minister from carrying out their tasks, etc. He was sentenced to imprisonment for one year and three months, including a suspended sentence of 10 months.

Two court-appointed experts had examined the convicted person prior to the conviction and had concluded negatively regarding both psychosis and other diagnoses, etc, of importance to the questions of guilt or sentencing. The court based its ruling on this.

The convicted person applied to have his conviction reopened and stated that he should have been acquitted because he was psychotic at the time of the offences (2012-2015). He submitted an epicrisis from his therapist. The Commission obtained the convicted person's medical records and conducted a new forensic psychiatric assessment using new experts. The new experts also reached a negative conclusion regarding both psychosis and other diagnoses but expressed doubt regarding factors of importance to the sentencing as referred to in section 80 f and g of the Penal Code (2005).

The Commission unanimously found that this doubt was of such a nature that the conditions for reopening the sentencing had been met, see section 391 no. 3 of the Criminal Procedure Act. The decision regarding the question of guilt was not reopened following a dissenting vote. One Commissioner believed there was a real possibility that the convicted person had been psychotic at the time of the offence, see section 20 (1) b of the Penal Code (2005).

The Commission unanimously decided to allow the application to reopen the case as regards the sentencing.

**05.05.2021 (2021/40 m. fl.) Violence and crimes of acquisition etc. - section 391 no. 3 of the Criminal Procedure Act (new expert report, criminal responsibility). Application submitted by the prosecuting authority**

From 1992-2016, a man was convicted 11 times of violent offences and crimes of acquisition, threats, breaches of the peace and contraventions of the Road Traffic Act and Medicines Act. The offences occurred between March 1991 and November 2015.

In connection with another criminal case against the convicted person in 2016, he was found to be not criminally responsible at the time of the offence for offences committed in the summer of 2016. The court therefore appointed forensic psychiatry experts to assess whether the convicted person had also been psychotic at the time of previous offences. The experts concluded that the convicted person had been psychotic for much of the 1991-2016 period.

Based on the expert report, the Director of Public Prosecutions applied to have the convicted person's 11 convictions from this period reopened.

The Commission found that the expert report, which concluded that the convicted person had not been criminally responsible at the time of the offences, see section 44 of the General Civil Penal Code (1902), was new evidence or a new circumstance 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 application to reopen the case.

**06.05.2021 (2021/76) Breach of a restraining order etc. - section 391 no. 3 of the Criminal Procedure Act (new expert report, criminal responsibility). Application submitted by the prosecuting authority**

In 2018, a district court convicted a woman of breaching a restraining order, of exhibiting sexually offensive conduct without consent and of particularly ruthless conduct. She was sentenced to imprisonment for 60 days, including a 20-day suspended sentence. She was also ordered not to contact the aggrieved party and to pay litigation costs.

In connection with the investigation of a later criminal case against the woman, she was subjected to a forensic psychiatric assessment. The experts concluded that she was probably psychotic at the time of the new criminal offences. Based on this, the same experts were appointed to assess her criminal responsibility at the time of the offences of which she was convicted in 2018. The experts concluded that the convicted person had probably been psychotic at that time too. Based on this, the prosecuting authority applied to have the 2018 conviction reopened in favour of the convicted person. The convicted person agreed with the prosecuting authority's application.

The Commission found that the expert report was a new circumstance that was likely to lead to an acquittal, and that the conditions for reopening a conviction pursuant to section 391 no. 3 of the Criminal Procedure Act had been met.

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

**16.06.2021 (2021/69 and 2021/146) Drugs, violence - section 391 no. 3 of the Criminal Procedure Act (new expert report, criminal responsibility). Application submitted by the prosecuting authority**

In 2014, a district court convicted a man of possessing and using drugs and sentenced him to a fine of NOK 3 600. He had previously been convicted by a district court in 1996 and given a 28-day suspended sentence and ordered to pay fine for assault occasioning actual bodily harm.

In connection with later criminal proceedings against the convicted person, he was subjected to a forensic psychiatric assessment in 2019. The experts concluded that the convicted person was psychotic at the time of the criminal offence. The experts were also asked to state when they believed the convicted person had become psychotic.

Based on statements in the expert report relating to when the psychosis started, the Director of Public Prosecutions applied to have the 1996 and 2014 convictions reopened.

With reference to statements in the expert report, the Commission found that the report was to be regarded as a new circumstance which seemed likely to lead to an acquittal or a substantially more lenient sanction, see section 391 no. 3 of the Criminal Procedure Act.

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

#### **17.06.2021 (2020/159) Threats and violence, etc. - section 391 no. 3 of the Criminal Procedure Act (new expert report, criminal responsibility)**

In 2014, a district court convicted a man of several counts of illegal storage of drugs, threats and violence against public officials, threats of criminal acts, criminal damage and particularly ruthless conduct. He was sentenced to imprisonment for two years and four months.

In the years following his conviction, the convicted person had been subjected to treatment and diagnosed as having a paranoid psychosis. His defence counsel therefore applied to have the 2014 conviction reopened. Later, but before the Commission had reached a decision on the case and in connection with an alleged additional criminal offence committed in 2018, the convicted person was subjected to a full judicial observation. Here, he was found not to be criminally responsible at the time of the offence in 2018 or when he was examined in 2020. The acts were therefore not adjudicated on.

The Commission appointed the same experts to consider whether the convicted person had also been psychotic at the time of previous criminal offences. The experts could not reach agreement and therefore each presented their own conclusion. One expert believed that the convicted person's later diagnosis started as early as in 2014, and that the convicted person could not have been criminally responsible at that time either. The other expert believed that the convicted person was criminally responsible in 2014, and that the dysfunction was not as extensive as she found that it was in 2018 and 2020.

The Commission found that the expert reports and the convicted person's illness in the period after the acts that had been adjudicated on had to be regarded as new evidence and circumstances that were likely to lead to an acquittal, see section 391 no. 3 of the Criminal Procedure Act.

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

#### **24.06.2021 (2020/25) Gross money laundering - section 391 no. 3 of the Criminal Procedure Act (new evidence and circumstances)**

In 2018, a court of appeal sentenced a man to imprisonment for one year for gross money laundering. He alleged to the Commission that circumstances of importance to the question of his guilt had not been made known when the court tried the case, and that the case would have had a different outcome if the court had known the circumstances.

Information that the Commission obtained in connection with its investigation into the case supported the convicted person's allegations. The prosecuting authority recommended allowing the application.

In the Commission's view, after the conviction, circumstances became known that were not known to the court of appeal and which seemed likely to lead to an acquittal or a substantially more lenient sanction, see section 391 no. 3 of the Criminal Procedure Act.

The Commission unanimously decided to allow the application.

**25.08.2021 (2021/148 and 2021/209) Violent offences - section 391 no. 3 of the Criminal Procedure Act (new expert report, criminal responsibility). Application submitted by the prosecuting authority**

In 2019, a man was twice sentenced by a district court to imprisonment for violent offences.

In connection with an investigation into another case, he was subjected to a forensic psychiatric assessment. The conclusion was that he had been psychotic at the time of the offences of which he was convicted in 2019.

The Director of Public Prosecutions applied for the cases to be reopened in favour of the convicted person and referred to the fact that there was doubt as to whether the convicted person had been criminally responsible at the time of the offences.

With reference to section 20 b) of the Penal Code, according to which an offender is not to be regarded as criminally responsible if he is psychotic at the time of the offence, the Commission found there was new evidence or circumstances that were likely to lead to an acquittal, see section 391 no. 3 of the Criminal Procedure Act. The Commission referred to the fact that there were many indications that the convicted person had been psychotic at the time of the offences. It was unclear whether the psychosis had been triggered by intoxication. However, the doubt that had arisen relating to the convicted person's criminal responsibility was sufficient for there to be a reasonable likelihood of an acquittal.

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

**25.08.2021 Gross fraud and making a false statement - section 392 (1) and (2) of the Criminal Procedure Act. Application of the law. EEA law, the EU Social Security Coordination Regulation. Application submitted by the prosecuting authority. (NAV cases)**

The Commission dealt with 36 applications to reopen convictions relating to the so-called NAV cases at a meeting in August 2021. All the convictions were reopened. The convicted persons consisted of 13 women and 23 men.

Common to these cases was that the convicted persons had been in other EEA countries while receiving work assessment allowance or sickness benefit from the Labour and Welfare Administration (NAV). The convicted persons had not applied to NAV for permission to be abroad or reported that they were abroad on the employment status cards. On this basis, they were convicted in district courts, in either a main hearing or a summary trial on a plea of guilty, of fraud and/or computer fraud against NAV. In several of the cases, the convicted persons were also



convicted of making a false/incorrect statement to NAV. Some of the convicted persons had also been living outside the EEA. The sentences varied from fines to community sentences and suspended and immediate prison sentences. Some people were also sentenced to pay compensation to NAV. Some of the convictions were appealed against, but all the convicted persons were refused leave to appeal to the court of appeal.

The prosecuting authority, and some of the convicted persons, applied to have the cases reopened in favour of the convicted persons. The prosecuting authority alleged that the law had been incorrectly applied in the convictions. The requirement of a presence in Norway in order to receive work assessment allowance and sickness benefit was regarded as contravening the EEA regulations. The prosecuting authority took the view that the convicted persons could not be regarded as having obtained an unjustified gain when they received benefits while living in the EEA. The conditions for strict criminal liability for fraud had therefore not been met.

In its decisions, the Commission referred to the Supreme Court grand chamber ruling HR-2021-1453-S, where the Supreme Court ruled on the relationship between section 11-3 of the National Insurance Act and the EEA regulations. After obtaining an advisory opinion from the EFTA Court, the Supreme Court found that the requirement that the benefit recipient had to be present in Norway stated in section 11-3 of the National Insurance Act contravened EEA law. After the EU Social Security Coordination Regulation No. 883/2004 became part of the EEA Agreement on 1 June 2012, the requirement of a presence in Norway was found to be in contravention of articles 7 and 21 of these regulations. For the period prior to 1 June 2012, the requirement of a presence in Norway stipulated in section 11-3 of the National Insurance Act was found to be in contravention of article 36 of the EEA Agreement.

On this basis, the Commission found that the district court convictions relied on an incorrect interpretation of the law, and that the conditions for strict criminal liability for fraud had not been met. All the convictions for fraud were reopened, including when some of the stay abroad had been in countries outside the EEA. The Commission believed that, if the periods spent residing outside the EEA had been adjudicated on alone, there would in some cases have been grounds for applying a more lenient penal provision or substantially more lenient sanction. In cases where the convicted person was convicted of computer fraud and had been residing outside the EEA, the Commission agreed with the Director of Public Prosecutions' allegations that it is uncertain whether it was correct to apply the computer fraud provision alone given the wording of NAV's employment status card.

The Commission also considered there was such a close link between the prosecutions for fraud and the prosecutions for making a false statement that the convictions for making a false statement also had to be reopened if the convicted persons had been convicted of this. In addition, the Commission pointed out that the wording of the questions in NAV's employment status card made it doubtful that there were sufficient grounds for a conviction of making a false statement.

The Commission found there were special circumstances which made it doubtful that the convictions were correct and that weighty considerations indicated that the question of the convicted persons' guilt should be re-tried, see section 392 (2) of the Criminal Procedure Act. The cases contained several EEA-law questions that had not been considered. The conditions for reopening cases pursuant to section 392 (2) of the Criminal Procedure Act had therefore been met.

The Commission unanimously decided to allow the applications to reopen the cases.

**26.08.2021 (2020/106) Contribution to robbery - section 391 no. 3 of the Criminal Procedure Act (new expert report, mild intellectual disability)**

In 2017, a district court convicted a man of contributing to a robbery. One other person was convicted in this case. He was given a community sentence of 209 hours with an execution period of one year, or alternatively sentenced to imprisonment for seven months. He was also ordered to pay damages for non-economic loss of NOK 30 000 to the aggrieved party, jointly and severally with the other person convicted.

The convicted person applied to have his conviction reopened, alleging that he should have been assessed as a person with a mild intellectual disability. This was substantiated by information that became known in a later conviction, a provisional forensic psychiatric assessment and an epicrisis. He alleged that the information provided was sufficient to lead to a reopening of the question of guilt, and in any case to a reopening of the sentencing. The Commission appointed experts who provided a forensic psychiatric report which concluded that the convicted person was regarded as having a mild intellectual disability, although there was some uncertainty linked to this. The Commission decided that there was new evidence or circumstances in the case. Regarding the question of guilt, the Commission commented that it did not find that the new material provided grounds for a different assessment of the conditions for criminal liability, neither the fault-based nor strict liability ones, that could lead to a reopening. The Commission found that the new circumstances entailed a reasonable likelihood that a substantially more lenient sanction would have been applied, see section 391 no. 3 of the Criminal Procedure Act.

The Commission unanimously decided to allow the application to reopen the case as regards the sentencing.

**21.10.2021 (2020/104, 2020/105 and 2020/118) Rape, violence, threats, etc. - section 391 no. 3 of the Criminal Procedure Act (new expert report, criminal responsibility)**

In 2011, a district court sentenced a man to preventive detention for six years, with a minimum period of four years, for rape, violence, threats and theft, etc. In 2014, a district court again convicted him of violence and threats, etc. Sentencing was postponed, with a probationary period of three years. In 2016, he was sentenced to continued preventive detention for five years as an extension of the timeframe in the district court conviction in 2011.

He applied to have his case reopened and stated that the forensic psychiatry experts had concluded in 2019 that he was schizophrenic and psychotic and had been for many years, possibly even before 2014. The Commission appointed the same experts to assess the convicted person's mental state at the time of the offences that he had been convicted of, which were during the 2009-2014 period. They concluded that the convicted person was assumed to have been psychotic during this period too.

The Commission found that the expert report raised doubt about the convicted person's criminal responsibility at the time of the offence. The report was a new circumstance that was likely to lead to an acquittal pursuant to section 391 no. 3 of the Criminal Procedure Act.

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

**08.12.2021 (2021/176 etc.) Drugs, threats, the Road Traffic Act, etc. - section 391 no. 3 of the Criminal Procedure Act (new expert report, criminal responsibility). Application submitted by the prosecuting authority**

From 2004-2020, a man was convicted eight times of threats, crimes of acquisition, breaches of the Road Traffic Act, smuggling, etc. In connection with other criminal proceedings against the convicted person in 2020, he was found to be not criminally responsible at the time of offences committed during the period from January to October 2019, and in March and July 2020. Based on the expert report, the Director of Public Prosecutions applied to have the convicted person's conviction in March 2020 reopened. In his reply, the convicted person's defence counsel applied to have all the offences committed from 2004 reopened.

The Commission found that the conditions for reopening the March 2020 conviction had been met, see section 391 no. 3 of the Criminal Procedure Act, since the expert report had to be regarded as new evidence or circumstances that would have been likely to lead to an acquittal, see section 20 of the Penal Code (2005).

However, the Commission did not find that there was sufficient evidence that the convicted person had also not been criminally responsible at the time of the offences covered by the 2004-2013 convictions. Nor did the Commission find that it was likely that the appointment of new experts to provide statements linked to the period in question would add anything new to the case.

The application to reopen case 2021/176 was unanimously allowed. The other applications were disallowed.

**08.12.2021 (2021/245) Wilful destruction of property, threats, etc. - section 391 no. 3 of the Criminal Procedure Act (new expert report, criminal responsibility). Application submitted by the prosecuting authority**

In 2020, a district court convicted a man of, among other things, the wilful destruction of property, threats to a public official, theft and failure to show due care when carrying out activities that may lead to fire. He was sentenced to imprisonment for five months. The convicted person was also ordered to pay damages.

In connection with the investigation of a later criminal case against the convicted person, he was subjected to a forensic psychiatric assessment. The experts concluded that the convicted person met the criteria for the diagnosis of paranoid schizophrenia, and that he had a defective perception of reality and significantly reduced functional capacity. Based on this, the prosecuting authority applied to have the 2020 conviction reopened in the convicted person's favour. The convicted person supported the prosecuting authority's application.

The Commission found that the forensic psychiatric report shed light on whether the convicted person was criminally responsible at the time of the offences dealt with in the conviction, even though the report did not directly cover these dates. The Commission found that the expert report was a new circumstance that was likely to lead to an acquittal and that the conditions for reopening a conviction pursuant to section 391 no. 3 of the Criminal Procedure Act had been met.

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

**08.12.2021 Fraud and making a false statement) - section 392 (1) and (2).  
Application of the law. EEA law. EU Social Security Coordination Regulation.  
Application submitted by the prosecuting authority. (NAV cases)**

The Commission dealt with nine applications to reopen so-called NAV cases at a meeting in December. In addition, one case had been dealt with at a meeting in October. All the convictions were reopened.

Common to these cases was that the convicted persons had been staying in other EEA countries while receiving work assessment allowance or sickness benefit from the Labour and Welfare Administration (NAV). The convicted persons had not applied to NAV for permission to be abroad or reported that they were abroad on the employment status cards. On this basis, they were convicted in district courts, in either a main hearing or a summary trial on a plea of guilty, of fraud and/or computer fraud against NAV. In several of the cases, the convicted persons were also convicted of making a false/incorrect statement to NAV. Some of the convicted persons had also resided outside the EEA and/or worked more than they were permitted to. The sentences varied from case to case and consisted of a combination of fines and suspended and immediate prison sentences. Some people were also sentenced to pay compensation to NAV. One convicted person was ordered to repay the amount relating to the social security fraud. The Commission received an application to reopen the conviction from the convicted persons in two of the cases. The prosecuting authority supported one of these applications, and also applied to have seven other convictions reopened. It was alleged that the law had been incorrectly applied in the convictions, since the requirement of a presence in Norway in order to receive sickness benefits contravened the EEA regulations.

In its decisions, the Commission referred to the Supreme Court grand chamber ruling HR-2021-1453-S, where the Supreme Court ruled on whether the condition of a presence in Norway in order to be entitled to work assessment allowance is in accordance with the EEA regulations. In accordance with advisory opinion E-8/20 from the EFTA Court, the Supreme Court found that the requirement of a presence in Norway contravened EEA law. For the period prior to 1 June 2012, the requirement of a presence in Norway was found to be in contravention of article 36 of the EEA Agreement, while for the period after 1 June 2012 it was found to be in contravention of articles 7 and 21 of Regulation (EC) No. 883/2004.

The Supreme Court judgment concerned the requirement stated in section 11-3 of the National Insurance Act that recipients of work assessment allowance had to be present in Norway. Several of the cases decided on by the Commission concerned other sickness benefits, such as medical rehabilitation allowance and vocational rehabilitation allowance. The Commission found that the requirement of a presence in Norway in order to receive these benefits was also in contravention of EEA law.

In the case of conflict, EEA legal rules take precedence over National Insurance Act rules. Since the requirement of a presence in Norway was in contravention of EEA law, a failure to comply with it could not form the basis for a refusal to pay benefits or suspension of benefits. The convicted persons' acts have therefore not caused any loss or danger of loss to NAV or given the convicted persons an "unjustified gain".

On this basis, the Commission found that the convictions relied on an incorrect interpretation of the law, and that the conditions for strict criminal liability for fraud had

not been met. The convictions for fraud were reopened in their entirety, including when some of the stay abroad had been outside the EEA.

The Commission also considered there was such a close link between the prosecutions for fraud and the prosecutions for making a false statement that the convictions for making a false statement also had to be reopened if the convicted persons had been convicted of this.

The Commission found there were special circumstances which made it doubtful that the convictions were correct and that weighty considerations indicated that the question of the convicted persons' guilt should be re-tried, see section 392 (2) of the Criminal Procedure Act. The cases contained several EEA-law questions that had not been considered. The conditions for reopening the cases pursuant to section 392 (2) of the Criminal Procedure Act had therefore been met.

The Commission unanimously decided to allow the applications to reopen the cases.

## **The Commission's other activities**

### *The Commission's digitalisation project*

In accordance with instructions stated in the Digitalisation Circular (H-7/17) issued by the Ministry of Local Government and Modernisation, the Commission started to prepare for an integrated digitalisation project in 2018. For the secretariat, the start-up and implementation took place in October 2020. Since August 2021, the Commissioners have also been able to work on cases digitally. We cooperate closely with the supplier of the case and archive system in order to develop and improve the system.

A digital form for applying to reopen cases will be published on the Commission's website. The solution will be established via Altinn but has unfortunately been severely delayed.

As part of this project, the Commission also wants to be connected to Justishub, the new communication channel between key players in the criminal justice chain. By using Justishub as a communication channel, the Commission hopes to help improve the efficiency of both its own operations and those of other players in the criminal justice chain. The Commission uses common national solutions for digital transmissions. The police and prosecuting authority do not wish to receive transmissions using common national solutions. This means that outgoing correspondence to the police and prosecuting authority is sent using an encrypted email line with severely limited capacity. This makes the Commission's casework difficult and inefficient.

### *Contact with other authorities*

The Chair of the Commission attended the Ministry of Justice and Public Security's conferences for heads of government agencies in February, June and November. In March, the Chair attended a government agency management meeting with the administrative management of the Ministry's Civil Affairs Department.

The annual meeting with the Director of Public Prosecutions took place in September.

Most meetings and gatherings were digital in 2021 too, and we have attended several, such as conferences arranged by JustisCert and the Digitalisation Conference.

### International contact

At the beginning of August, we had a digital meeting with the commissions in England/Wales/Northern Ireland (CCRC), Scotland (SCCRC), and New Zealand (NZ CCRC).

The Chair was also in touch with the UK commission regarding a book the CCRC is planning to publish in connection with its 25<sup>th</sup> anniversary in 2022.

Links to these commissions' websites:

<https://ccrc.gov.uk/>

<https://www.sccrc.co.uk/>

<https://www.ccrcc.nz/>

The Chair has contributed a chapter about the Norwegian criminal cases review scheme to a book being prepared by the University of Ottawa in Canada. This book is expected to be published in 2022.

### Efforts to lease premises

The Commission's lease expires on 28 February 2022, so in 2020 we started to consider where we were to be located in the years to come. We hired the Norwegian Directorate of Public Construction and Property (Statsbygg) as a consultant, in accordance with the Instructions on the Handling of Building and Lease-related Matters in the Civilian Central Government Sector. The Commission had to look in the rental market and give interested lessors the opportunity to make an offer. Negotiations were held with three of these, in addition to the Commission's current lessor. Even with a lot of help from Statsbygg, this work took a lot of our time in 2021. The result was that the Commission signed a lease for office premises at Bryn, a choice we believe we will be satisfied with. The move will take place in mid-March 2022.

### Information activities

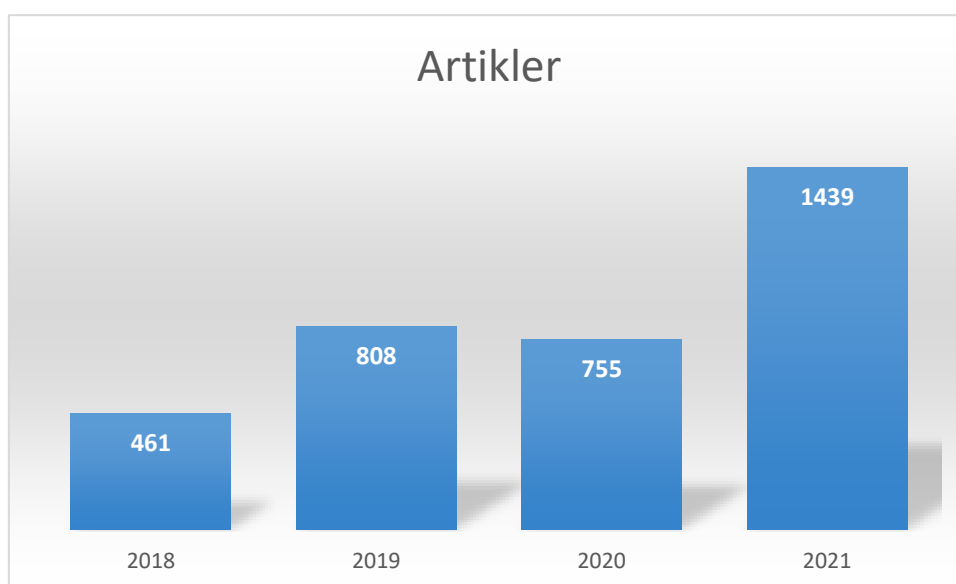
In so far as possible, requests for talks, etc, about the Commission's activities are granted. Several events have been cancelled or postponed due to the pandemic and information activities in 2021 have only consisted of two talks.

- In September, the Chair gave a talk at the Director of Public Prosecutions' prosecution meeting at Hamar.
- In November, the Chair gave two talks to two different departments of the Norwegian Civil Affairs Authority.
- In November, the Chair gave a talk to Asker Rotary Club.

### Media contact

We have noticed a clear increase in the interest in the Commission's work on the part of several media over the past few years. Retriever, a media company, registered 1 439 articles about the Commission in 2021, compared to 755 in 2020, 808 in 2019 and 461 in 2018. We particularly relate this to "True Crime" series, books and articles. Among other things, the Chair was interviewed several times on the radio and TV, as well as in newspapers and various podcasts. The Commission places emphasis on being open and available for questions and inquiries from journalists.

### Articles



The Commission's media and information strategy is stated in a separate document.

The Commission's website [www.gjenopptakelse.no](http://www.gjenopptakelse.no) contains information on the Commission and regulations, press releases, downloadable forms for applications to reopen cases, the Commission's annual reports, anonymised abbreviated versions of decisions to reopen cases, etc. Key information is available in 12 languages in addition to Dano-Norwegian, New Norwegian and Sami.

The Commission's website has a press section where the full text of all the Commission's decisions is available to the media for three months.

All the Commission's decisions based on the merits of a case are published on the Lovdata website.

The Commission uses its Twitter account to announce decisions published on its website, press releases and information on vacant positions in the secretariat.

## **IV. Management and control of the activities**

### Internal controls

According to section 14 of the Regulations on Financial Management in Central Government, the Commission shall have satisfactory internal controls so that its operations are effective for achieving its objective, cost-efficient and in compliance with prevailing laws and regulations and so that the reporting is reliable and accurate. Good internal controls mean that any material non-conformances are prevented, revealed and rectified to the extent necessary. The Commission normally has effective internal controls and no significant weaknesses in these were identified in 2021. The last risk assessment was conducted on 1 March 2021.

The internal controls have been carried out and documented to the extent regarded as necessary based on the nature of the operations, activities, risk factors and size.

The Commission is not aware of any particular challenges and no specific weaknesses have been identified.

### Preventive security

The Commission has no object/infrastructure that is especially important for maintaining fundamental national functions and is thus important to national security interests.

The Commission has a risk and vulnerability analysis that is reviewed and updated regularly. Similarly, the Commission's emergency response plan is updated at regular intervals.

In connection with the move to new office premises, the Commission has particularly focused on improving its physical security. A security area at the entrance and an outer zone for visitors are currently being established in the new premises. No visitors will be admitted to the inner zone unless this is necessary and not considered to be a problem.

Computer rooms, archives and offices are in the inner zone and can be locked.

### Comments by the Office of the Auditor General of Norway

The Commission did not receive any comments from the Office of the Auditor General in 2021. In general, it is pointed out that any such comments will be given high priority. The same applies to any criticism from the Parliamentary Ombudsman.

### Inclusiveness work

The Commission focuses on inclusiveness when hiring new employees. Job adverts include a diversity declaration. In 2021, the Commission used the following wording in its job adverts:

"We urge qualified candidates, irrespective of their background or affiliation, to apply for a job with us. We ask candidates with disabilities, with an immigrant background, or who have not been working or studying for a lengthy period to tick the box for this in the job portal. If there are qualified applicants, we invite at least one in each group



to an interview. The boxes ticked in the job portal also form the basis for anonymised statistics that all public enterprises publish in their annual reports. In order to be considered as an applicant in these groups, i.e. to receive positive discrimination in this way, applicants must meet certain requirements. If you are given the job, we will make adaptations for you if you so require.”

The Commission hired fewer than five new employees in 2021 and thus does not report the percentage with a disability or gap in their CV.

We will continue the work described above.

### *Gender equality report, diversity and an inclusive working life*

The Commission's aim is to ensure that it at all times has the correct manpower and expertise.

The Commission's goal is to have a corporate culture based on equality, diversity and respect for the individual, so that everyone has the opportunity to develop their abilities and use their skills. Job adverts include a diversity declaration.

The Commission continues to apply the principles of the Inclusive Working Life (IA) Agreement, which aim to ensure that everyone who wants to and can is to be allowed to contribute to working life. The Commission also has measures aimed at older employees.

The Commission's secretariat is headed by a woman and otherwise consisted of 13 women, of whom two were on a leave of absence, and three men in 2021. This means that the secretariat's gender distribution in 2021 was 81% women and 19% men. All the organisation's management positions are held by women. The secretariat has thus achieved the state's goal of a 40% share of female managers.

Measures to prevent discrimination, bullying and harassment are stipulated in the Commission's HSE plan. The Commission has continued the work of determining more detailed procedures for whistleblowing cases.

The sickness absence rate in the Commission's secretariat is low so the Commission has not had any need to implement measures to reduce this rate.

### *Follow-up of the UN Sustainable Development Goals*

SDG no. 5 “Gender equality” is referred to above and is not discussed here.

SDG no. 11 “Sustainable cities and communities” must be regarded as the most relevant goal for the Commission.

As mentioned, the Commission signed a new lease for office premises in 2021. Environmental considerations have been emphasised in the process. The requirement specification stated that the Commission wanted environmentally friendly spaces that contribute to a circular economy and the lowest possible greenhouse gas emissions.

The new premises include bicycle parking facilities and are in an area with good access to public transport. No agreement on car parking spaces has been entered into. The Commission aims to re-use furniture in so far as possible. The Commission has also stipulated that the premises must be adapted for waste handling in accordance with local requirements.

The requirement of working from home during the pandemic has led to more meetings using Teams and the telephone, so that travel activity has been reduced. The Commission's digitalisation project has led to less use of paper.

On the whole, this is assumed to contribute to less strain on the environment.

## **V. Assessment of the outlook**

The Commission's core activity is dealing with applications to reopen convictions. The Commission is obliged to deal with the applications it receives as long as these lie within its sphere of authority.

For a number of years, the volume of applications to the Commission has been stable at an average of 170 applications. The 263 applications received in 2021 thus entailed a clear increase in the number of cases.

The number of convictions in Norway fell from around 20 500 in 2015 to around 17 900 in 2019 and around 16 500 in 2020 (Statistics Norway figures). The number of prosecutions also fell from around 351 500 in 2015 to around 310 000 in 2019 and just over 300 500 in 2020. The reduction from 2019 to 2020 is particularly due to a reduction in crimes of acquisition, drug crimes, violent offences and economic crimes. This is assumed to be partly due to the pandemic measures leading to fewer people in public areas, see the STRASAK Report 2020. These reductions have not led to fewer applications to the Commission, rather the opposite. The 2021 statistics show a clear increase in the number of cases and this figure has risen even if the NAV cases are disregarded.

We believe it is likely that the number of cases dealt with by the Commission will *increase* in the next five years, and that many of these cases will require a lot of work.

Some trends that will be important in the next five-year period are:

### *International rules and practice*

The EU/EEA regulations and international practice are becoming increasingly important. The Labour and Welfare Administration (NAV) cases are an example of this. Regarding the background to these cases, refer to that stated under the heading "Relevant decisions by the Commission in 2021". As can be seen, the Commission reopened 46 NAV cases in 2021. In the future too, the Commission can be expected to receive more applications from recipients of various benefits who have been convicted of defrauding NAV without the court having considered relevant EEA issues.

Another example is the Refugee Convention cases. The Commission reopened two such cases in 2021, and we assume we may receive more applications to reopen cases on these grounds.

The Commission monitors the decisions of the European Court of Human Rights (ECtHR) and other international organisations that ascertain a breach of human rights. In a Supreme Court ruling on an appeal case on 5 November 2020, it was stated that routine strip searches for no reason during the time in custody was a breach of section 93 of the Norwegian Constitution and article 3 of the European Convention on Human Rights (ECHR), and that such a violation provides the right to an “effective remedy”. The Supreme Court stated that it was not enough simply to ascertain the violation, and as a result the defendant in this case was given compensation in the form of one extra day deducted for time spent in custody on remand per two illegal strip searches (HR-2020-2136-A). During the year, the Commission received applications from convicted persons based on them also being subjected to illegal strip searches during their time spent in custody on remand and asking for their convictions to be reopened in order to be awarded additional deductions for their time spent in custody on remand. The Commission also received applications to reopen the sentence from convicted persons who stated they had been subjected to illegal strip searches while serving their sentence. In both these cases, it is alleged that the Supreme Court rulings are a new circumstance which provides grounds for reopening. At the year-end, these cases had not been decided on.

#### *Amendments to statutes, regulations and practice in Norwegian law*

Section 321 (3) of the Criminal Procedure Act was repealed on 1 January 2020. This provision stated that a court of appeal could not refuse to hear an appeal by a defendant in a case that concerned a crime which, according to the law, could lead to imprisonment for more than six years. The statutory amendment thus means that even the most serious cases are to be considered for appeal filtering. The number of six-year cases that are refused to be heard by the court of appeal has proven to be higher than was envisaged when the statutory amendment was introduced.

Such a decision to refuse to hear an appeal was reviewed by the Appeals Selection Committee of the Supreme Court in the autumn of 2021. This case concerned an appeal against the sentence in a drugs case where the defendant had been sentenced to imprisonment for five years. In the appeal to the Supreme Court based on a procedural error, it was stated that the court of appeal’s “very brief reasons” for refusing to hear the appeal were completely based on the district court’s assessments. It was alleged that this was not enough to prove that the court of appeal had conducted a real review of the district court conviction. The Appeals Selection Committee of the Supreme Court agreed with this and the court of appeal’s decision was set aside.

We do not know what actual importance this new provision regarding appeal filtering will have. However, there is reason to assume that the Commission may receive more applications to reopen six-year cases where leave to appeal has been refused.

It must also be mentioned that the rules governing exemptions from criminal responsibility have now been changed so that a greater degree of discretion is allowed when considering whether a person lacks the capacity to incur criminal responsibility due to his/her mental state at the time of the offence. The criticism of

the statutory amendment is that the change will make things vaguer. This may potentially lead to more applications to reopen cases.

### Technological developments

Global digitalisation has to a large extent enabled online-related abuse. In the Director of Public Prosecutions' circular no. 1/2022 (goals and priorities for the treatment of criminal cases in 2022), serious sexual crimes, including online-related child abuse, has been stated to be a prioritised area.

As a consequence of this prioritisation, the Commission may receive more such cases. These are often cases with a large number of aggrieved parties, and may, for example, involve communication via encrypted channels, the use of cryptocurrency, etc. There is reason to assume that such cases may be very time-consuming for the Commission too, and they may require increased manpower and special expertise.

### Complex cases

A trend towards extensive, complex cases in the courts, for example cases that relate to serious economic crime and various types of organised crime, also mean extensive, complex cases for the Commission. According to the aforementioned circular, serious international and organised crime and serious economic crime, including serious work-related crime and serious ICT crime, are also to be prioritised areas. Such cases can also be very time-consuming and require increased manpower, and they may often require the Commission to have special expertise.

### Media attention

The media attention paid to individual cases dealt with by the Commission makes the scheme better known and leads to more applications to reopen cases.

### Effects of COVID-19 measures

The challenges resulting from absences due to closed schools/kindergartens and sickness, flexible office solutions and strict infection-control requirements have affected our efficiency and production. It seems this is something we will have to live with in 2022 too.

### Measures to deal with the challenges:

Like the courts, the Commission cannot determine which, how many or what types of cases it receives. This makes it difficult to plan measures.

Experience from the NAV cases has shown how important it is to have close dialogue with the Ministry if/when unforeseen events occur. It is also important that the organisation is flexible and can change quickly by increasing its manpower for periods. Many cases take up the time of such a lot of employees that we see a need to increase our manpower, at least in the short term. This has been taken into account in the new premises at Brynsalleen 4 which the Commission is moving into in March.

We had extra all-day meetings in 2021 and this will also be necessary in 2022. Due to the increase in the number of applications, the Commission will have to request a larger budget if we are to manage to deal with our cases well and efficiently.

It is also likely that we will have to utilise more external expertise and personnel. This may lead to the greater use of external experts in cases that require this, for example those with digital or economic expertise.

#### *Remote interviews/meetings*

As previously mentioned, the Commission will normally offer the convicted person a guidance meeting if the person is not represented by a lawyer. In those cases where the convicted person is serving his/her sentence, the meeting will normally take place in the prison. During the pandemic, the Commission, and the rest of society, has had to hold digital meetings. For the Commission, it will be relevant to consider whether such meetings with the convicted person can also be held digitally or possibly over the phone in future too, unless there are special grounds for not doing so. However, such schemes require there to be established satisfactory technical solutions, that the meetings can be held without disturbance, and that the convicted person can be sure that the meeting with the Commission is confidential. In such case, this would reduce our travel activity and thus produce an environmental gain, and the travel time would be freed-up for normal casework. The same will apply to interviews of witnesses, unless the witness statement is regarded as so important that the interview should be carried out in the normal manner as a physical meeting.

#### *Media conversion of the paper archive*

The Commission has a paper-based archive for the 2004-2013 period. We want to look into the possibility of media converting (digitalising) these documents in accordance with chapter 8 of the National Archivist of Norway's regulations and the National Archival Services of Norway's guide to the media conversion of paper archives.

## **VI. Annual accounts**

### **The Chair's comments on the 2021 annual accounts**

#### Objective

The Norwegian Criminal Cases Review Commission was established in 2004 and reports administratively to the Ministry of Justice and Public Security. The Commission is an independent government agency that keeps accounts in accordance with the cash accounting principle.

#### Confirmation

The annual accounts have been presented in accordance with the Provisions on Financial Management in Central Government, circular R-115 issued by the Ministry of Finance, and requirements stipulated by the Ministry of Justice and Public Security in its main instructions to the agency. I believe the accounts provide a full picture of the Commission's available appropriations and recorded expenses, revenues, assets and liabilities.

#### Assessment of some important factors

The Commission was allocated a total of NOK 17 540 000 for 2021. In addition, the amount of NOK 194 000 in unused appropriations was transferred from 2020. The Commission was also allocated NOK 371 000 as compensation for the pay settlement in 2021. This means the total funding allocated to the Commission for 2021 was NOK 20 405 000. This amount includes an extra appropriation of NOK 2 300 000 to handle the increased number of cases.

The Commission buys ICT, salary and accounting services from the Secretariat for the Norwegian Mediation Service and has in connection with this granted the Secretariat a debit authorisation equal to NOK 887 360 that is registered to chapter 0468, item 01. The Secretariat for the Mediation Service has charged the Commission NOK 887 720. This amount is slightly different to the debit authorisation that was granted. The difference will be refunded in the debit authorisation for 2022.

Of this, NOK 120 589 was not utilised. This equals 0.59% of the total available funding.

In 2021 the Commission had 12.62 full-time equivalents, compared to 13.61 in 2020.

In addition to chapter 468 appropriations, appropriations relating to chapter 414 Conciliation Board and Other Court Expenses and chapter 466 Special Criminal Case Expenses are made available to the Commission. This means that expenses relating to defence counsel, counsel for aggrieved parties, interpreters and experts appointed by the Commission are rule-governed and not debited to the Commission's budget.

In 2021, the Commission debited NOK 2 844 389 to chapter 466 Special Criminal Case Expenses, etc, which is a considerable increase compared to 2020, when the amount debited was NOK 1 396 299. The reason for this is larger payments than usual to the defence counsel who were appointed.

#### Explanation of the under-utilisation

In 2021, the Commission received NOK 1 187 078 in refunds from the Norwegian Labour and Welfare Administration relating to parental benefits and sick leave.

The Commission has a relatively small budget and many fixed expenses, of which salaries, rent and the purchase of ICT/accounting services are the largest items. The Commission's other costs depend, among other things, on the number of cases. If the Commission has to deal with large cases, it may have to increase the volume of investigative work and number of extraordinary meetings, and this in turn leads to higher costs.

This was the situation in 2021. We dealt with several large, demanding cases that took up the time of several FTE in the secretariat, and we held more all-day meetings than normal. We also received applications to reopen 263 cases last year, compared to an annual average of 170 for the past 10 years.

Due to this and to some challenges relating to COVID-19, the Commission has a certain backlog, and we also expect the number of cases to increase in 2022.

#### Additional information

The Office of the Auditor General is the external auditor and certifies the Commission's annual accounts. The audit of the annual accounts is not fully complete as at today's date. The auditor's report will be available on the Commission's website [www.gjenopptakelse.no](http://www.gjenopptakelse.no) as soon as it is published.

Oslo, 15 February 2022

Siv Hallgren  
Chair

*This document has been electronically approved*

## **Accounting principles**

The annual accounts of the Norwegian Criminal Cases Review Commission are prepared and presented in accordance with detailed guidelines stipulated in the Provisions on Financial Management in Central Government (“the Provisions”). The annual accounts comply with item 3.4.1 of the Provisions, more detailed provisions stated in Ministry of Finance circular R-115 and any additional requirements stipulated by the Ministry in charge.

The appropriation reporting statement and general ledger accounts reporting statement have been prepared on the basis of the provisions in section 3.4.2 of the Provisions – the fundamental principles for annual accounts:

- a) The financial year matches the calendar year
- b) The accounts contain all the reported expenses and revenues for the financial year
- c) The accounts are prepared in accordance with the cash basis of accounting
- d) Expenses and revenues are shown gross in the accounts

The appropriation reporting statement and general ledger accounts reporting statement have been prepared in accordance with the same principles but are grouped according to different charts of accounts. The principles comply with the requirements stated in item 3.5 of the Provisions on how agencies are to report to the central government accounts. The total “Net amount reported to the appropriation accounts” is the same in both reports.

The agency is linked to the state's group account scheme with Norges Bank in accordance with the requirements stipulated in item 3.7.1 of the Provisions. Gross-budgeted agencies are not given any funding during the year but are entitled to draw on their group account. At the year-end, the balance of the individual settlement account is set at zero.

## **Appropriation reporting**

The appropriation reporting statement comprises an upper part containing the appropriation reporting and a lower part containing agency's listed balances in the capital accounts. The appropriation reporting shows the accounting figures reported by the agency to the central government accounts. These are stated in accordance with the chapters and items in the appropriation accounts that the agency is authorised to utilise. The total allocation column shows the amount made available to the agency in a letter of allocation for each government account (chapter/item). The statement also shows all the financial assets and liabilities that the agency is stated to have in the government's capital accounts.

Authorisations received to debit another agency's chapter/item (debit authorisations) are not shown in the total allocation column but are referred to in note B to the appropriation reporting statement. The expenses relating to received debit authorisations are entered in the books, reported to the central government accounts and shown in the accounts column.

Debit authorisations granted to others are included in the total allocation column but are not entered in the books or reported to the central government accounts by the agency itself. Debit authorisations granted to others are entered in the books and reported by the agency that has received the debit authorisation and are therefore



not shown in the accounts column. The authorisations granted to others are stated in note B to the appropriation reporting statement.

### **General ledger accounts reporting**

The general ledger accounts reporting statement has an upper part showing amounts reported to the central government accounts in accordance with the standard chart of accounts for government agencies and a lower part showing assets and liabilities included in outstanding accounts with the public treasury. The general ledger accounts reporting statement shows the accounting figures that the agency has reported to the central government accounts in accordance with the standard chart of accounts for government agencies. The agency is entitled to draw on its group account with Norges Bank. The allocations are not taken to income and are therefore not shown as revenue in the statement.

The accounting figures in the appropriation and general ledger accounts reporting statements with notes are accounting figures reported to the central government accounts. In addition, the note to the general ledger accounts reporting statement called 'Link between the settlement with the public treasury and the outstanding account with the public treasury' shows the recorded figures from the agency's account specification in the column called 'Specification of the recorded settlement with the public treasury'. This note shows the difference between amounts the agency has entered in asset and liability accounts in the agency's account specification (including the balance of accounts receivable and accounts payable) and the amounts the agency has reported to the central government accounts as receivables and liabilities and which form part of the outstanding balance with the public treasury.

The agency has arranged its bookkeeping such that it complies with the requirements of the Provisions on Financial Management in Central Government. This means that all the information on transactions and other accounting acts necessary to prepare mandatory accounting reports, see the regulations in item 3.3.2, and a specification of mandatory accounting reports, see the regulations in item 4.4.3, has been recorded in the accounts. The regulations require a specification of customers and suppliers to be prepared, among other things. This means that sales and purchase transactions are recorded in the account specification at an earlier date than they are reported to the central government accounts, and that amounts due from customers and amounts due to suppliers are stated in the account specification.

Agency: **The Norwegian Criminal Cases Review Commission**

## Appropriation reporting statement 31.12.2021

Expense chapter	Chapter name	Item	Item text	Note	Total allocation*	Accounts 2021	Additional (-) / reduced expense
0466	Special criminal case expenses, etc	01	Operating expense B		0	2 844 389	
0468	Criminal Cases Review Commission	01	Operating expense A, B		20 405 000	19 396 691	1 008 309
1633	Net scheme for VAT in the state	01	Operating expenses		0	899 994	
<i>Total amount charged to expenses</i>					20 405 000	23 141 073	

Revenue chapter	Chapter name	Item	Item text	Total allocation*	Accounts 2021	Additional/reduced (-) revenue	
5309	Miscellaneous revenue	29	Misc.	0	20 246		
5700	National Insurance revenue	72	Employer's NI contributio	0	1 998 722		
<i>Total amount taken to income</i>					0	2 018 968	

**Net reported to the appropriation accounts** **21 122 106**

### Capital accounts

60087201	Norges Bank GA/payments received				1 199 878	
60087202	Norges Bank GA/payments made				-22 364 072	
704485	Change in outstanding account with the public treasury				42 088	
<i>Total amount reported</i>					<b>0</b>	

### Balances reported to the capital accounts (31.12)

		31.12.2021	31.12.2020	Difference
xxxxxx	[Shares]	0	0	0
704485	Outstanding account with the public treasury	-730 619	-772 707	42 088

\* The total allocation shall not be reduced to take account of any debit authorisations granted to others (both for expense and income chapters). Refer to Note B *Explanation of used authorisations and calculation of the amount possibly transferrable to next year* for a further explanation of this.

**Agency:**

**The Norwegian Criminal Cases Review Commission**

## **Note A Explanation of the total allocation of expenses**

<b>Chapter and item</b>	<b>Transferred from last year</b>	<b>The year's allocations</b>	<b>Total allocation</b>
046801	194 000	20 211 000	20 405 000

## Note B Explanation of used authorisations and calculation of the amount possibly

Chapter and item	Key words	Additional(-)/ reduced expense	Charged to expenses by others pursuant to granted debit authorisations(-)	Additional(-)/ reduced expenses pursuant to granted debit authorisations	Additional / reduced (-) revenues pursuant to additional revenue authorisations	Transferred from item 01 to 45, or to item 01/21 as from next year's appropriations	Savings(-)	Total basis for transfer	Max transferrable amount *	Possible transferrable amount calculated by the agency
046801		1 008 309	-887 720	120 589				120 589	1 020 250	120 589

\*The maximum amount that can be transferred is 5% of the year's appropriations in operating items 01-29, apart from item 24 or the sum of the last two years' appropriations for items with the key words "may be transferred". See annual circular R-2 for more detailed information on the transfer of unused appropriations.

### Explanation of the use of budget authorisations

#### Granted debit authorisations (charged to expenses by other parties)

The Norwegian Criminal Cases Review Commission has granted a debit authorisation to the Secretariat for the Mediation Service equal to NOK 887 360 for chapter 0468, item 01. The Secretariat for the Mediation Service has debited the amount of NOK 887 720 to the Commission. The difference will be refunded in the debit authorisation for 2022.

#### Possibly transferrable amount

The Norwegian Criminal Cases Review Commission's unused appropriations relating to chapter 0468 item 01 amount to NOK 120 589.

#### Appropriations relating to other budget chapters

In addition to appropriations relating to chapter 0468 item 01, the Norwegian Criminal Cases Review Commission has appropriations at its disposal relating to chapter 0414 Conciliation Boards and Other Court Expenses and chapter 0466 Special Criminal Case Expenses, etc. These appropriations are utilised in accordance with the regulations applicable to the rule-governed scheme.

Agency: The Norwegian Criminal Cases Review Commission

General ledger accounts reporting statement 31.12.2021

		2021	2020
<b>Operating revenues reported to the appropriation accounts</b>			
Fees received		0	0
Grants and transfers received		0	0
Sales and rental payments received		0	0
Other payments received		0	0
<i>Total payments received from operations</i>		0	0
<b>Operating expenses reported to the appropriation accounts</b>			
Salary payments	1	16 162 318	16 808 474
Other operating expenses	2	6 078 201	5 727 529
<i>Total operating expenses</i>		22 240 519	22 536 004
<b>Net reported operating expenses</b>		<b>22 240 519</b>	<b>22 536 004</b>
<b>Investment and financial income reported to the appropriation accounts</b>			
Financial income received	3	-561	0
<i>Total investment and financial income</i>		-561	0
<b>Investment and financial expenses reported to the appropriation</b>			
Investments	4	0	323 841
Share purchases		0	0
Financial expenses		0	0
<i>Total investment and financial expenses</i>		0	323 841
<b>Net reported investment and financial expenses</b>		<b>561</b>	<b>323 841</b>
<b>Debt-collection operations and other transfers to the state</b>			
Taxes, fees, charges, etc, received		0	0
<i>Total debt-collection operations and other transfers to the state</i>		0	0
<b>Grant management and other transfers from the state</b>			
Payment of grants and benefits		0	0
<i>Total grant management and other transfers from the state</i>		0	0
<b>Revenues and expenses reported for common chapters *</b>			
Group life insurance account 1985 (ref. chapter 5309, revenue)		20 246	18 700
Employer's NI contributions account 1986 (ref. chapter 5700, revenue)		1 998 722	2 088 244
Net bookkeeping scheme for VAT account 1987 (ref. chapter 1633,		899 994	910 534
<i>Net expenses reported for common chapters</i>		-1 118 974	-1 196 410
<b>Net amount reported to the appropriation accounts</b>		<b>21 122 106</b>	<b>21 663 435</b>

Overview of outstanding account with the public treasury \*\*

2021 2020

Receivables due from employees		0	0
Cash		0	0
Bank accounts containing state funds, outside Norges Bank		0	0
Withholding tax and other deductions due		-730 619	-772 707
Public taxes due		0	0
Pension premium allocated to the Norwegian Public Service Pension Fund		0	0
Advance payments received		0	0
Salaries (negative net amount, excess salary paid, etc)		0	0
Differences relating to bank and unidentified payments		0	0
<b>Total outstanding account with the public treasury</b>	<b>5</b>	<b>-730 619</b>	<b>-772 707</b>

\* Any other revenues/expenses reported for common chapters are to be specified in separate lines if required.

\*\* Specify and add lines if required.

[Refer to the guide regarding what is to be included in the outstanding account with the public treasury.](#)

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**Checksum of net amount reported to the appropriation accounts**

General ledger accounts reported	21 122 106
Appropriation accounts reported	21 122 106
<b>MUST BE ZERO</b>	<b>0</b>

**Checksum of outstanding account with the public treasury**

General ledger accounts reported	-730 619
Appropriation accounts reported	-730 619
<b>MUST BE ZERO</b>	<b>0</b>

Agency: **The Norwegian Criminal Cases Review Commission**

## Note 1 Salary payments

	<b>31.12.2021</b>	<b>31.12.2020</b>
Salaries	11 823 734	10 904 989
Employer's NI contributions	1 998 722	2 088 244
Pension expenses*	1 424 490	1 284 334
Sickness benefit and other refunds (-)	-1 187 078	-213 422
Other payments	2 102 450	2 744 330
<b>Total salary payments utbetalinger til lønn</b>	<b>16 162 318</b>	<b>16 808 474</b>

**No. of full-time equivalents (FTE):** 12,62 13,61

### \* Further details about pension expenses

Pensions are entered as expenses in the profit and loss account based on the premium actually accrued for the financial year.

The premium rate for 2021 is 14.00 per cent. The premium rate for 2020 was 14.00 per cent.

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## Note 2 Other operating expenses

	<b>31.12.2021</b>	<b>31.12.2020</b>
Rent	1 605 330	2 009 871
Maintenance of own buildings and facilities	0	0
Maintenance and modification of leased premises	0	0
Other expenses relating to running properties and premises	329 402	288 163
Repair and maintenance of machinery, equipment, etc.	0	0
Minor equipment purchases	23 766	52 488
Rental of machinery, fixtures, fittings, etc	0	0
Purchase of consultancy services	3 342 622	2 230 775
Purchase of other external services	227 060	239 740
Travel and per diem allowances	161 665	126 451
Other operating expenses	388 355	780 042
<b>Total other operating expenses</b>	<b>6 078 201</b>	<b>5 727 529</b>



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### **Note 3 Financial income and expenses**

	<b>31.12.2021</b>	<b>31.12.2020</b>
<i>Financial income</i>		
Interest income	-561	0
Foreign exchange gains	0	0
Other financial income	0	0
<b>Total financial income</b>	<b>-561</b>	<b>0</b>
	<b>31.12.2021</b>	<b>31.12.2020</b>
<i>Financial expenses</i>		
Interest expenses	0	0
Foreign exchange losses	0	0
Other financial expenses	0	0
<b>Total financial expenses</b>	<b>0</b>	<b>0</b>

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## Note 4 Investments and share purchases

	31.12.2021	31.12.2020
<i>Investments</i>		
Intangible assets, etc	0	0
Land, buildings and other real property	0	0
Infrastructure assets	0	0
Machinery and vehicles	0	0
Operating equipment, fixtures, fittings, tools, etc	0	323 841
<b>Total investments</b>	<b>0</b>	<b>323 841</b>

	31.12.2021	31.12.2020
<i>Share purchases</i>		
Capital contributions	0	0
Bonds	0	0
Investments in shares and partnerships	0	0
<b>Total share purchases</b>	<b>0</b>	<b>0</b>

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**Note 5 Link between the settlement with the public treasury and the outstanding account with the public treasury**

**Part A The difference between the settlement with the public treasury and the outstanding account with the public treasury**

	31.12.2021	31.12.2021	Difference
	Specification of the <u>recorded</u> settlement with the public treasury	Specification of the <u>reported</u> outstanding account with the public	
Fixed-asset investments			
Investments in shares and partnerships*	0	0	0
Bonds	0	0	0
<i>Total</i>	<i>0</i>	<i>0</i>	<i>0</i>
Current assets			
Trade debtors	0	0	0
Other receivables	0	0	0
Bank deposits, cash, etc	0	0	0
<i>Sum</i>	<i>0</i>	<i>0</i>	<i>0</i>
Long-term liabilities			
Other long-term liabilities	0	0	0
<i>Total</i>	<i>0</i>	<i>0</i>	<i>0</i>
Current liabilities			
Trade creditors	-644 441	0	-644 441
Withholding tax due	-730 619	-730 619	0
Public taxes due	0	0	0
Other current liabilities	0	0	0
<i>Total</i>	<i>-1 375 060</i>	<i>-730 619</i>	<i>-644 441</i>
<b>Total</b>	<b>-1 375 060</b>	<b>-730 619</b>	<b>-644 441</b>

\* Agencies that own fixed-asset investments in the form of shares and partnership shares must also fill in note 8 B

**Part B Specification of investments in shares and partnerships**

				Firm's balance-sheet equity	Carrying value in the accounts*
Acquisition date	No. of shares	Ownership share	Voting share	Firm's profit/loss for the year	

*Shares*

Company 1

Company 2

Company 3

Carrying value 31.12.2021

\* Investments in shares are recorded at their original cost. The carrying value is the same in both the enterprise's account specification and the capital accounts.

When filling in note 8, part B, figures from the firm's last presented annual accounts shall be used. Firms in which the agency owns shares may not have published their annual results before the agency's deadline for submitting an annual report with annual accounts (as soon as they are ready and by 15 March). When filling in the note, you may use figures taken from the firm's annual accounts for the previous year. If accounting figures from the latest year are not used, this should be stated in the note.