

Review

Handling of legal disputes by businesses and individuals – a survey conducted on behalf of the Standing Committee on Procedural Law

This report is based on a survey of how businesses and individuals handle legal disputes, that is, disagreements between private individuals, businesses and/or public authorities, etc., which can be settled in court. The survey focuses on whether individuals and businesses choose out-of-court resolution in such disputes and, if so, what the reasons are for their choice, how the dispute was then handled and whether (in the case of businesses) there were any consequences of that choice.

The survey was conducted by the Research Division of the Ministry of Justice on behalf of the Standing Committee on Procedural Law (*Retsplejerådet*) in connection with the Committee's consideration of the terms of reference for a general reform of the administration of civil law.

The analyses of the report are based on two questionnaire surveys conducted among (1) a representative number of businesses in Denmark, a total of 6,042, and (2) 983 lawyers and 32 legal aid agencies. The responses from the businesses were collected by Statistics Denmark and the responses from the lawyers were collected in cooperation with the Danish Bar and Law Society (*Advokatsamfundet*).

The questionnaires only included questions about the handling of legal disputes by businesses and individuals in cases where the business/individual believed that they had a claim against the counterparty.

Results of sub-group analysis 1: handling of legal disputes by businesses

- During the past five years, 17 per cent of the businesses had resolved at least one legal dispute, while 4 per cent had not resolved any legal disputes during the period but were involved in an ongoing legal dispute at the time of the survey.
- In 50 per cent of the disputes, the counterparty was another business while in 29 per cent of the disputes, the counterparty was a private individual, such as a customer. In the remaining disputes, the counterparty belonged to another group, such as a public authority.
- 40 per cent of the businesses had sought advice or assistance from a neutral third party in connection with their most recent legal dispute, while 32 per cent had resolved the dispute together with the counterparty without any assistance from a neutral third party. 10 per cent of the businesses had not resolved the dispute nor had they sought assistance from a neutral third party, while 17 per cent stated that the dispute was still ongoing and that it had not yet been decided if the business was to ask for advice or assistance from a neutral third party with resolving the dispute.

- Of the businesses that had sought advice or assistance from a neutral third party in connection with their most recent legal dispute, 64 per cent had gone to court, 10 per cent had used arbitration, 5 per cent had used mediation while 25 per cent had involved another type of neutral third party. It should be noted that each business may have involved several types of neutral third party to handle/resolve the same dispute.
- Based on the replies from businesses that had *not* sought advice or assistance from the courts in connection with their most recent legal dispute, it can be deduced that factors such as ‘the financial costs of legal proceedings’, ‘the length of court proceedings’, ‘the internal workload related to legal proceedings’ and ‘the difficulty of conducting legal proceedings’ were generally the weightiest reasons for choosing out-of-court solutions. Factors such as ‘lack of confidence that the courts will resolve a legal dispute in a fair manner’ and ‘that the public might get insight into the matter’ were less weighty reasons for choosing out-of-court solutions.
- The businesses that had sought advice or assistance from a neutral third party in connection with their most recent legal dispute indicated their satisfaction with a number of issues related to the resolution and outcome of the dispute. The proportion of businesses that was *dissatisfied* or *very dissatisfied* with the financial outcome of the case, the case processing time and the amount of time and effort spent by the business on the case was higher among businesses that sought advice or assistance from the courts than among businesses that involved another type of neutral third party.
- Businesses that have often gone to court to resolve legal disputes were asked how satisfied they generally were with the conditions in court in relation to the handling and outcome of disputes. The proportion of *satisfied* businesses was higher than the proportion of dissatisfied businesses as regards the financial outcome of the case – despite the fact that several of the businesses that chose to seek assistance from the courts with the handling of the legal dispute were dissatisfied with the financial outcome of the case compared with businesses that involved another type of neutral third party in the handling of their dispute, see above. Further, the proportion of satisfied businesses was higher than the proportion of dissatisfied businesses as regards the fairness of the decision/outcome. Conversely, the proportion of *dissatisfied* businesses was higher than the proportion of satisfied businesses as regards the case processing time, the amount of time and effort spent by the business on the case and delays or postponement of business activities.
- Some businesses indicated that their most recent legal dispute had not been resolved and that they had not sought advice or assistance from a neutral third party with resolving the dispute. 88 per cent of those businesses indicated that the business had suffered a financial loss as a result of the unresolved dispute. 9 per cent indicated that it had not had any consequences for the business while 11 per cent indicated that their business activities had been delayed or postponed and 9 per cent indicated that the business had suffered loss of reputation or standing. 6 per cent indicated that it had had other consequences. It should be noted that each business may have indicated several types of consequences.



Results of sub-group analysis 2: handling of legal disputes by individuals

- 66 per cent of the lawyers and close to all the legal aid agencies asked had offered advice to a private individual on a legal dispute within the past three years.
- In connection with the most recent legal dispute in which the lawyers had offered advice to a private individual, the counterparty was another private individual in 44 per cent of the cases and a business in 43 per cent of the cases. In the remaining cases, the counterparty was a public authority, association, foundation or similar. In the legal disputes in which legal aid agencies had offered advice, the counterparty was more often another private individual than a business.
- In connection with the most recent legal dispute in which the lawyers had offered advice, 73 per cent indicated that they had recommended the client to involve a neutral third party in the dispute handling/resolution. The proportion was largely identical for the legal aid agencies.
- Both lawyers and legal aid agencies recommend clients to go to court much more often than they advise them to involve another type of neutral third party (arbitration, mediation, complaints or appeals boards, etc.).
- 44 per cent of the lawyers indicated that in connection with their most recent legal dispute for a client, the dispute had been resolved by a neutral third party, 19 per cent indicated that the client and the counterparty had ended up resolving the dispute without any assistance from a neutral third party while 28 per cent indicated that the dispute had not been resolved. The majority of the legal aid agencies were unaware of whether the legal dispute in which they had offered advice had been resolved.
- Of the lawyers whose clients' disputes had been resolved by a neutral third party, 90 per cent indicated that the dispute had been handled/resolved by the courts while a markedly lower number indicated that the dispute had been handled/resolved by another type of neutral third party.
- The lawyers who had *not* advised their clients to go to court indicated the significance of various factors to that decision. Generally, the most weighty reasons were the financial costs of legal proceedings and the courts' long processing time. The legal aid agencies also cited the financial costs of legal proceedings as the most weighty reason. The second most weighty reason was that the client would probably not be able to substantiate the claim.
- The lawyers have assessed their clients' satisfaction with a number of matters related to the dispute handling and outcome. According to the lawyers, the proportion of clients who went to court and were *satisfied* with the case processing time and the amount of time and effort spent by the client on the case was smaller than that of the clients who involved another type of neutral third party. Meanwhile, according to the lawyers, a large proportion of the clients who went to court were *dissatisfied* with the financial outcome, the case processing time and the overall handling of the case.
- The lawyers with a large number of cases in which the client's dispute was resolved by the courts have assessed the clients' *general satisfaction* with matters related to dispute handling and outcome. As regards the case processing time, the lawyers indicate that the proportion of clients who are dissatisfied is much higher than the proportion of clients who are satisfied. Conversely, according to the lawyers, the proportion of clients who were satisfied is higher than the proportion of clients who were dissatisfied with the

financial outcome of the case, the fairness of the decision/outcome, the overall decision/outcome and the overall handling of the case.

- The lawyers with a large number of cases in which the client's dispute had not been resolved although the lawyer had assessed that the client had a justified claim against the counterparty were asked about the general reasons why the clients did not go to court to have their dispute resolved. 88 per cent of the lawyers indicated the reason to be the financial costs of legal proceedings while 61 per cent indicated the reason to be the courts' long processing time. Other reasons, such as difficulties faced by clients by going to court, that it would require too much effort for the clients or lack of confidence that the courts would resolve the dispute in a fair manner, appeared to be much less frequent.

