Small Claims Procedures in the Scandinavian Countries

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Abstract All the Scandinavian countries have some form of special proceedings for small claims. Still, there has not been formal cooperation between the countries. This means that Sweden, Denmark and Norway have quite different approaches to some procedural questions concerning small claims. The goal of this article is to analyse whether the implementation of small claims procedures has had any effect on the Scandinavian civil procedure. There is no doubt that the introduction of small claims procedures has a direct effect purely by being an addition to the ordinary proceedings. The question of more interest here is whether the implementation has some indirect effects on the Scandinavian way of approaching procedural questions. Mainly, the article will focus on the effect of the rules limiting the possibility of obtaining cost reimbursement from the losing party in small claims cases. For example, there is an assumption that the mentioned cost limitations will increase the number of self-represented parties. More self-represented parties demand more of the judge, for example when it comes to giving guidance.

1 Introduction

Special procedures for claims of lower value have become a staple in most European countries.[1] This is also the case in Norway, Sweden and Denmark, which all have small claims regulations, although there are clear differences in the structure. This text aims to identify some aspects of the small claims procedure that have influenced how Scandinavian countries approach procedural questions.

Two of the other Nordic countries will not be further discussed in this article. Iceland does have small claims procedures, but the source material is neither available in any Scandinavian language nor English, which excludes the procedures from this article. Finland does not have a small claims procedure, at least not of the kind

[1] CEPEJ (2014), p. 260.

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L. Ervo et al. (eds.), *Rethinking Nordic Courts*, Ius Gentium: Comparative Perspectives on Law and Justice 90, https://doi.org/10.1007/978-3-030-74851-7_15

this article discusses.[2] Through its membership in the European Union, Finland is required to implement the European Small Claims Procedure, which is not the topic of the article. Finland does have procedural rules that aim to limit costs and time spent on smaller cases, but these are more like order-for-payment procedures than small claims procedures, since the claims must be uncontested.[3] In this article, the focus is on procedures concerning contested claims, and how these are handled by the courts. Therefore, Finnish procedural aspects that have common features with small claims procedures will not be discussed further here.

Since the focus of the article is Scandinavia, it might be natural to assume that there has been some form of cooperation between the countries. However, this is not the case, at least not formally. In fact, there are examples of significant differences among the three countries, especially with regard to the degree of EU impact on procedural rules.

Still, there are clear signs of common inspiration in the reasoning behind implementing small claims regulations. First, the main goals of having special procedures for small claims are the same. The procedure should be more effective than the ordinary procedures, and it should limit the parties' financial risks associated with going to court. Secondly, all three countries have obligations to secure a fair trial, in accordance with the ECHR article 6 number 1.

There have also been communications between lawyers in the different countries concerning the procedure for small claims, in a more informal way compared to official law making. For example, one of the topics during the 35th Nordic Law Meeting '*Nordisk juristmøte*' in 1999 was small claims.[4] Therefore, even though there has not been any formal cooperation, it is a legitimate hypothesis that it should be possible to identify some similar developments for the Scandinavian courts.

The problems with small claims and court proceedings have also been similar in the countries. Mainly, the procedures in the Scandinavian courts have been too expensive and too time consuming, and often the parties have different procedural experience.[5] These factors may reduce the expectation of fairness in the court proceedings, which again can make people with small claims choose to give up the claim instead of taking it to court. This is generally seen as a restriction of 'access to justice'. The introduction of small claims procedures in the Scandinavian countries has a common goal: to make the courts accessible to people with small claims by reducing the costs and the time spent on the case and to reduce differences between experienced parties and parties that have never been to court before. The procedural rules should secure a proportional treatment of the cases.[6]

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[2] Nylund (2016), p. 77.

[3] See, e.g., The Finnish Code of Judicial Procedure chapter 5 Sect. 3, concerning the procedure for uncontested claims.

[4] This is a meeting held regularly since 1872, where participants from all the Nordic countries discuss different legal challenges, with the goal to learn from each other.

[5] Jensen (2021), pp. 33–40.

[6] For Norway, see Lov 17.6.2005 no. 90 Tvisteloven (hereafter The Dispute Act) Sect. 10–1 (1); for Sweden, see Law committee report 2004/05: 131, p. 78; and for Denmark, see The Danish Standing Committee on Procedural Law (Retsplejerådet) report no. 1436/2004, p. 41.

In the following, I will firstly discuss what constitutes a small claim in the different countries. Secondly, I will present the main structure of the different procedures. Thirdly, I will discuss differences in the cost rules. Finally, I will analyse the different effects these rules have had, or may have, on the procedure.

2 The Application of the Small Claims Procedures

A necessary condition for discussing small claims is to understand what constitutes a small claim in each of the countries. There are three questions of particular interest for this subject. The first is which monetary amount the countries have set as the limit between ordinary proceedings and small claims proceedings. The second is what kinds of cases are not suitable for judgment after a simplified procedure and therefore fall out of the small claims scope. The third is what the definition of a small claim entails for the number of cases dealt with under the small claims procedures.

2.1 The Monetary Limit

As a main rule, the usage of the special procedural rules for small claims depends on the monetary value of the contested claim. This is the case, for example, in England and Germany, as well as in the Scandinavian countries.[7] Among the Scandinavian countries, there is quite a large difference in what constitutes a 'small' claim.

Norway has the highest threshold for small claims. All claims that are valued less than approximately 13,000 EUR are considered small claims, with some exceptions.[8] The typical Danish small claims are of lower value than approximately 6700 EUR, which is less than half the Norwegian limit.[9] Sweden has a noticeably lower limit than the two other countries, at only approximately 2200 EUR.[10]

However, the Swedish limit does change somewhat from year to year, as it depends on the price base amount, which the Swedish government adjusts every year.[11] This differs from the Norwegian and Danish thresholds, as these are set as a fixed amount. Consequently, there needs to be a change in the law if the limits are to change in the latter countries. Such changes are under discussion in Norway, where there is a suggestion to increase the limit to approximately 25,500 EUR, which is double

[7] See The Civil Procedure Rules 1998 no. 3132 Sect. 26.6 and *Gerichtsverfassungsgesetz*, 27 January 1877 Sect. 23 no. 1.

[8] The Dispute Act Sect. 10–1 (2) a.

[9] *Lovbekendtgørelse* 14.11.2018 no. 1284 *Retsplejeloven* (hereinafter Administration of Justice Act) Sect. 400 (1).

[10] Lov 1942:740 *Rättegångsbalken* (Hereafter Swedish Code of Judicial Procedure) Sect. 1–3d (1).

[11] Swedish Code of Judicial Procedure Sect. 1–3d (1).

the amount that divides small claims from ordinary claims today.[12] If this change is made, it will increase the differences in what constitutes a small claim among the Scandinavian countries.

There is no consensus across the borders concerning non-monetary claims and the usage of small claims procedures. In Norway, the small claims procedure excludes non-monetary claims, unless the parties agree on using it and the court finds it reasonable.[13] In Sweden, the simplified procedure is only applicable to monetary claims, with no exceptions.[14] Both the Swedish and the Norwegian solutions therefore differ from the Danish one. The main rule in the latter is that the small claims procedure is applicable in both small monetary claims cases and cases concerning claims of no monetary value.[15]

2.2 Excluded Cases

The principle of proportionality does not set aside the principle of procedural fairness in small claims cases, as stated, for example, by the European Court of Human Rights in Pönka versus Estonia.[16] Some cases have high societal importance or are so complicated, either legally or factually, that they are not suited for simplified procedures. This means that the ordinary procedural rules must regulate some cases, even though they may concern lower value claims.

In all three countries, the small claims procedures are not applicable to cases concerning public interests.[17] For example, child custody cases and cases about coercive matters are excluded. This rule stems from a belief that some cases are so important to the society that efficiency and costs should have less impact on the procedure. Therefore, simplified procedures are not suitable for these kinds of cases.

In addition, the courts must use the ordinary procedural rules in cases of high importance outside the specific case or cases that demand a more thorough hearing. In the evaluation of importance, the perspective is that of the party. This rule is the same in all three countries.[18] It is therefore not of relevance in this respect if the case has, for example, high importance for interest groups. However, high importance for an interest group can be a factor in the consideration of the need for a more thorough

[12] Hearing proposal from the Norwegian Ministry of Justice and Public Security, dated July 2018, no. 18/3837, p. 39 and Proposal 133L (2018–2019), p. 36.

[13] The Dispute Act Sect. 10–1 (2) c.

[14] Swedish Code of Judicial Procedure Sect. 1–3d (1). In addition, see Westberg (2013), p. 96.

[15] Administration of Justice Act Sect. 400 (1) no. 1.

[16] Judgement of 8 November 2016, paragraph 30.

[17] For Norway, see The Dispute Act 10–1 (3) c; for Sweden, see Swedish Code of Judicial Procedure Sect. 1–3d (2); and for Denmark, see Administration of Justice Act Sect. 400 (1) no. 2.

[18] For Norway, see The Dispute Act 10–1 (3) d; for Sweden, see Swedish Code of Judicial Procedure Sect. 1–3d (1) and (2); and for Denmark, see Administration of Justice Act Sect. 402 (1) no. 1 and 2.

hearing of the case, at least from the Norwegian perspective.[19] In Swedish and Danish law, the question concerning the relevance of interest groups as an argument for a more thorough hearing seems unanswered.

2.3 The Usage of the Small Claims Procedures

The small claims procedures will only make the court procedures more effective if it is used. It is therefore necessary to discuss the actual usage of the procedures in the Scandinavian countries.

Danish courts have the highest percentage of small claims cases of the Scandinavian countries. Over half of the civil cases brought before the Danish courts are small claims cases.[20] In Sweden, the number is lower. Only a fourth of civil cases brought before the Swedish courts are small claims cases, which is natural because of the low monetary limit.[21] The lowest share of small claims among the Scandinavian countries is in the Norwegian court system, where only about one tenth of civil claims are small claims.[22] As we can see, even though Norway has the highest monetary limit, the percentage of cases judged after the small claims regulations is the lowest, being less than half the percentage of small claims in Sweden and less than a fifth of the small claims in Denmark.

The reason for the discrepancy is most likely the extensive use of Conciliation Boards in Norway.[23] The Conciliation Board in Norway is a formalised form of mediation with the possibility of obtaining a judgment. The judges are always laymen. Before the district court can hear a small claims case, it must go before the Conciliation Board, with some exceptions.[24] The most important exception is when an official complaints board has heard the case on its merits.[25] Still, small claims cases in general need to undergo a hearing by some kind of board before the district court can hear them.

Neither Sweden nor Denmark has Conciliation Board hearings as a requisite for a district court hearing. Small claims cases will therefore generally have their first

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[19] See judgment from the Norwegian Supreme Court, HR-2018–1369-U paragraph 12.

[20] Statistics from Denmark: https://www.domstol.dk/om/organisation/domstolsstyrelsen/organisationsdiagram/Documents/Civile%20sager%20-%20byretter%20-%20modtagne-afsluttede%20sager.pdf (last visited 1 May 2019). In 2018, 45,657 civil cases came to the district courts. Of these, 23,268 were small claims cases.

[21] Statistics from Sweden: https://www.domstol.se/upload/Lokala_webbplatser/Domstolsverket/Statistik/Domstolsstatistik%202018.pdf (last visited 1 May 2019). In 2018, 85,617 civil cases came to the district courts. Of these, 20,480 were small claims cases.

[22] Statistics from Norway: https://www.domstol.no/no/domstoladministrasjonen/publikasjoner/arsrapport/tema-13/domstolene-i-2017/ (last visited 1 May 2019). There are no statistics concerning small claims cases in Norway from 2018.

[23] Jensen (2021) pp. 112 and 125.

[24] The Dispute Act Sect. 6–2 (2) a.

[25] The Dispute Act Sect. 6–2 (2) c.

hearing at the courts. In Norway, if the parties get a judgment from the Conciliation Board, there is not necessarily a need for a second judgement from the district court. For example, the judgment from the Conciliation Board is enforceable.[26] As long as the losing party does not appeal the judgment from the Conciliation Board, the winning party can enforce the ruling in the same way as a district court decision. This is probably the main reason for the low number of Norwegian small claims cases in the first instance courts, compared to Sweden and Denmark.

A second reason for the large difference in the number of small claims cases may be the fact that Denmark also includes non-monetary cases, which neither of the other two countries do. Without detailed statistics that show how many small claims cases concerns non-monetary claims in Denmark, this remains merely a speculation.

3 Procedural Steps in the Small Claims Procedures

3.1 Norway

The Norwegian small claims procedure came to force on 1 January 2008. Chapter ten of the Dispute Act (*tvisteloven*) regulates the procedure. In addition, the Dispute Act has several chapters that are common for both the ordinary procedure and the small claims procedure. Still, the interpretation of these rules may also be affected by the fact that the case concerns a small claim.[27]

The first stage of the case starts with a writ of summons and a written reply.[28] After this, the preparatory stage starts. Based on the written summons and the written reply, the court sets up a plan for the case and gives the parties necessary guidance. Still, the parties are responsible for the preparatory stage. The communication between the parties and the court shall be in writing at this stage, and there is no room for preparatory meetings. In legal theory this restriction has been deemed illogical, as an active use of the preparatory stage generally is seen as an effective addition to civil procedures.[29]

In small claims cases, the main rule is that the case is heard by a single judge. There is a possibility of adding two expert lay judges within a week of the hearing, but it is rarely used.[30] Small claims cases therefore have limited possibility for lay participation. The judge that prepares the case is generally the same judge that hears the case.

When the preparatory stage is finished, the main hearing commences. Ideally, the case should be fully prepared at this stage. Small claims hearings should ideally be

[26] Lov 26.06.1992 no. 86 om tvangsfullbyrdelse (The Enforcement Act) Sect. 4–1 (1) a.

[27] NOU 2001:32 A, p. 341 and Jensen (2021) p. 90.

[28] The Dispute Act section 10-2 (1) together with Sects. 9-2 and 9-3.

[29] See Nylund (2016) p. 73 and Jensen (2021), pp. 93–95.

[30] The Dispute Act Sect. 10–3 (3).

finished within 2–3 h.[31] The hearing should be less formal and simpler compared to the ordinary procedure. For example, the judge and the lawyers do not wear capes, and the court can adjust the proceedings to a greater extent with fewer obligatory stages.

If one or both of the parties are displeased with the result, it is possible to appeal the judgment. However, there are limitations. If the case concerns a claim valued below 13,000 EUR, the second instance court must agree to hear the case.[32] Approval by the second instance court is rarely given, so in reality small claims cases in general only get one hearing.[33]

3.2 Denmark

The road towards special procedures for small claims in Denmark started in 1979.[34] Several propositions came and were turned down. The process towards the small claims procedure of today started in 2002.[35] The revision of the Administration of Justice Act that implemented the small claims procedure came to force 1 January 2008.[36]

The Danish small claims procedure is designed much like the Norwegian procedure. The Administration of Justice Act has a separate chapter including the main rules for the hearing of small claims, chapter 39. As in The Dispute Act, the small claims chapter is supplemented by general chapters in the law.

A writ of summons and a written reply commence the court case. Based on these, the court takes responsibility for the preparation of the case, which is the opposite of the Norwegian solution.[37] Identifying and presenting relevant procedural acts is still the responsibility of the parties. However, the court may reject some acts, mainly evidence, if they are not deemed necessary or proportionate. Since the court has been given an extra responsibility for the case during the preparatory stage, this is where the main adjustments of the case should happen. The preparation is mainly written, but since 2012 it has been possible to have preparatory meetings.[38]

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[31] The Norwegian Justice Department report Ot.prp. no. 51 (2004–2005) p. 359 and Vangsnes (2018), p. 156.

[32] The Dispute Act Sect. 10–6 and Sect. 29–13 (1).

[33] The Norwegian Justice Department report Innst. O. no. 110 (2004–2005), p. 65.

[34] Law committee report 1979/886 *om behandling af sager af mindre værdi ved domstolene.*

[35] The Danish Standing Committee on Procedural Law (Retsplejerådet) report no. 1436/2004, p. 440.

[36] Act no. 538, 8 June 2006 § 1 no. 102.

[37] Administration of Justice Act Sect. 406 no. 2. See also Dahlager (2010) p. 56.

[38] Administration of Justice Act Sect. 406 no. 4 and law proposition 14. December 2011 no. 58 *om ændring af retsplejeloven m.m.,* no. 6.2.2.2.

The main hearing of the case should be finished within a few hours.[39] This requires a well-prepared case, as time-consuming discussions about questions in the hearing generally are not possible. Time restrictions on the main hearing constitute one of the reasons why the judge is given proportionally more responsibilities during the preparatory stage compared to the ordinary procedures. The hearing itself is quite like an ordinary case, where the parties present evidence and closing arguments. However, the parties should not present their perspectives on the facts separately.[40] The court oversees the preparation of the case and therefore does not require the facts in the case to be repeated.

In Denmark, there are no general restrictions on the possibility to appeal the judgment in a small claims case.[41] There are only restrictions for monetary claims valued lower than approximately 2680 EURO.[42] If this limit is exceeded, the second instance court must accept the case before the case can be heard again.

3.3 Sweden

Sweden was the first of the Scandinavian countries to have a separate procedure for small claims, at least in a form that can compare to small claims procedures today.[43] The small claims law (*småmålslagen*) regulated the procedure in full. The law must have been a success, as it inspired a revision of the ordinary procedure, where special rules for small claims were implemented in the Swedish Code of Judicial Procedure. The small claims law was therefore removed. After 1988, the Swedish procedural rules have in general been meant to be more flexible, and therefore it has been possible to make the procedure in the single case proportionate to the interests at stake, based on for example the value of the claim.[44]

The general focus on efficiency has had a direct impact on the regulation of the small claims rules. Whereas the ordinary procedure is highly flexible, the need for special regulations of small claims cases is more limited. In the Swedish Code of Judicial Procedure, there are therefore only a few special rules concerning small claims. These relate firstly to the number of judges preceding the case. There is only one judge presiding over small claims cases, whereas under the normal rule three judges preside in civil cases.[45] As a consequence, it is not possible to have lay judges.

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[39] The Danish Standing Committee on Procedural Law (Retsplejerådet) report no. 1436/2004, p. 45 and Kirk (2011) p. 137.

[40] Administration of Justice Act Sect. 407 (1).

[41] Administration of Justice Act Sect. 410.

[42] Administration of Justice Act Sect. 368 no. 1.

[43] For example, Norway has had some special procedures for claims of lower value in earlier days, but the rules have been very limited, with the consequence that they were rarely used; see Official Norwegian Report NOU 2001:32 p. 318.

[44] Law committee report 1986/87:89 p. 68.

[45] Swedish Code of Judicial Procedure chapter 1 Sect. 3d (1).

Secondly, there are separate limitations for cost reimbursement in small claims cases. All other procedural questions depend mainly on the discretion of the judge. In the decisions, the goal of an efficient but fair procedure is of high importance.[46]

In the preparatory stage, the judge decides if it is necessary to have preparatory hearings, if the preparation of the case shall be in writing or if a combination of the two will be used.[47] In small claims cases, where the focus on efficiency is of high importance, the preparation is mainly written. Only in exceptional circumstances will the court allow oral preparation.[48]

The final hearing is as, a main rule, oral. The parties present their perspectives on the case, evidence is presented, and the parties present their closing arguments. Based on the oral hearing, the court gives judgment.

In theory, if one or both of the parties disagree with the judgment, they can appeal. In Sweden, however, there are quite strict limitations on the possibility of appeal. All cases must be approved by the second instance court before being allowed a second hearing.[49] The threshold is very high, which means that in practice small claims generally will not be allowed a second hearing. It has also been claimed that the Swedish civil procedure is mainly a one-instance procedure.[50]

In Sweden, the courts may also be inclined to use the European Small Claims Procedure.[51] This is not the case in Norway or Denmark. Norway is not a part of the EU, and Denmark is exempt from the regulation.[52] The regulation does not have rules concerning the topics discussed in this article and will therefore not be included in the discussions.

4 Limitation of Costs

There seems to be a worldwide consensus about the need for cost limitations as a tool to reduce the risk of taking small claims to court.[53] The costs related to taking a small claim to court should be predictable for the parties. Still, the extent of the limitations differs. Here I will outline the most central aspects of the Norwegian, Danish and Swedish procedural rules which aim to reduce the parties' costs in small claims cases. Cost-reducing rules are directly linked to securing the 'access to justice' of people with small claims, as the high court costs have constituted one of the main restrictions to access to the courts for this group of claimants.

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[46] Swedish Code of Judicial Procedure chapter 42 Sect. 6 s paragraph.

[47] Swedish Code of Judicial Procedure chapter 42 Sect. 9 first paragraph.

[48] Lindell (2017) p. 354.

[49] Swedish Code of Judicial Procedure chapter 49 Sect. 12.

[50] Westberg (2013), p. 250.

[51] Regulation (EC) 861/2007, O.J. L199/1 (2007) and Regulation (EU) 2015/2421, O.J. L341/1 (2015).

[52] See Regulation (EC) 861/2007, O.J. L199/1 (2007), The preamble paragraph 37.

[53] Kramer and Kakiuchi (2015), p. 27.

I will focus on costs that arise from representation by a lawyer. The countries may also have lower court fees in small claims cases, but these are generally quite low in the Scandinavian countries. All the countries also accept reimbursement of necessary travel expenses and expenses for witnesses.[54] The biggest differences in cost limitations are therefore mostly visible with regard to lawyer representation.

4.1 Norway

The Dispute Act Sect. 10–5 limits the reimbursement the parties can get in a small claims case. In ordinary cases, the main rule is that the winner of the case gets full reimbursement from the losing party.[55] This is also the main rule in small claims cases; however, the definition of 'full reimbursement' is quite limited when it comes to legal representation.

Firstly, the limits depend on the value of the claim. Cost reimbursement is only possible for up to 20 percent of the value of the claim. If the claim is valued at 3000 EUR, the reimbursement is limited to 600 EUR. Secondly, there are limits for minimum and maximum reimbursements. The party should always get approximately 260 EUR reimbursed, but never more than approximately 2600 EUR. The limit for maximum reimbursement is usually not necessary, as 20 percent of 13,000 EUR, the small claims threshold, is 2600 EUR. The only time the maximum will be reached is in cases in which the parties have agreed to use the small claims procedure in a case concerning a claim valued above 13,000 EUR.

There is a narrow exception to these restrictions. If a party 'has brought or resisted an action clearly without grounds for doing so' the restrictions may be lifted.[56] The same is the case when a party has increased the opposing party's costs through negligent behaviour.

The party that seeks reimbursement of costs must also show that the costs are necessary.[57] This is another example of the principle of proportionality and its practical meaning in small claims cases. The parties should always aim to reduce their costs within the maximum cost limit.

[54]For Sweden, see Swedish Code of Judicial Procedure chapter 18 Sect. 8a (2) no. 3 and 4. For Denmark, see Administration of Justice Act Sect. 408 no. 1 together with Sect. 316 no. 1. For Norway, see The Dispute Act Sect. 10–5 (1).

[55]The Dispute Act Sect. 20–2 (1).

[56]The Dispute Act Sect. 10–5 (2).

[57]The Dispute Act Sect. 20–5 (1).

4.2 Denmark

In Denmark, there is no direct link between small claims and limitation of costs. Instead, there are limitations only for the small claims of lowest value.[58] The first threshold is approximately 1340 EUR. If the claim is of lower value then this, the winning party can only get reimbursement for approximately 335 EUR. If the case concerns a claim of even lower value, such as approximately 670 EUR, there are even more limitations, and the possibility for reimbursement reduces to a maximum of approximately 200 EUR.

For claims valued higher than 1340 EUR, there are no special restrictions. Since small claims can be valued up to approximately 6700 EUR, there are several cases in which the parties can get full reimbursement for costs. This way of differentiating the limits accounts for the different needs of cases concerning extremely low values compared to cases concerning values close to the small claims limit.

Finally, as in Norway, the expenses that can be reimbursed must be necessary.[59] It is therefore possible that the parties must endure further restricted cost reimbursement.

4.3 Sweden

The most restrictive cost limitations are in the Swedish small claims procedure. In the ordinary procedure, as in the other two countries, the main rule is that the winning party gets full compensation from the other party for the costs of going to trial. In small claims cases, this is not the case; instead, the winning party can only get reimbursement for one hour of legal advice.[60] If the case gets appealed to the second instance court the party can be reimbursed for another hour. In addition, the amount cannot exceed the hourly rate set by the government.[61] This amount is usually lower than the ordinary hourly rate set by lawyers.

As in the other two countries, the party must also show that the expenses have been necessary.[62] However, this is a restriction with little effect concerning lawyers' expenses in Sweden. Since the amount of legal advice are already limited to an hour, it is not likely that the judge will find this expense unnecessary. As noted previously, it is not a goal of the small claims procedure to hinder the parties from seeking any advice from a lawyer.

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[58] Administration of Justice Act Sect. 408 (1).

[59] Administration of Justice Act Sect. 316.

[60] Swedish Code of Judicial Procedure chapter 18 Sect. 8a (2) no. 1.

[61] Swedish Code of Judicial Procedure chapter 18 Sect. 8a and code no. 1996:1619 Sect. 4 (2). See also Almkvist and Elofsson (2013), p. 156.

[62] Swedish Code of Judicial Procedure chapter 18 Sect. 8.

5 The Effects of Cost Limitations

The goal of limiting the possibility of compensation for cost is to reduce the risk of going to court. However, this is not the only way the limitations affect the court proceedings. When the parties must pay their own costs, they may choose not to be represented in the case or to have only limited representation. Less representation can affect the expectations the parties may have of the presiding judge. What the cost limitations entail for the procedure and the courts is the subject here.

5.1 Self-Represented Parties

When the possibility for the parties to get a reimbursement of the lawyers' fees is limited, there is a risk that the parties might choose to represent themselves to save money. In this way, the cost risks are limited. Therefore, it is natural to assume that small claims procedures may increase the number of self-represented parties, since these are closely related to cost limitations. However, it is unclear whether this is actually the case in Scandinavia. As of 2019, statistics related to the number of self-represented parties in small claims cases in the Scandinavian countries are lacking. Even though there is no factual basis to conclude on this question for Scandinavia, there are indications that this prediction has come true in other countries.[63] There is no reason to believe that the Scandinavian countries should be affected differently, at least over time.

Despite the lack of statistics, all three countries have assumed that the small claims procedures will increase the number of self-represented parties. This has had an impact on how the small claims rules are to be interpreted, which to some extent follows from the law in Norway and Denmark, but not in Sweden.[64] In Sweden, the same idea is presented in the preparatory works.[65]

5.2 Case Management

In all three countries, the court is generally given more responsibility for securing more efficient progress in small claims cases compared to the ordinary procedures. Since the claims are of low value, the resources put into the case can quickly become disproportionate. This kind of case must therefore be handled with a greater focus on efficiency compared to the procedure in ordinary cases. If the parties are self-representing, the judges' responsibility generally increases, as mentioned above.

[63] Andrews (2003), pp. 534–535, Voet (2015), p. 157 and Sorabji (2015), p. 172.

[64] For Norway, see The Dispute Act Sect. 11–5 (6); for Denmark, see Administration of Justice Act Sect. 339.

[65] Law committee report no. 1986/87:89, p. 107.

This is a consequence of the parties' lack of judicial experience combined with the fact that the main hearing still should be finished within few hours.

One of the most visible ways in which case management is introduced in the law is in the possibility for the judge to set deadlines.[66] If the parties do not finish the requested procedural act by the deadline, the act as a rule ends up being the subject of preclusion. This is intended to have both a disciplinary effect and a cost-reducing effect.[67] The disciplinary aspect arises when the parties present procedural acts in a timely manner because they do not want it to be precluded. It is also assumed that the earlier the parties present procedural acts, the more efficient the procedure will be.[68]

Denmark can be said to have the most extensive case management in small claims, as the responsibility for the preparation is given to the judge. Since the judge is the one who asks for necessary procedural acts, the parties have less possibility to unnecessarily extend the preparatory stage. In Sweden and Norway, where the main responsibility is with the parties, a passive judge may cause delays. Still, all three countries have tools to make sure that the case progresses effectively.

5.3 Judicial Guidance

Lastly, it must be assumed that the judge, to achieve a fair and efficient trial, must give the parties more judicial guidance in small claims cases then in ordinary cases. This presumed increase in guidance comes as a consequence of the above-mentioned assumption of an increase of self-representing parties in these cases. This assumption is common for all three countries, as shown above. One of the general problems with small claims, from a procedural perspective, has been to reduce the differences between 'one-shot litigants' and 'repeat players'.[69] The most common way to approach this is to allow for more guidance for the party without procedural experience. Some commonality is therefore to be expected between the countries. However, the extent of the guidance does differ.

In Norway, the judge is permitted to give quite extensive guidance about procedural questions.[70] This applies in both ordinary cases and small claims cases. However, it is assumed that the judge can go even further in giving guidance in small claims cases. This must be seen in relation to the cost limitations. When the law limits the possibility for representation, even if only implicitly, the judge must have an increased responsibility to ensure that the parties understand the procedural

[66] For Sweden, see Swedish Code of Judicial Procedure Sect. 42–15 and Sect. 42-15a; for Norway, see the Dispute Act Sect. 11–6; and for Denmark, see Administration of Justice Act Sect. 406 no. 3.

[67] Jensen (2021) pp. 203–205.

[68] Nylund (2016) p. 7.

[69] Cappelletti (1976) p. 679 and Lindblom (2000) p. 311.

[70] See the Dispute Act Sect. 11–5 first paragraph.

steps. A party should not lose the case merely because of misunderstandings about procedural rules. In addition, it is assumed that there are few arguments against procedural guidance.[71] This is especially the case in small claims cases, where the parties are in more dire need of procedural guidance compared to ordinary cases (where the parties most likely get procedural guidance from a lawyer).

With regard to guidance about substantial questions, it is assumed that the judge must be more restricted compered to procedural guidance. This is a consequence of the rules concerning impartiality in general legislation, as well as the Constitution Sect. 95 and ECHR art. 6 no. 1.[72] The latter two state that the judge must be impartial at all stages of the case. Extensive guidance about the substantial questions in the case, at least when one of the parties needs guidance more than the other, may give an impression of partiality. The principle of impartial judges is also relevant in Danish and Swedish procedural law, as the ECHR is binding for all the Scandinavian countries.

Still, it assumed that the judge can give quite a lot of guidance about substantive questions in small claims cases. Again, this increase in guidance must be seen in relation to the expectation of more self-representing parties.[73] However, the lack of preparatory meetings may reduce the judges' possibility to give guidance in small claims cases. It is more difficult to give guidance by writing, and it is often a bit too late to give guidance during the final hearing. Guidance is therefore possible to a wide extent in small claims cases in theory, but perhaps not in practice. However, the judge can never give the parties advice about the case, even in small claims cases.[74]

The Swedish approach is quite similar to the Norwegian one. There are no special rules concerning judicial guidance in small claims cases. Still, it can be argued that parties in small claims cases are obliged to receive more guidance than parties in ordinary cases. This is stated, for example, in the preparatory works.[75]

It is generally assumed that the judge has an obligation to give guidance about procedural questions.[76] This is based on similar ideas as in Norway. Since the parties only get reimbursed for one hour of legal counsel in small claims cases, the necessity of procedural guidance may be assumed to be even larger in Sweden than in the neighbouring countries.

The Danish judge has similar options to give the parties guidance as in Norway and Sweden. The primary aim of guidance is to clarify what the procedural acts the parties present should add to the case. Furthermore, the possibility of giving guidance is wider for procedural questions and smaller for substantial questions.

The Danish rules, however, seen to go a bit further than the other two countries' with regard to substantive questions. For example, the judge may give the parties

[71] See NOU 2001:32 A, p. 140.

[72] See the Norwegian Constitution, 17 May 1814 § 95 and the European Convention on Human Rights article 6 no. 1.

[73] Nylund (2016), p. 73.

[74] The Dispute Act Sect. 11–5 (7).

[75] Law committee report 1999/2000:26 *Effektivisering av förfarandet i allmän domstol*, no. 12.

[76] Westberg (2013), p. 157.

advice.[77] This is unheard of in Norwegian and Swedish law, where the judge is banned from giving the parties advice.[78] Guidance may be given, but not to the extent of advising the parties about what to do. A reason for this difference may be the fact that in Denmark, the same judge does not both give guidance and deliver the judgement. In Norway and Sweden, the same judge usually does both, which increases the possibility of doubt as to impartiality.

Moreover, even though it may seem that Swedish and Norwegian law clearly forbids the judge from giving advice, it must be noted that the line between guidance and advice is, to some extent, blurred in all three countries. Thus, it is possible that that the practical application of the rules is more similar than it seems from the outset.

When one compares the three countries' restrictions concerning judicial guidance in small claims cases, they may at first seem a bit different. Still, the main guidelines are similar. The extent of guidance to be given in small claims cases is larger compared to ordinary cases. The increased responsibility of the courts to give guidance is perhaps one of the most visible procedural changes that has a direct connection to the introduction of small claims procedures in the Scandinavian countries. Even in Sweden, where all cases should be handled with flexibility, parties in small claims cases should get more guidance then in ordinary cases. This similarity must be seen in connection with the problems with small claims and 'access to justice'. One of the issues with small claims cases has been that the parties have had different experiences with the courts, which can make the procedure uneven and therefore unfair, especially for self-representing parties. Introducing more guidance may reduce the impact of this kind of unevenness in small claims cases.

6 Conclusions

This chapter began by asking whether the small claims procedures have affected the Scandinavian courts and proceedings. Based upon the analyses above, it seems clear that they indeed have done so. The Danish and Norwegian civil procedure has gotten a new track, which is an entirely new procedural element, while Sweden removed the small claims law but used it as an inspiration for the ordinary law. Even without a separate track, the Swedish procedure has therefore been affected by the earlier small claims regulations. The more interesting question is how and to what extent the small claims procedure has had an impact on the Scandinavian procedures. As mentioned in the introduction, within the scope of this article it is not possible to draw full conclusions. Based on the analysis above, some aspects that have affected the approach to procedural questions have been identified.

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[77] The Danish Standing Committee on Procedural Law (*Retsplejerådet*) report no. 1436/2004, p. 457.

[78] For Norway, see The Dispute Act Sect. 11–5 (7). For Sweden, see Law Committee report 1986/87:89, p. 107.

The most obvious impact of the small claims procedures is the visibility of the principle of proportionality. This principle is of importance in the ordinary proceedings in Scandinavia. Still, the introduction of small claims proceedings shows how the principle may outweigh other important procedural principles. For example, the preparation stage is, at least to some extent, downplayed compared to ordinary cases, and the possibility to appeal small claims cases is reduced.

Another way in which the small claims procedures may impact civil procedures is by affecting the way the judges approach the question of judicial guidance. In small claims cases, the Scandinavian judge should give the parties more extensive guidance, as shown above. However, it is possible that the judges will give more similar guidance over time, without it necessarily depending on the classification of the case. Since judges in general will preside in both ordinary and small claims cases, the entrance of small claims procedure may increase the amount of guidance given in ordinary cases as well. This is at least a possibility if the increased guidance is seen as an effective tool in the procedure. For the time being, this is only speculation, as this hypothesis requires further research to reach a conclusion.

Also, the introduction of small claims procedures increases the impact of judicial discretion. This is seen, for example, in the different rules based on the idea of flexibility, discussed above under Chap. 18.3 and 18.5. Common among the Scandinavian countries is the fact that the small claims regulations to a great extent depend on the discretion of the judge. Judicial discretion is typical for the Nordics, but with the introduction of the small claims procedures, it has especially intensified in the Scandinavian countries. The combination of the bigger impact of the principle of proportionality and increased judicial discretion does give the Scandinavian judge more responsibility when it comes to managing the case compared to how it was before the entrance of small claims procedures. This is the case, for example, for the main hearing in small claims cases. In all three countries, the judge is given almost full discretion in deciding which steps are necessary to take, and which can be skipped, to make sure the hearing is efficient and proportional.

The small claims procedure, and the special importance of the principle of proportionality, may seem partly to constitute a reduction of the quality of civil procedure in Scandinavia. Still, the introduction of small claims proceedings is a clear sign that the principle of access to justice is of high importance in the Scandinavian countries. Even though some procedural aspects are reduced in small claims cases, the special proceedings also reduce the risk of costs, which can open the courts for people with small—but, to them, important—claims. This is an important addition to the Scandinavian Civil Procedure which arguably outweighs some of the procedural reductions. Without these associated restrictions, the costs related to the cases could skyrocket, potentially making it impossible for the parties to take their cases to court at all.

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