II STUDY COMMISSION

Alternative Dispute Resolution
As a means of improving the delivery of justice

Question 1.

• In Norway mediation outside normal court procedure is not regulated by law. Parties can voluntary engage a mediator, a third person, to assist them to solving their dispute. There is no legal system or regulation for voluntary mediation.

• In our country the parties can use arbitration for resolving civil law dispute. The parties can in a contract agree to solve any possible dispute about the contract by arbitration. If there are any disputes, they are obligated to use arbitration to solve the dispute.

• The parties can also agree to submit their dispute to a binding decision by an arbiter.

• The parties can in some field obtain a decision from a special committee after complains. For example can an insured appeal to a special committee. There are different kinds of committees connecting special area for example construction, buildings, medical negligence claims etc., such committees can make decisions, but cannot prevent litigation. The decisions are more like an advice.

• In criminal cases where there is a dispute about compensation the parties can agree to submit their dispute to a conciliatory.

The parties in consumer cases can submit the dispute to a committee for consumers where it will be mediation. If the parties do not reach an agreement, the committee can make a decision which is binding unless one of the parties bring the case for normal court procedures within four weeks.

Question 2.

a.) None of the alternative means mention above subject to special regulation by statutory provisions.

b.) An arbiter does not require to have a particular qualification or to have undergone professional training, but it is normal procedure that the parties choose one arbiter each who is specialist in the subject and they choose the third who administrate the arbitration tribunal, often a lawyer, advocate or judge.

c.) A mediator requires no special training. It is no profession as mediator in our country.

d.) There is no professional organisation of mediators in our country.

Question 3.

a.) Arbitration for resolving civil law dispute is often used in areas as building, construction, maritime law. Claims for committees, non-binding arbitration, are used in areas as medical negligence claims, consumer cases, equality of status, insured claims against insurance company, claims against banks. There is a lot of different committees for claims in different areas.

b.) There are a few types of civil law dispute which cannot be resolved by such alternative means, for example disputes about children, and child care.

Question 4

a.) Each local town in our country has a minor civil court with power to deal with claims by arbitration arrangement and to enforce the arbitration or settlement as a judgement. It is publicly funded.

Mediation service attached to office for family guidance is publicly funded.
b.) There is no further answer to b.

Question 5

a.) Parties not assisted by an advocate, they have to attempt mediation by a minor civil court with power to deal with claims by arbitration arrangement. If the parties do not reach an agreement, the parties can bring the dispute to ordinary court proceeding.

In area family law where there are dispute about the children, the parties are obliged by law to participate in mediation held by a special mediator in family matters.

b.) The court administration is not able to assist litigants, in using dispute resolution outside normal court procedures than described in answer to question 7.

Question 6.

It is difficult to give an answer to question 6. Voluntary mediation has increased, but the amount of disputes has also increased.

Question 7

We have a pilot scheme where the judge acts as a mediator in our country. When one part start a law suit the judge can encourage the parties to attempt mediation where the judge is the mediator. If the parties agree to take part in a mediation and obtain an agreement, this agreement can be binding and stop further court procedure. If the parties do not reach an agreement, the normal court procedure continue with an other judge.

Question 8

Mediation with a judge has reduced the burden of work on the court. It is proposed to make the arrangement permanent.