Norwegian civil procedure – how to make fast even faster[1]

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1. Introduction

Norwegian civil procedure scores well on efficiency as measured in average time for case processing and for achieving high trust among the public[2]. General litigious civil and commercial cases are on average processed in approximately six months and small claims civil cases in four months. On average, a case has passed through both the District Court and the Court of Appeal within 13 months.[3] The number of incoming litigious civil and commercial cases is the second lowest in Europe, with only 359 cases per 100,000 inhabitants in 2012.[4]

This text identifies and explores some of the key features providing efficiency in Norwegian civil proceedings. It will be argued that the main hearing model of civil proceedings, a preference for settlement and flexibility are central elements ensuring efficiency. Critical questions are also raised: Are the proceedings too efficient in some areas? Are there still points of improvement or threats to efficiency?

2. Norwegian civil procedure

Norwegian civil procedure could be characterised as West-Scandinavian (or West-Nordic). It is based on Scandinavian tradition emphasising early settlement. In 1795, Conciliation Boards (Forliksrådet) were introduced to allow for swift and cheap settlement of dispute using local lay people to help the parties find an acceptable solution. Conciliation Boards had additionally power to decide some types of small claims, and still do so. Conciliation Boards still have a role in the civil justice system.

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[1] I would like to thank Associate Professor, Dr. Erik Eldjarn for his insightful comments.
[2] In a study conducted for the Norwegian Courts Administration, 88 percent of respondents said they trusted the courts. See http://aarsmelding.domstol.no/data/2014/aarsmelding.pdf, p. 26-27.
[3] Evaluering av tvisteloven (Oslo: Justis- og beredskapsdepartementet 2013), p. 21-23.
[4] CEPEJ, *European judicial systems – Edition 2014 (2012 data): efficiency and quality of justice* (Council of Europe 2014), p. 202.

The 1915 Civil Procedure Act modernised the civil justice system based on the ideas and concepts of Franz Klein and Austrian (and German) civil procedure.[5] The idea of dividing the proceedings in an initial pleadings stage, a preparatory stage and a final concentrated main hearing became the backbone of the proceedings. In practice, the role of the preparatory stage was limited. Still, an early model of the "main hearing model" of civil proceedings has existed since 1915.

Norwegian civil procedure has also strong connections to English common law civil proceedings. Traditions for a concentrated, party (legal counsel) driven main hearing are strong in Norwegian court culture. Further, the court system is very simple with only general courts, no administrative courts and very few special courts. The Norwegian Supreme Court has central role in the legal system as its case-law is a central legal source.

Pragmatism is another feature of the Norwegian (civil procedure) law. The reason is at least partly societal. The legal system has historically not been very elaborate due to small local communities with few lawyers and even fewer legal academics. Such a system cannot deliver detailed rules: it must rely on judicial discretion. The court system with only general courts also requires the procedural rules to be flexible enough to fit a number of different types of cases. The strong position of the courts has also contributed to a tradition of open, flexible rules. As a conflict averse society, Norwegians prefer fast and pragmatic solutions to disputing for principles.

At the end of the 1990's the Civil Procedure Act required comprehensive revision and modernisation. The result was the Dispute Act of 2005[6], which entered into force 1 January 2008. The foundation of the Dispute Act (hereinafter DA) consist of several key principles, in particular swift and cheap justice, proportionate and fair use of resources, and flexibility. The aim is to enable courts to provide quality proceedings with substantively correct results by three mechanisms. First, by strengthening the preparatory stage of proceedings and the duty of the judge to manage the case, to clarify disputed questions of fact and law and by giving judges increased opportunities to give parties guidance. Second, by stressing the role of the courts a last resort of dispute resolution. Third, by making proceedings more flexible

[5] H.H. Fredriksen, 'German Influence on the Development of Norwegian Civl Procedural Law' in V. Lipp and H.H. Fredriksen (eds), *Reforms of Civil Procedure in Germany and Norway* (Tübingen: Mohr Siebeck 2011)
[6] Act of 17 June no. 90 relating to mediation and procedure in civil disputes. An unofficial English translation is available at http://app.uio.no/ub/ujur/oversatte-lover/data/lov-20050617-090-eng.pdf. Unofficial English and German translations are also available in V. Lipp and H.H. Fredriksen (eds), *Reforms of Civil Procedure in Germany and Norway* (Tübingen: Mohr Siebeck 2011).

including increased opportunities to choose between oral and written proceedings or a combination thereof.

After the reform, the average time for civil proceedings in District Court has remained stable.[7] According to judges and attorneys, the quality of proceedings has been enhanced, but only to a limited degree. However, the legal costs of small claims has sunk by 62.2 %. The legal costs of other cases has not been reduced.

3. The main hearing model and the active judge

3.1 The preparatory stage as a key component

The 2008 reform of Norwegian civil procedure strengthened the main hearing model of civil procedure. In the main hearing model civil proceedings consists of three distinct stages: the pleadings stage, the preparatory stage and the main hearing stage.[8] During the main hearing, the court hears the case in a single, concentrated hearing where the parties present the pleadings, evidence and legal argumentation. The preparatory stage has a key role in ensuring the concentrated main hearing. During the preparatory stage, the parties identify disputed and undisputed factual and legal question and relevant evidence. The judge has a key role in ensuring progress; helping the parties sort out disputed circumstances from undisputed; and distinguishing key questions from more peripheral.

The preparatory stage has a double function in enhancing concentration. First, by ensuring that the case can be heard in a single hearing. In larger cases, the hearing may be on consecutive days. Preclusion occurs at the end of the preparatory stage two weeks before the date of the main hearing, DA section 9-16. The claims, grounds for claims and evidence are "fixed": the parties may not introduce new claims, grounds for claims or evidence after the closing of the preparatory stage. However, as the parties present only list the evidence, the content of the evidence may change, and as they only present an outline of claims and grounds for the claims. The parties may adjust the claims, grounds for claims and evidence as long as the essentials remain the same. As a rule, two weeks before the main hearing the parties submit written closing submissions, which state briefly the claims, the factual and legal grounds for the claims and evidence invoked, DA section 9-10. The parties have detailed information of the claims; the legal and factual ground for the claims; which pieces of

[7] Evaluering av tvisteloven (Oslo: Justis- og beredskapsdepartementet 2013), p. 21-23, 81-82, 105 and 108.
[8] For a closer discussion on the main hearing model A. Nylund, 'Introduction to preparatory proceedings' in L. Ervo and A. Nylund (eds), *Current Trends in Preparatory Proceedings* (Cham, Springer forth coming).

evidence will be presented; and which persons will be heard during the main hearing. Thus, the parties have ample time to prepare their legal argumentation for the main hearing and there will generally not be a need for adjournment.[9]

The judge has a duty to ensure a concentrated hearing by working with the parties to make a tentative time schedule for the hearing, especially timing of hearing witnesses, DA section 9-11.

Second, the case as such should be concentrated to disputed factual and legal questions. By sorting out undisputed questions, and questions of little or no relevance, the case boils down to the essential elements. A concentrated case increases efficiency, as the parties and the court do not have to discuss these questions or to present evidence to support them. Concentrating the case to relevant disputed circumstances is likely to enhance the quality of argumentation and eventually the quality of the decision.[10]

Although the case is "fixed" at the end of the preparatory stage, the parties do not present evidence or arguments during the preparatory stage. The argumentation and presentation of evidence takes place during the main hearing. Each piece of evidence has to be identified, and the parties must indicate which of the disputed circumstances each piece of evidence proves. For instance, a party claiming compensation based on breach of contract must identify the contractual agreement and provisions the opposing party is in breach of, and present an outline on the factual and legal circumstances constituting the alleged breach of contract and the evidence in supporting the claims. Section 9-2 DA specifically states that the claimant may not go further than necessary in argumentation in the statement of claim. The preparatory stage is not the trial, thus the parties may not argue their case during it, only present the outlines to enable clarification and concentration of the issues.[11] The parties present evidence and legal arguments during the concentrated main hearing. Rulings after the main hearing are only based on material presented directly to the court at the hearing, DA section 11-1.

The rules on evidence stress the duty of the parties to inform about all relevant evidence of the case. The parties are obliged to disclose the existence of important evidence if they have no reason to believe that the opposing party is aware of the evidence, DA section 21-4. There is a

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[9] J.E.A. Skoghøy, *Tvisteløsning* 2 edn, (Oslo: Universitetsforlaget 2014), p. 629; and A. Robberstad, *Sivilprosess* 3 edn (Bergen: Fagbokforlaget 2015), 48-50.
[10] Skoghøy, *Tvisteløsning*, p. 551-555.
[11] T. Schei and others, *Tvisteloven. Kommentarutgave Bind I*, vol 1 2nd edn, (Oslo: Universitetsforlaget 2012), p. 299.

general duty to testify and give evidence and to give access to evidence, DA sections 21-5 and 26-5. This duty applies to parties as well.

Parties shall restrict themselves to offering only relevant and proportionate evidence. The court may reject evidence with little or no relevance and excessive evidence. The same is true for evidence, which is expensive to obtain. Cutting off disproportionate evidence is important for cases of a limited monetary value.

The success of the preparatory stage is contingent on preclusion and an active judge. The role of these two factors are discussed next. If the court or the parties find relevant arguments, claims or evidence is missing after the end of the main hearing, the court may decide to continue the proceedings. However, the threshold for doing so is very high, particularly if a party wishes to invoke new evidence.[12]

3.2 Preclusion

Preclusion at the end of the preparatory stage is a key to concentrated main hearings. Parties must be barred from changing their claims, the ground for the claims and introducing new evidence after the conclusion of the preparatory stage. Preclusion forces the parties to prepare the case and "boil it down" to essentials well in advance of the main hearing. In Norway, preclusion occurs when the preparatory stage is closed two weeks before the main hearing. Thus, the parties have ample time to prepare their cases and to sharpen their argumentation primarily to central issues.

However, preclusion is not in itself a panacea. Strict rules on preclusion, especially the principle of eventuality (*Eventualmaxime* in German) may result in front-loading of the case and increased litigation. The parties must include all possible issues and evidence in order to avoid preclusion thereof. The case will then become loaded with all possible claims, grounds for the claims and evidence making it difficult to distinguish central elements from peripheral ones and differentiating between disputed and undisputed elements may be onerous. Preclusion at the end of the preparatory stage gives parties the possibility to let the case evolve and to add and drop elements as needed.

Very lenient rules, on the other hand, may result in an attenuated preparatory stage and less concentration in the main hearing.

[12] Ibid, p. 350-351.

The Norwegian civil procedure follows a middle path with flexible rules. Preclusion is as a rule not applied *ex officio:* it requires a protest from the opposing party unless an "important consideration" suggest the opposite. The threshold for "important considerations" is high, and requires that the main hearing would have to be adjourned and an additional ground for rejecting the change, such as gross negligence of the party. The court has discretion to allow the amendment despite protest from the opposing party. Changes should as a rule be allowed when the party cannot be blamed due to change of circumstances or new evidence not available earlier. If a change results in little or no harm for the opposing party, or if disallowing the change would result in loss for the party, the court should permit it. The former circumstance covers changes that result in only limited need for further preparation of the main hearing, the latter applies *inter alia* to changes where the identity of the case remains the same although the claims are modified.[13]

Amendments may result in more efficient proceedings. For instance, the claimant claims compensation for a leaky roof from the seller of the building, but discovers additional damage shortly after filing the statement of claim. The inspection of the damages end shortly after the preparatory stage is closed. If the claimant is not allowed to include the additional damage in the current case, a new case must be filed, inducing additional costs for both parties and the court. If the court allows extending the claims, all relevant damage may be included by adding an extra day to the main hearing. Only limited additional cost and delay will result from the extra day.

3.3 The active role of the judge

Efficient preparatory proceedings require active involvement of the judge and the parties (their legal counsel). The judge has several duties to promote efficiency and clarification, but the parties must also be active and cooperate with the judge in charge of preparation of the case. The active role of the judge continues throughout the proceedings and applies in appellate proceedings as well.

First, the judge has a duty to case management, DA sections 9-4 and 11-6. The judge "shall actively and systematically manage the preparation of the case" to ensure swift and cost effective proceedings. The duty is restricted to questions related to ensuring timely preparatory proceedings and possibilities for early settlement. As part of the case management, the judge in charge of the case must make a number of choices, including *inter*

[13] Ibid 347-349.

alia if court-connected mediation is appropriate; if summaries of factual or legal questions are necessary; if the case should be split to several proceedings; and if expert evidence or on-site inspections are needed. The judge must ensure timely preparatory proceedings to allow the main hearing to be set within the time limit of six months. This rule is modelled based on the English civil procedure reform of 1995.[14]

Secondly, the judge has the duty to give guidance on procedural rules, routines and formalities, procedural guidance (*prozessuelle Prozessleitung* in German), DA section 11-5 (1). The duty is primarily restricted to questions that are of importance for the parties in the current case ("as is necessary"), and only as far as the parties have overlooked a question ("prevent errors and …enable errors to be rectified"). The court has a duty to encourage parties to rectify errors within a time limit, DA section 16-5. The duty to guide self-represented parties goes further. However, the judge may never give advice to the parties. The judge may not guide a party in a manner that is liable to impair impartiality.[15]

Third, the judge has a duty to clarification and a right to provide material guidance (*materielle Prozessleitung* in German), DA section 11-5 (2)-(5). The difference between clarification and guidance is very subtle. *Clarification* relates to ambiguous or incomplete claims, factual and legal grounds for claims and evidence. For instance, if there are two or more alternative claims or ground for claims, such as damages and price reduction, or liability based on negligence or breach of contract, and it is not clear which of the claimant invokes (primarily), then the court has a duty to clarification. *Judicial guidance* on substantive issues could potentially result in extending the case to new or different claims, factual or legal grounds for the claims and evidence. For instance, in a case on lack of conformity of goods, the buyers has claimed price reduction or damages, the judge could provide judicial guidance by asking (indirectly) if the buyer wants to invoke rectification or delivery of substitute goods.

The judge has a duty to clarification, but only a right to judicial guidance. When clarifying issues, and particularly when providing judicial guidance, the judge must not act in a manner that is liable to impair impartiality. The way the judge poses a question, the selection of wording, the tone of voice and body language are all relevant factors. When considering judicial guidance, the judge must take into account numerous factors, including legal

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[14] Skoghøy, *Tvisteløsning*, p. 551-558; Robberstad, *Sivilprosess*, p. 193; and I. L. Backer, *Norsk sivilprosess* (Oslo: Universitetsforlaget 2015), p. 179-182

[15] Skoghøy, *Tvisteløsning*, p. 558 ff.; Robberstad, *Sivilprosess*, p. 189-192; and Backer, *Norsk sivilprosess*, p. 274-278.

representation of the parties, the stage of the proceedings, if the question is already briefly touch upon by the parties, the type of the case, and the importance of the case for the parties.[16]

4. Courts as a last resort – early settlement

The Committee drafting the Dispute Act stressed that court should be a last resort for dispute settlement. Parties have an obligation to try to reach friendly settlement before involving the court. When appropriate, parties should use other dispute resolution mechanisms, such as dispute resolution boards, to solve their conflicts. Early settlement of cases is cost efficient for both the parties and society.[17]

The Dispute Acts promotes early settlement both before and after the case becomes pending. Before the proceedings, the parties are obliged to send the opposing party a notice of the claim, DA section 5-2. The notice shall contain sufficient information to identify the claim and the outlines of the legal and factual grounds for it. The parties must also give notice of important evidence. The notice helps clarify issues early, delineates the dispute, and may serve as a foundation for negotiations for settlement. The parties also have a duty to attempt to reach amicable settlement, DA section 5-4. The parties may *inter alia* try negotiation, mediation, or a dispute resolution board.

The sanction for failure to send a notice or attempt to reach an amicable settlement is limited to responsibility for possible extra legal costs for the opposing party. The Dispute Act has also rules on out-of-court mediation (chapter 7), but mediation is not mandatory. However, the rules on out-of-court mediation are seldom used and many lawyers are unaware of them.

The Dispute Act also promotes settlement during all stages of court proceedings. The court has a duty to consider the possibility of full or partial settlement at each stage of the proceedings, DA section 8-1. The duty is limited to an evaluation of if, and how, the judge should promote settlement at the specific stage. Judicial settlement efforts vary in range from subtle hints that the parties should consider negotiations to more active involvement. The role of the judge limits the efforts available: the judge may not give advice, present proposals for a solution or act in a manner that could impair the impartiality of the court in the view of the parties. The case may also be diverted to court-connected mediation. In court-connected

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[16] E. Eldjarn, *Materiell prosessledelse* (Tromsø: UiT Norges arktiske universitet Det juridiske fakultet 2016), p. 82-102.

[17] NOU 2001: 32, Rett på sak, Lov om tvisteløsning (tvisteloven), Bind A, (Oslo: Justis- og politidepartementet 2001), p. 130; I. L. Backer, 'Goals of Civil Justice in Norway: Readiness for a Pragmatic Reform' in A. Uzelac (ed), *Goals of Civil Justice and Civil Procedure in Contemporary Judicial Systems* (Cham, Springer 2014).

mediation, the judge usually serves as the mediator. The mediator is not limited by the role of the judge and may have private meetings with the parties. Approximately 40-50 % of all court cases are solved by judicial settlement efforts or court-connected mediation.[18]

5. Flexibility and judicial discretion

Flexible rules and judicial discretion were keywords of the Norwegian civil procedure reform. They are an epitome of Norwegian civil procedure thinking. Procedural rules are general and must fit a range of as the same rules apply to civil, commercial, family and administrative cases. Certain types of proceedings, such as child-custody disputes, have partly special rules, but the basis for all proceedings is the same. Flexibility is required to fit the proceedings to the case at hand. For instance, although the preparatory stage should normally consist of limited written communication and a telephone conference, the court may limit it to written communication only, or expand it to consist of court hearings at the court.

The judge must always strive for proportionality: each case should be allocated enough and appropriate resources for giving the court a solid foundation for its decisions and the parties a fair trial, but not more than necessary.[19] Many rules give judges discretion: trust on judges' capacity to make sensible and conscientious decisions is the foundation of the Dispute Act.

Many rules provide the judge discretion to choose the appropriate reaction. The court should consider the issue, the circumstance and consequences of the options available. When deciding on preclusion the court shall take into account if the late modification is a result of circumstances beyond the influence of the party, or of possible protraction tactics, and the importance of the right to the party. If preclusion results in loss of an important claim due to res judicata, then the court should be lenient. If the additional claim is of less consequence, or if there are alternative ways to make the claim, then the court should adopt a stricter stance. Reasonableness, fairness and cost-benefit analyses should permeate judicial decision-making.

While flexibility as such is beneficial, it requires skilful, reflective judges and sufficient time for judges to consider alternatives. Balancing different principles is demanding. The legal counsel may try to pressure the judge and judges may yield to pressure under constraint. Less experienced judges may err on either side. Case management and judicial guidance are

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[18] A. Nylund, 'The Many Ways of Civil Mediaiton in Norway' in L. Ervo and A. Nylund (eds), *The Future of Civil Litigation Access to Courts and Court-annexed Mediation in the Nordic Countries* (Cham, Springer 2014); and A. Nylund, 'Preparatory Proceedings in Norway - Efficiency by Flexibility and Case Management' in L. Ervo and A. Nylund (eds), *Current Trends in Preparatory Proceedings* (Cham, Springer forthcoming).
[19] Skoghøy, *Tvisteløsning*, p. 555-556.

rigorous tasks and require time. A restrictive approach where the judge opts to disallow amendments, cut off evidence: and shorten proceedings, may result in a need to formal decisions including providing grounds for the decision. A lenient approach will result in more time spent on the substance of the case. Erring on the restrictive side may result in a materially wrong judgment, whereas erring on the expansive side will only result in a slightly longer proceeding. Thus, most judges tend to be lenient. This is also reflected in the duration and cost of civil litigation: the court reform did not result in shorter or cheaper court proceedings.

6. Small claims as the Achilles' heel of civil justice

Hitherto, this paper has highlighted elements enhancing efficiency of civil proceedings. In spite of the general success, there are some important weaknesses. Small claims is a significant weakness.

Small claims could be characterised as the Achilles' heel of the civil procedure reform. Claims with a value of less than 125,000 NOK (approximately 13,500 €) are labelled small claims. For many citizens the amount is significant, amounting to an equivalent of almost 1/3 of a gross annual income.

The proceedings start in Conciliation board unless the case is exempted due to its nature (mainly cases against a public authority and family cases), or the case has been heard on the merits by a complaints tribunal or board, DA section 6-2. Conciliation boards are not formally courts, yet they have significant adjudicative tasks, particularly deciding uncontested pecuniary claims. Local Execution and Enforcement Commissioners administer the Conciliation boards, but the cases are heard by a panel of three lay judges. As the panels in Conciliation boards are organised based on municipalities, there are only a limited number of cases in most of the more than 400 municipalities. More than 2/3 cases are uncontested and decided by administrative staff without a hearing. Some cases are diverted directly to the District Court as they are too complex factually or legally, or if it is necessary to hear witnesses or appoint experts.

The hearing at the Conciliation board is usually limited to 15-30 minutes. Evidence is limited primarily to written documents, and witnesses may only be presented by consent of the board, DA section 6-8 The board has not power to compel the witness to appear or to appoint expert witnesses. A party may request discontinuation of the proceedings if the meeting has not been

closed within three hours, DA 6-11. Conciliation boards may only decide a case if a party requests it and the members of the panel deciding the case agree that the case is factually and legally simple, DA 6-10. Additionally, there must be sufficient evidence to decide the case.

The Conciliation boards have a duty to promote settlement, DA section 6-8. However, there is little room for settlement efforts. If the parties agree that the panel cannot decide the case, the proceedings can be set up as a quasi-court-conducted mediation. In practice, there is only limited time for mediation, as the board generally hears several cases per hour. The panel members have usually no mediation training, which reduces their ability to use more advanced mediation techniques.[20]

Conciliation boards solve a limited number of cases. Of the incoming cases, more than two thirds of the cases end with default judgments, usually without the board hearing the case. One in five cases is dismissed or discontinued as unsuitable for Conciliation boards. Of the remaining 10 % of cases, approximately two thirds are solved, with an almost even distribution between settlement and judgment.

While Conciliation boards offer an avenue to simple legal proceedings, many small claims are too complex for the boards. Consequently, Conciliation boards are a detour on the way to the District Court. Lack of mediation training and limited time to mediate reduces the help the parties gain to settle the case. Many settlements are probably a result of clarification of facts rather than a result of narrowing the gap between the parties. With “genuine” mediation more cases could settle early. Legal counsel have a limited role in the proceedings, as the proceedings should be informal, which further reduces the possibility for legal clarification.[21] The quality of proceedings is variable. At best, the parties may find early solution through clarification of the facts and resolution of clearly unmeritorious.

If the case is too complex for the Conciliation board; the parties do not settle and the panel does not decide the case; or the board decides the case, a party may induce regular civil proceedings. In District Courts, claims of a primarily economic value of less than 125,000 NOK are directed to the small claims track. Small claims procedure is swift and cheap, and the proceedings are both simplified and flexible. The judge may *inter alia* limit evidence to achieve increased proportionality. The aim is to accommodate parties with no or only partial

[20] Nylund, 'The Many Ways of Civil Mediaiton in Norway'.
[21] Schei and others, *Tvisteloven. Kommentarutgave Bind I*, p. 225.

legal representation. The judge has a heightened duty to clarification and judicial guidance to serve self-represented parties.

The preparatory stage has a more limited scope, and there should generally not be a preparatory hearing, only a single hearing when the case has become sufficiently clear, DA sections 10-2 and 10-3. The lack of a preparatory hearing seems inconsistent with the goal of accommodating self-represented parties. Clarification, settlement efforts, and procedural and material guidance typically require an oral format, especially if the judge needs to address to party in person. In general civil cases, if at least one of the parties is self-represented, the court should have a preparatory hearing.[22] Paradoxically, this does not apply to small claims proceedings, which are designed for self-represented parties. The goals of cost-saving seemed to overrun obtaining clarification. In practice, many judges conduct preparatory hearings, primarily by telephone.

The rules on judicial settlement efforts apply to small claims proceedings. However, court-connected mediation should generally not be conducted in the small claims track.[23] The principle reflects an excessive avoidance of costs. Although unsuccessful mediation increases costs and delays, successful court-connected mediation provides a potential for swift and cheap dispute resolution, and more favourable outcomes. A general rule discouraging court-connected mediation in small claims cases is too categorical and deprives the parties of access to efficient and appropriate non-contentious dispute resolution. “Mediation” offered by Conciliation boards is not sufficient, since the lay judges lack both qualifications and time to mediate. The reason for overlapping rules on mediation, which in practice reduce the access to mediation, are a result of tug-of-war on the role of Conciliation boards, where lawyers are generally in favour of abolishing the boards and the politicians favouring lay judges. The committee working on the draft for the Dispute Act was pressed for time, which is reflected in particular in the vague rules on Conciliation boards and small claims proceedings. The vagueness of the rules augments the problems.

Although flexibility and an active judge generally enhance efficiency, the use of them is demanding. Most small claims are assigned to a deputy judge, who has usually recently graduated from university and has limited experience as a lawyer. Deputy judges serve usually two years, and a maximum of three years. Many small claims are simple cases

[22] NOU 2001: 32 A, p. 342.
[23] NOU 2001: 32 A, p. 342.

suitable for inexperienced judges, but other cases are more demanding. Lack of proper preparation of the case exacerbates the challenges for the judge.

Access to second courts is limited, as the parties need a leave to appeal. A leave to appeal is seldom granted Thus, the discretion and the decision of the inexperienced judge deciding the case, is often not subject to review. While such a rule makes sense from the perspective of enhancing cost and time efficiency, it may inadvertently lessen the quality of justice, as discretion and inexperienced judges may be a hazardous cocktail.

7. Structure and funding of the court system as a threat

The structure and funding of courts may also prove to be a threat to the efficiency of Norwegian civil procedure.

Currently, there are 66 District Court and 6 Courts of Appeal. Many of the District Courts are small, with one to three judges, and a couple of deputy judges. The judges decide all types of cases, including *inter alia* compulsory care of children and mentally ill persons, child custody, employment, construction cases, complaints against administrative orders, and a range of criminal law cases. Judges in smaller District Courts have little or no opportunity for specialisation. In larger District Courts, judges often practise “moderate specialisation”, where for instance family cases are distributed to a limited group of judges, complex construction cases to another group of judges and economic and organised crime cases to a third group of judges. The same judge may be member of several groups of specialisation, and all judges sit a number of different cases. Moderate specialisation increases the quality of legal proceedings and the outcomes; it also ensures coherence of the legal system as each judge has an overview of different types of cases. Today, many parties choose to arbitrate commercial cases. More specialisation of District Courts could attract some of these cases back to courts. However, specialisation requires a certain minimum size of a court, with a minimum of five or six judges, not counting deputy judges.

A drastic reduction of the number of courts have been discussed. However, due to local resistance, little progress has been made. In Denmark and Finland, which have approximately as many inhabitants as Norway, the number of District Courts has been reduced to around 25. Sweden, with almost a double population, has 48 District Courts. Due to the geography, a slightly higher amount of District Courts could be required in Norway. Absence of modern telecommunication, especially equipment for videoconferences, hinders the court reform.

Paradoxically, Norway has financed such systems in other countries, including Lithuania, but not found the means to do it nationally.

Norwegian courts face an increasing pressure to process more cases, particularly criminal cases, without getting more resources. While the police and the public prosecution have increasing budgets and are able to investigate and prosecute increasingly complex crimes, courts have not received any additional resources. An increased number of complex criminal cases, and partly increasingly complex administrative cases, cause court congestion.

Another problem are the "vanishing" commercial cases. Norway has one of the lowest numbers of civil and commercial cases per 1 million inhabitants in Europe. Considering that civil cases include administrative cases and the lack of special courts, the number is low. Approximately 40 % of civil cases are child law cases (child custody, parenting time and compulsory care). Therefore, the traditional commercial case has become rare. There are several explanations, including small courts and limited specialisation. In small District Courts, judges have little experience in commercial cases and complex litigation, thus parties may prefer arbitration. Larger District Courts face increasing congestion, where commercial cases receive a lower priority.

8. Final thoughts

Norwegian civil proceedings are cost and time efficient. Citizens trust the court system. In the general perception, courts deliver quality outcome. The main hearing model, flexible proceedings and early settlement are the key success factors. However, the legislator has so far not solved the perpetual enigma of small claims proceedings. Neither has some of the most politically sensitive issues been solved: the role of Conciliation boards and centralising the courts. While a legal culture emphasising judicial discretion, flexibility, pragmatism and settlement and a successful modernisation of the rules of civil procedure are essential, they are not sufficient alone. Efficient proceedings need continuous maintenance and evolution.