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Investigation of Police Affairs

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# Content

# Foreword

Jan Egil Presthus was director of the Bureau from its establishment on 1 January 2005 until his far too early passing on 6 January 2020. I have great respect for his work during these 15 years on developing the Bureau to what it is today, with a distinct stamp of legitimacy, quality and integrity. On 7 May 2020, I was appointed by the King in Council as Presthus's successor, and began work on 17 August the same year. I aspire to further develop the Bureau along the lines set out by Presthus coupled with current expectations regarding quality, case processing time and organisation. I look forward to this work. In view of the knowledge I now have of the Bureau's employees, I am convinced that I am not aiming too high.

Since I graduated from the Police College in 1987, my working life has mainly been devoted to the police and prosecuting authorities. I experienced several years of operational duty prior to transfer to the prosecuting authorities, serving a period as a Chief of Police and ending as a senior public prosecutor at the Office of the Director of Public Prosecutions. Just under a year in Kabul in Afghanistan in 2007–2008 also provided useful perspectives for work at the Bureau. In this war-torn country, I experienced at close quarters how destructive it is to have a police force marked by corruption and lack of confidence.

The social mission of the Bureau – to maintain public confidence in the police and prosecuting authorities – is deeply meaningful and inspiring. The Bureau is responsible for preserving a particularly important democratic function.

From time to time, the Bureau is accused of having too close links to the police. This view was also expressed towards the end of 2020 in connection with a case where the police shot and killed a man at Bolkesjø in Notodden municipality. It was asserted that the Bureau viewed the case with "the eyes of the police", and the familiar discussion regarding who shall be responsible for investigating offences committed in the course of duty flared up again. The Bureau is organisationally entirely independent of the police, but we must always carefully consider objections to arrangements regarding how society is to investigate offences committed by persons who are themselves entrusted with enforcing the law. In 2021 we will establish our own

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ethical guidelines. These will undertake to point out the various dilemmas we face as an organisation, not least in promoting greater awareness with regard to objectivity, integrity and neutrality.

One must nevertheless be aware that officers of the police and prosecuting authorities must be investigated with the same professionalism and legal safeguards and pursuant to the same rules as any other citizen investigated for an offence. It is therefore difficult to envisage an arrangement where the Bureau is not largely staffed by persons with a background from the agencies that practise professional investigation, i.e. the police and prosecuting authorities.

In my view, the fact that a number of us who work at the Bureau have felt the stress, the rush of adrenaline or the need for rapid response – sometimes involving use of a firearm – in various operational situations adds a valuable dimension to our decisions. Nor need it be a drawback to have held the role of lawyer on duty, often at night, where procedural decisions must be made when pressed for time with limited information available. Be that as it may, it is nevertheless a source of strength that several of our senior investigation officers do not have such a background. This results in a balance both for the organisation as a whole and for the processing of individual cases. In this regard, I will also call attention to our eight lawyers on assignment. These people do very valuable work and, in my dialogue with the Ministry, I will propose new ways of harnessing their competence, so that they are given a more visible role in future.

For some years, the time spent by the Bureau on dealing with cases has been too long. It is my ambition to do something about this without any reduction in quality. It is important for all parties that cases are decided within a reasonable time, and this in itself results in an increase in confidence. From 1 December 2020, selected senior investigation officers were given the authority to decide clear cases

where there are no reasonable grounds to initiate investigations. These cases will therefore not receive two-instance processing at the Bureau, and will thus be decided more rapidly. The arrangement will free up time for the more resource-demanding cases.

I also feel that a central case reception should be set up at the Bureau. Just before Christmas 2020, a working group submitted its recommendations regarding the design and location of such a reception facility. The arrangement should be in place by the end of the year. The objective is to ensure continued a high quality of initial investigations while fostering more similar practice in deciding the cases where investigation is to be initiated. I strongly believe in the measure, not least because, in combination with the authority given to selected senior investigation officers, it will lead to reduction of the total time spent on dealing with cases.

How the Bureau should be organised has been under consideration during recent years. In autumn 2020, a working group was set up to consider the structure of the Bureau and the arrangement, location and size of the various departments. The working group submitted its recommendations in January 2021, and follow-up of this work will be of central importance during the coming year.

For various reasons, the continuous work on competence development during recent years has not received the attention it deserves. A long-desired strengthening of the budget for 2021, allowing an increase in personnel, will also entail that we can prioritise and intensify increased work on competence development.

In order to safeguard our important social mission, the Bureau must have high competence at all levels.

Transparency regarding our decisions has always been important to the Bureau. We will further develop this in other ways, such as by means of social media.

In 2020 we have also dealt with cases where people have been shot and killed by the police. Such cases are generally difficult for the bereaved, and they are demanding for the police officers involved. Our obligations pursuant to international conventions require that these cases are dealt with tactfully and subjected to thorough investigation.

The taking of lives by police officers when acting in the course of duty is always to be avoided, and the Bureau must play a part in preventing this as part of our mandate.

Many cases involving use of firearms with fatal consequences occur in connection with police assistance to the health service or in cases involving psychiatry or suicidal persons. The fact that most persons shot by the police belong to these categories – and are thus shown by experience to be at an increased risk of being subjected to fatal use of force – should call attention to the need for further learning at both tactical and operational levels.

As regards learning, the Bureau has considerable materials and experience to contribute. One of our experiences is that many cases could have been avoided if leaders at various levels of the police or prosecuting authorities had taken the initiative to the "difficult conversation" at an earlier stage; had paid attention to rumours, gossip and things that were "general knowledge". According to the terms of reference of the Bureau, one of our primary areas of responsibility is learning. We wish to promote further development of this field, principally as part of a more structured dialogue with both the Police Directorate and the Police University College. In our experience, our decisions regarding cases involving use of firearms are made considerable use of in relation to police operations.

The case concerning gross corruption and abetting of aggravated drug felony, which the Bureau has worked on since 2014, was finalised on 10 November 2020 when the Appeals Committee of the Supreme Court denied leave to appeal. The case has demanded considerable resources of the Bureau for a number of years, but has also provided considerable experience and knowledge of great future value.

Terje Nybøe
Director of the Norwegian Bureau for the Investigation of Police Affairs

TEXT John Reidar Nilsen / PHOTO at left: unsplash.com, at right: Geir Fiskerstrand, page 13: unsplash.com

# The crime prevention work of the police

## – good intentions, but with a poor legal basis

On 25 March 2020, the newspaper *Bergens Tidende* printed the following headline:

"The police are considering visits to men convicted of domestic violence". This was intended as a crime prevention measure in police work on "giving priority to violence towards and abuse of children and violence towards a spouse or cohabitant".

Police crime prevention work is a major element of public efforts to *safeguard* fundamental human rights. In the community at large, there is a general expectation that the police is as far as possible capable of preventing crime and, in cases where the public authorities "understand or should have understood" that a person's rights are in danger of infringement, both the Norwegian Constitution and the European Convention on Human Rights prescribe a duty of action. However, the obligation of the police to safeguard human rights is not absolute. Such efforts must also pay regard to other fundamental human rights.

Neither the Police Act and its travaux préparatoires nor legal writing provide clear and unequivocal directions for the means and methods to be employed in police crime prevention activities. In practice, any measure at all may be considered appropriate. In the light of the rule of law (see article 113 of the Norwegian Constitution), such a clarification seems little relevant. The significant factor is whether a measure and/or activity as such constitutes an *intervention* in the rights of the individual, and thereby requires a basis in law.


**John Reidar Nilsen**

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Currently attached to the Faculty of Law at the University of Bergen and the project "Police and police law". He is currently working on a PhD thesis on the topic of:

*Constitutional limitations for police activities – with a particular emphasis on human rights and the rule of law.*

Interventional exercise of authority by the police is legitimate when it has a basis in law, is founded on a legitimate purpose, is manifestly necessary and proportionate and is exercised within the legal limitations of human rights.

There is no doubt whatsoever that crime prevention measures involving visits to men convicted of domestic violence or similar surveillance activities, constitute intervention in individual privacy, family and/or domestic life, and consequently violate section 102, first paragraph, of the Norwegian Constitution, since the measure/activity has no basis in law (see article 113 of the Norwegian Constitution).

It is not unusual for police officers to invoke sections 2 (2) and 7 of the Police Act and *general freedom of action* or *consent* as a legal basis for various unspecified interventional measures for preventive purposes. Reference is also made to various political signals indicating prioritisation of crime prevention work.

It follows from section 2 (2) of the Police Act that one of the key roles of the police is to "prevent crime and other violations of public order and security". This provision does not give the police the authority to implement interventional crime prevention measures, and may only be viewed as a duty norm where the Storting indicates that the police are to give priority to crime prevention work. Any management signals from the Government will at the most reinforce the significance of the provision as a duty norm.

Pursuant to section 7 of the Police Act, the police may adopt specific measures to prevent disturbances of public peace and order or violations of the safety of individuals or the general public or breaches of the law in general (see the second paragraph of the provision). The scope of the provision as a competence norm for interventional measures must be established in the light of, inter alia, the individual's *general freedom of action* in conjunction with the specific nature of the crime prevention activity. Certain requirements must therefore be made regarding situations legitimating adoption of interventional measures. Assumption of a risk that qualifies for implementation of such a measure must be supported by objective and verifiable information. Furthermore, the risk must be assessed as *concrete* and *imminent* (see the condition "reason to fear" stated in section 7 of the Police Act). A more abstract possibility that a person will break the law is thus not sufficient.

These conditions are clearly distinct from individually oriented police crime prevention activities characterised by implementation of measures (founded on risk assessment involving comparison of an individual's behaviour with a profile of behaviour regarded as cause for concern) at an earlier stage of a constructed course of events thought likely to lead to a breach of the law. There is thus a genuine risk of directing such measures against persons who have not broken the law or even considered doing so. The significance of section 7 of the Police Act as a competence norm for police crime prevention activities is therefore severely limited, and is not suitable as a general competence norm for police crime prevention activities.

The only other competence norms that specifically authorise concrete interventional crime prevention measures are provided in chapter II of the Police Act. Section 6a regulates *police use of camera surveillance* while section 13 authorises *preventive interviews*. We can thus affirm that the Police Act only to a limited extent authorises interventional measures for police crime prevention.

It is not surprising that a perception that the police can invoke *general freedom of action* as a basis for interventional measures prevails in the police service. Such a perception is also rooted in the jurisprudential discussion recommending that the rule of law should only prescribe authority for *regulative actions*, where legal statutes are only one of several alternative legal bases. Furthermore, the public authorities have the same freedom of action as the individual as regards *actual activities* provided there is no regulation prohibiting the action. An example is section 13.3.1 of Official Norwegian Report

NOU 2004: 6 on preventive methods in the police service, where the majority stated as follows:

"It has generally been assumed that the police, when investigating and preventing criminal acts pursuant to general freedom of action, may carry out any actions that may be carried out by any and every person."

This perception of *the rule of law* and *general freedom of action* may, in the light of the constitutional reform's approach to the rule of law and the judicial practice of the Supreme Court, not be viewed as an expression of current law. As pointed out by Jens Edvin Skoghøy in *"Rett og Rettsanvendelse"* [Law and Application of the Law] (Universitetsforlaget 2018), pages 56–57:

"By requiring that 'interventions by the authorities against individuals have a basis in law', article 113 of the Norwegian Constitution, following the constitutional reform of 2014, reinstates the rule of law as a fundamental, substantive legal safeguard for members of the public."

As a result of the requirement of the rule of law that interventions by the public authorities – regardless of whether they may be viewed as regulative or actual actions – require a basis in law (see article 113 of the Norwegian Constitution ) the freedom of action of the police is limited to *noninterventional measures* that are not prohibited by law.

The prevailing perception in the police service that *consent* may serve as a basis of authority for interventional crime prevention measures is understandable. It is inherent in the concept of consent that consent by the person against whom a measure is directed suspends the action's interventional character. The consent – as an expression of free will – eliminates the action's nature of force, which must be said to constitute the core of an interventional measure.

In various areas of law, examples can be found whereby individuals may consent to interventional measures by the public authorities. See, for example, the provisions concerning search in chapter 15 of the Criminal Procedure Act (in particular section 197, first paragraph). In section 24 (1) of the Police Databases Act, consent is provided as an independent basis for the authority to make confidential information known to other persons. Another example is the provision in section 22, first paragraph, of the Mental Health Care Act that an individual may consent to compulsory mental health care. These examples are characterised by the fact that the individual right to consent to exercise of authority in violation of integrity is provided by law.

***Police crime prevention measures may constitute intervention if the individual's private sphere is so affected that the person concerned must "perform, submit to or omit to do something"***

One of the purposes of the rule of law is to safeguard individual security under the law by limiting the power of the authorities to exercise interventional authority. The principle is manifested in this respect as a prohibitive norm prohibiting the public authorities from implementing interventional measures that have no basis in law. An arrangement whereby the police – beyond the scope of statutory exceptions – may also invoke consent as a basis for interventional exercise of authority, actually constitutes a circumvention of the implications of the rule of law as a prohibitive norm, which may create conditions favourable to arbitrary exercise of authority. Consequently – in accordance with the legal system – it must be assumed that, if consent is to serve as a basis for police measures, this must be authorised by statute. Consent-based interventions will then have a basis in law.

Neither the Norwegian Constitution nor the Police Act provides a definition of what may be deemed an *interventional measure*. Not every *oppressive measure* may be characterised as an intervention pursuant to article 113 of the Norwegian Constitution. Whether a measure is to be deemed interventional depends on an overall assessment of the *type*, *intensity* and *duration* of the measure. Conditions associated with the individual also play a major role. Furthermore, the specific nature of the crime prevention measures must be ascribed considerable weight in an overall assessment.

***In a crime prevention context, there is a danger that the police will regard the individual as an object to be subjected to regulation in order to reduce the risk that a threat will be materialised, rather than as a (legal) person with certain rights.***

Police crime prevention measures may constitute an intervention if the individual's private sphere is so affected that the person concerned must "perform, submit to or omit to do something".

Owing to the fact that crime prevention measures may be directed towards individuals who have not broken the law or even made preparations to do so, but have only behaved in a manner that gives grounds for predictive concern, the threshold for characterising a measure as interventional is lower than for repressive police measures. Furthermore, the decision regarding whether the measure constitutes an intervention is not limited to assessment of individual measures. The assessment must include all measures in an activity that place a planned and systematic focus on individuals or groups of individuals. This entails that an individual measure that does not in isolation exceed the lower tolerance limit for what may be deemed intervention may constitute an intervention pursuant to article 113 of the Norwegian Constitution when implemented as part of an overall activity.

Society's focus on crime prevention is both appropriate and important. As a police method, it testifies to an acknowledgement of the insufficiency of the assumed individually and generally deterrent function of criminal legislation as a guideline for desirable conduct or as a conduct-regulating instrument. To remedy this, measures are implemented at an earlier stage of a constructed course of events that may lead to breaches of the law. In this way, the activity focuses on conduct that is characterised as "antisocial behaviour", and is in danger of both moralising and stigmatising. The preventive measures of the police, which have the purpose of safeguarding the "vulnerable individual" who is frightened of being "in jeopardy", may thus have an impact on other vulnerable members of the community; those who, for one reason or another, have "fallen astray" or who do not identify with the general perception of correct conduct.

In a crime prevention context, there is a danger that the police will regard the individual as an object to be subjected to regulation in order to reduce the risk that a threat will materialise, rather than as a (legal) person with certain rights.

The police play a major role in attending to the duty of the state to safeguard fundamental human rights, while human rights define what may be deemed legitimate exercise of police authority. As also pointed out by Inger Marie Sunde in the article *"Bør rettssikkerheten i politiets kriminalitetsforebyggende arbeid styrkes?"* [Should security under the law be strengthened in police crime prevention work?], Tidsskrift for strafferett No. 1/2020, it is therefore important that police crime prevention work is exercised within the legal limitations that can be inferred from human rights, which require that the activity is regulated by law.

TEXT Jørn Sigurd Maurud / PHOTO Director of Public Prosecutions

# The Director of Public Prosecutions' reflections on the Bureau

This year, we can congratulate the Bureau on 15 years since its establishment. For most of this period, I have followed the work of the Bureau at a distance, but in recent years – particularly during my time as head of Oslo Public Prosecuting Authority – I have become better acquainted with the Bureau's activities, not least in connection with the cooperation between Oslo Public Prosecuting Authority and the Bureau on prosecution of the Jensen/Cappelen case. When I specifically mention this case, it is to commend the Bureau for the work it has invested in it since 2014. Even for a large police district, this would have been a very demanding case to investigate. The effort and – not least – endurance shown by the Bureau throughout this investigation and prosecution is truly impressive. I am, of course, also satisfied that the result arrived at by the court was in accordance with the prosecution decisions of the Director of Public Prosecutions.

In my relatively new role as Director of Public Prosecutions, I have become the Bureau's professional superior, and I am looking forward to becoming even better acquainted with its employees and its social mission.

My knowledge of the Jensen/Cappelen case and of the many other cases that have crossed my desk since I became Director of Public Prosecutions give a very positive impression. There is no doubt that the Bureau maintains high quality in its investigations and in its prosecution decisions. It is pleasing to be able to confirm this because the high quality of the work carried out by the individual employees is of crucial importance for public confidence in the Bureau as a whole. In this connection, it is appropriate to extol the first director of the Bureau, Jan Egil Presthus, who so tragically and suddenly passed away in January 2020. His contribution to making the Bureau what it is today, where confidence, quality, independence and legitimacy have been guidelines for its activities, cannot be overestimated.

I feel extremely confident that the Bureau's new director, Terje Nybøe, will continue Jan Egil Presthus' work in an excellent way. I know Terje Nybøe very well, and, in my view, the Ministry of Justice and Public Security made a very good choice when they appointed him as the new director of the Bureau. As well as being an enthusiastic, caring and charming man, Terje Nybøe has an unusually broad background from the police and prosecuting authority. Not only does he have

background from the Police Tactical Firearms Unit and from the Office of the Director of Public Prosecutions, he also has sound practical experience as a police lawyer and public prosecutor in addition to his extensive managerial experience from offices such as Deputy Chief of Police, Chief of Police and Senior Public Prosecutor.

Over the years, a reduction in the Bureau's case processing time has been called for. I know that the Bureau is now working on this. One course of action involves authorising senior investigation officers to decide cases where there are no reasonable grounds to initiate investigations. I believe this to be a wise move. This should not only help to reduce the overall time spent on dealing with cases, but also ensure that the Bureau's resources are applied to the cases that require a considerable investment of investigative resources. I am also familiar with the ongoing work on the possible establishment of a joint case reception and certain other organisational changes at the Bureau. I am looking forward to the outcome of this work. As time goes on, I will also assess whether the Director of Public Prosecutions, in his capacity as professional superior, should conduct inspections of the Bureau according to the model for inspection activity conducted by the regional public prosecuting authorities in the police districts. This has not been done before at the Bureau, but experience has shown that such inspections are of mutual benefit and also reveal procedures and tasks that can be improved. I will return to this in dialogue with Terje Nybøe.

Good luck with important work in 2021!

**Jørn Sigurd Maurud**

TEXT Norwegian Bureau for the Investigation of Police Affairs / PHOTO Getty Images

# Press access to the Bureau's criminal cases

Criminal case documents are confidential. This article gives an account of the Bureau's processing of requests from the press for access to documents relating to our criminal cases.

Documents in state agencies are as a general rule publicly accessible. However, this does not apply to criminal case documents. In the case of criminal case documents, information is by default confidential.

In accessing case information, parties to criminal cases, the suspect and the aggrieved person, have rights other than and additional to the rights of persons who are not parties. This is because the persons whom the case concerns must be given an opportunity to familiarise themselves with such information in order, if appropriate, to refute it. As a general rule, access to a case to which a person is a party is granted by allowing the person to read the documents at the Bureau. If the person has a lawyer, the documents may be read at the lawyer's office.

Other persons than the parties, particularly journalists, may also have a right of access to information relating to a criminal case. In this article, we wish primarily to focus on the Bureau's processing of access requests from journalists.

Most documents in a criminal case contain confidential information, i.e. information concerning "an individual's personal affairs". The press may therefore only be granted access when an exception is granted from the duty of confidentiality.

***Most documents in a criminal case contain confidential information, i.e. information concerning "an individual's personal affairs"***

The rules that apply to access depend on whether the criminal case is still under investigation or whether it has been decided. Stricter rules apply to granting of access during an investigation than when the case has been decided. In an undecided case, access may be granted to the press when there are special reasons for doing so and the access is "deemed unobjectionable" with regard to further processing of the case. In cases that have been decided, access may be granted when there are "objective grounds" for doing so. It must also be mentioned that there are also implications for this question in article 10 (1) of the European Convention on Human Rights (ECHR). As is well known, article 10 (1) safeguards the right to freedom of expression, primarily that the public authorities shall not interfere with this right. This provision is also relevant to access. Practice from the European Court of Human Rights (ECtHR) and the Supreme Court of Norway confers upon the public authorities a certain positive obligation to release material (including from criminal cases) in cases of public interest. The Supreme Court of Norway dealt recently with such a case (see below for more information on this).

The press has an important social mission in controlling the exercise of authority and informing the general public of cases of general interest. It therefore has an objective need for information concerning such cases. The Bureau wishes to encourage transparency regarding our decisions, which is a basic premise for public confidence in us. It is in our interest that our assessments and decisions are subject to review. Such reviews can help to reveal errors both in individual cases and at system level. These factors justify granting access to the press. On the other hand, the Bureau must also bear in mind the considerations that contraindicate granting the press access to criminal case documents. The Bureau must take into account that the information to which access is granted will often be made public. Due regard for the persons the case concerns therefore plays an important role in considering this question. Criminal case documents may also contain information that proves incorrect or that, in isolation, gives a misleading or fragmentary picture of the case or investigation. Information may have been disclosed in connection with testimonies that witnesses are obliged to provide or by means of means of force, such as search and seizure of property. It may also be that persons referred to in the documents are not aware that there is information concerning them in the case, and they have in such case not been given the opportunity to refute the information. A further factor is that, if the Bureau has a practice of providing extensive press access, for example to testimony, this may in the long term result in reluctance to provide information on the part of both witnesses and suspects owing to fears of being able to read their own statements in the media.

***It is in our interest that our assessments and decisions are subject to review.***

In this connection, it is relevant to refer to a case against a senior police officer who was investigated by the Bureau. At the appeal proceedings of the Director of Public Prosecutions against our dismissal of the case, the press was not given full access to the documents of the criminal case precisely out of regard for the person involved and the fact that the access request concerned typical criminal case documents.

The Director of Public Prosecutions' rejection of the access request was brought before the courts by the press, and was heard by the

Supreme Court on 9 and 10 February 2021. At the time of writing, the conclusion had not yet been reached. The Supreme Court's decision in the case is of course of great interest.

In autumn 2020, the Bureau dismissed a case concerning a collision between a police car and a motorcycle. The press had previously published a video of the incident. In its decision concerning the case, the Bureau attached importance to a video recording other than that produced by the press, and the press then requested access to this. In considering whether or not to grant access, regard was paid to several of the above-mentioned factors such as, on the one hand, transparency regarding the Bureau's decisions and public confidence in the assessments on which dismissal of the case was based and, on the other hand, the fact that the case had not been finally decided since it had been appealed to the Director of Public Prosecutions. Importance was also attached to the receipt by the press of an anonymised decision describing both video recordings, which thus enabled a review of the Bureau's assessments. The Bureau assessed there to be no "special reasons" for granting the press access and nor was such access "unobjectionable with regard to further processing of the case". After the case had been finally decided by the Director of Public Prosecutions' decision to uphold dismissal of the case, the Bureau considered there to be "objective grounds" to grant the press access to the video recording, and the recording has now been released.

The press has right of access to an indictment that has been served. The same applies to optional fines that are not accepted, and which take the place of indictment. The press has no right of access to accepted optional fines.

Transparency regarding our decisions is of major importance to the Bureau, and we practise the principle of extended public accessibility. For a number of years, we have published anonymised summaries of all of our decisions on our website.

We also publish anonymised summaries of some court cases. It is our experience that journalists throughout Norway are beginning to be aware of our practice of publishing summaries, and we frequently receive requests for anonymised summaries based on information concerning cases on our website or newly decided cases. Such requests are usually granted.

In 2021, we will also make use of social media to communicate our decisions more rapidly and, if appropriate, to new groups of people.

We often also receive enquiries from journalists concerning access to statistical data regarding specific topics and access to associated cases. For example, we received such enquiries in connection with cases concerning police violence in the USA and a request from the Norwegian press for an overview of cases with associated decisions, where persons have been killed by the police in Norway. Responding to such enquiries is costly because it involves considerable manual work, particularly with regard to anonymising of decisions. The Bureau also wishes to be able to provide information regarding our work on criminal cases. We therefore attempt as far as possible to provide requested information, and also make ourselves available for interviews.

The rules regarding access to criminal case documents are primarily provided by section 28 of the Criminal Procedure Act, section 16-5 of the Prosecution Instructions and section 27-2 of the Police Records Act. In 2017, the Director of Public Prosecutions issued (Riksadvokatens skriftserie 3/2017) the guide "Access to criminal case documents for persons other than parties to the case", which provides a useful guide to the various conflicting considerations.

TEXT Norwegian Bureau for the Investigation of Police Affairs / PHOTO unsplash.com

# Bans on visits

## – the duty of the police to protect members of the public

The Bureau has dealt with several cases concerning the duty of the police to protect members of the public. In this article we examine more closely bans on visits as a protective measure.

The Bureau often deals with cases where it is alleged that the police have applied *excessive* force, intervened against members of the public without sufficient grounds or made use of means of force that were manifestly disproportionate. However, it is important to be aware that issues may arise associated with *insufficient* use of force by the police or prosecuting authority or insufficient use of the various powers to intervene.

In recent years, the Bureau has dealt with a number of cases associated with the police role of protecting the general public. The issue has particularly been brought to the fore in connection with incidents involving manslaughter, where it transpires that, prior to losing his or her life, the deceased was in contact with the police (see box).

Pursuant to section 2, first paragraph (1), of the Police Act, one of the main responsibilities of the police is protection of members of the public. The same follows from the security obligation pursuant to article 1 (see articles 3 and 8) of the European Convention on Human Rights (ECHR). For the Bureau, the question may be whether this responsibility has been satisfactorily fulfilled, particularly when it transpires that someone who has been killed or injured has contacted the police owing to fear of named persons.

On 25 April 2013, a similar issue was considered by the Supreme Court, published in Norwegian Supreme Court Reports Rt-2013-588. The situation was that a woman had had a brief relationship with a man, who was subsequently convicted of gross violence towards the woman. When he had finished serving his prison sentence, he violated the bans on visits several times, and subjected the woman to stalking and harassment. The Supreme Court found that

### Examples of cases

In 2020, the Bureau initiated investigations into a double homicide where information was received that the victims had been in contact with the police concerning the person who was later charged with the killings. The case is still under investigation. In the Annual Report for 2016, the topic is dealt with in an article about police processing of cases concerning domestic violence. On the Bureau's website there is a summary of one of the cases referred to in the article. The case concerned a killing in Melhus, where the victim had been in contact with the police in connection with violence and threats from her spouse.

the state had failed to fulfil its obligation to protect the woman pursuant to the European Convention on Human Rights (ECHR). Article 8 of the European Convention on Human Rights prescribes the right to private and family life and respect for home. The state is obliged to ensure these rights to "everyone within their jurisdiction".

In paragraph 46 of the judgment, the Supreme Court states:

> *And the state is not expected to prevent any danger of violations by private persons. However, a* real *and* immediate *risk that the public authorities* are *or* should be *aware of must be reacted against with the measures that, in view of the situation, are* reasonable *to expect.*

In the case, the Supreme Court found that the follow-up of repeated violations of bans on visits was very inadequate. A ban on visits is an adequate means of protection against stalking. However, if such a prohibition is to have the intended preventive effect, it must *be enforced* by investigating and punishing any violations". The ban on visits was in fact in this case found not to have been enforced, and the state was convicted of failing to fulfil its obligation pursuant to the European Convention on Human Rights to secure the woman against stalking.

In 2020. a similar issue was brought to the fore by the ECtHR's judgment in the case Kotilainen and other v. Finland. The case stemmed from the school shooting in Kauhajoki in Finland on 23 September 2008, where a man killed 10 persons before killing himself. In June 2008, the perpetrator had applied to the police for a firearm licence. He had purchased a firearm in the August, and received a licence for it in the September.

The police later received information that gave them reason to suspect that the person might be considering carrying out a school shooting. Among other indications, activity on the Internet gave cause for concern. The police decided to seize the firearm, but did not succeed in carrying this out immediately. Shortly after, on 22 September, the person was summoned to an interview with the police. On the basis of the interview, the police found no grounds to withdraw the firearm licence or seize the firearm. The following day, the school shooting was carried out.

The officer who conducted the interview with the person without seizing the firearm was indicted. After acquittal by a court of the first instance, the appeal court found that the firearm should have been seized. The officer was convicted of breach of official duties, but not found responsible for the killings. The Supreme Court rejected any further appeal. Seizure of a weapon is described as a preventive measure which must have a low threshold.

***Of course, a ban on visits involves no physical protection against an offender able and willing to harm another person, but it demonstrates the seriousness with which the police view the case, and may provide a sound basis for penal sanctions and use of means of force.***

In its judgment, the European Court of Human Rights reminds that the state, pursuant to article 2 of the European Convention on Human Rights, shall take "appropriate steps to safeguard the lives of those within its jurisdiction". As part of this obligation, it is particularly important that the state takes appropriate steps to secure the general public in connection with activities that may constitute a danger to human life, such as in connection with weapon management.

There is moreover an obligation to implement preventive measures for protection of individuals. This is particularly stated in paragraphs 69 and 73 of the judgment. It is stated there that this obligation is activated when it can be ascertained that the state was, or should have been, aware of the existence of a real and immediate risk to the

life of one or more individuals constituted by a third party, and that the state failed to react within the framework of its jurisdiction when this probably could have prevented the risk.

Particularly bearing in mind the major risk constituted by firearms and the limited measure involved in seizure of the firearm, it was established that failure to seize the firearm constituted a violation of article 2 of the Convention. This would have been a "reasonable measure of precaution to take".

The obligation to act prescribed by the Convention underlines how failure to invoke the existing authorities for intervention may constitute a violation of human rights. To omit to intervene to protect an individual in need of protection may be more censurable than the use of means of force or a similar intervention against the person who constitutes a risk.

The case is also relevant in Norway, and may be directly applicable in connection with police weapon management. However, the statements also serve as a reminder in other areas. The Bureau wishes to take the opportunity to call particular attention to the issue of bans on visits, both in connection with requests for this and subsequent follow-up.

The police may, for example, receive a request for a ban on visits but, shortly after, a situation may arise where the person who requested such an injunction is killed or subjected to violence. Situations may thus occur where the state had knowledge of a "real and immediate risk" to the life of an identified person, and an incident where failure to act may constitute a violation of the European Convention on Human Rights (ECHR). In such cases, a ban on visits may be a "measure that in view of the situation is reasonable to expect" (see Norwegian Supreme Court Reports, Rt2013588, paragraph 46).

A ban on visits is often a relatively low-threshold interventional measure easily available to the police. A person requesting a ban on visits generally has a right to protection of privacy from a party that violates this. On the other hand, the violator may not necessarily have any right to contact with another person who does not wish such contact. At the same time, there is reason to point out that a considerable range of cases involve requests for bans on visits. In cases where there are children in common, clearly involving conflicts relating to child custody, there may be a need for a thorough basis for decision-making. However, in many cases, a ban on visits is an obvious, simple and unproblematical measure.

Of course, an injunction prohibiting visits guarantees no physical protection against an offender able and willing to harm another person, but it nevertheless demonstrates the seriousness with which the police view the case, and provides a sound basis for penal sanctions and use of means of force. A ban on visits is perhaps the only initial measure available, and it is therefore important that it be considered.

The police sometimes wish to examine the person against whom a ban on visits is being considered before imposing such an injunction, but some time may elapse before such an examination is carried out. This may be because the criminal offence reported is not particularly serious, whereas the existing threat is more serious. It is of paramount importance that it is the threat that forms the basis of the assessment. In some cases, in order to fulfil the security obligation, it would probably be more appropriate to issue a ban on visits immediately rather than delaying the decision pending further investigative steps.

Finally, the Bureau will call attention to the Director of Public Prosecutions' Circular No. 1/2020 regarding objectives and priorities for processing of criminal cases, where paragraph 3 states that, in 2020, the police will increase the use of bans on visits. See also the corresponding circular for 2019, where the Director of Public Prosecutions reminds of the responsibility of the police and prosecuting authority pursuant to article 1 of the European Convention on Human Rights (see articles 3 and 8). The instructions of the Director of Public Prosecutions will of course be included in the Bureau's criminal law assessment of whether failure to fulfil the security obligation involves gross breach of official duties at both personal and corporate levels.

TEXT Norwegian Bureau for the Investigation of Police Affairs / PHOTO Politiforum

# Unlawful searches in various records

Each year, the Bureau deals with cases concerning searches in police records. The topic has been raised in previous Annual Reports. Here, we call attention to the Data System for Immigration and Refugee Affairs (DUF) and searches for close associates.

**Searches in the police records without an official purpose**
In previous Annual Reports we have addressed the issue of unlawful searches in police records. In the Annual Report for 2019 we turned our attention to the question of when searches in police records are unlawful, and provided an account of developments in law and the Bureau's decisions. The article from 2019 referred specifically to seven cases where the Bureau had imposed optional fines for violation of section 171 of the Penal Code concerning gross violation of an official duty for searching in the police case management system (BL). The cases concerned a fatal accident that had been covered in the press.

In 2020, the Bureau also investigated a number of cases involving suspicion of searches of police records without an official purpose, and we see a need to call attention to this once more. Correct use of the records is important both out of regard for protection of individual privacy and to maintain public confidence in the police.

This time, we specifically examine searches for close associates in the Data System for Immigration and Refugee Affairs (DUF).

Police employees have access to a number of different records in order to be able carry out their work. This applies to police officers, prosecution lawyers and civilian employees.

Police records include both the records used in connection with criminal cases and the records used to carry out civilian tasks. Civilian tasks of the police include immigration administration and processing cases concerning passports, drivers' licences and firearms.

***Correct use of the records is important both out of regard for protection of individual privacy and to maintain public confidence in the police.***

The police districts have drawn up instructions for use of police information and communication technology (ICT), which must be read and signed by all employees. These instructions state that an employee may only search records when he or she has an official purpose for doing so. This means that searching for a private purpose is prohibited. Searching in police records without an official purpose may thus constitute a criminal offence.

It is the National Criminal Investigation Service (Kripos) that is responsible for police records and the Directorate of Immigration (UDI) that is responsible for the Foreign Nationals Database (UDB), of which the Data System for Immigration and Refugee Affairs (DUF) forms a part. All use of the records is logged, and both the National Criminal Investigation Service and the Directorate of Immigration (UDI) have developed control systems which generate deviation reports if employees access the records unlawfully, e.g. search for information concerning themselves or family members. The National Criminal Investigation Service and the Directorate of Immigration forward the deviation report to the police district where the officer is located, and the police district decides whether to send the case to the Bureau for investigation.

If it is suspected that a police employee has made searches without an official purpose, the Bureau obtains log data from the National Criminal Investigation Service or the Directorate of Immigration as part of the investigation.

Pursuant to sections 171 and 172 of the Penal Code, searches without an official purpose are regarded as professional misconduct. The provisions prescribe penalties for any person who exercises or assists in the exercise of public authority and who grossly breaches his/her official duty.

The requirement that the violation must be gross entails that the provision does not apply to trivial misdemeanours. Regarding this condition, chapter 12.2.4, page 338, of Proposition No. 8 to the Odelsting (2007–2008) states as follows:

> "The condition has implications in two regards: Firstly, the deviation from correct conduct must be gross. Secondly, it must involve violation of an official duty of a certain significance."

The culpability requirement pursuant to section 171 of the Penal Code is intent. The scope of application of section 172 is acts which objectively fall under section 171 of the Penal Code, but where the culpability requirement is gross negligence.

It follows from section 21 of the Police Databases Act that direct searches may be made in the records on the condition that the officer has an official purpose and that the search is made in order to realise one of the purposes of the Act.

Pursuant to section 83, second paragraph, of the Police Databases Act, the official purpose condition is met if the officer wishes to be able to make a more correct or more well founded decision or to carry out more efficient and expedient service than if the information had not been available. Pursuant to section 83, first paragraph, direct searches must only be made if there is an official purpose and it is necessary to achieve the purposes referred to in section 82 of the regulations, which include processing of information in criminal cases and for police purposes.

In the view of the Bureau, searches without an official purpose constitute deviations from correct conduct according to the Police Databases Act and regulations issued pursuant to the Act. In connection with the assessment of whether an significant official duty has been violated, the Bureau wishes to point out that the risk that sensitive information will fall into the wrong hands increases when searches are made that are not warranted by official purposes. In assessing whether a breach of duty is gross, the crucial factor is the risk of dissemination, not whether the information was actually disseminated. If the information has been disseminated, it must also be assessed whether the statutory duty of confidentiality has been violated.

Pursuant to the Bureau's practice and case law, searches without an official purpose are deemed violation of an official duty, and *a single* search may be sufficient for deeming the violation gross (see Oslo District Court's judgment of 9 January 2020).

In the view of the Bureau, use of police records without an official purpose and risk of violation of the duty of confidentiality constitute a major challenge for the police, and awareness is necessary at all levels. Firstly, by conducting searches without an official purpose, the officer abuses the confidence he or she has been given when granted access to police records. Secondly, there is a reduction in public confidence in professional information handling by the police. Violation of the duty of confidentiality is also a serious matter because it weakens protection of privacy and may have an adverse effect on the investigation.

In 2020, the Bureau imposed an optional fine or granted a waiver of prosecution in ten cases concerning searches without an official purpose and violation of section 171 or 172 of the Penal Code. Five of the cases concerned searches without an official purpose in the Data System for Immigration and Refugee Affairs (DUF). In most cases where the Bureau issued a waiver of prosecution or optional fine, the searches without an official purpose were made by civilian police employees. For more information, see **page 38.

**Further information regarding searches in the Data System for Immigration and Refugee Affairs (DUF)**

DUF is the case management part of the Foreign Nationals Database (UDB). The system is used in connection with the immigration authorities' processing of immigration cases, such as applications for asylum, family reunification, residence permits, etc. Several thousand employees, including police employees, have access to this system and use it in their daily work.

Use of DUF is regulated by the Personal Data Act and the General Data Protection Regulation (EU) 2016/679 (GDPR) (see the Immigration Act and the Immigration Regulations). Use of the system is only permitted in conformity with the purpose for which the information is obtained, i.e. use of DUF also requires an official purpose.

Pursuant to article 9 of GDPR, processing of personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, and the processing of genetic data, biometric data for the purpose of uniquely identifying a natural person, data concerning health or data concerning a natural person's sex life or sexual orientation is prohibited. However, the immigration authorities are nevertheless allowed to carry out such processing in order to fulfil the responsibilities of the Norwegian authorities in the area of immigration administration. The fact that the DUF data system contains such exceedingly sensitive personal data concerning a large number of persons entails strict requirements that officers do not familiarise themselves with or use information from the system without an official purpose. The Directorate of Immigration has made it quite clear that searching for information concerning oneself, family members, friends and acquaintances or well-known persons is prohibited. This has been communicated by the Directorate of Immigration to the police districts.

Searches in DUF for private purposes is clearly capable of reducing confidence in the police and the immigration authorities' protection of personal data, and involves an increased risk that data will fall into the wrong hands or be misused. In the view of the Bureau, all uses of DUF that are not warranted by official purposes constitute punishable violation of an official duty.

On 13 January 2021, Stavanger District Court passed judgment against a civilian employee of the immigration administration of the police. The employee had made a number of searches during several years for information regarding his spouse and other family members and friends. The optional fine imposed by the Bureau concerned searches for information regarding his spouse, a close friend, a relative, an acquaintance/friend and himself in DUF in 2019 (approximately 10 searches). The employee did not accept the fine. The District Court affirmed that searches are only permitted when they have an official purpose. The searches made by the employee were in violation of official duties because they were not made in the course of his work. The enquiries from the persons he had searched for information on had been received by him because of the private relations between them, and the searches in DUF were made in order to reply to private enquiries and requests, and were not made in the course of his ordinary duties. The employer had also made clear that

employees were not to prepare or handle cases for close family, friends or persons close to them. His searches were also in violation of the police district's disqualification rules.

The District Court observed that DUF contains exceedingly sensitive personal information, and that it is of major importance that access to and processing of such information is in compliance with the Immigration Act out of regard for the persons registered. DUF may also contain internal police information concerning circumventions of the Immigration Act or planned control measures. It is important that this type of information is not shared with the person it concerns or with this person's close associates. There is thus a need for rules prohibiting searching in cases concerning close associates even when the relatives wish the searches to be made.

He was sentenced to a fine of NOK 9600 and was ordered to pay costs amounting to NOK 3000. The judgment has been appealed.

**Further information regarding close associates**
Close associates are either members of one's family or are persons with whom one for another reason has a close and strong association, e.g. close friends and/or colleagues.

Employees of the police or the prosecuting authority must not use register information for their own private purposes. They have no right to check the status of their spouse's drink driving case, check whether a potential boyfriend/girlfriend has a criminal record or whether a neighbour has been convicted of drug trafficking or sexual offences. Nor may they check whether the immigration authorities have initiated enquiries regarding whether a potential spouse for whom one wishes entry into Norway may have been subjected to forced marriage or why a well-known person is under investigation, etc.

As observed by the court in the above-mentioned judgment by Stavanger District Court, another issue is disqualification. As an officer, one is disqualified from dealing with cases concerning close associates. This also excludes searching for information concerning these persons in police records. One may sometimes be in doubt regarding whether or not one is qualified to make searches. This may be particularly relevant in small service locations. In the case of such uncertainty it is, in the view of the Bureau, appropriate to inform/consult a superior officer before making the search. Transparency may be of significance when assessing whether or not the officer acted unlawfully.

A review of the cases where the Bureau issued a waiver of prosecution or optional fine for searches without an official purpose in 2020 found that in six of the cases searches were made concerning persons whom the Bureau defined as close associates.

**Breach of confidentiality**
Section 209 of the Penal Code prescribes a penalty for "any person who reveals information in respect of which he/she has a duty of confidentiality pursuant to statute or regulations. The first paragraph applies correspondingly to breach of confidentiality pursuant to valid instructions for service or work for a central or local government body". The culpability requirement is gross negligence or intent.

It follows from section 23, first paragraph (1), of the Police Databases Act that any person who is employed by or performs service or work for the police or the prosecuting authority is obliged to prevent other persons from gaining access to or obtaining knowledge of anything that he becomes aware of in connection with such service or work concerning an individual's personal affairs.

By making a search without an official purpose in police records, the officer obtains knowledge that he or she would not otherwise have obtained, and thereby increases the risk of dissemination of the information.

Before punishing a person for violation of section 209 of the Penal Code, the Bureau must be able to prove that the information was actually disclosed to a person who should not have had access to it. Most of the cases received for processing by the Bureau concern suspicion of searches without an official purpose, but in two of the cases decided in 2020 there was evidence that the officer had also breached the duty of confidentiality.

TEXT Norwegian Bureau for the Investigation of Police Affairs

# Use of social media

## – Advice from the Director of the Bureau

Social media are here to stay, and are now a normal part of social intercourse. Most employees of the police and prosecuting authority use various platforms for social intercourse. Snapchat is in frequent use, and is an integral part of many people's daily lives. Many employees also set up groups with colleagues, where they share information about all manner of things. Service-related and private matters are all mixed together. This can be a pitfall! The boundary between service-related and private matters is erased. The duty of confidentiality can so easily be breached by sending a picture of something amusing that happened at work or a bizarre confiscated item. It may seem so innocent there and then, and is quite possibly done with the best of intentions. However, it can be wrong – and unlawful – because something has been sent that should not have been sent, and it was sent to the wrong recipient. It may turn out that the picture contains sensitive information or that the sender mistakenly believes that it does not matter since "the recipient, as a police employee, is subject to the duty of confidentiality". Perhaps social media are used to come into contact with persons with whom one has a working relationship. In such cases, it is easy to overstep boundaries that are subject to penal sanctions, not least if the intention is to attain a sexual relationship, in which case all the alarm bells should ring!

In the Annual Report for 2019, we wrote about police officers' use of social media. Wrong use has resulted in a number of criminal cases. Once again, we have cases of this kind under investigation. My advice to individual employees and to managers at the various levels is to be very aware of all use of social media that touches upon the various aspects of the service. It may prevent the need for criminal cases against officers.

TEXT Norwegian Bureau for the Investigation of Police Affairs / FOTO unsplash.com

# International cooperation

In 2020, as in previous years, there were plans for both Nordic and European cooperation in fora that have been attended by the Bureau for some years. As a result of the corona pandemic, much has been cancelled or postponed. Some conferences have been held digitally, but the Bureau did not attend any of these.

The annual Nordic Cooperation Meeting (meeting of managers from agencies in Nordic countries corresponding to the Bureau) should have been held in Finland in May 2020. The meeting will instead be held digitally in February 2021.

The Nordic Cooperation Meetings have taken up legal issues as well as methodology issues and various other issues with a bearing on the agencies' transnational cooperation. In 2019, the initiative was therefore taken to launch a project to address the legal conditions, means of communication and methodology issues involved in extending and improving cooperation between the Nordic agencies. One goal is to draw up joint guidelines for this cooperation.

The project group had planned meetings in Denmark, Iceland and Finland in 2020. The report was planned to be completed and presented in October 2020. Owing to the lockdowns and travel restrictions brought about by the pandemic, a number of video and telephone meetings were held instead. The participants in the project group agreed that this was not the ideal solution since reaching a common understanding and conclusion on several challenging issues necessitated physical meetings. It was therefore decided that submission of the report would be postponed until autumn 2021 provided that the participants were able to meet physically during the coming year.

TEXT Norwegian Bureau for the Investigation of Police Affairs

# No reasonable ground to investigate

The Bureau dismisses a relatively large proportion of cases without investigation. The background for this is further explained in this article.

The question of whether investigations are to be initiated is discretionary. Pursuant to section 224 of the Criminal Procedure Act, a criminal investigation shall be carried out when, as a result of a report or other circumstances, there are reasonable grounds to inquire whether any criminal matter requiring prosecution by the public authorities subsists. Major factors in assessing whether there are reasonable grounds for initiating investigations include the probability that one or more unlawful acts have been committed, the seriousness of any such unlawful acts and a specific assessment of objectivity.

The Bureau has a low threshold for initiating investigations. Despite this, the Bureau dismisses a relatively large proportion of cases each year without initiating investigations. In 2020, 50% of cases were dismissed without investigation (see statistics for 2020 and previous years on **page 35). A more detailed account of the background for these Statistics is given in the following.

The Bureau registers a complaint as a criminal case if the complainant so wishes. This question is dealt with specifically in the circular from the Director of Public Prosecutions on matters to be dealt with by the Bureau (Circular No. 3/2006). In 1.2, it is pointed out that in many cases there are doubts regarding whether the complaint is to be regarded as a report of a criminal offence or as a complaint concerning conduct or actions in the course of duty. The recipient of such a complaint (normally the police or the Bureau) must request the person concerned to clarify this. The Director of Public Prosecutions further states that, if the complainant maintains that a criminal offence has been committed in the course of duty, the case must be processed through the Bureau's criminal complaints track.

***In all cases dismissed without investigation the Bureau provides a reasoned decision in writing.***

This means that, even if it is clear that a complaint concerns entirely lawful acts carried out in the course of duty, it is registered as a criminal case if the complainant so wishes. A number of the cases dismissed without investigation in 2020 concern lawful acts carried out in the course of duty. The Bureau also receives some clearly subjective or groundless complaints. Some complaints are clearly motivated by a wish to obstruct the work of the police in an ongoing investigation.

Even if a case is dismissed without investigation, the Bureau will in most cases have made enquiries to assess whether there are reasonable grounds to initiate investigations. The complainant is sometimes examined in order to obtain further information or to clarify the complaint. As a rule, documentation is obtained from police records or from criminal cases. If, for example, a person complains that he or she has been wrongfully arrested and searched, the Bureau will request documentation from the stay in custody and documents concerning the criminal case in order to assess whether there are reasonable grounds to investigate the reported matter. If the complaint concerns two or more matters or matters that have taken place over time, such enquiries may be relatively extensive.

In some cases, other types of enquiry are carried out, such as examining official reports or obtaining documents from supervisory authorities that have assessed the same incident, or matters reported to the Bureau.

In all cases dismissed without investigation, the Bureau provides a reasoned decision in writing stating the details of the report, the enquiries conducted by the Bureau and an explanation of why the case has been dismissed without investigation. The decision is sent to the person who reported the case and to the Chief of Police in the police district concerned in the case. If any person is registered as a suspect, the decision is also sent to them. In many of the cases dismissed without investigation, officers against whom a complaint has been made are not notified of this until they receive the decision concerning dismissal of the case.

Cases dismissed without investigation may also be referred to the Chief of Police for administrative assessment. The Bureau may refer a case for administrative assessment if there are indications in the complaint or the Bureau's investigation that this would be appropriate (see section 347, second paragraph, of the Prosecution Instructions). On **page 42 of the Annual Report, summaries are given of some of the cases referred for administrative assessment in 2020. It can be seen here that several cases concerning bans on visits were referred for administrative assessment of the routines for processing of requests for such injunctions. These are cases that were dismissed without investigation.

In all cases, after the decision is sent out, a brief summary is published on the Bureau's website. The public and the press can thus see which cases the Bureau dismisses without investigation.

Although a case is dismissed without investigation, the enquiries and assessments may be relatively extensive. In the case referred to below concerning an aircraft accident, the Bureau's decision is 12 pages long.

The following examples show various types of case dismissed without investigation in 2020:

**Agder Police District**
During a search for a person presumed to be dead, the police requested assistance from Norges Luftsportforbunds Flytjeneste [Norwegian Air Sports Federation's Air Service]. During the search, the aircraft developed engine trouble and crashed into the sea. Not until many hours later was the crew of three brought up from the sea, and one of them died shortly after. A criminal case was opened with suspicion of professional misconduct, and documentation was obtained to establish whether there were reasonable grounds to initiate investigations. The Bureau was

given access to information from the police investigation of the aircraft accident. The Bureau also reviewed the report concerning the incident from the Accident Investigation Board Norway. Central and local guidelines for police searches for persons presumed to be dead were obtained and studied.

On the basis of the documentation obtained, the Bureau found that there was insufficient evidence to substantiate that police employees or the police district as a corporate entity had acted unlawfully. Emphasis was particularly placed on the report from the Accident Investigation Board Norway that safety on board aircraft was a demanding task and that police employees were not particularly capable of attending to it. Moreover, the chosen communication system had functioned initially, but had ceased to function when the aircraft was searching at such a low altitude that they no longer had contact with the onshore radio station.

Although investigations were not initiated, enquiries revealed a number of major factors that, in the view of the Bureau, warranted assessment by the police to establish what could be learned from them. The Bureau also considered that the case could be used in assessing procedures for communication between the police and persons assisting the police with searches. Since this applies to all police districts, the case was referred to the Police Directorate for administrative follow-up.

**Finnmark Police District**

A person lodged a complaint against the police for careless handling of an 18year-old who had been at a party held by his son. According to the complainant, the police had tested the 18year-old for half an hour using the "signs and symptoms" method until the 18year-old suffered a panic attack. Instead of driving the 18year-old to the hospital, they drove him to the police custody facility and held him there for nine hours. In the complainant's view, the situation would have been solved more satisfactorily if the police had shown more consideration for the arrested person.

The Bureau dismissed the case without investigation on the grounds that it was unlikely that the police had acted unlawfully. The assessments and measures adopted by the police towards the 18year-old were well documented in the police duty log and in the custody log. There was no information to support the complainant's allegations regarding careless handling or to indicate that the police in any other way had handled the 18year-old contrary to current rules.

The National Police Immigration Service

A person lodged a complaint against the National Police Immigration Service and the police regarding their treatment of him as a refugee, and for the situation regarding the safety of himself and his family. According to the complainant, the Norwegian police had requested Turkey to deport him to Syria, which he asserted to be in violation of international rules.

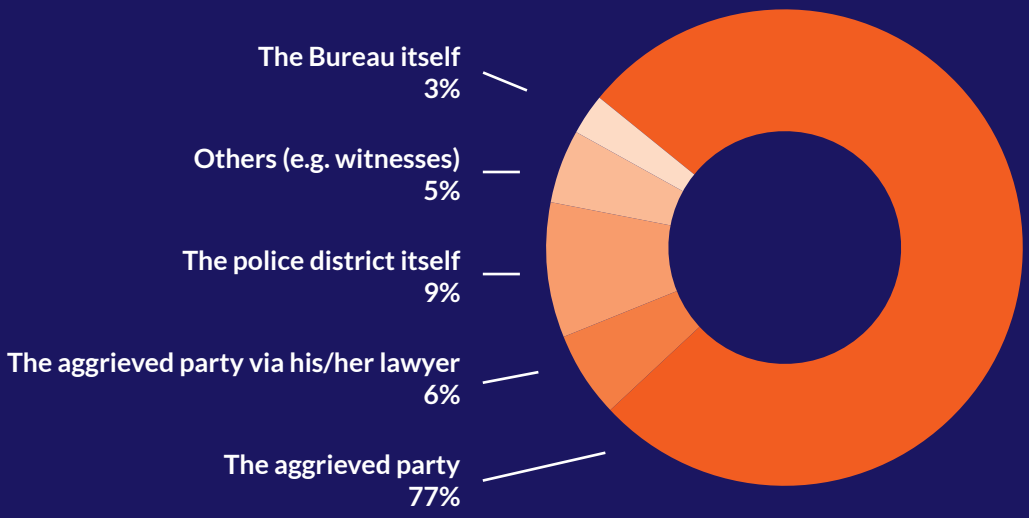
The complainant was requested by the Bureau to provide concrete information concerning what he asserted to be criminal offences committed by the police. On the basis of the information in the case, the Bureau did not consider it likely that the National Police Immigration Service or any other part of the Norwegian police had acted unlawfully. The complaints put forward by the complainant mainly concerned the administrative decisions that lie with the Directorate of Immigration pursuant to the Immigration Act. No unlawful acts committed by Norwegian police have been specified. The case was dismissed without investigation.

# Statistics 2020

## Recorded complaints

| 2016 | 2017 | 2018 | 2019 | 2020 |
|---|---|---|---|---|
| 1188 | 970 | 1226 | 1169 | 1260 |

## Who lodges complaints?



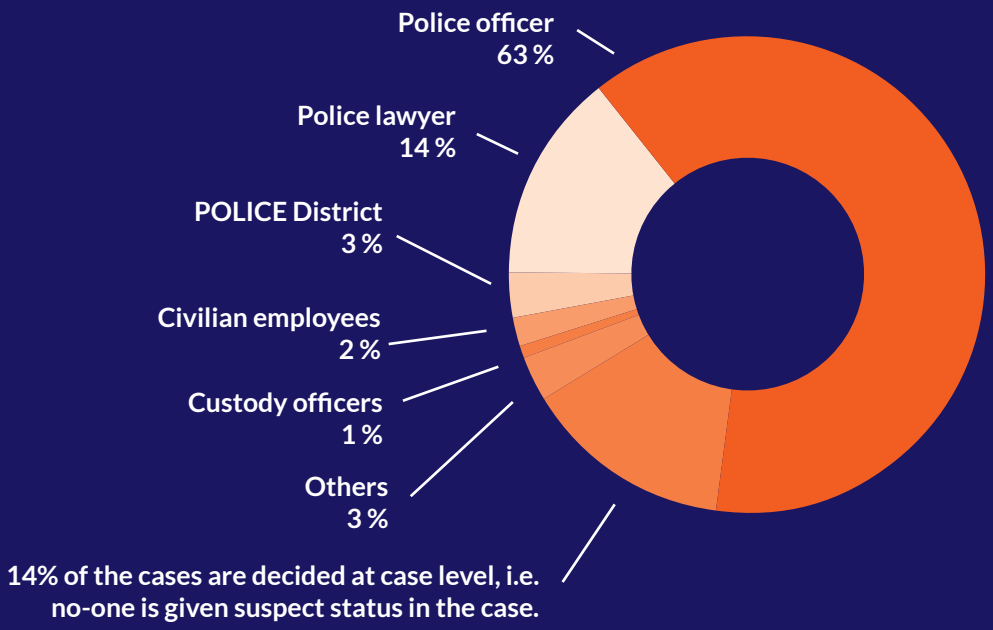

## Complainants

Distribution by gender

**76%**
men

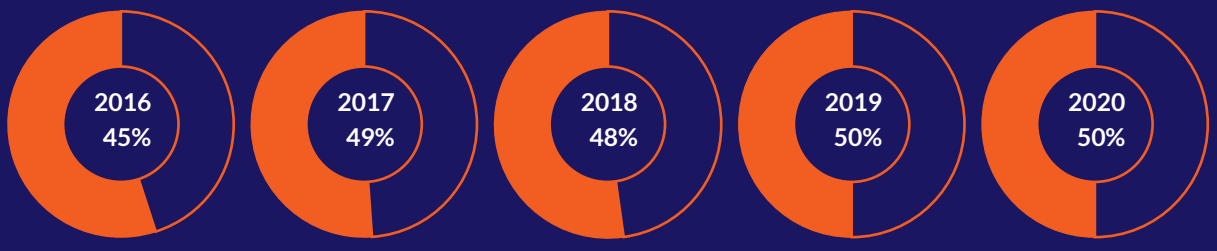
**24%**
women

## Who are complaints lodged against?



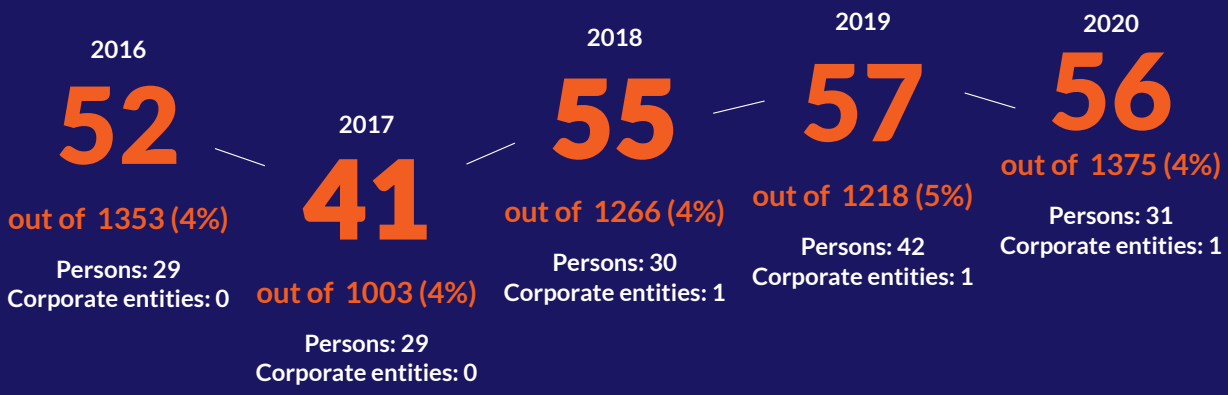

## No reasonable grounds for investigation

Number of cases dismissed without investigation




See **page 31 for further information on cases dismissed without investigation. The article explains why so many cases are dismissed without investigation, and describes the preliminary enquiries and procedures that lie behind decisions not to initiate investigations.

## Decisions to prosecute



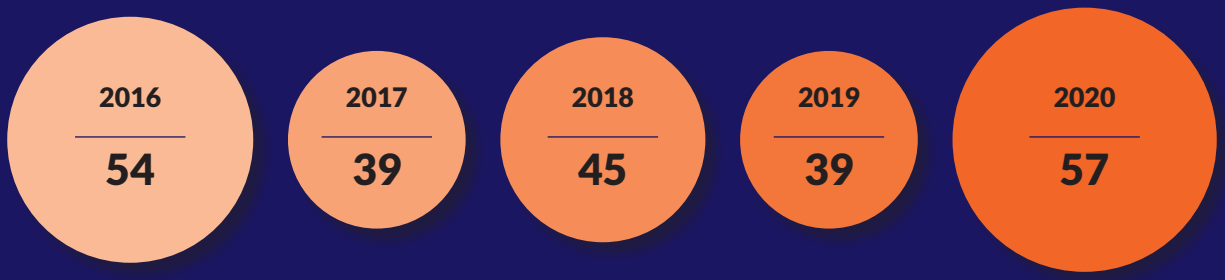

In 2020, 56 out of 1375 complaints dealt with resulted in an optional fine, indictment or waiver of prosecution (4%). Penalties were imposed on a total of 31 persons and one corporate entity. See **page 38 for a more detailed account of these cases.

As a prosecuting authority, the Bureau must decide cases in accordance with frameworks that follow from legislation and case law.

The law provides the police with extensive powers, among these, the right to use force in carrying out their duties. Both the legislature and the courts have established that the police must be allowed a wide margin of error before being made criminally liable for otherwise lawful performance of duty. Criminal liability must be assessed in relation to the officer's perception of the situation at the time.

## Administrative assessments 2020

Cases referred to Chiefs of Police or directors of special bodies




For further information concerning cases referred for administrative assessment, see **page 42.

## Case Processing Time

Days


The Bureau aims at an average case processing time not exceeding 150 days.

## Appeals to the Director of Public Prosecutions

In 2020, the Director of Public Prosecutions considered 203 appeals against the Bureau's decisions. The Bureau's decision was upheld in 197 of the cases.

In three cases, the Director of Public Prosecutions amended the grounds for dismissal and, in one case that had been dismissed owing to insufficient evidence, requested that an indictment be issued.

In eight cases, the Director of Public Prosecutions ordered that further investigation be made. Two decisions were amended by the Bureau after further investigation. Processing of the remainder is not yet finalised.

In four cases that were dismissed, the Director of Public Prosecutions did not allow the appeal, but ordered that the cases be referred to the police district for administrative assessment.

In 2020, 23% of prosecuted cases were appealed.

# Decisions to prosecute 2020

In 2020, 56 out of 1375 complaints dealt with resulted in an optional fine, indictment, waiver of prosecution or summary judgment on confession. Penalties were imposed on a total of 31 persons and one corporate entity.

## Summary judgment on confession

**Fraud, misappropriation and violation of the Firearms Act**
On 18 February 2020, Asker and Bærum District Court passed summary judgment on confession against a civilian employee for fraud, misappropriation and violation of the Firearms Act. The person concerned had for several years authorised invoices on behalf of the police district concerning the purchase of electronic equipment that was ordered and delivered to him privately. For some years, he had also taken home computer equipment that belonged to the police district for his own private use. During the search at his home, were found a firearm and two throwing knives. The man was sentenced to six months' imprisonment, seizure of NOK 72 000 and seizure of the weapons.

## Indictments

**Sexual activity with a person in a particularly vulnerable life situation and professional misconduct**
On 30 June 2020, an officer was indicted for having engaged in sexual activity by exploiting a person under 18 years of age in a particularly vulnerable life situation (see section 295 of the Penal Code), for having communicated sexually with the same aggrieved person over a long period via various social media while working as a police officer (see section 171 of the Penal Code concerning professional misconduct) and for, on several occasions, having provided information from police work to his then girlfriend (see section 209 of the Penal Code concerning violation of the duty of confidentiality).

The main hearing in the case is scheduled for 18–21 January 2021 at Øvre Romerike District Court.

**Physical assault and professional misconduct**
On 18 November 2020, an officer was indicted for violation of section 271 of the Penal Code concerning physical assault and section 171 of the Penal Code concerning professional misconduct.

The background for the incident was that a person charged with drug offences had been questioned at the police station. At one point during the interview, the accused had been asked the name of the user of a Snapchat account. The accused had written the user name on a slip of paper and placed it on the table in front of him. Shortly after the slip had been placed on the table, the accused had picked it up again and crumpled it up. The indicted officer, who had been an adviser during the interview, had risen from his chair, taken hold of the accused person and pressed himself against him while attempting to grasp his hands. The officer had then held an arm round the neck of the accused person and dragged him down onto the floor. In the view of the Bureau, this was disproportionate and unnecessary use of force in the situation.

The main hearing in the case is scheduled for 8–9 February 2021 at Kristiansand District Court.

On 17 December 2020, an officer was indicted for violation of section 272 (see section 271) of the Penal Code concerning aggravated physical assault and section 171 of the Penal Code concerning professional misconduct.

The case was first dismissed by the Bureau owing to insufficient evidence and was subsequently reversed by the Director of Public Prosecutions, who found that the use of force applied to the patient by the officer at the accident and emergency unit was disproportionate and unnecessary.

The background for the incident was that the police had been summoned to assist medical personnel in controlling a patient, since the patient was aggressive, was strongly under the influence of alcohol and was to be treated after cutting himself in the arm and also examined because he had claimed to have swallowed a broken light bulb. After the patient had failed to comply with an order from the police to sit down, the officer had pushed him down onto a stretcher and hit him several times in the face. The blows had resulted in a cut below his left eye that had needed to be taped, bruising and swelling round his left eye, a bleeding sore in his mouth and a scratch on the right side of his forehead. In the view of the Bureau, the injuries inflicted on the patient may be deemed damage in the legal sense and the provisions concerning aggravated physical assault may therefore apply. Beyond the patient's failure to comply with the order to sit down and his use of abusive language, his behaviour had not been threatening or dangerous in a manner that would have made the blows he received necessary and justifiable in the light of the situation as a whole, including the relative strength of the officer and the patient, the patient's condition and the fact that another police officer and a security guard had also been present.

The case is scheduled for 1–4 February 2021 at AustAgder District Court.

## Waivers of prosecution

**Searches in police records without an official purpose**

On 23 June 2020, pursuant to section 69, first paragraph, of the Criminal Procedure Act, an officer was granted a waiver of prosecution. The officer had searched in police records for information concerning her son. The Bureau found that the officer had not had an official purpose for searching for information concerning her son, and that she had violated section 171 of the Penal Code concerning professional misconduct.

On 14 November 2019, an officer was fined NOK 11 500 for violation of section 171 of the Penal Code concerning professional misconduct for, on a number of occasions, searching the case management system (BL) and the criminal intelligence system Indicia without an official purpose for the searches. The case was appealed and the optional fine was not accepted. On 21 December 2020, following appeal proceedings, the optional fine was commuted to a waiver of prosecution.

**Breach of confidentiality**

On 18 May 2020, pursuant to section 69, second paragraph, of the Criminal Procedure Act, an officer was granted a waiver of prosecution. The officer had provided confidential information to a family member concerning a personnel matter. The Bureau found that the officer had violated section 209 of the Penal Code concerning duty of confidentiality.

## Optional fines

**Violations of the Road Traffic Act**
The Bureau initiated investigations of a traffic offence involving a civilian car driven by an off-duty police officer and a private car driven by a civilian. The Bureau received from the Director of Public Prosecutions a mandate to also decide the case against the driver of the private car. The case against the officer was dismissed. On 22 April 2020, the driver of the private car was fined NOK 7 000 for violation of section 31 (see sections 3 and 4) of the Road Traffic Act. He had overtaken a vehicle in the right-hand lane, and then moved into the left-hand lane. A private car in the left-hand lane had been forced to slow down and keep close to the centre crash barrier in order to avoid collision. The optional fine was not accepted. The main hearing at the District Court was held on 14 August 2020. The driver was sentenced to a fine of NOK 6 000 for changing traffic lane from right to left, thereby putting fellow road users in danger. He was acquitted of overtaking on the right-hand side.

On 27 April 2020, an officer was fined NOK 8 000 for violation of section 31 (see section 3) of the Road Traffic Act. The officer had been driving in an emergency turn-out. In an exit road, he had lost control of the vehicle and collided with a road sign, crossed the opposing lane and driven into a wall, resulting in considerable material damage. The case was appealed with a request that the sentence be commuted. A new optional fine was imposed on 2 September 2020 instead of the previous optional fine. The optional fine was not accepted.

In Nedre Romerike District Court's judgment of 26 November 2020, he was acquitted.

On 15 June 2020, an officer was fined NOK 8 000 for violation of section 31 (see section 3) of the Road Traffic Act. The officer had been driving an unmarked police car. In connection with a U-turn, she had not been sufficiently aware that there was a private car behind her to which she was obliged to give way. As she turned left, the private car had driven into her left side, resulting in considerable material damage. The optional fine was not accepted.

The main hearing is scheduled for 1 February 2021 at Bergen District Court.

On 24 June 2020, an officer was fined NOK 7 000 for violation of section 31 (see section 3) of the Road Traffic Act. The officer had been driving an unmarked police car. He had driven at excessive speed into an intersection and had failed to stop in time to avoid collision with a private car driving on the priority road, resulting in material damage. The optional fine was accepted.

On 5 August 2020, an officer was fined NOK 7 000 for violation of section 31 (see section 3) of the Road Traffic Act. The officer had been driving in an emergency turn-out. He had failed to show sufficient alertness, so that the car had come too far to the right, collided with a road sign and driven onto the guard rail/stone edging. There was considerable material damage. The optional fine was accepted.

The Bureau initiated investigations following a collision between a police car during an emergency turn-out and a private car driven by a civilian. The Bureau was authorised by the Director of Public Prosecutions to decide the case against the driver of the private car also. The case against the officer was dismissed. On 17 August 2020, the driver of the private car was fined NOK 5 000 for violation of section 31 (see section 3) of the Road Traffic Act. He had failed to show sufficient alertness and caution when moving from the right to the left-hand lane. During an emergency turn-out, the police car,

which was in the left-hand lane, had driven into the private car from behind, resulting in material damage to both cars. The optional fine was accepted.

On 15 September 2020, an officer was fined NOK 7 000 for violation of section 31 (see section 3) of the Road Traffic Act. In connection with an assignment, he had left the police car without first making sure that the car's gear was in "p" or that the handbrake was on. The car had rolled backwards down a hill and into a building and a parked car, resulting in material damage. The optional fine was accepted.

On 28 October 2020, an officer was fined NOK 5 000 for violation of section 31 (see section 3) of the Road Traffic Act. In connection with an assignment, he had been driving in an emergency turn-out. He had not been attending sufficiently to the traffic, and had driven into a private car from behind. This private car had been pushed into the private car driving in front of it. There was material damage to all three cars. The optional fine was not accepted, and the case has been sent to the District Court for the main hearing.

On 10 November 2020, an officer was fined NOK 10 500 for violation of section 31 (see section 3) of the Road Traffic Act. He had been driving at a speed of 87 kph despite the fact that the highest permitted speed was 60 kph. The optional fine was accepted.

On 10 November 2020, an officer was fined NOK 5 000 for violation of section 31 (see section 3) of the Road Traffic Act. In connection with an assignment, he had driven through a red light without using a blue light or a siren. He had collided with a private car that had been driving through a green light. There was material damage to both cars.

**Theft**

On 6 August 2020, a civilian police employee was fined NOK 15 000 for violation of section 324 of the Penal Code concerning theft. The employee had taken nine headphones from his employer. The optional fine was accepted.

On 13 November 2020, a civilian police employee was fined NOK 8 000 for violation of section 324 of the Penal Code concerning theft. The employee had taken a keyboard and a wireless mouse from his employer and given the items to a family member. The optional fine was accepted.

**Searches in police records without an official purpose, breach of confidentiality**

On 24 April 2020, an officer was fined NOK 15 000 for violation of section 171 of the Penal Code concerning professional misconduct and section 209 of the Penal Code concerning duty of confidentiality. The officer had searched the police case management system for information concerning a deceased woman. Some days later, she had provided confidential information concerning, among other things, a crime scene involving the deceased. The optional fine was accepted.

On 6 May 2020, a civilian police employee was fined NOK 8 000 for violation of section 171 of the Penal Code concerning professional misconduct. The Bureau found it proven that a civilian employee at an immigration section in South-West Police District had made a number of searches without an official purpose in the Data System for Immigration and Refugee Affairs (DUF) for information concerning the employee, family and friends. The optional fine was not accepted. In Stavanger District Court's judgment of 13 January 2021, the employee was sentenced to a fine of NOK 9 600 and ordered to pay costs amounting to NOK 3 000. The judgment has been appealed.

On 18 May 2020, a civilian police employee was fined NOK 11 000 for violation of section 171 of the Penal Code concerning professional misconduct. In the police records and in the Data System for Immigration and Refugee Affairs (DUF), she had made a number of searches for information concerning several family members without an official purpose. The optional fine was accepted.

On 19 August 2020, a civilian police employee was fined NOK 10 000 for violation of section 171 of the Penal Code concerning professional misconduct and section 209 of the Penal Code concerning duty of confidentiality. The employee had searched police records for information concerning a person. She had later sent a text message to a family member referring to the person she had searched for information on, and provided confidential information concerning him. The optional fine was accepted.

On 17 September 2020, an officer was fined NOK 6 000 for violation of section 171 of the Penal Code concerning professional misconduct. The officer had searched in police records and in the Data System for Immigration and Refugee Affairs (DUF) a number of times for information concerning her husband and another family member without an official purpose. The optional fine was accepted.

On 23 September 2020, an officer was fined NOK 8 000 for violation of section 171 of the Penal Code concerning professional misconduct. The officer had searched in the Data System for Immigration and Refugee Affairs (DUF) for information concerning a former spouse and family members without an official purpose. The optional fine was accepted.

On 29 October 2020, an officer was fined NOK 8 000 for violation of section 171 of the Penal Code concerning professional misconduct. The officer had searched in the Data System for Immigration and Refugee Affairs (DUF) for information concerning himself/herself, family members and acquaintances without an official purpose. The optional fine was accepted.

On 9 November 2020, an officer was fined NOK 3 000 for violation of section 171 of the Penal Code concerning professional misconduct. The officer had searched in police records for information concerning his/her former spouse and former mother-in-law without an official purpose. The optional fine was accepted.

On 16 November 2020, a civilian police employee was fined NOK 9 000 for violation of section 171 of the Penal Code concerning professional misconduct. The officer had searched in the Data System for Immigration and Refugee Affairs (DUF) for information concerning family members without an official purpose. The optional fine was accepted.

On 1 December 2020, an officer was fined NOK 10 000 for violation of section 209 of the Penal Code concerning duty of confidentiality. He had provided information to a colleague that the husband of another colleague had been convicted of involvement with sexual abuse material, and was the subject of an ongoing investigation of similar offences. There had been no official purpose for providing such information.

The optional fine was accepted.

**Violations of the Firearms Act**
On 5 October 2020, an officer was fined NOK 5 000 for violation of section 33 (see section 31, first paragraph) of the Firearms Act (see section 80, first paragraph, second sentence, of the Firearms Regulations) for having stored ammunition in an outdoor storage room without the ammunition being securely locked away. The optional fine was accepted.

On 2 June 2020, an officer was fined NOK 50 000 for violation of section 33 of the Firearms Act (see section 8, first paragraph and section 27a, first paragraph, and section 190 of the Penal Code). During the period 2009–2016, the officer had kept a firearm without the necessary permission of the Chief of Police. Nor had the firearm been kept securely locked away in an approved safe. The optional fine was accepted.

## Corporate penalties

On 13 May 2020, Agder Police District was fined NOK 100 000 for violation of section 171 of the Penal Code concerning professional misconduct. An officer in the police district had seized three passports belonging to a woman who had been arrested. In the absence of satisfactory routines in the police district, the decision to seize the passports had not been submitted to the prosecuting authority or the court. Some time had elapsed before return of the passports despite the fact that the woman and her lawyer had made several enquiries to the police district informing that the woman needed the passport in order to be able to attend a court hearing abroad.

# Administrative assessments 2020

Cases referred to Chiefs of Police, directors of special bodies or other appropriate bodies for administrative assessment

In 2020, the Bureau referred 57 cases for administrative assessment. On what basis is a case referred for administrative assessment? It plays no decisive role that the case has been dismissed or that an optional fine has been imposed or that the case has resulted in indictment or waiver of prosecution. The Bureau should refer a case for administrative assessment when something comes to light from the complaint or the investigation that makes administrative assessment appropriate. In some cases, there may be something to learn from the complaint itself. In other cases, details may emerge during the investigation requiring the Chief of Police to consider the need for improvements to training or procedures. There may also be circumstances involving individual officers that should be subjected to administrative assessment.

For publication in the Annual Report, we have selected some of the cases referred for administrative assessment. Summaries of all cases are available on our website.

## Cases that in various ways concern bans on visits

*In 2020, three of the cases referred for administrative assessment concerned in various ways bans on visits. In previous years too, the Bureau has dealt with a number of cases concerning this, and there may therefore be something to be learned from these cases. See also the article on the same topic on* ***page 21*.

### SOUTH-EAST POLICE DISTRICT

A woman lodged a complaint against a police lawyer for failing to reply to her request for a ban on visits. The law requires a written response to a request for a ban on visits regardless of whether or not the request is granted.

The law prescribes no deadline for replies, but good prosecution practice requires that requests are responded to rapidly since the object of the request may otherwise expire. More than six months elapsed from the date the woman's lawyer sent the request to the police until the criminal case was dismissed by the police lawyer without responding to the request for a ban on visits. The police lawyer should have responded to the woman's request, but the Bureau dismissed the case without investigation since it was not probable that the error was a gross breach of official duties. The case was referred to the police district for administrative assessment of procedures for processing of requests for bans on visits.

### WEST POLICE DISTRICT

A man (A) lodged a complaint against the police for late notification of a ban on visits and for failure to send the ban to the District Court for review. A police lawyer had signed the ban on 26 November 2018, but A had not been notified of it until 15 January 2019, when questioned. When notified of the ban, A had requested that the decision be considered by the court. The ban was in force until 26 February 2019.

The police may order a ban on visits when specific conditions are met. The person against whom the ban is directed may immediately or

subsequently request that the decision be brought before the court. The prosecuting authorities shall at the earliest opportunity and as far as possible within five days following submission of the request, bring the case before the court.

The reason for the late notification was reduced capacity, which had resulted in a shorter enforcement period for the ban than had been prescribed. In its decision, the Bureau emphasised that the failure to submit the case for review by the court was very regrettable, and violated A's rights. However, the case was dismissed without investigation since it was considered improbable that failure to meet the deadline in this case was a gross breach of an official duty. The case was referred for administrative assessment of the processing of the ban on visits.

### SOUTH-EAST POLICE DISTRICT

A man lodged a complaint against the police for failure to turn out to an incident where he had been threatened. The man informed that he had called the police emergency number, but that his call had not been given priority or taken seriously since the police had not turned out. The Bureau found that the police's contact with the man and handling of the call had been justifiable and adequate. Following the incident, the man had requested a ban on visits. The Bureau's investigations showed that the police had not considered or responded to this request. The case was dismissed without investigation and referred for administrative assessment of the need for reminders or amendment of procedures for processing of requests for bans on visits.

## Use of firearms in connection with police assistance to the health service

*If the police shoot, kill or seriously injure any person, the Bureau must investigate the case regardless of whether there is any suspicion of unlawful acts. Many of these cases of shooting by the police concern incidents where the police have assisted the health service. In 2020, the Bureau referred two such cases for administrative assessment.*

### EAST POLICE DISTRICT

East Police District reported to the Bureau that a woman had been shot in the thigh during an assignment. The background for the police calling on the woman at home was that the accident and emergency unit had requested police assistance. The accident and emergency unit had received a report that the woman needed medical assistance at home. Owing to previous incidents, the accident and emergency unit had requested the assistance of the police. Three officers had turned out to the woman's home along with health service personnel.

Following an overall assessment of the information on the case, the Bureau found that the woman had approached the officers holding a raised bat. The officer who had shot at the woman had believed that she was also holding a knife. The investigation established that the woman had been holding a metal-coloured mascara. The Bureau found that the officer had aimed at the woman's thigh. The question was whether the officer acted in self-defence and whether the act was thus lawful.

The principle was cited that it is the suspect's assessment of the situation in question that is to form the basis when assessing whether the conditions for self-defence are present. The Bureau

dismissed the case against the officer since such conditions were found to be present. The two officers had shouted at the woman and, when one of them kicked out at her to prevent the attack, she had continued approaching the officers with the bat and what was perceived as a knife. One of the officers had then fired a warning shot in the floor beside the woman, but she had neither stopped nor dropped what she was holding. The officer had then shot the woman in the thigh. The Bureau found that there was only a short distance between the woman and the two officers, and they had stood in such a way that they had not been able to back out of the woman's home.

The Bureau mentioned that it had investigated a number of cases where the police had fired shots in connection with assignments involving assistance to the health service. The case was referred for administrative assessment in order to establish what could be learned from it.

## INNLANDET POLICE DISTRICT

Innlandet Police District requested the help of the Police Tactical Firearms Unit in its assistance to the health service. The background for the assignment was a rumour that a mentally sick person was in possession of a firearm. Officers from Innlandet Police District had turned out unarmed, but had subsequently been ordered to arm themselves. This had been decided because, in a confrontation with the police, the person had stabbed a police officer in the face with a knife or machete. The Bureau's decision in the case provides a detailed review of the incidents up to when the person was shot and killed by the police. The Bureau dismissed the case against the two officers who shot at the person since the Bureau found that they acted in self-defence.

After the Director of Public Prosecutions had assessed a complaint from the relatives of the deceased and upheld the Bureau's decision, the Bureau decided to refer the case for administrative assessment.

The case was referred to Oslo Police District, Innlandet Police District and the Police Directorate with extensive grounds. The Bureau pointed out that in recent years many shots fired by the police have been aimed at persons who are mentally ill or suicidal. Many of the situations experienced by the police have without doubt been exceedingly dangerous for the officers concerned. Police shootings assessed by the Bureau have therefore been assessed as justified, and not as unlawful acts carried out in the course of duty. However, much can be learned from all such cases.

The question is whether it is possible to extract specific learning points from these cases in order to help ensure that as few persons as possible are injured or lose their lives as a result of the performance of duty by the police.

The Bureau made reference to the following list of factors that might be relevant for national learning:

The relationship between the police and the health service. Questions regarding the degree to which the assignment has changed character from providing assistance to the health service to a more operational police assignment. The police should view this in relation to the matter concerning supervision initiated by the County Governor.

**The role of prosecuting authorities (the boundary between the responsibility of the police and that of the prosecuting authorities).**

1. Use of the assistance of relatives.
2. Possible use of other means of force, such as gas.
3. Other tactical solutions.
4. The significance of time for choice of means of action.
5. Distribution of responsibilities between the Police Tactical Firearms Unit and the local police.

The Bureau pointed out that these are points that the Bureau, depending on the case, considers may be relevant to include in an assessment of national learning, but that this is for guidance only for the police and the Police Directorate in the work to be carried out by them. It was also pointed out that the question regarding why electroshock weapons did not function according to intentions is also a relevant topic for closer examination. The Bureau emphasised that previously investigated cases will be made available if found useful for this work.

The overall purpose of referring a case for administrative assessment is to increase knowledge and competence on both operational and tactical levels of the police concerning persons with mental disorders and procedures for cooperation between the police and the health service.

## Incidents in custody

### TRØNDELAG POLICE DISTRICT

A woman lodged a complaint against police employees for having undressed her and left her naked in a cell for many hours. The woman informed that there had been male officers present when she was made to undress.

The Bureau found no evidence that police employees had acted unlawfully. The woman had attempted to strangle herself on two occasions using her clothes and a hair elastic. This had been discovered and an attempt had been made to prevent it. The woman had not been given a blanket because this was not tear-proof and because the woman might have attempted to injure herself under the blanket. The woman had been dealt with by male officers because there had been only one female custody officer on duty and because the woman had been so angry and aggressive that it had required several persons to restrain her.

The case was referred to the police district and the Police Directorate for administrative assessment of the need for tear-proof blankets or other alternatives in situations where a detainee must be stripped.

## Weapon management

### TROMS POLICE DISTRICT

Two employees (A and B) and one police district were investigated for possible violation of the Firearms Act. A total of five firearms were on the same number of occasions approved for purchase by employees in their own police districts. Two of the weapons were fully automatic machine pistols that were unlawful firearms, and were therefore unlawful to purchase or own. Two of the other weapons were (lawful) semi-automatic pistols and a (lawful) shotgun. The applications for purchase of these weapons should not have been approved because the firearms had been handed in to the police by the previous owner for destruction. These acts took place in 2016 and 2017.

The Bureau found no evidence that A and B or the police district as a corporate entity had acted unlawfully, and the case was dismissed. A and B, who had processed and approved the applications had lacked knowledge concerning weapon management, and had not intentionally or grossly negligently violated the current rules regarding these acts. Moreover, A (who was a manager) had himself reported the matter when he received training in this field in autumn 2018. Although the employee training had been inadequate, there was not sufficient evidence in the case that this was so serious that it constituted an unlawful act by the police district. Moreover, there had been mergers between several police districts after these acts took place.

Although weapon management in Troms Police District differs from that in the former Midtre Hålogaland Police District, where investigation of the offences began, the Bureau referred the case for administrative assessment in order to avoid similar situations occurring in the future. In the Bureau's view, a review of the case will also ensure that weapon management maintains a high professional level at all service locations that have this responsibility.

For the same reason, the Bureau referred the case to the Police Directorate for administrative assessment. Reference was made to the fact that the Directorate is the highest competent authority, and to previous cases concerning weapon management that the Bureau has referred to the Police Directorate for administrative assessment.

# The distinction between police measures and criminal procedure measures

*It is of paramount importance that persons who work operationally in the police are well acquainted with the distinction between police measures and criminal procedure measures. The individual officer must be aware of the kinds of measures he or she makes use of at any given time. The text below describes a case referred for administrative assessment in 2020 concerning this question. In the article on* **page 9**, Johan Reidar Nilsen describes the measures adopted in the preventive work performed by the police.*

## WEST POLICE DISTRICT

A person (A) lodged a complaint against the police for searching his car unlawfully. A had been stopped in a traffic control because his driving had attracted attention. A had refused to take a breathalyser test or to provide a spit sample to test for use of narcotic drugs. He had been taken to the accident and emergency unit by police officers C and D, and had been required to surrender the keys to his car, which had been standing in such a way that it might be necessary to move it.

Searches in the police records had revealed a note concerning A's car stating that the number plate on the car had disappeared when passing through road toll stations and then reappeared. The officer, B, who had remained by the car after A had been taken to the accident and emergency unit, had noticed a contraption mounted on the number plate which might indicate that the information was correct and that A had done this in order to avoid paying the road toll. B had entered the car and had found a remote control there that could be used to lower a curtain in front of the number plate. She had reported this to C and D, who had confronted A with this information. B had also contacted the operations centre and reported what she had found. She had been put through to the lawyer on duty who, like B, had been uncertain of what kind of criminal act was involved. When A returned to the car, the police had asked to see the AutoPass chip that he had informed that he had, but which could not be seen in the car. A had watched while B unlocked the car's glove compartment. A had asked to find the chip himself. The chip had proved to be wrapped in aluminium foil.

When questioned at the Bureau, B stated that she had not given much thought to it when she had opened the car door and entered the car but, in retrospect, she realised that she had been making a search, and should have written a report. There and then, they had thought that A could be suspected of fraud or violation of the Road Traffic Act.

In the view of the Bureau, the examination of A's car had clearly required a search warrant, and must be considered a search in accordance with criminal procedure. B had had both the time and the opportunity to clarify with the lawyer on duty whether she could enter the car pursuant to the provisions of the Police Act concerning search, or request a decision on searching the car.

There was no evidence that the substantive conditions for conducting a search had not been present, and the Bureau considered that B was not very much to blame for acting as she had. The same applied to the search of the glove compartment after the return of A. There was also documentation of what she had done in the complaint written by C and through B's contact with the operations centre. The case against the officers was dismissed since there was no evidence that they had acted unlawfully in the course of their duty.

The case was referred to the police district for administrative assessment. It was pointed out that the case was suitable for learning purposes regarding the distinction between police intervention and intervention in accordance with criminal procedure and appurtenant provisions concerning decision-making authority.

## Interpretation of role

### OSLO POLICE DISTRICT

A person (A) lodged a complaint against officers B and C for calling on him at home regarding a case that A considered to be a private law matter and identifying themselves as a police officers.

The officer B wished to report A for fraud following a private deal between them. B contacted a colleague C to report A. In the interests of A, C wished to resolve the situation without reporting A. C did not have receipt of reports as a normal part of his day-to-day police duties.

When they called on A at his home, it was C who led the interview and it was he who identified himself as a police officer. Although it was not clear whether B had identified himself as a police officer, the Bureau found that the two were perceived by A as a single unit. The case was dismissed with regard to both B and C since there was no evidence beyond any reasonable doubt that they had acted unlawfully. Emphasis was, inter alia, placed on their belief that they were dealing with a criminal offence and not a private law matter.

The Bureau referred the case for administrative assessment by the police district concerned. It was pointed out that the interpretation of the role of police officer, rules for asserting police authority in one's own case and documentation of assignments not reported to the operations centre should be subjected to administrative assessment.

## Searches for information on friends and acquaintances in police records

*Each year, the Bureau receives a number of cases concerning use of police records for purposes other than the individual officer's police work. On **page 25, you will find an article on this topic giving an account of a case concerning the same topic that the Bureau referred for administrative assessment in 2020.*

### INNLANDET POLICE DISTRICT

A police district lodged a complaint against an officer from a different police district who had made a search in a criminal case investigated by them. When questioned, the suspect in the criminal case (B) had informed that he had discussed his case with a friend (A), who worked at a different police district. On the basis of the complaint, the Bureau investigated whether the officer, A, had searched without an official purpose and whether he had breached the duty of confidentiality.

The investigation established that B had himself contacted A and told that he had driven while intoxicated and that the police had taken an unsecured shotgun from his house. A was worried about B since the blood test showed that he had been heavily under the influence of alcohol while having an unsecured firearm in his home. A therefore searched for information concerning B's criminal case and subsequently had conversations with him regarding this. A did not notify the investigator or prosecution lawyer who was working on B's case concerning his contact with B.

The Bureau dismissed the case against A since there was no evidence beyond any reasonable doubt that he had acted unlawfully. Emphasis was, inter alia, placed on B's right of access to his own criminal case and that A explained his actions with reference to his duty to assist as a police officer. The case was nevertheless referred to the police for administrative assessment both as a personnel matter and to establish what could be learned from it. The Bureau pointed out that searching for cases under investigation in a different police district and discussing the case with the suspect without notifying the responsible investigator and/or prosecution lawyer should not occur.

# Court Cases 2020

## ASKER AND BÆRUM DISTRICT COURT

**– Gross fraud, aggravated misappropriation and violation of the firearms legislation**

On 23 January 2020, an officer was indicted for gross fraud, aggravated misappropriation and three violations of the firearms legislation, all during the period from 2012 to 2018.

The officer had authorised invoices totalling at least NOK 246 200 including VAT on behalf of his employers, Asker and Bærum Police District and Oslo Police District. Several of the invoices included charges for audiovisual equipment that had been delivered to him privately and for private use, while the invoice incorrectly stated that the charges applied to other goods and services that had been delivered to the police districts.

The officer had also removed computer equipment to a value of at least NOK 625 000 including VAT from his employers, Asker and Bærum Police District and Oslo Police District.

The violations of the firearms legislation were that the officer had been in possession of firearms without the permission of the Chief of Police, that he had stored firearms insecurely and that he had kept throwing-knives in his car.

The officer admitted to the offences, and the case was decided by summary judgment on confession. In Asker and Bærum District Courts judgment of 19 February 2020, the officer was sentenced in accordance with the indictment to imprisonment for a period of six months. He was further sentenced to confiscation of NOK 72 000 for the benefit of the public treasury and to confiscation of one firearm and two throwing-knives.

The judgment is legally enforceable.

## OSLO DISTRICT COURT

**– Breach of confidentiality, professional misconduct, etc.**

On 27 June 2019, an officer was indicted for violation of section 210 of the Penal Code (see section 209, first paragraph, concerning gross violation of the duty of confidentiality). The officer had on several occasions provided information from police work to his/her boyfriend/girlfriend. The person concerned was also convicted of violation of section 171 of the Penal Code concerning professional misconduct for searching in police records without an official purpose, and for using the police radio communications system while off duty together with his/her boyfriend/girlfriend. Finally, the officer was convicted of violation of section 33 of the Firearms Act (see sections 27 and 79 of the Firearms Regulations) for failing to store a firearm in an approved gun cabinet and section 343 of the Penal Code concerning unauthorised use of movable property, etc. for having taken one of the police radio communications systems and used this while off duty.

In Oslo District Court's judgment of 23 January 2020, the police officer was sentenced to a conditional term of 45 days imprisonment and a fine of NOK 10 000.

The judgment is legally enforceable.

## GJØVIK DISTRICT COURT AND EIDSIVATING COURT OF APPEAL

**– Abuse of position, etc.**

On 27 September 2018, an officer was indicted for having engaged in sexual activity by abuse of a position (see section 193 of the Penal Code of 1902), influencing a participant in the justice

system (see section 157 of the Penal Code), two counts of misappropriation (see section 324 of the Penal Code), professional misconduct (see section 171 of the Penal Code), aggravated theft (see section 322 of the Penal Code), storage of narcotic drugs (see section 231, first paragraph, of the Penal Code), possession and use of narcotic drugs (see the Act relating to medicinal products and poisons, etc.) two counts of violation of identity (see section 202 of the Penal Code) and storage of a flick knife (see section 33 of the Firearms Act (see section 31 (see section 9 of the Firearms Regulations))).

The officer worked as an investigator with responsibility for drugs and as an informant counsellor, and he was indicted for on several occasions engaging in sexual intercourse with a woman while receiving information from her regarding a drug scene. The Indictment also concerned visiting this woman on several occasions and requesting her to change her statement to the Bureau concerning their sexual relationship, and that he had removed drugs from the property room at the police station, kept drugs and doping agents in his office and opened telephone subscriptions in other persons' names and used them as his own.

In Gjøvik District Court's judgment of 28 March 2019, the officer was acquitted of storage of narcotic drugs, one count of possession of narcotic drugs and violations of identity. He was convicted of the remaining counts of the indictment to a sentence of unconditional imprisonment of one year and nine months.

The officer appealed the judgment. In Eidsivating Court of Appeal's judgment of 2 December 2019, he was sentenced to imprisonment for one year and nine months and to pay compensation to the aggrieved person. The officer has appealed the judgment to the Supreme Court.

The Appeal Committee of the Supreme Court disallowed the appeal.

The judgment is legally enforceable.

## KRISTIANSAND DISTRICT COURT
**– Professional misconduct**

On 14 November 2019, on the orders of the Director of Public Prosecutions, pursuant to section 69, first paragraph, of the Criminal Procedure Act, the Bureau granted two officers waivers of prosecution for violation of section 171 of the Penal Code concerning professional misconduct. The case was first dismissed by the Bureau on the ground that no criminal offence was deemed proven and was subsequently reversed by the Director of Public Prosecutions.

The officers were at work as senior investigators in a double homicide case. It was found that, without conferring with a prosecuting officer who was in the immediate vicinity, they had decided that a minor was to be further examined by the police without a defence lawyer present. The minor had been at the police station for several hours, and had been examined as a witness but, in accordance with a decision of the prosecuting authority, had been arrested and charged with homicide at the police station. Shortly before, the officers had also attended a meeting with the prosecutors in charge of the investigation, where it had been made known that defence counsel was to be appointed and that the examination was not to continue after the minor had been informed that he was charged with homicide.

The officers applied for judicial review of the waiver of prosecution. On 29 January 2020, the Director of Public Prosecutions issued indictment in the case. At Kristiansand District Court's judgment of 12 June 2020, the officers were convicted of violation of section 171 of the Penal Code. Sentencing was waived. The court as a whole found the conditions for waiver of sentencing to be met. The court gave as grounds that the accused was in negligent ignorance of the law regarding the unlawful acts in question, and that it would be unreasonable to impose a penalty for the offence. Moreover, the court attached importance to the long time that had elapsed since the criminal offence was committed.

The judgment was appealed but, in Agder Court of Appeal's decision of 24 November 2020, the appeal was disallowed. Both officers have appealed to the Supreme Court, but the conclusion there had not been reached when the Annual Report went to press.

## HAUGALAND DISTRICT COURT

**– Grossly negligent professional misconduct**

On the orders of the Director of Public Prosecutions, the Bureau granted an officer a waiver of prosecution pursuant to section 69, first paragraph, of the Criminal Procedure Act for violation of section 172 of the Penal Code (see section 171) concerning grossly negligent professional misconduct. The case was first dismissed by the Bureau owing to insufficient evidence and subsequently reversed by the Director of Public Prosecutions.

As the prosecuting officer in a criminal case, the officer decided that the accused was not to be released from remand despite the fact that, on the same day, the Court of Appeal had ordered his release. The following day, he further decided that the accused was to be apprehended on grounds of the risk of repetition and the risk of destruction of evidence associated with a criminal offence that was the subject of a remand application considered by the Court of Appeal. As a result of the officer's decisions, the accused was, without authorisation, deprived of his freedom from Wednesday to Saturday.

The officer applied for judicial review of the waiver of prosecution. On 3 February 2020, the Director of Public Prosecutions issued indictment in the case, and conducted the prosecution in the case.

In Haugaland District Court's judgment of 29 April 2020, the officer was acquitted of violation of section 171 of the Penal Code. The District Court found that failure to release the accused from remand was a violation of an official duty. In the court's view, it was moreover a gross breach of duty. However, following a specific assessment, the court concluded that the officer had not acted with a sufficient degree of guilt, and he was therefore acquitted.

The judgment is legally enforceable.

## BORGARTING COURT OF APPEAL

**– Aiding and abetting import of narcotic drugs and gross corruption**

On 6 February 2016, on the orders of the Director of Public Prosecutions, a retired police officer was indicted for aiding and abetting import or attempted import of a very considerable quantity of narcotic drugs (see section 162, first paragraph, of the Penal Code of 1902 (see third paragraph (see fifth paragraph))). On the orders of the Director of Public Prosecutions, the police officer was also indicted for gross corruption (see, respectively, sections 276b and 276a, first paragraph (b), of the Penal Code of 1902). The indictment for corruption states that, in connection with his post as a police officer, he had received money and other economic advantages from a co-accused amounting to a minimum total value of NOK 2.1 million.

The main hearing of the case was held at Oslo District Court from January to May 2017. The accused appealed Oslo District Court's judgment of 18 September 2017, and appeal proceedings with a jury were held from August 2018 to January 2019. After the jury had delivered its verdict, the court (the three professional judges) ruled that the case was to be retried before other judges (see section 376a of the Criminal Procedure Act). New appeal proceedings were held from November 2019 to March 2020. In the Court of Appeal's judgment of 19 June 2020, the accused was convicted in accordance with the indictment to imprisonment for a period of 21 years and to confiscation of NOK 1 418 000. On 10 November 2020, the Appeals Committee of the Supreme Court decided that the convicted person's appeal was disallowed.

## GJØVIK DISTRICT COURT

**– Grossly negligent professional misconduct**

On 27 May 2019, an officer was fined NOK 10 000 for violation of section 172 of the Penal Code (see section 171 concerning grossly negligent professional misconduct). The case was first dismissed by the Bureau owing to insufficient evidence, but the judgment was reversed by the Director of Public Prosecutions, inter alia, because the assignment did not call for such a violation of the speed limit.

The officer had been assigned the task of driving to a railway station to fetch two young people who had locked themselves in the toilet on a train. He had failed to set out in time and had therefore been pressed for time, so he had driven at almost 130 kph in the 80 kph zone for part of the way.

The optional fine was not accepted. The main hearing at the District Court was held on 27 January 2020. In Gjøvik District Court's judgment of 5 February 2020, the officer was acquitted.

The judgment is legally enforceable.

## OSLO DISTRICT COURT

**– Searches in police records without an official purpose**

On 20 August 2019, an officer was fined NOK 2 500 for violation of section 171 of the Penal Code concerning professional misconduct.

The Bureau found it proven that the police officer had searched police records for information concerning a criminal person who had been arrested by the police. When questioned, the police officer admitted that he had not had an official purpose such a search. However, the optional fine was not accepted, and the case was submitted to the court.

In Oslo District Court's judgment of 9 January 2020, the officer was sentenced to a fine of NOK 3 000.

The judgment is legally enforceable.

## MOSS DISTRICT COURT

**– Careless driving**

A civilian reported an off-duty officer for careless driving. The prior circumstances were that a situation had arisen that the officer had perceived as hazardous to traffic, and he had signalled to the driver of a civilian car that he was to stop, which he had done. After stopping, the civilian driver had asserted that the officer wished to confiscate his drivers' licence. The Bureau was given an extended mandate by the Director of Public Prosecutions to decide the case against both the officer and the civilian.

The Bureau found it proven that the civilian had violated section 31, first paragraph, of the Road Traffic Act (see section 3 concerning careless driving and section 31, first paragraph, of the Road Traffic Act (see section 4 (see section 12 (1) of the Traffic Rules concerning unlawful overtaking))), and the civilian was fined NOK 7 000 on 22 April 2020.

The optional fine was not accepted, and the case was submitted to the court. In Moss District Court's judgment of 14 August 2020, the civilian was convicted of violation of section 3 of the Road Traffic Act, but acquitted of violation of section 4 of the Road Traffic Act, and was sentenced to a fine of NOK 6 000.

The judgment is legally enforceable.

## NEDRE ROMERIKE DISTRICT COURT

**– Careless driving**

On 27 April 2020, an officer was fined NOK 8 000 for violation of section 31 (see section 3) of the Road Traffic Act. The officer had been driving in an emergency turn-out with a marked BMW X5 police car. On an exit road, he had lost control of the vehicle and collided with a road sign, crossed the opposing lane and driven into a wall, resulting in considerable material damage. The optional fine was not accepted, and the case was submitted to the court.

In Nedre Romerike District Court's judgment of 26. November 2020, the officer was acquitted, since it was found that the police car's brakes may have been faulty.

The judgment is legally enforceable.

# Emergency turn-outs in 2020

When a person has been seriously injured or lost his or her life as a result of acts performed in the course of duty by the police or the prosecuting authority, the Bureau turns out and initiates immediate investigations. There may also be other cases where an immediate response is called for. In 2020 the Bureau turned out in response to eight cases of which brief accounts are given here.

**3. February 2020**

## SOUTHWEST POLICE DISTRICT

The police turned out to an address where it had been reported that a person had fired shots. The police established a telephone dialogue and ordered the persons inside to leave the flat. The person opened the door and fired several shots at the police. Officers fired shots at the person who was standing in the doorway. The shots hit the person in the belly. The case was dismissed on the ground that no criminal offence was deemed proven.

**4. April 2020**

## SOUTHWEST POLICE DISTRICT

The police began pursuit of a car after receiving a report concerning a drug-intoxicated driver. The driver did not stop, and the police remained in pursuit for some time. When the car finally stopped, the police fired several shots at one of the car's tires, without injuring any persons. The case was dismissed on the ground that no criminal offence was deemed proven.

**20 July 2020**

## AGDER POLICE DISTRICT

On the evening/night of 20 July 2020, the police fired three shots at a person, hitting him in the leg.

Since the morning, there had been an ongoing armed operation aimed at arrest and search of the person, who was suspected of threatening one or more persons with a sawn-off shotgun. When the police encountered the person, he aimed the shotgun at the patrol. The police then aimed and fired three shots at the person, hitting him in the left leg. The person did not suffer life-threatening injuries, but was taken to hospital for medical treatment. The Bureau has not yet decided the case.

**12 August 2020**

## MØRE OG ROMSDAL POLICE DISTRICT

The police turned out to an address to assist an ambulance with an assignment. Shortly after the police arrived at the address, the persons rapidly left the house wielding knives. Officers fired shots at the persons, which struck them in the belly. The Bureau has not yet decided the case.

**8 September 2020**

## MØRE OG ROMSDAL POLICE DISTRICT

On 8 September 2020, the local police district contacted the Bureau to inform that a man had been confirmed dead in a local police custody facility. The person had earlier in the day been brought to the custody facility by the police. The same evening, the Bureau's Investigation Division decided to investigate the matter, and an emergency turn-out was initiated. During the following two days, the Bureau examined the involved officers and witnesses, and technical examinations were conducted, inter alia, of the incident location. An autopsy was performed on the deceased. The criminal case has been regis-

**The Bureau's investigator and technician from the National Criminal Investigation Service at the scene of the incident in West Police District on 21 December 2020. Photo: Jannica Luoto, Bergens Tidende**

tered as grossly negligent professional misconduct. The purpose of the investigation has been to clarify the circumstances of the police's handling of the detainee from his apprehension by the police patrol to his follow-up and supervision by the police during his stay in the custody facility. The Bureau has not yet decided the case.

**22 September 2020**

## SOUTHEAST POLICE DISTRICT

The police turned out to an address in Notodden after receiving a report from the medical emergencies communications centre (AMK) concerning a threat situation associated with a person who appeared to be under the influence of drugs or alcohol. On the basis of the report and further information received by the police from witnesses and health personnel at the location, the police assessed it as time-critical to gain control of the person. When the police came in contact with the person, a situation arose where one of the officers fired several shots at him. The person was shortly after declared dead by a doctor at the location. The Bureau has not yet decided the case.

**14 October 2020**

## OSLO POLICE DISTRICT

Oslo Police District reported that a person had been arrested and placed in the police custody facility at Grønland police station the previous evening. The same morning, the person was found dead in the cell. The Bureau has not yet decided the case.

**21. December 2020**

## WEST POLICE DISTRICT

The police turned out to an address where a breach of the peace had been reported, and the medical emergencies communications centre (AMK) had requested assistance. The police entered the flat and encountered the person, who was wielding a knife. An officer fired shots at the person, hitting him in the chest. The person died as a result of the shots. The Bureau has not yet decided the case.

# Organisation and Staffing

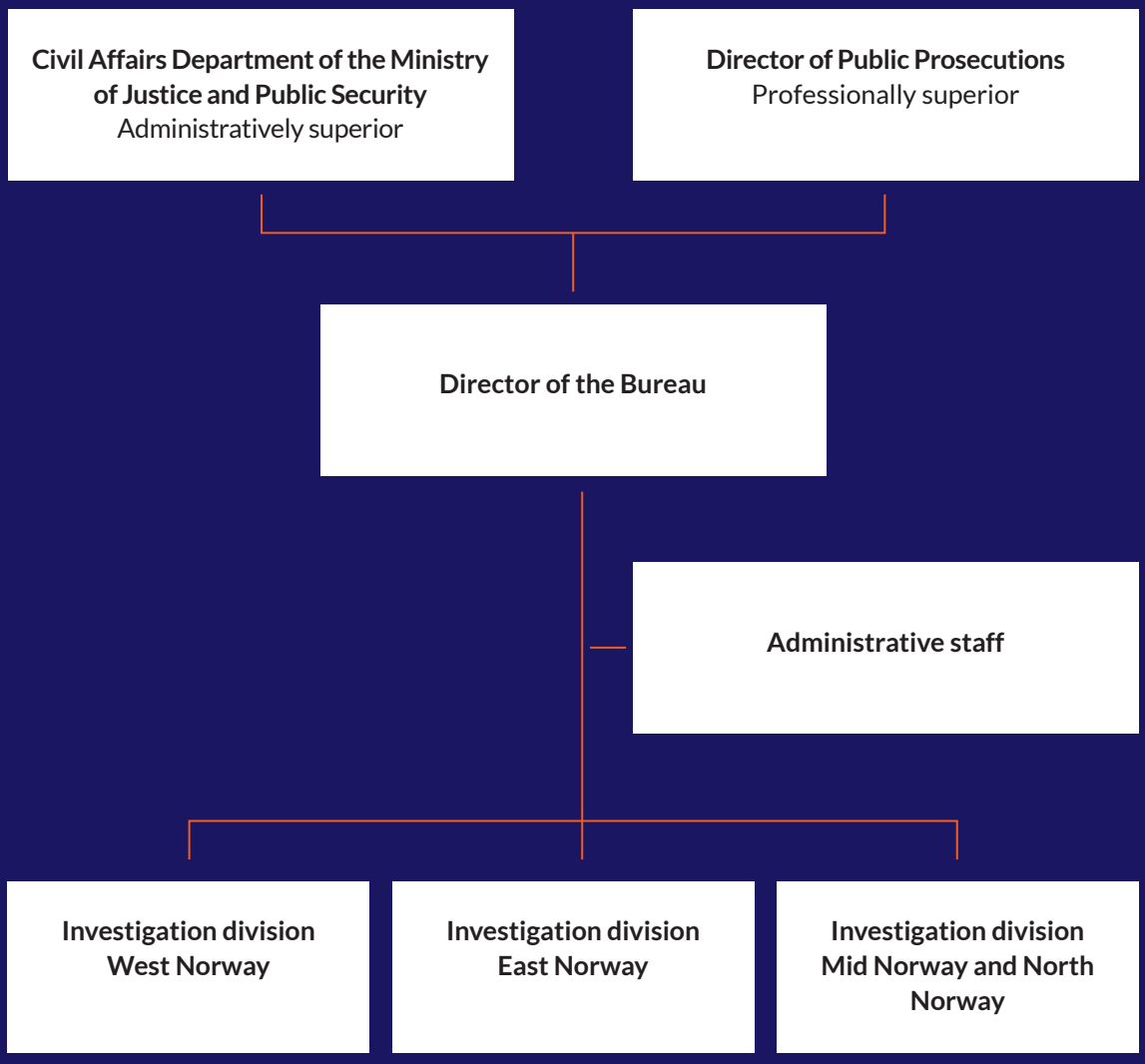
The Norwegian Bureau for the Investigation of Police Affairs was founded on 1 January 2005 for the purpose of investigating cases where employees of the police or prosecuting authority are suspected of committing criminal offences in the course of duty. The Bureau is not part of the police, but an independent body administratively subordinate to the Ministry of Justice and Public Security and professionally subordinate to the Director of Public Prosecutions.

The Bureau's investigation activities are governed by the Criminal Procedure Act, the Prosecution Instructions and directives issued by the Director of Public Prosecutions. Case processing is carried out at two levels, one level for investigation and one level for overall management and final prosecution assessment. Investigation Division East Norway is located in Hamar and Oslo, Investigation Division West Norway is located in Bergen and Investigation Division Mid Norway and North Norway is located in Trondheim. The Director of the Bureau, legal advisers and administrative staff are located in Hamar. The Director of the Bureau decides on prosecutions in all cases, but this may be delegated to another employee of the Bureau with a law degree/ Master of Laws. The Director of the Bureau does not participate in or issue detailed guidelines for the work of the Investigation Division.

On 1 January 2021, the Bureau has 34 permanent and seven temporary employees, of which 19 are special investigators, six senior investigation officers (lawyers), three legal advisers, nine administrative employees and four permanently employed managers. In addition, eight privately practising lawyers are engaged on assignment in processing criminal cases, two of whom head investigation divisions (the offices in Bergen and Trondheim). All of these employees have varied and extensive work experience from private and public undertakings. The arrangement involving lawyers on assignment is designed to emphasise the Bureau's independence and is intended to encourage transparency and trust.

Special investigators at the Bureau are required to have an up-to-date and a thorough knowledge of investigation methodology. All special investigators are currently graduates of the Police College/Norwegian Police University College, but several of them also have a background and training from occupations other than the police. A certain preponderance of the lawyers have a background from the prosecuting authority, but several of them have no such experience. These persons have a background from positions in central government and municipal administration, from private enterprises or from work as lawyers.

# Organisational chart



# The Bureau's Management Group

**Terje Nybøe**
Director of the Norwegian Bureau for the Investigation of Police Affairs

**Guro Glærum Kleppe**
Assistant Director, Norwegian Bureau for the Investigation of Police Affairs

**Vigdis Thomassen Aaseth**
Head of Administration, Norwegian Bureau for the Investigation of Police Affairs

**Liv Øyen**
Head of Investigation Division East Norway

**Halvor Hjelm-Hansen**
Lawyer/partner at the law firm of Erbe & Co DA, Trondheim. Also Head of Investigation Division Mid and North Norway. Lawyer on assignment.

**Ellen Eikeseth Mjøs**
Lawyer/Lawyer/partner at Sentrumsadvokaten, Bergen. Also Head of Investigation Division West Norway. Lawyer on assignment.

# Lawyers on assignment

In addition to permanent employees, eight lawyers are engaged on assignment in work on cases at the Bureau. The arrangement involving engagement on assignment emphasises the Bureau's independence and is designed to encourage transparency and trust.

**Bjørn Rudjord**
Lawyer/partner at the law firm of Elden DA, Oslo

**Mats J. Iversen Stenmark**
Lawyer/at the law firm of Fend DA, Oslo

**Ellen Eikeseth Mjøs**
Lawyer/Lawyer/partner at Sentrumsadvokaten, Bergen. Also Head of Investigation Division West Norway. Lawyer on assignment.

**Eirik Nåmdal**
Lawyer/Lawyer/partner at Sentrumsadvokaten, Bergen

**Paal Henrich Berle**
Lawyer/partner at the law firm of DalheimRasmussen Advokatfirma ANS, Bergen

**Halvor Hjelm-Hansen**
Lawyer/partner at the law firm of Erbe & Co DA, Trondheim. Also Head of Investigation Division Mid and North Norway. Lawyer on assignment.

**Roy Hedly Karlsen**
Lawyer/partner at the law firm of Bjerkan Stav AS, Trondheim

**Magnhild Meringen**
Lawyer/partner at the law firm of Advokatene på Storkaia DA, Kristiansund N

# Articles from previous annual reports

## 2008
- Protection of Civil Society
- Use of Force during Arrest
- Performance of Police Duties – When is it Punishable?
- Frequent Breaches of Confidentiality
- High-Speed Vehicle Pursuits and Shunting
- Corruption is Harmful to Society
- Reports of Racism
- Police Use of Handcuffs

## 2009
- Detaining in Custody – Incidents Involving Persons in Police Custody
- Corporate penalties
- Processing Time
- The Swedish National Police-Related Crime Unit
- Can Criminal Offences in the Police be Prevented?

## 2010
- The Police Operations Centre
- The Police's Duty of Activity when a Person is Deprived of their Liberty
- Misuse of Register Data
- The Use of Blunt Physical Force by the Police
- Sexual Involvement between Police Officers and Parties in Criminal Cases
- The Duty to Register Crime Reports

## 2011
- Deprivation of Position by Court Judgment
- Documenting Decisions in Criminal Cases
- Police Corruption in Norway
- The Conduct of Police Employees
- The Use of Police Signature in Private Contexts
- Incidents during Detention

## 2012
- The Police and the Public
- The Decision to Search
- Documenting Seizure, Search and Examination in connection with Committal to Custody
- Strip Search of Persons under Arrest
- Breach of the Duty of Secrecy
- The Detainee's Right to be Heard
- Correct Use of Handcuffs
- Police Action against Foreign Beggars
- The Duty of the Police to Inform
- The Duty of the Police to Deal with Dangerous Situations

## 2013
- Analysis of Cases concerning Use of Force
- Information Leaks from the Police to the Media
- Discipline in Communications
- Status in Interviews with the Bureau
- Custody – an Invasive Measure
- Complaints against Police Lawyers
- The Requirements of the Criminal Procedure Act regarding Report of Search
- Photographing/Videoing Police Performing their Duties
- Police Management

## 2014
- 10 Years since the Bureau was Established
- Approval of Overtime
- Custody/Incidents involving Persons in Police Custody
- Police Methodology and Methodological Development
- Notification of Complaints
- "The police do not answer my enquiries"
- Misuse of Police Records
- Assistance to the European Committee for the Prevention of Torture (CPT)
- Prevention of Torture
- Investigation of Cases involving Shooting by Police

## 2015

- The 10th Anniversary of the Bureau
- Police Ethics
- Investigation of Police Shootings
- Accidental Shootings
- Misuse of Police Records
- Dealing with Requests for Assistance
- Necessary for or Considerably Facilitating Performance of Duty
- New Provisions concerning Offences Committed in the course of Official Duty

## 2016

- Complaints regarding Use of Force by the Police
- Domestic Violence
- The Release of Pictures and Video Recordings to the Media
- Knowledge of other Cultures
- Breaches of the Duty of Secrecy Committed by Providing Information to Family Members or Acquaintances
- Use of Body Cuffs on Persons in Police Custody

## 2017

- Police Use of Firearms
- Whistleblowing
- Unwanted Sexual Attention
- Unlawful Searches in Police Records
- Is that good enough policing?
- In Georgia, on Assignment from the Council of Europe
- Nordic Cooperation Meeting

## 2018

- Driving through Red Lights during Emergency Turn-outs
- Visit by a Delegation from Georgia
- Experiential Learning in the Police
- User Survey
- From Random Checks to Full Control
- Police Weapon Management

## 2019

- Police Encounters with Children and Young People
- Assistance to the Child Welfare Service – Use of Force against Children
- Police Officers' Authority to Decide to Make Searches
- Searches in Police Registers
- Police Officers' Use of Social Media
- The Responsibility of the Police Management for Methodological Development
- Compliance with Decisions of the Court

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Office address: Kirkegata 13, Oslo

**Investigation Division West Norway**
Office address: Slottsgaten 3, Bergen

**Investigation Division Mid Norway and North Norway**
Office address: Kongens gate 30, Trondheim

The divisional offices are staffed by investigators who are often out on assignment. Visitors should therefore make appointments in advance. All the divisions can be contacted by means of the given telephone number and email address.

**www.spesialenheten.no**