

Laura Ervo, Anna Nylund (eds.)

Current Trends In Preparatory Proceedings A Comparative Study Of Nordic And Former Communist Countries¹

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Recently there have been many efforts among legislators worldwide to enhance the efficiency of civil proceedings. In times of austerity, it seems as if all other goals of civil justice become less important. One of the cornerstones of efficient civil proceedings is an effective preparatory stage. This is extensively shown in the book *Current Trends in Preparatory Proceedings: A Comparative Study of Nordic and Former Communist Countries*, edited by Laura Ervo and Anna Nylund. In the Introduction to the book, one of the editors makes a point of stressing that, “pre-trial, or preparatory, proceedings have been introduced, or reinforced, to provide for both efficient proceedings and a sound basis for a correct judgment. Amicable solutions, through judicial settlement efforts and court-connected mediation, have been another vehicle to achieve sound results in a timely and economic manner. These reforms have an impact on the course of civil proceedings and on the role of the judiciary.”²

The book is divided into four parts. The first part presents introductory remarks and sets the methodology of the research. The second part focuses on the experience of the Nordic countries of Finland, Sweden, Norway and Denmark, while the third part deals with the former communist countries of Slovenia, the Czech Republic, Slovakia, Lithuania, Latvia, Estonia, Poland and Hungary. The fourth and final part of the book starts with general conclusions regarding court-connected mediation and judicial settlement efforts in the preparatory stage and ends with final conclusions

1 This paper was supported in part by the Croatian Science Foundation, Project No. 6988.

2 A. Nylund, Introduction to the Preparatory Stage of Civil Proceedings, (in:) L. Ervo A. Nylund (eds.), *Current Trends in Preparatory Proceedings: A Comparative Study of Nordic and Former Communist Countries*, Springer 2016, pp. 1-15.

of the research. The structure of each chapter is adapted to the goals of the book. The authors first explain the historical background of their respective civil justice systems and give a general overview of their civil procedure. Following this, the preparatory stage preceding the main hearing is described by stressing its structure, purpose and the complex role of court and parties in that stage, with special emphasis placed on the use of modern technologies, as well as the rules on preclusion. Finally, the role of judicial settlement efforts and court-connected mediation in the preparatory stage is assessed in each of the countries reviewed. This approach provides an opportunity to “identify and assess similarities and differences between countries and across European legal cultures.”³

The similarities and differences can best be traced in the neighbouring countries, such as Sweden and Finland. As Sweden has always represented a sort of role model for Finland, it is not surprising that those countries share a similar approach towards preparatory proceedings. “East-Scandinavian”⁴ civil procedure, as Laura Ervo refers to it, remains highly efficient with orality and immediacy as its main characteristics. On the other hand, the flexibility of Swedish rules represents the main difference between the two countries. As the author puts it, “the Swedish procedure as a whole is based on the orality which has been seen as a very important and valuable principle also in post-modern proceedings”⁵ Surprisingly enough, the non-use of modern technologies, telephone and video conferencing, is also a characteristic of another neighbouring country – Norway. Despite that fact, impressive statistics show a high level of efficiency in the Norwegian civil justice system, which leads Anna Nylund to the conclusion that, “preparatory proceedings with active judicial case management have proved to be a success in Norway.”⁶ The overview of these three systems clearly illustrates that “the main hearing model provides a more flexible and settlement oriented procedure, and probably also leads to more accurate judgments.”⁷ This can also be said for the last of the Nordic countries reviewed – Denmark. The Danish system is characterized by some interesting features, such as the centralised handling of case preparation. According to Jakob Juul-Sandberg, the preparatory stage in approximately half of the district courts is, “administrated by a certain unit of the co-

3 *Ibidem*, p. 13.

4 L. Ervo, Swedish-Finnish Preparatory Proceedings: Filtering and Process Techniques, (in:) L. Ervo, A. Nylund (eds.), *Current Trends in Preparatory Proceedings: A Comparative Study of Nordic and Former Communist Countries*, Springer 2016, pp. 19-56.

5 *Ibidem*, p. 54

6 A. Nylund, Preparatory proceedings in Norway: Efficiency by Flexibility and Case Management, (in:) L. Ervo, A. Nylund (eds.), *Current Trends in Preparatory Proceedings: A Comparative Study of Nordic and Former Communist Countries*, Springer 2016, pp. 57-79.

7 *Ibidem*, p. 78.

urts including not only a judge but also other legal staff”⁸ which means, “that the judge who tries the case often does not see the document or evidence [for] more than a week or two before the main hearing.”⁹ The courts system and preparatory stage reforms resulted in efficient “think-ahead” proceedings,¹⁰ but even more efficiency is expected in the future, due to the increased application of modern technologies.

The story becomes rather different in the third part of the book which is devoted to the former communist countries. It starts with the experience of three Central European countries Slovenia, the Czech Republic and Slovakia who are characterized by, “a great public dissatisfaction with the functioning of civil justice due to [the] excessive duration of proceedings and backlogs in courts”¹¹ as described by Aleš Galič. He notes the deficiency in the preparatory stage in civil proceedings of those countries and identifies the reasons for it. The failure of the three countries to recognize the importance of preparatory stage leads him to the conclusion that “changes in legislation are only one – and actually the easier part – of the necessary reform.”¹² Indeed, even the example of the Baltic countries of Lithuania, Latvia and Estonia, shows how legislative reform is only a first step in the process. Although closing of the preparatory stage in these countries means that, “in theory it should be quite difficult to change something regarding the essence of a civil case”¹³ in practice it often occurs that parties later change their respective positions and submit new evidence. This and other cases of non-conforming practice lead Vigita Vébraité to the conclusion that “to change legal regulation and to change the aims and role of preparatory proceedings is much easier than to change [the] mentality and culture of judges, lawyers or participants of civil proceedings.”¹⁴ A similar problem is noted by Anna Piszcz when describing the reforms of Polish civil procedure which aimed at amendment of the piecemeal hearing model and giving more discretionary powers to judges in the preparatory phase. However, concludes the author, “the key to success of preparatory proceedings through the proposed solutions would naturally depend on the appro-

8 J. Juul-Sandberg, Reform and Development of Preparatory Proceedings in the Danish Civil Justice System: Towards (Even) More Efficient Courts, (in:) L. Ervo, A. Nylund (eds.), *Current Trends in Preparatory Proceedings: A Comparative Study of Nordic and Former Communist Countries*, Springer 2016, pp. 81-107.

9 *Ibidem*, p. 88.

10 *Ibidem*, p. 102.

11 A. Galič, The Preparatory Stage of Civil Proceedings in Slovenia, the Czech Republic and Slovakia: Halfway There Yet?, (in:) L. Ervo, A. Nylund (eds.), *Current Trends in Preparatory Proceedings: A Comparative Study of Nordic and Former Communist Countries*, Springer 2016, pp. 111-140.

12 *Ibidem*, p. 138.

13 V. Vébraité, Preparatory Stage in the Baltic States: Similarities and Differences, (in:) L. Ervo, A. Nylund (eds.), *Current Trends in Preparatory Proceedings: A Comparative Study of Nordic and Former Communist Countries*, Springer 2016, pp. 141-159.

14 *Ibidem*, p. 158.

ach of the judges”,¹⁵ which may be, “the question of their education and training”.¹⁶ On the other hand, in Hungary, even the procedural rules seem to be insufficient to enable efficient civil proceedings. For instance, preclusion is very limited in Hungarian civil procedure, as a claim can often be later amended and the introduction of new evidence is not so restricted as in other countries. “Dynamic preclusion”,¹⁷ as Adél Köblös calls it, is used “flexibly depending on the certain state of affairs in the procedure and the notices and warnings of the court.”¹⁸ She concludes that “only disputes with simple legal and factual questions can be properly prepared under the present regime”,¹⁹ so the announced recodification of civil procedure rules is more than welcome.

At the beginning of final part of the book, the importance of court-connected mediation and judicial settlement efforts during the preparatory stage is considered. According to Lin Adrian, there is certainly “potential for using judicial settlement efforts more actively than is apparently the case today.”²⁰ On the other hand, court connected mediation is a rather new concept that is still on the rise. Although potentially there is “the rise of a new legal culture across the Eastern and Northern parts of Europe with the emergence of court-connected mediation,”²¹ its real potential is yet to be confirmed in practice and be critically assessed.

The final chapter in the book gives broader conclusions regarding different models of hearing. It summarizes the conclusions for each of the described regions. According to Laura Ervo, Nordic countries are characterized by “the use of the preparatory system as a filter”,²² orality as the fundamental principle by preserving “party autonomy and the active participation of parties during the preparatory stage”.²³ By contrast, the southern and northern former communist countries share the same struggle to change “from the Soviet influenced civil proceedings towards western party autonomy and efficient preparatory stage including the rule of preclusion and

15 A. Piszcz, Polish Civil Proceedings: Expanding the Floor for Preparatory Stage, (in:) L. Ervo, A. Nylund (eds.), *Current Trends in Preparatory Proceedings: A Comparative Study of Nordic and Former Communist Countries*, Springer 2016, pp. 141-183.

16 *Ibidem*, p.182.

17 A. Köblös, Hungary: Towards More Efficient Preparatory Proceedings, (in:) L. Ervo, A. Nylund (eds.), *Current Trends in Preparatory Proceedings: A Comparative Study of Nordic and Former Communist Countries*, Springer 2016, pp. 185-205.

18 *Ibidem*, p. 199.

19 *Ibidem*, p. 201.

20 L. Adrian, The Role of Court-Connected Mediation and Judicial Settlement Efforts in the Preparatory Stage, (in:) L. Ervo, A. Nylund (eds.), *Current Trends in Preparatory Proceedings: A Comparative Study of Nordic and Former Communist Countries*, Springer 2016, pp. 209-231.

21 *Ibidem*, str. 229.

22 L. Ervo, Conclusions, (in:) L. Ervo, A. Nylund (eds.), *Current Trends in Preparatory Proceedings: A Comparative Study of Nordic and Former Communist Countries*, Springer 2016, pp. 233-245.

23 *Ibidem*, p. 237

with the aim of procedural truth instead of material truth.”²⁴ It is often the case that the, “non-binding old type of culture and manners are usually stronger than binding legislative novelties.”²⁵ Regardless of the region, “all legislators seem to share similar aims when reforming civil proceedings and focusing on [the] preparatory stage and the keyword seem to be efficiency.”²⁶

In the introduction, Anna Nylund asks twelve different questions regarding the preparatory stage and the different approaches made towards amicable solutions within civil proceedings. Although each chapter thoroughly answers each and every one of them, the historical background and complex economic and social situation in each country shows how the answer is not always simple. On the contrary, sometimes answers lead to another set of problems and more questions. Of course, the form of the book could not allow an in-depth analysis of every civil justice system, but every chapter allowed a small peek into the historical reasons of today’s problems. Such a short glance represents a perfect starting point for any research in the field, as it can help the researcher to aim in the right direction.

Coming from a country coping with the same problems, this book gives me the hope that the efficiency of civil proceedings is not just a myth and that it can really be achieved with the right amount of cooperation and good will. This goes both for the legislators and the participants of civil proceedings.

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24 *Ibidem*, p. 239.

25 *Ibidem*, p. 240.

26 *Ibidem*, p. 241.

