Norwegian Bureau for the Investigation of Police Affairs

2017

ANNUAL REPORT

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FOREWORD

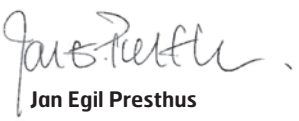
The primary concern of the Bureau is to investigate and decide whether to prosecute cases where employees of the police and prosecuting authority are suspected of committing criminal offences in the course of duty. The Bureau is also required to ensure that the public is provided with information about the system, how it operates and what decisions are made. The annual report, which is made available on the Bureau's website, is a major instrument of our information work.

The articles in the annual report address some of the topics that have figured prominently in the Bureau's work during the previous year. The topics raised in this year's report include police use of firearms, unwanted sexual attention and unlawful searches in police records. In our experience, information on actual episodes promotes discussion and learning. The report contains brief accounts of all cases dealt with by the courts and all cases involving decisions to prosecute.

If, in connection with the Bureau's investigation, matters come to light that should be assessed administratively, the Bureau must, in accordance with the provisions of the Prosecution Instructions, refer the case to the chief of police or special body concerned. Each year, approximately 50 cases are referred for administrative assessment. Associate Professors Linda Hoel and Brita Bjørklund, both on the staff of the Norwegian Police University College, have examined a selection of the cases referred to the police districts by the Bureau. A brief description of the examination, findings and assessments has been included in this report. There is perceived to be room for improvement.

The Bureau has strengthened its cooperation with the agencies of other Nordic countries with wholly or partly similar responsibilities, resulting in mutual benefits. Comparison of statistics reveals that the small proportion of decisions to prosecute and large proportion of cases dropped is not a specifically Norwegian phenomenon. Moreover, it is my view that the Bureau, as an independent investigative and prosecutorial body, is, of all of the Nordic solutions, that which best meets the requirements regarding independence, reasoned decisions, etc. that can be made of this type of arrangement.

The Bureau's case processing time is still too long. In recent years, the Bureau has dealt with a number of resource-demanding cases that have resulted in delays to the whole portfolio. In 2018 too, we will make thorough efforts to increase the speed of case processing and to further rationalise the use of resources.



Jan Egil Presthus
Director of the Norwegian Bureau for the Investigation of Police Affairs

POLICE USE OF FIRE-ARMS

IN 2017, THE BUREAU MADE DECISIONS IN FOUR CASES WHERE SHOTS WERE FIRED AT PERSONS BY THE POLICE.

Bergen, 18 July 2016

In Bergen, on Monday 18 July 2016 at approximately 1200 hours, the police received a report that a man who resided at a hostel had aimed a pistol at his own head. When the police arrived, the man had barricaded himself in a room. He called out that he would shoot if the police entered the room, and that he had explosives. The police negotiated with the man for more than an hour. At a point when they hoped that the man would give himself up, a bang was heard from the room. Five minutes later, a louder bang was heard, followed by silence. The police then decided to enter the room, and fired a gas cartridge into the room from outside the building. Some minutes after the gas cartridge was fired, the police called to the man that they were coming in, and used a battering ram to force the door open, at which point the officer nearest the door heard two bangs and saw that the man was holding a pistol in his hand. The officer fired two shots at the man's hand. The man was wounded in the left hand, necessitating amputation of half of his middle finger. The man's weapon turned out to be a cap pistol.

He had made the bangs by using new year fireworks.

Kristiansand, 27 November 2016
In Kristiansand on the night before Sunday 27 November 2016, two police officers fired a total of 17 shots at a man. Thirteen shots were fired by one of the officers and four shots by the other. The man died as a result of damage caused by a projectile that entered the right-hand side of his back, injuring a lung. At approximately 0430 hours, the police were contacted by a road worker who had spoken to the man. The man had asked the road worker to contact the police because he was frightened of what he might do to himself. He showed the road worker a firearm, and said that something dreadful was going to happen. Two armed patrols turned out on the assignment. The police confronted the man at two locations.

The first confrontation took place beside a petrol station. The man, who had taken up a firing position outside his car, fired a shotgun, hitting one of the police patrol cars but without injuring any of the officers in the car. The patrol drove off rapidly, and then stopped by the roadside to put on helmets and heavy tactical vests. While standing by the roadside, they received a report over the radio communications system that the man was on his way towards them in his car. After he had driven past them, the patrol drove off in pursuit. They kept a certain distance in order to avoid being shot at. The second confrontation took place at a roundabout. The officers had lost sight of the man's car some time before driving into the roundabout, at which point, they noticed that the man had made a right turn, parked and got out of the car holding the weapon in his hands. The officers saw that the man had readopted a firing position, and assumed that he intended to fire at them. The driver of the police car accelerated and drove behind a planted area in the middle of the roundabout. The other police officer went out of the car and fired several shots at the man from approximately 50 metres. The man then got back into his car in order to make a getaway, at which point both officers fired shots at the car. Approximately 33 seconds elapsed from the time the patrol reported on the radio communications system that they had driven into the roundabout until they reported that the man had driven off. The patrol pursued the man's car. Approximately 250 metres from the roundabout, they observed that he had stopped, and was lying partly outside the door on the driver's side. First aid was administered on the spot.

Stavanger, 6 May 2017
In Stavanger on Saturday 6 May 2017 at approximately 1520 hours, a shot was fired at a man by an officer serving in the South-West Police District. The police had turned out after receiving several reports from the public that a man in the area of the cathedral was behaving in an alarming manner. According to the persons who reported the matter, the man was holding in the air something shiny and sharp that looked like a weapon, and was shouting "You will die" or something similar. When armed police arrived on the scene, they observed the man near a café carrying an axe multi-tool. There were crowds of people in the area, many of them children. A police officer shouted: "armed police". At this, the man walked some distance away, then suddenly turned round, and ran roaring towards the officer, holding the axe over his head. The officer drew his weapon and shouted, "Armed police. Stand still and drop what you are holding". When the man did not stop, the officer withdrew some distance. Despite shouts from other people, the man did not stop. He continued walking towards the officer, who, when the man was just a few metres away, aimed and fired a shot that hit the man in the calf of the left leg. In his statement to the Bureau, the man said there were good prospects that the gunshot wound would not result in a permanent injury. On the basis of statements concerning the case, it was taken into consideration that, at the time of the incident, the man was suffering from a psychotic disorder.

Bergen, 6 June 2017
In Bergen, on Tuesday 6 June 2017 at approximately 0215 hours, a man was shot at by an officer of the West Police District. The police had turned out after receiving a report from a member of the public that a man with a pistol had been observed in a street in the city centre. When a patrol arrived at the scene and observed the man, an armed officer went out of the patrol car. The man aimed a weapon at the officer. When the man failed to respond to an instruction by the patrol to drop the weapon, and continued to stand with the weapon raised, the officer fired a shot which hit the man in his left thigh. On subsequent medical treatment, a projectile was removed without finding any damage to blood vessels, nerves or bones. The man had an air pistol that resembled a pistol for firing live ammunition. He has stated that he behaved as he did because he wanted to take his life.

The Bureau's assessment of the shootings

In the above cases, the Bureau found no grounds for penalising the officers who had fired shots, and the cases were dropped. In all four incidents, the conduct of the police was assessed on the basis of the provision concerning self-defence (see section 18 of the Penal Code of 2005). This provision provides for impunity in cases where a police officer fires his weapon in order to prevent an unlawful attack, where such action is not excessive and not clearly unjustifiable. The Bureau's complete account of these cases with legal assessments is available on the Bureau's website.

The Bureau's decision to drop the case against the officers who, on the night before 27 November 2016, fired shots in Kristiansand and the case against the officer who, on 6 May 2017, fired shots in Stavanger were appealed to the Director of Public Prosecutions. In both cases, the Director of Public Prosecutions upheld the Bureau's decision not to prosecute.

In 2017, the Bureau decided six cases of accidental shooting by police. One of the cases resulted in a fine. An account of this case is given in the present annual report in the overview of decisions to prosecute.

Assistance from the National Bureau of Crime Investigation
The Bureau has no forensic unit of its own and, in a number of cases, has requested the assistance of the National Bureau of Crime Investigation. In the Bureau's investigation of the incident in Kristiansand on 27 November 2016, the National Bureau of Crime Investigation assisted in carrying out an on-the-spot reconstruction. The incident was documented by means of video recordings using cameras located in a drone, in a car and on the ground. The same car, weapon and protective equipment were used as in the actual incident. Students from the Norwegian Police University College functioned as stand-ins. The National Bureau of Crime Investigation also carried out a 3D scan of the scene of the incident. A digital mirror was made of the scene of the incident in the form of point clouds and panoramic representations. All of the technical findings at the scene of the incident were marked with GPS coordinates. The scanning was used to calculate distances during the incident, including the distances from which shots were fired.

WHISTLE-BLOWING

WHISTLEBLOWING CASES AND THE THRESHOLD FOR PENALTIES IN CONNECTION WITH VIOLATIONS OF THE WORKING ENVIRONMENT ACT

In 2016 and 2017, the Bureau investigated and decided a number of cases associated with internal whistleblowing in the police. Common factors in these cases are the disclosure of low investigation quality and the failure of the police to prosecute serious criminal offences. In some of the cases, it is alleged that an employer, in connection with the processing of a disclosure, violated provisions of the Working Environment Act, including the Act's provisions concerning retaliation (see section 2 A-2 of the Act).

In several of the cases, the Bureau carried out extensive investigations. In none of the cases was it concluded that criminal acts had been committed. The Bureau has been criticised for decisions not to prosecute. In the view of the Bureau, this criticism has primarily been an expression of dissatisfaction with conclusions, and has to a lesser extent raised the essential issue regarding the Bureau's assessment, i.e. the question of when the threshold for penalties has been breached. In cases where the Bureau's decision not to prosecute has been appealed, the Director of Public Prosecutions has upheld the Bureau's decision.

In an appeal decision from October 2016, the Director of Public Prosecutions commented on the threshold for penalties in connection with violations of the Working Environment Act. The case concerned the conduct of West Police District in connection with disclosure of deficiencies in the investigation of the Monika case. In the decision, the Director of Public Prosecutions pointed out that the criminal liability pursuant to section 19-1 of the Working Environment Act is formally very extensive, but that not every violation of the Act gives grounds for penalties. The main sanctions in response to violations of the Act are civil law sanctions, such as compensation for non-pecuniary damage, as provided by the third paragraph of the Working Environment Act's provision on disclosure of censurable conditions or ordered by the Norwegian Labour Inspection Authority. In the decision, the Director of Public Prosecutions writes that, as otherwise in connection with violations of special legislation, sanctions for violations of the Working Environment Act are reserved for the more serious cases, typically where the violation itself is serious or where it results in considerable damage (see the Director of Public Prosecutions' Circular No. 1/1996 concerning working environment crime). It is also observed that, when imposing penalties in connection with violations in cases such as that discussed here, certain issues arise in connection with the statutory requirements of criminal law. Terms such as "kritikkverdige forhold" [censurable conditions], "gjengjeldelse" [retaliation] and the requirement regarding a "fullt forsvarlig arbeidsmiljø" [fully satisfactory working environment] make it difficult to deduce where criminal liability is applicable. As regards the case in question, the Director of Public Prosecutions writes that it is outside the scope of the prosecuting authority's responsibilities to consider whether the conduct of individuals or employers towards an employee has been correct, prudent and considerate.

In the present report's overview of cases referred for administrative assessment in 2017, the Bureau discusses another whistleblowing case from West Police District. See page 19.

UNWANTED SEXUAL ATTENTION

The Bureau receives complaints concerning unwanted sexual attention.

In an article in its annual report for 2010, the Bureau described cases where police employees have exploited or sought to exploit relationships of trust for sexual purposes. In recent years, the Bureau has dealt with a number of cases where police officers have been convicted of attempting to obtain or of having engaged in sexual activity by misuse of their position. In addition to cases of serious sexual offences, the Bureau's portfolio contains cases concerning allegations of unwanted sexual attention and harassment. These cases concern conduct which, from the point of view of the public and the employer, must be regarded as undesirable and improper, but the question of whether the perpetrator is guilty of a criminal offence may raise difficult evidential and legal issues.

In a case from 2017, a male police officer was reported for sexually offensive behaviour in a public place without consent (see section 298 of the Penal Code of 2005). A young woman told that, at a bar after midnight, she had chatted to a police officer who was on duty there and in uniform, and that he had felt her buttocks outside her clothes and complimented her on her appearance. The police officer had previously sent a "friend invitation" to the same woman on Facebook, and had sent her pictures of himself in uniform. The officer denied touching the woman on the buttocks, and said he had only complimented her on her turnout. There were no witnesses who could help clarify the course of events. The officer's colleague stated that he had not registered anything out of the ordinary. The Bureau dropped the case owing to insufficient evidence. In the Bureau's assessment, the incident and other information concerning the case gave reason to question the officer's conduct towards women. The employer was requested to follow up the matter administratively. Following a complaint from the officer, the Director of Public Prosecutions upheld the Bureau's decision to drop the case owing to insufficient evidence.

In another case from 2017, a police officer was reported by a woman for touching one of her breasts. The officer and a colleague had turned out after midnight in response to a report of a theft from a hotel room. The victims of the theft were two women who shared a room. One of the women told that, after the patrol had finished its investigations, the officer had returned and given her a slip of paper with his telephone number, saying that she was just to ring him if she needed someone to look

after her. According to the woman, the officer gazed at her for a long time, then touched one of her breasts and left. Later that night, the officer texted the woman, asking whether they had been given a new room, and urging her to contact him if she needed someone to talk to before she went to sleep. He also wrote: "Du er helt sykt deilig" [You are utterly gorgeous]. The officer told that he had returned to the hotel room because he had forgotten to ask where the women's car, which was also missing, had been parked. After he had given the woman his telephone number, so that she could contact him if she had further information for the police, the woman had leaned forward and kissed him. His reason for later sending her text messages was that he had been given the impression that she might be interested in further contact. The Bureau dropped the case owing to insufficient evidence. Neither the officer's colleague nor the woman's female friend had observed that the officer had touched the woman's breast. The woman denied kissing the officer, but admitted that she may have had a flirtatious tone. When interviewed, the officer said that he reproached himself for behaving unprofessionally.

He was reprimanded by his employer and was transferred to duties where he would have less contact with the public.

In 2016, the Bureau decided a case where a male police officer was accused of committing professional misconduct in connection with guard duty at a camp for members of a political youth organisation. The officer took an interest in one of the young women at the camp and, among other things, arranged that she and her friends could bathe from the police boat and be photographed wearing handcuffs and a police uniform cap. When a number of the camp participants were taking a night swim, the officer took off his uniform, radio and other police equipment, and joined in the bathing. He invited the young woman to the police guard room, chatted with her and gave her a chocolate heart. The officer sent several text messages to the woman, where he told her that he found her charming. The woman's impression was that the officer was interested in sex. After the camp was over, the leadership of the youth organisation complained to the police about the officer's conduct. He was reprimanded by his employer.

The Bureau's assessment was that the officer's conduct was censurable. There was reason to question his interpretation of his professional role and his professional judgment as a police officer. There were not found to be grounds for criminal liability, and the case was dropped owing to insufficient evidence. It was found appropriate that his conduct at the camp be followed up by his employer.

In the overview of decisions to prosecute in the present annual report, the Bureau gives an account of an indictment of a former police officer. The person, whose duty involved protecting a threatened woman, was, among other things, accused of repeatedly touching her thighs, buttocks, belly and back, despite the fact that the woman said she did not want him to touch her.

Police employees are subject to strict requirements regarding conduct. Section 4-1 of the Police Instructions states that a police officer shall, whether on or off duty, behave in a manner that warrants such respect and confidence from the public as the post requires. In the case of police officers, the question of criminal liability in connection with sexual harassment is therefore assessed not only pursuant to the provisions of the Penal Code concerning sexual offences but also pursuant to the provisions of sections 171 and 172 of the Penal Code concerning professional misconduct. An example of a conviction in connection with breaches of the provisions of the Police Instructions is to be found in Norwegian Supreme Court Reports Rt-2015-1170. A male police officer had, among other things, in breach of section 5-1 of the Police Instructions, made insulting remarks to a female detainee, and was convicted by the Supreme Court of violation of section 171 of the Penal Code.

Prohibition against harassment is laid down in section 13 of the Equality and Anti-Discrimination Act. It follows from the third paragraph of the provisions that by sexual harassment is meant any form of unwanted sexual attention that has the purpose or effect of being offensive, frightening, hostile, degrading, humiliating or troublesome.

In the view of the Bureau, the question of whether an officer's conduct is in violation of the harassment prohibition for police employees could be a factor in assessing whether professional misconduct has been committed pursuant to sections 171 and 172 of the Penal Code.

UNLAWFUL SEARCHES IN POLICE RECORDS

INTRODUCTION

Police employees have access to considerable information to enable them to perform their statutory duties as well as possible. This plays a major part in ensuring police efficiency. At the same time, the public is entitled to expect that personal data and other sensitive information held by the police is not used for any other purpose than to carry out the social responsibility of the police.

Access to the data in police records is strictly regulated, and the data may only be used where there is an official purpose for such use pursuant to the Police Records Act. For a number of years, there has been an increasing focus in the police on the purpose of the Act and on what may be deemed an official purpose. For example, all police employees are informed that it is unlawful to search for information concerning oneself, even for the purpose of training. Searches for information concerning friends and family and the like are searches of a private nature, which do not meet the conditions for official purpose.

Each year, the Bureau deals with a number of cases concerning whether unlawful searches have been made in police records. Searches in violation of the Police Records Act may be professional misconduct subject to penalties pursuant to section 171 of the Penal Code. However, not all violations of official duty are subject to penalties. In order that section 171 of the Penal Code shall apply, such a violation must constitute a "gross" violation of an official duty. In assessing the grossness of a violation, the Bureau has previously attached importance, among other things, to the number of searches that have been made. Following a decision by the Director of Public Prosecutions in 2015, the number of searches is no longer regarded as crucial.

In the following, we provide brief accounts of individual cases that may indicate where the boundary for criminal liability is drawn in practice.

SEARCHES CONCERNING ONESELF AND FAMILY MEMBERS

In 2017, the Bureau dealt with a case where an officer (A) had searched in police records for information concerning himself, his daughter and his son in law. A had searched 60 times for information concerning himself, 31 times for information concerning his daughter and 247 times for information concerning his son in law. The case was dropped by the Bureau and the decision not to prosecute was upheld by the Director of Public Prosecutions. A's search concerning himself was not warranted by an official purpose, but did not clearly fall within the area where there are grounds for criminal liability. In assessing the grossness of the action, it was pointed out that regard for the right to privacy and the risk of spreading of sensitive information do not apply with equal weight in the case of searches concerning oneself.

A's contention that the searches concerning his son in law and daughter were warranted by his police duties could not be disregarded. However, the Director of Public Prosecutions pointed out that A was nevertheless disqualified from investigating cases concerning his daughter and son in law, which thereby also excluded him from searching for information concerning these persons. The searches were assessed as gross violations of duty. Since, in their statements concerning the case, A's colleagues expressed very different views on the types of search that they were allowed to make and what practice was followed in the police district, the Director of Public Prosecutions, in view of the strict evidence requirement in criminal cases, did not find there to be sufficient evidence that A had wilfully violated his official duties.

The Director of Public Prosecutions pointed out that the case in the police district should

without doubt give rise to an administrative assessment of the procedures for use of police records, and that it must be documented that all persons with access to police records have been informed of the restrictions that follow from the Police Records Act and other legislation.

In another case from 2017, the Bureau concluded that a person (A) had acted unlawfully when searching in police records for information concerning two persons, one of whom was his own son. A was not an investigator on any of the cases these persons were involved in, and had only a personal interest in finding out what had happened.

SEARCHES PROMPTED BY CURIOSITY

In a case from 2014, the Bureau found that a person (A) had acted unlawfully when he searched for information concerning his girlfriend (B). A and B had previously been in a relationship, and had resumed the contact. From 2009 to 2013, A searched for information concerning B a total of 118 times. A stated that he made the searches out of curiosity and because he wanted to find out more about what B was like.

In 2015, the Bureau dealt with a case where a person (A) had searched three times for information concerning his girlfriend. Owing to the low number of searches, the offence was not deemed by the Bureau to be so serious that there were grounds for a imposing a penalty. When considering the appeal against the Bureau's decision, the Director of Public Prosecutions found the offence to be subject to a penalty on grounds of general deterrence.

In 2016, a police officer was fined by the Bureau for violation of official duty. Owing to a personal interest in the area concerned, the officer had looked up more than 900 incidents associated with sex and prostitution in the police intelligence database.

In 2017, the Bureau fined an officer who, out of curiosity, had, on two occasions, searched for information concerning two persons. The Bureau found it to be clear that such use lay outside the framework and conditions that apply to use of police computer tools.

SEARCHES OWING TO INFORMATION THAT CAUSES CONCERN

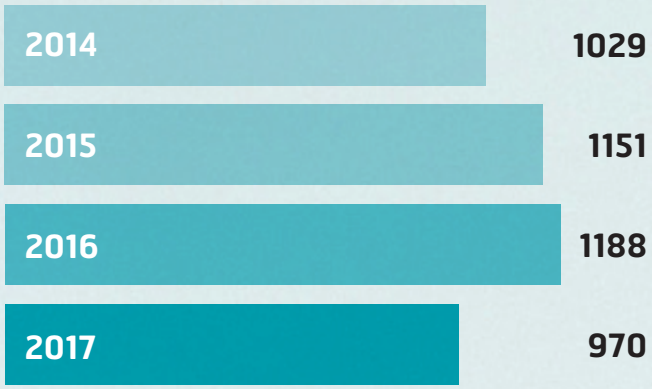
In a case from 2017, the Bureau concluded that a police officer had acted unlawfully when searching police records a total of six times for information concerning two persons. The officer had received information that a person who participated in the care of a child for whom the officer was a godparent had previous convictions for violations of the Firearms Act, and might now have connections with a narcotics network. The officer had therefore carried out searches in order to find out more about the person. The officer did not have police duties involving responsibility to follow up this information, and therefore, in the Bureau's assessment, did not have an official purpose for making the search.

The Bureau found that none of the tasks that A was already involved in or could be given responsibility for would have been carried out more simply or effectively as a result of the searches he made. The Bureau also found that A had not shared his anxiety concerning the person with anyone in the police and that the knowledge he gained by means of the searches was not applied to police work.

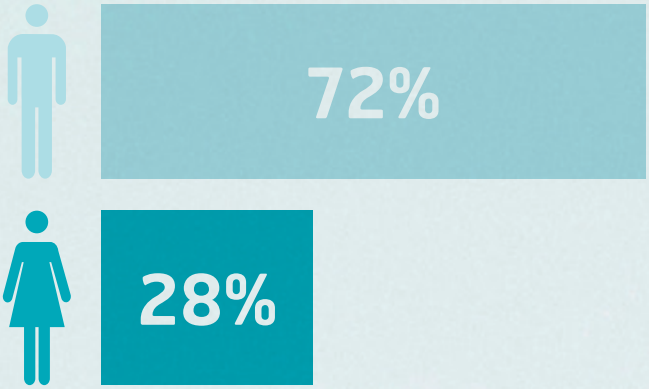
An officer (A) became worried and insecure on learning that a close family member was to serve a prison sentence, and searched police records on two occasions for more information concerning the background of the sentence. In 2017, when the Bureau considered the case, it concluded that this conduct was subject to a penalty. In the Bureau's assessment, A had no official purpose for making these searches (see section 21 of the Police Records Act).

STATISTICS 2017

RECORDED COMPLAINTS



COMPLAINANTS (distribution by gender)



WHO LODGES COMPLAINTS?

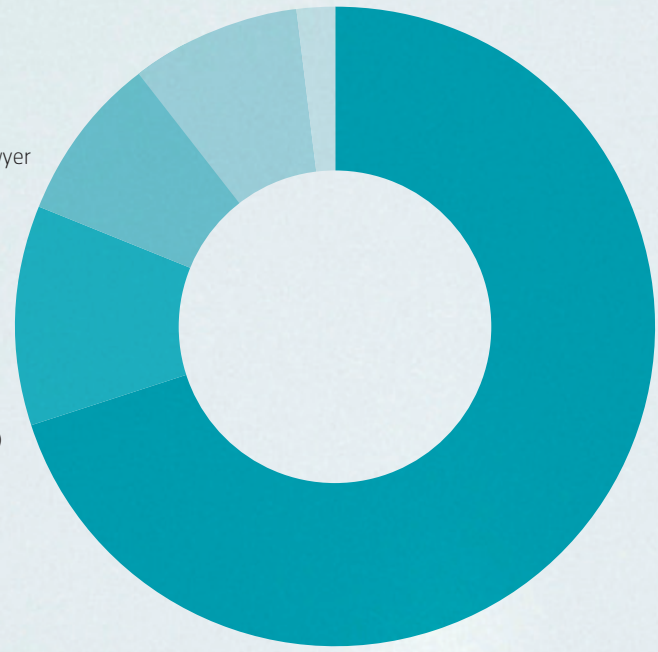
The aggrieved party
76%

The aggrieved party via his/her lawyer
8%

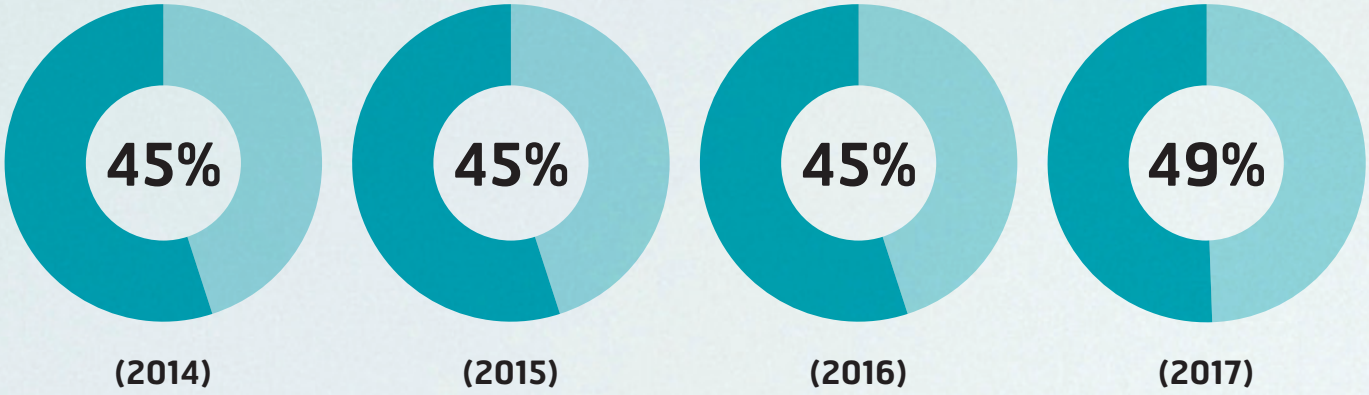
The police district itself
10%

Others (e.g. witnesses to incidents)
5%

The Bureau itself
1%



NO REASONABLE GROUNDS FOR INVESTIGATION [Number of cases dropped without investigation)

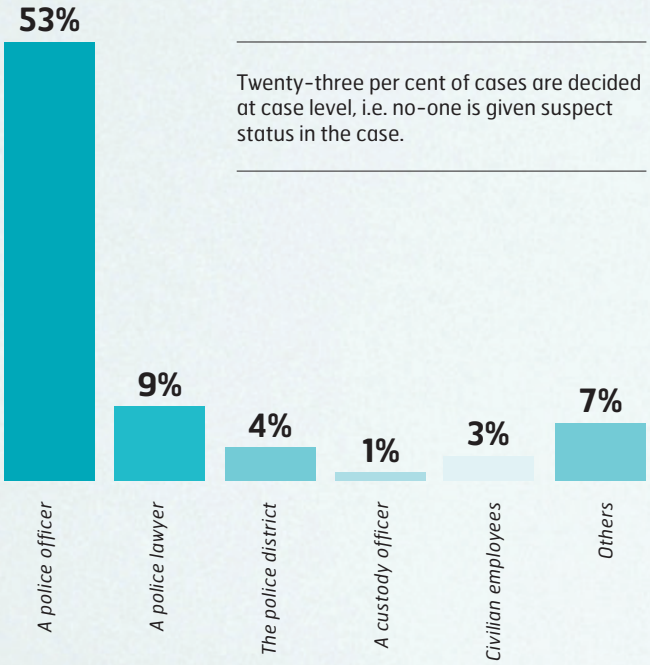


The question of whether investigation is to be initiated is discretionary. Pursuant to section 224 of the Criminal Procedure Act, a criminal investigation shall be carried out when, as a result of a complaint or other circumstances, there are reasonable grounds to investigate whether any criminal matter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

The Bureau has a low threshold for initiating investigations. The Bureau drops 45% of cases without investigation partly because many complaints concern entirely lawful performance of duty and partly because some complaints are clearly subjective or groundless. The Bureau also receives complaints where the motive of the complainant is clearly to obstruct the work of the police in an ongoing investigation. Although a case is dropped without investigation, a number of enquiries have generally been made, and a reasoned decision is written.

Summaries of all decisions are made available on the Bureau's website.

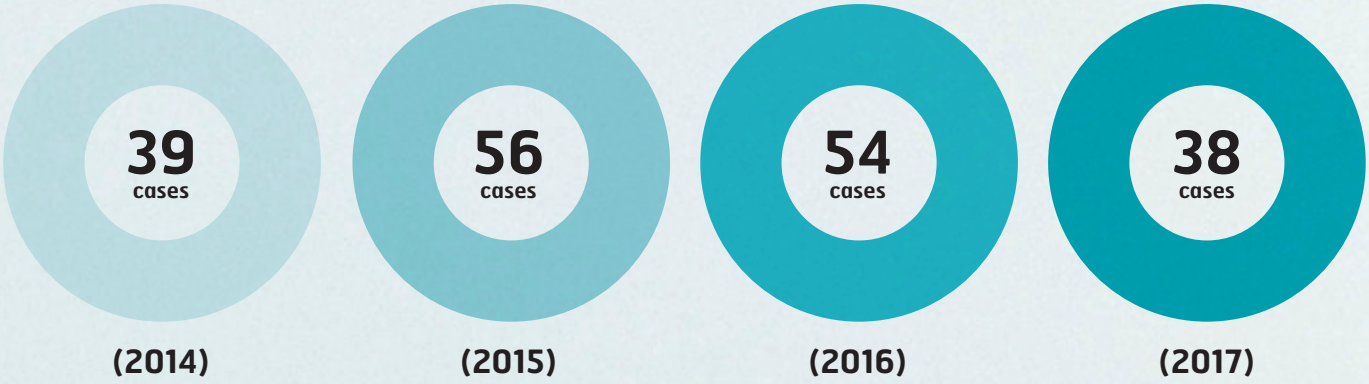
WHO ARE COMPLAINTS LODGED AGAINST?



Twenty-three per cent of cases are decided at case level, i.e. no-one is given suspect status in the case.

STATISTICS 2017

ADMINISTRATIVE ASSESSMENTS (Cases referred to chiefs of police or directors of special bodies - pages 18-21)



APPEALS TO THE DIRECTOR OF PUBLIC PROSECUTIONS

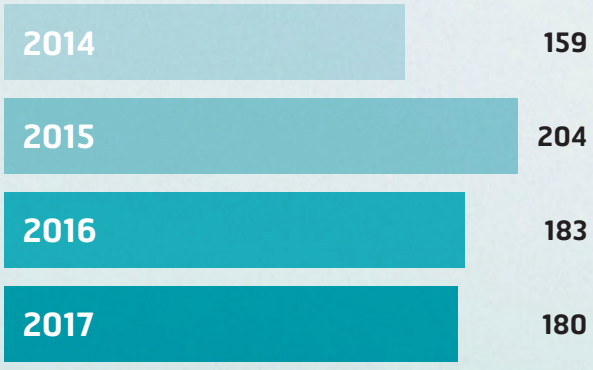
175 In 2017, the Director of Public Prosecutions considered 175 appeals against the Bureau's decisions.

172 In 172 of the cases, the Bureau's decision was upheld. In two cases, the Director of Public Prosecutions changed the reason for dropping the case. In four cases dropped by the Bureau, the Director of Public Prosecutions ordered further investigation. In one case that had been dropped by the Bureau, the Director of Public Prosecutions requested the Bureau to impose a fine.

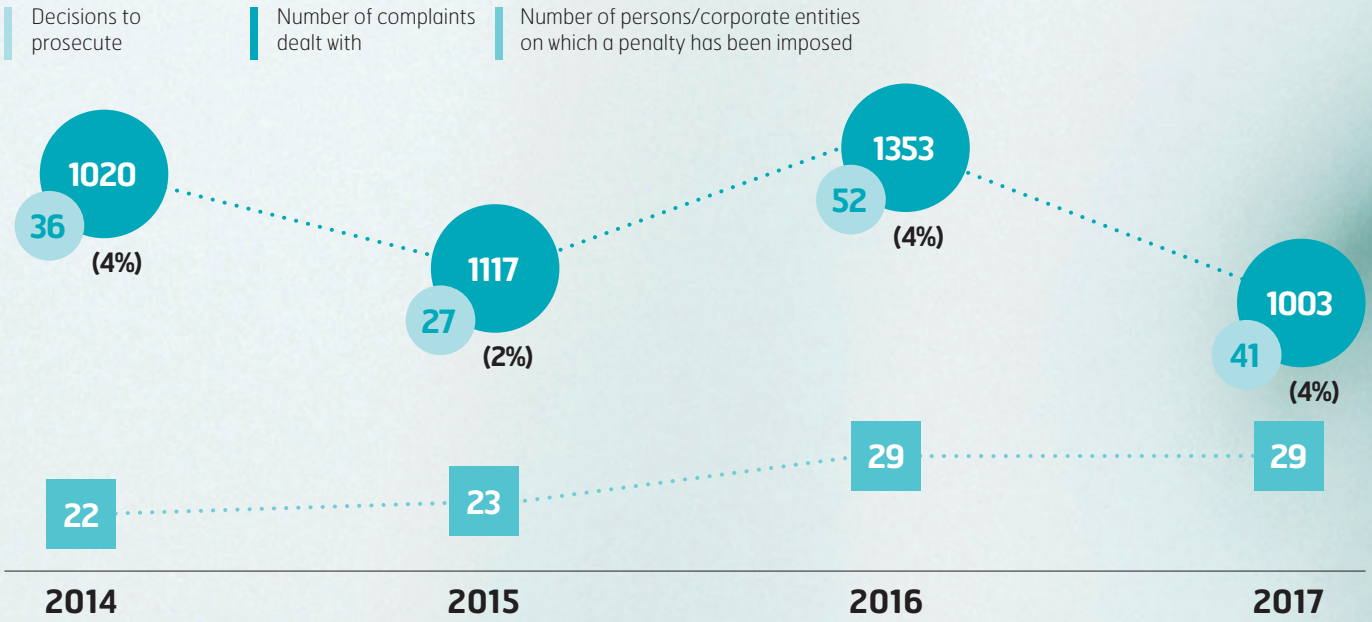
25% In 2017, 25% of cases decided were appealed.

PROCESSING TIME [days]

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



DECISIONS TO PROSECUTE



In 2017, 41 out of 1003 complaints dealt with resulted in an optional fine, indictment or waiver of prosecution (4%). Penalties were imposed on a total of 29 persons. More detailed accounts of the cases are provided on pages 31–35.

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.

Text:
Linda Hoel, Associate Professor,
The Norwegian Police University College,
Bodø

Text:
Brita Bjørkelo, Professor,
The Norwegian Police University College,
Oslo

IS THAT GOOD ENOUGH POLICING?

In the article "Is that good enough policing?" we examined a selection of what we have called grey-area cases. These are cases that the Bureau refers to the police districts for administrative assessment.

The criteria for selection of cases were that they involved incidents of recurring types, which were not necessarily criminal offences but nor were necessarily good practice. The main findings were that police managers primarily responded by (1) "tightening up practice", (2) providing training measures and reminders concerning legislation while seeking to resolve the Bureau's request within the framework of criminal law. In summary, our findings indicated that the experiential learning initiated on the basis of the Bureau's requests mainly takes place as a result of "instrumental measures based on criminal law". The question we ask ourselves is whether such measures are conducive to experiential learning that results in permanent and compulsory changes of practice.

On the Bureau's website, administrative treatment of grey-area cases is regarded as "experiential learning". However, we find no detailed description of how the Bureau envisages that experiential learning can, should or must be implemented on the basis of what the Bureau has arrived at. When we examined how police managers interpret and deal with the Bureau's request for administrative assessment of cases where their employees have been found not to be criminally liable but where the investigation has revealed censurable practice, we found that managers respond mainly to the conclusion and pay less attention to the description of the content of the decision. The Bureau's mandate is related to criminal law considerations. It may therefore be natural for experiential learning to be implemented within a juridical framework.

Our findings indicate that, despite the fact that police managers perceive the possibility of "taking a look at practice", what they actually do ("tighten up", provide training and reminders) does not seem to elicit critical and conjectural questions regarding individual or collective factors that may underlie the practice. Police managers implement various measures. However, the instruments and working methods we gained insights into do not appear to promote critical reflection over the experience, which may in its turn be one of the main conditions for experiential learning.

On the basis of our findings, we deduce that it may have unintentional consequences for the Bureau's expressed wish for experiential learning if the interpretation of the request excludes an analysis of recurrent grey-area cases beyond examination of what is censurable in terms of

Source:
Hoel, L. and Bjørkelo, B. (2017). "Kan dét være godt politiarbeid? – En undersøkelse av erfaringslæring av gråsonesaker" [Is that good enough policing? An investigation of learning from experience of grey-area cases]. Nordisk politiforskning 2017. DOI: 10.18261/issn.1894-8693-2017-02-06

Link:
www.idunn.no/nordisk_politiforskning/2017/02/kan_det_vaere_godt_politiarbeid

criminal law. Experiential learning may involve arriving at insight and awareness concerning practice and factors that may influence this. Incidents that challenge or affect us in one way or another are said to be well suited to learn from. Learning on the basis of experiences that affect us may thus be conducive to insight which may in its turn result in changes to prevailing values and conceptions that may underlie recurrent actions, which may not necessarily be individually unlawful but which do not constitute "good policing".

Our findings showed that a long time can elapse from the report of a grey-area case until it is decided and a request for administrative assessment is sent to the district where it took place. As a result of this, the case is not necessarily perceived as challenging or relevant by the person or persons involved. When the case involves an act that is not unlawful, it may not even be perceived as a case at all. Dealing with requests for administrative assessment of grey-area cases is demanding for police managers because it concerns conduct, actions and practices that were the subjects of complaints but did not constitute criminal offences. This requires juridical insight and courage.

If experiential learning is to be achieved on the basis of the Bureau's requests, our findings suggest that more systematisation and inquiry into how police managers deal with these requests in practice may be useful. We do not consider that a reporting system would in itself be sufficient. Learning is often defined as a relatively permanent change of behaviour. Since the cases do not involve unlawful actions, experiential learning requires police managers, while preserving their employees' legal rights, to safeguard their employees in such a way that they can both be affected by an event and recollect it in order to perceive it as an experience.

In the article, we suggest that the experience of being reported and the content of the Bureau's requests may stimulate reflection over the attitudes of police employees, the core values of the police service and the intentions of the Act. Facilitating the exchange of ideas and reflection over the various cultures, myths, conceptions and values associated with practice in the police district may promote involvement in and commitment to the organisation. This would conform to the employee platform of the police service. Against this background, experiential learning should also take place outside the framework of criminal law. In order to achieve this, police managers should ask themselves and other persons in the police service the question "is that good enough policing?" Such a question requires that the manager also encourages learning by investigating, elucidating, bringing to the fore, questioning and exchanging ideas about other aspects of the exercise of duty than the purely juridical aspect.

Grey-area cases have a learning potential where questioning potentially unintentional negative consequences of police methods may strengthen the possibility of transparency regarding police powers and control of their employment (Presthus, 2009, Wathne, 2009). For the police service it is not unproblematical to learn from cases where police officers have been investigated and acquitted. It is nevertheless our view that these cases, precisely because they are by their nature problematical, may be particularly appropriate for experiential learning. Such management requires courageous police managers with juridical sensitivity, since such cases demand investigating and raising fresh interpretations of practice in addition to the juridical.

ADMINISTRATIVE ASSESSMENTS 2017

CASES REFERRED TO CHIEFS OF POLICE FOR ADMINISTRATIVE ASSESSMENT 2017

SOUTH -EAST POLICE DISTRICT
Investigations in private areas

The police were reported for unlawfully entering a private area. The complainant referred to a police officer's statement in his report that he had observed drug-use equipment lying on the living room table. According to the complainant, in order to be able to observe this, the officer would have had to enter his property, sneak onto his terrace and look through the window. In an interview with the Bureau, the officer told that the police had over time received tips that the complainant was engaged in distribution and use of narcotic drugs. One night when the officer was driving in a patrol with a colleague, there was otherwise little to do and they decided to pay a visit to the complainant's address. They parked the patrol car some distance from the house, went through the garden and up to a living room window. After looking in and observing drug-use equipment, they withdrew and later wrote a report on their observations. The officer's assessment was that the investigations were authorised by section 8-7 of the Police Instructions.

In its decision, the Bureau criticised the manner in which the police had proceeded, and referred in this connection, inter alia, to article 8 (1) of the European Convention for the Protection of Human Rights on the right to respect for private and family life and to the fact that, prior to the observations through the window, there were only slight grounds for suspicion. For this reason among others, it was considered doubtful that the intervention was proportionate. However, on the basis of an overall assessment, the Bureau concluded that the officer's action was not so serious as to justify a penalty for professional misconduct. The case was dropped owing to insufficient evidence. When the officer told that the procedure was normal in the police district, the case was referred to the chief of police for administrative assessment.

The complainant appealed against the Bureau's decision and, in considering the appeal, the Director of Public Prosecutions considered whether the police had authority to enter a private area and look through the window. The Director of Public Prosecutions found that, if the police enter a private area in order to search for evidence that a criminal act has been committed, authority for the intervention must be sought in the provisions of the Criminal Procedure Act. Since the rules

concerning search of premises do not apply to outdoor investigations, even when the investigation takes place in a private area, the Director of Public Prosecutions referred to section 156 of the Criminal Procedure Act (inquiry relating to a building or other private area) and section 202 of the Act (outdoor inspection) as possible authorities. Pursuant to section 202, it is sufficient that the investigation takes place "for the purpose of a criminal investigation", which entails that there must be reasonable grounds to initiate investigations pursuant to section 224 of the Criminal Procedure Act. On the basis of the tips the police had in the case in question, the Director of Public Prosecutions found this condition to be met. In his assessment of the proportionality of the intervention, the Director of Public Prosecutions observed that it is not unproblematical that the police look through the window of a private residence in the middle of the night, and wrote: "Such an inspection may reveal very personal matters, and would moreover give rise to alarm if discovered by the residents of the house. It does not therefore automatically follow that the course of action in question was proportionate". It follows from section 202 of the Criminal Procedure Act that such an investigation, without the consent of the owner or occupier, must as a rule be decided by the court or the prosecuting authority. If delay entails any risk, such an investigation may be decided by a police officer. Since there did not appear to have been any urgency associated with the need for the investigations, the Director of Public Prosecutions found that the investigations were carried out without the necessary decision of a competent authority. The Director of Public Prosecutions upheld the Bureau's decision in the case, and subscribed to the request that the case be reviewed administratively. With regard to this, the Director of Public Prosecutions wrote as follows: "Besides the question of whether the course of action in question should have been followed at all, there are grounds to review the relationship between instruments of criminal investigation and policy and the appurtenant rules concerning decision-making authority."

WEST POLICE DISTRICT

Disclosure that under-cover investigators had been instructed not to intervene against persons suspected of serious drug offences

An employee of the police district disclosed that under-cover investigators in the district had for several years been instructed not to intervene against persons suspected of serious drug offences. Following reports in the media concerning this disclosure, the Bureau decided to initiate investigations in order to clarify whether, in specific cases, general guidelines or instructions had been given involving professional misconduct subject to penalties. The investigation established indisputably that general guidelines had been given that the number of new drug cases for investigation was to be limited. The main reason for reducing the number of such cases was that the capacity for investigation and prosecutions was strained. When considering the complaint against the Bureau's decision, neither the Bureau nor the Director of Public Prosecutions believed that the guidelines that had been given were of a nature that was subject to penalties. The Director of Public Prosecutions wrote as follows concerning the threshold for penalties: "Considerable justification is required before the police management's discretionary distribution of the various statutory duties could in such a situation give rise to criminal liability, either of individuals or of the police district as such. The Director of Public Prosecutions found that criminal liability would have been applicable if an explicit or

Continued

ADMINISTRATIVE ASSESSMENTS 2017

implicit order had been given involving full decriminalisation of a specific category of serious crime. This would, for example, have applied if it were decided that there should be no intervention against drug crime regardless of the strength of the grounds for suspicion and the seriousness of the offence. On the basis of the evidence in the case, which must be assessed in relation to the provisions of the penal code regarding evidence requirements, there is no evidence that such guidelines have been given".

Nor did the Bureau and the Director of Public Prosecutions find that individual cases referred to in the disclosure had been dealt with in a manner that could be subject to penalties. The Bureau referred the case to the police district for administrative assessment. The Bureau found, inter alia, grounds to question whether the internal communication concerning the need for priorities had been good enough, including whether it had been sufficient to base this on dialogue and oral management signals.

MØRE OG ROMSDAL POLICE DISTRICT
Use of force resulting in fracture of upper arm.
The police district notified the Bureau that a woman, who was 18 years of age at the time of the incident, had suffered a fracture of the upper part of her left arm when taken into police custody. The woman was detained by the police because she was intoxicated, and was disturbing the peace. On the basis of the result of the investigation, the Bureau found that the fracture of the woman's arm occurred after she had been placed in the police car on her stomach, and was to be handcuffed. The woman behaved aggressively, kicking out and nearly hitting one of the officers on the head. The decision to handcuff her therefore did not appear unnecessary and disproportionate. While the woman resisted, a police officer took hold of her left arm and pressed it towards her right arm. The officer then heard the arm snap. A medical expert assessed the fracture of the woman's arm as a spiral fracture that may have occurred as a result of twisting the arm while there was muscular resistance. Such a fracture is dependent on the use of force by both the injured person and the person causing the injury. The medical expert compared the fracture with examples of upper arm fractures suffered in connection with arm wrestling.

The Bureau did not find it proven beyond any reasonable doubt that the use of force in the situation was disproportionate and subject to a penalty. The procedure followed by the police was not found to clearly deviate from the ordinary arrest technique in connection with handcuffing of an uncooperative person. The case against the officer who took hold of the woman's left arm was dropped by the Bureau owing to insufficient evidence. The case was referred for administrative assessment with a view to possible experiential learning in arrest technique. The woman weighed 45 kg and was 157 cm tall.

WEST POLICE DISTRICT
Handling and storage of seized goods – 5 kg amphetamine sulphate
The police district was notified by a hiker that he had found a sack in the woods containing a plastic container with several plastic packages inside it. An officer was sent to investigate the find location. The officer took the sack to the police station and placed it in a room for temporary storage of seized goods. The sack was not opened until approximately one year later, when it was found to contain almost 5 kg of amphetamine sulphate. The Bureau was notified of the sack and considered there to be reasonable grounds to investigate whether there had been professional misconduct

subject to penalties. The officer who took the sack to the police station stated that he had had no thoughts that the sack might contain narcotic drugs. On the day the sack was discovered, he had had a hectic tour of duty, with several demanding assignments. The sack had not been labelled, and he had placed it in the property room without writing a report. In the duty log, it was noted that the officer would write a report if the sack contained narcotic drugs or the like. During the period that the sack was in the property room, several persons knew about it, including the senior officer in charge of the property room and civilian personnel with duties associated with day-to-day follow-up of seized goods. Owing, among other reasons, to ongoing reorganisation and the senior officer's considerable pressure of work, inspections of the property room were not carried out in accordance with instructions during the period in question. The officer who placed the sack in the property room had not complied with the routines for handling of seized goods or lost property. He had not provided documentation in connection with the find or labelled the sack, and was in the Bureau's assessment guilty of professional misconduct. On the basis of an overall assessment, the misconduct was not deemed to be gross or subject to penalties. Importance was attached to the fact that there was information on the find of the sack in the duty log, that the sack had been placed in a suitable place, where it could easily be followed up by other persons, and that the officer had notified his senior officer about the find. Nor, in the case of the senior officer who had failed to comply with the instructions for inspection of the property room, did the Bureau find grounds for gross violation of official duty. The senior officer had no reason to believe that the sack might contain a considerable quantity of narcotic drugs. For parts of the period when the sack was in the property room, the senior officer was partly exempted from his administrative duties in order to be able to take part in the investigation of a serious criminal case. Witnesses in the case stated that, during the senior officer's assignment to other duties, it had been somewhat unclear who had responsibility for seized goods. The Bureau assessed whether there could be grounds for a corporate penalty in the case, and stressed that correct handling of seized goods and lost property is important for the quality of prosecution of criminal cases as well as regard for the parties to the case and owners of lost property. The fact that the police had long been aware of the sack and its location and, despite repeated internal reminders, had failed to carry out the simple task of clarifying its contents was deemed likely to weaken public confidence that seized goods and lost property are correctly handled by the police. The Bureau concluded, not without doubt, that a corporate penalty should be imposed. Among other factors, importance was attached to the fact that the police district had appropriate instructions and routines for handling of seized goods, of which the employees were aware. The failure in this case appeared to be particularly due to a lack of compliance by employees. The case was referred for administrative assessment.

IN GEORGIA, ON ASSIGNMENT FROM THE COUNCIL OF EUROPE

In June 2017, a lawyer and an investigator from the Bureau held a two-day training seminar for 22 representatives of the Georgian prosecuting authority.

The seminar was held at the request of the Council of Europe. The topic for the seminar was investigation of the police with a focus on cases concerning ill-treatment and torture. Before holding the seminar, the Bureau was required to prepare a plan to be approved by the Council of Europe.

In teaching the seminar, the Bureau used specific cases from its own portfolio, including a case that has been appealed to the European Court of Human Rights in Strasbourg. The seminar participants were divided into groups and were informed step-by-step of the facts of the case. They responded to questions on how they would have investigated the case on the basis of the facts they had been given. After the groups had presented their proposals, they were informed of how the Bureau had proceeded.

The questions discussed were:

- How do you identify cases concerning abuse of power by the police?
- How do you gather and document relevant data/how do you secure evidence?
- How do you carry out effective investigations?
- How do you treat and examine victims, witnesses and accused persons?

The groups were also assigned the task of preparing a case for trial.

After the seminar, the participants expressed satisfaction with the content and execution, and particularly called attention to the advantageous effect of the investigator and lawyer acting together.

ACTIVITIES 2017

NORDIC COOPERATION MEETING

In September 2017, the Norwegian Bureau for the Investigation of Police Affairs hosted a meeting in Oslo of agencies in the Nordic countries whose responsibilities include investigation of cases where employees of the police or prosecuting authority are suspected of committing criminal offences in the course of duty.

The meeting gathered managers and investigators from Denmark, Finland, Iceland, Norway and Sweden. The main topic of the meeting was exchange of experience. All agencies held presentations on incidents and specific cases considered to be of common interest. Information was also provided concerning new legislation, reports and changes in organisation or working methods. During the meeting, it was agreed that an effort should be made to prepare comparative statistics for the processing of complaints against the police and prosecuting authorities of the Nordic countries. There are clear characteristics in common in the processing of cases. Among other things, this applies to the large proportion of cases dropped. The Swedish agency assumed responsibility for coordinating this work. There was also agreement on facilitating more direct exchange of experience at the various levels.

In December 2017, the Bureau received a visit from a group of investigators from Avdelningen för Särskilda utredninger [the Swedish Special Investigations Department]. The purpose of this visit was to exchange experiences from work on large cases. In 2017, two of the Bureau's employees visited Riksåklagarämbetet [the Finnish Prosecution Service]. The topic for this visit was processing of cases concerning gross corruption in the police. In 2018, Den uafhængige politiklagemyndighed [the Danish Police Complaints Authority] will host a new cooperation meeting in Aarhus.

As a result of previous meetings, a brief joint presentation has been prepared of the agencies of the Nordic countries, providing information on organisation, areas of responsibility, etc.

This document is available on the Bureau's website.

COURT CASES 2017

OSLO DISTRICT COURT
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, third paragraph and fifth paragraph, of the Penal Code of 1902). On the orders of the Director of Public Prosecutions, the 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 shall have 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 during the period from January to May 2017. On 18 September 2017, Oslo District Court passed judgment. In the District Court, the retired police officer was sentenced to imprisonment for twenty-one years and to confiscation of NOK 667 800. The co-accused was sentenced to imprisonment for 15 years and to confiscation of NOK 825 million. The judgment has been appealed against and the appeal is scheduled for August 2018 at Borgarting Court of Appeal.

HAUGALAND DISTRICT COURT AND GULATING COURT OF APPEAL
On 4 April 2016, a police officer was indicted by the Bureau for misusing his position on two occasions in order to engage in sexual activity (see section 193 of the Penal Code of 1902) and for violations of sections 201 (b) and 324 of the Penal Code of 1902. Through his work, the accused came into contact with vulnerable women. When one of the women was at the police station to file a charge, the accused made sexual innuendos, which he followed up with a number of SMS text messages asking to visit her. When, on the following day, he called on the woman at her home, he had sexual intercourse with her. The other woman was visiting Norway to retrieve the ashes of her recently deceased husband when the accused came into contact with her through his duties.

The main hearing at the District Court was held in January 2017. In Haugaland District Court's judgment of 13 January 2017, the officer was sentenced in accordance with the indictment to imprisonment for nine months and to pay to one of the women NOK 50 000 in compensation for non-pecuniary damage. He was also deprived of his position and the right to hold a position in the police for all time. He appealed against the judgment of the District Court, and the appeal proceedings were held at Gulating Court of Appeal in June 2017. On 30 June 2017, Gulating Court of Appeal passed judgment in the case. In the Court of Appeal, the convicted person was acquitted of the counts of the indictment concerning violations of section 201 (b) and section 324 of the Penal Code. The Court of Appeal's sentence was otherwise the same as that of the District Court, involving imprisonment for nine months, compensation for non-pecuniary damage and deprivation of position. The judgment is legally enforceable.

SØR-GUDBRANDSDAL DISTRICT COURT
On 13 October 2016, a police officer was indicted by the Bureau for exceeding the speed limit (see, respectively, sections 31, first paragraph, and section 5 of the Road Traffic Act). The officer was indicted for driving at an average speed of 135 km/h over a distance of 4395 metres. The highest permitted speed on the stretch of road concerned was 80 km/h. During the main hearing, the defendant

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COURT CASES 2017

demanded an acquittal with reference to his decision to measure the speed of the police car that drove behind him. He also disputed that he had driven as fast as was stated in the indictment. Sør-Gudbrandsdal District Court did not give credence to the defendant's statement, and passed judgment on 20 February 2017, sentencing him to 36 hours community service, alternatively 18 days imprisonment, with an execution period of 90 days. He was disqualified from driving for five months and ordered to pay costs in the amount of NOK 5 000. The officer appealed against the judgment.

Eidsivating Court of Appeal denied his application for leave to appeal. An application to the Supreme Court to reverse the denial of leave to appeal was rejected. The judgment is legally enforceable.

ALSTADHAUG DISTRICT COURT AND HÅLOGALAND COURT OF APPEAL

On 20 January 2017, a police officer was indicted for having, one night at approximately 2357 hours, driven through a tunnel at a speed of 133 km/h, while the speed limit at the location was 80 km/h. On 15 March 2017, Alstadhaug District Court sentenced the officer to 36 hours community service and disqualification from driving for eight months and ordered him to pay costs in the amount of NOK 3 000. He appealed against the judgment, and Hålogaland Court of Appeal passed judgment on 1 November 2017 with the same conclusion, but increasing the costs to NOK 6 000. The officer appealed to the Supreme Court, which denied leave to appeal. A somewhat more detailed account of the case is given in the overview of decisions to prosecute in 2017. See pages 31–35 of the present report.

BORGARTING COURT OF APPEAL AND THE SUPREME COURT

On 1 December 2015, a police officer on the orders of the Director of Public Prosecutions was fined NOK 10 000 for violation of section 325, first paragraph (1), of the Penal Code concerning gross lack of judgment in the course of duty. The police lawyer decided that a person was to be arrested pursuant to section 175 (see section 171) of the Criminal Procedure Act despite the fact that there was no legal basis for such coercive action. In the grounds for the decision, the Director of Public Prosecutions pointed out that a person's refusal to make a statement to the police does not constitute a risk of destruction of evidence. The fine was not accepted and the main hearing was held at Sarpsborg District Court in August 2016. The district court sentenced the police lawyer to pay a fine of NOK 1 000. The police lawyer appealed against the District Court's application of law and the Director of Public Prosecutions filed a cross-appeal. On 28 March 2017, Borgarting Court of Appeal pronounced an acquittal in the case. The Director of Public Prosecutions appealed to the Supreme Court against the Court of Appeal's application of law and procedure, and the appeal against the application of law was referred for further processing.

On 4 September 2017, the Supreme Court set aside the judgment of the Court of Appeal. The police lawyer has subsequently withdrawn his appeal against Sarpsborg District Court's judgment, with the result that the prosecuting authority's cross-appeal has lapsed and Sarpsborg District Court's judgment is legally enforceable. In all instances, the case was prosecuted by one of the public prosecutors at the Office of the Director of Public Prosecutions.

SANDEFJORD DISTRICT COURT

On 17 November 2016, on the orders of the

Director of Public Prosecutions, a police officer was fined NOK 15 000 for violation of sections 288, first paragraph, and 325 (1) of the Penal Code of 1902 and section 31, first paragraph, (see section 3) of the Road Traffic Act. The officer had been driving a marked patrol car when he noticed a motorcycle with a driver and passenger. The registration plate of the motorcycle was not visible, and the officer decided to stop it for inspection. He used his blue light to indicate that the driver was to stop.

The driver then braked the motorcycle on the hard shoulder, and the passenger jumped off. When the officer saw that the driver of the motorcycle was attempting to avoid the inspection by push-starting the motorcycle, he decided to stop him by driving the patrol car into the left side of the motorcycle. The cycle overturned at the side of the road, and the driver fell off, fracturing his left leg in the collision with the car.

The fine was not accepted, and the main hearing was held at Sandefjord District Court. On 31 May 2017, the District Court pronounced an acquittal. The judgment has not been appealed against and is legally enforceable. The case was prosecuted by one of the public prosecutors at the Office of the Director of Public Prosecutions.

NEDRE ROMERIKE DISTRICT COURT

On 31 January 2017, a police officer was indicted for, one night at approximately 2320 hours, having driven on the E6 northbound from Oslo at a speed of 135 km/h while the speed limit on the stretch of road concerned was 80 km/h (see, respectively, section 31, first paragraph, and section 3 of the Road Traffic Act). The officer drove an unmarked police vehicle when his speed was measured by a Central Mobile Police Force patrol, which stopped him when he had turned off the E6 in the direction of his home address. On 11 September 2017, the officer was acquitted by Nedre Romerike District Court.

The Bureau has appealed against the judgment, and the appeal is scheduled for March 2018 at Eidsivating Court of Appeal. A somewhat more detailed account of the case is given in the overview of decisions to prosecute in 2017. See pages 31–35 of the present report.

SARPSBORG DISTRICT COURT

On 1 June 2017, a police officer was indicted for gross embezzlement (see, respectively, sections 325 and 324 of the Penal Code), for unlawfully acquiring narcotic drugs (see section 231, first paragraph of the Penal Code), for unlawful use of narcotic drugs pursuant to section 31, second paragraph (see section 24, first paragraph) of the Act relating to medicinal products and poisons, etc.) and for driving a motor vehicle under the influence of an intoxicating or narcotic agent (see section 31, first paragraph, etc. of the Road Traffic Act). In a judgment of 19 September 2017 at Sarpsborg District Court, the officer was sentenced to imprisonment for 24 days and to a fine of NOK 20 000. He was also disqualified from driving. The judgment is legally enforceable. At the time of the judgment in the District Court, the officer was no longer a police employee.

A somewhat more detailed account of the case is given in the overview of decisions to prosecute in 2017. See pages 31–35 of the present report.

DECISIONS TO PROSECUTE

In 2017, 41 out of 1003 complaints dealt with resulted in an optional fine, indictment or waiver of prosecution. Penalties were imposed on a total of 29 persons (no corporate entities).

INDICTMENTS

Speeding offence

On 20 January 2017, a police officer was accused of having, one night at approximately 2357 hours, driven through a tunnel at a speed of 133 km/h, while the speed limit at the location was 80 km/h. Speed measurement was carried out by a Central Mobile Police Force patrol. As the reason for the speeding offence, the officer stated that he and his partner had stopped at a petrol station to fill fuel and purchase food when they observed a car that looked as if it had previously been used as an ambulance. When the car left the petrol station, the officer decided to check it. Before leaving, he waited for the food that he had ordered. The officer did not mention to his partner that he wanted to check the car and, about 20 km after leaving the petrol station, increased the speed in excess of the current speed limit. They were on their way into a tunnel with good visibility and road conditions, and he had still not caught sight of the car he wanted to check. He had not seen the car after it drove out of the petrol station. Before stopping the police car, the Central Mobile Police Force patrol had contacted the police operations centre to ask whether the patrol had any reason for exceeding the speed limit. The operations centre said that they were not aware of any reason. The Bureau's assessment was that, in the situation, there were no weighty and urgent reasons for deviating from the traffic regulations and that the speeding was an offence pursuant to section 2 (4) of the traffic regulations. On 15 March 2017, Alstadhaug District Court sentenced the officer to 36 hours community service and disqualification from driving for eight months, and ordered him to pay costs in the amount of NOK 3 000. He appealed against the judgment, and Hålogaland Court of Appeal passed judgment on 1 November 2017 with the same conclusion, but increasing the costs to NOK 6 000.

Speeding offence

On 31 January 2017, a police officer was indicted for, one night at approximately 2320 hours, having driven on the E6 northbound from Oslo at a speed of 135 km/h, while the speed limit on the stretch of road concerned was 80 km/h (see, respectively, sections 31, first paragraph, and section 3 of the Road Traffic Act). The officer drove an unmarked police vehicle when his speed was measured by a Central Mobile Police Force patrol, which stopped him as he turned off the E6 and drove in the direction of his home address.

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DECISIONS TO PROSECUTE

When confronted by the Central Mobile Police Force patrol at the location, he admitted guilt, agreed to pay a fine for the offence and consented to seizure of his driver's licence. The officer later stated that, when his speed was measured, he had been pursuing a car of interest to the police, and that he could therefore lawfully deviate from the current speed provisions pursuant to section 2 (4) of the traffic regulations. He had never succeeded in overtaking the car. In its assessment of the case, the Bureau found that the officer, in order to avoid a penalty, had constructed the story that he had observed a car of interest to the police that he had therefore taken pursuit of after finishing his duty in Oslo. On 11 September 2017 at Nedre Romerike District Court, the officer was acquitted. The Bureau has appealed against the judgment, and the appeal is scheduled for 22 March 2018 at Eidsivating Court of Appeal.

Embezzlement of drugs, driving under the influence of drugs, etc.

On 1 June 2017, a police officer was indicted for gross embezzlement (see, respectively, sections 325 and 324 of the Penal Code), for unlawfully acquiring drugs (see section 231, first paragraph, of the Penal Code), for unlawful use of drugs (see, respectively, section 31, second paragraph, and section 24, first paragraph, of the Act relating to medicinal products and poisons, etc.) and for driving a motor vehicle under the influence of an intoxicating or narcotic agent (see section 31, first paragraph, etc. of the Road Traffic Act). The officer had been assigned the task of analysing seized tablets that are not available on the Norwegian market. He misappropriated approximately 30 tablets and later swallowed some or all of them. The day after he had been assigned the task of analysing the seized goods, the officer was absent from work. The following morning, when driving a police patrol car, he was under the influence of the active substance in the tablets, phenazepam. Analysis carried out following an extended test indicated intoxication comparable with a 1.5 g/L blood-alcohol concentration. In a judgment of 19 September 2017 at Sarpsborg District Court, the officer was sentenced to imprisonment for 24 days and to a fine of NOK 20 000. He was also disqualified from driving. The judgment is legally enforceable. At the time of the judgment in the District Court, the officer was no longer a police employee.

Influencing a participant in the justice system

On 2 November 2017, a police officer was indicted for, by unlawful conduct vis-à-vis a participant in the justice system, acting in a manner likely to influence the participant to perform or omit to perform an act in connection with criminal proceedings (see section 157, first paragraph (a), of the Penal Code). The officer sent two SMS text messages to a person who had shot a wolf. The following day, the person was to give a statement concerning the incident in an interview with the police. In the text messages, the officer provided advice on how the person should word his statement in order to make it easier for the police lawyer to drop the case. On 17 January 2018, Namdal District Court pronounced an acquittal in the case. The court's majority (the lay judges) held the view that the condition of section 157, first paragraph, of the Penal Code that the defendant shall have acted illegally was not met, and submitted that, in sending the text messages, the officer had no other intention than to ensure that relevant, personally experienced and correct facts came to light in the police interview. The court's minority (the professional judge) held the view that the text messages were likely to influence the statement of the person who had shot the wolf, that the officer had acted unlawfully and

that his conduct was of a nature that should be subject to a penalty. The Bureau has appealed against the judgment of the District Court.

Deficient records and assault
On 23 November 2017, a retired police officer was indicted for concealing the truth in a record (see section 120 of the Penal Code of 1902) and for physical assault (see section 228, first paragraph, of the Penal Code of 1902 and section 271 of the Penal Code of 2005). In his post in the police, the officer's responsibilities included implementation of measures to protect a threatened woman. He omitted to log parts of his contact with the woman and, when they met, touched her repeatedly on the thighs, buttocks, belly and back, despite the fact that the woman said she did not want him to touch her. The threatened woman's counsel complained against the Bureau's decision concerning prosecution of the case, and submitted that the Bureau should have considered indicting the officer for violations of, respectively, sections 123 and 193 (see sections 49, 390a and 266) of the Penal Code of 1902. The complaint regarding these points was dismissed but, when considering the complaint, the Director of Public Prosecutions found the indictment should be extended to include violation of section 325 (1) of the Penal Code of 1902 concerning gross lack of judgment in the course of duty. The basis for this was the content of the text messages that the retired police officer had sent to the woman. The appeal is scheduled for 5 March 2018.

Violation of the duty of confidentiality, searches in police records without an official purpose
On 13 December 2017, a police officer was indicted for gross violation of his official duty (see section 171 of the Penal Code), in that, during the period from December 2015 to August 2016 on a total of 70 occasions, he searched for information in police records without an official purpose (see section 21 of the Police Records Act). Twenty-eight of the searches were carried out when visiting a friend, having logged in from the friend's PC. The officer allowed the friend to have access to the data. The friend also photographed a police photo of a suspect. For having given the friend access to this data, the officer was indicted for violation of the duty of confidentiality (see section 209 of the Penal Code). The main hearing has not yet been scheduled.

FINES
Careless handling of firearms
On 13 December 2017, a police officer was fined NOK 10 000 for careless handling of a firearm in a manner likely to endanger the life or health of others (see section 188 of the Penal Code). When going on duty, the officer made ready his MP5 submachine gun. While standing in the weapon room, he pulled back the cocking handle into the rear position, and made sure that the safety catch was applied. He then inserted the magazine. When notified that he would not need the MP5 for duty, he let the cocking handle slide forward without removing the magazine. He released the safety catch and, aiming the weapon in what he thought was a safe direction, pulled the trigger. The shot that was fired went through the outer layer of a support pillar and down into a concrete floor. From there, it went through a wall and a corridor before stopping in the wall on the other side of the corridor. In his statement to the Bureau, the officer told that he had forgotten that the magazine was still in the weapon when he let the cocking handle slide forward. The fine was accepted.

Violation of the duty of confidentiality, professional misconduct
On 24 January 2017, a police officer was fined NOK 12 000 for violation of the duty of confidentiality (see section 209 of the Penal Code) and professional misconduct (see section 171 of the Penal Code). The officer told a family member, "we've arrested three 'bolers'*" or something similar. When the family member asked whether the persons referred to were three persons whom he named, he received a reply from the officer that he understood as a confirmation. The officer also searched in police records for information on two of the persons named without having an official purpose to do so (see section 21 of the Police Records Act). The fine was accepted.
* Translator's note: street slang for "user of anabolic steroids".

On 14 March 2017, a civilian employee of the police (A) was fined NOK 12 000 for violation of the duty of confidentiality (see section 209 of the Penal Code), and for professional misconduct (see section 171 of the Penal Code and section 324 of the Penal Code of 1902). Without an official purpose, A had searched in police records. A's friend's spouse was involved in a conflict concerning right of access to a child. In connection with this conflict, the spouse's lawyer produced print-outs from criminal records containing information about the opposite party. On the basis, among other things, of log information on searches made by A, the Bureau found it proven that A had provided the printouts to his friend. The fine was accepted.

Professional misconduct
On 9 August 2017, a police officer was fined NOK 10 000 for grossly negligent professional misconduct (see, respectively, sections 172 and 171 of the Penal Code). The officer reported a person whose home he considered ought to be searched. He requested a police lawyer to apply to the court for a search warrant, and entered a follow-up note in the police case management system (BL) indicating that the District Court's decision, when available, was to be sent to him for execution. When he received the District Court's decision, he omitted to read the whole decision, and searched the person's home, although it was stated in the decision that the District Court had not found that conditions for the search were met, and that the application from the police was rejected. The fine was accepted.

On 3 November 2017, a police officer was fined NOK 7 000 for professional misconduct (see section 171 of the Penal Code). Late one night, while boarding an underground train, the officer had shown his police ID card to a ticket inspector in order to avoid paying for a ticket. The officer had not been on duty, and had been under the influence of alcohol. The fine was accepted.

Violations of the Road Traffic Act
On 23 January 2017, a police officer (driver) was fined NOK 8 000 for violation of section 31, first paragraph, (see section 3) of the Road Traffic Act. The driver's speed was excessive in view of the road conditions, as a result of which, in a narrow bend, he drove across the

Continued

DECISIONS TO PROSECUTE

opposing lane and into a rockface. The fine was accepted.

On 13 February 2017, a police officer (driver) was fined NOK 3 000 for violation of section 31, first paragraph, (see section 3) of the Road Traffic Act. At an exit road, he slowed down, flashed his right indicator and made a right turn, then rapidly turned left and made a u-turn. The driver of the car behind him needed to brake heavily in order to avoid a collision. The fine was accepted.

On 30 March 2017, a police officer (driver) was fined NOK 8 000 for violation of section 31, first paragraph, (see section 3) of the Road Traffic Act. The driver backed into a pedestrian crossing, driving into a person who was on the crossing. The pedestrian fell to the ground and suffered a cut to the head that needed to be stitched. The fine was accepted.

On 3 April 2017, a police officer (driver) was fined NOK 5 000 for violation of section 31, first paragraph, (see section 3) of the Road Traffic Act. The driver failed to pay attention to the road ahead, entered the opposing lane and drove in front of a roundabout into a central reservation. The fine was accepted.

On 12 June 2017, a police officer (driver) was fined NOK 7 000 for violation of section 31, first paragraph, (see section 3) of the Road Traffic Act. When leaving a tunnel, he failed to pay sufficient attention and drove into a vehicle on the road ahead, which had stopped owing to roadworks and manual traffic direction. The fine was accepted.

On 9 August 2017, a police officer (driver) was fined NOK 6 650 for violation of section 31, first paragraph, (see section 3) of the Road Traffic Act. At an intersection, he failed to give way to a vehicle that came from the right, and collided with it. There was material damage to both vehicles. The fine was accepted.

On 16 August 2017, a police officer (driver) was fined NOK 6 000 for violation of section 31, first paragraph, (see section 3) of the Road Traffic Act. The driver was in an emergency turn-out using the blue light and siren. When he drove into a four-legged intersection, he went through a red light at excessive speed in view of the road conditions. At the intersection, he collided with a vehicle that came from the right. There was material damage to both vehicles. The fine was accepted.

On 29 August 2017, a police officer (driver) was fined NOK 7 000 for violation of section 31, first paragraph, (see section 3) of the Road Traffic Act. The driver failed to pay sufficient attention and drove into a vehicle on the road ahead. The driver of the vehicle had slowed down in order to make a left turn. The fine was accepted.

On 4 September 2017, a police officer (driver) was fined NOK 10 000 for violation of section 31, first paragraph, (see section 3) of the Road Traffic Act. He was driving a car with a trailer on a slippery road. In a right-hand turn, he failed to keep the car in his own lane, and collided with an oncoming passenger car. The wing mirrors of both cars were torn off and the trailer, which was wider than the car, collided with the oncoming car, causing considerable material damage to both the trailer and the car. The fine was accepted.

On 3 November 2017, a police officer (driver) was fined NOK 5 000 for violation of section 31, first paragraph, (see section 3) of the Road Traffic Act. During a turn-out on a wet road, he failed to pay sufficient care and attention. In a right-hand turn, he lost control of the vehicle, and drove into a parked car and onto the pavement. The fine was accepted.

On 3 November 2017, a police officer (driver) was fined NOK 7 000 for violation of section 31, first paragraph, (see section 3) of the Road Traffic Act. When driving out from a side road to a priority road, he failed to give way to traffic coming from the left. The driver of a vehicle that had right of way was forced to swerve abruptly to the side and into a ditch in order to avoid a collision. The fine was accepted.

Waivers of prosecution

On 27 February 2017, a police officer, pursuant to section 69, first paragraph, of the Criminal Procedure Act, was granted a waiver of prosecution for professional misconduct (see section 171 of the Penal Code) and violation of official duty (see section 324 of the Penal Code of 1902). The officer had received information that a person who participated in the care of a child for whom the officer was a godparent had previous convictions for violations of the Firearms Act, and might now have connections with a narcotics network. The officer had therefore carried out searches in order to find out more about the person. The officer did not have police duties involving responsibility to follow up this information, and therefore, in the Bureau's assessment, did not have an official purpose for making the search (see section 21 of the Police Records Act).

On 29 March 2017, pursuant to section 69, first paragraph, of the Criminal Procedure Act, a police officer was granted a waiver of prosecution for professional misconduct (see section 171 of the Penal Code). The officer was contacted by an immediate family member, who told that he was to serve a prison sentence. In order to find out more about the content of the criminal case that had resulted in the conviction, the officer searched on two occasions for information in police records. In the Bureau's assessment, the officer had no official purpose for making these searches (see section 21 of the Police Records Act).

On 10 April 2017, a former custody officer, pursuant to section 69, first paragraph, of the Criminal Procedure Act, was granted a waiver of prosecution for violation of section 325 and section 324 of the Penal Code of 1902. The custody officer had previously been fined by the Bureau for falling asleep at his workplace one night and failing to carry out several inspections in the custody facility. He had also crossed off in a record to indicate that inspections had been carried out although this was not the case. On the basis of a total assessment, taking into consideration information concerning the custody officer's poor health, his use of prescribed medicines while at work and the fact that he was no longer employed by the police, it was decided to waive the fine and issue a waiver of prosecution.

Pursuant to section 69, first paragraph, of the Criminal Procedure Act, a police cadet was granted a waiver of prosecution for professional misconduct (see section 171 of the Penal Code). The cadet had been told by a friend that the police had cases against him. The cadet searched for information on his friend in police records, and sent the friend an MMS message showing the information that the police had concerning him. The friend raised the matter with the local rural police station. In the Bureau's assessment, the cadet had no official purpose for searching for information concerning his friend (see section 21 of the Police Records Act).

On 6 September 2017, a police officer was, on the orders of the Director of Public Prosecutions, granted a waiver of prosecution pursuant to section 69, first paragraph, of the Criminal Procedure Act for violation of section 209, first paragraph, of the Penal Code. The officer had been involved in a road accident when off duty. When, following the accident, he was contacted by his insurance company, he wrote to the company that he had considered reporting the other driver, who was a party to the accident. He stated that the driver was described in police records as a short-tempered, arrogant, quarrelsome person who behaved recklessly both in road traffic and otherwise. The data was retrieved from police records on the basis of the officer's position in the police, and should not have been provided to an insurance company in connection with a private insurance matter.

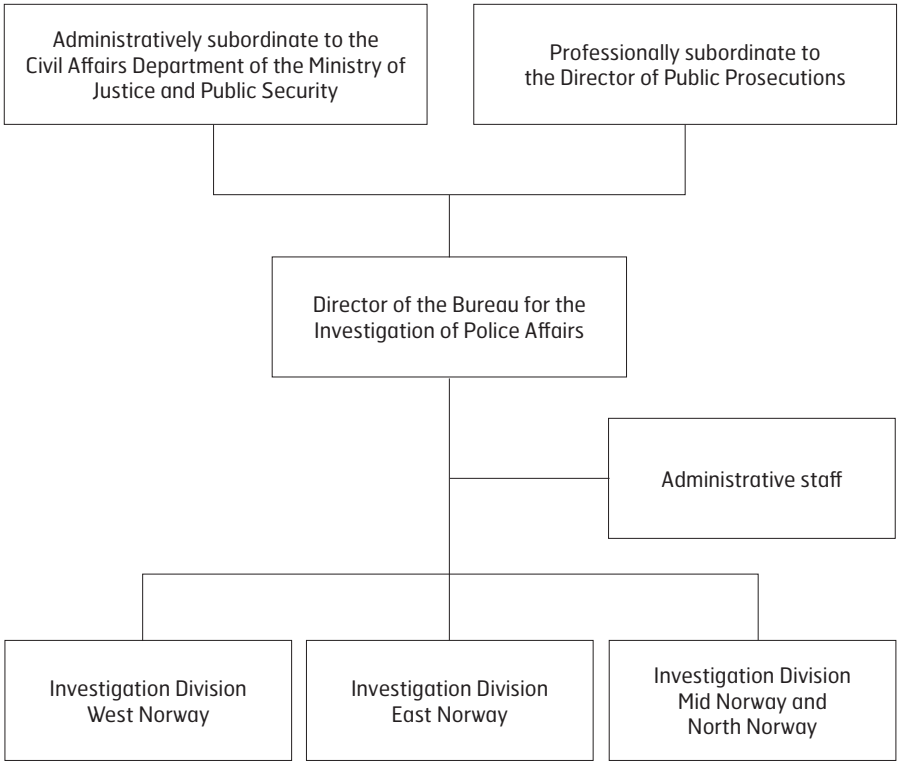
On 14 September 2017, a police lawyer, pursuant to section 69, first paragraph, of the Criminal Procedure Act, was granted a waiver of prosecution for violation of section 325 (1) of the Penal Code of 1902 concerning gross lack of judgment in the course of duty. The lawyer had decided that a person was to be brought to the police station pursuant to section 230, third paragraph, of the Criminal Procedure Act in order to give a statement in a criminal case despite the fact that there was no legal basis for bringing the person to the police station. The person had not been summoned to a meeting and had not failed to attend without a valid excuse. The person had been taken to the police station and held there for approximately 25 minutes.

On 16 October 2017, a police officer was, pursuant to section 69, first paragraph, of the Criminal Procedure Act, granted a waiver of prosecution for violation of the duty of confidentiality (see section 209 of the Penal Code) and grossly negligent professional misconduct (see, respectively, sections 172 and 171 of the Penal Code). In Snapchat and MyStory, the officer had made available a picture of handwritten notes concerning a criminal case on which he was working. The picture, which was sent to between 40 and 50 persons, showed an overview of a family containing 13 forenames. The picture was accompanied by the following text: "not an easy job to get a clear picture of a family, no #utlending".

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 has 35 permanent employees, of which 15 are investigators. In addition, 12persons are engaged on assignment. The Bureau is organised on two levels, one level for investigation and one level for overall management. The Director of the Bureau, who has overall responsibility for activities and decides on prosecutions in all cases, is located in Hamar. The Bureau has three investigation divisions, which are located in Hamar/Oslo, Trondheim, and Bergen.



Read more
www.spesialenheten.no

LAWYERS ON ASSIGNMENT

In addition to the permanent employees, 12 lawyers are engaged on assignment in processing of cases by the Bureau. The assignment arrangement underlines the independence of the Bureau, and fosters transparency and trust.

Ada Cathrine Høst Mytting
Lawyer at the law firm of Mageli ANS.

Morten Engesbak
Lawyer/partner at the law firm of Stabell & Co.

Bjørn Rudjord
Lawyer/partner at the law firm of Elden DA.

Mats J. Iversen Stenmark
Lawyer/partner at the law firm of Fend DA.

Ellen Eikeseth Mjøs
Lawyer/partner at the law firm of Sentrumsadvokaten.

Eirik Nåmdal
Lawyer at the law firm Turid Mæland.

Karsten Krüger Engedal
Lawyer/partner at the law firm of Kyrre ANS.

Åge Gustad
Lawyer at the law firm of Advio.

Halvor Hjelm-Hansen
Lawyer/partner at the law firm of Erbe & Co DA.

Kai Stephansen
Lawyer/partner at the law firm of Strand & Co.

Roy Hedly Karlsen
Lawyer/partner at the law firm of Bjerkan Stav AS.

Magnhild Meringen
Lawyer/partner at the law firm of Storkaia DA.

THE BUREAU'S MANAGEMENT GROUP

Jan Egil Presthus
Director of the Norwegian Bureau for the Investigation of Police Affairs.

Guro Glærum Kleppe
Deputy Director of the Norwegian Bureau for the Investigation of Police Affairs.

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

Liv Øyen
Head of Investigation Division East Norway.

Halvor Hjelm-Hansen
Head of Investigation Division Mid Norway and North Norway. Lawyer on assignment.

Ellen Eikeseth Mjøs
Head of Investigation Division West Norway. Lawyer on assignment.

ARTICLES FROM PREVIOUS ANNUAL REPORTS

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 – Seeing the Unique in the Usual
- 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
- Arrest - et inngripende tiltak
- Custody – an Invasive Measure
- 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

THE NORWEGIAN BUREAU FOR THE INVESTIGATION OF POLICE AFFAIRS

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Investigation Division Mid-Norway and North Norway
Visiting 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 on the given telephone number and e-mail address.

www.spesialenheten.no