

## Søknad om små driftsmidler til prosjektet “The coronavirus pandemic and court-connected mediation”

### Bakgrunn

Covid-19 puts pressure on civil justice systems and courts across the world. In the same manner as other organisations, courts have had to transfer their functions at least part of their services online, inter alia by conducting remote hearings.<sup>1</sup> Nevertheless, serious backlogs have been created during the past few months, and many courts either do not have the necessary technology or the skills to operate the technology to maintain normal functions. According to a preliminary study, mediation could solve at least some of the problems.<sup>2</sup> First, in involving only the mediator, the parties and possibly legal counsel, a mediation session requires less setup than a court hearing which usually also involves witnesses, experts etc. Second, the fact that the parties do not present evidence could also be advantageous, since only face-to-face communication is necessary. Third, the confidential nature of mediation enables the mediator to forego issues related to access of the public to the hearing/session. Finally, in the case of out-of-court mediation, the parties can avoid courts completely, and resolve their disputes regardless of the extent to which courts are operational.

Despite having several advantages vis-à-vis court proceedings, in addition to the general advantages of an interest-based, flexible, collaborative process, courts may still be reluctant to make use of mediation as a dispute resolution process. Some reasons might pertain to judges and court officials not having sufficient prior experience in mediation. Other problems might be that courts, as relatively conservative organisations with a relatively low level of digitisation, resist mediation for legal-cultural reasons. Furthermore, since mediators work with emotional, communicative and cognitive processes physical presence might be paramount to the process, with remote meetings serving as a poor surrogate.

In order for us to understand whether the covid-19 pandemic entails a shift towards increased use of court-connected (or out-of-court) mediation, and to be able to understand incentives and hurdles in using mediation, a comparative study will be highly helpful. A quantitative analysis of the ratio of cases directed to court-connected mediation as well as the settlement rate gives us an indication of whether the pandemic leads to more use of mediation. However, it does not give us any indication of the underlying factors – both those that thrust courts and judges to employ mediation, and those factors that hinder its use. A comparative, exploratory study of mediation in selected countries is likely to give us some indication of these factors and would enable us to make recommendations how to address the factors and serve as a foundation for future research.

### Gjennomføring, kostnadsbudsjett

Jeg søker om midler til en workshop som vil gjøre det mulig å gjennomføre prosjektet på en god måte samt midler til en vit.ass. På nåværende tidspunkt er det så godt som umulig å anslå hva eventuelle reiser koster våren 2021. Jeg anslår imidlertid at kr. 10.000-15.000 per person skal være nok til å dekke reise til Tromsø og to overnattinger. Det er nødvendig å legge inn minst to overnattingen fordi det er usikkert hvor gode flyforbindelsene vil være fremover.

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<sup>1</sup> Bart Krans, Anna Nylund, David Bamford, Laura Ervo, Frédérique Ferrand, Aleš Galič, Wolfgang Hau, Jordi Nieva Fenoll, Clement Salung Petersen, Catherine Piché, Piotr Rylski, Elisabetta Silvestri, John Sorabji, Vigita Vèbraité, and Hermes Zaneti jr. (2020). Civil Justice and Covid-19. *Septentrio Reports* 5.

<https://doi.org/10.7557/sr.2020.5>

<sup>2</sup> Ibid.

Vi skal gjennomføre en spørreundersøkelse og analysere andre faktorer, blant annet lovgivning, retningslinjer etc. Her trenger vi en vit.ass. for å hjelpe med den praktiske gjennomføringen etc. Vi samles til en workshop for å analysere resultatene, diskutere foreløpige funn og arbeide med en eller flere felles publikasjoner.

Forventet kostnad er 4 x kr 12.500 for reise, mat og logi, samt kr. 10.000 til vit.ass. , totalt kr. 60.000.

Prosjektgruppen består av lektor (=førsteamanuensis) Lin Adrian, Københavns universitet, og professor Ulla Glässer, Europa-Universität Viadrina, Frankfurt (Oder), professor Elisabetta Silvestri (Universitetet i Pavia) samt en person til (åpent på nåværende tidspunkt, men en person fra Belgia eller Nederland). De inviterte er ledende forskere innen (retts-)mekling i Europa, de to første primært fra et meklings-/konfliktløsningsteoretisk perspektiv, sistnevnte fra et sivilprosessrettslig perspektiv. De har erfaring fra bruk av kvantitative studier og prosjektet vil derfor innebære en kunnskapsoverføring til UiT, noe som vil være gunstig for hele forskningsmiljøet og gi særlig gode effekter med tanke på søknader og gjennomføring av NFR/ERC prosjekt.

Tromsø 15.5.2020

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