

Mediation in the Scandinavian Courts

In a quiet corner in the northern part of Europe we have the five Nordic countries. The population on Iceland is 300 000, in Finland 5,2 million, in Denmark 5,5 million, in Sweden 9 million and in Norway 4,7 million. We are well-established democracies and we have a tradition as fairly equal societies. Sweden, Denmark and Norway are kingdoms and Finland and Iceland are republics – Iceland is the oldest republic in Europe.

We have a common culture. In Denmark, Sweden and Norway we understand each other's languages easily, and in Finland Swedish is spoken as a second language.

We also have very similar court systems. We have the common courts in three instances – Iceland being the exception – where they have only two instances. We have almost no specialised courts – but Sweden and Finland have special courts for administrative cases. All the civil cases and all the criminal cases are dealt with in the common courts.

The first instance is a number of District Courts. We also have several District Courts of Appeal – and one Supreme Court in the capitals.

Mediation is developing in all the five countries. In Norway we started drafting a project on mediation in 1993. The project started on the 1st of January 1997 in six District Courts and in one Court of Appeal. Today all the courts in the first and second instance take part in the pilot project. We also have a new act by the Parliament on mediation and procedure in civil cases. The new law will come into force on the 1st of January 2008. These days we have a broad practise of mediation in the Norwegian courts both in the first and second instance.

In Denmark they started working on a project in 2000. They have now practised mediation in five District Courts and in one District Court of Appeal. Two weeks ago they published a draft law on mediation. The draft will pass the Parliament next year. When the draft law has been passed, mediation will be practised in all the courts in the first and second instance.

In Finland the Parliament passed an act in August 2005. There were no pilot projects in advance and they have had some difficulties starting mediation. There is a lack of education, but they are now developing and I hope they will soon have a broader practise.

Iceland will start a pilot project next year. They have tried mediation in a few cases. They are planning a broad education program next spring and will then start to practise mediation in the courts.

Sweden is very often in front in developing the society, but they are the last country to develop mediation. They have established a drafting committee, which will finish its work next spring.

Education

In all the countries the judges starting with mediation have a certain education. We have at least a three days course, some have a five days course and some judges have education from abroad like workshops at The Harvard Law School. We also have had teachers from the United States participating in the education in our countries.

In my opinion education is very important and it is necessary to establish a system of continuing education. It is also necessary to establish an academic branch at the law faculties. In Norway we have been working on this problem for a long time. In Denmark they have a professor in mediation at the Faculty of Law at The University of Copenhagen. They have a very good Master Degree program offered as a Post Graduate study. Next year we will start planning a common continuing education between Denmark and Norway and we hope the other counties will join as well.

Judges as mediators

In the mediation practise described we use almost the same model in all the Scandinavian countries. We practise what the Canadians call judicial mediation. In most cases the judge preparing the case act as the mediator. It is also possible to use others as mediators, but in Norway this very rarely happens – mainly because there are no other mediators to choose. The Lawyer's Association has offered education and many lawyers have taken part in this

education. Our experience is that the parties want the judge as a mediator. In the Danish project the lawyers have participated on a 50% basis and in the newly published draft law it is suggested that the state pays the salary if one chooses a lawyer as mediator.

In my court – Trondheim District Court – we are very eager to use mediation. We believe it is a better way to solve most of the civil cases. We now mediate approximately 50% of all the civil cases. We reach an agreement in almost 90% of the cases. In Norway we have the slogan “Mediation – faster, cheaper and friendlier”. We also mediate greater civil cases taking more than one day. We often use experts as co-mediators. From the filing of the case till the last mediation meeting we use on an average 90 days.

We have a very speedy litigation process in the civil cases. In the cases decided by judgements we use on an average 150 days from the filing of the case to the judicial decision.

Family Mediation – Custody disputes

For some years now we have been trying a special mediation model in family cases – custody disputes. The traditional litigation model is not very suitable for these cases. It often increases the conflict level and destroys the communication between the parents. In these cases we use a psychologist as a co-mediator and we spend more time handling the case. Lawyers usually represent the parents, but they have a more moderate role. We try to speak to the parents directly. The two main goals are to get the parents to take the responsibility for the well being of their children and to find out what is the best solution for them.

We have the first meeting shortly after the case has been filed. During this first meeting we try to reach a preliminary agreement, which the parents can try out for two or three months. During this period the psychologist might speak with the parents or the children if necessary. In the second meeting we sometimes reach an agreement. If this is not the case, we make a few adjustments to the agreement and let the parents try it out for another period of time. In most cases we reach an agreement in the third meeting. We are very satisfied with the results of this mediation. We resolve nearly 85% of the cases with an

agreement between the parents. We are also satisfied with the fact that the cases very rarely are brought to the court again.

Enforcement

We have a very practical solution when it comes to the enforcement of the agreements reached by mediation. The regulations allow the judge to decide to end the mediation with a court meeting if the parties wish to do so. An in court enforceable settlement is then written down.
