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Wrongful Convictions and Post-Conviction Review: Barriers to Access-to-Justice in the Nordic Countries

Unrechtmäßige Verurteilung und deren Überprüfung: Hindernisse für den Zugang zum Recht in den nordischen Ländern

Abstract: All the Nordic countries offer individuals who claim to have been wrongfully convicted the possibility to apply for post-conviction review. The research on wrongful convictions has however often discussed the risk that those cases that are identified, i.e., those cases of post-conviction review that lead to exoneration, are not representative of wrongful convictions as a whole. Moving from this background, this article provides an overview and comparison of the systems of post-conviction review in the Nordic countries, and problematises this description from an access-to-justice perspective with the aim of examining the obstacles wrongful conviction claimants may face when they attempt to pursue this review remedy. On the basis of the parameters used in this article to study accessibility of the review systems, Finland is emerging as the country with the least accessible system, whereas the Norwegian system is the most accessible, followed by that of Iceland. It is not entirely evident how Sweden and Denmark should be ranked in relation to one another however. The results are discussed from a transparency point of view, since detailed information that allows for an analysis of practice appears to be lacking in at least three of the Nordic countries.

Keywords: Wrongful convictions; Access-to-justice; Post-conviction review; Nordic comparison

1 Introduction

1.1 How it all began

The aim of this article is to provide an overview of the post-conviction review systems in the Nordic countries – Sweden, Denmark, Finland and Iceland – with a focus on examining the barriers that may face individuals who claim to have been wrongfully convicted and who are applying to have these convictions overturned. Interest in wrongful convictions, and research in this area, has to date largely been an Anglo-American phenomenon, primarily restricted to the USA, Canada and the UK. While some of the research findings and reform proposals presented in these countries may also be relevant for others, they cannot automatically be transferred to other parts of the world. Every country has
its own unique legal system, characterised by different challenges and varying opportunities to meet these challenges, and comparisons therefore serve an important purpose. In one of the first anthologies dealing with cross-national studies in the field of wrongful convictions, Huff and Killias (2008) argued that »we can often learn more about our own system of justice by looking at it in the context of other nations’ systems« (p. 5). One principle that unites modern rule of law-governed states, however, irrespective of the specific structure and characteristics of their respective legal systems, is that people should be acquitted rather than convicted when their guilt cannot be established beyond reasonable doubt, and that the conviction of an innocent is more problematic than the acquittal of a guilty party. Cases where convictions have been overturned nonetheless show that some individuals are subject to wrongful convictions, which raises the question of the extent to which this principle is always followed. Further, the cases of wrongful conviction that are identified are estimated to constitute a small part of the real number of such convictions (Gross & O’Brien, 2008; Lidén, 2018; Risinger, 2007).

Despite the fact that varying levels of wrongful convictions are likely to have occurred since the inception of justice systems, it was not until the 1990s that a number of actors in English-speaking countries began directing a focus at such cases, and defining them as a serious problem that requires both attention and corrective measures (Findley, 2014; Norris, 2017). This period has been characterised as »the discovery of innocence«, and the reason it occurred when it did has been described as being linked to progress in the field of DNA technology and a simultaneous increase in repressive crime policy, primarily in the USA, which produced a massive increase in the number of prison inmates. Norris (2017) writes: »[…] as the number of inmates increases, the error rate translates into large numbers« (38), which produced a situation where it finally became impossible to ignore wrongful convictions. This »discovery of innocence« symbolised a significant shift in perceptions of the justice system: from a view that wrongful convictions were isolated, unfortunate errors in an otherwise waterproof system, to one which instead viewed such convictions as a result of systematic errors and failings (such as structural racism, plea-bargaining and oppressive police interrogation techniques). This crisis of confidence was followed by demands to learn from the mistakes that had been made in order to avoid repeating them, which in turn gave rise to a movement that has been described as »since the Warren Court’s Due Process Revolution of the 1960s« (Findley, 2014). It has been suggested that the attention focused on wrongful convictions – which served to shake the foundations of the illusion of a waterproof justice system – has contributed to improving the level of rule of law standards, among other things via demands for a milder and more humane justice system, revised police interrogation techniques in order to reduce the risk for false confessions, reduced punitiveness, stronger evidentiary requirements and lobbying against the death penalty (Simon, 2012; Stratton, 2014).

1.2 The exceptional Nordics?

The general trend in the Nordic countries has been somewhat different with regard to both crime policy developments and the focus directed at wrongful convictions. Here it is important to emphasise – as Norris (2017) also argues in his discussion of the links between expansive legislation, repressive crime policy and wrongful convictions – that the prevalence of wrongful convictions is linked to failure to maintain legal safeguards. A general and simplistic comparison between the Anglo-American countries and their Nordic counterparts shows that the latter have milder criminal sanctions and lower rates of imprisonment, and the Nordic countries are world leaders with regard to adherence to the rule of law in criminal justice proceedings.1 »Nordic Penal Exceptionalism« is the term that has been used by academics to describe and discuss the difference between Nordic crime policy and the more punitive crime policy trend, towards more and harsher punishments, witnessed elsewhere in the western world (Pratt, 2008; Ugelvik & Dullum, 2012). If the Nordic exceptionalism hypothesis is examined in terms of relatively low imprisonment rates in a time of mass-incarceration, then the Nordic countries have remained largely exceptional, and the discussion is relatively uncomplicated. When additional perspectives are included, however, the picture becomes more complex in a way that is also of relevance to the discussion of wrongful convictions and the post-conviction review process.

A number of Nordic researchers have expressed doubts about the one-sided description of the Nordic countries as consummate examples of progressive justice systems with high rule of law standards2 (Barker, 2013 Barker, 2017;

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1 See The World Justice Project Rule of Law Index (2021) for annual rankings in this area: https://worldjusticeproject.org/rule-of-law-index/
2 Two central lines of argument can be distinguished in criticisms of the Nordic exceptionalism thesis, here summarized in a simplified manner: the first of these argues that the countries previously constituted exceptions and were characterised by a more humane use of punishment, but that crime policy has since undergone a shift and been influenced by the international trend, with the states becoming more punitive and controlling (John, 2019; Lappi-Seppälä, 2007). The other line of criticism instead argues that the more punitive approach in the Nordic countries has not been imported from other countries but has
Ugelvik & Dullum, 2012; Smith & Ugelvik, 2017). These researchers have among other things argued that it is risky to make overly simplistic comparisons – for example between the USA and the Nordics – in which isolated parameters such as the size of the prison population are given disproportionate significance, since it can lead to problematic aspects of the Nordic justice systems being overlooked. Researchers with a focus on intra-Nordic crime policy have instead argued that the Nordic welfare states are based on a model that is both humanely inclusive and highly exclusionary, with these two aspects conditioning one another (see e.g. Barker, 2013; Barker, 2017; John, 2019). Several researchers have also argued that crime policy measures have also taken a punitive turn in the Nordic countries (Hermansson, 2018; Lappi-Seppälä, 2018; Tham, 2021). Nordic drug policy has for example been described as very repressive, with Sweden taking a lead in this area, having »the severest sanctions and most intrusive police practice« (Tham, 2021, 5-6). Another example is found in the criticism Sweden has repeatedly received from the UN Committee against Torture, for long periods of pre-trial detention and the frequent isolation of those detained while awaiting trial (UN CAT, 2021, 4). Finland has also been criticised for long periods of pre-trial detention (UN CAT, 2017\(^3\)) and Iceland has for a number of decades been criticised for excessive use of isolation and for the conditions in pre-trial detention centres, which have been linked to an increased risk for false confessions, and wrongful convictions as a result (Gudjonsson, 2021).

Although there is good reason to note the humane aspects of the Nordic legal systems in comparisons with other countries, it is also important not to present them either as parts of a single system or as flawless utopias. Just as it is overly simplistic to lump together the Anglo-American legal systems and crime policy trends, there are important differences between the Nordic legal systems in certain areas. Martinsson (2021) has noted that legal reforms in one Nordic country often result in other Nordic countries being inspired to introduce similar changes, which is made possible by the fact that they »have a similar (legal) culture, a similar law-making process, an emphasis on the written law and where the travaux préparatoires is viewed as an important legal source for the court when interpreting the written law and they are all considered welfare state regimes« (13). However, the changes that certain Nordic countries have introduced with regard to the post-conviction review process have not served as an inspiration of this kind for change in others, and in this area the countries still differ; in certain respects quite dramatically. Norway, for example, and to some extent also Iceland, has worked to progressively reform its post-conviction review system on the basis of inspiration drawn from England and Scotland (Stridbeck & Magnussen, 2011-2012; Ingadottir & Haraldsdóttir, 2021), whereas the post-conviction review system of Sweden has instead been discussed as being outdated and in need of reform (Lidén, 2018; Martinsson, 2021; Office of the Chancellor of Justice, 2006, 2009). Critical studies of intra-Nordic variations in different areas of the legal system are thus both necessary and of considerable interest, since they facilitate the emergence of a more nuanced and layered understanding, which may provide insights into weaknesses and defects that would otherwise not be identified but that have serious consequences for the individuals affected by them.

1.3 Access-to-justice for victims of wrongful convictions

From a rule of law perspective, one of the worst things that can happen is that a person who has been wrongfully convicted remains convicted as the result of an inaccessible conviction review process. A situation of this kind may be interpreted as showing that the justice system has not only failed to judge the case correctly, but has also failed to take responsibility for the situation and provide redress to the wrongfully convicted individual. Savage (2007) has argued that those who are wrongfully convicted are thus doubly victimised: first via the wrongful conviction, and then through the justice system’s reluctance to acknowledge its responsibility for this failing. The discussion of Nordic exceptionalism becomes relevant in this regard, since if decision makers have an overly robust and dogmatic view of their country – and in this case its justice system – as exemplary, this can lead to blind spots when it comes to acknowledging possible weaknesses (see e.g. Barker, 2013; Barker, 2017). This can easily turn into a Catch 22 situation: if you do not believe that your system has weaknesses or failings, no measures are introduced to identify them. And if no such measures are introduced, failings and weaknesses will not be discovered, which may give the impression that they do not exist. In this context, studies based on an access-to-justice perspective, may provide important insights,
since they direct their focus at the individual and examine the obstacles that individuals may face when attempting to exercise their legal rights or utilise certain legal remedies (Rhode, 2004; Sandefur, 2009). Studying a certain area of law or a specific legal process thus becomes more than an end in itself. In studies employing an access-to-justice perspective, the aim is instead to examine the conditions and effects of a given legal right or remedy (such as the post-conviction review remedy) in order to understand its accessibility to those individuals who constitute its target group. Oelsen (2018), who has studied legal aid needs of former prison inmates in Denmark, writes that it is a question of studying the »law in society« (194). The opposite of such a law-in-society perspective has been described by Brown (2016; see also Hutchinson, 1999) as a »black letter approach to law«, in which the law is viewed as »neutral and natural«, and where the analysis restricts itself to an intra-disciplinary vacuum with no opportunity to problematise how the law is a result of, among other things, political and social influences.

All the Nordic countries offer convicted individuals the possibility to apply for post-conviction review once the normal appeals process has been exhausted. The very existence of such a legal remedy is of course an important first step. The research on wrongful convictions has however often discussed the iceberg metaphor (see e.g. Gross, 2013; Huff, 1986), which refers to the risk that those cases that are identified, i.e., those cases of post-conviction review that lead to a conviction being overturned, and that often find their way into the media headlines – are not representative of wrongful convictions as a whole. It is this dark-figure problem that makes access-to-justice studies important, since there may be a discrepancy between the intentions associated with the remedy and the potential consequences in practice. In this regard, research has shown that the possibilities of having one’s conviction overturned may be related to the applicants’ resources (Gies, 2017; Jenkins, 2013; Savage, Grieve & Poyser, 2007; Rhode, 2001), which is in line with the findings of research on legal aid in other areas, which shows that access to legal aid is a central precondition – and a widely acknowledged challenge – in relation to the ability to exercise one’s rights and pursue legal remedies (Sandefur, 2009). In an earlier study (Hellqvist, 2021), I have discussed how access-to-justice in the context of post-conviction review may be equated to access to legal aid, since it is generally difficult for non-lawyers to navigate the legal landscape. This is particularly true for convicted individuals, who are often less well-educated, have few economic resources, may have difficulties reading and writing and are sometimes still in prison. There are a range of factors that must be considered in this context, however, whose relevance may vary across different stages of the post-conviction review process. The next section, which describes the article’s aims, outlines what these factors might consist in, and how they are examined in the current study.

2 Conception

2.1 Aims

This article provides an overview and comparison of the systems of post-conviction review in the Nordic countries, and problematises this description on the basis of an access-to-justice perspective with the aim of examining the obstacles wrongful conviction claimants may face when they attempt to pursue the post-conviction review remedy. This means that I will be focusing on those aspects of post-conviction review that are most relevant to the applicants themselves, which I propose may be operationalised based on questions that capture what I will refer to as accessibility parameters:

a) What opportunities does the applicant have to obtain legal assistance?
b) What type of situations are covered by the legal grounds for post-conviction review?
c) Are there restrictions regarding how an application must be formulated or when it must be submitted?
d) Is there a fee for applying for post-conviction review?
e) What guidance and information are provided to applicants?
f) Who assesses the applications?
g) Is the post-conviction review system accessible to insight and/or scrutiny via the publication of judgements, statistics and/or research?

Both »access« and »justice« are complex and definitionally elusive concepts, but by studying the parameters listed above, my ambition is to present a comparative overview of the accessibility of the Nordic post-conviction review systems, while at the same time also focusing on factors that may also be relevant beyond the context of specific legal systems. Based on this approach, the remainder of the article is organised as follows: I first describe the material that is employed as a basis for the comparison, before moving on to present the central concepts employed in the

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4 For a more theoretical and comprehensive discussion of the distinction between the law in books and the law in action, see the classic articles by Pound (1910) and Quinney (1970).
overview, which also limit the article to a focus on certain aspects of the post-conviction review remedy. The article then consists of two parts: a descriptive presentation of the Nordic countries’ post-conviction review systems, and a discussion in which I summarise and reflect upon the most central differences between the Nordic countries and the consequences the different systems may induce for wrongful conviction claimants.

2.2 Material

My review of the Nordic post-conviction review systems is based on travaux préparatoires and legislative texts, information collected from the websites of the Nordic courts and commissions, e-mail correspondence with the courts, and academic publications that have already presented systematic descriptions of the functioning of the post-conviction review systems in the countries examined. One central publication that I have employed in the review is a special issue of the journal «Svensk Juristtidning»⁵, which includes articles on the Finnish, Swedish, Danish and Icelandic post-conviction review systems, written in the Nordic languages by researchers and practitioners working in this field. My aim is not however to solely repeat what these authors have written, but rather to focus on those aspects that are of relevance from an access-to-justice perspective. I then combine this material with the additional information I have collected and discuss the barriers that post-conviction review applicants may face from a comparative perspective. To the extent that they exist, I have also included other journal articles written by researchers in this field.

The primary aim of the literature search is to examine the extent to which research in this area has been published in international peer-reviewed journals (see parameter g above), and to provide interested non-Nordic readers references for further reading in this field. In order to establish the extent of the academic peer-reviewed research on the Nordic countries’ post-conviction review processes, I have conducted searches on Google Scholar using search terms that include the names of the countries and the terms »wrongful conviction« and »post-conviction review«. This means that my literature searches have not been exhaustive, and that I have not included articles written in the Nordic languages except for the special issue mentioned above. My impression, however, is that the articles that have been written on post-conviction review in the Nordic languages have often been based on quite a strict legal perspective, whereas the more interdisciplinary Nordic research in this field has often been published in English language journals.

2.3 Central concepts

The literature on wrongful convictions has discussed whether and how a distinction should be made between »wrongfully convicted« and »innocently convicted«, and the link between these concepts and those of »legal innocence« and »actual innocence« (see e.g., Naughton, 2013, Stratton, 2014). This discussion has a focus on which cases should be included in the research in order to study »real« miscarriages of justice rather than cases involving minor procedural errors (Huff, 1986). Stated somewhat simply, the restrictive view would be to equate »wrongfully convicted« with »innocently convicted«. In this case, only cases of »actual innocence« would be included, which is interpreted as meaning cases where it is possible to establish that those convicted have not committed the offences in question, for example because the real offender has confessed and subsequently been convicted or because exoneration has been possible due to the emergence of DNA-evidence (see e.g., Huff 2002). However, some scholars are sceptical about distinguishing between convictions on the basis of »actual« and »legal« guilt and argue that »[w] ithout proof of guilt, determined by a court, the presumption of innocence defines innocence« (Findley, 2010-2011, 1208). The less restrictive view is thus to see »wrongful convictions« as including those in which the individual is exonerated as being innocent on legal grounds, despite potentially having actually committed the offence. Since this article is focused on the process leading up to a possible exoneration, however, a discussion of whether or not the applicant for post-conviction review is actually innocent is not central, and nor is it possible to elucidate. The point of departure is instead that of studying the post-conviction review system from the perspective that the wrongful conviction claimants may be innocent of the offences. Moreover, if the post-conviction review remedy is inaccessible, this has a substantial negative effect on the potentially innocent individuals concerned, and their wrongful convictions constitute a more substantial failure on the part of the justice system than if they had, for example, been given a disproportionately long sentence for an offence they committed.⁶

⁵ English translation: Swedish Law Journal. A journal described as being written by lawyers, for lawyers (www.svjt.se).

⁶ For a more detailed discussion of the significance of terminology in the research on wrongful convictions, see Hellqvist, 2019 (although this text is only available in Swedish).
3 Review: Post-conviction review in the Nordic countries: similarities and differences

To begin, it may be of interest to state the size of the populations in the Nordic countries. According to figures from the World Population Review\(^7\), which present current population sizes, Sweden has approximately 10.2 million inhabitants, Denmark 5.8 million, Norway 5.5 million, Finland 5.5 million, and Iceland 345,400. A comparison between the Nordic post-conviction review systems should include a focus on at least three central factors: the structure of the post-conviction review organisation, the grounds for post-conviction review that applicants must relate to, and the way the application procedure functions. These three factors are described below for each country, in combination with an examination of the parameters listed above in the Aims section (see page 5, parameters a-g. I have also checked whether there are English language scientific publications focused on the countries’ post-conviction review systems or on wrongful convictions that have occurred in these countries. The review begins with a focus on the post-conviction review system in Finland, and ends with that in Norway, because these are the two countries that lie furthest from one another with regard to the accessibility parameters, and I will discuss why Norway may, in my view, be deemed to have the most accessible post-conviction review system. The remaining countries – Sweden, Denmark and Iceland – are described in this order, and based on the same assessment, although the difficulties associated with this ranking are problematised in the discussion section. Following the country-specific descriptions, their differences and similarities are discussed and summarised.

3.1 Finland

The current Finnish post-conviction review system was established in 1960, and was modelled on the Swedish system that had been established during the 1940s (Hupli, Niemi & Tammi, 2021). The Finnish system employs a different terminology from the Swedish, however, and refers to the »reversal of a final judgement«, but according to Hupli and colleagues (2021) it can be equated with the Swedish terminology in a comparative context, and may be viewed as including applications in which the applicant argues that the conviction is materially/substantively incorrect. Hupli and colleagues also state that »annulment of a final judgement«, a remedy focused on serious procedural errors, can also be included under the post-conviction review concept. However, a distinction of this kind between convictions based on issues of fact and issues of law is often far from self-evident since there is frequently an overlap between the two (Hupli et al., 2021). The Finnish post-conviction review system is located within the court system, and in the vast majority of cases involving »reversal of a final judgement« the application must be submitted to, and assessed by, the Supreme Court (Hupli et al., 2021). When judging such applications, the Supreme Court is comprised of five members, but may also be comprised of three members if these are in agreement on the Court’s ruling. Applications for »annulment of a final judgement« must instead be sent to a higher court than that which issued the original conviction, which means the Supreme Court in the case of appeal court convictions, and one of the country’s five appeal courts in the case of district court convictions. An appeals court quorum requires three members.

The Finnish post-conviction review provisions are regulated in Chapter 31 of the Code of Judicial Procedure, which lists four grounds for post-conviction review, which constitute the conditions necessary for »reversal of a final judgement«:

1. criminal conduct by a member or officer of the court, prosecutor or representative or legal counsel of one of the parties, which may be assumed to have affected the outcome of the case,
2. false or untrue evidence or testimony, that may be assumed to have affected the outcome of the case,
3. new circumstances or new evidence that is likely to have affected the outcome of the case and that the party could not have referred to earlier, or
4. a manifest misapplication of the law.

For »annulment of a final judgement«, the following is required (Chapter 31, Code of Judicial Procedure):

1. the court had no quorum or the matter had been taken up for consideration even though there was a circumstance on the basis of which the court should have dismissed the matter without considering its merits,
2. a serious violation of the adversarial principle (a person was convicted in absentia without having been summoned, or a person who has not been heard has otherwise suffered injury as a result of the judgement),
3. the judgment is so confusing or defective that it is not clear from the judgment what has been decided in the matter, or
4. another error has occurred in the conduct of judicial proceedings which is found or can be assumed to have essentially influenced the result of the case.

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7 Figures accessed 2022-08-06 at: https://worldpopulationreview.com/
Similar grounds for post-conviction review are found in the other Nordic countries, although with some linguistic variations and various differences in terms of the legal nuances. As Hupli and colleagues (2021) have argued, it is primarily the first group of grounds that are also equated with post-conviction review in the other Nordic countries, whereas annulment of a final judgement is instead regarded as a separate extraordinary legal remedy and is therefore not described in more detail in this review.

In Finland there is no time limit regarding the submission of applications (Hupli et al., 2021). However, a reform was introduced in 2005 which means that an applicant can only apply once with regard to the same case, unless there are exceptional grounds for re-examining the case. Hupli and colleagues (2021) state that the reason for the reform was that there were a large number of criminal cases in which applications had been made repeatedly. There was a general view that these applications came from »frustrated citizens, including querulants« (497), with the aim of the reform being to reduce such cases. A reform in 2011 introduced a requirement that applicants applying to the Supreme Court had to retain legal counsel, with the express intention of screening out applications that had no chance of success and as such taking the pressure of the resources of the Supreme Court (Hupli et al., 2021). No such requirement was introduced regarding applications made to lower courts however. The legal counsel may be a defence counsel, a lawyer at a public legal aid bureau, a lawyer with special certification or a public sector agency. Applicants have no automatic right to free legal assistance, but may in accordance with the legal aid legislation apply for such assistance. In applications for legal aid, the application must state the grounds on which the application for legal aid is being made, and if the application is approved, the right to free legal aid should as a rule be limited to 80 hours (Hupli et al., 2021). I have found no information regarding how common it is for legal aid to be awarded in connection with these applications. The website of the Supreme Court states that it costs 530 Euro to file an application, although this is not the case if the applicant has been granted legal aid or if the court then decides to change the judgement in the applicant’s favour.

A bill for the application fee is sent only once if an application is approved, the Supreme Court may overturn the conviction immediately or refer the case to be re-examined, in which case this occurs at the court that most recently tried the case.

Hupli et al. (2021) note that little information is published with regard to the Finnish post-conviction review process. Some information on how many applications have been submitted can be found in the annual reports of the Supreme Court, and The Supreme Court’s judgements are published online. As regards scholarly publications in English, I have found only one peer-reviewed article, in addition to the article by Hupli et al. referred to above, which compares the Finnish post-conviction review system with that of the USA (see Johnson, 2011).

3.2 Sweden

The modern Swedish post-conviction review system was formulated at the end of the 1930s and came into force in 1948. The organisation of the Swedish system is similar to that of Finland, and is located within the court system (Lidén, 2021). However, applications regarding convictions finalised by a district court are assessed by an appeal court. This represents a difference in relation to Finland, where applications for a »reversal of a final judgement« are only dealt with by the Supreme Court. This system was also employed in Sweden until 1989, but was then changed in order to reduce the burden on the Supreme Court, and today the Supreme Court assess applications regarding convictions finalised by their own court or by an appeal court. In Sweden, three members are required for a quorum in the appeal courts, and five in the Supreme Court, although an exception can be made if the application is regarded as non-complex. In this regard, the figures collected by Lidén (2021) for a five-year period show that in 80% of cases, the decision on a post-conviction review application had been made by a single member of the Supreme Court. If an application is approved, the court can either immediately overturn the conviction, if the matter is assessed to be obvious, or the case must be re-examined by the court at which it was most recently tried.

The grounds for post-conviction review in Sweden are generally similar to those in Finland, but with the addition of conflict of interest (point 2 below). Lidén (2021, referring to SvJT 1986, 5577) writes that this point was added following a case that attracted a great deal of attention, in which a prosecutor with a conflict of interest remained as the prosecutor in the case. The Swedish »new circumstances or
evidence» ground (point 4) also includes a supplement (the so-called supplementary rule), which means that post-conviction review can in theory be granted on the basis of a somewhat lower balance of probabilities regarding the question of whether the applicant would have been acquitted if the information in question had been presented at the original trial.

The Swedish grounds for post-conviction review are specified in Chapter 58 of the Code of Judicial Procedure, which lists the following five points:13

1. if any member of the court, an officer employed at the court, or the prosecutor, with respect to the case, is guilty of criminal conduct or neglect of official duty, or if an attorney, legal representative, or defence counsel is guilty of an offence with regard to the case, and the offence or neglect of duty can be assumed to have affected the outcome of the case,
2. if any legally qualified judge or the prosecutor has been disqualified and it is not plain that the disqualification has been without importance as to the outcome of the case,
3. if a written document presented as evidence was forged or a witness, expert, or interpreter gave false testimony and the document or statement can be assumed to have affected the outcome,
4. if a circumstance or item of evidence that was not presented previously is invoked and its presentation probably would have led to the defendant’s acquittal or that the offence would have been linked to a sanction provision milder than that applied, or if in view of the new matter and other circumstances, extraordinary reasons warrant a new trial on the issue of whether the defendant committed the offence for which he was sentenced, or
5. if the application of law forming the basis of the judgment is manifestly inconsistent with a statutory provision. (SFS 1987:1345).

(Official translation)

In the same way as in Finland, there is no time limit within which applications must be submitted, and in contrast to Finland, there is no limit on the number of times an application may be submitted (Lidén, 2021). Applicants are not required to have legal counsel, but nor do they have the right to such assistance. There is, however, the possibility of obtaining legal aid in accordance with the Legal Aid Act, although as in Finland this requires a separate application process.14 I have found no information regarding how common it is for legal aid to be granted in connection with these applications. A public defender may be appointed for the applicant if the court deems there to be exceptional cause for this, or if the prosecutor determines to reopen the criminal investigation.15 There is no fee for submitting an application.

As in Finland, court statistics on post-conviction review cases are not collected in Sweden. The website of the Swedish Prosecution Authority16 presents the number on how many post-conviction review applications the authority received in 2020. The Swedish Prosecution Authority does not assess post-conviction review applications, however, since this is the job of the appeal courts and the Supreme Court. The Prosecution Authority can, however, apply for post-conviction review on behalf of someone who has been convicted. Aggregate data on post-conviction review cases can only be found in the publications of individual researchers who have themselves compiled this information by coding each individual case. In this respect, the figures compiled by Lidén (2018) constitute the most comprehensive presented to date.

The international academic publications on post-conviction review and wrongful conviction that I have identified, in addition to my own two publications (Hellqvist, 2017; 2021), comprise Lidén’s doctoral thesis, which includes five empirical articles (published in 2018 and 2019) on confirmation bias in the justice system, and an article by Martinsson (2021), which discusses whether Sweden should introduce an independent post-conviction review commission like that found in Norway. See also (Stridbeck, 2020) for a case study of the notorious Thomas Quick-case and false confessions, which involved the justice systems of both Norway and Sweden.

3.3 Denmark

Denmark has had a special court (the Special court of Revision) for post-conviction review cases since 1939 (Toftegaard Nielsen, 2021).17 Toftegaard Nielsen (2021), who was himself a judge in this special court, has written that the background to its establishment in 1939 was a discussion of the importance of post-conviction review cases being assessed by a court that had not issued the conviction referred to in the review application. The Special Court of Revision determines whether an application is approved or rejected, and if it is approved a retrial must take place at the court that most recently tried the case. The Special Court is

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13 This is taken from the official translation of the Swedish Code of Judicial Procedure, page 336: http://www.regeringen.se/49bb67/cont entassets/5503f73d320b4de5bb521dd7ee07500a/the-swedish-code-of-judicial-procedure
15 Code of Judicial Procedure, Chapter 21, Section 3b
16 https://www.aklagare.se/om_rattsprocessen/resning/
17 See also https://domstol.dk/densaerligeklageret/om-den-saerlige-klageret/
comprised of a chairperson, who is a judge at the Supreme Court, two judges from lower courts, a defence counsel and a lawyer who is a university law professor or who has a special scientific competence within the field. Each of the members of the court also has a first and second alternate. The Special Court has its own secretariat which is located at the Supreme Court and comprises three judges’ assistants and two secretaries. The procedure followed is that one of the members of the court (which varies from case to case) produces a thorough and objective summary of the case, which is then sent for a vote to the other members of the court (Toftegaard Nielsen, 2021).

Unlike Finland and Sweden, the Danish post-conviction review process does not examine procedural questions, and the Danish grounds for post-conviction review only relate to the issue of guilt (Toftegaard Nielsen, 2021). In the Danish provisions, »improper assessment of the evidence« may also constitute a ground for post-conviction review (see point 3 below), which is also the case in Iceland. No such ground exists in any of the other Nordic countries, unless it can be argued that the incorrect assessment of the evidence constitutes »special circumstances« that cast doubt on whether the conviction was correct (Stridbeck, 2021).

The Danish grounds for post-conviction review are specified in Chapter 86 of the Danish Code of Judicial Procedure, which lists the following three points in Section 977:

1) when new information is provided, and it is considered probable that this, if it had existed at the time of the case, would have resulted in acquittal or the use of a substantially more lenient penalty provision;
2) when any matter referred to in section 976, subsection 1, no. 2, is disclosed, and it may be presumed that this matter may have caused or contributed to the conviction;
3) when, moreover, there are special circumstances that make it overwhelmingly probable that the available evidence has not been properly assessed.

(Unofficial translation)

Denmark has a time limit on the submission of applications (Toftegaard Nielsen, 2021). If there is an overwhelming probability that the evidence has been improperly assessed, then the application must be submitted within five years of the conviction, and if the convicted individual has been sentenced to prison, he or she may apply for post-conviction review up to two years after release from prison (Stridbeck, 2021). Toftegaard Nielsen (2021) notes that it is rare for a legal counsel to be appointed to assist the applicant, but that this may happen if the applicant is assessed to have a case that has a chance of resulting in post-conviction review. The Special Court can, however, require the police to conduct interviews, take other necessary measures or collect information required by the court (Toftegaard Nielsen 2021). It is possible to obtain legal aid in accordance with the Legal Aid Act, but this requires a separate application process. I have been unable to find any information on how often legal aid is awarded in connection with these applications. No fee is charged for submitting an application.

Some statistics are published on the work of the Danish Special Court, which according to Toftegaard Nielsen’s (2021) presentation include the number of applications and how many are approved. I have attempted to find more detailed information, but have only been able to find the information presented in Toftegaard Nielsens article. The Special Court does not publish an annual report, but some of the court’s judgements are presented in a special criminal law journal. My literature search did not identify any English language academic peer-review publications that refer to the Danish post-conviction review process or wrongful convictions.

3.4 Iceland

The Icelandic post-conviction review system has recently undergone two major organisational reforms, in 2013 and 2020 (Ingadottir & Haraldsdóttir, 2021). Prior to 2013, post-conviction review cases were assessed and determined by the Supreme Court. This process was subject to criticism, however, primarily on the grounds that it involved a risk for a lack of objectivity and transparency. It was deemed inappropriate that the Supreme Court should determine the outcome of an application relating to a judgement that the Court had itself previously issued, and the judgements were furthermore not made public. Ingadottir and Haraldsdóttir (2021) also note that the 2013 reform must be seen against the background of a high-profile case – the Gúmundur and Geirfinnur case – in which six individuals were convicted of the murder of two men who had disappeared at the beginning of the 1970s. They were exonerated 44 years later, when it was established that their confessions had been false and a result of long periods of isolation in pre-trial detention and long police interrogations (Gudjonsen, 2021).

Ingadottir and Haraldsdóttir (2021) note that the two reforms were inspired by the Norwegian and Danish
models. The first reform moved the post-conviction review process from the Supreme Court to an independent administrative committee, similar to the Norwegian Criminal Cases Review Commission (see below), but doubts were raised as to whether the legal preparations for this move had been correct, which in turn led to debate about the committee's legitimacy. The subsequent discussions resulted in the 2020 reform, which moved the independent administrative committee back into the court system, but in the form of the special court that is today in operation in Iceland, and which is known as the «reopening court». This court is similar to the special court employed in the Danish model, and is comprised of five judges, three of whom are drawn from the Supreme Court, the Appeal Court and the district courts, and procedures have been established to ensure that a judge does not assess a post-conviction review case from his or her own court. The reopening court constitutes part of what is termed the «judicial administration» and is independent of the other courts.

Decisions of the court are final and are not subject to examination by other courts.

The first modern grounds for post-conviction review were established in 1951, and included two points, with these provisions then being expanded with an additional three points, the most recent of which was added in 2008 (Ingadottir & Haraldsdóttir, 2021). The Icelandic grounds for post-conviction review are very similar to those already described for the other Nordic countries, and an «incorrect evaluation of the evidence» (point c below) constitutes a ground for post-conviction review in the same way as in Denmark. If an application is approved, the case is re-examined by the court that most recently tried the case.23

The Icelandic grounds for post-conviction review are specified in Article 228(1) of the Law on Criminal Procedure, which lists the following four points:

a. new material or information has come to light of which it may reasonably be argued that it would have been of substantial significance for the outcome of the case if it had come to light before judgment was delivered,
b. it may be argued that the police, the prosecutor, the judge or other persons engaged in criminal actions in order to obtain the conclusion of case that was arrived at, for example if witnesses or others consciously gave false testimony to the court, or if forged documents were submitted and this resulted in a false conclusion to the case,
c. it is demonstrated that there is a strong likelihood that evidence submitted in the case was wrongly assessed, which influenced the outcome of the case,
d. there were substantial defects in procedure, which influenced the outcome of the case.24

(Translation from Ingadottir & Haraldsdóttir, 2021)

There is no time limit for submitting an application, nor any limit on how many times an application can be made (Ingadottir & Haraldsdóttir, 2021). No fee is charged for submitting an application.24 If the application is not immediately dismissed but processed further, the court is required to appoint legal counsel to assist the applicant, if the applicant has requested such counsel. It is possible to receive legal aid, but this requires a separate application to the Legal Aid Committee.25 I have been unable to locate any information on how frequently legal aid is awarded in connection with these applications.

No post-conviction review statistics are available for the period prior to the introduction of the two reforms described above, and this was one of the reasons that the changes were implemented. Since 2013 information has been published on the number of submitted applications and the outcomes of these applications (Ingadottir & Haraldsdóttir, 2021). The website of the reopening court publishes all the court's decisions.26 A number of international peer-review articles have been published with a focus on wrongful convictions in Iceland. A majority of these have been written by a small number of researchers who have examined false confessions and how these contribute to wrongful convictions, primarily from a psychological perspective (see e.g. Sigurdsson & Gudjonsson 1996; Gudjonsson et al 2008; Gudjonsson 2021).

3.5 Norway

A complete reform of the Norwegian post-conviction review system came into effect in 2004 (Stridbeck & Haugen Mogen, 2021). As in Iceland, the reform was initiated against the backdrop of a high-profile wrongful conviction – in this instance the Liland case – in which a man convicted of a double homicide was exonerated after 25 years, when new medical evidence changed the victims’ time of death, for which the convicted man had an alibi (Stridbeck & Magnussen, 2012a; Magnussen, 2012b). Stridbeck and Magnussen (2012a; 2012b) showed that the case was a public relations disaster for the court system, which was involved in a media scandal.23

23 The translation of the grounds for post-conviction review is taken from Ingadottir & Haraldsdóttir; 2021.
24 Information from personal e-mail communications the reopening court in Iceland
25 See https://www.government.is/topics/law-and-order/legal-aid-in-iceland-basic-information/
26 https://endurupptokudomur.is/
2012b) note that the case served as an eye-opener in Norwegian political and legal contexts, where questions were raised about the objectivity of the existing post-conviction review system, which was at the time located within the court system. In creating the independent commission that replaced the former system, inspiration was drawn from England and Scotland, where independent commissions had been introduced just a few years earlier, in 1997 and 1998 (Stridbeck & Magnussen, 2012a; 2012b).

The Norwegian Criminal Cases Review Commission is an administrative body, which means that it is located outside the justice system and is independent of the police, the courts and the prosecution service.27 The Commission determines whether convicted individuals are given the opportunity to have their cases re-examined in a different court. The Commission is comprised of five permanent members and three alternates, five of whom are to have a law degree, whereas two of the permanent members and one of the alternates are instead to have an education and professional experience that is of use to the Commission in relation to non-legal matters (Stridbeck & Haugen Mogen, 2021). The Commission is served by a secretariat comprised of 13 full-time employees, of whom the majority are investigators with the task of ensuring that every case is thoroughly prepared for the Commission to assess. The grounds for post-conviction review themselves do not however differ markedly from those of the other Nordic countries, nor from the grounds for post-conviction review that were in place prior to the 2004 reform (Strickbeck & Magnussen, 2012a; 2012b). Norway also examines procedural issues which most recently tried the case, but at the same level in the court hierarchy. This is not the case for convictions determined by the same court.

There is no time limit for submitting an application for post-conviction review, nor any limit on how many times an application can be made (Stridbeck & Haugen Mogen, 2021). The Norwegian Commission may appoint a defence counsel for the applicant if it deems there to be special reasons for doing so, with this legal assistance being limited to a certain number of hours. The major difference between Norway and the other Nordic countries, however, is that the guidelines governing the work of the Commission expressly state that the Commission itself must offer guidance to applicants during the application process to ensure that the applicants’ interests are provided for in the best possible way (Stridbeck & Haugen Mogen, 2021). The Commission has a duty to investigate, which means that it is required to ensure that cases are elucidated as thoroughly as possible on the basis of existing practical and financial conditions, and on the basis of the seriousness of the case and its consequences for the convicted individual. More specifically, this means that the Commission has a mandate to collect information in various ways, among other things by appointing experts and applying to use coercive legal measures (Stridbeck & Haugen Mogen, 2021). If an application for post-conviction review is approved, and the case is re-examined, this re-examination takes place at a different court from that which most recently tried the case, but at the same level in the court hierarchy. This is not the case for convictions issued by the Supreme Court, which are instead re-examined by the same court.

Prior to the 2004 reform, no aggregate statistics were published on post-conviction review, but since the reform was implemented the Commission has presented information relating to its activities in an annual report, which is

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27 Se https://www.gjenopptakelse.no/en/
Among other things, the report presents information on the number of applications submitted and the outcomes of these applications, the offence types referred to in the applications, whether a defence counsel was appointed, and whether expert witnesses and interpreters were used in the case. Following the presentation of this information at the aggregate level, those cases that have been granted post-conviction review are briefly described. The annual report also presents an account of the media interest in the Commission’s work, and also what the Commission itself has done to publicise information on its activities in the media, among other things by reporting its decisions on Twitter.

My literature search identified a number of English-language peer-review articles published by a small number of researchers, several of which have been published by Stridbeck, one of whose articles I have referred to above (see also Stridbeck & Magnussen, 2012a; 2012b). See also (Stridbeck, 2021) for a case study on the notorious Thomas Quick case and false confessions, which affected both Norway and Sweden, and Grøndal and Stridbeck (2016) which employs regression analysis to examine Norwegian post-conviction review cases focused on »legal insanity«. Interestingly, it has been relatively common to include »legal insanity« as a form of new evidence in Norway, arguing that the conviction was wrongful because the individual should have been acquitted »on grounds of insanity« (Grøndal & Stridbeck, 2016). Grøndal & Stridbeck (2016) note that they have not found any statistics indicating that this is the case in other countries.

## 4 Discussion

### 4.1 Results

Table 1 summarises the post-conviction review systems of the Nordic countries with regard to when they were created, how they are organised, whether they deal with both procedural issues and the issue of guilt, whether the grounds for post-conviction review include an incorrect assessment of the evidence, whether there is a time limit for applications, if free legal assistance is available to applicants, where the case is re-examined if a review is granted, and whether statistics are published.

Post-conviction review is an extraordinary legal remedy in all of the Nordic countries, to be used with great care, and the threshold for approving a review is therefore as a rule set high. Generally speaking, the conditions that must be met for post-conviction review, i.e. the legal grounds for review, are similar across the Nordic countries, with the central ground involving the emergence of new information and evidence. Factors related to the organisation of the post-conviction review system and the applications process differ however. Stridbeck (2021) notes that a rough distinc-

### Table 1: Summary of the Nordic post-conviction review systems

<table>
<thead>
<tr>
<th></th>
<th>Finland</th>
<th>Sweden</th>
<th>Denmark</th>
<th>Iceland</th>
<th>Norway</th>
</tr>
</thead>
<tbody>
<tr>
<td>Created in its current form</td>
<td>1960</td>
<td>1948</td>
<td>1939</td>
<td>2013, 2020</td>
<td>2004</td>
</tr>
<tr>
<td>Organisation</td>
<td>Court</td>
<td>Court</td>
<td>Special court</td>
<td>Special court</td>
<td>Independent</td>
</tr>
<tr>
<td>Issues of guilt and procedure</td>
<td>Yes</td>
<td>Yes</td>
<td>Only guilt</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Incorrect evaluation of evidence</td>
<td>No</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Time limit</td>
<td>No</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Free legal assistance/guidance in the initial phase</td>
<td>No, legal counsel required</td>
<td>No</td>
<td>No</td>
<td>Yes, duty to investigate</td>
<td></td>
</tr>
<tr>
<td>If review granted, where is the case re-examined?</td>
<td>Same court</td>
<td>Same court</td>
<td>Same court</td>
<td>Same court</td>
<td>New court, unless Supreme Court</td>
</tr>
<tr>
<td>Application fee</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Statistics available</td>
<td>Limited, published decisions</td>
<td>No/limited</td>
<td>Aggregate statistics</td>
<td>Aggregate statistics, published decisions</td>
<td>Yes</td>
</tr>
</tbody>
</table>

29 For the English version see https://www.gjenopptakelse.no/fileadmin/user_upload/Aarsrapport_2021_med_regnskap_eng.pdf
tion can be made between the eastern Nordics, Finland and Sweden, and their western counterparts, Denmark, Iceland and Norway, with the former having a traditional, closed model located within the court system, while the latter have special post-conviction review courts or an independent administrative organ. On the basis of the parameters used in this article to study the accessibility of the post-conviction review system from the applicant’s perspective, this division is also reasonably applicable, which Finland emerging as the country with the least accessible system, whereas the Norwegian system is the most accessible, followed by that of Iceland. It is not entirely evident how Sweden and Denmark should be ranked in relation to one another however, primarily as a result of the time limits that are imposed in Denmark, and this issue is discussed further below.

On the basis of this review, the Finnish system is assessed to constitute the least accessible, primarily because there are a larger number of restrictions for applicants to relate to. Unlike the other countries, which have introduced various reforms of a minor or more substantial nature to reduce the administrative burden for applicants, Finland has introduced changes to facilitate the work of the courts but which impose restrictions on applicants: in the absence of exceptional circumstances, an individual can only apply for post-conviction review once in relation to the same case, and when applying to the Supreme Court, applicants must have legal counsel, which they must retain themselves. Applicants must also pay a fee of 530 Euro if the application is rejected. All applications (with the exception of applications for annulment of a final judgement) are assessed by the Supreme Court, including cases which have previously been tried by the Court itself. If post-conviction review is granted, the case is re-examined by the court that most recently tried the case. No statistics are available on applications for post-conviction review in Finland, or on how these applications are assessed by the courts, but decisions are published online. The clearest contrast to the Finnish system is found in Norway: the Norwegian Commission has a duty to provide guidance to all applicants during the application process and to ensure that the case is elucidated as thoroughly as possible. If post-conviction review is granted, the case is re-examined by a court other than the one that most recently tried the case. This is not true for cases previously tried by the Supreme Court, however, which are re-examined by the same court in all of the Nordic countries. The Norwegian Commission also works to publicise its activities by publishing annual statistics and further information on the post-conviction review cases that have been submitted, by publishing information in the media, and by being accessible to answer questions.

Between these two extremes, we find the Swedish, Danish and Icelandic post-conviction review systems. In Sweden there are no restrictions on when or how often an application can be submitted, and the application process is free of charge. The applicant may retain legal counsel or be granted legal aid, but this either occurs later in the process, if the case is deemed likely to result in a review being granted, or following a separate application for legal aid. Applications for post-conviction review are assessed by a court higher than that which most recently tried the case, with the exception of convictions issued by the Supreme Court. If an application is approved, the case is re-examined by the court that most recently tried the case. No aggregate information is published on either the post-conviction review applications submitted to Sweden’s appeal courts or Supreme Court or the outcomes of these cases. The Danish system imposes a time limit on applications for post-conviction review, which must be submitted within five years if the application relates to an incorrect evaluation of the evidence (a ground that is only mentioned explicitly in the post-conviction review provisions of Denmark and Iceland), or within two years of release if the applicant has been sentenced to a prison term. Applications are assessed by a special court, so none are assessed by the same court that tried the original case, but if an application is approved, the case is re-examined by the court that most recently tried the case. Applications are free of charge. Denmark publishes aggregate statistics on the total number of applications and how many are approved. Like Denmark, Iceland also has a special court, which means that no applications need to be assessed by the same court that issued the original conviction. There are no restrictions on when or how often an application may be submitted. Applicants may receive legal assistance if an application is not immediately dismissed, and thus processed further. Applicants may also be granted legal aid, but this is subject to a separate application process. If applications for post-conviction review are approved, the case is re-examined by the court that most recently tried the case. Applications are free of charge. Statistics relating to the number and outcome of post-conviction review applications have been collected since 2013, and the website of the special court publishes the court’s decisions.

4.2 Further reflections

From an organisational perspective, the Finnish and Swedish systems for post-conviction review have more in common with each other than with the Danish system, where applications are assessed by a special court in the same way as is now the case in Iceland. Viewed from the perspective of objectivity, the use of a special court may be seen as a strength, since applications are always assessed
by a court other than that which tried the case, whereas in Finland and Sweden, this is not the case for applications relating to cases that have been tried by the Supreme Court. The use of a special court may also mean that other types of resources are available for post-conviction review cases, which is one of the challenges that has been raised in connection with the Swedish system. One former chair of the Swedish Supreme Court, for example, has stated that post-conviction review should not be conducted by the Court, because assessing this type of case is not one of the Courts’ principal tasks, which is to produce legal precedent, and is therefore not the Courts’ principal area of competence. The majority of Swedish post-conviction review applications are nonetheless submitted to the Supreme Court, however, since the Court assesses cases relating to convictions issued by both the appeal courts and by the Supreme Court itself (and the Finnish Supreme Court assesses applications relating to all Finnish courts). A lack of resources for assessing post-conviction review applications was also among the principal arguments for the establishment of an independent commission in Norway, as well as in Canada, England and Scotland (Stridbeck & Magnussen, 2011-2012; Nobles & Schiff, 2001). There is however one aspect of the Danish special court, which involves a more independent and specialised process than the Swedish and Finnish systems, that may nonetheless be viewed as problematic from an accessibility perspective, namely the specification of a time limit for when applications must be submitted, which does not appear to be the case in any of the other Nordic countries.

I have been unable to find a detailed motivation for the time limit employed in Denmark. Finland does not have a time limit on applications, but the country does have other restrictions. Finland is the only Nordic country that charges a fee for submitting an application, but I have been unable to find a motivation for this fee. However, the express intent behind the other two restrictions in place in Finland, i.e., that an applicant can only submit a single application in the same case, and the requirement that the applicant retain legal assistance, was to reduce the burden on the High Court by screening out applications that had no chance of success. It is possible that thresholds of this kind may improve the quality of the applications that are submitted, but there is a risk that they will serve as a barrier that primarily affects those potential applicants with few resources. Here it is important to emphasise that those who apply for review are convicted individuals, who as a group often have both poor finances and debts (see e.g. John, 2019; Oksanen, Aaltonen & Rantala, 2015; Gälnder, 2022). In such cases, it may simply be impossible to pay an application fee and retain legal counsel. The time limit imposed in Denmark for certain types of application is also problematic given that, as noted by Stridbeck (2021), scientific progress may lead to a need to re-evaluate old evidence. In this regard it could be argued that it is in the interests of all rule of law-governed states to correct wrongful convictions irrespective of how much time has passed, and that limiting the time window for review applications is incompatible with this.

The Norwegian system, which may be viewed as unique on the basis of the accessibility parameters employed in this article, shows that the quality of the post-conviction review applications submitted can be improved in other ways than via the use of time limits, fees, requiring legal counsel, or a separate system of legal aid applications. The website of the Norwegian Criminal Cases Review Commission provides information on the Commission’s work, the application process and the review process in 13 languages, and all applicants are offered personal guidance with their application from the start, rather than only later in the applications process, once the application has been assessed as having the potential for approval, which is the case in some of the other countries (with this being problematic because showing that an application has this kind of potential probably requires a considerable amount of work). The 2021 Annual Report of the Norwegian Commission states that, »Unless he/she is represented by a lawyer, the convicted person will usually be offered a guidance meeting. Such a meeting may take place over the phone or as a physical meeting on the Commission’s premises. If the convicted person is in prison, the meeting may take place there«(4).

From the perspective of the justice system it is of course more efficient to screen out those applications that have no chance of success by means of more demanding application thresholds, rather than by working harder to ensure accessibility by means of providing more information and guidance. The consequence, however, is that this instead places the burden of obtaining the resources needed to pass these thresholds on the applicants themselves, or may lead to applicants failing to reach the threshold and thus not applying for review, despite the fact that they may indeed have been wrongfully convicted. Improving access to information would instead give applicants – irrespective of their own individual resources – better and more equal opportunities to formulate a correct application and make their arguments.
which constitutes a first important step on the path towards a more accessible system of post-conviction review. Norway’s shift from its earlier, more traditional, post-conviction review system to the use of an independent administrative organ provided the basis for subsequent improvements in accessibility for applicants and transparency in the work of the post-conviction review system (Stridbeck, 2021). This type of reorganisation might constitute a way forward for certain countries, whereas reforms of this kind may be less appropriate for others for various reasons. What is important from an access-to-justice perspective, however, is to find ways to improve the level of accessibility in relation to applicants, irrespective of the organisational framework of a specific country’s post-conviction review system.

On the basis of my work with this comparative overview, my view is that the greatest difference between the Nordic countries is that the governments of Norway and Iceland, in reaction to wrongful convictions that had been identified, came to view such convictions as a serious problem that required attention and intervention. In all of the countries examined, however, there have been high-profile cases in which it has been shown—often following work by journalists and lawyers who have on occasion worked pro bono—that an innocent person has been imprisoned for several years, but the reactions to these cases, and their consequences, have varied. Why high-profile wrongful convictions created a crisis of confidence and subsequent change in Norway and Iceland, but not in the other countries, is an important question, which should be examined in more detail than is possible in this article. However, although the general crime policy context of the Nordic countries differs dramatically from that of the USA and the UK, the developments in Norway and Iceland are similar to those that occurred during the «the discovery of innocence» period, when wrongful convictions came to be defined as a serious problem from which important lessons should be learned in order to avoid a repetition (Findley, 2014; Norris, 2017). In the current context, however, it is important to emphasise that there is no universal answer to the question of what types of weakness characterise the legal systems, both in general and with regard to post-conviction review in particular, and how these might be improved. It is therefore important to conduct research in order to identify these weaknesses, and how they may differ between systems. It is my hope that this overview will encourage further investigation focused on the problems associated with restrictions on the process of applying for review and with the absence of accessible guidance in this process.

4.3 Concluding remarks

One of the aims of applying an access-to-justice perspective is that of examining possible discrepancies between the «law in books» and the «law in action», i.e. the potential gap between the formulated intentions of legislation and its potential consequences in practice, and also how these discrepancies may affect people as they attempt to exercise a certain legal right or to pursue a certain legal remedy (Rhode, 2004; Sandefur, 2009). This is difficult, however, when there is no accessible, detailed information on the practice in focus. As a result, there is a risk that reflections on legal processes will be overly reliant on how something is described (or not described) in legislation and travaux préparatoires, while the practical application of the legislation may lead to quite different outcomes and consequences that are impossible to illustrate without systematic analysis. This may also be the case for the reflections presented in this article, in which the focus has primarily been directed at how the Nordic post-conviction review systems have been described in various texts, and less at their application in practice.

For this reason, transparency is important with regard to the work conducted with post-conviction review, not least in the form of detailed information that allows for an analysis of practice, which on the basis of my overview appears to be lacking in at least three of the Nordic countries. Reform work, as was the case in Norway, may constitute a starting point for developing this type of insight into post-conviction review systems. In the other Nordic countries, the situation has to date been such that it has often been left to individual researchers to collect this information, but this is a very time-consuming task, since researchers must themselves examine and code each individual case, which means that the information collated is often limited to a small number of variables and a brief observation period. One proposal that might lead to improvements in this area would be to assign a responsibility to the agencies that today collect statistics to continually collate information on the post-conviction review process, something which these agencies already do in the Nordic countries in relation to

32 See Martinsson, 2021 for a discussion of whether it is time for Sweden to shift to the use of a post-conviction review commission.

33 See Ingadottir & Haraldsdottir, 2021 for a description of why Iceland first introduced a post-conviction review commission, and then shifted to the use of a special court.

34 See Grøndal & Stridbeck, 2016 for examples of this type of more in-depth analysis, which would be possible if more detailed datasets were available.
other areas of the law. In rule of law-governed states, providing insight into the activities of the justice system may be viewed as an end in its own right, but making more detailed information on the post-conviction review process available would also provide valuable benefits from a policy perspective, since it would allow for more research that could probe beneath the surface and beyond legal texts and individual cases. This would contribute to increasing the quality of both national and comparative studies that may in turn be used to improve the work of ensuring the application of high rule of law standards.

References


