Conflict Resolution in the Nordic Countries: the Rise of Alternative Dispute Resolution

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RESUME

This paper gives a historical overview of the development of conflict resolution, discussing how and why it developed as the way it did in Nordic Countries. More importantly, an explanation will be suggested to the current trend of an increasing use of alternative dispute resolution in the North.

The first chapter will be dedicated to the reasons why Denmark, Norway, Sweden and Finland legal systems should be discussed together concerning the development of conflict resolution. Indeed, the Nordic countries belong to the same legal family and share a common Nordic culture due to several historical and sociological reasons. The second chapter will point out the major historical developments related to conflict resolution in the Nordic legal systems: from ancestral conflict resolution methods in the rural North to the rise of state adjudication of justice. Finally, the third chapter will expose the modern trend toward the increasing use of ADR. This development is just the natural outcome of the legal-historical development of conflict resolution in the Nordic countries. The parties seek for more understanding of the procedure and participation in their own legal issue. However, States tend to prevent their citizens to resolve their dispute on their own and most importantly, they are willing to remain the guardian of justice. In order to satisfy the will of their citizens renouncing to the state's monopoly over justice, alternative dispute resolution methods have been created next to court proceedings. However, the balance between flexibility and formalization of conflict resolution is difficult to reach, as the analysis of mediation in the Nordic countries will demonstrate.

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INTRODUCTION

Ever since the Prehistoric Age humankind tried to resolve its conflict in a peaceful way in order to avoid violence. This search for alternatives to vengeance gave birth to the precursor of alternative dispute resolution. Depending on the culture, the handling of conflicts was different. For instance, Hawaiian islanders of Polynesian ancestry used the traditional system of *ho'oponopono* to resolve disputes pacifically. This ancestor of mediation involves a family's coming together to discuss interpersonal problems under the guidance of a leader[1]. In China, Confucius[2] taught that natural harmony should not be disrupted, and adversarial proceedings were the total opposite of harmony. It is consequently not surprising to notice that today in China, mediation stands out as a very important conflict resolution mechanism[3].

Modern alternative dispute resolution first developed in Common Law countries in the 1960's, in the United States of America in relation with strikes problems in the public sector.[4]. However, as explained above, alternative dispute resolution existed way before that. Ancestors of mediation were commonly used in traditional communities across the globe. Some scholars believe that alternative dispute resolution has more sense in relatively egalitarian communities[5]. The Nordic countries have recently witnessed a growing use of alternative dispute resolution. Does it have to do with the fact that the Nordic mentality is based on equality and consensus? Are there historical factors explaining this development in Denmark, Norway, Sweden and Finland?

This paper gives a historical overview of the development of conflict resolution, discussing how and why it developed as the way it did in Nordic Countries. More importantly, an explanation will be suggested to the current trend of an increasing use of alternative dispute resolution in the North.

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[1]BARRET,J.P., BARRET, J.T.,*A History of Alternative Dispute Resolution-The Story of a Political, Cultural, and Social Movement*, San Francisco, Jossey-Bass,2004,p.3.
[2] (551-479 B.C.)
[3]op.cit,p.6.
[4]Op. cit. P141; SLATER,J.*, "Interest Arbitration as Alternative Dispute Resolution: The History from 1919 to 2011 "*, Ohio State Journal on Dispute Resolution, 2013,pp.397 – 413.
[5]KERNEIS,S., *Le droit à l'épreuve de l'anthropologie historique: le cas des modes alternatifs de resolution des conflits*, Revue électronique d'histoire du droit- Clio @Themis n°5, 2012,pp.11.

ADR. This development is just the natural outcome of the legal-historical development of conflict resolution in the Nordic countries. The parties seek for more understanding of the procedure and participation in their own legal issue. However, States tend to prevent their citizens to resolve their dispute on their own and most importantly, they are willing to remain the guardian of justice. In order to satisfy the will of their citizens renouncing to the state's monopoly over justice, alternative dispute resolution methods have been created next to court proceedings. However, the balance between flexibility and formalization of conflict resolution is difficult to reach, as the analysis of mediation in the Nordic countries will demonstrate.

I. THE NORDIC LEGAL SYSTEM

Before considering the major historical developments related to conflict resolution in the Nordic countries, it is necessary to understand why those countries should be discussed together. The first subsection will explain why Denmark, Norway, Sweden and Finland are forming a distinct legal family. The following subsection will be dedicated to the cultural explanation of the existence of a common nordicness.

A.- IS THERE A NORDIC LAW FAMILY?

Nordic (or Scandinavian) law gathers the law of five countries namely Denmark, Finland, Iceland, Norway and Sweden. Geographically speaking, the Scandinavian Peninsula is located between the Atlantic Ocean and the Baltic Sea and thus constitutes of Norway, Sweden and the northern part of Finland. However internationally, the term Scandinavian law is commonly used to refer to the law of the Nordic Countries as a whole. Although the term Nordic Law is more appropriate to qualify the law of this region, both terminology are equally meaningful[6] .

[6]BERNITZ,U., *What is Scandinavian Law? Concept, Characteristics, Future*, Stockholm Institute for Scandinavian Studies, 2010,p.15.

1) Arguments in favor of a Nordic legal family

Some scholars consider that Nordic Law is a subgroup of Civil Law, others think it is a distinct legal family. I personally agree with the many arguments pointing out to the admission of a unique Nordic legal system. First of all, the concept of Nordic Law appeared on the scene of worldwide comparative law in 1951. Arminjon, Nolde and Wolff[7] based their classification upon several criteria: the formation of basic legal concepts, legal sources, history, the law's relation to religion and politics, the economic basis of law, the role of tradition in law, legal techniques and culture. Their classification was considered modern and remained the basis for subsequent research on legal families namely by Konrad Zweigert and Hein Kotz[8]. The latter discerned eight legal families in the world: Romanist, Germanic, Nordic, Common law, Japanese law, the law of the People's Republic of China, Hindu and Islamic law[9]. This early academic recognition of a Nordic legal system among the well-known legal families is a first proof of the existence of such a legal system.

Second, as the Danish Professor Ditlev Tamm[10] wrote, three factors are relevant to classify Nordic law as a separate legal family: the modest influence of Roman law upon the Nordic countries, the lack of modern codifications and the pragmatic Nordic legal way of thinking[11]. Like in Common law countries, the Roman law's impact in the Nordic countries is almost inexistent compared to elsewhere in Continental Europe[12] .This conjointly led to a more pragmatic way of legal thinking than in Roman law influenced countries like the Germanic ones. Indeed, those are characterized by a systematic and abstract system which relies on large-scale codifications. On the opposite Nordic law is driven by the idea of simplicity and the absence of wide-ranged codification. Indeed there is no general civil code in any of the Nordic countries. Furthermore, case law is an important source of law like in Common law countries[13]. However, the lack of codification and the significant authority of case law do not suffice to classify the Nordic legal system as a subgroup of the Common law family. Actually, Nordic law is more formalized than Common law as statutory law constitutes the main legal basis in most fields of law. Despite their role, statutes are not covering all aspects of the discipline and are not intended to do so. The basic concepts are outlined and undefined legal problems are resolved by applying analogy principles expressed in the statutes, by the interpretation of the *travaux préparatoires*, by the legal doctrine or by supplementing case law. This is why Professor Ditlev Tamm analyses Nordic law as a separate legal family.

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[7]ARMINJON, P., NOLDE, B., WOLFF, M., *Traité de droit comparé*, Paris, L.G.D.J,1951. They distinguished seven legal families: French, German, Scandinavian, English, Russian, Islamic and Hindu..

[8]HUSA,J.,NUOTIO, K.,PIHLAJAMÄKI,H.,"*Nordic Law Between Tradition and Dynamism", Nordic Law-Between Tradition and Dynamism*, Antwerp-Oxford, Intersentia, 2007 p.3.

[9]KOTZ,H., ZWEIGERT,K.,, *Introduction to Comparative Law*, Oxford: Oxford University Press,1998, pp.63 - 73 and 277- 285.

[10]TAMM,D., *"The Nordic Legal Tradition in European Context", Nordisk identitet – Nordisk rätt i europeisk gemenskap*,Helsinki ,Institute for International Economic Law at Helsinki University, 1998,p.15.

[11] Ibid. subpaginal note 6, p.20.

[12] Ibid. subpaginal note 8, pp.9-10.

[13] Ibid..subpaginal note 6, p.23.

Additionally, the close co-operation between the Nordic countries and their willingness to reduce divergences in the area of law, tend to demonstrate that they belong to a same legal family[14] .There are several examples of similar statutes enacted in each of the Nordic countries. For instance there is a special Contracts Act in force since 1915 in Sweden, Denmark and Norway and since 1925 in Finland[15]. Over the years this statute has been applied by the courts and treated in legal doctrine similarly among the Nordic countries. The fact that this Act does not cover all aspects of contract law and that many unanswered legal issues are left to case law did not hamper its almost homogeneous application. Furthermore, the willingness to cooperate has been given a legal basis through the signing of the Helsinki agreement in 1962[16]. The aim of this act is to achieve similar legislation among all Nordic countries in central areas of law. It has resulted to general conformity in the legislative field in areas such as sale of goods, instruments of debt, contract law, tort law, family law, maritime law, intellectual property law and company law[17]. This close legal cooperation between the Nordic countries is another proof of the classification of the Nordic countries in a legal system of their own.

Finally, if those arguments were not already enough to convince the most radical thinkers of the existence of a Nordic legal family, Ulf Bernitz gives a crystal-clear illustration of the deep-seated similarity between the Nordic legal systems. It is clear that a French or English legal doctrine could not be implemented easily in a Nordic country or even in an Asian country. However, in between Nordic countries legal doctrine often and effortlessly crosses borders to be cited and applied to another Nordic legal system. For instance the legal theories and methods of the Norwegian legal scholar Torstein Eckhoff in his book Rettskildelære largely apply to Swedish law, even though the main subject of his book is about Norwegian law. As Bernitz points out, a similar situation would apply also in relation to Danish or Finnish law[18]. This illustration of cross border transposition of the legal theories and methods in between the Nordic countries could only happen among a same legal family.

After having explained the arguments in favor of the admission of a Nordic legal family, argument against the acknowledgment of a Nordic legal system will be pointed out.

2) Arguments against a Nordic Legal Family

Some argue that Nordic law does not merit to be considered as a particular legal family. According to Zaphiriou[19], Nordic law is just a subgroup of the Germanic legal family[20]. He

[14] Op cit subpaginal note 12.
[15] Ibid. subpaginal note 6 pp.20-21.
[16] https://www.norden.org/en/information/formal-nordic-co-operation
[17] Ibid. subpaginal note 6,p.24.
[18] Ibid. subpaginal note 6,p.18.
[19]ZAPHIRIOU,G., "*Introduction to Civil Law Systems", Introduction to Foreign Legal Systems*, New York, Oceana, 1994, pp.47-55.
[20] Ibid. subpaginal note 8,p.8.

points out that both legal systems consider as the supreme source of law the legislated acts passed by a national parliament. Moreover, the Nordic and German legal systems are based on the separation between public and private law. A first objection can be made against the relevance of this argument since even though Finland and Sweden have separate administrative courts like in the German legal system; on the contrary Denmark and Norway do not have one. I personally agree with Zaphiriou's assertion that Nordic law comes closer to the civil law systems than the common law family. Indeed, the Nordic countries have sometimes been inspired by concepts developed in civil law systems. However classifying Nordic law as a subgroup of the Germanic legal family is a generalization that does not take into account all the complexity of the Nordic legal system. It may be true that the Nordic countries were inspired by the civil law countries but in a similar way Japan was inspired by the German civil code to enact its own. Japan is, for sure, not seen as a member of the Germanic legal system. A a result, even though Zaphiriou argues that Nordic law is a subgroup of the Germanic legal family, I personally believe that the Nordic countries have a specific legal family of their own due to their special features.

Another argument against the admission of Nordic law as a distinct legal family is related to the growing importance of international law and more precisely the influence of European Law. Indeed there are, to a certain extent, decreasing the cohesion among the countries of the Nordic legal system. A first factor leading to this disintegration is their opposite views about the European Union membership. While Denmark became a member of the European Union in 1973, followed by Finland and Sweden in 1995, Norway has rejected EU membership twice[21]. A second factor is the asymmetry between the Nordic EU members states in the implementation techniques used. For instance Denmark is using a less detailed and time-consuming implementation techniques than Sweden. The implementation of the same directive even led to differences in the statutory text of existing inter-Nordic statutes such as one dealing with consumer law and another concerning intellectual property law[22]. Lastly, a third factor jeopardizes the Nordic cooperation in the legal field. Undeniably, European legislation is expanding rapidly and ambitious new European legislative projects are on the agenda. Consequently, the scope of Nordic legal cooperation, independent from the European Union, is gradually diminishing over the years. However I personally believe that the growing influence of European law does not change at all the fact that the Nordic countries belong to the same legal family. Each Nordic country are free to follow their international politics as they wish. Being part of a legal family does not mean having identical legal systems.

Finally another argument against the admission of a Nordic Legal system is related to the inter-Nordic legal cooperation. According to Bernitz, this cooperation has diminished over the years and especially since the 1970s and 1980s. He points out that even if the Helsinki Agreement is a binding document, its formulations are vague and some politically sensitive areas of law, such as property law, are absent from the negotiations. This lack of a fixed regulatory system and the fact that the cooperation depends primarily on the good will of the

[21] Ibid. subpaginal note 6,p.16.
[22] Ibid. subpaginal note 6 pp.26-27.

legislators within each country has deeply weakened the inter-Nordic legal cooperation[23]. However ministries of the Nordic countries are still communicating with each other to discuss the evolution of their respective law. More importantly, law faculties and law associations among the Nordic countries are meeting on a regular basis to exchange their ideas[24] .As a conclusion even if the official inter-Nordic legal cooperation has deeply weakened over the years, the governmental and academic cooperation is still ongoing among the countries of the Nordic Legal Family.

Personally, I believe that reasons in favor of the admission of a Nordic Legal System weight heavier on the balance than those against. Recently all the members of the Nordic legal family have followed the same trend of an increasing use of Alternative Dispute Resolution. An explanation to this development could be that they belong to the same legal family and so share common legal values. However the Nordic countries don't only belong to the same legal system but also share a common culture of the North.

B.- THE COMMON CULTURE OF THE NORTH

The first subsection was dedicated to a purely legal analysis on the existence of a Nordic legal system. However, Nordic countries are not only connected through law but also have a historical and cultural bond. Indeed, the notion of legal family cannot be conceived in isolation from its cultural context. The following subsection will thus explain why the Nordic countries should be analyzed together since they share a common culture.

1) The tumultuous creations of the Nordic countries: an intertwined history

The events leading to the independence of each of the modern Nordic countries tend to attest that they share the same roots. More than a legal family, the Nordic countries are also related historically.

The shaping of the modern Nordic countries started in the Middles Ages after the Viking era. At the time, three kingdoms started their establishment. Indeed, population groups began to regroup in larger territorial units where chiefs and warlords exercised local authority and allied to achieve their military goals. Even though the geographical borders were different

[23] Ibid. subpaginal note 6, p.24.
[24] Ibid. subpaginal note 6, p.25.

from those demarcating the Nordic states today, those kingdoms were the precursors of what would later be Denmark, Norway and Sweden[25] .

The Kalmar Union between Sweden, Norway and Denmark from 1397 to 1523, marks a turning point in Nordic history[26]. This alliance was negotiated with the aim of diminishing the growing German influence in the Baltic Sea region. As the years went by, the Union began to be dominated by the Danish crown which was unbearable for the Swedish nobility. As a result the Kalmar Union split up in the sixteenth century and gave birth to two countries, Denmark and Sweden. Norwegian and Icelandic[27] territories were part of the Danish Kingdom while Finland was predominantly comprised in the Swedish Kingdom. Due to the failure of the Kalmar Union, the geopolitical relationships between the two newly established Kingdoms remained tense for centuries as each wanted to rule over the enemy's territories[28].

The Napoleonic Wars led to the modification of the borders between Denmark and Sweden. In 1809 Sweden lost Finland to Russia due to the conclusion of the treaty of Tilsit between Russia and France. Indeed, the Tsar agreed to join the alliance against Great Britain and in exchange Napoleon gave its consent to the Finnish war to force Sweden to join their coalition. In 1814, as a compensation to Sweden for the loss of Finland and to reward its participation in the alliance against Napoleon, the Treaty of Kiel transferred Norway from Denmark to Sweden. This transfer was also a sanction against Denmark, an ally of France. As a result two new future countries were slowly emerging: the forthcoming Finland and the imminent Norway[29].

Almost a century later both sub-countries gained their independence. Finland took advantage of the confused period during the Russian revolution of 1917 and declared itself as an autonomous country. It must be pointed out that despite the Russian ruling over Finland from 1809 to 1917; Finland was governed according to its own legal regime which essentially contained provisions of Swedish law. Concerning Norway, it became independent in 1905 following the conclusion of the treaty of Karlstad[30]. Ever since, the Nordic area has been composed of five countries: Denmark, Finland, Iceland, Norway and Sweden.

The path to independence of the Modern Nordic countries has been long and combined with many turns of events. It is interesting to notice that at one point of history or another, all Nordic countries were linked. The territories of Norway, Sweden (which included the Finnish lands) and Denmark were forming the Kalmar Union in 1397. After the split of this Union,

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[25]SUKSI, M., *"Common Roots of Nordic Constitutional Law? Some Observations on Legal-Historical Development and Relations between the Constitutional Systems of Five Nordic Countries", The Nordic Constitutions- A Comparative and Contextual Study*, Oxford, Hart Publishing,2018, p.12.

[26]SUNNQVIST,M., *Konfliktlösung in Schweden-Finnland 1500-1800*, Juristische Fakultät, Universität Lund, Schweden, (*non publié*), p.1.

[27]Iceland had been joined with Norway in 1262. The position of Iceland in relation to Denmark started to develop after the period of absolutism and resulted in a sub-state status for Iceland. The independence of Iceland in 1944 was a consequence of the second world war.

[28]Ibid. subpaginal note 25 p.13 ; GUSTAFSSON,H., *The Forgotten Union*, Scandinavian Journal of History, Vol.42, No 5, 2017, pp.560-582.

[29] Ibid. subpaginal note 25, p.18.

[30] Ibid. subpaginal note 25, p.25.

Norway disappears into the Danish kingdom while Finland was still included in the Swedish lands. The Napoleonic wars changed again the Nordic map as Finland grew apart under Russian ruling but kept the Swedish law provisions. Furthermore Denmark lost Norway as it took the place of Finland. Those union, occupation and following independence show that the roots of the Nordic countries are intertwined. Those historical factors are proof that more than a legal family, the Nordic countries have most than probably influenced each other culturally. The foundations of each of the Nordic countries were built on the same Viking ashes.

2) A Common Nordic Culture

For many, the Nordic countries symbolize the ideal social model of democratic thinking and participation, as well as individualism. The respect of the rights of the individuals is of primer interest for those countries. Indeed, they were among the first countries to grant women the right to vote. Furthermore, many factors can explain this relatively egalitarian common Nordic culture: the almost nonexistence of serfdom during the Middle Ages, the Lutheran influence and the notion of everyman's rights. Finally the Nordic welfare state model is a legitimate illustration of the values dear to the Nordic countries[31].

First, during the Viking era as the Viking conquerors were bringing back prisoners from foreign lands to work upon their territories, serfdom began to develop in the Nordic Countries. It was only in the early Middle Ages, with the decline of the Viking period, the growing importance of the church and the development of new methods of agriculture that servitude began to disappear in the Nordic countries[32]. Curiously, servitude developed in Denmark until is abolition in 1788. A as result, during the Middle Ages while European countries like France, Germany and Belgium were dominated by the system of serfdom, it was rare and not significant in the Nordic space[33] . Farmers were the rightful owners of their lands and their rights were not taken away by the nobility. As a result, peasants had a recognized status and were traditionally involved in at least some measures of self-determination in respect of their common matters. This factor has sometimes been put forward to explain the egalitarian way of thinking of the Nordic countries[34].

Secondly, the Lutheran church also had and still has an influence on the Nordic mentality. Even if not many attend services, in all the Nordic countries approximately 90% of the population belongs to the national Lutheran churches. Those beliefs deeply stand out in Nordic people's minds as almost everyone chooses to marry or be buried pursuant to Lutheran traditions. According to this religion's ideology, everybody has a duty of solidarity towards the poorer and those demanding care. A richer citizen is not more worthy of care because he

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[31] Ibid. subpaginal note 8, p.22.
[32] BADER GINSBURG, R., BRUZELIUS, A., *Civil Procedure in Sweden*, The Hague, Martinus Nijhoff, 1965 ,pp.3-36.
[33] Expect Denmark.
[34] Ibid. subpaginal note 25, p.13.

or she has money. As a result, the influence of the Lutheran church on the Nordic countries has strengthened the social ethics that everybody is equal and should be helped in case of need as anybody else would be[35].

Third, the notion of everyman's rights also had a great impact on the Nordic culture. Despite the absence of those rights in the legislation, since they belong to customary law, they are considered fundamental. Indeed, they are based on the bond between the people of the community which is characterized by mutual respect and trust. Those rights are not only granted to citizens of the Nordic countries but also to foreigners. For instance everybody has the right to spend the night in a tent wherever he wants as long as the exercise of his right does not cause to others an annoyance that goes beyond the ordinary. That means that wild campers may not leave garbage behind, exploit their right for economic gain or disturb the environment. On the other hand, landowners may not forbid camping on their property just because they want to since everybody may camp anywhere. As this example shows everyman's rights are rights of the individual but that must be used in a responsible way. Those rights are mostly related to nature: right to walk in the forest, to pick up mushrooms and wild berries etc. In a modern context those rights have a sort of sustainability message that everybody can use the gift of Mother Nature but must respect it to give the opportunity to other to do the same. The Nordic countries have been influenced by this way of thinking, as equality and sharing are deeply printed in their culture[36].

Finally, the Nordic model of the welfare state is a good illustration of the existence of a Common Nordic culture. Notwithstanding the different political and historical developments of each of the Nordic countries, they all have created a functioning welfare state based on social rights and values. The idea of welfare in the North is based on the incapacity of the market to prevent social exclusion. However the market economy runs more efficiently if citizens are granted a large amount of citizenship, political and social rights. As a result in order to increase the wealth of the economy, the State has a duty to intervene by enhancing social inclusion namely by providing access to education and health care services to everyone. Indeed, promoting equality at the highest standard is one of the core concepts at the foundation of the welfare state. In order to reach this objective, the Nordic countries have relatively high taxation and conduct policies to promote a considerable protection of the individual and even sometimes with a paternalistic approach. For instance the alcohol policy in Norway is very strict as you cannot buy any alcohol on certain days or after a certain hour and only certain stores run buy the Norwegian State are selling liquors. Moreover the Nordic countries have developed a culture of safety in much legislation such as those concerning the protection of consumers, the protection of the environment, the prevention of gender discrimination and patient's protection[37]. Solidarity and equality are essential values in the Nordic way of thinking, as it is believed that even the market would not function properly

[35] Ibid. subpaginal note 8,pp.23-26.
[36] Op.cit.
[37] Ibid. subpaginal note 8,pp 22,26,31.

without their integration in the society. Nowhere else in the world is this kind of communitarian culture so present.

As the first section demonstrated, the Nordic countries are forming a legal family of their own. Later on, the tumultuous history of the birth of the modern Nordic countries was explained. It showed that the roots of the Nordic countries are intertwined and they have more than probably influenced each other culturally. Moreover, these countries also share a common culture and heritage, based on common democratic and social values such as equality and solidarity, and nowadays also the welfare state. All those elements are interlinked. The historical and cultural contexts have influenced the development of the law. More precisely, I personally believe that the Nordic mentality had everything to lead to the modern development of an increasing use of alternative dispute resolution mechanisms. In order to prove this assumption, the historical development of conflict resolution in the Nordic countries will be described in the following chapter.

II. HISTORICAL DEVELOPMENT OF CONFLICT RESOLUTION IN THE NORDIC COUNTRIES

According to scholars, the use of alternative dispute resolution has increased over the past ten years. This is a worldwide phenomenon but more importantly a Nordic movement[38]. The aim of this paper is to examine the reasons of this development. In order to do so, after having explained the historical and cultural background of the Nordic legal system, focus will be put on the history of conflict resolution in the Nordic countries since the Middle Ages. Ancestral mechanisms will be discussed as well as the evolution of the court procedure.

Academically, the division between an East and a West Nordic group makes sense[39]. Until 1809, Sweden and Finland were forming one country with a centralized Swedish government. Following the Napoleonic wars, Finland was separated from Sweden and put under Russian occupation. Nonetheless, the Tsar wanted to rule over Finland according to the Finnish legal regime, which essentially contained provisions of Swedish law. Finland kept its own legal system until its independence from Russia and close legal cooperation with Sweden has been largely maintained ever since. As a result, Sweden and Finland have common legal roots in terms of court organization and conflict resolution development. Concerning the West Nordic group, Norway was from the late Middle Ages until 1814 in a union with Denmark. However,

[38]LINDELL,B., *Alternative Dispute Resolution and the Administration of Justice-Basic Principles*, Scandinavian studies in law,2012 pp.312-344.
[39]Ibid. subpaginal note 25, p.19.

Norway had almost nothing to say, since the Danish kings were predominantly dominating the Union. This situation led to a significant level of legal and cultural similarities between the two countries. In 1814, Norway was transferred from a Union with Denmark to another with Sweden. This union lasted until 1905 but had little or no effect on Norwegian conflict resolution development[40].

For pedagogical purposes, this chapter will be divided in two sections. The first one will deal with ancient conflict resolution, while the second one will analyze the rise of a state adjudication of justice. In terms of historical development of conflict resolution, the Nordic countries underwent almost the same evolution. When appropriate, the differences between the West and East Nordic group will be pointed out.

A.- ANCIENT CONFLICT RESOLUTION

The ancient conflict resolution in the Nordic countries was characterized by the strong implication of the village community. Resolving the conflict at a local level was of primer interest for the parties but more importantly for their families, as the old Viking pride of belonging to a clan was still instilled in people's mentality. Conflicts arising out between family members were solved by light means and damages. On the contrary conflicts with a neighbor or a stranger were paving the way to judicial procedures[41].

First and foremost the Ting was usually consulted to resolve conflicts between the citizen of the then mostly peasant Northern countries. The Ting was a local assembly meeting held twice or three times a year where the Ting leader (Swedish *häradshövding*, Finnish *kihlakunnantuomari, Norwegian lögmaor*) would put questions to the audience or inquire the views of the public about a current issue involving at least one member of the community[42]. The session was held publicly and attendance was paramount since the Ting could not begin unless a specified number of free men had assembled. The meetings operated on the basis of oral communication and a formal proof system prevailed. Witnesses could only be heard if it was required or permitted by the local customs. After the parties had taken the required oath formula and stated their respective claim or defense accordingly, the applicable law was declared by the Ting leader and the men gathered at the assembly determined the outcome of the conflict[43].

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[40] Ibid. subpaginal note 6,p.16.

[41] ERVO,L., *"Nordic Court Culture in Progress: Historical and Futuristic Perspectives", The Future of Civil Litigation access to Courts and Court-annexed Mediation in the Nordic Countries*, Switzerland, Springer, 2014,pp.383-407.

[42] e.g. on the drawing of property boundaries, the paternity of a child out of wedlock, the severity of a criminal penalty, the form in which a penalty should be enforced etc.

[43] Ibid. subpaginal note 32; BLOMSTEDT, Y.," *Historical Background of the Finnish Legal System", The Finnish Legal System*, Helsinki, the Union of Finnish Lawyers, 1966,pp.7-23;SUNDE,J.- Ø., "*The Legal Cultural Dependency of the Norwegian Legal Method-and its Future", Nordic and Germanic Legal Methods,*

A second type of conflict resolution body, the *Nämnd* in Swedish (Finnish *lautakunta*, Norwegian *Sàttardom*) was used to help to resolve disputes in the community. During the thirteenth century, its original function was to investigate for the Ting and report to the assembly on the relevant facts of the case. The *Nämnd* was an impartial board composed of the most respected and usually wealthiest members of the community. The members of the *Nämnd* (the laymen or *sandemand* in Danish*)* were usually chosen by the parties. The laymen were aware of locals affairs and knew the villagers, so that the legitimacy of the decision made in the Ting, on the basis of the *Nämnd* findings, had more credibility and impact on the community. At first, this body was only formed for particular cases but gradually it became permanent and held sessions where witnesses were heard and evidence examined. Soon after that, the *Nämnd* began to settle controversies outside the assembly under the instructions and guidance of the Ting leader. Finally in the mid-sixteenth century, in most parts of Finland and Sweden, the *Nämnd* emerged as an independent tribunal taking over in full the judicial authority of the Ting[44]. Further developments concerning the *Nämnd* took place after the royal restructuration of the judicial system in the East Nordic group, two centuries later [45].

A third judicial procedure used during the Middle Ages in the Nordic countries was oath making. The rule was that each party to a conflict in the community had to take the appropriate oath that several people, the so-called "oath helpers", from the same village confirmed with their own oaths. Usually, 12 people had to confirm the oath before it became effective. The helpers had a personal duty to investigate the truth but they were not required to have personal knowledge of the conflict presented in front of the community. The oath system was thus not based on the search for the material truth but on the trust the community had in the persons involved in the conflict. This method of proof remained permissible until the end of the seventeenth century[46].

The main objective of those different medieval proceedings was to maintain the peaceful life of the community. Indeed, the conflict had to be solved concretely in order to avoid revenge. At the Ting, the community as a whole participated to decide how to best resolve the conflict for instance by trying to make friendly settlements between the parties. To help this institution, the *Nämnd* was originally used to investigate the truth and legitimate the Ting's decision. The laymen were respectable members of the community and people were more incline to believe their findings and respect their way of thinking. As previous paragraphs showed, material truth finding was not of primer interest but the confidence of the community

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Tübingen, Mohr Siebeck, 2014, pp.44-70; TAMM,D., *"Lay Judges and Professionals in Danish Courts", Fair Reflection of Society in Judicial Systems- A Comparative Study*, Cambridge, Springer, 2015 ,pp.147-156.

[44]Ibid. subpaginal note 32; KOCH,S., *Konfliktlösung im Westnordischen Rechtskreis*,Juristische Fakultät, Universität Bergen, Norway (*non publié*); LETTO-VANAMO,P., "*Finnish Judges Between Tradition and Dynamism*", *Fair Reflection of Society in Judicial Systems- A Comparative Study*, Cambridge, Springer, 2015,pp.157-168; TAMM,.D., *How Nordic are the old Nordic Laws?*, Anuario de historia del derecho espanol, No.74 , 2004.

[45]Concerning the Nämnd development in Sweden and Finland: With the appreciation of the status of the local judges and the closer identification of the judge with the state judicial authority (during the eighteenth century), the laymen lost some of their stature.

[46]Ibid. subpaginal note 32;op.cit. LETTO-VANAMO,P., "*Finnish Judges Between Tradition and Dynamism*".

was predominant[47]. Moreover this desire to maintain social stability is even more noticeable since obtaining the decision of the community was more important than settling the conflict rapidly[48]. As we can see, the procedure perspective was communal and based on societal needs.

B.- THE DEVELOPMENT OF STATE ADJUDICATION OF JUSTICE

At a later stage and alongside to the Ting, as Christianity was taking roots, assemblies for the regulation of community life were also organized by the Catholic Church. Those meetings concerned family relations and church related matters. The first degree of jurisdiction was held at parish meetings and, on appeal, by superior diocese councils. As exposed above, the traditional Nordic medieval proceedings focused on the peaceful resolution of conflict and the restoration of unity between members of the community rather than on finding the material truth. However the Catholic Church favored another path and stressed the relevance of resolving the conflict according to the material truth. From the thirteenth century onward, church adjudication replaced the system of the 12 oath takers by a jury system where the jury had to find out the substantive truth of the case[49].

This is when the conflict revolution history began to change. In the East Nordic group including Finland and Sweden and in the West Nordic group comprising Norway and Denmark, state adjudication was slowly beginning to replace ancient local conflict resolution.

1) East Nordic Group (Sweden and Finland)

At the beginning of the thirteenth century, due to the consolidation of the centralized power in Sweden-Finland, procedural law began to develop. At the time, the king had the authority to govern the country, administer the kingdom, uphold the peace and confirm the laws. His power to legislate was developing but provincial communities were still considered the main authorities in the law-making process.[50]

As explained before, the Ting was a pillar of the Swedish-Finnish society. This popular assembly was not only a place to resolve conflicts but also a legislative authority. More

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[47]Ibid. subpaginal note 41.
[48]Op.cit. KOCH,S., *Konfliktlösung im Westnordischen Rechtskreis*; LARSSON,J.*,"Conflict-resolution mechanisms maintaining an agricultural system. Early modern local courts as an arena for solving collective-action problems within Scandinavian Civil Law",* International Journal of the Commons Vol. 10 no 2, 2016, pp.1100-1118.
[49]AARS RYNNING,A., *Administration of Justice in Norway*, Oslo, the Royal Norwegian Ministry of Justice , 1957 ,pp.11-27; Ibid. subpaginal note 41.
[50]KORPIOLA,M., *"Not without the Consent and Goodwill of the Common People: The Community as a Legal Authority in Medieval Sweden",* The Journal of Legal History,Vol.35, No2,2014, pp.95-119.

precisely, district assemblies (*Häradsting* in Swedish*)* were dealing with purely local matters and superior provincial assemblies (*Lagmansting* in Swedish) served as governing bodies of the larger political units. During the eleventh and twelfth centuries, the rules of the provincial legal orders were passed on to the next generation through orality through short rhymes or maxims. Those rules were interpreted by the provincial leaders, the so-called *lagmän* (lawmen), for the people gathered at the Ting assembly. The provincial codes (*landskaplagar* in Swedish), which appeared in the thirteenth century, were a compilation of the customary laws which derived from the private written recordings of the lawmen. It was common to all provincial codes that the substantive law and procedural rules were not separated but blended in[51]. Finally, provincial laws also included family justices, canon law and king's orders[52].

Each of the provinces led an essentially independent existence with their own provincial codes and conflict resolution mechanisms. However, groundwork was laid for the future unity of the Swedish-Finnish country. Around 1350, during the reign of Magnus Eriksson, the first national legal codes were compiled. These were the general country or rural code (*almänna landslagen*) and the general urban code (*almänna stadslagen*)[53]. According to those new codes, the negotiated justice made by the parties, communities and local traditions were pushed aside, as adjudication in courts was given particular importance. In 1540, the King forbade private settling of crimes. The power to sanction was transferred from the local community to the state. However, the radical change of state adjudication and administration of justice did not fully take place until the seventeenth century[54].

Until approximately the half of the sixteenth century, provincial laws, family justice, church justice and state justice coexisted. After the Lutheran Reformation, the local churches were subjugated to the Crown and Canon law lost is application, although many of its provisions were incorporated in the provincial laws[55]. As time went by, community attendance and implication in the conflict resolution process gradually decreased. One reason for that was that sessions were not held outdoor anymore but took place inside the main building of the village. As a result, the audience could no longer find seats to be present. These changes in factual procedural frames caused changes in the internal proceedings as well[56].

Many other factors have led to the state adjudication of justice, such as the development of the appeal procedure. In 1614, the Svea Court of Appeal was created following the model of the *Reichskammergericht* and the *Parlement de Paris*. Before long, there were courts of appeal established everywhere in the Kingdom. As appellate courts, they were able to monitor and to unify the administration of justice at the local level[57]. As a result, the provincial Ting meetings gradually shifted towards a state court type of proceedings. The emergence of the court of appeal also helped the development of the legal profession. Since they needed to

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[51]e.g.*upplandslagens köpmalabalk* (commercial law) of 1296 §1 one accused of selling spurious gold must prove by oath of ten men that he did not know of its false character.
[52]Ibid. subpaginal note 32; Ibid. note subpaginale 41.
[53] Ibid. subpaginal note 32.
[54] Ibid. subpaginal note 41.
[55] Ibid. subpaginal note 8, pp.14-15.
[56] Ibid. subpaginal note 41.
[57] Op.cit. LETTO-VANAMO,P., "*Finnish Judges Between Tradition and Dynamism*".

travel long distances to the courts of appeal, the parties were most of the time using lawyers to represent them. Due to this, new rules covering the absence of the parties were institutionalized. Moreover, the long distance encouraged the use of the written procedure[58].

In 1695, oath taking, the symbol of local adjudication, was abolished. At the same time, the characteristics of proof procedure changed. Material truth finding became the aim of conflict resolution proceedings. The parties lost their autonomy to settle the case, as the resolution of the conflict was based on the will of outsiders, namely the judge and the legislator. Furthermore, adjudication became professional and bureaucratic with the increasing intervention of lawyers and the increasing complexity of the procedural law[59].

This development of the state adjudication reached its height in 1734 with the enactment of a new procedural code (*Sveriges Rikes lay).* This code stressed the importance of written proceedings. More importantly, it stated that the judge is the servant of law and should not resolve a dispute on the basis of equity. From then onwards, the roles of the legislator and the judge were plainly separated, marking a significant change compared to the Ting[60].

The new code established a clear hierarchy within the state court system and recognized the transfer of authority from the popular assemblies of the Ting to tribunals composed of judges appointed by the state. The court system was split between the rural courts and the cities courts. In both systems cases could be appealed directly to the court of appeal (*Hovratt*). Until 1789, when the Supreme Court was established, the king and a branch of his council (the *justitierevision*) functioned as the highest level of the judicial hierarchy[61].

This system continued quite similarly even after Finland became an autonomous part of Russia in 1809. As mentioned before, the Tsar allowed Finland to keep its own legal system. In 1917, Finland became an independent country and still decided to continue following the Swedish model. Indeed, today, the 1734 Judicial Code of Procedure is still used as an inspiration even if no original paragraphs are still in force. In 1993, the Finnish court system and judicial procedure underwent significant reforms both in civil and criminal proceedings. These reforms covered especially the lower courts and the courts of appeal. In the latest development, the possibility to make friendly settlements was strongly stressed by the legislator in order to hamper the overcrowding problem that courts are facing. In addition, mediation has played a huge role and even court-connected mediation was developed[62].

Concerning Sweden, minor changes and simplifications took place but it was not until 1971 that rural courts and cities courts systems were actually merged into district courts, which corresponds to first degree courts. Moreover, in 1909 the government decided to establish the Supreme administrative court so that it would not be responsible anymore to resolve disputes of an administrative nature. Gradually, a system of lower administrative courts was also established and in 1979, the administrative courts acquired their present form. Alongside this,

[58] Ibid. subpaginal note 41.
[59] Op. cit.
[60] Op.cit.
[61] Ibid. subpaginal note 32.
[62]Op.cit. LETTO-VANAMO,P., "*Finnish Judges Between Tradition and Dynamism*"; Ibid. subpaginal note 41.

a number of new specialized courts were established during the twentieth century like the Labour court or the Foreign Intelligence Court[63].

2) West Nordic Group (Denmark and Norway)

In Denmark and Norway the development of procedural law began to evolve gradually with the adoption of the *Landslov* by King Magnus Lagaboter in 1274[64]. Prior to the thirteenth century, the system of rules of law was based mainly on custom, particularly case-law, but also on laws enacted by the regional Ting assemblies[65]. Next to each regional laws, belonged a separate system of ecclesiastical rules of law containing provisions with regard to all matters concerning Christianity and the church. These provisions were strongly influenced by Canon law[66]. However, due to external influences like the beginning of law studies in Bologna, the King decided to undertake a national law codification of all the regional laws. Thereby, the King's privilege to legislate was established in the Norway-Denmark area[67]. As a result, in 1274 the national law codification (*Landslov*) was completed. It must be pointed out that the King knew that he did not deal with all legal matters and left it up to the courts to fill the lacunas of law[68]. With this first national code, the King turned the Ting assemblies into actual courts, and restructured them into a hierarchical system with three levels of general courts[69].

One of the first steps toward state adjudication was the introduction of the single judge at the local Tings level. As explained before, the ancient conflict resolution procedure was divided between a fact-finding part with the help of the respectable members of the *Nämnd* (*Sàttardom* in Norwegian) and a legal assessment part by the Ting leader (*Lögmoar* in Norwegian). The latter presented his reasoning to the assembly for approval. This system gradually evolved in the courses of the reforms. With the establishment of the instance order, the Ting leader was prohibited from acting as a judge at the local level. The King argued that this would resolve the lack of legal competence of certain Ting leaders[70]. However, this was heavily criticized by the nobility which demanded that the local courts be provided with at least one state court clerk (*sorenskriver*), whose duties should also include providing legal advice to the Ting assembly. The matter was immediately taken up by the crown and the *sorenskriver* was put in practice. Although the function of the *sorenskrivers* was initially only to record the judgment of the Ting in writing and advise the assembly, he quickly acquired a

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[63]STOCKHOLM INSTITUTE FOR SCANDINAVIAN LAW, *The Swedish National Courts Administration*, 2010 pp.629-649.
[64]Op.cit. KOCH,S., *Konfliktlösung im Westnordischen Rechtskreis.*
[65]Op. cit. TAMM,.D., *How Nordic are the old Nordic Laws?.*
[66]Op. cit. SUNDE,J.- Ø., "*The Legal Cultural Dependency of the Norwegian Legal Method-and its Future".*
[67]Op. cit. AARS RYNNING,A., *Administration of Justice in Norway*; op.cit.SUNDE,J.- Ø., "*The Legal Cultural Dependency of the Norwegian Legal Method-and its Future.*
[68]Op.cit. SUNDE,J.- Ø., "*The Legal Cultural Dependency of the Norwegian Legal Method-and its Future".*
[69]This court hierarchy was a copy of the Church courts, also having three levels of general courts. The main difference was that the King was the supreme judge at the top of the royal hierarchy, while de archbishop held the same supreme position in the Church courts.
[70] Op.cit. KOCH,S., *Konfliktlösung im Westnordischen Rechtskreis*.

comprehensive knowledge of the law through his deployment in various Tings in his district. Within a few decades, the *sorenskriver* became an observer and finally a single judge[71].

However from the fifteenth century onwards, there were repeated complaints about the inadequate legal knowledge of the judges, particularly at the local level. The amount of complaints was such that the Royal administration in Copenhagen had to intervene to tackle the issue. As a result, a fundamental institutional reform was introduced. This reorganization, is often referred to as the legal revolution (the *juridiske revolusjonen*), aimed at creating a more effective and professional administration of justice, laying solely in the hands of the royal administration. In 1590, a hierarchical structure was established with a basis consisting of municipal courts (*herredsting/byting/birketing* in Danish), regional appeal courts and the King in Council as the Supreme Court (*herredag* in Norwegian or *Kongens retterting* in Danish). In other words, a tripartite system of instances had been set up in Denmark and Norway. Indeed, it was decided that henceforth all cases taken to court had to be judged initially by the first level courts before an appeal could be introduced to the second and third levels. The appeal was structured as a trial against the judges for wrong judgment and sometimes resulted in a fine being imposed against the first instance judge. Judges in lower courts hence paid attention to how higher courts applied the law. The official purpose of this order was to improve legal security but, as a side effect, it achieved a higher degree of legal unity in the Denmark-Norway area[72].

All these measures ultimately served to enforce the judicial monopoly of the state and thus enable the royal authorities to exercise unrestricted control over social life. With the establishment of the absolutist regime in Denmark-Norway in 1660, this aspect became even more important. Several years later, two general procedural codes, the Danske Lov in 1683 and to the largely identical Norske Lov in 1687 have been enacted. The ambition of those codes was to finally secure unity in law through royal legislation. As a result, the previously given competence of the Ting leaders and the judges to fill the lacunas of law was removed and the King remained the only one capable of enacting laws[73].

A last step towards the institutionalization of judicial dispute resolution was the introduction of legal examination and the associated professionalization of the legal profession. In Denmark and Norway, a compulsory examination was introduced in 1736[74].

The Norwegian Constitution was enacted in 1814 following the dissolution of the Union with Denmark[75]. As explained before, Norway formed a Union with Sweden until its independence in 1905 but tried to remain as independent as possible. The Norwegian court system is currently still based on the three levels of general courts introduced in 1590. Obviously, some

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[71] Op.cit. KOCH,S., *Konfliktlösung im Westnordischen Rechtskreis*.
[72] Op.cit. SUNDE,J.- Ø., "*The Legal Cultural Dependency of the Norwegian Legal Method-and its Future"*; Op.cit.TAMM,D., *"Lay Judges and Professionals in Danish Courts"*.
[73] Op.cit. SUNDE,J.- Ø., "*The Legal Cultural Dependency of the Norwegian Legal Method-and its Future"*.
[74] Op.cit. KOCH,S., *Konfliktlösung im Westnordischen Rechtskreis*.
[75] Op. cit. AARS RYNNING,A., *Administration of Justice in Norway*.

reforms were undertaken but the basic principle of the strong influence of the Supreme court is still prevailing[76].

Concerning Denmark, in 2006, the Danish Parliament adopted a court reform bill. The objectives were to organize the judicial system in order to ensure the highest possible level of professional competence, flexibility and service as well as efficient case administration. For instance, alternative procedures have been introduced for civil cases. From 1 January 2007, the Danish Courts are composed of the Supreme Court, the two high courts, the Copenhagen Maritime and Commercial Court, the Land Registry Court, 24 district courts, the courts of the Faroe Islands and Greenland, the Appeals Permission Board, the Special Court of Final Appeal, the Danish Judicial Appointments Council and the Danish Court Administration[77].

In both the Eastern and Western Nordic groups, the developments of conflict resolution have followed almost the same pattern. The conflict was first dealt at a local level and the main objective was to restore the broken peace in the community. Trust and formal proof were more important than material truth. The aim was to find a balanced way to resolve disputes to avoid vengeance between the members of the community. As time went by, state adjudication of dispute became prevailing and the objective changed completely. The law had to be unified and applied equally to all the citizens. Legalism and discovering the material truth were most important. Unlike in traditional conflict resolution, the parties were not free to choose the way how to resolve their dispute, only the judge and the legislator were given power.

It seems like two antagonist ways of resolving disputes. How can the current trend towards an increased use of Alternative Dispute Resolution be explained in such context? Is it a revolution due to the too radical way of resolving disputes according to the state or is it just a predictable evolution combining the advantages of both antagonist conflict resolution developments? The next chapter will try to answer those questions.

III. THE RISE OF ALTERNATIVE DISPUTE RESOLUTION

The use of alternative dispute resolution has increased over the past ten years. It is a worldwide phenomenon but more importantly a Nordic movement[78]. Several European countries, most recently Norway and Finland, have introduced legislation about mediation. What are the reasons behind this rapid increase in the use of ADR? My assumption is that the common culture of the North, the fact that the Nordic countries belong to the same legal

[76] Op.cit. SUNDE,J.- Ø., "*The Legal Cultural Dependency of the Norwegian Legal Method-and its Future".*
[77]STOCKHOLM INSTITUTE FOR SCANDINAVIAN LAW, *The Danish Courts-an Organisation in development*,2010, pp.581-590.
[78]Ibid. subpaginal note 38.

family and the historical development of the way they resolve conflict are all the pieces of a same puzzle explaining the rise of ADR.

The first section will be dedicated to the description of the rise of Alternative Dispute Resolution in the Nordic countries. It seems that the current legal situation is just a rightful evolution after the ancient conflict resolution period and the state adjudication period. Indeed with the increasing use of ADR, a balance has been reached between the excessive liberty of the parties that had their conflict to be decided according to the community's value and the disproportionate intervention of the State in the adjudication of justice.

The second section will focus on a new challenge caused by the increasing use of ADR. How to find the right balance between the parties' autonomy and the state's formalization of the procedure? To answer to this question, this section will outline the mechanism of mediation and court-annexed mediation in the Nordic countries.

A.- THE RISE OF ADR IN THE NORDIC COUNTRIES

Nowadays, various changes can be seen in conflict resolution in the Nordic countries. Norway stands out as the country where alternative dispute resolution is most commonly used. Sweden is a world-wide recognized arbitration platform. The Danish ombudsman has inspired many other European countries and Finland is becoming an expert in mediation[79]. Alternative Dispute Resolution is used everywhere by members belonging to the Nordic legal family. This common development may sometimes seem uneven since national rules are differing from one another. For instance, Finland and Norway have extensive legislations about mediation and its many variations. Conversely, Sweden prefers to put the emphasis on arbitration and the enforcement of arbitral award. In the end, all those national rules are based on the common goal of improving conflict resolution[80].

Several reasons can explain this Nordic trend of an increasing use of ADR. The first one has to do with the Nordic mentality. As explained before, the Nordic countries share a common culture and heritage, based on common democratic and social values such as equality, self-determination and solidarity, and nowadays also the welfare state. This way of thinking has influenced the development of conflict resolution since almost every area of life is characterized by consensus and negotiation[81].The parties are willing to be included in the process of resolving their conflict because most of the time there is so much more than a legal

[79]CARLSSON,J.,FOESTER,A., *Fresh air in the north- Trends and developments in Scandinavian arbitration*, Dispute Resolution Ausgabe 02, 2014,pp.7-9; LEGRAND,A., *L'ombudsman Scandinave*, Paris, librairie générale de droit et de jurisprudence R.Pichon et R.Durand-Auzias, 1970,pp.201-241; LETTO-VANAMO,P., *"Judicial Dispute Resolution and its Many Alternatives: The Nordic Experience", Formalisation and Flexibilisation in Dispute Resolution*, Leiden, Koninklijke Brill,2014, pp.151-163.
[80]Ibid. subpaginal note 41.
[81]ADRIAN,L.,ERVASTI,K., NYLUND,A., *"Introduction to Nordic Mediation Research" ,Nordic Mediation Research*, Switserland, Springer, 2018,pp.1-8.

issue at stake. The parties would rather not be dictated the solution to their personal conflict by outsiders, namely the judge and the legislator. For a very long time, the legitimacy of judgments arose from the conviction that the courts obeyed the law which was the expression of the people's will. However, nowadays, the legitimacy of decisions is sought elsewhere and most of the time in ADR[82]. Indeed, when using alternative mechanisms, parties are turning into proactive actors of the resolution of their conflicts. Most of the time, all the choices as to the opportunity to undertake such a procedure, the conduct of it and the way of addressing their needs are made by the parties together. As a result, this Nordic trend of ADR seems to be related to the growing wish of self-determination of their citizens[83].

Another reason to the rise of ADR in the Nordic countries is linked with the advantages of those mechanisms. Most of alternative processes are less expensive than court proceedings since the end can be anticipated, delays are avoided and transaction costs are reduced. Further, the parties escape the pressure which accompanies legal proceedings, and they have better possibilities to preserve good relations. The speed of ADR compared to court proceedings is an advantage that is commonly put forward[84]. For instance, many Finnish citizens chose to resolve their conflict through mediation or negotiation due to the risk of legal costs and the delays in court procedures in Finland[85]. Furthermore, ADR are flexible and can easily adapt to the needs of the parties, while court proceedings are more focused on the rigid application of the law. For example, during an arbitration procedure the parties can commonly agree to keep the process confidential while the courts proceedings are always public[86]. Moreover, sometimes the conflict concerns a subject so complex and technical that the legislator has never dealt with it before and would never do so. ADR allows to fill the gap by providing for special procedures and norms with the help of up to date experts in the field such as in the area of high-technology. Specialists will understand the conflict to a considerably deeper extent than the court, since the judge is usually lacking time and knowledge in those matters. The use of Alternative Dispute Resolution is gaining in popularity in the Nordic countries due to the flexibility and advantageous features of those processes. ADR are filing the gap that court proceedings cannot reach[87].

Historically, this evolution towards an increasing use of alternative dispute resolution can be analyzed has a synthesis of the features of the ancient conflict resolution period and the state adjudication period. The growing use of ADR is halfway between the freedom of the parties and the omnipresent control of the State over the adjudication of justice. As explained above,

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[82]Op.cit. LETTO-VANAMO,P., *"Judicial Dispute Resolution and its Many Alternatives: The Nordic Experience", Formalisation and Flexibilisation in Dispute Resolution.*

[83]ANDRIAN,L., MYKLAND,S., *« Unwrapping Court-Connected Mediation Agreements », Nordic Mediation Research*, Switzerland, Springer, pp. 83-102; Op.cit. LETTO-VANAMO,P., "*Finnish Judges Between Tradition and Dynamism*", *Fair Reflection of Society in Judicial Systems- A Comparative Study;* Ibid. subpaginal note 38 p.318.

[84]Ibid. subpaginal note 38.

[85] Ibid. subpaginal note 41

[86]Op.cit. CARLSSON,J.,FOESTER,A., *Fresh air in the north- Trends and developments in Scandinavian arbitration;* HOLMBÄCK,U., *Arbitration in Sweden,* Stockholm, Stockholm Chamber of Commerce,1977,pp.45-143.

[87] Ibid subpaginal note 38.

ancestral conflict resolution was characterized by the strong involvement of the community. Most of the time the Ting, the local assembly, was the place where the conflict were resolved. The main objective of the Ting was to bring peace between the parties for the sake of avoiding vengeance. In order to do so, negotiation between the parties, oath taking and formal proof were commonly used. As time went by, state adjudication of dispute became prevailing and the objective changed completely. The law had to be unified, applied equally to all the citizens and the problem of unprofessional judges had to be tackled. Legalism and discovering the material truth were more important than reconciliation. Unlike in traditional conflict resolution the parties were not free to choose the right way to resolve their dispute, only the judge and the legislator had this power. The main goal of the state adjudicate justice was to bring justice through an organized hierarchy of court proceedings. Ancient conflict resolution was adapted for ancient traditions and the peasant north. The rise of state adjudication was needed in order to resolve the lack of judicial unity. The citizens were willing to be judged equally according to the same law and not according to traditions and good will of some considered respectable members of the community. Both periods had their pro's and con's and finally the rise of alternative dispute resolution was the expected evolution of the local autonomy and parties settlement with the frame of state judicial procedure[88].

Lastly, the growing use of alternative dispute resolution does not imply that it will supersede court proceedings. By choosing the word « alternative » to qualify those processes it clearly appears that the parties are entitled to choose the way that best suits their needs. This is true for most of the disputes. However; indispositive civil cases[89] and criminal cases must imperatively follow the court proceedings. It seems that there is a distribution of power between the courts and the parties[90]. As national resources shrink, a prioritization between questions that are handled by the court and other questions that are managed by ADR must be made. In that sense, ADR should be considered as a tool that helps the courts to better resolve conflicts among the Nordic citizens. The alternative process operates as a sort of relief filter that makes it possible for the courts to devote time and energy to other cases. In a certain way, the Nordic countries have transferred a part of the administration of justice to the citizens, while creating direction and control mechanisms so that the court could better render justice[91].

More importantly it can be said that nowadays, ADR and court proceedings are an indispensable combination for an optimal conflict resolution management. Sometimes, a party is not inclined to find a settlement in a mediation process until an action has been instituted to warn the other party of the seriousness of the conflict. Some parties even deliberately institute an action as part of their negotiation plan because they fear that the alternative process will not satisfy them and bet on the judge's opinion to obtain an appropriate solution. Moreover,

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[88]Ibid. subpaginal note 32;Op.cit. KOCH,S., *Konfliktlösung im Westnordischen Rechtskreis;*Ibid. subpaginal note 41; op.cit. LETTO-VANAMO,P., "*Finnish Judges Between Tradition and Dynamism*", *Fair Reflection of Society in Judicial Systems- A Comparative Study*,; op.cit. SUNDE,J.- Ø., "*The Legal Cultural Dependency of the Norwegian Legal Method-and its Future";* Op. cit. TAMM,.D., *How Nordic are the old Nordic Laws?*

[89]e.g. to establish the paternity over a child, the dispute cannot be resolve by conducting a mediation between the two presumptive fathers.

[90] Ibid. subpaginal note 38.

[91] Op;cit.

Nordic judges are allowed and encouraged to promote settlements. If the parties do not settle with the help of the judge, he or she will resolve the dispute personally. Additionally, court-connected mediation is also organized. All of those mechanisms are part of a general strategy put forward by the state and aiming at the adequate resolution of conflicts. ADR addresses and solves numerous cases that substantive law is not capable of solving in a satisfactory way, so that the judge remains unable to reach a suitable outcome. Pia Letto-Vanamo points out, a functioning court system must secure the feasibility of ADR. As a result, traditional court proceedings and ADR are not incompatible concepts. One will not replace the other. Contrarily to the ancient conflict resolution period and the rise of state adjudication period, the present time is open to the coexistence of several ways of resolving conflicts. The matter is no longer that of the antagonism between the Ting and the participation of the community on the one hand, and the strict court hierarchy of the Nordic Kings on the other hand. The current development of conflict resolution takes into account that there is a plethora of conflicts and legal disputes which needs a multi-faceted conflict resolution system. As a result, court proceedings and Alternative Dispute Resolution are interconnected and must develop jointly in order to efficiently resolve modern conflicts in the Nordic countries [92].

B.- THE STRUGGLING BALANCE BETWEEN FLEXIBILITY AND FORMALIZATION: MEDIATION IN THE NORDIC COUNTRIES

This last section is dedicated to a new challenge caused by the increasing use of ADR. Where is the right balance between the parties' autonomy provided by ADR and the need for state's procedural rules able to ensure equality among citizens?

Mediation is a good example of the quest to find a balanced way to deal with alternative conflict resolution. This alternative procedure is defined as a voluntary process, involving an independent and impartial third party seeking to assist the parties to resolve their disagreements through negotiation[93]. There are several variants to mediation such as court-annexed mediation where the program is operated by the court and the mediator is a judge, a lawyer or another professional[94].

Finland, Norway, Denmark and Sweden all have mediation and court-annexed mediation procedures. However, the level of activity varies depending on the country. In Sweden, mediation is not a popular way of resolving conflicts. On the contrary, mediation in Norway

[92]Ibid. subpaginal note 38; Ibid. subpaginal note 41; op.cit. LETTO-VANAMO,P., "*Finnish Judges Between Tradition and Dynamism*", *Fair Reflection of Society in Judicial Systems- A Comparative Study*.
[93]PYNNÄ,A.,TAIVALKOSKI,P., *"The Courts and Bar Association as Drivers for Mediation in Finland", New Developments in Civil and Commercial Mediation- Global Comparative Perspectives*, Switzerland, Springer, 2015,pp.275-289.
[94] Ibid. subpaginal note 41.

and Finland is occupying a central spot in the conflict resolution culture. As to Denmark, its system is somewhere in-between[95].

At first sight it may seems that out-of-court and in-court mediation are completely different. The first is an extremely flexible mechanism to resolve disputes without the intervention of a judge. The second rather appears as a hidden state-controlled jurisdictional mechanism governed by an overwhelming amount of rules. However, the reality is more nuanced than those assertions.

Out-of-court mediation is flexible but nevertheless formalized. First of all, the conduct of the mediation proceedings is not regulated in detail by law, which leaves a substantial amount of autonomy to the parties. Consequently, in each case the mediator will have to organize the mediation according to the parties' wishes[96]. Besides these flexible characteristics, one must keep in mind the indirect procedural features that show the formalization of the mediation process. In the Nordic countries, mediation is offered by private providers as well as by public institutions. In practice, mediation is mostly operated by those public, highly regulated institutions[97]. Even though there is no certification procedure or specific training to follow to become a mediator, the mediation institutions are setting precise requirements and rules that prospective mediators shall observe if they want to practice in those institution[98]. Moreover, the enforcement of an agreement reached in the context of the mediation process depends upon the fulfillment of certain conditions. The Nordic countries' legislations have enacted certain substantive limitations on the confirmation of settlement agreements resulting from mediation. Courts cannot confirm a settlement that is against the law[99], or clearly unfair, or breaches the right of a third party[100]. Lastly, another example of the slightly formalized nature of out-of-court mediation is the recent enactment of the Norwegian Dispute Act which establishes, in its chapter 7, a set of non-mandatory but highly recommended set or rules[101].

Accordingly, in-court mediation is formalized but remains somewhat flexible. The specific kind of mediation takes place at the parties or the judge's initiative just before or during legal proceedings. Since the process is taking place inside the court room, a comprehensive set of statutory rules have been enacted in the Nordic countries. The rules are however not rigid, and the mediation process remains flexible. The parties have the right to request a particular judge at the relevant court to be their mediator[102]. Furthermore, like for out-of-court mediation, none of the Nordic countries have general regulation in their legislation about the required training

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[95] Ibid. subpaginal note 81.
[96] Ibid. Subpaginal note 93; BERNT,C., *"Mediation of Legal Disputes in Norway. Institutionalized, Pragmatic and Increasingly Popular", New Developments in Civil and Commercial Mediation- Global Comparative Perspectives*, Switzerland, Springer, 2015,pp.511-545.
[97] Ibid. subpaginal note 81.
[98] Op.cit.subpaginal note 96.
[99] A settlement agreement is likely to be against the law if it contains stipulations that are contrary to the fundamental principles of the legal system, ordre public, or contrary to an explicit (mandatory) statutory provision.
[100] Ibid. subpaginal note 93.
[101] Op.cit. BERNT,C., *"Mediation of Legal Disputes in Norway. Institutionalized, Pragmatic and Increasingly Popular"*
[102] Ibid. subpaginal note 93.

to become a mediator. However, in-court mediators are most of the time judges and some courts required them to be trained in mediation and to act in accordance with a set of ethical guidelines like independence, efficiency and impartiality[103].Once the parties have agreed to mediate in court, the court decides when mediation will start and the mediator, together with the parties, established the methods that will be adopted throughout the procedure, which is another flexible feature of in-court mediation[104]. At the parties' request an agreement reached in court-connected mediation can be entered into the court records. Consequently, the agreement obtains the status of a judicial settlement and becomes enforceable, without other formal requirements needed[105]. If the parties do not request such entrance, the agreement will be given the binding effect of a contract. The enforcement is thus easier for in-court mediation settlements than for out-of-court mediation settlement that must be confirmed by the court[106].

Both in-court mediation and out-of-court mediation are, even if it is to a different extent, formalized but also flexible mechanisms. I personally believe that the degree to which mediation mechanisms is formalized or flexible depends on the conflict that the process tends to resolve. My assumption can be confirmed by the variety of mediations available in the Nordic countries. For instance communal mediation system like street mediation needs to be flexible and not too formal in order to resolve the conflict. The idea of this kind of mediation is to stop a young person when she or he does wrong or behaves in a disorderly manner. The goal is to encourage young people to understand why their actions are considered bad and take responsibility by apologizing to the complainant. This kind of mediation takes place in a safe environment in the presence of the parents and the mediator[107]. Another example is the case of family mediation which more regulated due to the presence of children. Family mediators provide help and support in the event of family conflicts like child custody agreements. The main goal of this mediation is to protect the best interests of children. As a result only specifically trained mediators social welfare can conduct those kind of mediation. Experts in child psychology often help the mediator in the mediation process[108].

As a whole, there are many kinds of conflict resolution systems and mediation variants in the modern Nordic society. Some alternative dispute resolution mechanisms are more formalized while others are more flexible. This is because modern conflict resolution in the Nordic countries adapts itself depending on the dispute that must be resolved. This evolution can be explained by the Nordic historical development of conflict resolution. Originally, the parties had to hand their conflict to the community assembly (the Ting). Whatever the nature of the dispute and whatever the truth really was, it would be settled according to community's

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[103] Ibid. subpaginal note 81.
[104]Op.cit. BERNT,C., *"Mediation of Legal Disputes in Norway. Institutionalized, Pragmatic and Increasingly Popular"*
[105]Only in Norway must a few formal requirements be fulfilled. The court must ensure that the agreement states exactly what the parties' have agreed to and the parties must sign the settlement.
[106]Op.cit.ANDRIAN,L., MYKLAND,S., *« Unwrapping Court-Connected Mediation Agreements », Nordic Mediation Research,*; Op.cit. subpaginal note 96.
[107]ERVASTI,K., *"Past, Present and Future of Mediation in Nordic Countries", Nordic Mediation Research,*Switzerland,Springer,2018;pp.225-241.
[108]Op.cit. BERNT,C., *"Mediation of Legal Disputes in Norway. Institutionalized, Pragmatic and Increasingly Popular".*

values and the trust that the oath helpers gathered at the Ting had in the parties. A suitable settlement would be found and local peace would be restored. As time went by, state adjudication of justice became predominant. All disputes had to be resolved according to the strict court hierarchy established by the state. The goal was to discover the material truth through specific proof mechanisms. Disputes would be resolved according to almost the same pattern to ensure legal unity in the Nordic kingdoms. Modern day conflict resolution reflects the growing culture of self-determination. Nordic people have taken back the handling of their conflicts and state adjudication is there to frame and help this resolution with the intervention of alternative dispute resolution. Nowadays, it is not anymore up to the citizen to adapt its conflict to the resolution but it is rather up to the resolution to adapt to the conflict. Certain disputes are too complex to be handled by a 'common' judge, and need a fast resolution that cannot be reached in court. Other disputes are perfectly dealt with classical judicial proceedings. The increasing complexities of disputes arising in the Nordic society and the desire of self-determination of the parties have giving rise to a new evolution in conflict resolution. The time has come for the state court proceedings and alternative dispute resolution to work hand in hand.

CONCLUSION

As the first chapter demonstrated, the Nordic countries are forming a legal family of their own. Later on, the tumultuous history of the birth of the modern Nordic countries was explained. From three Crowns united to counter the increasing German influence to two Kingdoms fighting to rule over the others lands. The Napoleonic Wars turned their world upside down by taking away from Sweden its eastern part, Finland and transferring the Norwegian area from Denmark to Sweden. Both sub-countries became independent almost a century later. It shows that the roots of the Nordic countries are intertwined and have more than probably influenced each other culturally. Moreover, these countries also share a common culture and heritage, based on common democratic and social values such as equality, self-determination and solidarity, and nowadays also the welfare state. All those elements are interlinked. The historical and cultural contexts have influenced the development of the law. More precisely, I personally believe that the Nordic mentality had everything to lead to the modern development of an increasing use of alternative dispute resolution mechanisms.

In order to prove this assumption, the historical development of conflict resolution in the Nordic countries was described in the second chapter. In both the Eastern and Western Nordic groups, the developments of conflict resolution have almost followed the same pattern. The conflict was first dealt at a local level and the main objective was to restore the broken peace in the community. Trust and formal proof were more important than material truth. The aim was to find a balanced way to resolve disputes to avoid vengeance between the members of the community. As time went by, state adjudication of disputes became prevailing and the objective changed completely. The law had to be unified and applied equally to all Nordic citizens. Legalism and discovering material truth were more important. Unlike in traditional

conflict resolution, the parties were not free to choose the way how to resolve their dispute, only the judge and the legislator were given such power.

The last chapter was dedicated to the explanation of the rise of Alternative Dispute Resolution in the Nordic countries. It seems that the current legal situation is just a rightful evolution between the ancient conflict resolution period and the state adjudication period. Indeed, with the increasing use of ADR a balance has been reached between the excessive interference of the community in the parties' dispute and the disproportionate intervention of the state in the adjudication of justice. The Nordic citizens are longing for more self-determination in the resolution of their conflict. Consequently, the modern Nordic States agreed to introduce suitable conflict resolution mechanism as long as they are framed and regulated by state legislation in order to respect equality between the citizens. Moreover, the different variants of mediation were examined in order to understand how to find the right balance between flexibility and formalization. It turned out that those factors depend on the conflict that seeks resolution.

More importantly it can be said that nowadays, ADR and court proceedings are an indispensable combination for an optimal conflict resolution management. Traditional court proceedings and ADR are not contrary concepts. One will not replace the other. Contrary to the ancient conflict resolution period and the rise of state adjudication period, there is not one way to resolve disputes. There is not only the Ting and the local community or the strict court hierarchy of the Nordic Kings. The current development of conflict resolution takes into account that there is a galaxy of different conflicts that will not be resolved by following the same heavily formalized procedure or too flexible mechanism. Modern conflict resolution in the Nordic countries adapts itself depending on the dispute that must be resolved. Nowadays, it is not anymore to the citizen to adapt its conflict to the resolution, but it is to the resolution to adapt to the conflict.

BIBLIOGRAPHIE

1. Monographs

AARS RYNNING,A., *Administration of Justice in Norway*, Oslo, the Royal Norwegian Ministry of Justice , 1957.

ARMINJON, P.,NOLDE,B.,WOLFF, M., *Traité de droit comparé*, Paris, L.G.D.J, 1951.

BADER GINSBURG, R., BRUZELIUS, A., *Civil Procedure in Sweden*, The Hague, Martinus Nijhoff, 1965.

BARRET,J.P., BARRET, J.T.,*A History of Alternative Dispute Resolution-The Story of a Political, Cultural, and Social Movement*, San Francisco, Jossey-Bass,2004.

HOLMBÄCK,U., *Arbitration in Sweden*, Stockholm, Stockholm Chamber of Commerce,1977.

KÖTZ,H., ZWEIGERT,K.,, *An Introduction to Comparative Law*, Oxford: Oxford University Press,1998.

LEGRAND,A., *L'ombudsman Scandinave*, Paris, librairie générale de droit et de jurisprudence R.Pichon et R.Durand-Auzias, 1970.

2. Articles from periodicals and collective works

ADRIAN,L.,ERVASTI,K., NYLUND,A., *"Introduction to Nordic Mediation Research"*, *Nordic Mediation Research*, Switzerland, Springer, 2018,pp.1-8.

ANDRIAN,L., MYKLAND,S., *« Unwrapping Court-Connected Mediation Agreements »*, *Nordic Mediation Research*, Switzerland, Springer,2018 pp. 83-102.

BERNT,C., *"Mediation of Legal Disputes in Norway. Institutionalized, Pragmatic and Increasingly Popular", New Developments in Civil and Commercial Mediation- Global Comparative Perspectives*, Switzerland, Springer, 2015,pp.511-545.

BLOMSTEDT, Y.," *Historical Background of the Finnish Legal System", The Finnish Legal System*, Helsinki, the Union of Finnish Lawyers, 1966,pp.7-23.

ERVASTI,K., *"Past, Present and Future of Mediation in Nordic Countries", Nordic Mediation Research*,Switzerland,Springer,2018;pp.225-241.

ERVO,L., *"Nordic Court Culture in Progress: Historical and Futuristic Perspectives", The Future of Civil Litigation access to Courts and Court-annexed Mediation in the Nordic Countries*, Switzerland, Springer, 2014,pp.383-407.

GUSTAFSSON,H., *The Forgotten Union*, Scandinavian Journal of History, Vol.42, No 5, 2017, pp.560-582.

HUSA,J.,NUOTIO, K.,PIHLAJAMÄKI,H.,"*Nordic Law Between Tradition and Dynamism"*, *Nordic Law-Between Tradition and Dynamism*, Antwerp-Oxford, Intersentia, 2007,pp.1-39.

KERNEIS,S., *Le droit à l'épreuve de l'anthropologie historique: le cas des modes alternatifs de resolution des conflits*, Revue électronique d'histoire du droit- Clio @Themis n°5, 2012.

KORPIOLA,M., *"Not without the Consent and Goodwill of the Common People: The Community as a Legal Authority in Medieval Sweden",* The Journal of Legal History,Vol.35, No2,2014, pp.95-119.

LARSSON,J*.,"Conflict-resolution mechanisms maintaining an agricultural system. Early modern local courts as an arena for solving collective-action problems within Scandinavian Civil Law",* International Journal of the Commons Vol. 10 no 2, 2016, pp.1100-1118.

LETTO-VANAMO,P., "*Finnish Judges Between Tradition and Dynamism*", *Fair Reflection of Society in Judicial Systems- A Comparative Study*, Cambridge, Springer, 2015,pp.157-168.

LETTO-VANAMO,P., *"Judicial Dispute Resolution and its Many Alternatives: The Nordic Experience", Formalisation and Flexibilisation in Dispute Resolution,* Leiden, Koninklijke Brill,2014, pp.151-163.

PYNNÄ, A., TAIVALKOSKI, P., *"The Courts and Bar Association as Drivers for Mediation in Finland", New Developments in Civil and Commercial Mediation- Global Comparative Perspectives*, Switzerland, Springer, 2015, pp.275-289.

SLATER, J., *Interest Arbitration as Alternative Dispute Resolution: The History from 1919 to 2011,* Ohio State Journal on Dispute Resolution, 2013, pp.387-418.

SUKSI,M.,*"Common Roots of Nordic Constitutional Law? Some Observations on Legal-Historical Development and Relations between the Constitutional Systems of Five Nordic Countries", The Nordic Constitutions- A Comparative and Contextual Study*, Oxford, Hart Publishing,2018, pp.9-42.

SUNDE,J.- Ø., "*The Legal Cultural Dependency of the Norwegian Legal Method-and its Future", Nordic and Germanic Legal Methods*, Tübingen, Mohr Siebeck, 2014, pp.44-70.

TAMM,.D., *How Nordic are the old Nordic Laws?,* Anuario de historia del derecho espanol, No.74 , 2004.

TAMM,D., *"Lay Judges and Professionals in Danish Courts", Fair Reflection of Society in Judicial Systems- A Comparative Study*, Cambridge, Springer, 2015 ,pp.147-156.

TAMM,D., *"The Nordic Legal Tradition in European Context", Nordisk identitet – Nordisk rätt i europeisk gemenskap*, Helsinki ,Institute for International Economic Law at Helsinki University, 1998,pp.15.

ZAPHIRIOU,G., *"Introduction to Civil Law Systems", Introduction to Foreign Legal Systems,* New York, Oceana, 1994, pp.47-55.

3. Others

BERNITZ,U., *What is Scandinavian Law? Concept, Characteristics, Future,* Stockholm Institute for Scandinavian Studies, 2010.

CARLSSON,J.,FOESTER,A., *Fresh air in the north- Trends and developments in Scandinavian arbitration,* Dispute Resolution, Ausgabe 02, 2014,pp.7-9.

KOCH,S., *Konfliktlösung im Westnordischen Rechtskreis,Juristische* Fakultät, Universität Bergen, Norway (*non publié*).

LINDELL,B., *Alternative Dispute Resolution and the Administration of Justice-Basic Principles*, Scandinavian studies in law,2012, pp.312-344.

STOCKHOLM INSTITUTE FOR SCANDINAVIAN LAW, *The Danish Courts-an Organisation in development*,2010, pp.581-590.

STOCKHOLM INSTITUTE FOR SCANDINAVIAN LAW, *The Swedish National Courts Administration*, 2010 pp.629-649.

SUNNQVIST,M., *Konfliktlösung in Schweden-Finnland 1500-1800,* Juristische Fakultät, Universität Lund, Sweden, (*non publié*).