



COUNCIL OF EUROPE    CONSEIL DE L'EUROPE

Strasbourg, 30 May 2006

**CDL(2006)039**

Engl. only

**Study no. 316 / 2004**

**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW**

**(VENICE COMMISSION)**

**REPLIES TO THE QUESTIONNAIRE  
ON NATIONAL REMEDIES  
IN RESPECT OF  
EXCESSIVE LENGTH OF PROCEEDINGS<sup>1</sup>**

**IN**

**NORWAY  
SAN MARINO**

**“THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA”**

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<sup>1</sup> See CDL(2004)124.

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**NORWAY**

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**1. Does your country experience excessive delays in judicial proceedings? Which proceedings (civil, criminal, administrative, enforcement)?**

In general, judicial proceedings in Norway are held without excessive delays.

In 2005 the average time from an initial step in a civil suit to a ruling rendered by the District Court was 7.0 months, in criminal cases 3.2 months.

According to guidelines from the Department of Justice, the aim is to render rulings in civil cases within 6.0 months, in criminal cases within 3.0 months.

An appeal in a civil case was in average decided by the Court of Appeal within 9.8 months, while criminal cases in average was decided within 5 months.

As for the Supreme Court, approximately 20% of the appeals are granted leave of appeal to the Supreme Court after decision by The Appeals Selection Committee. The decision by the Appeals Selection Committee was in civil cases in average rendered within 0.7 months after receiving the case, while in criminal cases the decision was rendered within 0.6 months.

In 2005, the average time from an appeal in a civil case was granted leave of appeal to the Supreme Court to a decision was rendered, was 5.8 months. In criminal cases, the average time was 2.5 months.

Cases regarding enforcement are in general handled considerably faster than ordinary civil cases.

**2. Have such delays been acknowledged by court decisions? Which courts (national/ European Court of Human Rights)? Please provide some examples in English or French or reference to ECHR case-law.**

As it follows from the statistics quoted under question no.1, the main numbers of cases are decided within reasonable time. In specific cases though, the national courts have found that that the delay in a judicial proceeding has been excessive. Such delays have been noted both in criminal cases and in certain civil cases – for instance tax cases.

Norway has been a party to only a few cases before the European Court of Human Rights. In the case of Beck v. Norway, application no. 26390/95, the European Court of Human Rights found that that the proceedings had exceeded a reasonable time, but that the national court had afforded adequate redress for the alleged violation. As a result, the European Court of Human Rights held that there had not been a violation of Article 6 § 1 of the Convention. The same result was found in Lie and Berntsen v. Norway, application no. 25130/94.

**3. Does an explicit requirement of reasonableness of the length of the proceedings equivalent to that contained in Article 6 § 1 of the European Convention on Human Rights exist in the Constitution or legislation?**

The Human Rights Act of 1999 gave The European Convention of Human Rights the legal force of national parliamentary legislation. The Convention is therefore invoked directly before the national courts, and Article 6 § 1 sets binding limits on the length of judicial proceedings. Furthermore, the Human Rights Act states that the convention shall prevail over any other conflicting statutory provisions.

The Criminal Procedure Act sets forth certain time limits with regards to the handling of cases where the defendant is held in custody. In both criminal cases and civil cases, there are statutory guidelines as to when a decision should be handed down after the closing of oral proceedings.

**4. Is any statistical data available about the extent of this problem in your country? If so, please provide it in English or French.**

There is no such statistical data available in English or French.

The official statistics shows that in general, there are no excessive delays in the judicial proceeding in Norway, cf. question no 1.

**5. Does a remedy in respect of excessive delays in the proceedings exist in your country? If so, please describe it (who can lodge the complaint, before which authority, according to what - ordinary/special – procedure, within what deadline etc.). Please provide the texts of the relevant legal bases in English or French.**

No specific legislation has been passed, proving specific remedies in case of excessive delay in the judicial proceedings.

An excessive delay may constitute a procedural error as mentioned in the Civil Procedure Code and the Criminal Procedure Code, leading the appellate court to quash a decision from the lower court, though this is unusual.

In cases where an excessive delay in the judicial proceedings has resulted in an economic loss, a lawsuit may be filed in order to compensate for such loss.

Certain forms of redress are available during the pending proceedings, cf. question no. 10.

**6. Is this remedy also available in respect of pending proceedings? How?**

Cf. question no. 5 and 10.

**7. Is there a cost (ex. fixed fee ) for the use of this remedy?**

No.

**8. What criteria are used by the competent authority in assessing the reasonableness of the duration of the proceedings? Are they the same as, or linked to, the criteria applied by the European Court of Human Rights in respect of Article 6 § 1 ECHR?**

The criteria used are the same as the criteria applied by the European Court of Human Rights in respect of Article 6 § 1 ECHR.

**9. Is there a deadline for the competent authority to rule on the matter of the length? Can it be extended? What is the legal consequence of a possible failure by the authority to respect the deadline?**

Not applicable.

**10. What are the available forms of redress:**

- |   |     |
|---|-----|
| - acknowledgement of the violation                                | YES |
| - pecuniary compensation  |     |
| o material damage   | NO  |
| o non-material damage   | NO  |
| - measures to speed up the proceedings, if they are still pending | NO  |
| - possible reduction of sentence in criminal cases                | YES |
| - other (specify what)  | YES |

Cf. question no. 5.

**11. Are these forms of redress cumulative or alternative ?**

In criminal cases where there have been excessive delays in the judicial proceedings, the courts shall acknowledge that such delays have taken place. In addition, the courts shall reduce the sentence. However, the courts are not obliged to acknowledge a violation of Article 6 § 1, since according to Norwegian sentencing practice, sentences will be reduced after excessive delays even where the delay did not amount to a violation of Article 6 § 1.

**12. If pecuniary compensation is available, according to what criteria? Are these criteria the same as, or linked to, those applied by the European Court of Human Rights? Is there a maximum amount of compensation to be awarded?**

Not applicable.

**13. If measures can be taken to speed up the proceedings in question, is there a link between these measures and the general case-management of the relevant courts? Is the taking of these measures co-ordinated at a central or higher level? On the basis of what criteria and what factual information concerning the court in question (workload, number of judges, nature of cases pending, specific problems etc.) does the competent authority order such measures?**

Not applicable, cf. question no. 10.

**14. What authority is responsible for supervising the implementation of the decision on the reasonableness of the duration of the proceedings?**

Not applicable.

**15. What measures can be taken in the case of non-enforcement of such a decision? Please indicate these measures in respect of each form of redress and provide examples.**

Not applicable.

**16. Is an appeal possible against a decision on the reasonableness of the duration of the proceedings? Is there a fixed time-frame for the competent authority to deal with this appeal? What would be the legal consequence of non-compliance with this time-limit?**

Not applicable.

**17. Is it possible to use this remedy more than once in respect of the same proceedings? Is there a minimum period of time which needs to have elapsed between the first decision on the reasonableness of the length of the proceedings and the second application for such a decision?**

Not applicable.

**18. Is there any statistical data available on the use of this remedy? If so, please provide it in English/French**

Not applicable.

**19. What is the general assessment of this remedy?**

Not applicable.

**20. Has this remedy had an impact on the number of cases possibly pending before the European Court of Human Rights? Please provide any available statistics in this connection.**

Not applicable.

**21. Has this remedy been assessed by the European Court of Human Rights in respect of Articles 13 or 35 ECHR? If so, please provide reference to the relevant case-law.**

Not applicable.

**SAN MARINO****1. Does your country experience excessive delays in judicial proceedings? Which proceedings (civil, criminal, administrative, enforcement)?**

Yes, two cases concerning civil proceedings.

**2. Have such delays been acknowledged by court decisions? Which courts (national/ European Court of Human Rights)? Please provide some examples in English or French or reference to ECHR case-law.**

Yes, there have been two rulings of the European Court of Human Rights, one finding a breach by San Marino, dated 17 June 2003 (Tierce v. San Marino judgment of 17 June 2003), and one of 21 March 2006 whereby the case was struck out of the case-list following a friendly settlement (Greco v. San Marino, decision of 21 March 2006).

**3. Does an explicit requirement of reasonableness of the length of the proceedings equivalent to that contained in Article 6 § 1 of the European Convention on Human Rights exist in the Constitution or legislation?**

Art. 2 of Constitutional law 26 February 2002 no. 36 modified art. 1 of the Declaration of the rights of the citizens and of the fundamental principles of the San Marino legal order, by introducing the following paragraphs:

*3. The legal order of San Marino recognises, guarantees and secures the rights and freedoms set forth in the Convention for the protection of human rights and fundamental freedoms.*

*4. International agreements on the protection of human rights and freedoms, duly ratified and made enforceable, prevail over conflicting internal provisions.*

Article 6 of the same law 26 February 2002 no. 36 has equally confirmed the content of Article 15 § 3 of the Declaration of rights, by phrasing it as follows:

*“The law ensures that legal proceedings be carried out in a swift, cost-effective, public and independent manner.”*

**4. Is any statistical data available about the extent of this problem in your country? If so, please provide it in English or French.**

As stated under question 1, an inquiry at the Tribunale Commissariale revealed that two actions for denial of justice have been brought against the State: one was abandoned, whereas the other one is currently pending.

**5. Does a remedy in respect of excessive delays in the proceedings exist in your country? If so, please describe it (who can lodge the complaint, before which authority, according to what - ordinary/special – procedure, within what deadline etc.). Please provide the texts of the relevant legal bases in English or French.**

There is no specific domestic remedy against the excessive length of proceedings in San Marino.

It must be said however that the case-law has considered that all the non merely programmatic provisions of the European Convention on Human Rights are directly applicable as part of the San Marino law (nowadays they even prevail over the other provisions), following the Convention's ratification by decreto reggenziale 9 March 1989 no. 22 (Giud. app. pen. Gualtieri, ord. 16 April 1991, Varinelli, pp no. 53/91; Giud. app. pen. Nobili 31 October 1996, Stefanelli, pp. no. 38/1992; Giud. app. pen. Gualtieri 25 giugno 2001, Molari, pp. no. 1114/97).

As Article 6 § 1 ECHR may be considered as a self-executing provision, it may be considered that an ordinary action for damages may be brought before the civil judge on the ground of breach of the reasonable time requirement.

It must be added that Article 2 of Law 27 June 2003 no. 89 has modified Article 200 of the code of criminal procedure by introducing amongst the grounds for revision of judgments and penal decrees of condemnation (decreti penali di condanna) the following:

*“d) if the European Court of Human Rights has found that a judgment has been rendered in breach of the European Convention on Human Rights or its Protocols and the serious adverse consequences of such judgment can only be removed through its revision”.*

The above provision seems applicable also in case of a breach of the reasonable time requirement, even though it might be difficult to prove that the “serious adverse consequences” may only be removed through a revision.

**“THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA”****1. Does your country experience excessive delays in judicial proceedings? which proceedings (civil, criminal, administrative, enforcement)?**

The Republic of Macedonia experiences excessive delays in judicial proceedings, especially in civil and enforcement cases.

The analysis of the performance of the judicial system in the Republic of Macedonia demonstrates that the delivery of court summons or documents has been one of the main reasons for delays in the proceedings. The legal provisions governing this matter (that were amended by new laws adopted in 2005, mentioned below) were leaving large space for abuse on the part of the involved parties by avoiding to receive court summons or documents, or by indicating incorrect or concealing the accurate address. The principle of personal delivery that has been accepted in the procedural legislation (both criminal and civil) as a condition associated with individual freedoms and rights, does not correspond consistently with the other regulation (for residence registration) that would allow greater civil obedience and functioning of a so-called “mail box” system.

Furthermore, laws allowed for an abuse of the institute of exemption (in practice, besides the request for exemption of the sitting judge, and after a negative ruling upon such a request, an exemption could also be requested for the Court’s President and even for the Court itself, and even more on several occasions during the same proceedings upon a single case).

Frequent delays of trial hearings also occur as a result of the failure of the involved parties, attorneys, witnesses or court experts to appear before the court, despite having been orderly summoned. Such occurrence has been typical in particular for cases involving larger number of parties, i.e. defendants and attorneys.

The previously existing legal provisions which allowed new facts and evidence to be presented in proceedings upon appeals, directly contributed to the delays in proceedings (if a party is not satisfied with the Court’s ruling, by presenting new facts and evidence in the appeal, it exercises a possibility that the decision may be revoked by a higher court and the case be remanded to the court of first instance for re-trial and reassessment).

The system of alternative dispute resolution is currently under development. The use of arbitration in practice has been very limited.

Additional reasons for delays in procedure are the non-existence of adequate registers and records, as well as the low level of technical equipment available to the courts in their handling of cases. Namely, there is still lack of an integrated and authorized access to good-quality information, as well as of generation and storage mechanism for all documents from the initiation up to the permanent filing of a case (inappropriate document management).

At the same time, the flow, organization and analysis of data are a slow process.



**2. Have such delays been acknowledged by court decisions? Which courts (national/European Court of Human Rights)? Please provide some examples in English or French or reference to ECHR case-law.**

Such delays have been acknowledged only by the European Court of Human Rights, since there is no a legal remedy in national law providing for protection of excessive delays in judicial proceedings. In 2005 European Court of Human Rights delivered the following judgements against the Republic of Macedonia where the ECHR found a violation of Article 6 paragraph 1 (excessive delays in judicial proceedings) of the European Convention of Human Rights: *Atanasovic v Republic of Macedonia Application No.13886/02 of 22.12 2005 ECHR* and *Dumanovski v Republic of Macedonia Application No 13898/02 of 8.12., 2005 ECHR*.

**3. Does an explicit requirement of reasonableness of the length of the proceedings equivalent to that contained in Article 6 § 1 of the European Convention on Human Rights exist in the Constitution or legislation?**

*The Constitution of the Republic of Macedonia* does not contain an explicit requirement of reasonableness of the length of the proceedings equivalent to that contained in Article 6§1 of the European Convention on Human Rights. However, Article 50§1 of the Constitution of the Republic of Macedonia provides that: “Every citizen may invoke the protection of freedoms and rights determined by the Constitution before the ordinary courts, as well as before the Constitutional Court of the Republic of Macedonia, **in a procedure based upon the principles of priority and urgency**”.

Legal provisions containing an explicit requirement of reasonableness in terms of Article 6§1 of the European Convention of Human Rights are to be found in the Law on the Courts as well as in procedural laws.

The *Law on the Courts* (“Official Gazette of the Republic of Macedonia” No. 36/95) in Article 7 stipulates that: “Everyone is entitled to lawful, impartial and fair hearing in reasonable time”.

The *Law on Civil Procedure* (“Official Gazette of the Republic of Macedonia” No. 79/2005 in Article 10§1 says: The Court is obliged to conduct the proceedings **without delay, in reasonable time**, with as little costs as possible, and to prevent any misuse of rights of the parties in the proceedings.

According to Article 4§1 of the *Law on Criminal Procedure* (“Official Gazette of the Republic of Macedonia” No. 15/97, 44/2002, 74/2004 and 15/2005 – cleared text): A person charged with criminal offence is entitled to a fair and public hearing **within reasonable time** before a competent, independent and impartial court established by law.

According to Article 6 of the *Law on Enforcement* (“Official Gazette of the Republic of Macedonia” No. 35/2005): In conducting the enforcement, the enforcement agent is obliged **to act promptly**, according to the order in which he has received the cases at work, unless the nature of the claim or some other special circumstances require otherwise.

According to Article 8 of the *Law on General Administrative Procedure* (“Official Gazette of the Republic of Macedonia No. 38/2005): “In administrative decision making, administrative bodies are obliged to ensure the **efficient exercise of rights and interests of the parties** in the administrative procedure.

According to Article 17 of the same Law: “The administrative proceedings is conducted *economically and urgently without delay, in a cost-effective and time-consuming way*, in such a manner that will allow everything that is necessary to be obtained for a rightful determination of facts and for making a lawful and correct decision”.

**4. Is any statistical data available about the extent of this problem in your country? If so, please provide it in English or French.**

The average duration of cases for civil and criminal decisions is presented in the chart below:

Average duration of cases		2001	2002	2003	2004 (first 6 months)
Civil Cases	Basic courts (first instance)	10 m. & 10 days	10 m. & 1 day	8 m. & 26 days	9 m. & 16 days
	Appealed civil cases (second instance proceedings)	30 days	1 m. & 11 days	1 m. & 9 days	1 m. & 24 days
	Supreme Court	1 y. & 6 m. & 22 days	1 y. & 6 m. & 26 days	11 m. & 10 days	7 m. & 15 days
Criminal Cases	Basic courts (first instance)	9 m. & 13 days	9 m. & 24 day	8 m. & 27 days	9 m. & 7 days
	Appealed civil cases (second instance proceedings)	1 m. & 1 days	28 days	26 days	26 days
	Supreme Court	1 m. & 12 days	2 months	1 m. & 29 days	2 m. & 6 days
<i>Source: State Statistical Office</i>					

Regarding the enforcement of judgments, the average time period between the delivery and the execution of judgments in civil and criminal cases is presented in the chart below:

	2001	2002	2003	2004 (first 6 months)
Civil cases	11 months & 11 days	6 months & 18 days	6 months & 23 days	7 months & 12 days
Criminal cases	2 years & 9 months & 16 days	3 years & 1 months & 5 days	2 years & 3 months & 21 days	1 year & 11 months & 29 days
Source: State Statistical Office				

**5. Does a remedy in respect of excessive delays in the proceedings exist in your country? If so, please describe it (who can lodge the complaint, before which authority, according to what - ordinary/special – procedure, within what deadline etc.). Please provide the texts of the relevant legal bases in English or French.**

In the Republic of Macedonia a special judicial remedy in respect of excessive delays in the proceedings does not exist. There is however, an administrative remedy within the competences of the Ministry of Justice in the area of judicial administration. According to Article 77 of the Law on the Courts, the Ministry of Justice is competent to review the complaints of the citizens concerning the work of the courts especially those related to delays in the court proceedings. The complaint is lodged in writing, by the party in the proceeding. Upon the complaint the Ministry of Justice in written correspondence with the court obtains information regarding the case (especially about the reasons for the delay and to whom is the delay attributable) and informs the complainant about its findings again in writing. This remedy in practice has shown very little effectiveness since the Ministry of Justice cannot order the court to undertake certain measures for speeding-up the procedure in a particular case. If the Ministry of Justice finds that the delay in the procedure is a result of unprofessional and unethical conduct of the judge sitting in the case, the Ministry can inform the Judicial Council of the Republic of Macedonia and propose dismissal of the judge.

The Judicial Council is also competent to review the complaints of citizens regarding the conduct of judges.

**6. Is this remedy also available in respect of pending proceedings? How?**

The remedy described under question no. 5 is available in respect of pending proceedings and is almost always used by citizens regarding cases pending before the courts.

**7. Is there a cost (ex. fixed fee ) for the use of this remedy?**

No.

**10 What are the available forms of redress:**

- acknowledgement of the violation
  - pecuniary compensation
    - o material damage
    - o non-material damage
  - measures to speed up the proceedings, if they are still pending
  - possible reduction of sentence in criminal cases
  - other (specify what)
- YES