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MEDIAÇÃO NOS TRIBUNAIS DA ESCANDINÁVIA

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MEDIAÇÃO NOS TRIBUNAIS DA ESCANDINÁVIA*

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SUMÁRIO: Em todos os países escandinavos, os juizes têm uma certa formação para efeitos de se proceder a mediação. O juiz é desejado como mediador.

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 the common culture. In Denmark, Sweden and Norway we understand each others languages easily.

We also have very similar court systems. We have the common courts in three instances in Iceland being the exception – here we have common courts 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 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 in mediation in 1993. The project started on the 1st of January 1997 in seven 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.

* Intervenção na Universidade Lusíada de Lisboa em Dezembro de 2006.

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In Denmark they started working on a project in 2000. They have now practiced mediation in one District Courts and in one District Court of Appeal. Two weeks ago they published a draft law about 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 instance 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 practice.

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 practice mediation in the courts.

Sweden is very often 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 import and it is important to establish a system of continuous 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 countries will join as well.

Judges as mediators

In the mediation practice described we use almost the same in all the Scandinavia countries. We practice what the Canadians call judicial mediation. In most cases the judges preparing the case act the mediator. It is also possible to use others as mediators, but 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 the education. Our experience is that the parties want the judge as a mediator. In Denmark project

the lawyers have participate on a 50% basis and 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 be have 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 in 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 dispute

For some years now we have been trying a special mediation model in family cases – custody disputes. The tradition litigation model is not very suitable for these cases. It increases the conflict level and destroys the communication between the parties. In these cases we use a psychologist as a co-mediator and we spend more time handling the cases. 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 bet solution for the children.

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 there months. During this period the psychologist might speak with the parents of 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 to the agreement and let the parents try 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.

We have a very practical solution when it comes to the enforcement of the agreement 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.
