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Mediation in Family Law: Perspectives from Norway and Brazil

Mediation has gained increasing prominence in family law disputes worldwide, reflecting a broader shift towards consensual methods of conflict resolution. Particularly in family relationships, where connections often endure beyond the formal resolution of a dispute, mediation provides a structured environment capable of preserving communication while encouraging cooperative decision making.

Brazil and Norway illustrate distinct yet converging approaches. While both jurisdictions recognise mediation as an effective dispute resolution mechanism, they differ in the extent to which it operates as a mandatory step prior to court proceedings.

The Brazilian Perspective

Legal Framework and Procedural Approach

Mediation in Brazil is firmly established as an effective mechanism for resolving family disputes, particularly where relationships must continue beyond the judicial outcome. Rather than assigning responsibility exclusively to the courts, mediation enables parties, with the assistance of an impartial third party, to reach practical and mutually acceptable solutions.

Although Brazilian law does not require mediation before initiating legal proceedings, the legal system strongly encourages consensual engagement. Courts may even impose fines on parties who unjustifiably fail to attend scheduled conciliation or mediation hearings.

Mediation may occur either prior to litigation or at any stage of the proceedings, including on appeal. Judicial processes can run concurrently with negotiations, and parties may jointly request a stay while discussions are underway.

Costs and Duration

Litigation in Brazil often entails substantial financial burdens, including court fees typically calculated in proportion to the economic value of the dispute, as well as expenses related to expert evidence. Private mediation chambers, by contrast, usually operate under fixed administrative fees, with mediators compensated on an hourly basis.

The duration of court proceedings remains difficult to predict due to the broad range of available appeals, and obtaining a final, non-appealable decision frequently

takes several years. Mediation, however, is commonly concluded within weeks and, in some particularly successful cases, after a single session.

Scope and Enforceability

Mediation has proved particularly valuable in divorce proceedings, facilitating agreements on spousal and child support, custody arrangements, parenting schedules, and the division of marital property. Outcomes shaped directly by the parties tend to promote greater long-term compliance.

Successful mediation results in an enforceable extrajudicial instrument. Where non-waivable rights are implicated, particularly those concerning minors, judicial approval remains mandatory.

Arbitration is also available for disputes involving disposable property rights but is generally reserved for high net worth matters due to its cost. It is not permitted in cases involving filiation or other non-disposable rights.

Future Outlook

Mediation has evolved into a highly relevant and adaptable mechanism for dispute resolution, capable of being employed at any stage, whether prior to the commencement of litigation or after it is already in progress. As the Judiciary continues to face the structural challenge of an overwhelming caseload, consensual mechanisms are expected to assume an increasingly prominent role, with mediation likely to become not merely an alternative, but frequently the preferred path for resolving family conflicts.

The Norwegian Perspective

Legal Framework and Procedural Approach

Under Norwegian law, mediation plays a central role in family law disputes, particularly in cases concerning parental responsibility, a child's permanent residence, and contact arrangements following separation. Pursuant to the Children Act (barneloven), parents are generally required to attend mediation at an approved family counselling office before initiating court proceedings. A mediation certificate is therefore a procedural prerequisite for bringing a case before the courts.

The primary purpose of mediation is to help parents reach an agreement that serves the best interests of the child while reducing conflict between them. Mediation takes place outside the court system and is free of charge within a prescribed number of hours. In addition, the Dispute Act (tvisteloven) authorizes courts to order or recommend judicial mediation. Although judicial mediation requires the consent of both parties and is formally voluntary, it is firmly integrated into judicial practice, particularly in parental disputes.

Access to the Courts

Failure to comply with the statutory duty to mediate may result in dismissal of the case. However, this does not amount to a substantive denial of access to justice. Rather, it reflects a procedural requirement that can easily be fulfilled, for instance by the court directing the parties to attend mediation before the case proceeds.

Exceptions apply in situations involving domestic violence, abuse, serious threats, or other circumstances that render mediation inappropriate. In such cases, proceedings may continue without a mediation certificate.

Costs, time and Efficiency – Mediation versus Litigation

Mediation is generally far less costly than traditional litigation. Mediation through the family counselling service is free within a specified number of hours.

Judicial mediation does not involve court fees, and the court covers the costs of any court-appointed child psychologist participating in the process. The parties must cover their own legal fees, unless they are entitled to free legal aid, but a successful mediation often significantly reduces overall costs.

By contrast, traditional court proceedings in family law disputes may be expensive. Many court processes may take months or even years. Mediation may also run parallel to preparatory court hearings, and it is common for multiple settlement attempts to be made—first through the family counselling service and later through judicial mediation.

Arbitration in Family Law

Arbitration has a very limited role in Norwegian family law. Disputes concerning a child's personal circumstances, such as parental responsibility and custody, cannot be resolved by arbitration. This reflects the principle of the best interests of the child and the State's duty of oversight. In purely financial disputes between spouses or cohabitants, arbitration is legally possible but rarely used in practice. Mediation and court proceedings remain the dominant mechanisms.

Future Outlook

Norwegian legal developments suggest a continued and growing emphasis on alternative dispute resolution, particularly mediation. Courts have pursued a clear policy of resolving more cases through judicial mediation, especially in family matters where ongoing parental cooperation is important. Mediation is likely to assume an even more prominent role in the future, though there is little indication that access to the courts will be made conditional on absolute mediation requirements.

Concluding Observations

Brazil and Norway demonstrate different yet complementary models for integrating mediation into family justice systems. Brazil emphasises a voluntary approach within a framework of strong institutional encouragement, whereas Norway adopts a more structured procedural approach, particularly in disputes involving children.

Despite these differences, both jurisdictions recognise mediation as a humane, efficient, and sustainable pathway for managing conflicts in relationships that must endure beyond the dispute itself.