



**NORWEGIAN PARLIAMENTARY
OVERSIGHT COMMITTEE**
ON INTELLIGENCE AND SECURITY SERVICES

Special report to the Storting on differing practices in security clearance cases of persons with connections to other states

Document 7:2 (2018–2019)

To the Storting

In accordance with Act No 7 of 3 February 1995 relating to the Oversight of Intelligence, Surveillance and Security Services (the Oversight Act) Section 17 third paragraph, the Committee hereby submits its report to the Storting on differing practices in security clearance cases of persons with connections to other states.

The report is unclassified, cf. the Oversight Act Section 17 third paragraph. Pursuant to the Security Act, the issuer decides whether or not information is classified. Before the report is submitted to the Storting, we send the relevant sections of the report text to each of the respective services for them to clarify whether the report complies with this requirement. The services have also been given the opportunity to check that there are no factual errors or misunderstandings.

Oslo, 12 March 2019


Eldbjørg Løwer


Svein Grønner


Theo Koritzinsky


Øyvind Vaksdal


Håkon Haugli


Inger Marie Sunde


Eldfrid Øfsti Øvstedal


Henrik Magnusson



From left: Inger Marie Sunde, Håkon Haugli, Eldfrid Øfsti Øvstedal, Theo Koritzinsky, Eldbjørg Løwer (Committee Chair), Svein Grønner (Deputy Chair) and Øyvind Vaksdal

CONTENTS

Preface 4

Summary..... 5

1. Background to the special report..... 6

2. Investigation method 6

3. Legal basis..... 7

4. Security clearance cases where the principal person holds dual citizenship..... 8

 4.1 Introduction 8

 4.2 Unwarranted differences in case processing and outcomes 8

 4.3 Inadequate elucidation of security clearance cases before decisions are made..... 10

 4.4 Assessment of the persons' connection to Norway..... 10

 4.5 Follow-up of negative security clearance decisions 11

5. Requirement for personal history for closely related persons with connections to foreign states 12

6. Information to security cleared personnel..... 13

7. Follow-up and recommendations 13

Preface

The main purpose of the EOS Committee's oversight is to ascertain whether the rights of any person are violated and to prevent such violations. This oversight purpose has been our starting point for the work on this special report to the Storting. Particular emphasis is placed on uncovering any unwarranted differential treatment in security clearance cases where persons denied security clearance have connections to foreign states and whether the processing of these cases has been satisfactory.

A decision to deny a person security clearance can be detrimental to that person's career and life situation. The decision is often based on classified information and assessments that the person for whom security clearance is requested does not have access to. It is therefore very important to the Committee to ensure that the security clearance authorities process security clearance cases in a fair manner that safeguards due process protection. The Storting's Standing Committee on Scrutiny and Constitutional Affairs has stated that it is concerned with the principle of equal treatment in security clearance cases.¹ The intention behind submitting a special report to the Storting, is to give the Storting the opportunity for a more in-depth consideration of the investigation and its results.²

¹ Recommendation No 146 to the Storting (Resolution) (2016–2017) p. 47.

² Recommendation No 146 to the Storting (Resolution) (2016–2017) p. 33.

Summary

Security clearance shall only be granted if there are no reasonable grounds for doubting that the person in question is suited for security clearance. In the assessment, importance must be attached to factors of relevance to the person's reliability, loyalty and sound judgement when it comes to processing classified information

The EOS Committee has reviewed security clearance cases where the person for whom security clearance is requested or their closely related persons have a connection to states other than Norway. We have identified several matters that warrant criticism, and the National Security Authority (NSM) is the expert authority and is responsible for these matters. One of the main goals of this project has been to assess whether similar cases are treated in the same way.

- The Committee's investigation has uncovered unwarranted differential treatment of cases concerning security clearance of persons who are citizens both of Norway and of a foreign country. There were differences in both case processing and outcomes. Some persons with a connection to a country were denied security clearance despite other persons with a comparable connection to the same country being granted clearance.
- The investigation showed that several of the cases were not sufficiently elucidated and that the persons' connection to Norway had not been sufficiently well assessed.
- The Committee has concluded that the rights of individuals have been violated, cf. the Oversight Act Section 2.

The Norwegian Defence Security Department (FSA), the Norwegian Police Security Service (PST) and the Norwegian Intelligence Service (NIS) processed the majority of the security clearance cases included in this investigation. These security clearance authorities process a great number of cases. The Committee has no opinion about what the outcomes of the cases in questions should have been. Our concern is to ensure that all security clearance authorities process and assess cases with similar facts in a uniform manner. Variation between security clearance authorities in terms of case processing and outcomes is detrimental to the due process protection of the persons for whom security clearance is applied for.

The investigation of eight cases where persons were denied security clearance showed that six of the persons were denied clearance without their case having been sufficiently elucidated. These cases were decided by the FSA. The FSA has informed us that these negative security clearance decisions will be reconsidered.

The Committee's investigation also uncovered unwarranted differential treatment in security clearance cases where there was insufficient information about the personal history of the spouse of the person concerned. Several cases were decided based on the assumption that the personal history requirement did not apply to the spouse, and security clearance was therefore granted, while NSM denied security clearance in comparable cases.

The reply received from NSM in this case supports the Committee's conclusions. NSM acknowledges that there is disproportionate and unwarranted variation in case processing as well as decisions in the cases that the Committee referred to. NSM pointed out that no traceable overview of practice exists, and that the security interview capacity is challenging, as possible reasons.

Over several years, the Committee has emphasised the importance of NSM, as the expert authority for security clearance cases, putting in place an experience archive and other tools to ensure that similar cases are treated in a uniform manner. It is very important that NSM establishes tools to ensure uniform practice. The Committee notes that such measures have not yet been implemented.

1. Background to the special report

In connection with its ordinary oversight of security clearance cases, the Committee has identified several matters of principle relating to cases where the person for whom security clearance is requested has a connection to other states. Such matters have been discussed several times in our annual reports, including the reports for the years 2011–2015.³ In this regard, the Committee has criticised NSM, FSA and other security clearance authorities for errors in case processing and assessments in individual cases.

The number of security clearance cases involving some form of connection to other states is increasing, and these connections are generally of a more complex nature than they used to be. This presents a challenge to the security clearance authorities. Among other things, they have to assess if the loyalty of the person for whom security clearance is requested, lies with Norway or with another state in case of a conflict of interest.

Any connection to another state is not in itself sufficient grounds for refusing security clearance, and the degree of connection to the other state and to Norway must be a factor in an overall assessment.

In 2016, the Committee decided to conduct a systematic review of a large number of security clearance cases where persons for whom security clearance had been requested (hereinafter referred to as *the principal person*) or their closely related persons have connections to other states. The purpose of the project was to investigate whether the processing of security clearance cases complies with the applicable regulatory framework. It was a key aspect of the investigation to uncover any unwarranted differences in how the security clearance authorities deal with similar cases, including whether endeavours are made to ensure equal treatment across the different clearance authorities. We also investigated whether the security clearance authorities carried out a sufficiently concrete and individual assessment of the facts of each case.

2. Investigation method

The Committee oversees security clearance cases on a regular basis in connection with its inspections of the security clearance authorities. This oversight is based on a review of negative security clearance decisions made by the authority. The Committee does not review cases with positive outcomes to the same extent.

In this project, we wanted to investigate a larger number of negative and positive decisions in security clearance cases where connection to other states had been assessed. The inclusion of positive decisions in the investigation made it possible for the Committee to find out whether similar cases have different outcomes. Including decisions from several security clearance authorities in our investigation allowed us to compare case processing and outcomes across clearance authorities.

It proved difficult to identify cases in which connection to other states had been assessed. The case processing system offers limited possibility to search for assessment topics in security clearance cases. Therefore, the investigation is based on spot checks, not on a review of all the relevant cases. The Committee reviewed around 400 negative and positive security clearance decisions in cases decided in 2015.⁴ The purpose of this was to identify cases where connection to other states had been assessed, for inclusion in our project. After identifying cases where connection to other states had been assessed, we identified groups of cases with common characteristics that could be used to assess equal treatment. We then asked NSM about practices

³ Annual report for 2011 chapter V sections 5.2 and 5.4, Annual report for 2012 chapter V section 6 and chapter VI sections 1 and 3, Annual report for 2013 sections 4.2 and 2.2, Annual report for 2014 sections 4.1 and 4.8 number 4, Annual report for 2015 sections 5.5 and 5.6.3.

⁴ The basis for the investigation included all the negative security clearance decisions that had been registered in the case processing system in 2015 and decided by 7 December 2015, regardless of topics assessed, and positive security clearance decisions where NSM had registered a connection to certain states.

and case processing, referring to concrete cases from the different security clearance authorities as examples.

The Committee remarks that good search and report functions in the security clearance authority's case processing tools are a precondition for our ability to conduct thematic oversight of security clearance cases. We emphasise how important it is for NSM to take the Committee's oversight requirements into consideration in the further development of its case processing system.

3. Legal basis

The security clearance of persons is regulated by the Security Act,⁵ which came into force on 1 January 2019. The Committee's investigation took place while the previous Security Act⁶ was still in force. Most of the rules governing security clearance are upheld in the new act. This report refers to provisions in the current Security Act, with references to the previous act.

Security clearance shall only be granted if there are no reasonable grounds for doubting that the person concerned is suited for security clearance.⁷ In the suitability assessment, importance shall be attached to 'matters that are relevant to evaluating the reliability, loyalty and sound judgement of the person concerned in relation to the handling of sensitive information'.

Importance may be attached to information about the person's connection to other states when making the assessment.⁸ A connection to another state exists e.g. when the principal person or a closely related person is a citizen of another country, or if the person has close family ties, property or financial interests in or is in contact with the authorities of the foreign state. Importance can also be attached to factors that 'may lead to the person concerned himself or herself or persons who have close family ties with the person concerned being subjected to threats entailing a risk to life, limb, freedom or honour along with a risk of possible pressure on the person concerned to take action that is contrary to national security interests'.⁹

Foreign nationals (including Norwegian persons with dual citizenship) may be granted security clearance following an assessment of how important their home country is from a security perspective and of the person's connection to the home country and to Norway.¹⁰

Importance can also be attached to a lack of opportunity to carry out satisfactory vetting.¹¹ It must be possible to obtain security-relevant information covering the past ten years about persons covered by the vetting process, either from Norway or by information being disclosed by another country with which Norway has a security cooperation.¹² Exceptions may be granted from this requirement. It must be taken into account in the assessment whether the reason for the insufficient personal history is a short-term interruption, service for the Norwegian state or humanitarian organisations, young age or 'factors that have little bearing on the suitability for security clearance'. For the final option, NSM has stipulated a minimum limit for how far it is deemed justifiable to depart from the personal history requirement. The number of years of personal history required depends on how important the country is from a security perspective.

⁵ Act No 24 of 1 June 2018 relating to National Security (the Security Act 2018).

⁶ Act No 10 of 20 March 1998 relating to Protective Security Services (the Security Act 1998). (repealed)

⁷ Cf. the Security Act 2018 Section 8-4 first paragraph, ref. the Security Act 1998 Section 21 first paragraph (repealed).

⁸ Cf. the Security Act 2018 Section 8-4 fourth paragraph letter n, ref. the Security Act 1998 Section 21 first paragraph letter k (repealed).

⁹ Cf. the Security Act 2018 Section 8-4 fourth paragraph letter c, ref. the Security Act 1998 Section 21 first paragraph letter c (repealed).

¹⁰ Cf. the Security Act 2018 Section 8-7, ref. the Security Act 1998 Section 22 (repealed).

¹¹ Cf. the Security Act 2018 Section 8-4 fourth paragraph letter m, ref. the Security Act 1998 Section 21 first paragraph letter j (repealed).

¹² Cf. Regulations regarding security clearance and other clearances Section 13, ref. the Regulations concerning Personnel Security Section 3-7 (repealed).

Security clearance decisions should be based on a specific and individual overall assessment. The security clearance authorities shall ensure that security clearance cases are as well elucidated as possible before making a decision. Security interviews shall be conducted in cases where such an interview is not deemed obviously unnecessary.¹³

4. Security clearance cases where the principal person holds dual citizenship

4.1 Introduction

The Committee investigated 19 security clearance cases where the principal person is a citizen both of Norway and of another state. In eight of these cases, the principal person was denied security clearance. In the other eleven cases, the principal person was granted security clearance. In 14 of the 19 cases, the principal person was born in the other state. In 4 of the cases, the principal person was born in Norway. In the last case, the principal person was born in a third state. These 19 cases form the basis for the Committee's statements in sections 4.2–4.5 below.

Security interviews were not conducted in any of the cases where security clearance was denied, but in one case, the security clearance authority requested a statement from the principal person regarding her connection to the other state. This means that security clearance in most cases has been denied solely based on the information provided in the personal particulars form and obtained through vetting. Information about a person's country of birth, citizenship and, if relevant, when he/she immigrated to Norway, will emerge in the vetting process.

The assessments made in cases where security clearance was denied indicate that importance has primarily been attached to the principal person's connection to the other state in the form of dual citizenship, through his/her parents and because he/she was born there. Clearance has been denied with reference to the principal person's connection to another state, the potential for pressure based on this connection, and the state's importance from a security perspective.¹⁴ However, the positive decisions show that holding citizenship both in Norway and in another state and being born in the other state do not preclude people from being granted security clearance.

The 19 security clearance cases had been considered by the security clearance authorities in the Norwegian Defence Security Department (FSA), the Ministry of Foreign Affairs, the Ministry of Local Government and Modernisation, the Norwegian Police Security Service (PST) and the Norwegian Intelligence Service (NIS). The eight cases where security clearance was denied were considered by the FSA. Because one of the issues under investigation was differences in practice between security clearance authorities, the Committee addressed some questions to NSM as the expert authority responsible for these matters.

4.2 Unwarranted differences in case processing and outcomes

The Committee asked NSM to consider whether unwarranted differential treatment had taken place between the 19 security clearance cases where the principal person had a connection to another state.

NSM confirmed that this was the case, and stated that there is disproportionate and unwarranted variation in case processing procedures¹⁵ and decisions. NSM also stated that there appears to be internal variations in practice within each security clearance authority. NSM pointed out as possible reasons that no traceable overview of practice exists, and that the security interview capacity is challenging.

¹³ Cf. the Security Act 2018 Section 8-4 third paragraph, ref. the Security Act 1998 Section 21 third paragraph (repealed).

¹⁴ Cf. the Security Act 1998 Section 21 first paragraph letter k, cf. letter c and Section 22 (repealed).

¹⁵ The variations concerned both the extent to which cases are elucidated and which documents are obtained.

NSM's reply supports the Committee's conclusions.

The Committee has pointed out on several occasions¹⁶ that there is a certain variation between the different security clearance authorities in the quality of case processing and assessments in comparable security clearance cases. This is clearly unfortunate from an equal treatment perspective. We have previously linked these differences to the number of security clearance authorities and variation between them in terms of the number of cases they consider and their level of expertise. Therefore, the Committee supported the Ministry of Defence's proposal to reduce the number of security clearance authorities. We stated that this reduction '[could], in the Committee's opinion, provide a better basis for equal treatment of cases, more efficient case processing and a higher degree of professionalism, provided that the security clearance authorities receive sufficient resources and expertise'.¹⁷

The Committee nevertheless noted that 17 out of the 19 cases that it referred to had been considered by security clearance authorities¹⁸ that will continue to exist after the number of authorities has been reduced. In its account, NSM made several comments on the case processing in these three security clearance authorities, including failure to obtain documentation from the immigration administration and to conduct security interviews. The unwarranted differences in the outcomes of cases come in addition to this.

The FSA, PST and the NIS are security clearance authorities that consider a great number of cases and are assumed to have a robust professional community. Which security clearance authority a case is considered by should not have any bearing on its processing or outcome. Variation between security clearance authorities in terms of case processing and outcomes is detrimental to the due process protection of the persons for whom security clearance is applied for.

It is possible that the differences are due to the absence of a traceable overview of practice and capacity challenges pointed out by NSM. The Committee raised the matter of the security clearance authorities not having access to an experience archive of administrative practice in the area with NSM in 2011. In 2012,¹⁹ NSM informed the Committee that they would consider establishing such a base, and in 2014,²⁰ it stated that a project to develop an experience archive had been initiated and was scheduled for completion in 2016.

The Committee asked NSM how and when they would follow up the findings relating to unwarranted differential treatment. In a letter to the Committee dated July 2018, NSM stated that they would implement a number of measures to improve equal treatment. Among other things, practice notes and an experience archive will be created. New guides and a new information portal for the security clearance authorities are also being developed. NSM stated that the measures would be completed by the entry into force of the new Security Act on 1 January 2019.

In January 2019, NSM informed the Committee that the experience archive was expected to be completed during the first quarter of 2019, and that practice notes would be prepared in 2019. A new handbook on assessment in security clearance cases was expected to be ready on 31 January 2019. The handbook had not been completed at the time of the Committee's final consideration of this report in mid-February.

The Committee notes that the implementation of the measures has been postponed. We assume that NSM will give high priority to work on these measures and that the work will be completed shortly.

¹⁶ For example, in the Committee's annual report to the Storting for 2011, *Document 7:1 (2011–2012)*, p. 17.

¹⁷ Consultation submission from the EOS Committee to the Ministry of Defence dated 27 August 2015 on proposed amendments to the Security Act, our reference 2015/62-6.

¹⁸ PST, the NIS and the security clearance authority for the defence sector: FSA.

¹⁹ See the Committee's annual report to the Storting for 2012, *Document 7:1 (2012–2013)*, p. 20.

²⁰ See the Committee's annual report to the Storting for 2014, *Document 7:1 (2014–2015)*, p. 24.

The Committee remarks that it has taken a very long time to establish the experience archive. The Committee has emphasised to NSM the importance of putting in place an experience archive and other tools to ensure uniform treatment of similar cases. Without these tools, it will be difficult for the security clearance authorities to adjust their own practice in relation to each other. Practice will then only be corrected based on the consideration of any complaints received. It is therefore very important that NSM, as the expert authority in the field, establishes solutions to ensure uniform practice.

4.3 Inadequate elucidation of security clearance cases before decisions are made

The personal particulars form contains many questions about connections to other states, but other factors may also be relevant to assessments in the security clearance case. Such factors include information about circumstances with a bearing on the person in question's degree of connection or loyalty to the country in question or Norway.

The Committee noted that endeavours are not always made to elucidate these circumstances. We asked NSM to assess whether the negative decisions are to a sufficient degree based on a specific and individual overall assessment, and whether the cases are sufficiently elucidated.²¹

In NSM's opinion, there was insufficient information to conduct a specific and individual overall assessment in six out of the eight cases where security clearance had been denied. The security clearance authorities have emphasised circumstances that indicate the existence of a connection to the other state, but have not tried to investigate what bearing this connection has on the principal person's suitability for security clearance. NSM stated that there were no grounds for assuming that the cases should have had another outcome, but that the process did not meet the requirement for a specific and individual overall assessment because the cases had not been sufficiently elucidated.

According to NSM, it will often be necessary to obtain additional information in cases concerning connection to other states. The reason for this is that the personal particulars form and source information do not provide sufficient information to allow the authority to consider all relevant aspects of the case. NSM referred to the assessment of the country of origin and the immigration case, among other things, as relevant information and also added that a security interview will often be required.

The Committee supports NSM's conclusion that the security clearance authorities have not fulfilled their duty to ensure that the security clearance cases are as well elucidated as possible and base their decisions on a specific and individual overall assessment.²²

The Committee points out that insufficient elucidation of cases can lead the security clearance authority to form an incorrect or incomplete impression of the case. This could have a bearing on its outcome. It is a serious matter if decisions, whether they be positive or negative, are based on an insufficiently elucidated case. The Committee expected NSM as the expert authority to follow up these matters with the security clearance authorities.

4.4 Assessment of the persons' connection to Norway

A foreign national may be granted security clearance following an assessment of how important their home country is from a security perspective and of the person's connection to the home country and to Norway, cf. the Security Act Section 8-7. In a letter to NSM, the Committee remarked that in several of the cases it had investigated, the connection to Norway had not been examined further. NSM replied that the security clearance authorities have not elucidated all relevant

²¹ Cf. the Security Act 2018 Section 8-4 third paragraph, ref. the Security Act 1998 Section 21 third paragraph.

²² Cf. the Security Act 2018 Section 8-4 third paragraph, ref. the Security Act 1998 Section 21 third paragraph.

circumstances relating to the principal person's connection to his/her parents' country of origin and to Norway to a sufficient extent to safeguard the principal person's due process protection.

The Committee emphasised to NSM the importance of also assessing the person's connection to Norway, as required by the Security Act. Failure to conduct such assessments could result in persons who could have been granted security clearance, still being denied clearance.

In its reply to the Committee, NSM referred to a case where the principal person was a citizen of Norway and of another state. Other than the citizenship, the principal person had a weak connection to the other state and a strong connection to Norway. In this case, it was deemed a sufficient risk reduction measure to attach conditions to the security clearance. The conditions limited the security clearance so that it could not be used to serve in the other state or where the other state has interests. Nor could the security clearance be used to process information about the state in question or circumstances of interest to the other state. Conditions relating to travel, an obligation to report and a follow-up of the person granted security clearance were also imposed.

The Committee takes a positive view of attaching conditions to a security clearance as a risk reduction measure.

4.5 Follow-up of negative security clearance decisions

The Committee's investigation uncovered that the cases of several persons who were denied security clearance had been insufficiently elucidated, see section 4.3 above. When asked by the Committee whether it will follow up the negative decisions, NSM first referred to there being 'no grounds for assuming that the cases should have had another outcome'. With reference to the fact that the decisions were made more than two years ago, NSM did not consider it expedient to reopen the cases. NSM wanted to follow up the shortcomings in the case processing on a general basis.

The Committee agreed that the shortcomings in the case processing are probably a result of system errors. The error in these cases is that the security clearance authorities appear to apply different requirements with regard to what information must be available in order for a case to be deemed to have been sufficiently well elucidated. The Committee notes that NSM will follow up these errors. Among other things, NSM has recently corrected the security clearance authorities by returning similar cases for further processing.

At the same time, these shortcomings have had actual consequences for individuals. At least six people have been denied clearance without their cases having been sufficiently elucidated.

The Committee expressed understanding that further clarification of the cases will often uncover other vulnerability factors that can lead to a decision to deny security clearance. However, it is our opinion that this cannot be assumed.

The decisions have had a negative effect on these persons' possibility to work and to complete their national service. In addition, a five-year observation period (quarantine period) was set in all the cases, and this period has not yet expired. This means that no new requests for security clearance can be submitted for the persons in question until five years have elapsed since the negative security clearance decision. If a new request is received, a specific and individual overall assessment shall be made of the information available in the security clearance case. The negative decision will then form part of the information on which this assessment is based. We expressed our understanding that there is probably no need for security clearance of these persons at present, but commented that the decisions could nevertheless have negative short-term and long-term consequences for the persons in question.

The Committee again requested NSM to consider whether the decisions made without the cases being sufficiently elucidated should be considered legal nullities or followed up in some other way.

After considering the matter again, NSM stated that the failure to elucidate these cases constitutes a case processing error that may have had a decisive effect on the contents of the administrative decision. The administrative decisions must therefore be deemed invalid, cf. the Public Administration Act Section 41. NSM stated that the decisions should be annulled and that the cases must be reconsidered. The security clearance authority FSA has informed the Committee that it will reconsider the cases.

The Committee is satisfied that the FSA will reconsider the negative security clearance cases. This will ensure that potentially incorrect decisions do not have further negative consequences for the persons in question. The Committee has no opinion about what the outcomes of the cases in question should be.

5. Requirement for personal history for closely related persons with connections to foreign states

A personal history can be required also for the principal person's closely related persons.²³ Which closely related persons this requirement applies to, depends on the security clearance level requested for the principal person. Under the previous regulations, vetting of closely related persons could in special cases be carried out in connection with security clearance for the level CONFIDENTIAL.²⁴ Such special cases could for example be when a closely related person was a citizen of a foreign state.²⁵

The Committee's investigation indicates that there are differences in practice between security clearance authorities in cases concerning security clearance for the classification CONFIDENTIAL in which the person for whom security clearance is requested has a spouse or cohabitant who is a foreign national with insufficient personal history. The Committee pointed out to NSM seven security clearance cases considered by the Ministry of Foreign Affairs, the Norwegian Government Security and Service Organisation, and NSM.

In five of these cases, security clearance was granted for the level CONFIDENTIAL. The grounds given for these decisions are in different ways based on it not being necessary to meet the minimum requirement for personal history for closely related persons at this level, despite the fact that the person in question is a foreign national. In two of these cases, the application for security clearance was rejected. In these cases, personal history was required for closely related persons for the security clearance level CONFIDENTIAL with reference to the fact that the person in question was a foreign national without a sufficient period of residence in Norway or a country with which Norway has a security cooperation.

The Committee asked NSM to consider whether unwarranted differential treatment had taken place in the consideration of these cases.

In NSM's assessment, there was unwarranted differential treatment both in the case processing and the decisions in the cases where security clearance for CONFIDENTIAL was granted and where the decision was NO CLEARANCE. NSM stated that there are indications that the way in which the personal history requirement is practised varies between security clearance authorities. NSM was of the opinion that the security clearance authorities had not conducted a satisfactory assessment of the personnel security vulnerabilities represented by the lack of personal history in cases where security clearance for the level CONFIDENTIAL had been granted.

²³ Cf. the Security Act 2018 Section 8-5, cf. the Clearance Regulations Section 5.

²⁴ Regulations concerning Personnel Security Section 3-2 (repealed).

²⁵ This follows from NSM's guide to the Security Act [1998] Chapter 6 and the Regulations concerning Personnel Security, page 29, the guidelines on Section 3-2 of the Regulations.

NSM's reply supports the Committee's conclusions. It is very important that NSM, as the expert authority in the field, establishes solutions to ensure a uniform practice. See section 4.2 above for the Committee's assessments.

The new Regulations regarding security clearance came into force on 1 January 2019. Pursuant to Section 14 of these Regulations, insufficient information about the personal history of the person for whom security clearance is requested or his/her closely related persons is not sufficient grounds for denying security clearance if this is a result of service abroad for the Norwegian state. The Committee assumes that this new provision will result in fewer persons in the Norwegian Foreign Service being denied security clearance because of insufficient information about the personal history of their spouse.

6. Information to security cleared personnel

The Committee has received several enquiries and complaints from persons who have lost their security clearance after marrying or cohabiting a person who does not meet the requirement for ten years' personal history stipulated in the Security Act. Several of these persons expressed frustration at the lack of predictability and possibility to assess their situation. They referred to having sought or wanted information about the potential consequences for their security clearance in advance.

Based on the above, the Committee requested NSM to give an account of what information personnel who hold a security clearance can and should be given about the consequences that marrying or cohabiting with a foreign national could have for their security clearance.

NSM stated that connections to other states is a topic that should be covered in authorisation interviews and security follow-up. It may also be relevant to provide information about the relevance of insufficient personal history. Otherwise, NSM has not issued general advice about what information can be given about the potential consequences of marrying or cohabiting with persons who do not meet the personal history requirement. Whether it is possible to obtain a personal history depends on, among other things, whether Norway has security cooperation with the country and an agreement to exchange vetting information. The security clearance authority must also assess what level of insufficient personal history (when shorter than ten years) can be accepted in each case. NSM considers both information about *which countries* disclose vetting information to Norway and information about *the concrete minimum limits* for what constitutes sufficient personal history to be classified information.

The Committee let the matter rest after receiving NSM's account, as it is based on discretionary judgement in security matters that it is difficult for us to review.

The Committee understands that it is challenging to balance considerations for security cleared personnel's need for information against the need to protect information about security cooperation and security assessments. Nevertheless, the Committee asked NSM to continue to take account of security cleared personnel's need to be able to predict the consequences for their security clearance in its assessment of whether further information can be provided to individuals on request.

7. Follow-up and recommendations

The EOS Committee's shall ascertain whether the rights of any person are violated and ensure that the activities of the services are kept within the legal framework, cf. the Oversight Act Section 2 first paragraph (1) and (3). The Committee's investigation has uncovered variation between security clearance authorities in case processing and in the threshold for granting security clearance. Unwarranted differential treatment and inadequate elucidation of the case entails a violation of the rights of persons for whom security clearance is requested.

The Committee asked how NSM intended to follow up the findings from this investigation and what the schedule was for NSM's follow-up.

NSM stated that they are implementing a number of measures that will help to ensure more equal treatment across security clearance authorities. Among other things, NSM referred to the creation of practice notes and an experience archive, new guides being drawn up and the development of a modernised information portal for the security clearance authorities. This portal will make governing documents more accessible and facilitate efficient communication between the parties. NSM stated that the measures would be completed by the entry into force of the new Security Act on 1 January 2019.

The Committee notes that, at the time of its final consideration of this report, the measures have not yet been implemented. In addition, their implementation has been postponed.

For several years the Committee has been concerned about excessive variation in the quality of case processing and assessments in comparable security clearance cases between the different security clearance authorities. Considerations for ensuring uniform treatment of similar cases have not been sufficiently addressed. It is very important that NSM, as the expert authority, establishes solutions to ensure uniform practice in security clearance cases across the different security clearance authorities.

The Committee assumes that NSM will give high priority to work on these measures and that the work will be completed shortly.