C.E.D.R.

European Council for Agricultural Law
Comité Européen de Droit Rural (C.E.D.R.)
Europäisches Agrarrechtskomitee

XXIV. European Congress and Colloquium of Agricultural Law – Caserta (Naples) – 26-29 September 2007

XXIVe Congrès et Colloque Européens de Droit Rural – Caserta (Naples) – 26-29 septembre 2007

XXIV. Europäischer Agrarrechtskongress mit Kolloquium –Caserta (Neapel) – 26.-29. September 2007

Commission II

National Report – Rapport national – Landesbericht

Draft General Report

Mr. Roderick Mackay

Draft General Report

Commission II

by: Roderick Mackay FRICS FCIArb Rappoteur General
Salisbury ,

1. There is general provision in all countries for rural property disputes to be settled by Arbitration. In general the statutory rules follow the UNICITRAL model. England has internationally useable rules but these are set out in the Arbitration Act 1996.

The countries that have adopted the UNCITRAL Rules are:

Argentina
Austria
Finland 1992
Germany 1997
Italy 2006
Netherlands
Norway 2004
Poland 2005
Scotland
Spain
USA some states.

Those that have not adopted UNCITRAL Rules

England & Wales
France
Luxemburg
USA some states.
The USA seems to have moved away from Arbitration in favour of Mediation.

2. There are a number of specialised Tribunals in some countries and the most developed of these is the Appeals Board for Rural Industries of Finland dealing with matters between farmers and the state.

England & Wales has a Tribunal for these purposes but its findings are only advisory and not binding.

France has the Tribunal Paritaire and Norway the Land Consolidation Court which deal with similar problems.

In most countries the arbitration proceedings and awards are private but Norway allows awards to be made public unless the parties agree on privacy.

3. Few countries apart from the UK use Independent Assessors.

It would be interesting to know why this might be.

4. Mediation is encouraged in all countries some more than others.
The systems for mediation in the US seem to have become more complicated and expensive so much of the benefits of mediation would appear to have been lost.
No country appears to have adopted the EU Draft Directive but most are proceeding along similar lines.

One query thrown up is the idea of a judge or mediator conducting a mediation first and then proceeding to a formal court hearing or arbitration with the same person. In the UK this is unlikely to be possible because the mediator might have been presented with matters that the parties did not wish to bring to the court. On the other hand it is likely that the mediator in these circumstances is unlikely to get an agreement since he will be unable to explore all possible methods of agreement. In mediation an agreement of the dispute is often achieved outside the limits of the formal dispute. This is one of the strengths of the system.

Austria has a system on neighbour disputes where the parties have to show that they have tried serious negotiation or mediation before going to court. In the UK the courts encourage the parties to go to mediation in the first instance and if a party refuses then the court may award costs against them.
Norway has a similar system.

5. Appeals Appeal from Arbitration are limited in some countries.
In the Netherlands an appeal from an arbitration is only possible if the parties have arranged this in their contract. In England & Wales there is an option for the parties to agree at the start of the arbitration that there shall be no right of appeal. In all cases in England & Wales an appeal is only possible on a point of law.

DISCUSSION POINTS

Question 1

Is arbitration under the UNCITRAL model or equivalent working generally in Rural Law?

Could it be improved?.

Question 2

Are Specialist Tribunals working in Rural Law?

Could they be improved.?

Should Specialist Tribunals be established in all countries?

Question 3

Could specialist determination be used more widely?

Question 4

Could mediation procedures be improved?

Should they be more formalised?

Should the Draft Directive be accepted and/or should any changes be made.

Can mediation be successful if the mediator, on the failure of mediation, then proceed to decide the case as judge or arbitrator.

Should mediation be compulsory before a court trial?

Should courts be able to suggest mediation if they feel that a court decision could leave bad feelings or could be avoided?

Question 5

Should limits be applied to appeals from formal determination. (Tribunal or Arbitration?

How should those limits operate ? (ie. Appeal only on a point of law)