

**EUROPEAN COMMISSION
FOR THE EFFICIENCY OF JUSTICE
(CEPEJ)**

**Time management of justice systems:
a Northern Europe study**

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La gestion du temps dans les systèmes judiciaires: une étude sur l'Europe du Nord

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Executive summary

The Report *“Time management of justice systems: A Northern Europe study”* describes measures that might be helpful in keeping time use in European judicial systems within the boundaries of the “reasonable time” – standard set out in Article 6 (1) of the European Convention on Human Rights. It contains two studies.

Part One: *“Time management in Nordic courts: Review of proposals and policies aimed at reducing timeframes in courts”* describes the use and setting of timeframes in the Nordic countries with special focus on time frames for priority cases. It also provides a typology of deadlines. It then turns to time management strategies with emphasis on court leadership and recommendations to the judge to explore the parties openness to mediation, the need for a preparatory meeting and for setting the date and time of the main hearing at an early stage. A Danish pilot project on improved administrative management in civil cases is described, together with remedies for better co-operation between the different court players in juvenile matters. Important components of quality work are legally accurate judgments with well-written reasons, respectful treatment of parties and a friendly working environment.

Proceedings should be completed within an optimal time frame, with due respect to the complexity of the matter and the interests involved. The timeframe should be properly explained to the parties and adhered to by all the players involved. A Danish practice of using “best practice” consultants is explained. Measures to shorten case-handling time, authorisation of prosecutors to summon and set trial dates together with strategies for fast-tracking are introduced.

Part One also discusses specialisations, both between courts and judges within the court. It contains descriptions of new technologies; video- and telephone-conferencing and different IT systems used for case management and case processing. Part One ends with descriptions of two models used in Denmark and Norway for calculating and comparing time use and workloads between the courts. The models are used both for setting standard time frames for different operations in the processing of cases and for resource allocation to the courts.

Part Two: *“Swifter criminal justice in Norway: Pre-trial stage – from the Report to the prosecutorial decision of the police”* summarises a major report from an extensive Norwegian project on swifter criminal justice. It points out that the starting point for the “reasonable time”-standard embodied in ECHR Art 6 (1) in criminal matters occurs when a person is *charged* with an offence.

A charge exists when a suspect is “substantially affected” by the investigation, which often happens long before the case is brought before a court for a substantive judgment. If states are to avoid violations in criminal cases, time management has to also take into account the pre-trial stages.

The criminal case processing chain is a high volume system. The caseload at the police level is comparable to that of other public agencies that handle cases on a volume basis. Only a limited part of the caseload is forwarded to the courts and the selection process therefore has a tremendous impact on the workload of the courts. An action plan against delay that fails to target police and prosecution will obviously appear incomplete. Due to the hierarchical and uniform organisation of the police and prosecution, it might be easier and faster to achieve results by focusing at backlogs on the pre-trial stage, than in the courts.

The Report found striking differences in the detection rate and processing time between prosecutorial districts. They could not be explained from variances in volume or complexity of the caseload. It also created backlog profiles for selected police districts and found large variations that could not be explained from differences in crime rate or crime profile. The findings gave strong indications that a significant potential for improved efficiency existed.

The study separates processing time into two major components – *action time* and *standstill time* and made an in depth study of them. Action time is the time spent when someone works on the case. Standstill time is the time when nothing happens. The study has a distinct focus on standstill time.

The findings appear striking. While total average action time from the Report of the crime to the prosecutorial decision varied between two and five days both between police districts and crime areas, *standstill time* varied between 43 and 309 days. Action time only constituted a minor part of the total processing time, while standstill time counted for more than 90%.

Even with huge margins, the average action time was far below ten days, and this low figure could not be attributed to substandard work. Most cases reviewed appeared minor and handled thoroughly enough. Most of the action time took place at the first month of the processing time. The Report therefore asked if the police and prosecution focused enough on closing their cases without delay. When the essential work was done, the police prioritised new incoming cases instead of finishing their old ones. Of the time used for making the prosecutorial decision, on average not more than one day was action time, and that day was obviously spent toward the end of the processing time. When cases arrived at the prosecutor’s office, they were put at the bottom of the pile, waiting for their turn.

Finally Part Two summarises the numerous reform proposals for reducing time use proposed in the Report, and separates them into general remedies against delay and measures especially aimed at reducing standstill time. It concludes that many of the remedies might be transferred to the time management in the courts.

The Report builds on policy reports and administrative studies from the last decade recommended by the CEPEJ members of the Nordic countries. All of the summarised policies elucidate how the 18 action lines in the CEPEJ Framework Program might be put into action.

The Report is meant to provide an *initial* understanding of current time management policies in the Nordic countries. The descriptions of the policies are short and general. If a model is of special interest to a member state, it is advisable to contact the Nordic state in question for further information.

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Foreword

The Report “Time management of justice systems: a Northern Europe study focuses on measures that might be helpful in keeping time use in European judicial systems within the boundaries of the “reasonable time” – standard set out in Article 6 (1) of the European Conventions of Human Rights.

It contains two parts. The first one – “Time Management in Nordic courts” – focuses on measures relevant to the courts. They are obviously the primary targets of Article 6. However, in criminal cases, the reasonable time standard might also apply to pre-trial stages. The European Court of Human Rights has taken the police investigation and prosecutorial decision making into account. The second study: “Swifter criminal justice in Norway” therefore contains measures aimed at having a bearing on the handling of criminal cases by the police and prosecution. The challenges of effective time management have many common features, be it in the courts or at the police and prosecution stages. Methods developed in one part of the judicial system might be useful also in other parts.

The Report builds on policy reports and administrative studies recommended by the members of the European Commission for the efficiency of Justice (CEPEJ) from Denmark, Finland, Norway and Sweden. Iceland is not included. When it is referred to “the Nordic countries” for the lack of a more precise label, this omission should be kept in mind.

The project was designed by Professor Jon T. Johnsen, expert member of CEPEJ Task Force on timeframes of proceedings (CEPEJ-TF-DEL)¹ and approved by the CEPEJ-TF-DEL at its second meeting (Strasbourg, September 2005).²

The first part: “Time management in Nordic courts” has been prepared for CEPEJ by Mirka Smolej, Researcher at the National Research Institute of Legal Policy in Finland, and funded by the Ministry of Justice of Finland. The Nordic members of the CEPEJ have done a considerable job in providing the material for the study, and have also actively participated in the supervision of the work. They are

- Kari Kiesiläinen, Ministry of Justice, Finland
- Merethe Baustad Ranum, National Court Administration, Norway
- Klaus Rugaard, Danish Court Administration, Denmark
- Johan Sangborn, Ministry of Justice, Sweden
- Jon T. Johnsen has supervised the study on behalf of CEPEJ-TF-DEL.

1. See CEPEJ-TF-DEL (2004) 4.

2. See CEPEJ-TF DEL (2005) 11.

The second part, consisting of the review of the report on “Swifter criminal justice in Norway” has been prepared by Jon T. Johnsen.

CEPEJ – TF –DEL has commissioned, supervised the report at various stages and finalised it for adoption by the CEPEJ at its 8th plenary meeting (December 2006) in view of being published within the Series “CEPEJ Studies”. The CEPEJ-TF-DEL was chaired by Mr Alan UZELAC (Ph.D. Professor at the Faculty of Law, University of Zagreb, Croatia) and composed of Mr Jon Johnson (Professor in Law, Dean, Faculty of law, University of Oslo, Norway), Ms Janny Kranenburg (Vice-President, Court of Appeal of s’Hertogenbosch, Sector Civil Law Sec, The Netherlands), Mr John Stacey (Head of Civil & Family Procedure Branch, Her Majesty’s Courts Service, London, United Kingdom), Mr Gabor Szeplaki-Nagy (Judge, Head of the Private Office of the President of the Supreme Court, Director of the Human Rights Office of the Supreme Court, Budapest, Hungary), Mr Michael Vrontakis (Vice-President of the State Council, Greece) and Ms Jana Wurstova (Czech Bar Association, Prague, Czech Republic). Mr Klaus Decker also participated in the Task Force as an observer in respect of the World Bank, and Mr Jean-Jacques Kuster as an Observer in respect of the European Union of Rechtspfleger and Court clerks.

The reports selected for the Time Management study cover a variety of projects and recommendations developed in the Nordic countries during the last decade. The authors have selected proposals and reforms that might be useful as ideas, inspirations and models to other European countries.

The focus has been on the following elements:

First, the authors have searched for *innovative measures or models* for time management and focused on the following four elements:

- a brief overview of the problems or dysfunctions that made improved measures against delays desirable,
- a short summary of the ideas and debate behind the reform and how it has been justified,
- a description of the content of the reform or the reform model used and the reform methodology applied,
- a brief overview of the implementation and results, and follow-up systems.

Secondly, the authors have looked for descriptions of relevant *analytical tools* for effective time management. Such tools might concern statistics, systematisation of practical knowledge, research projects and methods developed especially for the time management in courts, for example the Norwegian workload model for the courts (Belastningsmodellen, see Part One pp. 31-33).

However the documents available vary in the level of detail relevant to this exercise. Most of them are reasonably comprehensive on the reform models, while studies of outcomes are not so detailed.

The collected documents also show that several of the models have been considered or used in more than one Nordic country. We have therefore focused on the most distinct description, and just mentioned its application in the other countries.

The “Swifter Criminal Justice” study also maps measures and analytical tools for time management at the police and prosecution according to the principles described above. Contrary to the Court Study, it summarises only one of four extensive reports from a comprehensive project on reducing time use in all major parts of the Norwegian criminal justice system. The report has been selected due to its richness on models, methods and analytical tools for reducing timeframes, and the way it attempts to combine different methods and tools in a concerted strategy for shortening time use.

The study separates processing time into two major components – *action time* and *standstill time*. Action time – or “working time” – is the time spent when someone works on the case. Standstill time – or “waiting time” or “queuing time” – is the time when nothing happens. The study has a distinct focus on standstill time. It shows that standstill time counts for most of the time use at the police and prosecution and that measures for reducing standstill time are both different from and cheaper than measures aimed at action time reduction.

Conducting independent research on the dissemination and outcomes of the models that are described has been outside the time spent and the resources made available to the study. Although the outcomes of promising reforms are of obvious interest to other systems considering making use of them, it is not the case that success or failure in one judicial system will be repeated necessarily in another judicial system. Judicial systems vary widely in Europe, and models developed in one country usually need to be adapted and adjusted before they can operate properly in another country. It is for the judicial authorities in each member state to select from the models presented, and to develop them according to their own situation.

Looking at CEPEJ’s survey of European judicial systems,³ we find that Nordic countries score highly on most of the indicators used. In the European context, they appear as well developed. Still our report shows an extensive and continuous reform process in all countries. Also, comparably well developed judicial systems show significant shortcomings that need to be remedied. Neither do we think that the amount of resources spent on judicial

3. European Commission for the Efficiency of Justice: *European judicial systems*. Edition 2006 (2004 data).

systems – nor whether the systems work fast or slow – are crucial to the usefulness of the time management policies and systems described in our report. Effective time management consists of a range of measures, linked together in a systematic way. Most of them are not expensive; many are just a question of thinking differently.

This study is mainly meant to provide an *initial* understanding of current time management reforms in the Nordic countries. The authors have consciously made the descriptions short and general. If a certain model is of interest to a member state, it is advisable that the relevant authorities contact the relevant Nordic countries for further information according to their specific interests. It is hoped that the report triggers off more intense exchanges of reform ideas and inspires other jurisdictions to bring forward their contributions to reducing judicial time use in Europe.

The CEPEJ wishes to express its warm thanks to the Ministry of Justice of Finland for the essential support given to this study, to the National Research Institute of Legal Policy in Finland and the authorities in Denmark, Norway and Sweden which have been involved in the research work. Its deep thanks also go to the scientific experts.

Part One

Time management in Nordic courts: review of proposals and policies aimed at reducing delays in courts

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1. Introduction

The study “Time Management in Nordic Courts” introduces and synthesises actions that have been initiated and carried out in Nordic countries (Denmark, Finland, Norway, Sweden) during recent years. It focuses on strategies and proposals that might bear on many or most of the member states of the Council of Europe. It is also desirable that this report could serve as a tool for exchanging ideas and practices among the target countries themselves.

- Marco Fabri and Philip Langbroek (CEPEJ (2003) 20 Rev) have emphasised some major issues regarding time management and time use in judicial systems:
- judicial commitment to time management;
- court leadership and accountability mechanisms for case progress;
- involvement from the different parties involved in time planning;
- court supervision of case progress;
- definitions of goals and standards for time use;
- monitoring of cases by an information system;
- a case management approach;
- policy against unjustifiable prolongation and an individual assignment system.

The CEPEJ-TF-DEL has been entrusted to develop eighteen “lines of action” set out in the Framework programme of the CEPEJ⁴ into practical measures. The issues mentioned by Marco Fabri and Philip Langbroek (ibid.) might be considered as the foundation for the eighteen lines of actions in the Framework Programme. In its discussions so far, the Task Force has emphasised the following issues: improving the foreseeability of the time use (line of action 3), defining and monitoring standards for an optimum timeframe for different categories of cases (line of action 4), improving statistical tools and developing communication strategies (line of action 5), measures to control the body of cases dealt with by the courts by ensuring appropriate use of appeals and avoid misuse by screening out manifestly ill founded cases (line of action 8), effective compliance with the procedural rules (line of action 9), defining priorities in case management (line of action 10), measures to reduce waiting time – especially for victims and witnesses – by developing practices to organise trials (line of action 11) and improve the training in time management of judges, prosecutors, lawyers and other professionals in judicial systems (line of action 15). These lines of actions

4. See CEPEJ (2004) 19 Rev.

have been important to the selection of actions and proposals presented in the study.

1.1. Data and focus of the report

Ministries of Justice and court administrations in all four countries have assisted in mapping relevant studies and reports from their jurisdictions. They have produced initial lists and overviews of existing studies at the request of the National Research Institute of Legal Policy in Finland and forwarded the studies to the researcher. In practice, data presented include working group reports, proposals and internal memoranda of ministries of Justice and national court administrations of the target countries. Some reports contain descriptions of empirical studies, such as questionnaires and interviews directed to different authorities in the judiciary.

Kaijus Ervasti and Hertta Kallioinen (2003, *Finland*) have noted that one central problem associated with empirical research relating to courts is that there is no solid research tradition in court sociology or legal sociology for that in Finland. The lack of systematic empirical data about court practices makes it difficult to assess the development and potential problems. Based on this study, this appears to be a major problem in other Nordic countries as well, since more in-depth academic studies on time management in courts appears to be non-existent.

The examination of this report covers civil, criminal and administrative matters. The Norwegian and Danish judiciaries do not include separate courts for administrative matters, but in **Sweden** and **Finland** this type of courts exists. As Fabri & Langbroek (2003) have noted, the concept of “court delay” is difficult to define, because it does not refer only to problems related to rules of procedure, but also to working practices of the courts. In criminal matters it refers to the interaction between the court organisation, the public prosecutor’s office and the police; in civil matters to the interaction between the court and advocates, including their law-firms, and to the interaction between parties, the court and, sometimes, bailiffs; in administrative cases to the interaction between administrative bodies, pre-trial committees and administrative courts. One point of attention is also the interaction between first instance courts, appeal courts and the supreme courts. Overall, the complexity of situations involving court delays is highly differentiated. From the point of view of this project, it is extremely challenging to present general time management systems and actions that could be applied to all different proceedings (criminal, civil, and administrative), and to all the varying judicial systems and practices in the four target countries.

The report does not analyse new raw data but synthesises studies, reports and reform proposals that have already been produced. Moreover, the aim has not been to include statistical data of caseloads in each target country

or carry out statistical comparisons between caseloads or processing times. The idea has neither been to present a comprehensive picture of policies and views regarding time management in Nordic countries. Instead, the objective of this study is to make an inventory of measures that may speed proceedings up, and to present an overview of strategies and actions aimed at reducing delays in legal proceedings. Although the main goal is descriptive, the results form a general overview of policy instruments to enhance time management strategies in courts.

1.2. Timeframes

The confidence of citizens in the legal system is dependant on their perceptions on how quickly cases are processed by the justice system and on the extent to which this processing is conducted in a way that ensures the protection of the individual's legal rights. Naturally, the case processing times of courts are directly related to the number of incoming cases and to the number decided.

Delays in proceedings have several negative implications. Often the cases in legal proceedings concern issues that are strongly connected to people's every-day life such as children, family, income, living conditions, work, property and safety. The legal process is often a unique experience in the life of a person that might take over thoughts and consume energy and resources from other areas of life. Already for these humane reasons it is essential that the proceedings are carried out without unjustified delays. (Lainkäytön laadun mittaaminen tuomioistuimessa 2005, 45, **Finland**)

The increase in processing times during the recent years in several European states (including the Nordic countries⁵) might partly be due to the lack of sufficient personnel in courts. Without an increase in the number of staff, the processing times will probably continue to rise e.g. because of backlogs from previous years, the expected increase in case loads and because of the increasing complexity of cases. Particularly, civil proceedings consume several days of action time because of their complexity. (God og effektiv rettspleie 2003, 4-7, **Norway**) However, the problems encountered cannot be explained only by the lack of staff; the factors behind delays are more complex. The number of cases that are decided depends on the resources of the court, but also on the efficiency and organisation of the court. Problems also arise because the values and objectives of the regulations are not all followed in practice. Besides the fact that a citizen should feel that the court decisions are just, it is also important to have secure, effective, swift and reasonably priced proceedings. In order to develop judicial proceedings a

5. The number of length of proceedings judgments by the European Court of Human Rights during the period from 1 January 1985 to 19 October 2006 regarding the Nordic countries are: Denmark 16 (2 violations), Finland 23 (17 violations), Norway 2 (0 violations) , Sweden 14 (5 violations) (CEPEJ-TF-DEL (2006) 3, 59-60).

Finnish commission, that examined the development trends of the court system, stated “quality work” to be of special importance. The term refers to innovations and modifications in work practices of judges, lawyers and the prosecutors and during recent years the concept has been widely recognised and implemented into practical measures in the Nordic countries. (Tuomioistuinlaitoksen kehittämiskomitean mietintö 2003, 162-163, **Finland**.)

In principle, there are no set legislative timeframes or deadlines for different categories of cases in the Nordic countries. The lack of such standard timeframes for specific types of cases is probably partly due to the problems it would create. Providing the public with promises of a certain speed of process could often lead to disappointment and a subsequent lack of confidence in the system, since standard timeframe are difficult to adhere to. However, in all Nordic countries the governments have issued recommendations regarding timeframes for courts.

The National Courts Administration of **Sweden** makes statistical follow-ups on the basis of average current duration of different cases and on cases older than six and twelve months. The National Courts Administration also helps the courts by producing tools as a support in their operational planning and follow-up. The courts make their own follow-ups and most of them report on cases that have been pending for a given length of time. In these reports one can, for example read the reasons for delay. Currently, several trial projects are implemented on a local level in **Sweden**, aiming at reducing the length of court proceedings. (Memorandum 9.3.2005, **Sweden**.)

Recommendations for processing time standards for Norwegian courts were set by the government in the early 1990s. For the courts of first instance the timeframes for proceedings are six months for ordinary civil matters, three months for ordinary criminal cases, and one month for summary criminal cases (Hagedal 2004, 228-229, **Norway**). The Norwegian Parliament has also formulated recommendations for deadlines, which differ very slightly from the deadlines set by the government (God og effektiv rettspleie 2003, 11, **Norway**).

In the **Finnish** Supreme Administrative Court the average processing time is set to 10 months. In addition, the aim is to process 25% of the cases in less than four weeks and 35% of the cases within 6-9 months. The objective set for 2006 is to pay special attention to overall processing times in the Finnish Supreme Administrative Court and in Finnish general courts and especially to enhance the processing of cases that have been pending over one year (Hallintotuomioistuinten tulostavoitteet vuonna 2006; Yleisten tuomioistuinten ja työtuomioistuimen tulostavoitteet vuonna 2006, **Finland**). The aims regarding courts of appeal are that the differences in processing times between individual courts are reduced. The aim is that the difference

between the longest and shortest processing times in courts of appeal is reduced from over six months (in 2005) to 5.5 months in 2006. (Yleisten tuomioistuinten ja työtuomioistuimen tulostavoitteet vuonna 2006, **Finland**.) In Finnish district courts the time limit for criminal cases is 3,1 month and in cases brought up by an extended application for a summons 7,9 months. Regarding nearly all district courts a time limit for processing 50% of the cases within two months has been set. The process should not exceed 9 months in more than 10% of the cases. The district courts shall also aim at identifying and processing already delayed criminal cases as swiftly as possible. (Yleisten tuomioistuinten ja työtuomioistuimen tulostavoitteet vuonna 2006, **Finland**.)

1.3. Priority cases

Certain matters – such as some criminal cases – are generally considered priority cases in the Nordic countries. For example in **Sweden**, cases where a person is on remand together with a number of cases where the person is under the age of eighteen are cases for which the legislation contains provisions requiring the case to be dealt with within a specified maximum period. Also, so called family cases, i.e. cases that relate to custody, access or a child's residence, are normally given priority. (Memorandum 9.3.2005, **Sweden**.)

The general demand for urgency in youth criminal procedure that previously concerned the police and the prosecutor was supplemented with a deadline reform regarding certain matters in **Sweden**. Currently the pre-trial investigation of those who are under the age of 18 and pre-trial investigations of crimes in which the prison sentence can exceed six months will be processed with particular urgency.

Moreover, preliminary investigation must be completed as soon as possible and the charge decided latest within six weeks from the completion of the pre-trial investigation. The main hearing shall be held within two weeks from the moment the charge has been brought in cases where the accused person is under the age of 18 and the conviction of the crime in question is more than six months imprisonment. (Memorandum 27.5.2005, **Sweden**.)

In **Norway** the first instance hearing in a criminal case should be held within 6 weeks after the case has been brought before the district court if the defendant remains in custody or is a juvenile. Appeal hearings shall then be held within 8 weeks after permission to appeal has been granted. Some civil matters are generally prioritised in terms of timeframes of proceedings. Examples of this kind of matters are child custody matters and labour disputes. (Hagedal 2004, 228-229, **Norway**).

In **Norway** the hearing in a criminal case should be held within 6 weeks after the case has been brought to the district court and within 8 weeks after

permission to appeal has been granted by the court of appeal. At the same time, some matters are generally prioritised in terms of timeframes of proceedings. Examples of this kind of matters are child custody matters and labour disputes. (Hagedal 2004, 228-229, **Norway**).

In **Denmark**, the Parliament and the Government have decided that special priority should be addressed to criminal cases involving violence and rape. The district courts have therefore been instructed to finalise such cases within a time limit of 37 days from the day the courts receive them. Every year the Danish Court Administration reports on the achievement of the targets. This report is sent to a committee under the Danish Parliament, Folketinget. At the same time the Danish Court Administration – in relation to cases involving violence – makes recommendations for how these cases can be dealt with in order to finalise them as quickly as possible. Furthermore the Court Administration analyses the reasons behind the delays.

1.4. Deadline typology

Although indispensable deadlines for courts are rarely used in the Nordic countries, a range of more flexible time limits exists. They are of different kinds: maximum deadlines, ordinary or average deadlines, optimal deadlines (“as fast as possible”). Special deadlines are also used, for example for child custody, juvenile crime and in criminal cases with the suspect on remand for securing frequent court reviews of the speed of the investigation and indictment decision, which also places pressure on the police and prosecution to prioritise custody cases.

The courts, according to an authority given by law, might set discretionary deadlines. Such deadlines usually affect the parties that might be entitled to complain if they are not complied with. Courts might set up internal deadlines that might be controlled and sanctioned by the court, but without entitlements for the parties. The parliament and the court administration or ministry of justice as part of budgetary allocations or other general administrative directives might also set up such deadlines.

A new kind of deadlines has developed due to an increased emphasis on court management. It can be called “percentage deadlines”: a certain share or percentage of a defined caseload must be handled within one limit, while the rest might be handled within another and more liberal limit. It is left to the courts to select the cases necessary to fulfil the percentage limit.

Table 1 summarises some examples of timeframes used in Nordic jurisdictions.

Table 1. Summary of some judicial timeframes in Nordic countries

Norway: Recommendations for processing time standards in courts

Type of court	Cases	Type of proceedings	Timeframe
Courts of 1st instance	Civil	Ordinary	6 months
	Criminal	Ordinary	3 months
		Summary	1 month

Finland: Objectives for administrative cases

Type of court	Cases	Type of proceedings	Timeframe
Supreme Administrative Court	Administrative	All	10 months average
			25% cases < 4 weeks
			35% < 6-9 months
Courts of appeal	Appeal	All	Reduce difference in processing time from 6 to 5.5 months (max to min)

Finland: Objectives for criminal cases

Type of court	Cases	Type of proceedings	Timeframe
District	Criminal	All	3.1 months (first instance)
			50% within 2 months
			90% within 9 months
District	Cases brought forward by an extended application for summons	All	7.1 months (first instance)

Sweden: Objectives in cases related to criminal cases involving minors

Type of court	Cases	Type of proceedings		Timeframe
Courts of 1st instance	Criminal	Investigation of those who are under the age of 18	Prison sentence can exceed 6 months	Charge should be decided within 6 weeks from the completion of the pre-trial investigation
				Main hearing shall be held within 2 weeks from the moment the charge has been brought

Norway: Objectives in criminal cases for defendants on remand and minors

Type of court	Cases	Type of proceedings	Timeframe
Courts of 1st instance	Criminal	– Defendant on remand – Juvenile (under 18)	Hearing should be held within 6 weeks after the case has been brought to the district court.
Courts of Appeal	Criminal	– Defendant on remand – Juvenile (under 18)	Hearing should be held within 8 weeks after permission to appeal has been granted by the court of appeal.

Denmark: Objectives in some priority cases

Type of court	Cases	Type of proceedings	Objective
Court of 1st instance	Criminal	Cases involving violence and rape	Case should be finalised within 37 days from the day the courts receive them.

2. Management strategies

Management strategies are important for the functioning of the court and also have a huge impact on the speed of the overall proceedings. This chapter is divided into three separate themes related to court management: court leadership, quality work and forwarding matters and tasks in the case handling chain. The separation of the themes is somewhat artificial as the three concepts are overlapping and interrelated. However, in order to present central information for the objectives of this report, some kind of categorisation of measures and themes is essential.

2.1. Court leadership

The judge should be responsible for the fact that the main hearing is actively steered. This contains for example ensuring that the process is concentrated and can be carried out without time waste for the court or the parties involved. It has been suggested in **Norway** (LOK-rapport 8, 2004/2005, *Norway*) that the judge must, at the beginning of the process, go through the timeframe with the parties involved and clarify any possible obscurities related to cause of action, evidence and so forth. Moreover, it has been proposed that the courts should organise meetings with representatives of local lawyer associations in order to develop means that can strengthen and enhance the processing of civil matters. It has also been suggested that guidelines for preparatory work and carrying out main hearings in civil matters should be planned and developed together with lawyers. It is desirable that a representative of the court would participate in the membership meetings of the local lawyer association whenever new guidelines are adopted or other changes made to the court practices. It is important to include lawyers in the co-operation. Co-operation between different courts has been called for in order to develop guidelines to establish the best possible practices. (ibid.)

Courts must see to it that judges are independent in their adjudications. This can set some limits to the management of officials of the courts. In this context it is important to define the border between adjudication and administrative work. The management of courts has traditionally been oriented towards the role of judges so that the characterising trait of the work has been to produce adjudication in matters that the court has at hand. However, the recent development in **Norway** shows that managing a court must contain more: therefore focus should be directed towards active leadership in all sectors of the court actions and the implications of the role of the court management officials should become unambiguous. Unambiguous and committed judges will have significant role in both enhancing courts as organisations and in bringing forth effective utilisation of the resources. The same applies in securing a good and effective process and not a stimulating work environment. (LOK-rapport 12, 2004/2005, *Norway*.)

The problem is not that the possibilities to exercise power over co-workers are too limited for the administrative officials in courts, but that many of the officials themselves have traditionally refrained from using their authority in an active manner. By directing and enhancing the focus of individual officials towards the necessity of good leadership the court officials will become a more important tool for gaining better resource allocation in courts. Apparently there is need for a wider understanding among the officials regarding the importance of the mechanisms enabling good leadership, but also a need to establish these through active processing in courts. (LOK-rapport 12, 2004/2005, **Norway**.)

The judge responsible for the preparation should secure a swift, economical process by active and systematic steering work (table 3). Immediately after the defendant's response to the claim is received, the judge must examine whether the parties involved have been introduced the possibilities for mediation. Information of court mediation must be given in all cases possible. Even in cases where the parties have disregarded an offer for mediation the judge must assess whether there is a need to contact the parties and give more information on the procedure and repeat the offer. This should be applied specially in cases where the statements of the parties differ. The main hearing must be organised within six months from the time the summons is issued and the judge has independent responsibility to assess how long timeframe is needed for the main hearing.

Table 2. "To-dos" for the judge to enhance steering work (LOK-rapport 9 2004/2005, 3-6, Norway)

1.Examining possibilities for mediation.
2. Assessing whether certain regulations have to be applied to the case.
3. Assessing whether there is a need to hold a meeting regarding the preparation of the case.
4. Deciding a date and time for the main hearing.

Before the main hearing the judge must ask the parties to express a proposal for the schedule for the main hearing. The plan must include an assessment of the time needed for the various stages, for example the time needed for presenting evidence. The judge must go through the suggested timeframe and if needed modify the plan with the parties. The time plan will set a binding frame for main hearings. (LOK-rapport 9 2004/2005, 3-6, **Norway**.)

There are probably large variations between the Nordic countries and between individual courts in terms of steering work. One problem is that there seems to be a lack of reported grass-root information on actions and methods that have actually been carried out. It is also probable that variations between different regimes adopted in courts are partly dependant on the personal traits of the judges. In some courts the judge might put special efforts on adhering to administrative deadlines, and in other instances the focus might be directed to other issues. The problem is that information on these kinds of factors affecting the functions of courts cannot be attained through statistical examinations of case processing times. The only applicable method would be to conduct empirical investigations in courts, such as interviews with the judges and court personnel.

2.1.1. Pilot project: enhanced process steering in civil matters

Long processing times in civil matters are regarded as one of the most serious problems for courts in **Denmark**. A lot of work has been done to

examine both the administrative and legislative measures to ensure that citizens have possibilities of an effective process. A Danish pilot project (Pilotprojekt om oget processtyring i civile sager 2002, **Denmark**) related to these questions was carried out in six courts between 2000 and 2002. The aim was to make the whole preparatory phase shorter both in the judge's role by tightening process steering and from the lawyers' side by complying with the set timeframes of the process.

The main model for the project was that already, shortly after the summons has been served a preparatory meeting shall take place. Moreover, it was also made possible to hold this meeting via telephone, and the experiences showed that this was widely used by the pilot courts. The project had the advantage that it involved a large number of representatives and players from various sections of the preparatory organisations, and it also gained large support from both judges and lawyers. The most time consuming phase in civil matters is the preparatory phase, where parties involved present relevant material. If the overall processing times are to be significantly reduced, this should happen by reducing the amount of time used specially for preparation. The court's ability to do this is largely dependant on its process steering. (Pilotprojekt om oget processtyring i civile sager 2002, **Denmark**.)

Focus group interviews that were carried out in some of the target courts gave a clear picture of the changes. The process steering of judges had become more active and during the project the use of time limits for the preparation of written pleadings increased. Also, in requests for extension, reasoned and justified postponements were demanded. The courts had taken a more active role during the trial phase in preparation of civil matters and the experiences indicated that increased process steering could enable significantly shorter processing time. Three of the six pilot courts had significantly reduced their processing times during the first six months of the trial.

The pilot project also aimed at developing forms to combine written and oral forms of preparation. The written procedure was combined in courts with direct dialogues and contacts with the parties involved. The employment of the increased steering measures were not restricted to only one type of a preparation procedure but could be applied to both procedures. (Pilotprojekt om oget processtyring i civile sager, 2002, 4-5, **Denmark**.)

More active process steering was regarded positively by all the participating players in the project. By carefully planning the process beforehand major improvements for the players can be achieved. Defining dates for court hearings and active use of timeframes is especially relevant when the actual time period is expected to be prolonged, for example because many individual calendars must be co-ordinated. It is important that the courts establish

stable lines of actions and as a basic rule not to allow adjournments in cases where the timeframes have not been adhered to. Both judges and lawyers agreed that telephone meetings were especially suitable in preparation of most general civil matters. (Pilotprojekt om oget processtyring i civile sager 2002, **Denmark**.)

2.1.2. Better co-operation between players in juvenile matters

In **Finland**, the duration has been seen as one of the main problems in the juvenile criminal procedure. In the late 1990s, a conviction did not take place until 3-5 months after the crime. Also, co-operation between different officials has been insufficient. The Probation and Aftercare Association is mainly responsible for conducting the personal investigation report during the police investigation. However, additional supporting and counselling measures are needed. (Rikollisuustilanne 2000, **Finland**.)

As a result the Finnish Ministry of Justice set up a pilot project in 2000, in which the criminal procedure of juveniles was shortened to about half compared to the situation before the experiment by means of effective co-operation between different officials dealing with juvenile delinquency. According to Matti Marttunen (2002, **Finland**) the experiment shortened the procedure at all its stages and affected the police investigation, the prosecution, the court proceedings and the enforcement of the punishment. Also, different kinds of supportive measures were combined with the criminal procedure better than before. In practice, the police, the prosecutor, the judge, the Probation and Aftercare Association and welfare officials have co-operated since the beginning of the crime investigation.

2.2. Quality work

Both the national court administrations of the Nordic countries and individual courts are currently making large investments in order to enhance the time balance between different categories of legal matters and to shorten the timeframes for proceedings in courts. This is done e.g. by altering work methods and by special resource allocation within courts. Concerning the preparatory stage, the courts are given more freedom to decide themselves how the internal working order of the court is to be organised. A central point of departure is that the judges will mainly carry out adjudication work and other members of the staff shall handle most of the preparation work.

In **Sweden** a manual defining quality work and measures to be taken in individual courts has been developed by a special "quality group" that consisted of representatives from general courts, general administrative courts and from the regional rent and tenancies tribunals. The working-group has defined the concept of "quality in courts" (table 4) and given its proposal

on the continuing quality work within the Swedish judiciary and proposed methods and strategies for this kind of work.

Table 3. The main components of “quality in courts” (Att arbeta med kvalitet i domstolsväsendet 2005, Sweden)

1. Correct decisions and well-written presentation of reasons.
2. Decisions and summons written in understandable language.
3. Treating parties involved in a respectable manner when approaching the court.
4. Pleasant work environment and atmosphere.

It has been suggested in **Sweden** that each court introduces suitable measures to increase dialogue between different parties, for example in organising group discussions. Regarding perceptions and experiences of private persons, the use of quantitative surveys have been recommended. The results of these examinations should be compiled and reported to all co-workers in the court. Further line of actions and measures should be decided together and the measures taken and their consequences should be reported on a regular basis in staff meetings. Moreover, the actions planned, actions in motion and actions that have already been put to practice should be reported in the courts’ annual reports and the information should be communicated to the National Court Administration. (Att arbeta med kvalitet i domstolsväsendet 2005, **Sweden**.)

On the central administrative level it has been suggested that the National Court Administration provides courts with support and assistance in carrying out quality work. The quality groups should be developed so that individual members could serve as contacts and proposers of quality projects. This reference group could also help to develop new practices for the courts. The National Court Administration has been proposed to be responsible for setting up and maintaining a database of quality benchmarks to be used by courts and also for providing models for conducting surveys.

2.2.1. Rovaniemi Quality Project⁶

In 1999 the most northerly court of appeal jurisdiction in **Finland** launched a quality project regarding the administration of justice. All the courts in the jurisdiction of the court of appeal of Rovaniemi, nine district courts and the court of appeal itself, have taken part in the project. The objective of the project was to develop the functioning of the courts so that the proceedings meet the strictest criteria of fairness, that the decisions are well reasoned and justified, and that the services provided by the court are affordable to citizens. The main working methods have consisted of systematic discussions among the judges and between judges and co-operating partners. The

6. The Rovaniemi project was awarded the “Crystal Scales of Justice” in 2005.

discussions have aimed at attaining improvements in the quality of adjudication. (Summary report of the Quality Project 2005, **Finland**.)

The concept of the quality project is that all the judges of the court of first instance and some of the Rovaniemi court of appeal judges are actively involved in the development. The representatives of the district courts are divided into working groups comprising representatives from different district courts and a representative from the court of appeal. Each working group is assigned yearly with a specific quality theme chosen by the governing board. The working groups examine according to their quality theme the procedures in different courts of instance, define high-quality and generally acceptable procedure or interpretation recommendation, and make a proposal that aims to harmonise different procedures. At the annual quality seminar the work of the quality teams is taken up, and after a debate judges draft their own opinion on the goals to be set for the following year. (Laatu ja asiakaspalveluhankkeet tuomioistuimissa 2005, **Finland**.)

The selection of the development themes is based on the magnitude of the problem addressed. The selection of the themes is finalised during the *Quality Conference*, which takes place every autumn. Usually each working group is assigned to concentrate on one of the development themes. The working groups map out the problems relevant to the theme, look into the practices adopted in the different district courts, define a procedure that can be mutually accepted, and make a proposal for the harmonisation of the court practices. Follow-up measures are designed when the objectives are set.

Some examples of the quality objectives relating to civil matters concern the clarity of the application for a summons (the action) and the response, the substantive management of the case by the judge, the management of evidence, technical case management, and the drafting of reasons for the court's findings on evidence. The discussions cover also the conduct of the judge in the hearing as an element of procedural justice and the preparation of a civil case by the parties themselves. Progress towards the objectives is monitored in follow-up reports. The Quality Project is supplemented by training, offered for 6-8 days per year. (Summary report of the Quality Project 2005, **Finland**.)

The development committee for the Finnish Quality Project also drafted a proposal for a set of *Quality Benchmarks*, which was evaluated in the beginning of 2006. This draft report (Lainkäytön laadun mittaaminen tuomioistuimissa 2005, **Finland**) suggests six separate areas of assessment, which in turn include 40 different quality criteria. One of the areas of assessment is swiftness of court proceedings. This area of assessment comprises four particular quality criteria (table 5.).

Table 4. Quality benchmarks regarding swiftness of proceedings (Lainkäytön laadun mittaaminen tuomioistuimessa 2005, 46-49, Finland)

1. Proceedings organised within an optimal timeframe.
2. Timetables for proceedings planned according to their implications to the parties involved.
3. The parties involved have the notion that the process has been handled in a swift manner.
4. The timeframes agreed upon must be adhered to.

1. Proceedings organised within an optimal timeframe

What is meant by “optimal timeframe” in this context is the period of time during which the process can be carried out according to the regulations for legal proceedings. Therefore, the concept of “optimal timeframes” does not include factors such as the extent and complexity of a matter or the available resources of the court of justice. Attaining the optimal timeframe of proceedings requires that the process does not contain periods during which nothing is done. The optimal timeframes are set separately for criminal proceedings and for civil proceedings. (ibid. p. 46-47.)

2. Timetables for proceedings planned according to their implications on the parties involved

The second quality criterion requires that matters are processed, and the timetable for proceedings is planned according to their implications and importance to the parties involved. The practice has traditionally been that matters are handled according to the order of arrival. However, this thinking rarely corresponds to real life conditions. Already, because of various regulations regarding hearings, the matters are directed to different “process tunnels”. The workloads of individual judges also considerably affect the processing times.

3. The parties involved have the notion that the process has been handled in a swift manner

Although the case might have been processed in a swift manner from the courts’ perspective, the parties involved may not share this notion. The differences in perceptions between the court and the parties involved can be reduced by explaining to the parties involved the separate phases the overall timeframe consists of and why.

4. The timeframes agreed upon must be adhered to

During the court proceedings the court sets several internal time limits for different phases of the process. The judge and the parties involved might agree upon a particular action to be carried out at a set time. The fourth

criterion provides that both the court and the parties involved comply with the dates set.

2.2.2. Best practice consultants

There are currently 82 district courts⁷ in **Denmark**. It is seen that development of good ideas and experiences also in the administrative sphere is very important in order to ensure efficiency and co-operation in the judiciary. This exchange of ideas and experiences for developing the system has been actualised during the recent years through various types of actions, such as internal courses for court employees and through regional meetings for exchanging ideas and experiences.

In 2002 the Danish National Court Administration decided to launch a “Best Practice” project. The background for this project was that there were notable differences in levels of productivity in different district courts. At the same time it was noted in court budgets that there is a need to reduce personnel in several district courts. The task was therefore to analyse and find answers on how district courts can process the current volume of cases with smaller personnel resources.

The project started with a general analysis of working procedures in some of the most productive district courts. The result of the examination was that a “Best Practice” manual describing concrete examples of effective working methods in district courts was produced. Moreover, a proposition was made on how the administrative support functions can be made more effective. The manual was sent to all district courts in November 2002. (Notat om Bedste Praksis-projektet ved Danmarks Domstole 27.2.2006, **Denmark**)

The most important element in the Best Practice project was that in 2003 four process consultants were assigned to continue the work for finding, expanding and developing good ideas within courts. These consultants are “internal” personnel, two of them being deputy judges and two of them office personnel. These people continue to carry out their normal tasks but at the same time take care of process consultant duties. Approximately half of the working time is used for Best Practice work and half of it for normal tasks.

There are certain advantages for using internal consultants instead of external. First of all, the internal consultants have concrete knowledge of the work carried out in district courts. Secondly, they can, to a certain extent, operate as legitimate consultants as some of the personnel can be sceptical about external consultants, and thirdly, the costs for internal consultants are considerably lower.

7. Currently a court reform is under preparation that is expected to take place 1 of January 2007. The reform aims at reducing the amount of district courts from 82 to 22. At the same time a drastic change in process rules regarding both civil and criminal matters is carried out in order to decrease the processing times in general.

In the preliminary phase, the consultants undergo training in order to be able to take the status of process consultants. Thereafter they can offer help to the courts to go through their working procedures and help the courts reach the highest possible level of efficiency. It is also important to note that participating in the best practice project is totally optional for the courts. However, many courts are interested in the project in order to reach the best possible results in resource use and in order to shorten case processing times. The process proceeds usually in four stages (table 6).

Table 5. The best practice procedure (Notat om Bedste Praksis-projektet ved Danmarks Domstole 27.2.2006, Denmark)

1. Planning meeting actions	→ Planning and deciding concrete measures and
2. One day seminar	→ Critical assessment of current working practices
3. Meetings with the court	→ Further development and implementation of measures
4. Evaluation seminar	→ Assessment of the implementation

A typical starting point is that the process consultant arranges a meeting with the representatives of the court. The concrete measures and methods are planned and decided together with the court president and eventually with other management personnel. In the meeting the aims and scopes for the project must be formulated containing e.g. the information which departments of the court shall contribute to the project and how. The planning meeting takes about 2 hours. (Notat om Bedste Praksis-projektet ved Danmarks Domstole 27.2.2006, **Denmark**)

Soon after the planning meeting a seminar is organised in which all members of the court personnel of the department in question – judges and lawyers also participate. Employees are then divided into smaller groups in which they critically consider the current working practices. The consultants do not decide on the further actions needed but comment and give their viewpoints on the personnel's own ideas. The consultants add ideas to the discussion that they have received in other courts. The whole seminar is aimed at receiving good ideas for improvements. The ideas are written down and further processed by the court in order to modify the measures and ideas to fit better the needs of the specific court in question.

After the seminar the court is given a longer time period, usually from 6 to 12 months to further develop and implement the suggestions that came up in the seminar. The process ends with an evaluation seminar in which the court and the consultants discuss together the developments they have achieved. The described phases construct a simplified idea of the overall procedure. It is also worthwhile to note that the contact between consultants and the courts is fully confidential. The consultant's role as independent

players means they will not report the outcomes or details to the National Court Administration without permission of the court. In addition to carrying out the above mentioned procedure the process consultants serve also as a conduit for exchanging ideas and experiences between courts. This will take place for example via the use of intranet in courts and by keeping up contacts with the personnel responsible for training new court employees.

The experience regarding these kinds of projects has generally been good. The majority of courts that have gone through the procedure have expressed positive opinions. Also both judges and office personnel have expressed satisfaction with the results achieved. It has been widely noted that it has been useful to have examined to a closer detail and with a new perspective the different working methods and procedures within the court. It has also been expressed that the evaluation meeting increases commitment of the court to further develop the ideas and to implement the ideas discussed. Moreover, an examination made by the National Court Administration shows that the productivity of district courts has increased since 2000 by 20% regarding office functions and by 10% regarding judges. A part of this productivity enhancement is definitely due to the input of the best practice consultants. The Best Practice project has been so successful that the three best practice consultants are currently working full-time in the project. (Notat om Bedste Praksis-projektet ved Danmarks Domstole 27.2.2006, **Denmark.**)

2.3. Moving tasks and decisions forward in the case handling chain

One measure adopted in order to shorten the overall time for court proceedings regards the possibilities to authorise other players to carry out tasks that have traditionally been handled by the courts themselves. One goal is to move the matter or the decision-making to an earlier stage in the case handling process, to avoid delay.

An example of this kind of procedure is available in **Sweden** where the prosecutors have a right to conduct certain measures normally conducted by the courts. The purpose of this action is to reduce the time delay between the indictment decision and the main hearing before the court. In most cases, prosecution is instituted when the prosecutor files a summons application with the court. The court then issues a summons, calls upon the defendant to answer the prosecution, sets a date and time for a main hearing and gives notice to appear at the main hearing. If the defendant is not under arrest or in detention, several months may pass between prosecution and main hearing. However, the court may commission prosecutors to issue summons and give notice to appear at main hearings. When making such a decision, the court shall consult with the prosecutor or the prosecution authority. The commission given to the prosecutor may be either specified

for certain cases or general, which makes it possible for the prosecutor to issue summons and give notice on a more regular basis. (Memorandum 27.5.2005, **Sweden**.)

In order to speed up proceedings even further, in **Sweden** a prosecutor may also decide that an investigation regarding the living conditions and individual circumstances of the suspect shall be conducted. A report of the investigation must in many cases be available at the main hearing in order for the court to decide upon sentencing, and is normally initiated by the court after the application for a summons has been submitted to the court. The prosecutor's right to initiate such an investigation, even as early as during the preliminary investigation, combined with the above mentioned possibility to issue summons and give notice to appear at the main hearing, can significantly diminish the time delay between prosecution and main hearing. (Memorandum 27.5.2005, **Sweden**.)

The general requirements for attaining shorter proceedings in criminal matters include the notion that there must be good routines available in order to decide which cases shall be investigated in the first place. Moreover, it is seen important that swifter proceedings do not affect the level of quality and amount of solved cases. Staff training and competence enhancement is of central importance both to lawyers and investigators. (Prosjekt hurtigere straffesaksbehandling. (Arbeidsgruppe I, sluttrapport 2000, 7-8, **Sweden**.)

Related to the "fast-track" model in **Sweden** (see 3.3.2) a working group has proposed an accelerated procedure that would cover the majority of so called "notary-matters" (*notariebrottmål*); e.g. matters that are decided by a notary. It has been suggested that the police should be granted authority to bring an action in matters that concern offences for which a petty fine can be issued. This could be made possible so that the police can decide about the charge, issue a summons and summon to the main hearing when the accused is present, directly "on the spot". In the main hearing the action will be handled by the prosecutor. However, this procedure would not cover youths under the age of 18.

2.3.1. Service of notice and summoning

Cancellation of main hearings contributes to rising costs as well as to inconvenience both to society and to private persons. The most typical reason for a cancellation is that the defendant simply does not show up to the hearing. For economic reasons it is essential that the main hearing can be held even when the defendant is absent. It is also important that the courts implement this option in an effective manner. Several initiatives aimed at simplifying the service of notice and the summoning organisations have been introduced in the Nordic countries during the recent years.

One example of this kind of action is the proposal of a Swedish working-group that aimed at developing means in order to reduce the number of cancelled main hearings in criminal cases in district courts. Special emphasis was placed on regulations guiding and defining court proceedings. The working group suggested that the possibilities to decide a case in situations where the defendant has failed to show up in the hearing should be increased. (Inställda huvudförhandlingar i brottmål I 2000, 18-20, **Sweden**.)

This working group considered a special question of service of notice that can affect the need to organise main hearings but does not require changes in regulations. The difficulty in reaching the parties involved in court hearings is a general problem both, for the courts and other authorities. This is why it is extremely important that the service procedure is organised in an effective manner and that the methods of service are well formulated so that the proceedings are made easier. A particular reason of concern is the huge workload of the “summoning organisation”, which results from lack of resources. As a consequence, the authorities have started to turn to private services in serving of notices and some Swedish authorities have had very positive experiences. For example introducing private companies to perform this task in the Police has resulted in reducing costs. The promotion of economic competition among the Police and out-sourcing tasks has increased quality in the service of notice sector. (Inställda huvudförhandlingar i brottmål I 2000, 40, **Sweden**.)

In 2004 a meeting with 40 Swedish chief judges was held. In group discussions questions regarding co-operation within justice chain, law amendments, working methods in courts, education and training were raised. Many of the discussion groups proposed an increased use of private service of notice companies. Those who had personal experience stated them to be effective. One advantage mentioned from private companies was the fact that one has to pay only for the service of notice that has been successfully delivered. Another proposal was that every judge should have a personal summoner). A variation of this proposal was that one should be able to tie one or more “summoners” to a specific court. This way the co-operation should be enhanced. There were many who stated that co-operation between district courts and the organisations attending to service of notice should be locally enforced. (Inställda huvudförhandlingar i brottmål II 2005, **Sweden**.)

Many participants stated that the possibility for simplified service of notice should be increased. A wish also emerged that it should be examined whether it is possible to submit a right for the police or prosecutor to attend the hearings instead of the complainant, defendant and witness. There appears to be a general perception among the judges that the training of court clerks should strongly focus on questions of service of notice and examine the possibilities to enhance the service. (ibid. 71-79.)

It has also been proposed in **Sweden** that “a summoner” can in certain cases hand over the summons to someone else other than the target person; for example to a family member or to a landlady/-lord. It has also been proposed that it must be made possible to serve a notice by using a courier from a private service of notice company and to serve a notice by fax. (Delgivning 2002, **Sweden**.) The possibility that the obligation to participate in court hearings will be expressed in court web pages has also been highlighted. Finally, it has been suggested that co-operation between different officials would be increased regarding questions of service of notice and fetching a person to court. (Inställda huvudförhandlingar i brottmål II 2005, **Sweden**.)

In **Norway** it has been suggested that it should be examined whether the procedure of summoning a defendant and witnesses currently carried out by the police could be reorganised. It has been proposed that consideration be given to moving the responsibility for this task to the court. Moreover, if the summoning is directed only to courts, special personnel should be appointed to handle this task in larger courts. (Prosjekt hurtigere straffesaksbehandling. Arbeidsgruppe II, sluttrapport 2000, 28-31, **Norway**.)

2.3.2 Fast-track

One initiative taken by the Swedish Government has involved initiating a trial project Fast-track in order to shorten the timeframes of processing high-volume offences. This trial project was initiated on 1 July 2004. The Government’s objective with Fast-track is that convictions in cases that are less serious and easy to investigate are brought about more quickly. One measure intended to give the agencies of the justice system the opportunity to achieve this end involved an introduction of a legislative change by which the prosecutors’ application for a summons and to appear in court may be served in a simplified fashion during the trial project by sending them to the suspect. Two weeks later the suspect will be considered notified of the application. One condition, however, is that the police or the prosecutor have informed the suspect that the simplified summons may be employed and explained what this means. (Memorandum 27.5.2005, **Sweden**.)

The trial project was initially intended to continue for a period of two years. The Government now considers continuing the trial period for another two years, until the end of June 2008. An evaluation report presented in May 2005 indicated that the processing time has been reduced in the Fast-track cases compared to other criminal cases although the number of cases within the project has been fewer than expected. The processing time from the registering of the offence report to the time when the suspect is deemed to have received the summons of application and to appear at trial is not to exceed five weeks. This means that the actual time for the police and the prosecutor to investigate the case is less than 2.5 weeks. The crime-fighting

authorities are therefore given a strong incentive to investigate high-volume crimes as quickly as possible. (Memorandum 27.5.2005, **Sweden**.)

By shortening the time between the committed offence and the court decision through these measures the efficiency of proceedings in simple “fine matters” would increase. The possibility for the accused to conceal the service of notice would decrease which in turn would lead to fewer cancelled hearings. Because there were no practical experiences from this kind of procedure, it was suggested that this would be experimented. It was also proposed that an amendment would be made that aims at simplifying summoning the defendants in criminal matters. The current information written in certain summons (that the matter can be decided without the presence of the defendant) should be expressed in all summons and not cover only certain matters. (Ett snabbförfarande för notariebrottmål. Kallelser till den tilltalade 2001, **Sweden**.)

3. Court specialisation

Court specialisation is both a way to improve the quality of the courts and to improve their swiftness. Court specialisation can be roughly divided into two categories: internal and external specialisation (table 5). One type of *internal* specialisation is a model, which covers all the judges of the court in contrast to a model that concerns only certain legal matters and therefore only certain judges. The specialisation method used depends on the size of the court in question. Extending the specialisation to all judges is assumed to lead to a higher quality and increased swiftness and adjudication of all types of matters in the court. In this model all judges receive the same opportunities to enhance and develop their skills. There can also be reasons to limit specialisation only to certain judges or legal matters. This kind of reason can be that the matter is complicated and creates unbalance in the court. Special competence of certain judges in a court can also result in simplifying the launch of special working-methods in this area. (DV-rapport 2003, 37-38, **Sweden**.)

The simplest way to carry out *external* specialisation suggested in the Swedish report (DV-rapport 2003, **Sweden**) is that the judges interested would report themselves to an “expertise bank” within a region. The expertise bank would contain information of the interests and experiences that the judge has according to certain matter. The expertise bank should be available to all courts within a defined region. A court that wishes so could in complicated cases contact a judge listed in the expertise bank in order to receive advice or adjudication help in the matter. It would then be possible to record special skills that certain judges already obtain in particular matters with minimum administration. Another way to start external specialisation would be to organise a co-operation network with several courts where legal matters that occur seldom in individual courts can be discussed and examined. It could also be possible to concentrate on particularly complicated and difficult matters in this kind of model. By co-operation between courts the needed training

regarding complicated matters could be obtained by individual judges who could later on use their abilities to adjudicate more swiftly and with higher quality. (ibid.)

Table 6. Models for court specialisation

	<i>Internal</i>	<i>External</i>
Methods	Specialised courts (all judges included)	Expertise bank
	Specialisation to certain legal matters (some judges included)	Co-operation networks

One obvious problem related to question of specialisation is that in reasonably small countries (such as the Nordic states) the model of specialised individual courts might not be a very cost-effective solution. The geographical distances are in many cases long and the legal protection of citizens might become jeopardised in this kind of model. It might also prove to be quite difficult to recruit specialised judges and other staff to smaller districts. When assessing the models of internal specialisation the option to limit specialisation within individual courts to certain judges or legal matters appears to be the best solution.

Regarding the models of external specialisation, the concept of an “expertise bank” might also prove to be challenging to carry out. First it would be necessary to have an authority to rank judges according to their expertise and to make the selection on whom to include as a member of the bank, which might trigger feelings of injustice among judges. Secondly, the practical realisation of the system might turn out to be difficult in terms of employment contracts, for example in situations where an “expert” judge is simultaneously employed at the “bank” and at an individual court. However, a co-operation network between different courts could be a fruitful system to adopt in order to increase exchange of ideas and practices. Still, this model might also be challenging to implement when taking into account the already limited resources of the courts in enabling active participation to meetings and discussions of the network.

3.1. Experiences from specialisation

Some of the challenges related to specialisation of judges have been mapped by the Swedish National Courts Administration (DV-rapport 2003, *Sweden*). Swedish judges were interviewed about their experiences of specialisation and about the advantages and disadvantages related to it (table 3). Many general courts expressed the notion that the major advantage of specialisation is that the overall time of proceedings becomes shorter and the handling and adjudication more effective. In several answers the notion that with more specialisation there is a greater possibility to acquire and develop skills and experience on special matters from the specialised

judges, was expressed. This in turn results in continuity and increased quality of adjudication. Several respondents believed that specialisation leads to a more established legal praxis. Many pointed out that the more important the specialisation is, the more independent is the branch of jurisdiction in question (e.g. property formation, environment matters and economic matters). Specialisation can be necessary within these branches of jurisdiction in order for the judges to attain the necessary depth of professional skills.

Table 7. Experiences for and against specialisation expressed by Swedish judges

Advantages	Disadvantages
Shorter processing times	Problems in personnel replacement
More established legal praxis	Allocation of matters according to needs
Consistency, firmness, efficiency of adjudication	Uneven distribution of workloads
Increased skills, expertise, competence, efficiency	Increased monotony
	Undesirable development of legal praxis

The most often mentioned disadvantage related to specialisation in the general courts was that in cases where the specialised judge is absent it can be difficult to find a replacement, which can make the system of specialised judges vulnerable. It can also become difficult to distribute a matter according to the available capacity. Another drawback mentioned was that the workloads can become unevenly distributed so that certain judges have too many cases to decide and some judges only rarely or never receive cases of particular type. Many courts mentioned as a disadvantage the fact that working with just one type of matter may result in finding the work too monotonous. This can be tackled by rotating judges and/or matters among different departments in the court. Another disadvantage mentioned was the possibility that specialisation leads to the “specialists” developing their own legal praxis. In particular this risk exists if a judge passes judgments, in certain branches of jurisdiction, within excessive timeframes. (ibid., 13-14.)

An advantage mentioned by administrative courts was that specialisation enables a better concentration on more unusual matters, which results in reaching a certain level of expertise. Several courts expressed the notion that in those departments where the taxation matters and social insurance matters have been centralised the efficiency in deciding a matter has increased as well as the competence of judges. Specialisation has also led to increased consistency and firmness of adjudication and has also enabled

working peace for judges processing extensive and complex cases such as taxation matters. From the courts' point of view specialisation enables the employee to concentrate on his/her tasks according to the varying needs of the operation of the court in different situations, which in turn results in more effective work. (ibid., 13-14.)

3.2. Division of tasks

The basic idea behind the system of delegating tasks is to increase the amount of time the judge has to conduct his/her "priority tasks" (such as adjudication work) by allocating some "secondary tasks" (such as administrative work) to other members of the staff. When the judge has the opportunity to concentrate on his or her main tasks it is assumed that the levels of quality and efficiency increase as well as the use of resources in the court. There are probably large variations between different courts on their level of delegating duties. These variations can be explained to a large extent by differences in competence or resources in case processing time. It is also quite natural that delegation of duties is more widely used in courts that have their own administrative positions (administrative managers etc). But there are also reasons to believe that individual variations depend also on the talents and skills of the court president. The director determines the tasks that are seen worthwhile to delegate and sets the means on how this is done. (LOK-rapport 11 2004/2005, 4, **Norway**.)

An inquiry made via e-mail in 2004 to all Norwegian district courts and courts of appeal indicated that delegation of duties is generally an unknown area of practice in courts. The low response rate can also be interpreted to reflect the fact that most courts do not either have a clear idea of the concept altogether or do not see any need for new ways to organising the distribution of duties. From the total 17 responses, 11 courts stated not to have a wish for this kind of development. (ibid., 4-5.)

The development of specialisation in the prosecution authority department has continued during the recent years in **Sweden**. Criminal cases that demand special competence are distributed to certain prosecutors in order to speed up the process. Specialisation takes place also through teamwork and working groups. More and more prosecutor offices have during the last years introduced routines by which certain individual prosecutors handle fine matters and police led pre-trial investigations. This procedure has had positive effects to general processing times. (Memorandum 27.5.2005, **Sweden**.) As examples of concrete actions the prosecuting authorities have adopted a more active management/steering of prosecutor led pre-trial investigations and increased co-operation with domestic violence authorities (e.g. victim support officials). Moreover, discussions with the heads of police administration on organisation and routines have become more common

in order to generate swifter processing in police-led pre-trial investigations.

The simple regulation found in the Norwegian Courts Act is that the allocation of cases falls within the discretion of the chief judge (Head of Courts). The provision is not straight forward, as there has been some discussion on the actual power of the chief judge. Traditionally there have been few problems. In Norwegian courts the cases are often distributed by a *fixed rotation system* (*Tilfeldighetsprinsippet*), which means that there is some version of an equal allocation of cases, based on a certain mathematical formula. In most cases this implies that cases are allocated in chronological order. (Hagedal 2004, 2005, **Norway**.)

In order to reach an effective court process it is essential that the courts adopt a flexible and pragmatic attitude towards the fixed rotation system. An inquiry with the Norwegian courts of first instance and courts of appeal carried out in autumn 2004 indicated that 69% of courts of first instance and 100% of courts of appeal used the system in distributing matters. However, there were some exceptions made in matters that were somehow special or exceptional, in situations where the workload of certain judges had to be taken into account and in cases where the timeframe of a specific case affected the distribution of duties. The use of the system depends also on the varying interest and competence of different judges. In order to protect oneself from suspicions of misuse, the case distributing officials talked about applying the system also to them if there were no judicial obstacle for it. (LOK-rapport 3, 2004/2005, **Norway**.)

It has been suggested in **Norway** that co-operation in distributing matters should be increased. This is believed to lead to a more focused process and this in turn to better resource allocation. This means that the threshold for differing from the normal distributing order or procedure should be lowered. The option could be used for example in situations where there are large variations in workloads of judges. Moreover, the fixed rotation procedure should not be seen only as a “crisis tool” but as an ordinary measure for ensuring swift procedure. (ibid.)

3.3. Specialisation in Nordic countries

As it can be concluded from the examples of specialisation in this chapter, it is important to distinguish between specialisation between different courts and specialisation among the judges within the courts. However, no universal model or regime for specialisation exists in the Nordic countries. Approaches seem to vary also within each country.

In **Denmark**, judges are mainly “general judges” with the exception of judges that work in the Maritime and Commercial Court of Copenhagen. Certain matters, such as taxation matters, can be handled in selected district courts.

Secondly, specialisation can take place in individual courts so that certain matters are handled within a specific department or by a certain judge. However, this should not mean that the court departments or judges in question decide selected matters only. It is important that judges remain “generalists”, but that this function can be combined with the objectives of specialisation among different departments and judges so that the judges obtain a special skill and knowledge in specific matters. Taxation matters and patent matters can be quoted as examples of matters where this type of specialisation would be fruitful. Thirdly, the above-mentioned way of specialisation can be applied to court clerks as well. (DV-rapport 2003:3, 17-18, **Sweden**.)

The current types of specialisation available for judges can be divided into three groups. First specialisation carried out by centralising the processing of certain matters to *special courts*, secondly centralising the processing of certain matters to *one or more individual courts* and thirdly specialisation by centralising proceedings in certain matters *within individual courts*. The two first types are related to certain laws or/and regulations whereas the third type takes place on courts’ own initiative to organise the proceedings in a way that particular judges specialise in certain matters. (DV-rapport 2003:3, **Sweden**.)

The lack of universal practices regarding specialisation is probably among other things due to the fact that individual courts vary largely from each other in size. In some courts specialisation is carried out by allocating tasks according to different departments or divisions but in some other courts specialisation is non-existent. It is presumable that at least in **Finland** the differences in size will remain quite large also in the future so that there is no need to strive for a common practice (Tuomioistuineläytöksen kehittämissuunnitelman mietintö 2003, 335, **Finland**). Also the number of legal matters, the special skills of judges and other such factors can be so different in individual courts that individual solutions can be more fruitful than a general regime.

The arguments point to a persisting dilemma in organising courts. Specialisation appears to be double edged. Specialised *judges* are supposed to be more effective. They handle more cases with better quality than non-specialised judges within the same time spent. However, they also create inflexibility if all cases that fall within their specialised competence are supposed to be handled by them and not by other, non-specialised judges. Then they might become bottlenecks if they are too few compared to the caseload. Similarly specialised courts improve the quality and speed of that particular type of case. On the other hand, they might decrease the overall competence of the general courts, and make them less efficient as all-round problem solvers. Specialised courts also reduce flexibility. If a specialised court is crowded with cases, it might become a bottleneck if it is difficult to

reallocate the backlog to a general court. Similarly, if the caseload in a specialised court drops, it might become inefficient if it cannot have other types of cases transferred.

4. New technologies and resource management

Currently there are expectations within the Nordic justice systems that all information should be collected once only or as few times as possible and transmitted through the system using established protocols to initiate such transmissions. In the courts, this challenges some of the organisational thinking about the separation of registry functions from those functions, which are performed in the courtroom. Nordic courts are increasingly turning to technology to deal with the problem of increased case loads. Judicial officers and administrators need to work together to ensure that its implementation is soundly considered especially with respect to established principles of judicial independence. Separation of registry functions means that the information in the registers is no longer easily available to the judicial process.

4.1. Videoconferencing

Videoconferencing and organising hearings via telephone are important tools in speeding up the proceedings. The need for videoconferencing will most likely increase in the future due to increasing international co-operation. Videoconferencing can enable attaining significant reductions in costs both to individual parties and the society. The witness does not have to travel long distances any more. For example, the costs for transporting a witness from Tallinn to Helsinki may result to high costs.

Lately, a number of amendments of the **Swedish** Code of Judicial Procedure – which comprehends both civil and criminal cases – have been proposed in order to modernise the proceedings in the general courts. Several proposals concern the use of new technologies. Parties or witnesses involved will be able to take part in court proceedings by videoconference instead of appearing in the courtroom. When deciding if a person can participate via video link, the court should consider the cost or inconvenience that would otherwise arise and whether the person is afraid to appear in person. One condition for using videoconference is that it is not deemed inappropriate. Furthermore, the testimony given in the district court will be recorded by video. Such a recording can then be used in the Court of Appeal. This will enable the Court of Appeals deliberations to be limited to the facts that were known to the court of first instance. The use of video technology will reduce the risk of having to adjourn court proceedings due to witnesses and parties

failure to appear in court. It will also make it easier to plan and hold trials and other hearings, which will result in a speedier trial.

It is also proposed that the court will be able to reject evidence when, despite all reasonable efforts, it proves impossible to hear evidence and the judgment of the court cannot be further delayed. To hold a main hearing before deciding a case is the normal procedure in criminal cases. In the future, it will however be possible for the district court to decide criminal cases without holding a main hearing when there is no reason to impose a sentence other than a fine, unless a party demands a main hearing or if such a hearing is necessary for the sake of the judicial inquiry. (Memorandum 27.5.2005, **Sweden**.)

A current proposal deals inter alia with appeals to the Court of Appeal. As an example, it has been proposed that the system of leave to appeal (review dispensation) is extended to most civil cases. A further proposal is to limit the deliberations of the Court of Appeal to the facts that were known to the court of first instance. Thus, statements of witnesses in the court of first instance would be videotaped for use in the Court of Appeal. Furthermore, a procedure where the court and the parties are required to set up timeframes in order to speed up the hearing of a case is proposed. (Memorandum 9.3.2005, **Sweden**.)

Since the beginning of 2000 it has been possible to use videoconferencing as a part of a pilot project in some general courts in Sweden. In administrative courts the corresponding pilot project has been carried out in 2001. (Videoneuvottelutyöryhmän raportti 2004, 17, *Finland*.)

The National Court Administration has collected information regarding the general needs and concrete situations for videoconferencing in general courts. In the final report it is noted that most experiences of videoconferencing are positive. Videoconferencing has been used both in civil and criminal cases and both in preparatory sessions and in main hearings. Nearly all the parties involved in the proceedings have taken part in the proceedings via videoconferencing: defendants, witnesses, attorneys, interpreters and experts. Most commonly videoconferencing has been applied in main hearings for criminal cases. (DV-rapport 2002, 5, *Sweden*.) The experiences in Sweden show that the most common problems related to videoconferencing are technical deficiencies. Problems mentioned include failure of data connections and various problems in the quality of sound and image. The experiences received from the pilot project in administrative courts in Sweden are quite similar in nature (Videoneuvottelutyöryhmän raportti 2004, 19, *Finland*.)

Finland is now conducting a videoconferencing pilot project. According to the legislation, the use of videoconferencing in court proceedings has been allowed since 2002 in **Finland**. However, only a very few courts have made

use of this legislation, which means that experiences of this technology are very limited. The main reason for not using videoconferencing is the lack of equipment in courts. (Videoneuvottelutyöryhmän raportti 2004, **Finland**.)

The Finnish Ministry of Justice appointed a working group in 2003 to plan and carry out a pilot project regarding the use of video in 1) national legal proceedings between individual courts 2) proceedings regarding coercive means so that it is not necessary to transport the imprisoned defendant to a court hearing and in 3) legal proceedings exceeding national borders. One of the main tasks of the working group was to examine the possibilities to develop videoconferencing techniques between Helsinki and Tallinn, Estonia. The project also aimed at enabling the use of videoconferencing between Vantaa prison and the courts in Helsinki metropolitan area. Before launching the pilot project the working group requested information regarding the needs for videoconferencing from 16 district courts and from all courts of appeal. The information received showed that the main reason for the rarity of videoconferencing was the lack of equipment in courts.

In the district court of Helsinki the experiences of the pilot project have been positive. Most of the videoconferences held concerned cross border cases financed by legal aid. Also the “telephone hearing” is a widely used procedure in Helsinki district court. In this procedure the judge calls to the witness and the testimony will be heard in the courtroom. In this case, for example, a busy doctor may give his or her statement from the work place. In some cases it is also possible for the witness to give his or her statement via telephone from a police department. (Puusaari 2006, 14-16, **Finland**.)

4.2. Data systems

Electronic case processing increases efficiency by “recycling” information and by simplifying routines. Usually individual matters are registered by the authority that is processing the matter. If other authorities can then use the same registered information later on in the process it will result in significant savings in resources. It is also typical that an authority that is not actually responsible for processing the matter interprets and formulates information in registers. This is not convenient from the point of view of resource allocation and quality. It has been noted that the authority that has produced the document should have responsibility over the information in the register. (Elektronisk samhandling i straffesakskjeden 2003, **Norway**).

In **Norway** possibilities for simplified registration routines and for other means of efficiency that could be brought to action by information technology have been examined as well. One of the main questions has been whether there are possibilities to pass data in a swifter manner between different officials with IT solutions, and which of these should be further developed in order to attain the best and swiftest possible communication

between different players in the criminal process. (Prosjekt hurtigere straffesaksbehandling. Arbeidsgruppe I, sluttrapport 2000, 5 **Norway**; see also part two: 8 (p 16 on *Monitoring systems*)

4.2.1. Electronic case management in Sweden

All Swedish courts have started to use the new electronic case management system Vera. Through the Vera database it is possible to combine information for various different purposes. The SIV-system (statistics in Vera) searches information from Vera and summarises data based on reports from courts. All information contained by Vera is not only used in producing statistical reports but there are also possibilities to carry out additional analyses with the tools in the system. For example, it is possible to produce a summary report, which presents all legal proceedings in which a certain person is currently involved in by using the search function of Vera. Vera's search function together with the SIV reports can be further used for different purposes with help e.g. from Excel calculation functions. (Promemoria 21.10.2005, **Sweden**). An example of this kind of procedure is a model, which shows how a certain court or a department of a court qualifies with administrative deadlines.

Vera is being constantly developed and possibilities to produce new information appear to be increasing. The main question at the moment is to define the type of information that is useful. Before this is possible a number of concepts must be defined. One of the most important ones regards the concept of timeframes of proceedings. If timeframes for proceedings are defined as the amount of time that is used from the moment a case is pending in a certain court to the moment a court has finished handling the case, the task is simple. In this case two dates need to be compared. However, it has been noted that regarding criminal cases it is not sufficient to measure the processing time starting from the point when a case is registered in a court but from the moment the first application for a summons is filed. This simple example shows how important it is to define the concepts adequately before going further. (Promemoria 21.10.2005, **Sweden**.)

If one wants to examine the timeframes of proceedings instead through the time between filing an application for summons and the judgment a more realistic picture can be obtained. In autumn 2006 this option will be introduced into Vera. There are also plans to integrate Vera with the prosecutor's system Cobra so that an electronic application for a summons can be sent to the court. (Promemoria 21.10.2005, **Sweden**.)

4.2.2. E-services in courts in Finland

Data systems in the Finnish courts cover the whole field of actions in judicial administration. The oldest systems in use date from the 1980s. Nevertheless, the need for integration of systems has been self-evident from the beginning.

The tools and technologies have changed during the years, but the systems have been designed and programmed keeping in mind that the information, once registered in a system, should flow through the whole chain of activities and other organisations serving every user, both in the courts and other authorities, and also benefit the public. (Kujanen 2005, **Finland**.)

Two systems enabling extensive use of IT in written preliminary hearing have been developed in **Finland**; the TUOMAS case management system and the SANTRA electronic transfer system. The courts get about 65% of the applications a year electronically by way of the SANTRA system. Also electronic mail or fax can be used. Plaintiffs using SANTRA transfer daily the data on all of their applications to the common “mailbox” of the courts. The SANTRA system then forwards the applications to the individual mailboxes of the courts that then update their own TUOMAS systems on the basis of the data. It is also possible to send the application to the courts by electronic mail. The court can then use the text of the application during the process. The court summons the defendant. That will be mostly done by post. The Finnish Post operates an electronic posting service (EPS) that the court can use, as it is not required to sign the summons, and the original document of the application does not have to be sent in most cases.

The documents or files needed for summons are produced by the TUOMAS system. Sending the files to the Finnish Post is automated both in TUOMAS and in SANTRA. TUOMAS will track the deadlines given to defendants for contesting. If the deadline has passed, TUOMAS will be used to produce the decision of the court, which will be based on the data in the application and summons. In many cases the court will have to contact the plaintiff. That can be done using electronic mail or fax, if the plaintiff has informed the court that the address to send the message is an electronic mail address. In the later phases of the proceeding, in scheduling the hearing and summoning the parties to the hearing, electronic mail and calendar software can be used.

TUOMAS stores and tracks all the documents in a case and if the document has been posted electronically, it can be used in later documents. Testimony received in the main hearing is audio taped. Minutes of the hearing will be produced, but they no longer are verbatim transcripts of every word said in the hearing. Instead, they indicate what has happened in the hearing. If one wants to know what a witness has said, one listens to the tape. Naturally, the end result of a trial, i.e., the decision is still a written document. The judge can use the texts of the application and the summing-up in writing the decision, if they were stored in the TUOMAS system.

In debt collection cases, a plaintiff using SANTRA will also receive the decision, sent to its data-systems via SANTRA. That data can be used to apply for enforcement. The automated enforcement system of the pertinent

authorities can make direct use of that data. Also a hard copy of the decision is posted to the plaintiff, because, even though one can use E-filing in the enforcement (85 % of the filing is done by E-filing) a hard copy of the decision is still needed for the formal filing of the request for enforcement. The entire enforcement legislation in **Finland** is due to be reformed in the near future; at that stage, the enforcement will retrieve the decision from the court systems and the plaintiff does not have to file it. (ibid.)

The Act on Criminal Procedure entered into force on 1 October 1997. A case management system for criminal cases was then designed, for implementation in 2000. In criminal cases, case management is more complicated than in civil cases, as it involves the police, the prosecutor, the injured parties and the courts. The SAKARI case management system covers the workflow of the prosecutors and the courts, and links to the systems that the police use. It will also, in the next phase, cover the court decision system and the authorities linked thereto. The new system has roughly the same case management features as the TUOMAS system in civil cases, but more emphasis has been put to managing the information in a case (contrary to managing cases in the court).

4.2.3. IT-systems in Danish courts

The Danish National Court Administration has been developing IT-systems that would support case processing in simple matters. This system is used in order to register cases, to prepare these and also to help deciding a date to the court hearing. The main advantage of the system is that by registering special codes for deciding cases and codes for the sliding scale of cases it is easier to estimate the needed resources in different work phases. There are also different IT-systems available for different case types. (Notat om kort beskrivelse af it-systemerne ved Danmarks Domstole 9.3.2006, **Denmark**.)

An important advantage of the system is that it presents, automatically, information of received matters, decided matters and matters that are pending. The system is connected to a statistics module in each case handling system. This means that each court can relatively easily send an electronic file containing six or twelve month statistics to National Courts Administration. The data can then be quite easily summarised regarding general courts and district courts. It is hoped that a special data warehouse will be established to which all case data will be directed so that the administration doesn't have to handle the data manually. At the moment the National Court Administration is carrying out a change in IT-system. At the moment the use of all IT-systems is centralised to National Court Administration with support of external consultants.

Since 2000 the Danish courts have worked with a system in order to get guidelines for the use of resources. The majority of the personnel in the courts follow the system in order to see how well their working environment meets the standards, and how the productivity appears to be in comparison to other courts. There are two main aims in the system. First, special focus is directed towards case processing times in courts of first instance that is to what extent are the time standards achieved in individual courts. These deadlines have been set in co-operation by the National Court Administration and representatives of courts. Secondly, the system shows the productivity of district courts. Productivity comprises the information regarding the amount of decided cases and resource use (amount of personnel). Descriptions of the system for all district courts are published annually in the court intranet. This means that every district court has the possibility to see each others' information. Courts of first instances have the possibility to send their 2-3 pages in length notes regarding the figures presented in the intranet. Moreover, a list is published in the intranet that shows the productivity in all courts divided by the amount of staff in the courts. (Notat om Bedste Praksis-projektet ved Danmarks Domstole 27.2.2006, **Denmark**.)

Once a year the National Court Administration evaluates together with representatives of courts what kind of deadlines for proceedings are set to various legal matters. The timeframes of proceedings have been reported annually for the last 3-5 years. The system shows what results the court has reached during the recent years regarding the set goals. At the same time the system shows the average processing times for different categories of cases and produces a ranking list of the ten best courts. The statistics of case processing times are based on information gathered from the courts twice a year.

Productivity is defined as the amount of cases solved per year. Productivity is calculated regarding each court in general (all members of staff), but also separately regarding judges and thirdly regarding administrative staff. Moreover, productivity is separately calculated within each case category. First the "weighted case-production" per each individual court and per individual case types is calculated. This is done by giving each decided case a weighting by calculating the approximate resource each case requires. This weighting is defined in co-operation with the courts. The aim has been to attain a calculation of the annual man-years used by the court. Each member of the court staff reports to the National Courts Administration of the tasks he or she has carried out during the working hours. This is done by dividing the working-time according to each type of legal work.

4.3. Danish time distribution model (Tidsfordelningsmodel)

In **Denmark** an examination was conducted in summer 1997 that aimed at mapping the distribution of different tasks within courts. The objective was

to gain a picture of the current resource allocation in courts that could be used later on in planning new resource allocation regarding simple matters. The point of departure of the time distribution model is that each individual court employee reports the allocation of different tasks with relation to his/her overall working hours. After combining these percentages with the wage structure can both the total amount of wages and the time usage for different tasks be divided among the different legal matters. The findings of the examination indicated that there were large variations in time use between different legal matters and different employee groups, but that this was mainly dependent on the characteristics of each individual case. (Delberetning 1 om domstolenes sagbehandlingstider 1998, 46-47, **Denmark**.)

On the basis of the statistical examinations the working group proposed a manual for timeframes in criminal proceedings that have been forwarded to all Danish district courts. It was proposed in the manual that:

1. all criminal matters are added to the list of cases one day after reception,
2. the material is given to the court secretary no later than in the morning of the next day,
3. all dates for separate processes within the proceedings are decided and added to judges' and lawyers' calendars as soon as possible,
4. matters should not be processed in bundles; if the Police expresses a wish that some matters should be processed together, this can be done but it is required that dates for each individual process phase are set immediately and information of these expressed for the Police as well,
5. the processing times must be as short as possible, but not so short that regulations regarding proceedings cannot be adhered to; the standard time frame should be 4-6 weeks; however, exceptions to exceed this time frame can be made in cases, which are particularly demanding and complex (Delberetning 1 om domstolenes sagbehandlingstider 1998, 41-43, **Denmark**).

4.4. Norwegian caseload weighting system (Belastningsmodell)

The Norwegian Ministry of Justice has developed a standard for statistics and a model for staff resource allocation of courts in the late 1980s and early 1990s. The basic idea of the model is that each type of a legal matter consumes a certain amount of working time (minutes). This total working time is distributed according to different tasks carried out by judges and administrative personnel within a court. An ideal model of staff resource allocation is then reached when the time use (minutes) of all tasks is compiled.

The model is sustained by the National Court Administration and has current plans to develop a similar model for courts of appeal. An output of the model from 2002 indicates that in most courts the allocation of resources regarding staff is consistent with the model. The major advantage of staff resource allocation system is that it enables to evaluate in a swift and simple manner, whether there's a need for increase or reduction of personnel in individual courts. (Hagedal 2004, 226-227, **Norway**.)

When caseloads are examined within a one-year time-span Hagedal (ibid.) notes that the vast majority of Norwegian courts of first instance have similar caseloads with only few exceptions. Court caseloads seem to be quite stable also when examined on a longer time period. However, during the last few years **Norway** has witnessed an increased caseload and the funding of courts seem to have become more insecure. One explanation Hagedal (ibid.) offers for the increase of caseloads is that the staff resources of the police and prosecution authority have increased. Continuous demands for increasing the resources of the Police can, if put to action result in increasing the caseloads of the judiciary even more severely in the future. This in turn, can lead to a situation where the judiciary is unable to meet its obligations. Also the strategies described in part two of this report for swifter case handling by the police and prosecution, might increase the case load of the courts – at least for a period.

Currently the Norwegian National Court Administration is developing a new caseload weighting system for district courts. Courts of first instance have for a long time given feedback that the current system has problems that complicates the reliability of the information on the distribution of budget resources. The National Court Administration supports this viewpoint as well. The system was developed in 1992-1996 and since then corrections and developments have been made to the system e.g. by law amendments and administrative changes and by development of characteristics of certain legal matters. During the ten-year period the system has existed several things that served as a basis for the original model have changed. (Ny belastningsmodel for tingsrettene 2005, **Norway**.)

At the moment work is being carried out in order to further develop the model and to correct some errors in functions that have become prevalent during the last ten years. For example, some law amendments and changes in administrative proceedings within the judiciary have not been updated to the model. It is also worthwhile to consider whether there could be other better tools for distributing resources among courts. A project group has been established that will carry out the planning of the new model for district courts. Also a reference group has been established which comprises of representatives from courts. These persons will express their ideas and comments on the project groups' work. Moreover, the courts are involved already in an early phase of the development work by participating regional

meetings. In these meetings the project group shall present results of the work so far and receive comments and insights to them. This will comprise an important element for developing the new model in courts. The model should be completed in autumn 2006 and should be accessible for use in 2007. (Ny belastningsmodel for tingsrettene 2005, **Norway**).

In order to develop a new case weighting system it is necessary to have basic information on time use and of the weight of different cases in the system. For this purpose a study will be carried out in a selection of courts. In order to explain the differences in time usage among certain legal matters diverging characteristics of individual cases will be registered and analysed. This is especially important because one of the criticisms of the current system is that it does not take into account the complexity of an individual case. The project group has selected 25 courts that will participate in the study. The time registration will be carried out in two four-week periods. In each of the selected courts a representative will be selected who shall be responsible for the practical work of time registration in the court.

The general aim is that the system would enable to serve several various purposes for example for the distribution of tasks and budget and that the model would be applicable to changes in courts and in changes in society. In this discussion the courts themselves are considered as key players. Many matters are in constant state of change: legal cases, court users, court employees, society, procedures, tools and legislation. This kind of viewpoints should be kept in mind when developing the new system. Moreover, this demands that when law amendments and changes in routines are carried out one examines to a closer detail what kind of consequences these changes have to the development of case processing in courts. The same problem formulation applies to administrative, technical and organisational changes. Objective and appropriate criteria are important when large amount of funds are distributed. When criteria of the system are clear and simple the work of the National Court Administration for distributing resources is less demanding.

Individual working stages related to a legal matter are presumed to be similar between courts. It is also assumed that even if the workload related to specific legal matters might differ temporarily, it will eventually normalise over time. It is also possible that there are constant differences between courts in some areas that the model is unable to measure. An especially important part of the work regarding the new system is to clarify which objective differences are predominant between different courts and to carry out analyses that will enable the size of weighting given to these differences to be calculated. The results of this work will produce an objective connection between the amount of processed cases and resource contribution. (Ny belastningsmodel for tingsrettene 2005, **Norway**.)

The current model uses statistics from previous year in order to calculate the allocation of resources. The advantage of this procedure is that the information is easily accessible. After the distribution of budget resources regarding annual principals means that changes in resource needs cannot be monitored before two years after the change has taken place. This is a weakness and the aim is that in the future the distribution decision will be made according to the activity level of the same year in question. To develop a system that takes into account all aspects of the court environment is unrealistic. Any kind of model will mean a simplification of reality. An extensive model will also, not necessarily, become a bit more accurate than a simpler model. The National Court Administration states that a model should be a useful tool but says that a 100% accuracy is not a realistic goal. The new system should be one of several factors that are used when allocating resources to courts of first instance. Through court's budget proposition and through the dialogue between courts the National Court Administration receives information of the tasks and situations in the courts. This means that the National Court Administration finds out about other factors as well when allocating resources. The model shall become a useful tool both in the dialogue between the National Court Administration and courts of first instance, in allocation of new positions in courts and courts budget and in the National Courts Administration dialogue with the Parliament on the need for additional funds for courts. (ibid.)

Part Two

Swifter criminal justice in Norway

Pre-trial stage – from the report to the prosecutorial decision of the police.

Review of “Prosjekt hurtigere straffesaksbehandling”. Report I

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1. Introduction

1.1. The Norwegian “Swifter criminal justice” project as a best practice example

Speed in the criminal process is desirable for several reasons: 1. Criminal sanctions ought to be applied swift. An offender should not be allowed to commit new offences before the penalties for previous crimes have been served. 2. Suspects that are innocent ought to be cleared as fast as possible. 3. The public wants serious crimes detected as soon as possible. 4. Victims and witnesses are best served with fast decisions: Especially victims of serious crimes might find it difficult to put the incident behind them and go on with their lives before the case has been finally decided. Also defendants who want to abandon their criminal behaviour might experience the waiting time for trial or other final decision as a barrier. 5. The principle of material truth is best served if the evidence is presented fresh to the court. Memory fades, the harm and emotional stress connected to the crime disappear and misleading explanations are fabricated as time goes by.

During 1999-2003, the Norwegian Ministry of Justice carried out an extensive project on faster processing of criminal cases. Criminal cases are processed in a complex chain with many players and stages, running from the discovery or reporting of the offence, until after the sentence is served and the case closed. The project aimed at the chain as a whole, targeting bottlenecks and evaluating collaboration. It proposed a range of measures to improve speed and quality.

As a best practice example, has been selected one of the several reports from the project that focuses on the processing time at the police and covers two stages in the criminal case processing chain, namely the investigation stage and the prosecutorial stage. The report was issued in 2000.⁸

The main reason for using the study, is its sharp focus on backlogs and especially on the time when nothing happens to a case. Line of action 11 in the Framework Programme of CEPEJ recommends governments to improve their trials to reduce waiting time. The Norwegian report both provides tools for understanding the dynamics of backlogs, and a sample of strategies for reducing and removing them.

8. *Prosjekt hurtigere straffesaksbehandling. Arbeidsgruppe I. Sluttrapport.* Justis- og politidepartementet. (Project Swifter Criminal Justice. Working Group I. Final Report. Norwegian Ministry of Justice). Submitted 20 June 2000. Some of the measures in the report also are described in the report *Time management in Nordic courts* (also mentioned in Part One p. 23)

Another reason is that criminal cases are an important part of the European delay problem that has received limited attention from CEPEJ so far. Their handling also differs significantly from the civil cases especially prior to the case is brought before the court. Civil parties organise their processing of disputes according to standards set by them. Usually, it is left to the parties to decide if and when they want to bring a dispute before a court. A party might decide to sue early or late during the course of a conflict, or not at all. Therefore “delay” in bringing civil claims before the courts are mainly outside the scope of the ECHR and also outside the scope of the CEPEJ-TF-DEL. To the author’s knowledge, no widespread ideology or ideas exists in Europe about optimum timeframe for bringing civil legal disagreements before the courts. Time frame standards mainly apply from the moment a claim is filed.

Criminal matters are different. The right to a fair trial “within reasonable time” standard is measured from the moment a person is “charged” with a criminal offence. Broadly, that status is achieved when the evidence against the suspect has gained certain strength – when it appears moderately probable that he has committed a specific offence. The status as charged often is achieved early during investigation, and usually long before the final decision of whether to indict him/her is made and the case is forwarded to the courts. In criminal cases, therefore, the “reasonable time” standard applies to most of the case handling at the police, and delay there might impact significantly on the assessment of alleged breaks.⁹

In civil cases, the plaintiffs vary from poor people with little experience with court procedure, to big business firms and public institutions that frequently use the courts. In most jurisdictions, criminal cases are handled within a uniform, national police and prosecutorial system also at the pre-trial stage. Equal and fair treatment and correct and speedy processing is a general demand to the system. Contrary to the courts, the investigation and prosecution system in most countries – if not all – is bureaucratic and hierarchical, in the sense that the national prosecutor is entitled to instruct the system on all levels about how to use their competence both in individual cases, policy issues and organisational matters. District prosecutors have similar powers over their police districts. While the players in civil disputes are dispersed without any common co-ordination, one major player dominates the handling of criminal cases in most jurisdictions with powerful tools for acting in a co-ordinated and uniform way throughout the whole jurisdiction. Police and prosecution are also in a far better position to pressure courts that behave atypically than the parties in civil cases.

9. Cf. CEPEJ –TF-DEL (2006) 3 pp 22-23: A charge exists when a person receives a notification from a competent authority of an allegation that he has committed a criminal offence or when he otherwise is substantially affected by the situation.

For the CEPEJ-TF-DEL, the focus is on *optimum* timeframes, which is a more demanding standard than “within reasonable time.” From the perspective of the victims, witnesses, the public and often the offender himself, it is not only the time from the charge to the court decision that matters. To them, it is obviously also a strain if the time used from the detection or reporting of a crime until someone is charged with it, becomes exorbitant. It justifies looking at time use from the start of the investigation, which is in accordance with the approach of the Norwegian report.

The criminal case processing chain also is a high volume system. In Norway, which is a small country with 4.6 million inhabitants and a low crime rate, 400.000-500.000 criminal acts have been processed yearly during the last years. The caseload at the police level is comparable to that of other public agencies that handle cases on a mass basis, for example social benefit applications, social security, building permits, tax returns. The volume of *potential* court cases therefore is enormous compared to what is handled by the different players at the civil side. The strain-off function of the police and prosecution has a tremendous impact on the workload of the courts. Of the 487.000 offences in Norway processed by the police in 1999, they indicted only 96.000 before the courts – or less than 20%. If another 10% of the offences had been forwarded to the courts, their caseload would have increased by 50%, and resulted in an unwieldy backlog. An action plan against delay that fails to target police and prosecution, will obviously appear incomplete.

These observations also point at another strategy consideration. If backlogs in criminal cases are significant in a jurisdiction, and the police and prosecution appears reasonably uniform, it will probably be easier and faster to achieve results by focusing at backlogs at the pre-trial stage, than at the courts. Despite the significant organisational differences between police and prosecution on the one hand and the courts on the other, many of the analytical tools and time reducing strategies developed in the report, also are adaptable to time management in the courts.

The full report amounts to more than 170 pages. The author has tried to extract the points that are of especial interest to the work of CEPEJ, and adjusted the presentation to that purpose. Its delay analyses have been significantly simplified and its major recommendations only have been summarised. Some analytical comments on the applicability of the report have also been added when it was thought appropriate.

1.2. Investigation and prosecution in Norway

Roughly, the Norwegian crime prosecution system has three levels. Police prosecutors form the first level. The country was divided into fifty-four police

districts.¹⁰ All police districts employ several jurists that perform the prosecutorial functions, frequently in combination with other police tasks, and with the police commissioner as the main responsible.

District Prosecutors constitute the second level. They are responsible for prosecution in several police districts and are the police prosecutors' superiors in all substantive matters concerning the processing of criminal offences. District prosecutors are full time prosecutors. At present, Norway has ten prosecutorial districts.

The whole system for handling criminal offences – comprehending crime investigation, prosecution, trial advocacy and control of the execution – is led by the National Prosecutor. As superior authorities, the district prosecutors and the National Prosecutor are entitled to interfere in any case handled by the police prosecutors when deemed necessary.

Criminal investigation is undertaken by the police and the district police commissioner decides resource allocation. During the pre-trial stages, substantive prosecutorial decisions might concern investigative steps, the use of coercive means and the final decision of whether to indict or to end the case with some sort of definitive prosecutorial decision.

Prosecutorial decisions are made at different levels in the prosecutorial system. For minor offences and high volume, standard crimes, the police prosecutors make all prosecutorial decisions. In other serious crimes, the district prosecutor makes the final prosecutorial or indictment decision. In such cases, the police prosecutor or the police commissioner will forward a prosecutorial recommendation on behalf of the police district. The recommendation will advise on whether to indict or not. If yes, it will propose an indictment, containing a description of the alleged act with a reference to the criminal provision, and a sanction. If not, it will propose a definitive prosecutorial decision that might be a dismissal or withdrawal of the charge, a prosecutorial fine, or a transferral of the case to another instance, like mental ward, child welfare agency, conflict council, foreign prosecution, or similar.

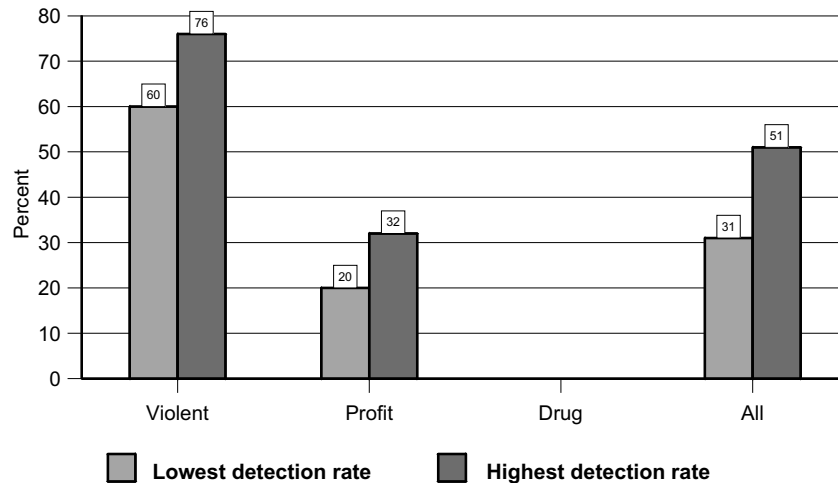
2. Statistics on backlogs

2.1. Prosecutorial districts

The study compiled statistics on case handing time and backlogs in the ten prosecutorial districts. They studied both the over all figures and the data for three major crime areas, namely violent crime, crime for profit and drug. Fig 1 shows the findings for the two prosecutorial districts with the highest and lowest detection rate

10. From 2002 the number is twenty-seven.

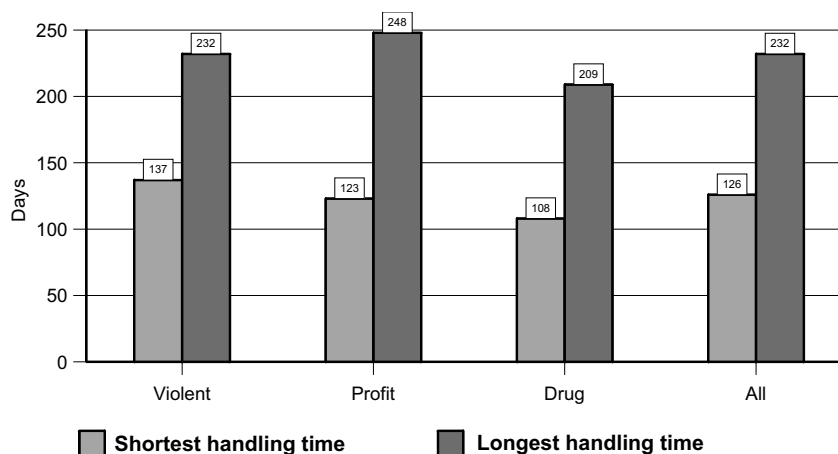
Fig 1: Variations in detection rates between prosecutor districts. Norway 1998



The over all detection rates varied a lot. The highest lay 20 percentage points over the lowest one. The variations within the two major areas violent crime and crime for profit also showed differences worth noting. Since the detection rate is a major indicator on quality in the processing of crime cases, the figures meant that quality was uneven and could be improved.

Fig 2 shows the variations in processing time between the two prosecutorial districts with the shortest and the longest processing time.

Fig 2: Variations in processing time between prosecutorial districts. Norway 1998



Processing time from report to prosecutorial decision for all crimes varied between 126 and 232 days, with an average of 199 days. The three major crime types studied, showed similar variations.

Both the detection rate and the processing time varied significantly between the prosecutorial districts. The striking differences could not be explained from variances in volume or complexity of the caseload. Although the report did not provide data on the statistical correlation between detection rate and processing time, it concluded that the findings gave strong indications that a significant potential for improved efficiency existed.

2.2. Backlogs and backlog profiles in police districts

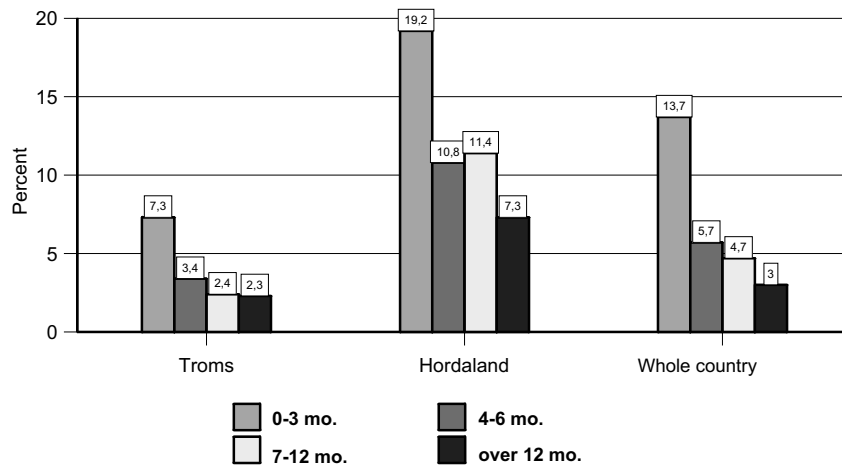
The report then chose seven of the fifty-four police districts for a more detailed study. They gathered statistical data from the central police register on six major crime areas, namely on damage, drug, sexual offences, violence, crime for profit and business crime in addition to data on all crimes. Average detection rates varied between 23% for damage and crime for profit up to 91% for drug crime. Average handling time varied between 151 days for drug crime up to 360 days for business crime.

The report also measured backlogs at the selected police districts. They split the processing time into two stages at the police district, the investigation stage and the prosecutorial stage. The investigation stage was measured from the date when the crime was reported until it was delivered to the police prosecutor for the final prosecutorial decision. The prosecutorial stage was measured from the end of the investigative stage until the police prosecutor made the final indictment decision. If the final prosecutorial decision had to be made by the district prosecutor, time was measured until the recommendation to the district prosecutor had been made by the police district. These limitations meant that time use at the district prosecutors and the National Prosecutor fell outside the scope of the study.

The study put up backlog profiles according to the age of the cases. The processing time was split into four brackets according to the processing time used at the time of measurement: 0-3 months, 4-6 months, 7-12 months and more than 12 months. The size of the backlog brackets was measured in percentages of the yearly amount of decided cases. The two extremes – represented by Troms and Hordaland police districts – with the average for the whole country, is shown in figure 3.

While backlogs in Troms police district amounted to 15% of the yearly output, it was 49% in Hordaland or three times as high. Hordaland's rate also was far above the 27% average of the country. The difference appeared largest in the most serious brackets of delay.

Fig 3: Backlog profiles. Troms and Hordaland police districts and the whole country. 1999



Differences in crime rate and crime profile could not explain such great differences in processing time between the two police districts. The figures gave a strong indication that other factors relating to differences in the system of processing criminal cases had to be considered. Since the handling of criminal cases at police districts has a uniform formal and organisational structure, it was reason to believe that the major cause for the differences in backlogs related to differences in how the case handling system functioned in practice.

Breaking the backlogs into brackets according to processing time used (age brackets), produced additional information. Backlogs in Norway as a whole had been quite stable. The profile for the country showed half of the backlog in the 0-3 mo. bracket and the other half in the remaining three brackets, while Hordaland had less than 40% in the shortest bracket. Especially the 7-12 mo. bracket appeared comparably high and might over time also increase the volume in the bracket over 12 months. The Report considered a processing time of more than six months as exceptional. Nineteen per cent of the backlog did fall in those brackets in Hordaland, compared to 5% in Troms and 8% at the national level. The profile gave a strong indication that backlogs in Hordaland would increase unless some preventive measures were applied.

2.3. “In-depth” study of backlog factors

The Report also studied the location of the backlog – or which actor that had the case. Since a criminal case moves through different stages; investigation, prosecutorial decision, trial preparation, main hearing, appeal,

execution, etc., the location of the backlog in the criminal case handling chain also will provide important information about delay when it is compared to the backlog profile. If the bulk of the cases in the over 12 month bracket are with the police, it is still at the investigative stage and the potential for excessive delay appears alarming. If it is at the appellate stage, the cases might seem well en route.

The working group therefore did an in-depth study of backlogs. It studied processing time and its components more closely. From the seven police districts and six major crime areas selected previously, they decided to make a smaller selection, by choosing five of the police districts and focusing on penal clauses that were frequently violated. They selected crimes within the following categories:

- crime for profits (especially theft),
- drugs,
- violence (especially bodily harm),
- damage.

They also added traffic offences as a statistically important offence. They picked 20 finished cases from each crime area within each police district, except for Oslo where the number was increased to 50, due to the size of the caseload. Within each district and crime area, the cases were selected randomly. The first 20 (50) cases registered as finished after a set date were included in the sample, which then amounted to 650 cases. The study of processing time was done from the information contained in the case documents.

The working group focused on processing time at different stages of the case handling and made a major distinction between the investigation stage and the prosecutorial stage. The investigation stage lasted from the registration of the case until it was sent to the prosecutor for the prosecutorial decision, and the prosecutorial stage then lasted until the decision of whether to prosecute had been made.

They found that the average processing time at the investigative stage varied from 39 to 118 days between the police districts for all crime types studied, while the variation at the prosecutorial stage lay between 43 and 190 days. The total processing time until the prosecutorial decision varied between 82 and 307 days.

As expected, processing time varied even more between the different crime areas. However, the difference between fast and slow police districts mainly remained also within the selected crimes.

2.4. Action time and standstill time

The working group separated the processing time into two major components – *action time* and *standstill time*.¹¹ They used days as the calculation unit and defined action time as days when some active investigation step was undertaken that could be registered from the documents. Also activity that only took up a part of the day, was counted as a day with activity. On the other hand, if more people did tasks with the case at the same day, that was counted as one day of activity only. They excluded theft and damage from this part of the study, which then comprehended 390 cases.

The findings appeared striking. While total action time for both stages varied between two and five days both between police districts and crime areas, *standstill time* varied between 43 and 309 days. Action time only constituted between one and 7% of the total processing time, while standstill time counted for 93%-99%. Although other counting methods might have brought somewhat differing results, it seemed well beyond doubt that standstill time constituted the bulk of the processing time.

That conclusion appeared obvious for the prosecutorial stage. Action time was counted to one day for all cases. On average police prosecutors read and decide several cases of the kind studied during a working day, which compensated for the few cases that needed more than one day. Therefore, of the processing time between 43 and 190 days, not more than one day was action time, and that day was obviously spent toward the end of the processing time. When cases arrived at the prosecutor's office, they were put at the bottom of the pile, waiting for their turn.

At the investigation stage the findings also were quite similar among the three types of crime. 57%-84% or more of the action time fell within the first 30 days of the investigation. After 90 days, very little happened.

The study mapped possible bottlenecks. They reviewed the response time for requests from the police for reports on the suspect's personal background and forensic evidence of different kind, like analyses of drugs and other chemicals, level of intoxication from alcohol and drugs, documents and graphical evidence, fingerprints, crime scenes, autopsies, DNA, other expert reports etc. Generally they found that the action time only constituted a minor part of the processing time. The bulk of the response time was made up by standstill time. Most of the instances interviewed, admitted that they might shorten processing time significantly.

11. Other terms used by CEPEJ are "working time" and "waiting time" or "queuing time". "Standstill time" means periods when pending cases are inactive, independent of reason, see p. 5. CEPEJ-TF-DEL (2006) 3 analyses the acceptable length of the proceedings on the basis of the case law of the European court of human rights. Standstill of the proceedings due to inactivity of the judicial authorities over a significant period of time usually is deemed unacceptable (pp. 34-35).

2.5. Conclusions

The report concluded that the over all average processing time of 198 days from registration/report until the prosecutorial decision was obviously too long. One could not explain the big differences between the police districts only from differences in crime rates or resources. Standstill time appeared excessive, especially at the prosecutorial stage, but also at the investigative stage. A significant difference between average and median processing time (not described here) implicated that for a minority of cases, the processing time was extraordinary long. It was important that the police districts emphasised adequate control routines that could detect such cases before they totally went off track.

Even with huge margins, the average action time was far below ten days, and the low figure could not be attributed to substandard work. Most cases reviewed appeared minor and handled thoroughly enough. The major problem was the standstill time. Most of the action time took place at the first month of the processing time. The working group therefore asked if the police districts focused enough on closing their cases without delay. It appeared that when the essential work was done, the police prioritised new, incoming cases instead of finishing their old ones. Bottlenecks connected to external providers of expert evidence were a cause for delay in some cases, but not for the bulk.

It seems obvious that the analytical tools used to study delay at the police districts in Norway, might be used in other jurisdictions as well. They also are applicable on courts, although the detection rate as a quality indicator has to be substituted with other indicators. Most of them might also bear on civil cases. Variations in case processing time, backlog profiles according to age brackets and type of case and the distribution of processing time on action time and standstill time might be mapped for courts as well. Another report from the Norwegian project on faster criminal justice did map some of these variables for the courts.¹² They found huge variations in processing time between them (p. 24).

3. General remedies against delay

The report proposed a bundle of remedies aimed at reducing processing time. Some of them are general in the sense that they are designed to impact both on action time and on standstill time. Others aim especially at standstill

12. *Prosjekt hurtigere straffesaksbehandling. Arbeidsgruppe II. Sluttrapport.* Justis- og politidepartementet. . (Project Swifter Criminal Justice. Working Group II. Final Report. Norwegian Ministry of Justice) Submitted 26 June 2000 (mentioned in Part One p. 25).

time and I will list them in the next paragraph. The general remedies related to:

- *Forensic evidence.*

Reduce the use of chemical analyses in drug cases.

- *Fixed intoxication limits for driving under drug influence.*

Like many other countries, Norway practices fixed statutory limits for driving under the influence of alcohol. (The present lower limit is at 0.2 per thousand in the bloodstream). Fixed limits significantly simplify the evidence needed for a conviction, by making clinical tests and witness evidence about the driving, superfluous. In most cases the main evidence is a blood test. The working group considered similar tests for drugs, but opted against it, partly because people's tolerance for drugs differed significantly more than for alcohol, partly because some drugs also were used as medication and partly because intoxicated drivers often had used a mix of drugs.

- *Obligation to appear at police examinations.*

The working group noted an increasing tendency among suspects or witnesses not to appear voluntarily at police interrogations, which caused delay, and proposed to authorise the police to make appearance obligatory for witnesses when necessary. With respect to the suspect, they thought the existing authorisations to arrest and detain him sufficient.

- *Punishment discounts.*

Processing time in criminal cases is significantly influenced by confessions. They increase the detection rate and reduce the resources necessary for achieving convictions. Rehabilitation both of victims and the offender are usually facilitated by confessions. The working group therefore proposed significant rebates in the sentences for suspects who confessed. The main criteria should not be remorse, motives were of less importance, but how it helped facilitating the detection and reduced the use of time and resources for the police and prosecution. A confession at the beginning of the investigation should count more than on the trial stage, and a confession when the other evidence was non-convincing more than when it appeared overwhelming. Also decisive information about other crimes committed either by the confessor himself or by others, ought to be rewarded, especially when it came to organised crime.

- *Standardised police ticketing.*

The report also considered increased use of standardised police ticketing for several minor offences, like traffic offences, minor drug and alcohol offences, petty larceny, vagrancy, failure to deliver tax return, custom offences, etc. However, compared to the existing prosecutorial fines, the gains in efficiency – processing time included – appeared limited, and to

some extent detrimental to other values that criminal justice was supposed to serve.

– *Plea bargaining.*

Plea bargaining in the American sense is not warranted in Norway. The working group proposed further research of the system, and sketched some major issues, namely 1. what sort of punishment reductions that might be offered to the suspect, 2. what sort of crime 3. the prosecutorial competence to bargain 4. notoriety of the agreement, 5. control from higher prosecutorial authority and the courts, 6. safety measures against ill-founded bargains. Reduced punishment for information that might help the investigation of offences committed by others, was not recommended.

– *Deadlines.*

The Report distinguished between preclusive statutory deadlines, extendable statutory deadlines and internal prosecutorial deadlines. It opted against preclusive deadlines, since they meant that criminals would not be prosecuted unless the deadline was kept. On the other hand, it favoured increased use of deadlines extendable on specified criteria either in the form of automatic extensions or by a court decision.

They recommended stricter deadlines for investigation progress when the suspect was kept in custody and distinguished between four kinds of remedies: 1. Extension of the ordinary deadline for bringing the detainee before a judge from one to four days, which the working group expected would reduce both the number of appearances and the need for longer detention terms significantly. When the suspect was brought before the judge just one day after the arrest, major investigation steps still had not been carried out and it was difficult to make reliable time estimates on the progress, which usually resulted in detention terms of one to eight weeks. A four-day limit would pressure the police to release most suspect before it expired, and make the estimate of the duration of the remaining investigation more reliable, 2. Stricter maximum limits for remaining in custody 3. A better co-ordination between the progress of the investigation and the detention deadlines. Studies revealed that most of the action time during investigation took place toward the end of the custody term, and that stand-still time took up most of it. 4. Stricter maximum deadlines for custody with restrictions, combined with intensified court control. They also suggested a new deadline of six weeks for the prosecutorial decision for young offenders (below 18).

The report proposed a gradual introduction of internal deadlines for the prosecutorial decision at the police, and suggested a deadline of 60 days for assault and bodily harm as a first step. The district attorneys already had a general deadline, saying that 90% of the caseload had to be decided

within 30 days, which the working group opted to keep. The group also discussed more effective IT tools to control the deadlines.

– *Extend the authority of police prosecutors.*

The working group evaluated the division of prosecutorial power between the police prosecutors and the district attorneys for crimes with a significant volume. To save processing time at the district prosecutor's office, they proposed a substantial enlargement of the police prosecutors' authority to make the final prosecutorial decision.

– *Prosecution integrated with investigation.*

The working group stressed better integration of prosecution with investigation – a working method that had been known for long. Prosecutors ought to be involved in the investigation, clarify the legal issues for the investigators and help them focus their work. According to the existing regulations, the police prosecutor was responsible for overseeing all investigations to secure their professional and legal quality, while the administrative unit decided the resource allocation. Close co-operation between the professional and administrative decision makers was indispensable to an effective investigation. Integrated prosecution also had spin offs at the prosecutorial stage. Police prosecutors would already possess a thorough knowledge of the case from the investigation, and should not need much action time to make the prosecutorial decision. In most cases the prosecutorial decision was ripe as soon as the investigation was finished, and could be made immediately.

– *Resource use.*

The police did not use their overall personal resources in an optimal way. Investigators and jurists spent too much time on office tasks and other business than processing criminal cases. A stricter priority seemed necessary. A culture for closing cases without delay also lacked. The routines for transferring cases when vacancies occurred, also had deficits.

– *Review the existing distribution of personnel resources on the tasks.*

A police district in Norway performs several other tasks than handling criminal cases. The working force consists of police jurists, police officers and various categories of administrative personnel who are not part of the police force. It was necessary to rethink the distribution of tasks. Was it possible to transfer tasks in the handling of criminal cases from the police jurists and the police officers to the administrative personnel, and might personnel working on other tasks become transferred to criminal case handling?

– *Education.*

The education of police prosecutors had deficits. Their university training focused on the principles of criminal and procedural law, and had not learned

them much about the challenges of directing criminal investigations or making prosecutorial decisions effectively. High turn over among the police prosecutors also was a challenge. The working group recommended 1. obligatory basic courses for new police prosecutors, 2. specialist courses for selected crimes as business crime, organised drug crime and sexual assaults; for extraordinary investigation methods as room surveillance, communication tapping, undercover, decoys, set up etc.; 3. courses on trial advocacy in complex criminal cases, 4. prosecutorial leadership, and 5. professional updating.

When promoting faster justice, quality must not fall below acceptable standards. The Norwegian report required that the measures used to shorten processing time within the police should not reduce the detection rate.

Many of the proposed remedies might bear on processing time in the courts as well. Reduced use of forensic evidence, fixed intoxication limits, increased confession rate and better educated police prosecutors would shorten court hearings, while increased police ticketing, plea bargaining and extended deadlines for bringing detainees before a judge might reduce the volume of criminal cases brought before the courts.

4. Measures against standstill time

The working group forwarded several proposals for improvements in the organising, routines and working methods applied by the police and prosecution, with the main aim of reducing standstill time. It put up six goals:

- investigation starts immediately,
- all investigations need well-defined goals,
- investigation must continue without interruptions until finished,
- different investigative steps ought to be carried out simultaneously to the extent possible,
- the final prosecutorial decision must be made immediately after the end of the investigation,
- all shipment should be accomplished without delay,
- case registration and filing ought to be performed properly and kept updated.

The working group found that the main reason for the huge deviance from the optimum processing time was standstill time. It made a distinction between internal standstill time that refers to delay within the police and prosecution itself, and external standstill time, which refers to delay at other instances, which are involved in the investigation.

Two main strategies for reducing internal standstill time were pointed out: 1. Significant improvements in the control and follow up of each individual case and of the police district's total caseload. 2. Changes in the workload both of investigators and police prosecutors.

The working group evaluated the overall capacity of the investigation and prosecution system in Norway. Although crime rates had risen far more than the resources during the last two decades, resources had improved significantly during the last part of the nineties. Backlogs had decreased somewhat during the last years while the detection rate remained stable. Those findings did not suggest any major disparity between resources and workload, and indicated that an appropriate reallocation of resources between the police districts combined with a temporary increase in districts with big backlogs might suffice. The rest was mainly an organisational and managerial challenge. The detection rates, which lay between 20% and 30% was considered too low and ought to be elevated to 40%-50% as in the seventies. That goal also seemed achievable without significantly increased resources. Several remedies for reducing standstill time were proposed:

– *Improvements at the investigation stage.*

The working group analysed the different parts of the investigative process and forwarded several proposals for improvement. They evaluated the handling of incoming crime reports, the decision to investigate or not, immediate investigative steps, the division of labour and transfer of tasks during investigation, the use of immediate prosecutorial decisions (fines) in high volume, non contested cases, like traffic offences, simple assault, vagrancy and ordinary drug use, and the use of daily meetings to co-ordinate the investigation of new reports received during the last twenty-four hours, and proposed improvements. They also recommended extended use of investigation teams headed by team leaders in complex matters.

– *Police prosecutors.*

The most severe backlog problem connected to the standstill time at the police prosecutors. They constituted a severe bottleneck that would increase significantly if the detection rate improved. The working group therefore proposed a 16% increase in permanent police prosecutor positions, either by reallocation or by new positions.

– *Separate internal deadlines for the prosecutorial decision at the police.*

A separate deadline for the prosecutorial decision seemed adjacent. The report proposed a 30-day limit, which meant a major reduction from the registered average time at the different police districts varying between 43 and 190 days. However, with an average action time of one day, the resulting standstill time would still make up 97% of the processing time at the

prosecutorial stage. To make such deadlines effective, thorough monitoring and supervision from the prosecutorial leaders – the police commissioners and the district prosecutors – was indispensable.

– *Priorities.*

For some categories of cases it was unacceptable with standstill time of any significance. The working group pointed to priorities set by the National Prosecutor that emphasised the most serious crimes that carried a danger for life or health, like murder, arson, rape, organised drug crime, reckless driving, serious economic and environmental crime, and cases where the suspect was held in custody and cases with a suspect younger than eighteen. Such cases should be put on a separate track, and decided without any standstill time of significance. Neither should the rest be kept on the same track. Small cases also ought to be decided without any standstill time. It was usually more efficient to make the decision immediately instead of keeping track of the case in the backlog and reread it for the final decision later on.

– *Joint prosecution.*

Many cases were not sent to the prosecutor immediately after the end of the investigation because the suspect was under investigation for other crimes and combined adjudication seemed preferable. The working group advised against delaying cases with the purpose to unite them, unless strong evidentiary or procedural considerations justified it.

– *Managing capacity.*

Police districts with excessive backlogs also had problems managing them. More efforts ought to be put into reducing them to a manageable level. Since the backlog nationally was on ebb, resources might be found within existing budgets.

– *Backlog profiling.*

Backlog profiling at set intervals might help predicting backlog development and make it possible to apply preventive measures. Are backlogs increasing, and in what time brackets?

– *Charts of case progress.*

The working group emphasised a thorough monitoring of the progress of the caseload. It recommended as a routine that all case files ought to include a separate chart that showed all investigative steps taken on a monthly basis, and on a weekly basis when the suspect remained in custody, and with a separate marking for the end of the investigation stage and the beginning of the prosecutorial stage. The processing chart should be placed at the top of the case file, and the point was to give all who handled it an immediate overview of the case progress, both to avoid excessive or

unnecessary standstill time, and to quickly detect cases that tended to or already had derailed and get them back on track.

– *Cutting backlogs (backlog reductions) – test projects.*

The police districts that had the largest backlogs needed additional resources temporarily to have them sufficiently cut. The working group proposed means for overtime work and “flying brigades” to remedy the problem. The extra resources should be allocated on the condition that the district in question developed a project plan containing both a plan for an adjustment period no longer than six months, and a permanent plan afterwards. The permanent plan should contain an average processing time of no more than 100 days and 60 days for traffic offences, and a detection rate at least as high as before the adjustment period. The ministry of justice was advised to grant money for test projects.

– *Temporary backlog strategies.*

The working group also pointed to extraordinary measures, especially suited for police districts that had a stable backlog and therefore a one time operation of bringing it down could be expected to have a permanent effect on processing time. Strategies as mass decisions of not to prosecute older cases, stricter screening of reports viable for investigation and less intensive investigation and stricter screening of cases for trial, would all reduce the average action time per case, and free resources for reducing backlogs, although the detection rate obviously would fall. A temporary decrease in the detection rate might still be defensible if it was brought back to normal after the clearing up period, together with a substantial and lasting reduction in standstill time.

– *“Stockholm model.”*

Special reference was made to the “Stockholm model” a backlog project that took place between 1997 and 1999. The Stockholm police had generated huge backlogs. More than 50.000 cases were reported in the queue. A special task force with ca 30 positions was set up for two years, consisting of five units with police jurists and investigators working together in teams. They had 20.000 backlog cases transferred, and at the end of the period, only 140 cases remained unfinished. The working group recommended a similar project for Oslo police district, and estimated that one team might finish 3.500-4.000 during the two-year period – somewhat less than their Swedish counterparts.

– *Monitoring system.*

Norway had an old, and very complex centralised IT system for monitoring criminal cases at the police. The working group put together a range of suggestions of improvements for securing statistical reports necessary for effective monitoring, and proposed that each police district issued detailed

regulations that secured adequate data from the central database and that incoming cases were registered correctly and without standstill time. The instructions ought to contain precise descriptions of how responsibility for the monitoring system was distributed among the police officers, and the police commissioner ought to have a central function in overseeing it. The IT systems also needed updating. Data could not be delivered as charts or graphs, only in tables, and it could not be linked to other IT systems used by the police, the superior prosecution or the courts.

The report's distinct focus on standstill time underpins the importance of making conscious distinctions to action time. Most of the delay registered, refers to standstill time. The working group convincingly shows that measures applicable to standstill time are different from measures aimed at action time reductions. From the balance between new and finished cases, the working group read that most of them also are cheap and might be implemented from resources already available. Reorganisation appeared more important than expanding the capacity of the police. However, reducing existing backlogs presupposes more capacity than preventing them from appearing or increasing. Still, a *temporary* extension of the resources will suffice.

Several of the strategies for reducing standstill time at the police, appear transferable to the courts. All of the working group's six principled goals might easily be adjusted to the trial stage.¹³ A detailed mapping of standstill time and its causes both before the main hearing and from the end of the main hearing until the execution is finished similarly to the report's study of standstill time before the prosecutorial decision, might reveal a potential for improvement. Joint handling of different criminal acts might be reviewed critically.

The use of monitoring systems, internal deadlines, priority setting and multi tracking are already part of court management strategies in several jurisdictions. So are strategies for cutting backlogs. Still, the special techniques that the report recommends might be of value.

13. Examples:

- trial preparation must start immediately after the court receives the case,
- trial preparation and the hearings need well-defined goals,
- preparation must continue without interruption until finished,
- different preparation tasks ought to be carried out simultaneously to the extent possible,
- judgment must be delivered immediately after the end of the main hearing,
- all shipment should be accomplished without delay,
- case registration and filing ought to be performed properly and kept updated.

Definition of major concepts

Action time is the time span or time frame when something happens to a case. Parties discuss the case or appear at hearings, lawyers work on court documents, or plead the case, the judge drafts a decision, the case file is transported from the first district court to the appeal court, etc. Other expressions with similar meaning are “working time” or periods of activity. The term is used on all sorts of progress.

Standstill time is the time when nothing happens to a case. It has come to a stoppage or a cessation of progress. A witness is out of reach and the major hearing cannot take place before he or she is available. The lawyers or the judge is busy with other cases. The expert witness is on holiday, etc. Other expressions are “waiting time”, “queuing time”, judicial inertia or periods of inactivity. The term is used on all stoppages, independent of reason.

Time management means a systematic or methodical administration and steering of the time use in judicial systems. The purpose is to keep the case handling time within set standards and secure that available resources are distributed among the pending cases in a fair and efficient way.

Quality work refers to systematic efforts to improve the efficiency and standard of the service delivered by the courts and their working environment.

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