



**Geneva Centre for the Democratic Control of Armed Forces (DCAF)  
The Norwegian Parliamentary Intelligence Oversight Committee  
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## **INTELLIGENCE OVERSIGHT IN NORWAY**

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# INTELLIGENCE OVERSIGHT IN NORWAY<sup>1</sup>

*Fredrik Sejersted*

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<sup>1</sup> Paper prepared for the Workshop on “*Making Intelligence Accountable*”, held 19-20 September 2003 in Oslo, Norway. The Workshop was organised by the Geneva Centre for Democratic Control of Armed Forces (Switzerland), the Intelligence Oversight Committee of the Norwegian Parliament and the Human Rights Centre, Department of Law of the University of Durham (UK.).

# INTELLIGENCE OVERSIGHT IN NORWAY<sup>2</sup>

*Fredrik Sejersted*

*The current Norwegian model of intelligence oversight was introduced in 1996, and is characterized by one single committee conducting oversight of the whole intelligence and counterintelligence machinery. The committee is appointed by and reports to Parliament, but the members are not MPs. Oversight is strong and proactive, but within statutory limits. It is mainly concerned with protecting the rule of law, and with checking the propriety of the activities of the agencies. Their efficiency and effectiveness are left to procedures of executive oversight, which are not as developed. The paper describes the background for this system, its main characteristics, and how it functions, with examples from cases which have been under scrutiny.*

## **Introduction**

The basic challenge of making intelligence, and counterintelligence, accountable is common to all democratic systems of governance. On the one hand, efficient intelligence services are vital for national security and stability, and they necessarily have to conduct most of their activities in deep secrecy. This limits the possibilities for democratic oversight and accountability. On the other hand, the need for such oversight and accountability is particularly acute with regard to secret agencies, which often will have the capability not only of endangering the basic rights and liberties of citizens, but also of covertly interfering in the processes of democratic governance. Intelligence oversight is a field riddled by inherent problems and paradoxes (Caparini 2002).

Though the basic challenges are the same, the ways in which liberal democracies have responded to them differs widely. One reason for this is that the structural problems are simply too complicated for political and constitutional theory to construe one, or even a few, general models. There can be many solutions, some good, some

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not so good, but none of them ideal. And in every democracy, any model attempting to establish efficient intelligence oversight must be specifically tailored to national needs and characteristics – to the constitutional structure, the political and historical traditions, the perceived external and internal threats, the size and capabilities of the secret services, the democratic maturity and stability of the system, and a number of other factors.

In recent years, some liberal democracies have managed to adopt near-satisfactory procedures for intelligence oversight, and they can certainly serve as role models for others, who are (or should be) struggling to do the same. A comparative perspective can provide inspiration, both on a general level and as regards different possible solutions to particular problems. But constructing and maintaining a system of efficient intelligence oversight is a task that can only be met on the national level.

In such a perspective, Norway was until recently a rather under-developed country. But in 1996 reforms were introduced, and today the Norwegian procedures for intelligence oversight should probably be ranked as quite an advanced and well-functioning model, which might be of some comparative interest. Certainly, the Norwegian experience can serve to highlight several of the inherent problems and paradoxes of making intelligence accountable, even in a small, stable and mature liberal democracy.

The main characteristic of the Norwegian model is the strong emphasis on *legislative* (as opposed to executive) oversight, or rather on oversight conducted *on behalf* of the legislature, by the Committee for Oversight of the Intelligence, Surveillance and Security Services. This Committee is appointed by and reports directly to Parliament, but the seven members are not MPs. The oversight they conduct is primarily of a legalistic and professional rather than a political nature, and their mandate, as laid down by parliamentary statute, focuses on the observance of the rule of law.

Within this mandate, the Committee has extensive powers of inquiry. Its oversight covers the whole of the Norwegian intelligence machinery, which consists of the (military) Intelligence Service, the (civilian) Police Security Service, and the (civilian) National Security Authority, but the extent and intensity of the oversight varies as regards the three agencies. The oversight is primarily of an ex-post facto nature, and the agencies shall not consult with the Committee on future operations. The major part of the Committee's work takes place through regular and thorough inspections of

the agencies, during which they are required to present documents, answer questions, and give briefings. The Committee can raise cases and issues on its own initiative, and it deals with all complaints from individuals and organizations who believe the secret services may have committed injustices against them.

This model of oversight has now been in operation for some seven years, and on the whole it seems to be working well. In its early days, the Committee uncovered one major “scandal”, which resulted in the forced resignation of the head of the Police Security Service as well as the minister responsible (see below). Since then, there has been less controversy, but rather a steady and continuous oversight which (at least seen from the outside) seems to have gained the acceptance of the agencies, as well as the approval of Parliament and the press. In a small country, with a moderate-sized intelligence community, this has created the preconditions for an acceptable degree of political and administrative accountability. Indeed, within the limits set by the Committee’s statutory mandate, it is difficult to envisage a more strict oversight regime, without at the same time seriously endangering the effectiveness and efficiency of the secret agencies.

The legislative oversight of the Norwegian intelligence machinery is today dominated by the work of the Committee, and by the parliamentary review of its reports. This is also the most visible oversight procedure, and the one most likely to guarantee some degree of public and political accountability. This is, of course, supplemented by *executive* control and oversight of the secret agencies, of a more traditional administrative nature, less visible to the public, and more concerned with the effectiveness, efficiency and quality of the agencies. There are few links and little coordination between the executive and the legislative oversight procedures, and results from the former are seldom channelled into the latter. We will later return to the executive oversight procedures, but only briefly, since from a comparative perspective it is the legislative procedures which are the more interesting.

The word “oversight” does not readily correspond to any Norwegian term, and indeed even in English the exact definition seems to be rather vague. In Norwegian the term most used is “*kontroll*” (control), and the proper name of what is here referred to as an “oversight committee” is in the native language “*kontrollutvalg*”. It would however be wrong to translate this into a “control committee”, since the word “control” in English usually refers to the *a priori* exercising of some kind of influence, before an

action or decision is taken,<sup>3</sup> whilst in Norwegian “*kontroll*” at least in legal terms usually implies a retrospective perspective, describing an activity of scrutiny or inquiry, an audit, taking place after something has happened, with the purpose of holding someone (preferably the right person) accountable, and resulting in some kind of evaluation, followed by approval or criticism.<sup>4</sup> The word “oversight” seems to cover this (though it is sometimes used differently). In the context of this paper, the point should be not to read any exact meaning into the word “oversight” as such, but rather to describe what *kind* of oversight the relevant Norwegian authorities conduct. And this, as we shall see, is primarily an *ex post facto* activity, aimed at uncovering and redressing faults and failures in the agencies. The purpose is thereby also to create and sustain accountability and legitimacy (two other rather vague concepts) in the system.

## **Background**

### ***The Norwegian Secret Services***

The Norwegian “secret services” consist of three agencies, the Intelligence Service, the Police Security Service, and the National Security Authority. The organizational structure reflects the traditional distinction between intelligence, counter-intelligence and other security tasks, as well as the distinction between “military” and “civilian” secret services. The three agencies cover the whole of the national “intelligence machinery”, and there are large variations between them, as regards their organization, mandate, tasks, resources, etcetera.

In a comparative perspective, organized “secret services” in Norway is a relatively new thing. The first institutionalized services were established after the break-up of the Union with Sweden in 1905, and developed during the First World War, in which Norway kept a precarious neutrality. They were further developed during the Second World War, by the Norwegian exile government in London, in close cooperation with the British secret services. After the war, the organizational structure as we know it

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<sup>3</sup> Though the term parliamentary (or legislative) “control” seems to be used in a variety of meanings (inspect, audit, scrutinize, criticize, examine, debate, approve, challenge, censure, influence), and to determine what is meant when the term is used often requires “a combination of guesswork, intelligent deduction and a readiness not to linger over precise shades of meaning” (Gregory 1990).

<sup>4</sup> In the semi-official translation (made by the Foreign Office) of the statutory act establishing the Intelligence Oversight Committee, which is annexed to this paper, it is called “The Act relating to the Monitoring of Intelligence, Surveillance and Security Services”. The word “monitoring” is not a good translation of the original word “*kontroll*” (control), which implies a lot more than just “monitoring” the secret agencies. I will refer to it as “The Intelligence Oversight Act”, or simply as “the Act”.

today was established, and its history has been heavily influenced by Norway's position during the Cold War, as a NATO member on the strategically sensitive Northern flank, bordering upon the former Soviet Union, and with close military ties to the United States. The Norwegian Secret Services are from a comparative perspective of course rather small, but in relationship to the size and apparent stability of the country, they are still rather large and well-developed. As in other Western democracies, the challenges facing the services have been profoundly influenced by the break-up of the Iron Curtain and the new threats to national security and stability arising over the last decade.

The Intelligence Service (*Etterretningstjenesten*) is a military agency, organized as part of the Armed Forces, and answerable to the Chief of Defence and the Minister of Defence. Its mandate is to gather and analyze intelligence from abroad, and it works in close cooperation with other national intelligence agencies. Its main task has traditionally been that of electronic signal intelligence, and it operates a number of large listening-stations and vessels for electronic naval monitoring of the Russian Northern Fleet, including the nuclear deterrence force based on submarines stationed on the Kola Peninsula, just across the border. Unknown to Parliament and the public, the financing of this quite large organization was up until the early 1990s for the most part (more than 90 %) covered by the United States and NATO. Today, it is financed nationally. During the last decade, the tasks of the Intelligence Service have both grown and to some extent changed, reflecting new national requirements for a broader range of intelligence information.

The existence and activities of the Intelligence Service have traditionally been shrouded in deep secrecy, and while this has changed somewhat recently, it is still by far the most secretive of the secret services. A statutory basis for the Intelligence Service was established for the first time by parliamentary legislation as late as in 1998.<sup>5</sup> The Act states that the mandate of the Service is to gather intelligence on, and counteract, external threats to national security and other vital national interests, and it is explicitly prohibited from gathering information on Norwegian citizens on national territory.

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<sup>5</sup> Cf. the Intelligence Service Act of 20 March 1998, which is a rather short and sketchy piece of legislation, but still a huge improvement compared to the earlier legal basis, which rested upon governmental prerogatives. The Act is supplemented by Instructions of 31 August 2001, which give a somewhat better impression of the nature of the Service.

The Police Security Service (*Politiets Sikkerhetstjeneste*)<sup>6</sup> is a civilian agency, organized as (a rather independent) part of the police force, and answerable directly to the Minister of Justice. The main tasks of this service have traditionally been that of counterintelligence directed against foreign agencies operating on Norwegian soil, and surveillance of national citizens suspected of threatening national security and other vital national interests. During the Cold War, the main focus of the agency was to counteract Soviet and Eastern European intelligence directed against Norway. But the agency also conducted rather extensive surveillance on national citizens, especially on the political far (though not always so very-far) Left. Over the last decade, the tasks of the Police Security Service have both grown and changed dramatically. While it still conducts traditional counterintelligence, a fast-growing part of its work is now connected to the “new” threats, including terrorism, sabotage and weapons of mass destruction. And its traditional preoccupation with the political far-left, has been supplemented and replaced by a rather keener interest in the more sinister activities of the far-right.

The former secretive nature of the Police Security Service was more or less blown apart in the 1990s, during which it was subjected to intensive scrutiny and debate, following a number of (real and imaginary) “scandals”, and resulting in a major re-organization. It was only recently (in 2002) given a statutory basis,<sup>7</sup> but its organization, resources, procedures and tasks have for some time to a quite large extent been publicly known, through official and other sources. Its competences to conduct operations through wire-tapping, covert surveillance and house searches are subject to the same legal requirements as are those of the ordinary police force, which often means that a (secret) court decision is necessary. But the Service is subjected to a far stricter oversight regime (legislative and executive) than what applies to the ordinary police.

The National Security Authority (*Nasjonal Sikkerhetsmyndighet*) was established by a statutory act in 2001, as a civilian directorate under the Ministry of Defence.<sup>8</sup> It replaced the former (military) Defence Security Service. Its tasks are of a preventive

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<sup>6</sup> The name *Politiets Sikkerhetstjeneste* (*PST*) was introduced in 2002. It was formerly called *Politiets Overvåkningstjeneste* (*POT*), the Police Surveillance Service, and this explains why the name of the Oversight Committee is still the Committee for Oversight of the Intelligence, Surveillance and Security Services. For reasons of simplicity only the current name will be used.

<sup>7</sup> This was done by an amendment in 2002 to the Police Act of 4 August 1995, see the new sections 17a, 17b and 17c. The amendment followed a White Paper published in 1998, which describes the Service in some detail. The Surveillance Instructions of 1994 still apply, but new instructions are under way.

<sup>8</sup> See the Security Act of 20 March 1998, which went into force in 2001.

and defensive nature, and it does not conduct investigations or operations. It is the highest authority for issuing (and withdrawing) personnel security clearances, classifying and de-classifying information and documents, and for the physical and electronical securing of governmental and other sensitive premises against espionage. Though secretive, its work is for the most part not subject to the same potential controversy as are the operations of the two other agencies.

### **Oversight of the Agencies up until the Early 1990s**

Up until the early 1990s, the structures and procedures for legislative and executive oversight of the Norwegian secret services were on the whole poorly developed. This is particularly true as regards *legislative* oversight. The Norwegian Parliament did not have any established procedures for efficient oversight (and much less control) of the secret services. As in many other countries, the government effectively argued that the idea of parliamentary oversight was inherently alien to the concept of running secret services, and this was broadly and tacitly accepted by all political parties in parliament, with the futile exception of the small and marginal Socialist Peoples Party (which was itself subject to quite extensive secret surveillance). On the whole, parliament was kept outside the “ring of secrecy”, and most MPs were perfectly comfortable with this.

The extent and efficiency of *executive* oversight of the secret services in the period from 1945 up until the early 1990s is more difficult to evaluate, as well as more complex. This activity mainly followed ordinary procedures for ministerial and administrative oversight and control of agencies, but subject to strict requirements of secrecy. There were no centralized administrative body charged with oversight of the intelligence machinery as a whole, and the three agencies were supervised by their respective ministries (Justice/Defence). Information gathered by the agencies was of course passed on to the relevant civilian and military authorities, including the Cabinet Security Committee, but this is not to be regarded as “oversight”.<sup>9</sup>

The extent to which government conducted oversight also varied as regards the three agencies. Oversight of the Intelligence Service mainly took part within the

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<sup>9</sup> In the 1950s there was also established a procedure, which still exists, under which the President (Speaker) of Parliament and the Chairman of the Standing Defence Committee are briefed once a year by the Minister of Defence on matters relating to the Intelligence Service. It is however doubtful to which extent this can be labelled “oversight”. The purpose of the procedure rather seems to be that of (one-sided) consultation. The arrangement was in itself secret, both to the public and to the other MPs, until the late 1980s.

military structure, and to some extent by a committee comprised of a few high-ranking government officials, reporting to the Minister of Defence and the Prime Minister. Review of the accounts of the Intelligence Service was (and still is) conducted by one especially trusted high-ranking official in the Office of the Auditor General.

The Police Security Service and the (then) Defence Security Service were subjected to a somewhat more rigorous oversight arrangement, with regard to those activities that concerned the interests of Norwegian citizens. In the late 1960s questions were raised in Parliament as to the need for some kind of scrutiny of these activities, and this eventually led to the creation in 1973 of an oversight committee for the two services. This committee was appointed by, and reported to, the government, but a political understanding was reached that the government should present the findings of the committee to parliament once every four years, and this it did.

The mandate of this committee was restricted to questions concerning illegal surveillance and respect for the rule of law, and it was headed first by a judge of the Supreme Court, and later on by a distinguished lawyer. The committee was in operation from 1973 until 1996, and some of its reports did produce cases of controversy and debate, but on the whole the oversight effect seems to have been rather small. In a large-scale inquiry report on the secret services, which was presented in 1996 (see chapter 2.3), the committee was criticized for having identified itself too closely with the agencies, thereby not being able to conduct real and substantial oversight.

The fact that oversight procedures were poorly developed, did not mean that the Norwegian secret services were wholly protected from public criticism. Indeed, the observation by Lustgarden and Leigh (1994, p. 491) that there is “a strange inevitability about the cycle of scandal, investigation, report, and fresh scandal which litters the history of investigation into security matters” also to some extent applies to Norway, even prior to the present climate of increased transparency. One such incident was the Loran C-case in 1975, which involved allegations that government had misled parliament by presenting Norwegian stations for sending maritime radio-signals as having a civilian purpose, where in fact their main function was to give directions to American nuclear submarines. This resulted in a commission of inquiry, but although the findings clearly indicated that parliament had in fact been misled, a broad majority of the MPs did not criticize the government. Another incident followed

the 1973 killing of a Moroccan citizen in Lillehammer, wrongly suspected of being a Palestinian terrorist, by Mossad agents. Two marginal members of the hit squad were arrested, and (lightly) sentenced, but the Israeli agents escaped, and this led to allegations of a cover-up by the Norwegian secret services. Subsequent inquiries did not find evidence of this. Another large parliamentary inquiry was conducted in 1989, following the arrest and sentencing of a Norwegian diplomat, Arne Treholt, who had been a Soviet spy. During this inquiry, the parliamentary committee had to look into the procedures of the Police Security Service, but the purpose of the process was not to investigate the agency, but rather to evaluate how the government had handled the case. A rather more controversial case for the Police Security Service was first uncovered by the media in 1991, when it became known that the Service had allowed Israeli Mossad agents to interrogate Palestinian asylum-seekers held in Norwegian custody, and supplied the agents with fake Norwegian passports, in order to hide their real identity. The case was investigated by the (governmental) oversight committee, and the report (which was also presented to parliament) led to the resignation in 1992 of the head of the Police Security Service and the police inspector responsible.

On the whole, the political and administrative climate for oversight of the secret services from 1945 until the early 1990s was heavily influenced by the Cold War, and by a broad consensus that vital national interests were best served by leaving the agencies to themselves.

### **Dealing with the past – the Lund Inquiry (1994-96)**

This changed dramatically in the early 1990s, when new light was shed on the secret services by critical journalists and persons who had been subject to surveillance. In a number of books and articles the services were criticized for allegedly having conducted illegal political surveillance and irregular operations, and for having had to close ties to the ruling Labour Party. This wave of criticism corresponded in time with a marked shift in the national security climate, following the break-up of the Iron Curtain. The result was a broad public demand that time was ripe for a major inquiry into the activities of the secret services, past and present. This gained the support both of the Conservative opposition and the Radical Socialist opposition, thereby creating a parliamentary majority, which the minority Labour government could not withstand.

The result was the Lund Commission, appointed by Parliament in 1994. The five members were headed by a judge of the Supreme Court, Ketil Lund, and included both a retired general and a former prominent radical politician. The committee was served by a professional staff of eight, working full time, and including historians and police investigators. The mandate was to inquire into all allegations of illegal or irregular surveillance of Norwegian citizens, by any of the intelligence and security agencies, covering the period from 1945 until the date of the report. The commission worked for two and a half years, with wide powers of inquiry, questioning more than 500 persons, and going through all relevant archives. The result was a 600-page report, presented to parliament in the spring of 1996, which was then declassified and published in its entirety.<sup>10</sup> This was followed by televised hearings and extensive debates in Parliament.

In effect, this was a “truth commission”, which received general acceptance on all sides of the political landscape. The Lund commission found a lot to criticize in the agencies, particularly in the Police Security Service, and particularly in the past,<sup>11</sup> but the most serious allegations were found to be unsubstantiated. For the agencies, the report was a rough encounter with the new demands and requirements of a more transparent modern society, and it led to major reorganizations of their structures and procedures. But at the same time the report of the commission also washed away the sins of the past, doing this so effectively as to create a basis both for national reconciliation, and for greater future legitimacy for the agencies concerned. The Lund Report is a unique historical document, describing the activities of the secret services through a period of fifty years. In a comparative perspective, it is an example of how a thorough and far-reaching inquiry into the intelligence machinery can produce results which are in the long term beneficial both to the agencies and to society at large.

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<sup>10</sup> The report was written with the aim that it should be published, and only minor parts had to be formally declassified. The archives of the Lund commission, on the other hand, were heavily classified and locked away, even beyond the reach of the parliamentary standing committee which received and evaluated the report.

<sup>11</sup> The Lund Commission revealed, *inter alia*, that the Police Security Service had conducted relatively extensive unlawful registration and surveillance of persons and organizations on the political left wing, from the late 1940s and well into the 1980s. The commission was also critical of how the Defence Security Service had handled security clearances of persons. No major criticism was levelled against the Intelligence Service.

## **The Establishment of New Oversight Procedures in 1996**

At the same time as the Lund Commission was appointed to uncover the sins of the past, a parallel process was started in order to establish more efficient oversight procedures for the future. In 1993 Parliament made a decision in principle, that intelligence oversight should be extended, intensified and parliamentarised. A special committee was appointed in 1994 to draft the model, and in 1995 Parliament adopted the Act relating to the Oversight of the Intelligence, Surveillance and Security Services, thereby establishing the new Intelligence Oversight Committee, which went into operation in the spring of 1996.

The creation of the Intelligence Oversight Committee coincided with, and was part of, a more general reform of parliamentary scrutiny and oversight procedures in the early 1990s (Sejersted 2000, 2002). In this period, the *Storting* (parliament) also established a new Standing Committee on Scrutiny and Constitutional Affairs, reformed the procedures for parliamentary hearings and inquiries, and strengthened the powers of the Office of the Auditor General. The combined effect of these (and other) reforms was that of a quiet “oversight revolution”, reflecting both the political context at the time, and growing demands for increased ministerial and administrative accountability. The intensifying of intelligence oversight was both part of this general trend, and a result of the more specific processes which also led to the Lund Inquiry.

In creating the new model for intelligence oversight, the drafters were inspired by experiences and procedures from other countries, notably the other Nordic countries, the UK, Germany, the Netherlands, Canada and Australia. But the result was an original Norwegian model, reflecting national needs and characteristics. The most radical feature was that so much of the oversight was moved away from the executive to the legislative branch, and the fact that oversight of the whole intelligence and counterintelligence machinery should be conducted by one single Committee, on behalf of Parliament.

## The Parliamentary Intelligence Oversight Committee

### *The Legal Basis and Mandate of the Committee*

The legal basis for the Intelligence Oversight Committee is the Act of 3 February 1995, and the supplementary Instructions issued by Parliament on 30 May 1995. Together, they form a quite detailed set of rules for how the oversight procedures should be conducted, as well as establishing the Committee's powers of inquiry.

According to the Act, the activities to be scrutinized by the Committee are defined functionally, and not by reference to the three established secret agencies. If other governmental bodies conduct intelligence or counterintelligence, this will also fall within the competence of the Committee. So far this has seldom been an issue,<sup>12</sup> and in practice, the oversight is closely related to the three agencies. The more detailed procedures in the Instructions are also specifically tailored to each of these agencies.

The mandate of the Committee is laid down in section 2 of the Act:

#### *Section 2. Purpose*

The purpose of the monitoring is:

1. to ascertain and prevent any exercise of injustice against any person, and to ensure that the means of intervention employed do not exceed those required under the circumstances,
2. to ensure that the activities do not involve undue damage to civic life,
3. to ensure that the activities are kept within the framework of statute law, administrative or military directives and non-statutory law

The Committee shall show consideration for national security and relations with foreign powers.

The purpose is purely monitory. The Committee may not instruct the monitored bodies or be used by these for consultations.

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<sup>12</sup> The issue is however growing, as the agencies find new ways of cooperating with other administrative bodies. The Committee is, *inter alia*, keeping its eye on the coordinated efforts of the Police Security Service and the Police Department for Economic Crime to uncover the financing of terrorism. The same applies to cooperation between the Service and Immigration Authorities. In one case, the Committee inspected the premises of the state-owned telecommunication company, Telenor, to investigate allegations that the company had kept unregular records of all cases in which it had assisted the Police Security Service with wire-tapping. No unproper registers was found.

As section 2 clearly shows, the main purpose of the Committee's oversight is to safeguard the interests of *individuals* under the rule of law. According to the provision, this includes the prevention of "any exercise of injustice against any person". This is however modified in section 4 of the Instructions, which states that, as a general rule, the oversight should not include intelligence and security activities directed against persons who are not resident in Norway, nor such activities "involving foreign citizens whose residence in Norway is associated with service for a foreign state". In other words, the main idea is to protect Norwegian citizens on native soil, and other individuals living their private lives here. Activities directed against foreign agents (and indeed Norwegians abroad) are as a main rule not covered by the oversight procedure.<sup>13</sup>

The oversight is primarily concerned with preventing "injustice", which should be read as a legal criterion, covering for example surveillance and wire-tapping without the proper authorizations. But the Committee shall also conduct a more discretionary test of proportionality, and may criticize any means of intervention against individuals that exceed those "required under the circumstances". Thus, the Committee may, for example, criticize the denial of a security clearance as being too strict, even if it is within the legal powers of the agency concerned.

In addition to preventing injustice against individuals, the purpose of the oversight according to section 2 is also to ensure that intelligence and security activities "do not involve undue damage to civic life", and that they are kept "within the framework of statute law, administrative or military directives and non-statutory law". The reference to "civic life" is rather vague, and may give rise to questions about the reach of the oversight, though this has so far not been a major issue. The reference to statute law and directives is more concrete, and gives the Committee the competence to raise cases that do not necessarily involve individual rights, but instead refers to other legal restrictions on the agencies. The problem here, is that the statutes and directives governing the agencies are mostly formulated in a rather wide and discretionary manner, thus giving few criteria for any sort of extensive oversight and evaluation. But there are exemptions to this. One criterion that the Committee has made use of, is the principle that the agencies should be under "national control", which has been used to inquire into allegations that listening stations operated by the

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<sup>13</sup> According to section 4, the Committee *may* however also conduct oversight in such cases, "when special grounds so indicate".

Intelligence Service are under undue American control. (The allegations were found to be unsubstantiated, see below).

Read in the proper manner, section 2 of the Act also shows what the Committee is *not* empowered to do. First and foremost, this oversight arrangement is not concerned with the effectiveness and efficiency of the secret agencies. The Committee has neither the competence nor the qualifications to evaluate the intelligence and analysis supplied by the agencies, nor to question whether they are cost-effective and give value for money.<sup>14</sup> Such evaluations are left to executive oversight procedures, and (to a lesser extent) to the Office of the Auditor General. Even if it is alleged that for example the Intelligence Service has given the government horrendously bad advice on a vital issue of national security, or seriously wasted public money, this will normally not be a case for the Committee, unless formal rules were broken.<sup>15</sup> If the Committee should find indications of intentional disinformation presented to the government by the agencies, this would however be regarded as falling within the oversight mandate.

Another restriction on the Committee's oversight, is that it is not concerned with operations against persons outside of Norwegian territory. This effectively means that most activities of the Intelligence Service are not covered. The Intelligence Service may eavesdrop on the Russians (and all other foreigners) as much as it likes, and should it happen to recruit agents abroad, or conduct other kinds of secret operations on foreign soil, this will normally not be reported to the Committee.<sup>16</sup> However, if operations abroad are contrary to Norwegian law, or to military or administrative directives, this can be scrutinized by the Committee.

A somewhat different restriction on the Committee is laid down in the last paragraph of section 2, which states that the purpose is "purely monitor" (which means that the

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<sup>14</sup> This stands in contrast to parliamentary oversight procedures in many other countries, for example the Intelligence and Security Committee in the British Parliament, which may look into the accounts of the services, and evaluate whether they are cost-effective.

<sup>15</sup> According to Caparini (2002) intelligence oversight bodies in a comparative perspective generally aim to assess one of two things – either the "efficacy" of the intelligence service, or the "propriety" of its activities. The Norwegian model of legislative oversight is almost entirely focused on "propriety", and leaves "efficacy" to the executive.

<sup>16</sup> According to section 11 second paragraph of the Instructions, the Intelligence Service shall on its own initiative give the Committee a brief on "current activities" during inspections. This is open to interpretation, but should be read as current activities of potential interest to the oversight. This might include activities directed against Norwegian citizens abroad.

oversight shall be *ex post facto*),<sup>17</sup> and that the Committee may not instruct the agencies, nor be used by them for consultations. The fact that the Committee has no formal powers of instruction over the agencies is natural for an oversight body, which is not itself part of the administrative chain-of-command. The prohibition against “consultations”, and the emphasis on “pure” oversight is more interesting, and will be discussed later.

The Committee’s oversight is primarily directed against the secret agencies as such, and not against the relevant ministries, or ministers, nor less against the Cabinet. The main purpose is to prevent injustice, and to ensure respect for the rule of law in the agencies – not to question how central government makes use of them, through instructions and political signals. This is reflected in the fact that the Committee’s otherwise wide powers of inquiry do not apply to the requiring of documents and information from ministers, nor from civil servants working in the ministries.<sup>18</sup> The (debatable) idea behind this, is that oversight of ministers should formally be a task for Parliament itself (MPs), and not for a Committee of professionals, acting on behalf of parliament. This is however not a very severe restriction on the Committee. Even if the Committee cannot formally demand documents and evidence from the ministries, it is free to ask for it on a voluntary basis. And if the ministries refuse, this is likely to be reported to Parliament, and looked into by the Standing Committee on Scrutiny and Constitutional affairs.<sup>19</sup> Furthermore, if the Committee should find indications that the agencies have been misused for political purposes by the ruling party, for example to spy on the legitimate opposition, this would certainly be seen as falling within the very heart of the oversight mandate, and thoroughly looked into.

The oversight procedures are modelled to function under normal political conditions. According to section 4 of the Instructions, the relevant ministries may wholly or partly suspend the oversight “during a crisis or in wartime”. But it also states that Parliament must be notified immediately of any such suspension, and that it may overrule the decision. In practice, the political threshold for a suspension will probably be very high, and any sort of “normal” crisis will certainly not be enough.

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<sup>17</sup> The Norwegian wording is that the purpose should be “*rent kontrollende*” (purely controlling). But the word “*kontroll*” here refers to *ex post facto* acts of scrutiny and inquiry, as opposed to the *a priori* exercise of influence.

<sup>18</sup> See section 6 of the Act, and section 10 of the Instructions. The exemption does not apply to cases concerning personnel security clearances, which might be scrutinized in the relevant ministries.

<sup>19</sup> One such case, which led to the forced resignation of the minister responsible, is described later.

## ***The Appointment and Resources of the Committee***

According to section 1 of the Instructions, the Committee is comprised of seven members, including the chairman and vice-chairman. The members are appointed by the Storting (parliament) in plenary session, on the recommendation of the Storting's Presidium. The term of office is normally five years, and the members may be re-appointed. Deputies are not appointed. The members must be cleared for the highest security classification in accordance with national and NATO rules. The Committee has a quorum when five members are present. It functions as a collective body, but inspections and especially extensive investigations may be conducted by one or more of the members, assisted by the secretary, and acting on behalf of the collective.

The Committee is an external parliamentary body, which conducts its day-to-day work independently of Parliament itself, and current MPs may not be members. In this respect, the Committee differs from legislative oversight models in most other Western countries, in which the oversight bodies are comprised of parliamentarians. The idea behind the Norwegian model is to combine the principle of legislative oversight with the need for more professionalized, confidential, politically neutral and work-intensive procedures. The Committee enjoys the authority of being a "parliamentary" institution, and it reports directly to Parliament, but it functions as an independent body, removed from the daily political struggles. Parliament may in principle instruct the Committee to investigate a given case, though so far it has not done so,<sup>20</sup> but it may not interfere in the way in which the Committee conducts its oversight. The model is partially copied from that of the Parliamentary Ombudsman, and the members should in principle be regarded as a kind of "intelligence ombudsmen".

Just how professional and politically neutral the Committee should be, has been the subject of some debate. When the first committee was appointed in 1996, the procedures allowed for each of the main parties represented in Parliament to effectively choose their own candidates, and all the members had some affiliation to a political party. Most of them had formerly held some kind of political office. This

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<sup>20</sup> To be formally binding on the Committee, such an instruction would have to be in the form of a plenary decision by Parliament. This has so far never been suggested, and the political consensus seems to be that the Committee should be left to decide for itself what cases to investigate. The need for such instructions are limited by the fact that the Committee is under a general obligation to look into cases which have been the subject of public discussion.

system was soon criticized, and in 1998 Parliament voted to change the procedures, so that new members should be recommended by the Storting's Presidium (the Speakers). This in effect means that no party can independently nominate their own candidates, and that the appointments are subject to broader considerations and compromises, taking into account the need for professional expertise.<sup>21</sup> In later rounds, three "professional" and politically neutral members have been appointed; one a retired diplomat and former NATO ambassador, one a judge of the Court of Appeal, and one a professor of history and Director of the Norwegian Institute for Defence Studies. At the same time, two of the original members have been re-appointed, and two others chosen amongst former politicians. The result is a rather strange mixture of "political" and "professional" expertise, which in practice actually seems to work pretty well.

The shift in the appointment procedures has to some extent diminished the importance of reflecting both the ruling party and the opposition in the Committee. When the Committee was first appointed in 1996, there was an unwritten political understanding that the chairman should belong to the opposition. But this idea was abandoned in 1999, when instead a politically "neutral" former diplomat, Leif Mevik, was appointed the new chairman. Amongst those members who are still chosen on a more political basis, care is however still taken to ensure that they reflect the main political interests represented in parliament. Most importantly, the Committee has always had a member (and former MP) from the Socialist Peoples Party,<sup>22</sup> representing a part of the political spectrum which has traditionally been critical of the secret services, and which has itself formerly been subjected to extensive (and partly illegitimate) secret surveillance. There is a quite broad (if not complete) political consensus that this is vital in order to ensure the legitimacy of the oversight procedures.

Being a member of the Committee is not a full-time job, but it is still quite work-intensive. This particularly applies to the chairman, who is supposed to function on a

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<sup>21</sup> In accordance with Norwegian traditions, care is also taken to see that both sexes should be represented on a roughly equal basis. In the current Committee, three of the seven members are women, two of them "politically" appointed and one "professionally" (a judge).

<sup>22</sup> The member concerned is Stein Ørnhøi, who is a teacher and journalist, and who has formerly been a MP (1977-85) and the Chairman of the Socialist Peoples Party. Mr Ørnhøi was appointed member of the first Committee in 1996, and re-appointed in 1999. His current term of office expires in June 2004. Though formerly quite opposed to national military and security policy, the Socialist Peoples Party is today more mainstream, not entirely unlike the Greens in Germany. The re-appointment of Mr Ørnhøi in 1999 was still rather controversial in parliament, with 64 votes in favour, 21 against, and 26 abstaining (54 were not present).

more or less continuous basis, working together with the secretariat. Such a position is not easy to combine with a regular job, but at present the problem is solved by the fact that the chairman, Mr Mevik, is a pensioner. The other members all have professions that are (more or less) combinable with serving on the Committee. Their main work is connected to the rather intensive monthly meetings, which takes two (or sometimes three) days, and which are also used for conducting inspections. The members are also required to spend time preparing for the meetings, but their chances to do so are restricted by the fact that they cannot bring classified documents with them home. All documents have to be studied in the Committee's offices in down-town Oslo, and for those members living in other parts of the country (three at present) this is of course rather difficult.

The secretariat of the Committee is small, and consists of an office secretary, and two part-time legal secretaries, which more or less amounts to one full-time position. The part-time legal secretaries are drafted from the office of the Parliamentary Ombudsman, an arrangement which reflects the similarities between the Committee and the Ombudsman. Their professional training is that of handling legal cases, particularly citizens' complaints, and they are neither investigators nor intelligence experts as such.

The Committee also has the right to engage expert assistance where this is considered necessary, subject to the restriction that persons who have themselves served in the secret agencies may not be employed. In practice, this possibility of further professionalizing the work of the Committee has only been used moderately, and only to engage (on a regular basis) a university expert on computers and telecommunications, a competence which has proved indispensable in overseeing the highly technical aspects of electronic intelligence. Like the members, the secretaries and experts assisting the Committee are also cleared for the highest security classification in accordance with national and NATO rules.

The limited staff resources clearly restricts the Committee's ability to conduct more extensive inquiries and investigations, and its ability to be proactive. There is a certain discrepancy between the tasks laid down in the mandate, and the resources allocated to the Committee in order to fulfil these task. To some extent this discrepancy might be intentional. The Norwegian Parliament does not suffer any lack of money, and it would have been perfectly possible within the same oversight framework to equip the Committee with a professional staff of five or ten persons (like

the Lund Commission). This would in effect have made it a completely different institution, and would have resulted in a rather more intense oversight of the agencies than what Parliament deemed necessary. It can however be argued that a certain strengthening of the staff would be possible without altering the nature of the institution, and that this would effectively improve the ability of the Committee to fulfil its mandate.

### ***Powers of Inspection and Inquiry***

The Committee mainly conducts its oversight in two ways – through inspections of the agencies, and by dealing with complaints and cases it raises on its own initiative. Of these two, the inspections are by far the most time-consuming, and arguably also the most important part of the oversight. In a comparative perspective, the strong emphasis on inspections is a particular characteristic of the Norwegian model.

The rights and duties of the Committee to conduct inspections are laid down in sections 3 and 4 of the Act, and further regulated in detail in section 11 of the Instructions, which specifies the minimum number of inspections which must be held annually. The Committee is required to inspect the headquarters of the Police Security Service six times a year, the headquarters of the National Security Authority four times a year, and the headquarters of the Intelligence Service twice a year. If necessary, more inspections can be held. The duty to inspect external (regional) offices and stations is also regulated, to a combined minimum number of 8 for the three agencies, thus bringing the total number of inspections which must be conducted each year up to a total of 20. Advance notice of inspections is always given. In principle unannounced inspections may also be conducted, but this has so far not happened.

During inspections, the Committee may, according to section 4 of the Act, demand access to the agencies' archives, registers, premises, and installations of all kinds. All employees of the agencies shall on request procure all materials, equipment, etcetera that may have significance for the effectuation of the inspection. The agencies are under a duty to keep archives and registers in such a way that they may effectively be scrutinized by the Committee.

Inspections of agency headquarters usually follow a more or less regular pattern. The Committee is first briefed by the agency leadership on current general matters, and

presented with regular surveys on new cases and new major developments falling within its mandate. The parties then discuss cases currently being scrutinized by the Committee, and finally there is often a physical inspection of registers, journals, archives or specific premises or installations. In addition to the inspections, meetings are sometimes also held on a case-to-case basis, to discuss particular issues. Such meetings are normally only attended by the chairman and the secretary of the Committee.

Although the inspections follow a more or less regular pattern, the intensity and nature of the oversight conducted differs as regards the three agencies, reflecting not only the variations in frequency (6-4-2), but also the different characteristics of the agencies, in general and in relationship to the mandate of the Committee. Roughly speaking, the proportional of 6-4-2 not only applies to the number of inspections, but also gives a rather good indication of the intensity of the oversight directed against each of the agencies. The Police Security Service is subjected to the most thorough scrutiny, followed by the National Security Authority, while oversight of the Intelligence Service is more limited. We will return to this.

During the Committee's inspections of agency headquarters, representatives of the leadership will always be present, at least part of the time. Also present will be higher officials responsible for the contact with the Committee, and officials responsible for the cases being scrutinized. Meetings are often long and intensive. This, combined with the frequency of inspections, in effect means that the parties over time get to know each other quite well. On the one hand, this is beneficial to the oversight, since it creates a basis for the confidence necessary to ensure the flow of relevant information. On the other hand, it puts the Committee members under the constant threat of being captured by the system, identifying too closely with the agency. As we shall later see, this is a structural problem which was debated when the model was designed, and which is partly reflected in the last paragraph of section 2 of the act, prohibiting "consultations". But keeping the balance between familiarity and critical distance is a continuous challenge to the Committee members, of which awareness in practice seems on the whole to be rather good.

The Committee's right to require documents and materials from the agencies according to section 4 of the Act, is not confined to the inspections, but may be exercised at all times, also through correspondence. Thus the Committee may in principle demand access to any document or other piece of evidence. Especially

sensitive documents are read in the offices of the agency concerned, without copies being made, but other documents (classified and unclassified) are given in copy to the Committee, and kept in a rather impressive vault in its secured offices.

As a main rule the Committee's right of access to documents and information under section 4 is unlimited (save from ministerial information, see below). The principle of access is however moderated in section 5 of the Instructions, which states that the Committee shall not apply for more extensive access to classified information than what is necessary for the purposes of the oversight, and that it shall as far as possible observe consideration for the protection of sources and information received from abroad. This is a natural consequence of the fact that the Committee's oversight according to the mandate only concern parts of the activities conducted by the agencies, and also that it should (as always within the ring of secrecy) operate on a need-to-know basis. Section 5 puts the Committee under a constant obligation to evaluate what kind of information is really needed in order to conduct efficient oversight within the limits of the mandate. But it is not formally a legal restraint on the right of access, since section 6 of the Instruction states that any dispute over the access to information shall be decided by the Committee itself, subject to a right for the agency personnel to demand that a reasoned protest is recorded in the minutes. This principle has however been challenged by the Intelligence Service, with some success, as we shall later see.

During inspections of the agencies, the Committee will discuss with the intelligence and security officials present, and the members may ask them questions on the cases under investigation. This is the way in which the Committee gathers by far most of its oral evidence and explanations, and it is done rather informally. The Committee does have the power to formally summon any person to appear before it under section 5 of the Act, and rules for such interrogations are laid down in section 9 of the Instructions, but these rules have so far never been applied in practice. If applied, private citizens would have to appear when summoned, but would not be under a legal obligation to give testimony. All persons who are or have been in the employment of the administration are however "obliged to give evidence ... concerning all matters experienced in the course of their duties". There are in principle no limits to this duty, and normal legal restrictions against forced self-incrimination do not apply. On the other hand section 5 also states that forced testimony given to the Committee may not be used in criminal proceeding against the person concerned without his consent. This demonstrates that the general public

interest in an efficient oversight of the agencies is seen as far more important than the individual prosecution of any official suspected of misconduct.

As mentioned, the ministers and their ministries are not subjected to the Committee's formal rights of inquiry. The Committee may not demand documents from the ministries, nor formally summon ministers and officials from the ministries to give evidence. In principle this may appear as a rather severe restriction on the Committee's ability to conduct real and effective oversight, but in practice it does not seem to be so. The mandate of the Committee is not concerned with political intelligence priorities, or with the administration's use of the intelligence supplied, but rather with the day-to-day operations of the agencies, mainly against individuals, and this is something that the ministries are rarely involved in, if at all. And if there are questions concerning the ministries, the Committee may ask for documents and evidence on a voluntary basis.<sup>23</sup> Furthermore, the restriction against inquiries into the ministries rests on the clear presumption that any suspicion of alleged misuse of the agencies by ministers and their officials must be reported to Parliament, which should then itself decide what further inquiries and actions are necessary, for example through the Standing Committee on Scrutiny and Constitutional Affairs, which is Parliament's own oversight body.

### ***Complaints and Other Cases Raised by the Committee***

According to section 4 of the Act, the Committee shall "investigate all complaints from persons and organizations". This means that anyone who allegedly believes that one of the agencies may have committed an injustice against him may complain to the Committee, and the complaint will be looked into, as long as it falls within the oversight mandate and shows at least some likelihood of being based on facts. This is the part of the Committee's oversight which in particular resembles the work of the Parliamentary Ombudsman, although subject to rather more strict rules of confidentiality.

The number of complaints received each year has varied somewhat. During its first two years in operation, the Committee received a total of 89 complaints, but due to public misunderstanding of the nature of the oversight, half of these had to be

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<sup>23</sup> Although this is rare, there are from time to time cases which require the Committee to get in direct contact with the ministries. The Committee has also made it a practice to ask for a meeting every time a new minister is appointed to one of the two relevant ministries (Justice or Defence).

dismissed outright, as falling outside of the Committee's mandate. The numbers for the following years have been 21 (1998), 17 (1999), 14 (2000), 25 (2001) and 28 (2002). The large majority of complaints concern the Police Security Service, and typically involve allegations of illegal surveillance. There are also a few complaints each year against the security authorities, concerning denials or withdrawals of personnel security clearances. So far only two complaints have been received against the Intelligence Service.

When a complaint is lodged, the Committee informs the agency concerned, and then goes on to investigate it. This is partly carried out through written correspondence with the agency, which may include demands for documents, and partly in connection with the inspections, during which the Committee may discuss the complaint with the agency and demand explanations or access to the relevant archives and registers. Sometimes special meetings are held on a case-to-case basis. The large majority of complaints have so far been found to be unsubstantiated. If however the investigation reveals grounds for criticism, the Committee will express this in a written statement to the agency concerned. The Committee has no authority to instruct the agencies to take specific action concerning the case, but it may express its opinion, and may make recommendations, for example to reconsider the matter.

According to section 4 of the Act, the Committee shall also "on its own initiative deal with all matters and factors that it finds appropriate to its purpose, and particularly matters that have been subjected to public criticism". Each year a number of cases are raised by the Committee on its own initiative.<sup>24</sup> The emphasis in the Act that special attention should be given to matters which have been subjected to public criticism reflects the fact that traditionally "scandals" concerning the secret agencies were often first uncovered by the media, and to some extent this is still true. In practice, all serious allegations raised by the media will be looked into by the Committee. Usually, they are found to be unsubstantiated, and when the Committee reports this to Parliament (in the annual report), the legitimacy of the oversight process is such that this will normally quell public criticism and distrust. In this way,

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<sup>24</sup> The actual number of cases raised by the Committee on its own initiative is 18 in 1997, 14 in 1998, 5 in 1999, 7 in 2000, 10 in 2001, and 12 in 2002.

the work of the Committee has so far also served to bolster the legitimacy of the agencies.<sup>25</sup>

The right to investigate a case on its own initiative formally lies with the Committee as such, which means the majority of the members. In practice, most cases are initiated during inspections, or on the suggestion of the chairman. In addition, the individual members may suggest that a case be considered, and this is usually accepted by the others, even if they do not really believe that it is necessary. There have been examples of such proposals being put to the vote, and turned down, but only very rarely.

### ***Statements and Reports***

The results of the Committee's oversight are given in full statements on a case-to-case basis to the agencies concerned, in short statements to complainants, and in the annual reports presented directly to Parliament. Sometimes short statements are also issued to the press. The ability of the Committee to demonstrate its results is restricted by the fact that it operates within the ring of secrecy, and does not itself have the legal competence to declassify secret documents or information, nor to disclose such information to persons not cleared and authorized to receive it.

The Committee's statements to the agencies shall pursuant to section 4 of the Act be "classified according to their contents", which in effect means that they are almost never made public.<sup>26</sup> Neither are they sent to Parliament, and indeed as a main rule Parliament can not ask to see them. The statements are in effect a purely internal form of communication between the Committee and the agency concerned, and sometimes also the Ministry responsible.

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<sup>25</sup> In several of its annual reports, the Committee has stressed that it should not be seen as a "provider of legitimacy" for the agencies. This may be the right and proper thing for it to say. But on the other hand the oversight conducted may of course in effect have such a *function*, both in general and in specific cases of controversy, and as long as the providing of legitimacy is based on fact and correct evaluation, this is hardly to be seen as negative.

<sup>26</sup> Legally, there is a distinction between "classified" information, which the Committee is obliged to keep secret, and information which is not classified, but which is nevertheless considered "internal", and which the Committee may give out, but without an obligation to do so. This is reflected in section 4, second paragraph of the Act, which states that the Committee shall decide "the extent to which its unclassified statements or unclassified parts of the statements shall be made public". It is also stated that if the making public of a statement will result in the revealing of the identity of a complainant, the consent of this person shall first be obtained. In practice, it has only happened once that a statement was (partially) given to the press, and then only under extraordinary circumstances.

Statements to the agencies are further regulated in section 7 of the Instructions. Such statements are given regularly every time the Committee closes a case, but they are naturally more detailed in cases in which the Committee finds something to comment or criticize. According to section 7 the Committee may express its opinion on any subject which falls within the oversight mandate. The Committee does not have the competence to formally instruct the agencies on what to do, but it may point out faults and failures, and if it considers that decisions made by the agency are formally invalid (on legal grounds), or contrary to principles of good administration, it shall indicate so. It may also propose improvements to existing administrative arrangements and procedures, on matters relevant to the purpose and mandate of the oversight.

When the Committee prepares a statement which may include criticism or suggestions, it shall according to section 7 give the agency prior warning of this, and give the leading official responsible for the case an opportunity to express his views on the matter to the Committee, before the final statement is made.

The Committee's statements shall be addressed to the head of the agency concerned, but they may also be addressed directly to the Chief of Defence (in matters concerning the Intelligence Service) or to the Ministry responsible, if the statements raise matters of which the superior executive authority should be aware. If a statement includes proposals for the implementation of measures, or the making of new decisions, the agency shall be requested to respond by giving notification on whether and how it plans to act on this.

Even if (or rather because) the Committee's statements to the agencies are not made publicly known, and not shown to Parliament, they are in effect probably the most important outcome of the oversight procedure. It is through these statements that the Committee may in fact actively assist the agencies in uncovering, redressing and preventing faults and failures. This part of the Committee's work in practice functions as a kind of "internal" audit, within the ring of secrecy, and of an assisting rather than an adversarial character, which should normally help to prevent potential controversy and make it easier for the agencies to accept comments, even of a critical nature.

Many of the cases considered by the Committee concern the individual rights of persons or organizations, and this not only applies to complaints, but also to cases uncovered during inspections, or raised by the Committee on its own initiative. It is

however only in complaint-cases that statements are given to individuals. Such statements are necessarily short, since the Committee does not have the competence to disclose classified information. When complaints are made against the surveillance activities of the Police Security Service, the Committee may as a general rule only give out information as to whether the complaint gave valid grounds for criticism. According to section 6 of the Act, the Committee may not by itself inform the complainant as to whether he or she has been subjected to surveillance, since this would enable anyone to find out whether he or she has been (or still is) the subject of attention. The Committee may however request the consent of the agency, or the Ministry responsible, to provide a more detailed explanation to the complainant, if this is deemed necessary in order to close the case in a satisfactory manner. This right has been made use of in several cases, both in relation to the Police Security Service and the National Security Authority, and has enabled the Committee to provide complainants with satisfactory explanations.

According to section 12 of the Instructions, the Committee may to some degree issue information to the public (e.g. the press) on its activities, but it is not under an obligation to do so. Such information must of course be unclassified, and the Committee must also respect the protection of privacy, both of complainants and of other persons involved. It is not allowed to name or identify officials, unless explicitly authorized to do so by the Ministry responsible. In practice, statements to the public are rarely given, and the public's main source of information on the Committee's work are the annual reports submitted to Parliament, which are published when submitted.

The Committee's obligation to submit reports to Parliament is stated in section 8 of the Act, and further regulated in some detail in section 13 of the Instructions. The Committee shall submit an annual main report by 1<sup>st</sup> April (no jokes allowed), covering its activities during the previous year, but it may also submit reports on individual cases, if it uncovers matters which "should be made known to the Storting immediately". So far this has only happened once, in the late autumn of 1996 (see chapter 4.1). The threshold is high. Any report to Parliament on an individual case would necessarily give rise to great attention and conflict, and the Committee will in practice be hesitant to start such a drama, unless it is certain that the case is both highly important and of great urgency. But its competence to do so does give it some leverage with the agencies.

According to the Act, reports to Parliament must be unclassified. This was not a constitutional requirement, since Parliament of course from time to time has to consider sensitive information, through special procedures designed for this. When drafting the oversight model, there was however a broad consensus that the Committee should not be given the opportunity to report classified information, even in extraordinary circumstances. This should at least partly be seen to reflect a parliamentarian self-awareness that MPs are notoriously bad at keeping secrets. But it also highlights the principle that the Committee conducts its oversight *on behalf* of Parliament, as a more professional form of scrutiny, going further and deeper into the activities of the agencies than what the legislative assembly should itself do. On a need-to-know basis, Parliament usually does not really need to know, nor should it. In this way, the Committee acts “as an agent of others who cannot be as well informed” (March and Olsen 1995, p. 164).<sup>27</sup>

In effect the prohibition against reporting classified information means that the Committee can usually submit its conclusions, but not the premises on which these conclusions rest. It may criticize an agency in a particular case, or it may exonerate it from public allegations, but it may often not explain why, nor disclose the nuances of its evaluations. It will just have to be believed. This underlines the fundamental importance of maintaining the Committee’s legitimacy, towards Parliament and the public.

The reports of the Committee are submitted directly to Parliament, and not through the executive. Since it is prohibited from reporting classified information, and since the finer distinctions between classified and unclassified information are often hard to draw, the Committee has however made it a practice to send parts of the draft report to the agencies concerned, so that they can assess whether the contents are unclassified. If the agency objects to a particular piece of information, on the grounds that it is classified, the Committee will have to take it out of the report. But the agencies can not otherwise interfere with the contents of the report, which is the Committee’s sole responsibility.

A number of matters which should always be included in the annual report are listed in section 13 of the Instructions, but these are minimum requirements, and the Committee is otherwise free to report on anything it finds appropriate. In practice the

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<sup>27</sup> March & Olsen presents this as a general characteristic of all systems of “audit”, but one which is especially true when it comes to models of intelligence audit.

annual reports are fairly comprehensive and readable, giving the interested reader (at least seemingly) quite a good impression of what the Committee has been up to during the previous year. Most of the report describes the findings of the regular oversight procedures (inspections held, complaints received, the number of cases raised, etcetera). Usually the Committee just indicates the results, for example the number of complaints which have given rise to criticism or comment. But sometimes cases are described in more detail, and usually so if the case has already been the subject of public debate.

The prohibition against reporting classified information is absolute, but if the Committee finds that it is vital for Parliament's own oversight of the executive to familiarize itself with classified information in a specific case, it shall according to section 13 second paragraph "bring this to the attention" of Parliament. This of course will require a rather delicate act of balancing, since the existence of such information could itself be considered classified, but it is in principle possible. It will then be a question for Parliament (the majority) whether it wishes to investigate the case further, by demanding the classified information from the Ministry responsible.<sup>28</sup> The same procedure applies "if there is a need for further investigations of factors concerning which the Committee itself is unable to make any progress". This would be the case for example if a thread pursued by the Committee leads from the agency concerned into the domains of the Ministry (or the Cabinet), over which the Committee does not itself have formal powers of inquiry. So far this has only happened once, in the infamous Furre-case (see below).

The Ministries are not under the same prohibition as is the Committee, and may disclose classified information to Parliament on their own initiative, through the proper procedures. This creates a structural imbalance, which may under the wrong circumstances give rise to problems. In 1998 the Ministry of Defence gave certain classified documents to Parliament concerning a matter which the Committee had dealt with, but did not enclose the views expressed by the Committee in its correspondence with the Ministry. This situation was deeply frustrating to the Committee. The specific case was dealt with (see chapter 4.3), but the fundamental problem remains unsolved. In such and some other circumstances, the Committee may find itself in a situation where there is nowhere to go with information which it

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<sup>28</sup> According to the view of some, Parliament must under such circumstances demand the information concerned from the Ministry responsible, as the Act prohibits it from requiring it directly from the Committee (except through a new statutory act). This interpretation of the Act is however debatable.

regards as important for Parliament to be aware of. In 2001 the Committee raised this problem with Parliament on a general basis, and asked for the Instructions to be changed, allowing for the reporting of classified information under exceptional circumstances. But the parliamentary majority turned the request down, preferring to stick to the current strict and simple rule.

When Parliament receives the reports of the Committee, they are published as parliamentary documents, and reviewed by the Standing Committee on Scrutiny and Constitutional Affairs, which gives its recommendations, followed by plenary debate.<sup>29</sup> The Standing Committee may inquire further into cases raised by the Committee, and to some extent it has done so, though only twice so far by itself conducting hearings and investigations.<sup>30</sup> On the whole the political attention given to the reports has varied widely from year to year, reflecting the contents of each report. The regular oversight activity of the Committee is usually of limited interest to the MPs, and in those years in which the Committee has had nothing particularly exciting to report, the recommendations have been short, and the debates summary. But when the Committee on the other hand reports on controversial singular cases, the MPs normally get rather excited, and conduct long debates. So far this has happened approximately every second or third year.

### ***The Prohibition against “Consultations”***

One of the main structural dilemmas for any intelligence oversight body is the need to build up confidence in the agencies, while at the same time maintaining a critical distance. Due to the lack of alternative sources, the oversight body must to a large extent rely on the information supplied by the agencies, and it must function within the ring of secrecy. This makes it “vulnerable both to co-optation by the audited and to pretensions of autonomous importance” (March and Olsen 1995, p. 164).<sup>31</sup> For the oversight body, the danger is not only that it may become too friendly and familiar

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<sup>29</sup> For those (few) familiar with the Norwegian language, the reports can easily be found on the homepage of the Storting (parliament), [www.stortinget.no](http://www.stortinget.no), by looking under “Saker” (cases), and then going on to “Dokumenter” (documents). The reports are normally given the number “16” (though once it was 17), and the typical reference will be “Dokument nr. 16 (2000-2001)”, “Dokument nr. 16 (2001-2002)”, and so on. The recommendations of the standing committee, and the minutes from the plenary debates are also published, and placed on the homepage.

<sup>30</sup> The first time was in 1996-97, in the Furre-case, and the second in the spring of 2003, in a controversial complaint-case concerning the withdrawal of a security clearance from a high official at Headquarters Defence Command. Both cases are described below.

<sup>31</sup> March and Olsen presents this as a general problem in all democratic oversight procedures, but one which is particularly acute when it comes to intelligence oversight. “Special legislative committees to audit intelligence services come to see the information world from the point of view of the services”.

with the agencies, thereby accepting activities which should have been criticized, but also that it may be tempted to exceed the role of auditor, and instead start to give instructions and advice. The problem is strengthened by the fact that it may sometimes be in the short-term interest of the agencies to try to consult with the overseers and to gain their prior acceptance to planned operations. The dangers inherent are clear. If suspicion arise that the oversight body identifies itself too closely with the agencies, and abandons the role of auditor for that of an advisor, this is a sure way to destroy the legitimacy of the oversight arrangement – to the damage of all parties concerned.

This structural dilemma has long been recognized by the authorities responsible for establishing intelligence oversight procedures in Norway. When the need for oversight of the secret services were first put on the agenda in the early 1950s, the initiative interestingly enough came from the head of the Police Security Service. And what he proposed, was a committee which could function both as “a breakwater and an auditor”, with the mandate both to oversee the service and to give advice, especially on cases which might be politically sensitive. The idea was not acted upon, but it was taken up again in the late 1960s, by a committee responsible for drafting a model of executive oversight. The committee’s draft proposal was however turned down by the Ministry of Justice, which stated that an oversight body with the double function of auditor and advisor would risk becoming “co-responsible for activities which it must later investigate”. Instead the governmental oversight committee established in 1972 was given a purely retrospective mandate, to conduct inquiries into actions already taken, and without any advisory or consultative function.

This executive oversight committee was in function from 1972 until 1995. As earlier mentioned, experiences were mixed. The relatively few cases into which it conducted critical inquiries were for the most part already uncovered by critical journalists, and its oversight on the whole seems to have been rather passive. Even if it was prohibited from giving the agencies consultations, it was still criticized quite severely by the Lund Committee in 1996 for having identified itself too closely with them, and for not having been able to keep a critical distance.

When the new Intelligence Oversight Committee was established in 1995, there was never any suggestion that it should act as an advisor or a “breakwater” for the agencies. Instead the need for critical independence was stressed, and it was laid down in section 2 of the Act that the purpose should be to conduct subsequent

(retrospective) oversight, and that the Committee cannot give instructions to the agencies, nor be used by them for consultations. The prohibition against consultations applies both to the Committee and to the agencies.

Due to the express wording of section 2, and the experiences of the past, the awareness of the prohibition against consultations is high both in the Committee and the agencies. It is probably rather unthinkable that the agencies should seek prior approval (even indirectly) from the Committee on future operations, and if they should try, this would certainly be rejected. On the other hand, there is in practice clearly a grey-zone between consultations and discussions, and especially so in an oversight arrangement which relies on frequent inspections, during which the Committee also receives briefings and discuss the cases. The atmosphere during inspections is seldom adversarial, nor is it meant to be so. This is recognized in the preparatory works to the Act, and the instructions of the legislator is first and foremost that the challenge is that of finding a proper balance. Experiences so far indicate that the parties have managed to do so.

The principle of subsequent (retrospective) oversight is difficult to maintain fully when it comes to operations that run for some period of time. Some cases concerning secret surveillance of persons or organizations may for example take years, and include a number of decisions and activities. Should the Committee have to wait until the case was finally closed, this would clearly be unsatisfactory. This is recognized in section 7 of the Instructions, which states that even if the Committee should “normally” abide by the principle of subsequent oversight, it may nevertheless “require access to information on current matters, and submit comments on such matters”. Again, this calls for a balance to be struck. When in 2001 the Committee presented its own evaluation of the oversight arrangement to Parliament, it highlighted the “tension” between subsequent oversight and the right to inquire into current cases. The Committee pointed out that this had often required difficult decisions to be made, and indicated that there had been instances of disagreement between itself and the agencies. But on the other hand it stated that it is probably impossible to regulate this in a more precise manner than what is already done in section 7, and that discretionary decisions must necessarily be made based on the facts of the individual case. This was approved by Parliament.

## **The Committee in Operation**

### ***Baptism of Fire – the Furre Case***

As the Committee first went into operation in the spring of 1996, it was almost immediately thrown into its most controversial case so far. This was just after the Lund Commission had presented its awesome report on the past activities of the secret agencies, which was still being reviewed by Parliament. Tensions were high. And at the same time allegations were raised in the media that the Police Security Service had been secretly surveilling the Lund Commission and investigating one of its members. The auditee had been spying on its auditors.

The allegations were scrutinized by the new Committee, and it soon found out that they to a large extent were true. Partly, the Police Security Service had made inquiries to German authorities, to learn what documents the Lund Commission had asked to see from the Stasi archives. And partly, a secret criminal investigation had been launched against Berge Furre, a member of the Commission, and a former prominent socialist politician, whom the Service suspected of having been a Stasi agent or informer (the suspicion was later found to have been unsubstantiated).

The investigations of the Committee during the autumn of 1996 uncovered the facts of the case, on which it expressed severe criticism against the Police Security Service in a special report submitted to Parliament in December,<sup>32</sup> which led to the immediate resignation of the head of the Service. What the Committee did not manage to uncover, was the extent to which the Service had informed the Ministry of Justice of its actions, nor whether (or rather when) the officials responsible had informed the minister. From a political point of view, this was a crucial question, since it determined to what extent the minister should be held not merely formally accountable, but also personally responsible. On this point, the Committee ran up against a wall, since it had no formal powers of inquiry over the Ministry. Instead the unsolved issue was reported to an outraged Parliament. Even before the opposition could start the unavoidable slaughter, the Prime Minister responded by sacking the minister responsible, just three days after the submission of the Committee's report.

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<sup>32</sup> This is the only time so far that the Committee has submitted a special report to Parliament, and it was the first report ever from the Committee, coming before its first annual report. Submitting the report presented a problem, since it contained information classified at the time. The Committee solved this by making Parliament aware of the report's existence (in a way not entirely consistent with the finer details of the Instructions), and this created enough political pressure for the Ministry of Justice to declassify the information after just a couple of days. The report was then handed over to Parliament.

This probably saved the Government from a vote of no-confidence. But it did not save the responsible officials in the Ministry from long and severe questioning in televised parliamentary hearings, and both the permanent secretary and the director general of the police department soon after resigned. With four casualties, this was by far the bloodiest example of political and administrative accountability in modern Norwegian history.

Whether or not the reason for the Police Security Service's actions against the Lund Commission and Mr Furre was indeed to discredit the ongoing inquiry, as alleged by many, remained a subject of controversy. The Service defended itself by stating that this was certainly not true, and that it had a legal and natural obligation to investigate suspicions of former espionage against any person, regardless of his or her position, and especially so if the person was currently entrusted with highly classified information, as Mr Furre certainly was. The Standing Committee wisely restrained from going into this (rather difficult) issue, and merely stated that it was a matter of severely bad judgement not to consult with the leader of the inquiry, or indeed with Parliament through the proper channels, when investigating a member of a parliamentary commission which was at the same time scrutinizing the Service itself. The Standing Committee was indeed more critical of the fact that the Service had investigated the contacts between the Lund Commission and German authorities, for which it could find no plausible explanation.

For the Police Security Service, the result of the Furre-case was a catastrophe. The legitimacy and efficiency of the Service was at the time already weakened by a number of lesser scandals, and by the findings of the Lund Commission. The Furre-case came on top of this, and it was the commonly held opinion that it left the Service with its "spine broken". It took a major reorganization, and several years of intensive confidence-building for the Service to regain some degree of legitimacy, and it was arguably not until September 11<sup>th</sup> 2001 that this process was concluded.

For the new Intelligence Oversight Committee, the Furre-case was at first sight a great success. Just half a year into operation, it had managed to uncover a real security scandal, and it received the full backing and congratulations of a broad majority in Parliament,<sup>33</sup> as well as a unison press. In hindsight, the Committee's

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<sup>33</sup> The parliamentary backing was not complete, since the (far-right) Progress Party objected to the way in which the Committee had handled the case, and strongly defended the Service's actions against the socialist Mr Furre. Perhaps more importantly, many members of the ruling Labour party were also

success was however not entirely unconditional. In the agencies (and indeed amongst not a few politicians) it was a tacit but not uncommonly held opinion that the Committee had acted rather rashly, and had made the case more controversial than need be. This is open to argument. But it is a fact that the Furre-case made the Committee start out in a pretty adversarial mode, which might be well suited to the handling of serious scandals, but which is ill suited to the efficient regular and continuous day-to-day oversight of sceptical intelligence and security agencies. It is difficult to measure from the outside, but it is probably true to say that after the Furre-case it took the Committee several years of consolidation and appeasement to gain an acceptable degree of confidence within the agencies.

In retrospective, after the first seven years of operation, the Furre-case stands out not as an example of how the Committee usually conducts its oversight, but as an extraordinary case, the kind of which will hopefully not arise again for a long time. It shows the potential powers of the Committee's oversight, especially in a volatile political context. But it is certainly not typical of its main functions.

### **Oversight of the Police Security Service**

It follows from the Act and the preparatory works that oversight of the Police Security Service should be more extensive than of the other two agencies, and this is also how it functions. Most of the activities of the Police Security Service falls into the centre of the oversight mandate, and due to the findings of the Lund Commission and the Furre-case this was also the agency for which the need for increased and intensified scrutiny was seen as most eminent.

The conditions for oversight of this agency are favourable. The organizational structure of the Police Security Service is not too complicated, and the number of annual inspections prescribed in the Instructions (6 of headquarters and 4 of regional offices) ensures that the Committee gets a fairly good impression on what is going on. The Police Security Service is also the agency on which the Committee receives most of its complaints – lately somewhere around 20 each year. The major part of the Committee's work as regards the Service is either connected to individual cases

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secretly sceptical of the havoc created, though for political reasons they could hardly say so out loud. But the other parties fully applauded the Committee, even when it was later found out that some of its evaluations on the finer legal points of the case were not entirely correct.

of secret surveillance, or to the more general procedures for registering persons, handling sensitive information, keeping proper archives, etcetera.

After a rough start with the Furre-case, both the Committee and the Service were eager to normalize relations, and in the annual report for 1997 it is stated that these were now constructive. In later reports the Committee has repeatedly given the Service praise for the way in which it responds to the oversight, and there seems to have been no major disputes. The Service has never tried to deny the Committee access to relevant information, and usually complies fully with its comments and opinions.

Inspections of the Police Security Service's headquarters usually follow a regular pattern. First the agency gives a general briefing on current activities, and on cases on which the Committee has beforehand signalled a desire to be especially informed. This is often followed by discussions. The agency then presents an overview of all new cases of surveillance, as well as new major developments in existing cases. Cases which are currently being scrutinized by the Committee are then examined, and questions asked to the officials responsible. Finally the Committee may conduct physical inspections of journals, registers and archives.

Complaints and cases raised on the Committee's own initiative are discussed during inspections, but sometimes special meetings are also held, on a case-to-case basis, usually with just some of the Committee members present. Of the many complaints and other cases, only a small portion (usually one or two a year, sometimes none) give rise to critical comments by the Committee, but it does express opinions on a somewhat larger number.

According to the reports the Committee has put a lot of effort into checking the general procedures of the Service, especially regarding registers and archives. This kind of oversight is time-consuming, and not very glamorous, but it is of great practical importance, and the impression is that the work of the Committee has resulted in a number of substantial improvements.

Only a few of the many individual cases considered by the Committee are described in any detail in the annual reports, and these are usually cases which have already received some kind of public attention. Some of them should be mentioned. They are

amongst the most important, and as such not necessarily typical of the majority, but they do give an impression of how the oversight works.

One of these cases followed the expulsion from Norway in March 1998 of five Russian diplomats suspected of espionage. The case received intense media attention, and the more so when a ministry official, Sven Lamark, told the press how he had acted as a double-agent, successfully helping the Police Security Service. This coincided in time with the presentation of a White Paper on the future organization of the Service, and allegations were raised in the media that the Service had timed the expulsion, and leaked the details, in order to look good in front of the coming discussions on its future. The allegations were scrutinized by the Committee, which cleared the Service by stating in the annual report that the case had been handled (and timed) according to purely professional standards.

In 2001 the Committee reported on a more controversial case, involving the investigation of a journalist, Stein Viksveen, suspected of being a former Stasi agent. The investigation started by the Service raiding Mr Viksveen's offices in 1999, but was finally dropped in 2001, for lack of evidence. The Committee did not comment on the substance of the case, but it criticized several aspects of its handling by the Service, including failures of routines for seized material, deficient internal information routines, and deficient information given to Mr Viksveen and his defence lawyer.

In 2002 the Committee reported on how the Police Security Service had conducted surveillance on demonstrators during a World Bank Conference in Oslo. The Committee did not explicitly criticize the Service, but it highlighted and discussed the distinction to be made between legitimate political demonstrations and criminal behaviour. In the same year the Committee also reported on its inquiry into press allegations that the Sami minority population had been subject to surveillance on ethnical grounds. The Committee was sceptical to two of the registered Sami cases, but it found no evidence that they were based on ethnical considerations.

A continuous challenge for the Committee has been the cases in which part of the Police Security Service's investigations have taken place on the instructions of the superior prosecuting authority (the Office of the Attorney General Criminal Affairs). The Committee is empowered to inquire into the Service's handling of such cases, but it is not allowed to comment or criticize the decisions of the prosecuting authority.

This has created a difficult grey-zone in some cases, but the problem has lately been partly solved by new guidelines, drawing clearer formal lines between the Service and the Attorney General.

In the last two years the Committee has been especially concerned with the new powers and tasks given to the Police Security Service following 11<sup>th</sup> September 2001, and with the greatly increased information-sharing between the Service and foreign counterparts. The Committee has not voiced any criticism, but it has repeatedly stated that efficient oversight must be maintained, and it has emphasized the need for better procedures for registering the information-flow between the Service and foreign agencies.

### **Oversight of the Intelligence Service**

The Committee's oversight of the Intelligence Service is rather limited, and may even be seen as somewhat marginal, in comparison to the tasks and operations of this agency. This is mainly due to the fact that most of the activities of the Intelligence Service fall outside of the Committee's mandate, as stated in the Act. But it is also partly so because the Intelligence Service is a very non-transparent organization, which the Committee has found it hard to penetrate and comprehend, and because most of its operations are of a highly technical (electronical) nature.

Oversight does however take place, within the limits prescribed by the Committee's mandate. Inspections are carried out twice a year at agency headquarters in Oslo, and two or three times a year at regional offices, including operational stations. During the first three or four years, the remarks on the Intelligence Service in the annual reports were short, usually stating that the Committee had found nothing to criticize, and that it was still in the process of learning about the workings of the agency. But in the more recent reports the remarks have been more substantial, and some cases of particular interest commented upon.

The oversight of the Intelligence Service mainly rests on two criteria. The first is that the Service must respect the legal restraints against conducting operations and surveillance on Norwegian territory. This has so far been a rather unobtrusive kind of oversight, with the Committee posing its regular question on whether the restraints are respected, and the agency giving the routine reply of – why yes, of course. So far no evidence to the contrary has been found.

The second criteria rests on the Committee's mandate to oversee that statute law and directives are respected. This gives a somewhat wider potential for scrutiny, although lessened by the fact that the relevant rules are rather widely and vaguely formulated. In practice the Committee has focused on the requirement that intelligence activities must be under proper "national control", which has always been seen as a fundamental principle, but one which is now explicitly stated in section 4 of the 2001 Instructions for the Intelligence Service. The importance of this principle can be understood when considering that the Intelligence Service was up until the early 1990s for the most part financed by the United States, and that much of its electronic signal intelligence is of military interest to NATO as a whole. In recent years the Committee has inquired into several cases concerning allegations that intelligence operations were not under national control, but so far the annual reports give no indication that this is so.

In 1998 a major dispute broke out between the Committee and the Intelligence Service, over what was primarily a question of access to information, but which also concerned the more fundamental question of how far oversight should go. The row started during an inspection, when the Committee uncovered a letter which the Intelligence Service had obtained from the Minister of Defence in early 1997, giving it permission to withhold information from the Committee if considered necessary for the protection of national or foreign sources. Such information will normally fall outside of what is necessary for the purposes of the Committee's oversight under the mandate, but the letter was still in pretty clear violation of the Committee's rights of access under section 4 of the Act and sections 5 and 6 of the Instructions. The Committee reacted strongly to the contents of the letter, but even more strongly to the fact that it had not been informed on the existence of such a ministerial instruction. A protest was sent to the Ministry, and later followed by a request for access to certain correspondence between the Intelligence Service and foreign agencies. The Service and the Ministry responded negatively to both.

The incident was reported to Parliament in the annual report for 1998, although just by one short sentence, since the Ministry refused to declassify the case. The one sentence was however enough to arouse the attention of Parliament (and the press), and after some haggling, the relevant documents were declassified and given to the Standing Committee on Scrutiny and Constitutional Affairs. During the subsequent parliamentary review a broad majority sided with the Intelligence Service, and the Committee was in effect reprimanded for having exceeded its mandate. A new

unwritten procedure was introduced which in reality gives the Intelligence Service the right to decide whether information demanded by the Committee is really relevant to the purposes of the oversight. In such a case the Committee retains the right to bring the question before the Minister, and if need be before Parliament. This rather awkward procedure only applies to the Intelligence Service (not the two other agencies), and has so far not been used.

For the Committee the lack of backing from Parliament (its employer) came as an unpleasant surprise. The political reaction can partly be explained by the strong position enjoyed by the Intelligence Service in parliamentary circles (the Police Security Service would never have been able to stand up against the Committee in such a way). But it also illustrated the fact that the political climate had changed somewhat by the late 1990s, replacing the earlier oversight euphoria with a concern shared by many MPs that intelligence oversight had perhaps been carried a step too far, and that time had come to set some limits.

After the final parliamentary debate on the incident, in June 1999, a mutual need was felt in the Committee and the Intelligence Service to repair and normalize relations, which also coincided in time with the appointment of several new members to the Committee. Both parties applied some effort, and in 2000 the Committee could report to Parliament that relations had now "improved considerably". Since then no further disputes over access to information have occurred, and judging by the latest annual reports oversight of the Intelligence Service seems now to be of a more constructive and substantial nature than before.

A case mentioned in the latest report can illustrate this. It concerns a large new radar installation, the Globus II, erected by the Intelligence Service in Vadsø, in the far north, which went into operation in 2002. In the press there have been frequent allegations that the radar is not under national control, and that one of its main purposes is to be a part of the planned US shield against nuclear missiles (the NMD). After inquiries and an inspection of the radar, the Committee could report that its operation was under strict Norwegian control, and that it was anyway technically unsuitable as part of the NMD.

Following the 2001 presentation to the European Parliament of a report on the so-called Echelon network of electronic surveillance, the Committee has discussed this issue with the Intelligence Service on several occasions. According to the reports, the

Service states that it has no information on “Echelon”, and does not participate in any such kind of network. It has however added that many countries may have the technical capability to conduct such electronic surveillance.

On the whole oversight of the Intelligence Service seems to have improved and matured somewhat lately. Although it will remain limited, due to the Committee’s mandate, there is probably still potential for further improvement, which could fit quite well in with the Service’s current ambition of becoming a more modern institution for the providing of a broader range of intelligence information.

### **Oversight of the National Security Authority**

The Committee’s oversight of the National Security Authority (NSA) is mainly concerned with issues of personnel security clearances – partly the general procedures, and partly individual cases where such clearance has been denied or withdrawn.

The National Security Authority is the superior body for questions of security clearance, but the competence to issue such clearances has been delegated to a large number of military and administrative bodies, with the NSA acting as the appeal body in cases of complaint. During inspections of NSA headquarters (four times a year) the Committee is regularly presented with all appeals that did not succeed. The Committee also makes regular random controls of decisions of refusal or withdrawal where appeals were not made. It usually receives a couple of complaints against the NSA every year, but most of the cases considered are raised on its own initiative, through the inspections.

The Committee has on several occasions commented upon various aspects of the NSA’s general guidelines and procedures for handling security clearance, and suggested improvements. To some extent it has also commented on the general criteria for denying clearance, especially when these were felt to be too strict or standardised. One example is that the Committee has successfully argued that refusing National Military Service should not automatically have a negative impact on the question of later clearance. In individual cases the Committee has however on the whole been rather careful in checking the administrative discretion of NSA. The large majority of complaints and other cases are closed without criticism, and to the

extent that the Committee does express objections, this is normally on procedural defects, not on the substance.

This is clearly illustrated in the Committee's most controversial clearance case so far. It concerned Owe Ellingsen, a deputy director general at Headquarters Defence Command, whose NATO Cosmic Top Secret clearance was withdrawn (after 36 years of service) owing to a perceived lack of security awareness and concrete failures of document security in his office. Mr. Ellingsen complained to the Committee. The Committee did not comment directly upon the substantial grounds for the withdrawal, but it did criticize the authorities on procedural grounds, for not having reviewed the case closely enough, and for not giving Mr. Ellingsen access to the relevant documents and a proper chance to defend himself. The clearance authorities were asked to reconsider the case, which they did, but with the same result.

The case did not end here. After the withdrawal of his security clearance Mr. Ellingsen was as a result also fired from his job, which of course required clearance. He then took the case to court, to test the legal validity of his dismissal under labour law (as it applies to administrative officials), and using the comments of the Committee as part of his argument, which rested partly on a claim that the withdrawal of clearance was invalid, and partly that such a withdrawal could anyway not in itself constitute grounds for dismissal. The Oslo City Court did not explicitly rule on the clearance withdrawal as such, but it did declare the dismissal invalid. The government appealed, but later withdrew the appeal. In the meantime, the case had received parliamentary attention, partly through the Committee's annual report, and partly through other channels. The opposition went in on Mr. Ellingsen's side, criticizing the Minister of Defence for her handling of the case, and the way in which it had originally been communicated to Parliament. Hearings were conducted by the Standing Committee on Scrutiny and Constitutional Affairs in June 2003, and harsh criticism expressed by a rather large parliamentary minority. The Ellingsen case is the only example so far of a case raised by the Committee ending up in court, and only the second so far (after the Furre-case) to end in parliamentary hearings and personal criticism of the minister responsible.

## Executive Oversight of the Secret Services

The executive oversight of the intelligence and counterintelligence agencies is not as regulated and developed as are the legislative procedures, and it is mainly conducted within the traditional administrative structures, under which the agencies are subordinate to the ministries, led by the ministers, who functions both as heads of their ministries and as members of the Cabinet. Thus, the Police Security Service is under the control and oversight of the Ministry of Justice, the National Security Authority under the control and oversight of the Ministry of Defence, and the Intelligence Service subordinate both to the Chief of Defence and to the Ministry of Defence.

When the parliamentary Intelligence Oversight Committee was established in 1996, it replaced the governmental oversight committee for the Police Security Service and the former Defence Security Service (now the National Security Authority). Thus oversight functions were moved from the executive to the legislative branch, which made it necessary to strengthen *internal* executive oversight procedures for the two agencies.

As regards the National Security Authority, there was never any perceived need for the Ministry of Defence to establish a new separate oversight body of its own. The most important oversight task regards personnel security clearances, which is handled by the Committee. The Ministry did strengthen procedures for the regular control and oversight of the agency in 1996, but it was considered sufficient to do this within the traditional administrative structures which apply to the relationship between a ministry and its subordinate agencies and directorates.<sup>34</sup>

As regards the Police Security Service, there was in 1996 a stronger perceived need not only for legislative but also for strict executive oversight procedures. After the Lund Report and the Furre-case the general feeling was that the Service had to be kept in tight reins, and experience had showed that cases concerning the Service had an unpleasant tendency to explode in the media, and to create political problems for the minister. New control procedures were therefore established, both within the

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<sup>34</sup> This was also discussed when the new Security Act of 20 March 1998 was passed, but again there was no perceived need to establish further oversight procedures. According to section 30 second paragraph of this act, the Ministry was however given the competence to establish new procedures of executive control and oversight of the National Security Authority, but so far this competence has not been used.

agency itself, and in the Ministry of Justice, which set up a special Inspection Service to monitor the actions of the Police Security Service. This Inspection Service to some extent parallels the work of the Oversight Committee, particularly when it comes to conducting regular inspections, but its oversight is of a somewhat different nature, partly because it is internal, but also because it focuses more on the efficiency and effectiveness of the agency. To the agency, its oversight is seen as being at least as strict (and burdensome) as is that of the Committee, and its findings are usually given great attention by the administrative and political leadership in the Ministry.

The Police Security Service is also subjected to other executive oversight arrangements. The Service is formally a part of the Police Force (although rather independent), and complaints against its officers and officials may be directed to the Special Investigating Body for Police Matters (SEFO), which handles complaints from citizens of alleged misconduct by police officers. There is a certain overlap between the competences of the SEFO and the Committee, but this has lately been sorted out in new instructions, and in practice there has not been any problems. The Police Security Service also has certain formal powers of prosecution, and in this capacity it is subordinated to the instructions, control and oversight of the superior prosecuting authority, the Attorney General Criminal Affairs (*Riksadvokaten*), which may in controversial cases be rather strict. Finally, the Police Security Service also answers to the Committee for Access to Files, which is an arrangement set up after the Lund Inquiry, in order to give citizens who have formerly been unlawfully registered or surveilled the right to inspect their files. This is a temporary arrangement, reflecting the need to deal with the agency's past, and the closing date for applications for access was in December 2002. But there are still a number of applications under consideration.

Seen in combination with the work of the Committee, this overview shows that the Police Security Service is indeed an agency subjected to rather strict and exhaustive procedures of oversight and control. To some extent this has probably been beneficial to the agency, helping it to repair legitimacy lost in the mid-1990s. Today, there is little chance of any fault or failure – much less a real “scandal” – not being uncovered by one or several of the oversight procedures. The question today is probably rather whether the combined oversight effect is in fact perhaps too severe, and whether it leaves the agency with sufficient time and discretion to fulfil its tasks.

The Intelligence Service was until 1996 not subjected to any kind of legislative oversight, and the establishment of the Committee did not in itself necessitate any new arrangements for executive oversight and control. Furthermore the Intelligence Service was for the most part cleared by the Lund Committee of allegations of past misconduct. To the extent that the executive arrangements for control and oversight of the Service can be evaluated from the outside (they are rather secretive) they do not seem to have changed much in recent times. For the most part, control and oversight seems to be conducted through regular military lines of instruction, subordinate to the Chief of Defence and the Ministry of Defence. But there is also a special oversight body, called the Coordination Committee for the Intelligence Service, which dates back as far as the late 1940s, and which is still in operation.<sup>35</sup>

This committee is comprised of the permanent secretary of the Ministry of Defence (acting as chairman), the Chief of Defence, and a director general from the Office of the Auditor General. The secretary of the committee is a director general from the ministry. The chief of the Intelligence Service together with one of his officials attend meetings as observers. The committee functions both as an oversight body and to some extent as a steering-committee, and one of its tasks is to authorize major expenditure and new projects. It focuses primarily on the accounts of the Intelligence Service, and its economic efficiency, but to some extent is also seems to conduct a broader form of oversight, inspecting installations, and seeing to it that military and administrative directives and guidelines are respected. The chairman is responsible for reporting the findings of the committee to the Minister of Defence, and if necessary to the Cabinet Security Committee (the ministerial body responsible for intelligence and security policy, headed by the Prime Minister). According to an evaluation in the Lund Report in 1996, the oversight conducted by the committee has been of real substance, and there is no reason to believe that this does not still apply. But the results of the process are never made public, nor formally reported to Parliament.<sup>36</sup>

Although the mandate and competences of the three secret agencies rarely overlap, at least not formally, there is a natural need for them not only to exchange

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<sup>35</sup> The existence and mandate of this committee is described in the Lund Report (pp. 495-98), which also includes an evaluation of its function up until 1996. Later sources have not been available.

<sup>36</sup> There is however a procedure under which members of the committee, together with the Minister of Defence, once a year meets with the President of the Storting (parliament) and the chairman and vice-chairman of the Standing Committee on Defence, and give briefings. The procedure is rather secretive, and results are not communicated to the other MPs, not even to the members of the (confidential) Enlarged Committee on Foreign Affairs, which is Parliament's consultative body on sensitive matters of foreign and security policy.

information, but also to cooperate and to coordinate their activities. This is partly done directly between them, but also through a special body, called the Coordinating and Advisory Committee for the Intelligence, Surveillance and Security Services, consisting of the three agency heads, and three high-ranking officials from the ministries. The arrangement gives the ministries a chance to oversee the cooperation between the agencies, but it is first and foremost an advisory committee, not an oversight body.

There is little coordination between the legislative and the executive procedures for intelligence and security oversight, and the Intelligence Oversight Committee does not receive reports or information from the executive bodies. Perhaps it should, but this has so far not been put on the agenda. The main reason for this is probably the rather different nature of the two arrangements. The legislative oversight is primarily directed against preventing injustice, and focuses on the rule of law and the propriety of the agencies' activities. To some extent it may help the agencies to uncover and redress faults and failures, and thus assist them in their work, but its main function is to protect citizens' rights, and (through the open reports to Parliament) to install and maintain some degree of political accountability in the system. The executive oversight arrangements are on the other hand primarily focused on the effectiveness and efficiency of the agencies, and they function as an internal audit. They are not designed to foster political accountability, and results very seldom reach Parliament or the public. To some extent they may create internal, administrative accountability, in the sense that officials are held to account by their superiors, or (rarely) by their ministers, but this is not the main purpose, which is to improve quality, not to administer blame.

This partition of functions between legislative intelligence oversight (propriety and accountability) and executive intelligence oversight (effectiveness and efficiency) is of course not the only one invisible, and the walls between the two in the Norwegian model may be somewhat too high, but on the whole it is a system which seems to work.

In addition to "executive" and "legislative" oversight, the agencies are in principle also subjected to two other forms of "oversight", namely financial audit and judicial control. Neither in effect really accounts for very much. The *financial audit* is conducted by the Office of the Auditor General (OAG), which is formally a parliamentary institution, but functioning rather independently. As regards the

Intelligence Service, the audit is conducted (as indicated above) by a special arrangement, under which one single official of the OAG, a director general, sits on the “Coordination Committee” and is also responsible for going through the accounts, according to special procedures. As regards the two other agencies, the OAG conducts a more regular audit, which is primarily of a purely budgetary nature. In other areas of the administration, the OAG has during the last decade developed rather extensive procedures for a more critical “performance audit” (based on the three e’s – economy, efficiency and effectiveness), but so far this has not been applied to the agencies, nor is it very likely to be so. As regards *judicial control*, this may in principle supplement the intelligence oversight arrangements, but the effect is small, and for the most part limited to the Police Security Service. Some of the more intrusive activities of the Service (like wire-tapping) require a court decision, but such decisions are usually given without the courts going very deeply into the discretion of the Service. The activities of the Police Security Service may also lead to criminal public prosecution and sentencing, but in practice this rarely happens, and not nearly often enough for the courts to play any substantial role in overseeing and evaluating the standards of the agency. As regards the National Security Authority, it is in principle possible to get the denial or withdrawal of a security clearance brought before the courts, but this very rarely happens, and the courts will be hesitant to overrule the discretionary security evaluations of the authorities. As regards the Intelligence Service, it is difficult to envisage what kind of case could actually be brought against it in court, and so far there has been none.

## **Conclusive Remarks**

If the Norwegian model may be summarized in one sentence, it is: Strong oversight, within limits. Apart from a certain lack of staff resources, the model created for intelligence and counterintelligence oversight on behalf of the Storting (parliament) fulfils most criteria for evaluating the strength and substance of such arrangements. It is independent, it has a proactive capacity, the membership reflects both professional standards and the spectrum of party politics, it has good access to sensitive information as well as the ability to maintain necessary secrecy, and after the first seven years of operation it has developed a satisfactory degree of institutional

maturity and expertise.<sup>37</sup> It is accepted by the agencies concerned, and approved by Parliament and the press.

The limits to this oversight arrangement are intentional, and reflected in the statutory mandate of the Committee. The oversight is primarily concerned with the rule of law, and the protection of the individual rights of national residents, as well as the protection of democratic governance against undue influence by the secret services. Within these limits oversight is both effective and efficient, and designed not only to uncover major “scandals”, but also to deal with lesser incidents of misconduct or bad administrative judgement. The preventive effect of the Committee’s oversight is probably the single most important outcome of the arrangement, and it has certainly contributed to a greater awareness of the rule of law within the agencies.

The efficiency, effectiveness and general quality of the secret services falls outside of the legislative oversight model, and this is left to executive oversight procedures, which are on the whole of a somewhat “weaker” nature, as well as less visible, and less liable to result in any kind of democratic accountability. Whether this is really a structural weakness in the system is however open to argument.

The substance and intensity of the legislative oversight also varies as regards the three secret agencies, roughly corresponding to a proportional of 6-4-2. The Police Security Service is subjected to rather strong legislative (as well as executive) oversight, and to some extent the same applies to the National Security Authority. Most of the activities of the Intelligence Service (against foreign states and foreigners) fall outside of the legislative procedures. The model is primarily one of counterintelligence oversight, rather than of intelligence oversight.

What has been presented in this paper is the formal framework and procedures of the legislative oversight arrangement, its main functions, and some of the more significant cases which have been subjected to scrutiny and debate. The overall impression given is that this is a rather good model, which on the whole works in a satisfactory way. On the more daily level, and for the people working within the

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<sup>37</sup> These seven criteria are listed in Lustgarden & Leigh (1994, p. 461). A final criterion mentioned is “the capacity to campaign – that is, to use the media to build up support for the review body’s position if it finds itself at loggerheads with the agency”. On the whole the Committee probably has this capacity, if it really need to exercise it, as was done with some success in the Furre-case in 1996-97. But this depends on the nature of the dispute (and the adversary), as well as shifts in the political and public climate. During its dispute on access with the Intelligence Service in 1998, the Committee certainly “lost” the media battle. Except in extraordinary circumstances, the current Committee will probably be very hesitant to bring a conflict with one of the agencies into the open by conducting a press campaign.

system, reality surely sometimes looks different. Practice has certainly not been without tensions, disputes, frustrations and failures. But this does not overshadow the fact that on the general level, and over time, the system is good, and seems to work pretty well.

The present oversight model was constructed in the mid-1990s, during a period of parliamentary obsession with oversight and accountability in general, and intelligence oversight in particular. Since then there has been a certain shift in the political climate, a tacit reaction, as illustrated in the 1998-99 dispute between the Committee and the Intelligence Service. The shift is not dramatic, and it has not really reduced the capability of the Committee to conduct its tasks. But it means that the Committee can not automatically rely on parliamentary approval and backing, unless it demonstrates that comments and criticism are well founded. And it also means that future extensions of the oversight mandate and procedures are not on the agenda.

In a comparative perspective the Norwegian oversight model is rather strong, and it is also in a national historical perspective at an all-time-high. The main challenge today is not to extend the system further, but rather to perfection it within the existing framework, and to support and maintain the present high alertness and the awareness of the need for intelligence oversight and accountability.

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*References to literature on the Norwegian system of intelligence oversight are few, due to the interesting fact that such literature does not exist. References to international literature on the subject have been limited to books and articles quoted in the paper.*

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