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Court Mediation in Finland

1. Court mediation - a new judicial institution

In the past few decades, the significance of alternative dispute resolution has increased in Europe. Also in Finland, new methods for resolving disputes have been introduced. In Finland, there are several officially or unofficially organised systems of mediation for resolving conflicts in different sectors. Such systems include victim-offender mediation, peer mediation in schools, social mediation, family mediation, mediation by the Finnish Bar Association, workplace mediation, mediation by the Finnish Association of Civil Engineers, court mediation and international peace mediation.

In Finland, a civil case becomes pending in a district court where the proceedings are divided into written preparation, oral preparation and main hearing. When it comes to civil proceedings in the Finnish general courts, there are two procedures that aim to solve the conflict amicably: the promotion of settlement in a civil procedure and court mediation. According to the Finnish legislation, a judge is required to investigate the prospects for settling a civil case during its preparation and pursue an amicable resolution of the matter. A judge may also make a proposal for a settlement. Therefore, the *promotion of settlement in civil proceedings* is not a matter of settlement as such, but a matter of promoting an amicable resolution in judicial proceedings.

In the beginning of 2006, the *Act on Court Mediation* (663/2005) entered into force. That statut introduced *court mediation* to Finland, modelled on the experiments carried out in Norway and Denmark. Court mediation is a procedure, voluntary to the parties and managed by the judge, aiming at a situation where the parties themselves find a satisfactory resolution of their conflict.

The *Act on Mediation in Civil Matters and Confirmation of Settlements in General Courts* entered into force on 21 May 2011 repealing the previous Act. Compared to the previous regulations, the

contents of the Act did not change significantly in 2011. The reform of 2011 implemented the EU Directive on certain aspects of mediation in civil and commercial matters (2008/52/EC). The legislative changes were quite small.

Court mediation cases become pending in court either by way of a specific *mediation application* or *a request* attached to the application for a summons (action). The request may be made also later, during the preparatory stage of the court proceedings. A case in court mediation may be closed by a settlement certified by the court, or by the case being struck from the court docket. The case is struck from the docket, if the parties cannot reach a settlement or if they do not wish to have their settlement certified. If the case is pending also as a regular adjudicative matter, the failure of mediation means that the civil proceedings are resumed and may then be closed by a judgment, by a certified settlement or by the case being struck from the docket. Mediation is possible in all types of civil case, including family law cases, always provided that the interests of the child are upheld.

The court decides whether mediation is to be undertaken. If the case is pending also as a regular adjudicative matter, the court proceedings are interrupted for the duration of the mediation. Thus, no one else but a judge can mediate in court mediation in Finland. In order to obtain necessary expertise or to further the progress of the mediation, the mediator may enlist an auxiliary mediator.

The mediation process can be informal; there are no detailed procedural provisions in the legislation. The mediator may also discuss the matter with each party separately, if the parties consent to the same. According to the law, "[t]he mediator shall assist the parties in their efforts to reach agreement and an amicable resolution". In other words, Finnish court mediation is by nature a facilitative effort. However, by the request or on the consent of the parties, the mediator may also make a settlement proposal.

Mediation ends, when (1) a settlement is certified or the parties notify the mediator that they have settled in some other manner, (2) a party notifies the mediator that he or she no longer wishes mediation in the case, or (3) the mediator decides, after having heard the parties, that the continuation of mediation is no longer justified. If the case is pending as an adjudicative matter, it lapses upon the certification of the settlement. The mediator is disqualified from sitting as a judge in the case; another judge must be assigned to preside over the resumed proceedings.

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In a nutshell, court mediation is *a voluntary process under the management of the judge, aiming at the parties themselves reaching a mutually satisfactory resolution of their conflict*.

By the end of 2012, approximately every third district judge (n= 160) has received a three-day *basic training course* for mediation. In the training, practical mediation skills are exercised through role play. Approximately one in ten district judges (n=52) has received a two-day *advanced training course*.

2. Court mediation in the light of empirical data

Between 2009 and 2010 annually for 1–2 per cent of the disputed civil cases went to court mediation. Since 2011, court mediation cases have increased notably. There are currently 500 cases each year, which equals to five per cent of the disputed civil cases. In some district courts almost 20 per cent of civil cases will be handled in court mediation.

In the Research Institute of Legal Policy has made a research of court mediation. Research material was all court documents of the court mediation cases in the years 2006 – 2009. Court mediation is used in *all kinds of civil cases* that are otherwise anyway dealt with in courts however, especially in cases between private persons (62 %). The parties also usually have legal counsels in the mediation (in 68 % for both parties.) The average disputed interest in cases (median) was 16 274 Euros. The amount is equivalent to the mean interest value of civil cases in court.

In Finnish court mediation approximately two thirds of the cases end up with a settlement (68 %). Usually the agreements in disputes concerning money are settled somewhere in the middle range of the parties claims, but in many cases, both parties drop their claims and/ or another creative solution is found. Various individual outcome alternatives seem to indicate that court mediation truly endeavours to satisfy the interests and needs of the parties and is not just about striving towards standard compromise solutions. All in all, based on the documentary material it seems, that court mediation when successful, is a functional conflict resolution alternative for the traditional trial. The proceedings are quicker, they help control risks, they enable more versatile outcome possibilities and keeps the relations between the parties better.

The introduction in 1993 of settlement promotion and oral preparation in the courts, and the introduction in 2006 of court mediation, are major change agents as regards court culture. It can well be said that Finnish court procedure is moving away from the ideals of material law and a substantively correct judgment and towards the ideal of negotiated and contextual law. It is no longer enough that the procedure meets the requirements of formal justice, but it must meet also the requirements of perceived procedural justice.