Rethinking Nordic Courts: An Introduction

Anna Nylund

1 Introduction

Europeanisation, globalisation, privatisation, diversification and digitisation are trends that all exert an influence on courts and the justice system. Still, our understanding of the interrelationship between these currents in the legal landscape and national court culture is limited, which in turn impedes our comprehension of the on-going, potentially transformational processes related to courts. Nordic courts and court proceedings are, naturally, influenced by these trends both directly and indirectly, and their reactions to the developments are contingent on the underlying legal culture.

We argue that a distinctly Nordic procedural or court culture exists; that is, a set of ideas and values that in combination constitute the core of a regional legal culture can be identified in addition to the national legal cultures in the Nordic countries. Studying primarily Nordic rather than national court cultures is fruitful in that it shifts focus away from details to overarching, core ideas, while still allowing us to discuss variations among the Nordic countries. Deepening our understanding of the genesis and formation of Nordic courts and justice systems will give us a richer comprehension of contemporary Nordic legal culture, including the similarities and differences between the Nordic countries. For instance, we can explore how what could seem to be haphazard historical choices have engendered tangible, enduring differences in some respects. It will also enable us to develop tools for conceptualising procedural or court culture in general. A legal cultural approach can provide invaluable insight into how current processes of change shape courts both in the Nordic countries and elsewhere.

A. Nylund (✉)
UiT, The Arctic University of Norway, Hansine Hansens veg 18, 9037 Tromsø, Norway
e-mail: anna.nylund@uit.no

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The Nordic countries—Denmark, Finland, Iceland, Norway and Sweden—form a distinct group with close historic, cultural, societal and legal ties.[1] Studying them is interesting for several reasons. In addition to enabling us to treat courts as a legal-cultural phenomenon, findings on historical processes, for instance in the uptake of ideas from abroad and the variation in the sources of inspiration, can be contrasted with observations on current processes of change.[2] A legal-cultural approach helps to explain how Nordic legal cultures react to current changes, and by juxtaposing past and present processes of change we could gain unique insights into the factors and mechanisms propelling or restraining change.

Studying the Nordic countries is also valuable from a comparative perspective. At least some of the past and present processes shaping Nordic procedural law and courts are parallel to similar developments in other countries. Hence, although our study is limited to the Nordic countries, the insights could reflect trends in many other countries as well and, thus, could bring forward new knowledge that is applicable in a wider context. Even if the Nordic situations diverges from that of other countries, the findings will lend themselves to comparisons and to exploration of the mechanisms thrusting legal cultures in different directions. Moreover, as the gap in procedural differences among civil law and common law countries is shrinking, the Nordic countries are in an ideal position, as they have evaded the civil law/common law dichotomy, possessing some traits from both and some typical 'Nordic' traits.

The Nordic countries are an interesting object of study: the countries are similar in terms of cultural, economic, political, religious and societal factors, yet each has its own flavour. Their relationship to the EU, in particular the Area of Freedom, Justice and Security varies. Denmark, Finland and Sweden are EU members, but Denmark has opted out of cooperation in justice affairs and hence participates in only when it wishes to do so. Iceland and Norway are members of the European Free Trade Agreement (EFTA) and the European Economic Area (EEA) Agreement but still participate in some elements of judicial cooperation, in particular the Schengen Agreement and law related to it. Thus, the Nordic countries are a perfect laboratory for studying multi-speed integration and whether the same input can have different results even in similar countries. Furthermore, the research presented in this volume can be used to juxtapose findings from other countries to achieve comparative insights.

2 Changing Landscape of Courts and Court Proceedings

As mention above, Europeanisation, globalisation, privatisation, diversification and digitisation are key factors influencing the legal landscape in which courts operate and dispute resolution takes place. This part gives a short introduction of these trends.

[1] E.g., Letto-Vanamo et al. (2019), Nylund et al. (2019), Husa (2010), Husa et al. (2007), Bernitz (2007), Agell (2001) and Lando (2001).

[2] Hjort (2021), Letto-Vanamo (2021), Sunde (2021) and Tamm (2021).

Legal input comes increasingly from supranational organs: in Europe, the European Union (EU) has evolved into a powerful actor by being a continuous source of new hard law, case law and soft law.[3] Courts must enforce EU law effectively and equally and ensure that both the outcome and the proceedings adhere to the rights enshrined in the European Convention on Human Rights and the EU Fundamental Rights Charter. EU law also contains numerous rules with both direct and indirect procedural content.[4] Supranational European law has shifted the balance among the state powers by making courts key players through judicial review and by increasing the role of case law as a source of law.[5] In regard to commercial disputes, globalisation has contributed to an acceleration in the shift from litigation in national courts to arbitration[6] and, more recently, from litigation in regular courts to courts specialising in resolving international commercial disputes.[7] Nevertheless, the impact of globalisation is so far almost impalpable, particularly since it is interconnected with other trends, notably the privatisation of justice.

'Privatisation' of dispute resolution in the Nordic countries is pervading and has long historical roots. As discussed above, Nordic justice systems are based on out-of-court dispute resolution in *inter alia* consumer dispute resolution boards and family counselling services and have thus been 'privatised' for decades. Moreover, many of these dispute resolution boards are public entities, or at least publicly funded, and many are corporatist (i.e., corporate groups that consist of persons with the same type of interests, such as labour associations, traders' associations, tenants' associations, consumer associations, and agriculture associations are included in decision-making processes that concern areas related to their interests). Therefore, categorising these organs as private would be misleading. A more recent trend in 'partial' privatisation is making facilitation of settlement a task for the judiciary, through court-connected mediation, plea bargaining and judge-facilitated settlement during the course of court proceedings. Consequently, arbitration is largely the only form of pure privatisation of justice in the Nordic countries. The key factor propelling the use of arbitration is a desire for a private dispute resolution process as such and an efficient procedure, which the lack of a possibility to file an appeal augments.[8] Additionally, the increasing complexity and diversification of legal norms brings about a desire for experts to adjudicate cases; however, since Nordic judges are generalists, the courts are not able to appoint a panel of specialist judges to decide a case.[9]

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[3] E.g., Krans and Nylund (2020a, b), Law and Nowak (2020) and Nylund and Strandberg (2019a, b).

[4] E.g., Krans and Nylund (2020b), Law and Nowak (2020) and Krans (2015).

[5] See Helenius (2021), Nylund (2021a), Sunnqvist (2021) and Thorsteinsdóttir (2021).

[6] E.g., Petersen (2021) and Cordero-Moss (2013).

[7] E.g., Kramer and Sorabji (2019a, b).

[8] Roschier Disputes Index 2021. Dispute Resolution Trends. https://www.roschier.com/publications/RDI2021/#p=1, p. 10 (Accessed 15 Feb 2021).

[9] Roschier Disputes Index 2021. Dispute Resolution Trends. https://www.roschier.com/publications/RDI2021/#p=1, p. 10 (Accessed 15 Feb 2021).

Arbitration also reflects the trend of privatisation of justice, since the proceedings are governed by international conventions, recommendations and rules issued by private bodies, and the outcome is often determined by soft law, some sort of *lex mercatoria* or other forms of private ordering. Many companies prefer to resolve their disputes in non-public, confidential proceedings and to appoint a private investigator to uncover disloyal employees and corporate crime rather than to rely on the government to investigate and persecute the possible crimes.[10] Another driving factor of privatisation is the government encouraging the parties to a dispute to resolve their case out of court in dispute resolution boards, mediation, negotiation processes or arbitration. Finally, and perhaps most interestingly, facilitation of settlement has become a task for the judiciary, through court-connected mediation, plea bargaining and judges facilitating settlement during the course of court proceedings.[11]

However, resorting to private processes can augment societal inequalities: large companies and well-funded organisations can afford a private investigation, whereas small and medium size companies and many non-governmental organisations cannot. Similarly, wealthy and knowledgeable consumers, tenants and employees can afford a legal counsel or have access to legal advice through insurance policies and membership in organisations, whereas less affluent citizens may be unable to do the same.[12] The use of private dispute resolution processes might also be problematic for enforcing mandatory law and using law to achieve policy-goals.[13]

Diversification of court proceedings (i.e., procedural rules tailored for a specific type of case) is interrelated with the other trends, although it is also concurrently discordant with them.[14] Enacting special procedural rules applicable only for a specific set of cases can contribute to increased party influence on the course of the proceedings and the court proceedings being tailored to fit each case. Small claims proceedings, for instance, could increase access to justice,[15] and flexible rules could serve as an incentive to select litigation over arbitration. However, the fragmentation and flexibilisation of procedural rules have some tangible drawbacks related to lack of coherence, either through lack of internal coherence of the special proceedings or by reducing the coherence of the rules of civil and criminal procedure in general.[16]

Digitisation is also important, despite the fact that it has so far meant transferring the activities of courts online, into a digital environment; thus far, however, it has had limited impact on how the courts are organised or the content and conduct of the proceedings.[17] Although the COVID-19 pandemic has signified a leap forward,

[10] Rui and Søreide (2019).

[11] See Ervo (2021a, b), Linnanmäki (2021) and Nylund (2021b).

[12] See, example, Fiss (1984), Resnik (2008), Cohen (2009) and Glover (2014).

[13] Petersen (2021).

[14] E.g., Krans and Nylund (2020b).

[15] E.g., Jensen (2021).

[16] E.g., Jensen (2021), Galič (2020), Hau (2020) and Krans and Nylund (2020b).

[17] E.g., Condlin (2016), Koulu (2016) and Ortolani (2016).

its long-term effect on courts is not known at the time of writing this chapter.[18] Uncontested pecuniary claims are among the proceedings that have been digitised to the greatest extent. Despite the fact that the Nordic countries are known for being among the most technologically advanced countries,[19] Nordic courts are still not at the forefront, perhaps with the exception of Danish courts. Nevertheless, small steps towards digitisation, either individually or in their combined effect, could eventually amount to a fundamental shift in the role of courts and court proceedings.

A final observation is that decreasing expenditure on courts appears to be a factor driving court reforms.[20] While efficiency has been a goal of court reforms for centuries and is certainly highly desirable, current reforms focus on saving government expenditure even if doing so generates costs for those who use courts, decreases access to justice and threatens the quality of the proceedings and the outcome.

3 Courts and Court Proceedings as a Legal-Cultural Phenomenon

Court proceedings are inherently a legal-cultural phenomenon deeply embedded in societal structures, values, concepts and ideas; in other words, they reflect the 'purpose to be served by the administration of justice: … the purpose of justice and … the choice of many procedural arrangements.'[21] As Oscar Chase wrote in his seminal book *Law*, *Culture*,*and Ritual*:

> Dispute processes are in large part a reflection of the culture in which they are embedded; they are not an autonomous system that is predominantly the product of insulated specialists and experts. More, they are institutions through which social and cultural life is maintained, challenged, and altered, or as the same idea has been expressed, 'constituted' or 'constructed.' These institutional practices importantly influence a society and its culture–its values, metaphysics, social hierarchies and symbols–even as those practices themselves reflect the society around them.[22]

Catherine Piché has discussed how legal culture—or, more precisely, litigation culture—is reflected in and shaped by class actions, as well as how each actor in court proceedings discloses, explicitly or implicitly, values, beliefs, ideas and norms. The judge decides which of these that will prevail.[23] Legal-cultural analysis of courts and court proceedings—that is, the analysis of litigation or court culture—is fruitful for understanding courts as key societal institutions that produce, interpret and enforce norms; that resolve disputes; and that are in constant interplay with

[18] See Krans and Nylund (2020c), and more specific observations on the Nordic countries in Ervo (2020), Nylund (2020) and Petersen (2020).

[19] Schwab (2019).

[20] E.g., Mekki (2016), Marcus (2013), Genn (2012) and Genn (2009).

[21] Damaška (1986), pp. 10–11.

[22] Chase (2005), p. 2.

[23] Piché (2009), pp. 114.

the surrounding society and culture. Litigation or court culture is reflected in, and shaped by, court proceedings: each actor in court proceedings discloses, explicitly or implicitly, values, beliefs, ideas and norms related to courts and dispute resolution.

In the endeavour to explore legal culture, doctrinal analysis and comparison of statutory and case law fall short of providing sufficient tools to account for variation in attitudes towards judicial discretion and the balance of formalism and pragmatism; they also fail to explain the extent and mechanisms of the influence these exert on other aspects of the justice system and court proceedings (i.e., the role of legal 'mentality').[24] Thus, we must explore the underlying ideas, values, concepts and practices and investigate courts as central societal institutions with various roles, including solving disputes and producing legal norms.

Judicial review serves as an example, in that providing courts with the power to perform judicial review does not necessarily induce courts to exercise those powers.[25] Whether and how courts use their power to review statutory law reflects the role of courts in society and thus also *inter alia* the interplay and relative power of different state organs, the role of supranational law, and the self-perception of judges. Understanding these differences necessitates an exploration of the foundational conceptions and ideas of procedural law.

A contextual, legal-cultural approach is also necessary to understand differences in the uptake of innovations. For instance, since the enactment of the 2008 EU Mediation Directive, many countries have implemented rules on court-connected mediation for both purely domestic and cross-border disputes. However, the extent to which court-connected mediation takes place varies significantly even among the Nordic countries.[26] Hence, understanding the underlying legal-cultural differences becomes important, as well as exploring whether and how mediation moulds litigation practices.

In this book, we will not attempt to define legal culture, or, more specifically, the legal culture of procedural law, in a conclusive manner. It suffices to say that we study courts as key institutions in society and that we are interested in treating procedural law primarily as a set of paradigms and practices, rather than a set of rules.[27] We focus specifically on legal culture that is connected to courts and court proceedings. In civil procedure, litigation culture and procedural culture are used as synonyms for court culture. However, for the purposes of this book, litigation culture is too narrow and even misleading. Litigation implies civil procedure, either in a broad or a narrow conception, whereas this book encompasses criminal procedure and to some extent administrative procedure as well. A narrow conception of litigation culture downplays the activities other than adjudication that occur outside courts and the role of dispute resolution mechanisms outside courts, such as arbitration, consumer dispute resolution and the use of administrative organs in the justice system.

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[24] Husa et al. (2019), Kischel (2019) and Mankowski (2018).

[25] Sunnqvist (2021).

[26] Ervo (2021a), Linnanmäki (2021), Nylund (2021b), Adrian (2016), Ervo (2016) and Nylund (2016).

[27] Michaels (2005), Valcke (2004) and Van Hoecke and Warrington (1998).

Many of the contributions in this book do not address court culture or procedural culture explicitly, let alone attempt to define legal culture. Nevertheless, all authors discuss legal-cultural change, though implicitly, without clearly defining the particular elements as regulatory or cultural. One reason for this is that the two are intertwined, and the demarcation between them is therefore blurred.

4 Nordic Courts and Court Proceedings: A Brief Overview

4.1 Historical and Cultural Foundations

Understanding the past is paramount for understanding the present and predicting the future: Prominent comparatists refer to 'the presence of the past', or perhaps the 'pastness' of the present.[28] Hence, tracing the genealogy of current ideas and structures is indispensable for explicating current Nordic court culture, responding to current challenges and assessing future developments.

Nordic procedural law and court culture is not monolithic; on the contrary, it is fluid, is far from coherent and has been open to influences from abroad. Hence, rethinking the past of Nordic procedural and court culture calls for questioning the genesis and evolution—and even the existence—of 'Nordic' procedural law and culture. Did it emerge and unfold organically, or is it a product of deliberate moulding, or perhaps a combination of the two? If it is at least partially a product of an intentional process of carving out a Nordic form of dispute resolution, then the question arises of what processes, methods and sources of inspiration have been foremost in shaping contemporary law and legal culture.[29]

The basic tenets of the Nordic legal culture, and most other Western legal cultures, can be traced to the Weberian idea of modernity. Therefore, this volume takes the mid-1800s as a starting point for its analysis. Another reason for choosing Weberian modernity as the baseline is that current developments erode, or outright undermine, its precepts, and in doing so they reflect a paradigm shift. In the Weberian tradition, the nation state is understood as the sovereign and the sole legitimate source of legal norms, and consequently courts and state enforcement agencies are understood as the sole legitimate organs for enforcing legal norms. Norms are then inherently national and specific for each nation state. The state is the epitome of the law. Law is uniform; it is unified in coherent codes or acts of parliament and one jurisdiction enforcing it. The production and enforcement of law ultimately requires a single, supreme, sovereign authority, reflecting the slogan 'one King, one law, one measure, and one weight' from the French revolution.[30] The law is the same for everyone and is to be equally applied. All court cases follow the same path, unless the subject matter or the

[28] Legrand (1996), pp. 63 and 71 ff.

[29] Hjort (2021), Letto-Vanamo (2021), Sunde (2021) and Tamm (2021).

[30] Murphy and Murphy (1997), pp. 1–2.

value at stake (i.e., the disputed amount or the possible criminal sanction) requires otherwise.[31] Thus, the legal classification, not the parties involved, determines the forum. Courts, then, must be rational, bureaucratic organisations. The rule of law is at centre stage: law ensures equal and predictable outcomes and proceedings, and law is a central tool for implementing values, ideas and policies.

The second half of the nineteenth century was a time for building the nation state, both in the Nordic countries and in Europe at large. In parallel, Scandinavianism, or the pan-Scandinavian movement, spurred the idea of a Nordic culture distinct from other European cultures and legal cultures. Pan-Nordic efforts could also serve to propel innovation and modernisation of law in the Nordic countries through the creation of formal and informal modes of cooperation.[32] In the Nordic countries, the relation between national identity and a Nordic identity is hence characterised by mutual amplification rather than by one excluding or reducing the other.[33] Since influences from abroad engender legal reform, understanding the sources of inspiration and factors influencing the choice of sources is highly relevant, such as linguistic, structural and practical circumstances.

Today, the Nordic countries can be characterised as relatively small, affluent, homogenous and egalitarian. These characteristics have an impact on the Nordic legal culture and Nordic courts.[34] Late modernisation, urbanisation and professionalisation are still reflected in many legal institutions, *inter alia* in low specialisation among judges and the relatively high use of lay judges.[35] The state is considered 'good', and the boundary between civil society and the state is blurred compared to many other countries.[36] This is reflected *inter alia* in private organs, such as dispute resolution boards, having an important role in resolving disputes and in flexible rules giving the decision-maker discretion to find the most practicable solution.[37] As in any legal-cultural comparison, what matters for defining 'Nordic-ness' is not whether a single factor is unique for the Nordics but rather whether the combination of the factors constitutes 'Nordic-ness'.

The contributions in the first part of this book explore the legal-cultural and historical underpinnings and development of Nordic courts, court proceedings and dispute resolution practices.[38] Hence, legal-cultural and historical aspects will not be discussed in further detail in this chapter.

[31] See, example, Weber and Kalberg (2005), pp. 221–224 and 238–244.

[32] See Hjort (2021) and Letto-Vanamo (2021).

[33] Letto-Vanamo et al. (2019).

[34] Niemi et al. (2019) and Petersen et al. (2019).

[35] Nylund et al. (2019).

[36] Letto-Vanamo et al. (2019), pp. 8–9.

[37] Letto-Vanamo et al. (2019), pp. 9–12.

[38] Letto-Vanamo (2021), Sunde (2021) and Tamm (2021).

4.2 The Nordic Courts and Court Proceedings

The court system in the Nordic countries is simple: the West-Nordic countries (Denmark, Iceland and Norway) have only general courts, and the East-Nordic countries (Finland and Sweden) have general and (general) administrative courts.[39] In the absence of constitutional courts, supreme courts perform judicial review. However, Nordic courts have historically been reluctant to exercise those powers.[40]

There are almost no special courts. With few exceptions, all civil and criminal cases start in courts of first instance (*byret* in Denmark, *käräjäoikeus* in Finland, *héraðsdómstól* in Iceland, *tingrett* in Norway and *tingsrätt* in Sweden). Courts of appeal (*landsret* in Denmark, *hovioikeus* in Finland, *landsréttur* in Iceland, *lagmannsrett* in Norway and *hovrätt* in Sweden) are second-tier courts. The Supreme Court (*Højesteret* in Denmark, *Korkein oikeus* in Finland, *Hæstiréttur* in Iceland, *Høyesterett* in Norway and *Högsta Domstolen* in Sweden) is a third-tier court. In the absence of constitutional courts, supreme courts perform judicial review. However, Nordic courts have historically been reluctant to exercise those powers.[41] In Finland and Sweden, administrative courts form a parallel hierarchy of courts. In Finland administrative courts (*hallintotuomioistuin*) are courts of first instance and the Supreme Administrative Court (*Korkein hallinto-oikeus)* is the second and final instance. In Sweden, administrative courts (*förvaltningsrätt*) are courts of first instance, Administrative Appeals Courts (*kammarrätt*) are the second instance, and the Supreme Administrative Court (*Högsta förvaltningsdomstolen*) is the final court.

The role of Nordic supreme courts is also a characteristic of Nordic court culture. Today, the Nordic supreme courts, including the Finnish and Swedish supreme administrative courts, are de facto courts of precedent. They give leave to appeal to 100–150 cases annually based on whether the cases raise important legal issues in need of clarification or development. Although the rulings are not formally binding on lower courts, they have a de facto binding effect on lower courts. A lower court will not depart from the ruling unless there are exceptional reasons for challenging a case, such as a new ruling from the European Court of Human Rights or the Court of Justice of the European Union.

Generally speaking, all cases follow the same path and the same procedural rules and are heard by the same set of judges.[42] Furthermore, judges are mostly generalists who hear many different types of cases.

There are some exceptions, however. Labour courts (*arbeidsdomstol*, *arbetsdomstol*, *työoikeus*) and the Danish Maritime and Commercial High Court (*Sø- og handelsretten*) are the main exceptions in civil cases. Labour Courts hear only cases concerning the interpretation of collective labour agreements, whereas general courts hear cases arising from individual labour contracts. The Danish Maritime and Commercial High Court specialises in commercial matters, particularly cases

[39] For a more detailed discussion, see Nylund (2021b).

[40] E.g., Husa et al. (2019).

[41] E.g., Sunnqvist (2021) and Husa et al. (2019).

[42] For a more detailed discussion, see Nylund et al. (2019).

requiring specialist knowledge (e.g., intellectual property rights) and in which the amount in dispute is high. It has a dual function as both a court of first instance and a court of appeal, depending on the type of case. In the domain of public law, both Finland and Norway have an Insurance Court (*vakuutusoikeus*, *trygderetten*) for social security, unemployment and sickness benefits, and the Finnish Market Court (*markkinaoikeus*) hears *inter alia* patent and competition law cases. In the West-Nordic countries, administrative organs serve as quasi-courts in many types of administrative cases.[43]

The use of out-of-court dispute resolution is ubiquitous in the Nordic countries. The Nordics are known for their consumer dispute resolution system, where complaint boards constitute a key institution that provides affordable and simple dispute resolution mechanisms. Although the decisions of the boards are not binding in Finland and Sweden, the vast majority of traders comply voluntarily. Consumer organisations blacklist non-complying traders.[44] Consumer Ombudspersons also have an important role in enforcing consumer law and hence reduce the need for consumers to file individual claims. The prevalence of out-of-court dispute resolution is reflected in the low number of court cases.[45]

Criminal policy in which social problems are regarded as the key factor explaining deviant behaviour has resulted in low levels of repression, low incarceration levels, and the use of alternatives to punishment, such as victim-offender mediation and the use of community service combined with education and addiction treatment.[46] If the source of criminality is social problems, not the evil character of the perpetrator, then criminal proceedings need not be punitive and retributive in form and instead can encompass 'therapeutic' or 'problem-solving' elements.[47]

Moreover, many forms of deviant behaviour are sanctioned outside the criminal law system through administrative sanctions such as parking sanction fees and fees for other minor traffic violations. The police have the power to issue fines for minor crimes, including traffic violations, simple theft and disorderly conduct. The fines become final and enforceable unless the perpetrator appeals the fine to the district court. If the court upholds the fines, the perpetrator must pay them and compensate the state for legal costs. Since perpetrators wish to avoid the additional burden, most perpetrators refrain from appealing, unless they have a prospect of prevailing on appeal. As a result, most criminal cases are resolved outside courts by the means of fines issues by the police or the prosecutor or through (conditional) decisions on non-indictment. Studies have found that 92.9% of all criminal offences in Norway and 87.4% in Finland were resolved outside courts; however, these figures do not include non-indictment.

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[43] See Nylund (2021b).

[44] For the Nordic EU Member States, see the national reports of Clement Salung Petersen (Denmark), Anna Nylund (Finland) and Eva Storskrubb (Sweden) in Law and Hess (2019), pp. 371–372, 379, 524, 534 and 538.

[45] Nylund (2019b) and Nylund et al. (2019).

[46] Helenius (2021), Lappi-Seppälä et al. (2019) and Nylund (2021a).

[47] Ervasti (2018), Diesen (2012) and Diesen (2007).

The Nordic labour courts embody corporatism in two ways. First, labour courts only hear disputes arising from collective labour agreements. Second, employers' associations and labour associations appoint a third of the judges each.[48] These judges are usually appointed on a part-time basis. The existence and role of labour courts illustrate the pivotal role of collective labour agreements: the labour courts do not have jurisdiction on individual labour agreements, only a right to interpret collective agreements regardless of whether the dispute pertains to a single case or a large number of similar cases. The labour courts are quorate in panels with an equal number of judges from each of the three groups: lawyers—usually judges or professors—with no ties to labour or trade organisations, representatives of labour organisations and representatives of trade organisations or the government as an employer. The Danish Tenancy Courts (*boligretten*) are another example, where the court is quorate either with a single professional judge or with a panel of one professional judge and two lay judges, one representing tenants' interests and the other landlords' interests.[49]

Many administrative appeals boards and CDR boards also adhere to the ideal of corporatism, with the chief and all chairpersons being 'neutral' and the rest of the members being appointed by corporate groups.[50] The chairpersons must usually possess the same qualifications as judges, but the requirements pertaining to the rest of the members are, with few exceptions, not defined. Furthermore, some persons are disqualified as members, so as to prevent persons from acting as judges in their own cases or cases they could be a party to.[51]

One could argue that labour court judges representing trade and labour organisations are not independent and impartial: after all, they have been appointed to promote the interest of one of the parties. However, the goal is not to forcefully argue for a specific party but rather to search for common ground and balanced, workable solutions. Having an equal number of representatives is expected to create a fertile ground for constructive debate in order to avoid strained relations.[52] Corporatist composition of the organs is believed to strengthen trust and confidence in the decision-making of the boards, especially among the members of the corporations that appoint the members of the boards.[53]

On a more intellectual or ideological level, Nordic court proceedings reflect a pragmatic approach with flexible rules that leave ample discretion to the judge. Many procedural rules state that the judge shall take a particular action unless he or she finds another option to be more appropriate, for instance due to the simplicity

[48] In Denmark lov om arbejdsretten og faglige voldgiftsretter 2017–08-24 nr. 1003, ss. 2 and 9; in Finland laki oikeudenkäynnistä työtuomioistuimessa 1974:676, ss. 3 and 8, in Norway lov om arbeidstvister 27 January 2012 no. 9, s2. 34–39; and in Sweden lag om rättegången i arbetstvister 1974:371, Chaps. 2 and 3.

[49] https://www.domstol.dk/alle-emner/boligret/ (Accessed 16 June 2020).

[50] Betænkning nr. 1401 (2001), pp. 128–129, HE 2006/115, and Difi-rapport 2014:2 p. 30.

[51] Difi-rapport 2014:2, pp. 28–31.

[52] Komiteanmietintö 2003:3, pp. 385–397.

[53] Difi-rapport 2014:2, p. 30.

or complexity of the case. The structure of court proceedings is based on the main hearing model.[54] Although the preparatory stage of the proceedings is central in both civil and criminal matters, the form and extent of preparation is highly discretionary. In criminal cases, preparatory hearings are used in complex cases and in cases raising complex procedural issues. In many simple criminal cases, the preparatory stage is limited and written. In civil cases, preparatory hearings are the norm; however, the length, number and content of the hearings can vary. Judges have ample discretion to form the preparatory stage.[55]

Trust in courts and the government is a prerequisite for entrusting judges to form the proceedings as they see fit. Nordic citizens and companies trust their courts,[56] which is hardly surprising considering that the Nordic countries are high-trust societies. A recent report from the Nordic Council of Ministers even called trust 'the Nordic gold'.[57] The use of lay judges has been identified as an important factor in building and maintaining trust in courts.[58]

A final characteristic of Nordic court culture is that the government actively uses courts to enforce policies and to create a level playing field. This is manifested in the duty of judges to give guidance to the parties to reduce the need for legal counsel and to actively manage the proceedings to ensure that expedient and economic proceedings are not dependent on whether a party can afford an expensive lawyer. Furthermore, there is a trend of openly acknowledging that enforcement of policies engenders differences in the role of judges depending on the subject matter of the case.[59]

5 Aim, Methods and Structure of This Book

This book seeks to analyse and assess the impact of selected aspects of the aforementioned trends on Nordic courts and court proceedings. To do so, we must first understand the history and present state of Nordic courts and court proceedings as part of Nordic society and legal culture. The identification of the 'Nordic' elements is intertwined with the historical analysis and with an examination of more recent developments that put Nordic courts and court proceedings into a broader societal context. This approach recognises that legal culture is both plastic and immutable and that change is gradual: an initially small step can unfold into a completely new direction. Although the analysis is limited to the Nordic countries, the findings shed light on shifts occurring in many other countries as well and deepen our understanding of court culture. However, pinpointing 'Nordic-ness' is difficult, since all cultures are fluid: they are not carved in stone, nor are they easily delimited from each other.

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[54] Nylund (2018).

[55] Nylund et al. (2019), Nylund (2019a), Ervo (2016), Juul-Sandberg (2016) and Nylund (2016).

[56] European Commission (2019), pp. 44–46.

[57] Andreasson (2017).

[58] See Letto-Vanamo (2021) and Sunde (2021).

[59] Fredriksen and Strandberg (2019), p. 181 and Andersson (2019), pp. 161–162.

The fact that a trait is identified as Nordic does not preclude it from being present in other legal cultures as well, nor does the existence of a Nordic procedural culture exclude variation among the Nordic countries. Moreover, legal cultures result both from attempts to deliberately forge them and innate processes. Many of the authors will discuss how Nordic cooperation and the desire to maintain a certain degree of alignment among the Nordic countries is essential for maintaining Nordic unity and a distinctly Nordic court culture.

This volume aims also to understand the future of Nordic courts and procedural culture by investigating ongoing processes of change. Determining whether the current trends constitute an unruly tempest or a gentle breeze, as well as understanding the dynamics of the potential transformation, requires in-depth study of procedural law and practices and an understanding of the quintessential parameters of the current Nordic court culture. A legal-cultural approach is fruitful for understanding whether some aspects of the justice system and court proceedings are more likely to adopt innovations or to resist change, as well as for understanding why some trends might exert more tangible, or perhaps simply more perceptible, influence than others.

The authors in this book apply different methodological approaches. Some have a more pronounced legal-cultural approach, wherein societal aspects and underlying ideas, concepts and values are explicitly addressed, while others apply a more traditional legal doctrinal approach, albeit with clear comparative elements.

The book consists of three parts. The first part contains contributions that re-examine and question the genesis and evolution of Nordic procedural law and culture and its components. The chapters sketch an outline of Nordic courts and court culture by identifying and discussing quintessential parameters of Nordic court culture, thus laying the groundwork for rethinking current procedural rules and court culture. To some extent, they also explore the linkages to society at large.

The second part investigates the impact of Europeanisation on Nordic courts and procedural law, drawing on the insights from the first part. What is the role of European human rights law and EU law in shaping Nordic court proceedings? Has Europeanisation altered the role of courts in society and, if so, how? How does Europeanisation influence Nordic procedural law, and from which countries are new influences sought?

The third part of the book examines how the diversification, privatisation and flexibilisation of procedural rules mold Nordic procedural law and court practice. It also discusses shifts in the intended functions of the justice system and role of the structure and institutions of the civil justice system. The fourth, and final, part consists of concluding observations on the past and future of Nordic courts.

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