

Comparative Analysis between East-Scandinavian¹ Countries

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1	Starting Point	136
2	History	137
3	Society	138
4	Culture	141
5	Mentality	146
6	Morality	150
7	Possibilities, Challenges and Visions	150

1 East-Scandinavia here refers to Sweden and Finland even if geographically the main part of Finland falls outside the Scandinavian peninsula. I use the term in the cultural and societal sense. The alternative term Fennoscandia is not quite adequate because in that case parts of Russia would be included in the concept.

1 Starting Point

Especially in Finland, it is very common to conduct comparative jurisprudence studies among the Nordic countries, if not with the whole group then at least with the neighboring country of Sweden. Swedish legislation has usually been seen as a source of inspiration and as a good example. The objective with the comparative studies is usually to learn from the Swedish experiences and to follow the same example later in Finland if the Swedish experiences have been positive. These comparisons are often said to be risk-free and easy due to similarities in society, culture and ways-of-thinking.² This might be true at least at the macro level. At the micro level, however, the Swedish and Finnish societies, cultures and ways-of-thinking do vary quite a lot. When comparing Sweden and Finland, the latter differences have usually not been taken into sufficient consideration. Instead, it is rather often the assumption that the two countries are more or less identical and that comparisons can be made without problematizing the societal or cultural differences, which can lead to wrong interpretations.

In Sweden, comparative studies focusing on Finland are not that common. One of the main reasons for this may be language problems. All Finns speak – or at least should speak – Swedish thanks to Finland's two national languages. At school, both Finnish and Swedish are mandatory subjects for all pupils. In contrast, Finnish is not easily understood by other Scandinavians. It belongs to a different (Finnic) language group and Swedes cannot readily understand Finnish without prior language training. In Finland, all official documents, like laws and even *travaux préparatoires*, are translated into Swedish, something which still sometimes surprises Swedish colleagues, despite this being a common fact. Still, the legal literature – the same goes for case law – is mainly written in Finnish and thus makes detailed comparisons challenging without prior knowledge of the Finnish language.

The purpose of this article is to expose especially the hidden risks in comparative studies between Finland and Sweden. All too often these challenges have been ignored and legislation in the two countries has been taken to be directly comparable. This article will argue that researchers should consider further societal and cultural contexts when drawing conclusions, especially when comparisons are made at the micro level.

2 For instance in Finnish criminal law, the Nordic comparisons have been said to be the most important source of information because of the similarities in society, culture and geography. This has simultaneously affected the way legal cultures have developed in the same direction over time and even spontaneously. In addition, there has been much cooperation at the legislative level and many legal organizations focus on the Nordic cooperation as well. Hahto, Vilja, *Rikosoikeustiede ja oikeusvertailu*. Lakimies 8/2001, p. 1299.

2 History

The East-Scandinavian countries have a common history. From the 1200s onwards, Finland constituted the eastern part of Sweden, a status that continued until 1809. Sweden was then one large national territory under one name, Sweden. The concept Sweden-Finland was only created later as a historical concept to describe a cultural situation; the fact that Finland constituted the eastern part of Sweden thus did not mean that the two territories formed a union like, for instance, Denmark-Norway. As a matter of fact, the Swedish legal system was valid in Finland as well.

Before the Swedish period, there was no state or central power in Finland and so the adjudication belonged to families and villages. Centralized power and, in turn, nationwide legislation started to develop simultaneously during the Swedish period, which is the natural (or at least historical) reason why the modern Finnish legal system is originally entirely based on the Swedish one.³

In 1809, Finland became an autonomous part of Russia but even then Swedish laws remained in force and were valid throughout the whole Russian period. Indeed, the Russian legal system did not have much of an effect in Finland, where the Swedish model remained prevalent up to and including the establishment of Finland as an independent country in 1917, and beyond. From 1890 on, a policy of 'Russification' was introduced and this era is therefore sometimes called the period of oppression. The policy's aim was arguably to make Finland more Russian. However, whenever certain Russian exceptions were made in the field of legislation, the Finnish legal services protested widely and the new system was never fully followed. Notably, these exceptions made in the field of legislation still only covered some aspects of the legal system while other aspects were still officially and formally legislated by the Finnish (formerly Swedish) laws only.⁴ The Code for Juridical Procedure, for instance, has been valid without any breaks from 1734 until today, despite the historical vicissitudes where Finland was a part of Sweden, an autonomous part of Russia and an independent state respectively.

When the Finnish Parliament adopted the Declaration of the Independence of Finland on 6 December 1917, the new state thus already had a rich national culture and centuries of experience in managing its own affairs. The makings of the independent nation stem partly from the times of Swedish rule (from the 13th Century until 1809) and especially from the period when Finland was an autonomous Grand Duchy of the Russian Empire (from 1809 until 1917).

As far as recent history is concerned, especially before Finland joined the European Union (Finland and Sweden both joined in 1995), legislative co-

3 Ervo, Laura, *Nordic Court Culture in Progress: Historical and Futuristic Perspectives*, in 'The Future of Civil Litigation. Access to Courts and Court-Annexed Mediation in the Nordic Countries', Springer 2014, p. 386 – 390.

4 See further, for instance: Jussila, Osmo, *Suomen suuriruhtinaskunta 1809 – 1917*, WSOY 2004, pp. 232 – 254, Jutikkala, Eino – Pirinen, Kauko, *Suomen historia*, Weilin + Göös 1966, p. 231, Pohjolan-Pirhonen, Helge, *Kansakunnan historia 3 1809 – 1855*, WSOY 1973, pp. 157 - 186 and Virtanen, Kari O., *Kansakunnan historia 5 1890 – 1917*, pp. 11 – 410.

operation was prevalent and widespread in the Nordic countries.⁵ Finnish and Swedish legislators have traditionally had a close and detailed co-operation, and very often Finland would follow Sweden's example in legal reforms, especially if the reformed aspect of a law had worked well in Sweden and experiences were positive. Only recently has the European legislative co-operation – more or less – replaced this Nordic co-operation in the legal field.⁶

Due to this common history, and especially the common legislative tradition which survived in modern-day Finland for quite a long time, the prerequisites for comparative analysis between Finland and Sweden are quite unique and analysis is made easier and less risk-prone than in many other comparative scenarios. The fact that the Finnish legal system, with its main principles, is still rooted in the same formal basis in both countries combined with a historical background in the form of the same legislator provides a guarantee that key legal concepts and principles are in fact understood in the much same way in the two different countries. That is; legal principles have, at least originally, the same, identical contents. This makes the general basis for comparative studies between Finland and Sweden safe and unique. The potential pitfalls I shall return to later.

3 Society

According to the official website of the Ministry for Foreign Affairs of Finland, under the topic of “Nordic Cooperation, the following information is conveyed: “[t]he main pillars of the Nordic model are a tradition of dynamic constitutional principles, active popular movements and civic organizations, freedom of expression, equality, solidarity and affinity with nature. Combined with hard work and enterprise, these elements form the basis of a society that promotes productivity, a sense of security and a balanced relationship between the individual and the community.”⁷

In extension of the above, *Ole Lando* sees neighborhood, nature, history, languages, religion, the special Nordic mentality, and common legal habits as a basis on which it is possible to say that Nordic law is a “legal family” in the

5 Husa, Jaakko, *Praktinen oikeusvertailu ja ratkaisargumentaatio – opittavaa Euroopasta?* In *Iura novit curia – Juhlakirja Veijo Tarukannel 60 vuotta*, Edita Publishing Oy 2013, p. 4.

6 See, for instance, Husa, Jaakko, *Oikeusvertailu – Teoria ja metodologia*, Lakimiesliiton Kustannus 2013, pp. 65 – 66. According to Husa, the co-operation in the European Union has made the Nordic co-operation more difficult because some of the Nordic countries are members and some are not. In addition, one might add that there is not that much space or need for the Nordic co-operation anymore because European legislation takes precedence and integration in this field is now a matter of fact. It is thus exceedingly difficult to have any extraharmonized areas among the union member states, like the Nordic countries, for instance. Of course the fact that Norway and Iceland are not member states complicates the situation even further.

7 “www.formin.fi/public/default.aspx?contentid=81004&nodeid=35435&contentlan=2&culture=en-US”, visited 2015-01-04.

true sense of the word.⁸ In addition, all the Nordic countries are welfare states where hard-working people are appreciated.

There is reason to group together the Scandinavian legal systems in one group or sub-group, because at least in the past they have been active in King-sharing; their languages - with the exception of Finnish - are close, and their non-legal cultures are also similar.⁹

As stated earlier, due to these types of similarities it is often said that comparative studies between the Nordic countries are easy, risk-free and fruitful. It has perhaps been taken too much for granted, though, that if “their non-legal cultures are similar” then this affects each country’s *legal* culture as well, effectively making the countries similar.¹⁰ This might be true to some extent at the macro level, but how profound is our understanding really at the micro level as concerns societal differences and their effects on legal decision making? My hypothesis is that the societal, cultural and mental differences are bigger and their effects more profound than usually thought.¹¹ At the same time, historical and moral elements seem to be ‘shared enough’ to support successful comparative studies between East-Scandinavian countries.

Due to the partly shared history and of course also the society, habits and other cultural issues were more or less the same in the western and eastern part of the monarchy called Sweden (13th Century - 1809). That being said, Swedish and Finnish societies, traditions and mentalities also display differences, which have existed from early on. The geographical situation, the different languages as well as different ethnical backgrounds are the main factors behind this difference. Finns and Swedes are, for instance, not of the same origin, they have – as populations – never been totally mixed, and have mostly lived separately even when inhabiting the same kingdom. Later on, Finland spent a long time as an autonomous part of Russia, became independent, participated in wars, including a civil war, and later participated

8 Lando, Ole, *Nordic countries, a legal family? A diagnosis and a prognosis*, Global Jurist Advances 2001/2, p. 10-11.

9 Hondius, Ewoud, *Pro-active Comparative Law*, in Scandinavian Studies in Law 50/2007, p. 146.

10 Peczenik and Strömholm have written that the Nordic law can always be used like the domestic one. According to Strömholm, the Nordic sources of law are not even foreign ones. Peczenik likewise recommends using all Nordic sources together with the domestic ones. Peczenik, Aleksander, *Rätten och förnuftet. 2:a upplagan*, Lund 1988, p. 271 and Strömholm, Stig, *Användning av utländskt material i juridiska monografier. Några anteckningar och förslag*. Svensk Juristtidning 1971, p. 254. According to Hahto, the Nordic doctrine can be used like a domestic one or otherwise Nordic interpretations can be used alongside the domestic ones only. Hahto, Vilja, *Rikosoikeustiede ja oikeusvertailu*. Lakimies 8/2001, p. 1300. Still, Hellner and Brusiin have warned about the differences as well. Brusiin, Otto, *Tuomarin harkinta normin puuttuessa*. Suomalainen Lakimiesyhdistys 1938, p. 203 and Hellner, Jan, *Rättsteori*. Juristförlaget 1988, pp. 89–90.

11 It is also said that it is not significant if there are similarities or differences between the compared countries if only so-called common key traits can be found, like e.g. similar economic theory when contract law is compared. Hahto, Vilja, *Rikosoikeustiede ja oikeusvertailu*. Lakimies 8/2001, p. 1301 and Pöyhnen, Juha, *Sopimusoikeuden järjestelmä ja sopimusten sovittelu*, Suomalainen Lakimiesyhdistys 1988, p. 9.

in the Second World War, with severe economic consequences to the country. During the 1970s, large-scale unemployment shook the country. In the beginning of 1990s, a major economic crisis (mainly in the form of bank crisis) affected the country again, and currently Finland is feeling the repercussions of the Euro crisis. In Sweden, contrastively, the situation has been more peaceful in all the mentioned respects. There have been no wars, more need for workers than unemployment; even the economy has consistently been relatively buoyant, at least compared with many other countries. In addition, Swedish society is more multicultural compared with Finland. In 2013, there were about 15.9% foreign inhabitants in Sweden¹² whereas the same figure for Finland in 2012 was only 3.6%.¹³ And last but not the least, the ideology of *Folkhemmet*¹⁴ well illustrates recent Swedish societal history. It still profoundly affects the self-image¹⁵ of Swedes today. Something similar did not occur in Finland even if both countries are welfare states.

The ways in which these differences do affect legislation and adjudication is also a sociological question, and one which crosses over into the realm of political science as well sociology and the law. I will not try to solve such questions here, but instead I wish to highlight the major differences and to ask the question whether “the similar society” is more of a myth than a fact, at least at micro level.

Husa emphasizes that it is of importance to understand that the most relevant similarities between Finland and Sweden do not concern formal legal rules but, rather, the legal *mentality*, which proves that certain basic values concerning social justice, social ethics and law in general are close to each other.¹⁶ I would like to stress the risks involved in this type of ‘orthodox’ thinking. Far too often it has been taken for granted that Finland and Sweden share similar societies, culture and even legal mentality and single articles in legal documents have been compared directly without first placing them in their domestic context.¹⁷ Very often there is a shared or similar jurisprudence,

12 “www.migrationsinfo.se/migration/sverige/”, visited 2015-01-08.

13 “www.vaestoliitto.fi/tieto_ja_tutkimus/vaestontutkimuslaitos/tilastoja-ja-linkkeja/tilastotietoa/maahanmuuttajat/maahanmuuttajien-maara/”, visited 2015-01-08.

14 *Folkhemmet* is a political concept that played an important role in the history of the Swedish Social Democratic Party and the Swedish welfare state. The core of the ‘Folkhem’ vision is that the entire society ought to be like a small family where everybody contributes. See more about the concept e.g. in Dahlqvist, Hans “*Folkhemsbegreppet: Rudolf Kjellén vs Per Albin Hansson*”, *Historisk Tidskrift* nr 3/2002, pp. 445 – 465.

15 Bertilsson, Björn. *Förändringstendenser i svensk rättskultur, Rättskipningens funktion och domarens roll*, Svensk Juristtidning 2010, p. 28.

16 Husa, Jaakko, *The Stories We Tell Ourselves – About Nordic Law in Specific*, in Finnish Reports to the 18th Congress of the International Academy of Comparative Law (IACL) Washington D.C. 25th July – August 1st 2010, p. 6

17 It is also a fundamental criticism against functionalism that they highlight the similarities instead of stressing more differences. Husa, Jaakko, *Valkoista yksisarvista pyydystämässä vai mörköä paossa – »oikeaa oikeusvertailua»?* *Lakimies* 5/2010 s. p.705. More about functionalism, its critics and benefits in Uimonen, Jari, *Funktionalismin kritiikki ja mahdollisuus oikeusvertailussa*, *Oikeus* 201, pp. 104–114.

sometimes even identical single legal rules in Finland and Sweden. Procedural law, for instance, is very similar on the whole. And yet, *interpretations* may vary more than we think owing to those differences that exist at micro level in the two cultures' ways of thinking.¹⁸

According to Aarnio, foreign law can be used as a legal source, and comparisons made at system level or at normative level can have significance in interpreting domestic law. However, comparative studies conducted to investigate foreign law as a cultural phenomenon do not have this significance.¹⁹ Still, I would like to argue that all these three levels are interconnected, and that it is in fact necessary to research foreign law as a cultural phenomenon in order to enable the use of comparative arguments correctly in the two first-mentioned functions.

4 Culture

Comparative studies as a method exists only in the arts and social sciences while, for instance, in mathematics or biology there is no comparative method.²⁰ The main reason for this is that (arts and) social sciences are

18 One example of this is how to apply the norms of non-prosecution in the cases of mediation in criminal matters. According to the open wording of the Swedish norm (Code on the Judicial Procedure, Chapter 20, Section 7, Paragraph 2), it is possible to make a decision not to prosecute due to successful mediation in criminal cases, but because the mediation is not mentioned explicitly in the wording or in the *travaux préparatoires*, prosecutors never use that possibility. Instead, it is used in the cases of young offenders because in the special act covering them only, mediation has been mentioned as one possible reason which can lead to non-prosecution (Young Offenders Act 17 §). Gärde, Emelie, *Lagföring av unga genom åtalsunderlåtelse, Medling vid brott och dess påverkan på beslut enligt 17 § LUL*, Candidate thesis, The University of Örebro 2011. From the Finnish point of view, there were no hindrances to deciding on non-prosecution even in the case of adults in such situations where norms enable this type of interpretation and where it corresponds with current needs. Based on the similar rule in Finland (Criminal Procedure Act, Chapter 1), non-prosecution was decided also based on successful mediation even if that possibility was not earlier explicitly mentioned in the law but the list was left open. The Finnish legislator however later reformed the law and now mediation is actually mentioned in the wording (Criminal Procedure Act 22.8.2014/670, Chapter 1, Section 8) as one possible reason for non-prosecution. The legislator presumably wanted to make this possibility even stronger and more obvious. However, the section was used according to the reformed wording already earlier in practice. So, based on the same rules, the Swedish and Finnish interpretations were fundamentally quite different. Ervo, Laura *Mediación en los Países Escandinavos*, in *Mediación penal para adultos: una realidad en los ordenamientos jurídicos*, Valencia Tirant lo Blanch, 2009, Chapters 1 – 2. Also, according to Bertilsson, mediation is not often used in the Swedish courts. Bertilsson, Björn. *Förändringstendenser i svensk rättskultur. Rättskipningens funktion och domarens roll*, Svensk Juristtidning 2010, p. 32. See also Dahlqvist, Amie, *Mediation in the Swedish Courts: Change by EU Directive?* in 'The Future of Civil Litigation. Access to Courts and Court-annexed litigation, Access to Courts and Court-annexed Mediation in the Nordic Countries', Springer 2014, pp. 138 – 155.

19 Aarnio, Aulis, *Laintulkinnan teoria*, WSOY 1989, pp. 217–222 and 235–236.

20 Herala, Nina – Hyyryläinen, Esa, *Induktiivisen päättelyn sääntöjen soveltaminen oikeusvertailussa – Oikeudellisten tekstien analyysi*. Oikeus 1/2001, p. 16.

intrinsically connected with the subject of culture. Culture implies difference; one might even say that differences are interesting simply because they exist. And yet, exactly due to this cultural contingency, comparative studies may be both difficult and prone to error. The risk is hidden in the fact that usually researchers compare from their own point of view whilst firmly rooted in their own cultural context. That risk can partly be eliminated by using original resources written in original languages²¹ and by the researcher familiarizing her/himself with the compared society, culture and mentality by e.g. staying for a long period in a target country and discussing with local researchers and/or other stakeholders as widely as possible. Legal comparative studies, one might argue, are impossible to carry out at home. If such is the case, the research is usually riddled with errors and misunderstandings in interpretation.²² This happens because the researcher is effectively the ‘prisoner’ of her/his own legal culture, which in turn affects the way s/he approaches problems. To be successful, researchers need to think like legal actors in the compared country, but this – of course – is difficult because the researcher’s own experiential horizon differs from the compared one.²³ This insight becomes more and more difficult, the more different the compared legal order and culture is and the less information and experience the comparer has about the compared context. And yet, as *Tuulikki Mikkola* has said, comparative studies are always incomplete.²⁴

One of the main goals in comparative jurisprudence is to produce information about the interdependency and relations between the law and society. Many legal concepts include these aspects, which should be understood even when making just general comparative studies and not comparative jurisprudence as such. For instance, in many parts of Africa, land is not only an area of a specific number of square meters but includes philosophical, religious, societal, cultural and political understandings, and is an essential social-cultural dimension of human and of social regulation activities. It is natural that in this African context western legal reforms cannot work well as long as they are based on western legal concepts of land, for

21 One might indeed argue that comparative studies are only superficial decorations if the cultural context has not been taken into consideration. In addition, as *Hautamäki* argues, it is potentially catastrophic if the comparative studies have been done based on translated [English] material only instead of using resources written in the original language of the compared country. Hautamäki, Veli-Pekka, *Oikeusvertailun edellytyksistä*, *Lakimies* 1/2003 pp. 108.

22 This is something I myself have learnt the hard way. It is not the same to compare - not even Finnish and Swedish sections in legal documentation – at home. Their meaning and application in the real world only really becomes apparent after one starts working in the relevant country oneself.

23 Husa, Jaakko, *Oikeusvertailu, Teoria ja metodologia*, Lakimiesliiton Kustannus 2013 pp. 28 – 29.

24 Mikkola, Tuulikki, *Oikeudellisten siirännäisten perusteista: esimerkkinä fidusiaarivastuu*, *Lakimies* 5/2010, p. 834.

instance.²⁵ The less these types of connections are understood and taken into consideration, the more incomplete the comparative studies will be.

It is well known that culturally very different systems of rules and institutions cannot simply be compared with each other, not even if a cursory consistency would be undeniable. The informative value of norms is *de facto* not always necessarily very large.²⁶ It is also a well-known fact that the foreign matter under investigation has to be put into its own cultural and legal context first and only after that will further interpretation and comparison be possible.²⁷ This is the minimum requirement of the comparative exercise. However, I would like to argue that the ‘otherness’ can never be fully understood without becoming part of that otherness which is something much more.²⁸ The foreign cultural and legal context, so to speak, has to become flesh and blood to the researcher her/himself. Only after that can s/he bring something new from the object studied into her/his own legal culture.

Let me exemplify. Nordic legal culture has been said to be democratic, transparent, human, flexible, pragmatic and reformistic. All those characteristics, which are not even linked with each other, affect the way that Nordic legal culture is sometimes referred to as ‘folksy’ - in a positive sense.²⁹

However, not even a long common history of nowadays two independent countries means that the Finnish and Swedish legal cultures are fully *identical* - not at all. Finnish history; the period of autonomy and ensuing legislative challenges during that period have marked Finnish legal culture and made it what it is today. Moreover, Russification caused an emphasis on legality to

25 See Husa, Jaakko, In *Afrika ist alles ganz anders – voiko kulttuurisesti vierasta oikeutta ymmärtää?* Oikeus 3/2004, p. 320 - 321.

26 Husa, Jaakko, In *Afrika ist alles ganz anders – voiko kulttuurisesti vierasta oikeutta ymmärtää?* Oikeus 3/2004, p. 321. I would like to add that the same also applies to culturally quite identical legal systems. The wording can always be misleading if the comparer does not know how to interpret and apply it in that legal culture, but interprets from her/his own perspective. For instance, from the Finnish point of view, there is no hindrance to creating laws by the court when there is an apparent need for it - even if the list of examples given by a legislator does not include the current situation but is left open. In Sweden, on the contrary, the authority applying the law is usually much more careful and has a tendency to wait for the legislator’s reaction in a given situation. In other words, the change in legislation happens whenever the societal changes need new interpretations. Bertilsson, Björn. *Förändringstendenser i svensk rättskultur, Rättskipningens funktion och domarens roll*, Svensk Juristtidning 2010, p. 25. This is something which comes from legal culture as such. The wordings of norms do not express this.

27 Husa, Jaakko, *Praktinen oikeusvertailu ja ratkaisargumentaatio – opittavaa Euroopasta?* In *Iura novit curia – Juhlakirja Veijo Tarukannel 60 vuotta*, Edita Publishing Oy 2013, p. 10.

28 See for instance Husa, Jaakko, In *Afrika ist alles ganz anders – voiko kulttuurisesti vierasta oikeutta ymmärtää?* Oikeus 3/2004, p. 320, where the author asks how to understand the otherness?

29 Hirschfeldt, Johan, *Domstolarna som statsmakt – några utvecklingslinjer*, Juridisk Tidskrift 2011-12 NR 1, pp. 5 - 6. and Thomas Wilhelmsson, *Suomen kansanomaisen oikeuskulttuurin uhat*, Lakimies 1/2003, p. 85.

take root among civil servants, and this culture of legality still affects the system today.³⁰

Extra flavor to this (cultural) soup was added by the Finnish civil war in 1918 and its consequences as well as by the Second World War and the war responsibility trials, which were of an accentuated political nature. The latter incidents may likely have resulted in accentuated demands on the democracy, the rule of law and legal protection.³¹ Sweden has been spared the experience of wars during the recent 200 years but even if there are no major national tragedies in the recent history of Sweden, democracy, the rule of law and general legal protection are characteristic and very well realized concepts also in Sweden. Yet, even if the history in this respect has been very different for Sweden compared with Finland, I cannot detect any major differences in the named values and their enforcement in the legal orders of the compared states of today's Sweden and Finland.³²

However, some other key differences between the Finnish and Swedish legal cultures do exist. Namely, the differences in efficiency and speed of reforms as well as the courts' power to create justice. Swedish legislative culture is much more dialogic compared with the Finnish one. For instance, SOU reports are very thorough and well prepared, and a wide societal discussion precedes any realized reforms, whereas in Finland it is said that

30 Aalto, Teemu. *Kansakunnan historia 1855 – 1890*, WSOY 1976, p. 40 – 42, Jussila, Osmo, *Suomen suuriruhtinaskunta 1809 – 1917*, WSOY 2004, p. 254, Kekkonen, Jukka, *Suomen oikeuskulttuurin suuri linja 1898–1998*, in *Suomalainen Lakimiesyhdistys 100 vuotta 1998*, pp.162–163 and Kemppinen, Jukka, *Oikeuskulttuuri*, in *Encyclopædia Iuridica Fennica* and Virtanen, Kari O., *Kansakunnan historia 5 1890 – 1917*, pp. 11 – 410. See also Björne, Lars, *Suomalainen legalismi – tarua vai totta?* *Lakimies* 1/2012, p. 147 – 149, where Björne is of opinion that the passive resistance of the Finnish civil servants and the counter-measures made against the nationwide (Russian) legislation had not that much to do with the legalism as such, but was more based on the will to interpret laws as the interpreter wanted to. Later in his article, Björne also discusses the Finnish legalism further and illustrates his opinion that the legalism is just a myth with a number of sad historical examples like trials after the civil war. Björne, Lars, *Suomalainen legalismi – tarua vai totta?* *Lakimies* 1/2012, p. 149 - 152. However, these types of tragedies linked with wars and other exceptional circumstances, like trials after the civil war or the war-responsibility trials in Finland after the Second World War, cannot be used as daily-life examples. They are of a political nature and therefore neither the legalism nor the legal protection were fully (or even partially) realized. Of course, the depth of the legalism and the legal protection of the society will be tested under exceptional circumstances and if the practice will stand even then, then legalism and the legal protection can be said to be fully in force. Usually, the legalism will work during good times but whenever societal (political) problems arise, the violations start to be more common, unfortunately. Still, I think, it is not totally correct to use exceptional political trials as daily-life examples. Nor is it correct to say that there was no such legalism as illustrated earlier in resources but that it was merely myth. How to interpret and apply the law in daily life in boring routine cases rightly ought to be researched as well. The cases with political value are usually exceptional even if often also very tragic examples.

31 Kekkonen, Jukka, *Suomen oikeuskulttuurin historiaa ja paikannusta*, *Lakimies* 6 -7/1998, p. 936.

32 Cf. Bertilsson, Björn. *Förändringstendenser i svensk rättskultur, Rättskipningens funktion och domarens roll*, *Svensk Juristtidning* 2010, p. 27 and Hirschfeldt, Johan, *Domstolarna som statsmakt – några utvecklingslinjer*, *Juridisk Tidskrift* 2011-12 NR 1, p. 5.

novelties have been made in the name of nationwide consensus “unanimously” (any dissenting opinions will be interpreted as a “rocking of the boat”). As a consequence, Finland has traditionally been a country of one truth and one type of politics.³³ This Finnish way to “run things” or to *do* instead of to *discuss* and reflect is the main difference between the Finnish and Swedish cultures of realizing things, and this can also be seen very prominently in the legal culture.³⁴

In Finland, legislative reforms were not easy to realize during the autonomous period and thus Finnish legislation was for some time static and not subject to development. It subsequently took 20 – 30 years to rapidly update it to correspond with current western legal systems. The Russian period and its challenges led to rapid developments in independent Finland and to some flexibility in applying and interpreting laws to correspond with the demands in the current society. These legal reforms have usually been realized quickly without wide societal discussion. One of the main goals has been effectiveness.³⁵ Therefore, the Finnish legal culture is still today characterized by quick solutions and rapid reforms, which can be realized whenever needed through new interpretations in the case law if the legislator has not reacted to relevant new and current needs in the society. This makes flexibility, creative solutions and common sense trademarks of the Finnish legal culture; a legal culture that has previously been illustrated as ‘folksy’.³⁶ The reasons for this can be at least partly found in history. Discretion has in many cases been delegated from the legislator to the adjudication in the form of open norms and concepts in laws to guarantee the flexible solutions in new situations of application.³⁷

33 Kekkonen, Jukka, *Suomen oikeuskulttuurin historiaa ja paikannusta*, Lakimies 6 -7/1998, p. 936.

34 One very current and rather shocking example from Finland is the change in compulsory education regulation. From 2015 on, pre-school is mandatory, which means that compulsory schooling starts at the age of 6 instead of the earlier age of 7. This was only small news in the media without any societal discussion before the reform even if the change radically affects all those families which have or will have small children. The Swedish discursive legislative method appears much fairer, especially in these types of situations where citizens cannot avoid feeling the direct effects of the reformed legislation in their daily-lives.

35 Kekkonen, Jukka, *Suomen oikeuskulttuurin historiaa ja paikannusta*, Lakimies 6 -7/1998, p. 936 and Saarnilehto, Ari, *Kansallisen oikeuskulttuurin uhat*, Lakimies 1/2003, p. 74. In the latter source it is said that those problems were solved between 1917 – 1995.

36 Sallila, Jussi, *Eurooppalainen oikeuskulttuuri, pohjoismainen perinne ja juristi-identiteetti*. Oikeushistoria Suomen oikeustieteellisissä aikakauslehdissä n. 1945–1970, Oikeus 2011, p. 466.

37 However, even this type of flexible legal culture has been found still to be too restrictive in Finland. *Syrjänen* has paid attention to the problem and given good reasons for more creative solutions made by courts in the name of justice. See Syrjänen, Jussi, *Tuomarin harkinnan rajat - irti legalismin taakasta?* Oikeustiede – Jurisprudencia 2012/XLV, pp. 335 – 388. *Siltala* is of opinion that there are two different “trends” in the Finnish adjudication; namely, the legalistic one and the more creative one. The latter is used especially whenever European legislation has to be applied to find the more corresponding interpretation

5 Mentality

Ewoud Hondious once wrote “...what has struck me personally is the missionary zeal of many of my Scandinavian - especially Swedish - colleagues. Often they seem truly concerned that the blessings of their national legal system are brought to the knowledge of the international forum.”³⁸ This quotation pinpoints the differences in the East-Scandinavian mentalities. Swedes seem mostly happy and well-satisfied with their legal system, which naturally leads to situations where its blessings can even be exported. It should perhaps also lead to critical thinking about what should be imported or whether something should or can be imported at all.³⁹ Contrastively, in Finland it is

between “Finnish” and European rules. Siltala, Raimo, *Oikeustieteen tieteenteoria*, Suomalainen Lakimiesyhdistys 2003, p. 294. *Hautamäki* in turn, is of opinion that judicial activism is increasing in Finland due to more open norms which delegate more discretion to the courts. Hautamäki, Veli-Pekka, *Tuomioistuimien aktivismi tutkimuskohteena*, Oikeus 2/2003, p. 172. *Tuori* shares the opinion of Hautamäki and Siltala that activism is increasing and affecting more issues in the EU legislation. Tuori, Kaarlo, *Tuomarit ja tuomioistuimet suomalaisessa oikeuskulttuurissa*, Lakimies 7-8/2000, pp. 1051. What is interesting is that *Björn Bertilsson* in Sweden has reached similar results and said that earlier very careful Swedish courts, which have been extremely bound to *travaux préparatoires* and wording, have become more active thanks to Europeanization. He stresses how this more creative way to interpret and apply is strange to Swedish judges, who are traditionally not used these types of instruments in their adjudication. Bertilsson, Björn, *Förändringstendenser i svensk rättskultur, Rättskipningens funktion och domarens roll*, Svensk Juristtidning 2010, pp. 29 - 31. Also *Elisabet Fura-Sandström* shares this opinion on the diminished significance of *travaux préparatoires* in Sweden. According to her, the case law has grown more important and judges have become more creative and willing to solve the problem within the court. Fura-Sandström, Elisabet, *Rättsbildning i en ny miljö — hur har domstolarnas roll och betydelse förändrats? Domstolarnas roll då, nu och sedan*, Svensk Juristtidning 2004, pp. 264 - 265. The above-mentioned Swedish development in response to Europeanization has also been criticized. See Heckscher, Sten, *Finns det en europeisk rätt?* in *Festskrift till Per Ole Träskman*, Norstedts Juridik Stockholm 2011, pp. 229. According to *Määttä*, Finnish courts are passive in creating law and respect the legislator sometimes even too much. He illustrates this argument with many examples from the Supreme Courts’ case law. It also seems to be disputed between legislator and courts how binding the articles including goals of the act are seen to be. *Määttä* refers to the guide for the legislator according to which they are not that binding, whereas courts seem to take them to be as binding as other norms. *Määttä*, Tapio, *Lainsäätäjän kunnioittamisasenne, tavoitteellinen laintulkinta ja lakien tavoitesäännökset vallitsevassa tuomarideologiassa*, in *Lainvalmistelu, tutkimus yhteiskunta Jyrki Talan juhla-kirja*, Turun yliopisto, Oikeustieteellinen tiedekunta 2011, pp. 207 - 225. Still, everything is relative. Perhaps the Finnish legal culture could be more (pro)active, but, compared with the Swedish one, it is not as careful as it would appear at first sight.

38 Hondious, Ewoud, *Pro-active Comparative Law*, in *Scandinavian Studies in Law* 50/2007, p. 147.

39 See Bertilsson, Björn. *Förändringstendenser i svensk rättskultur, Rättskipningens funktion och domarens roll*, Svensk Juristtidning 2010, p. 25. An example would be the differences in fixing the European *ne bis in idem* -problems in punitive taxes. See Ervo, Laura, *Ne bis in idem –problematiken inom Norden – Varför är det så svårt att acceptera Europadomstolens rättspraxis*, in *Festskrift till Josef Zila*. Iustus 2013, pp. 37- 62. However, *Husa* sees both Sweden and Finland as quite receptive when European human rights law is concerned compared with the West-Scandinavian countries of Norway and Denmark. Husa, Jaakko, *The Stories We Tell Ourselves – About Nordic Law in Specific*, in

typical to underrate local solutions and focus on what could be imported to make the own legal system better - sometimes even in situations where local solutions could be seen as “blessings”. This is not only a cultural issue; these types of differences are based on distinctions in mentalities and in ways of thinking. The researcher or comparer should be familiar with the local mentality and people’s nature to be able to interpret norms, and especially case law, correctly and in the same way it is done in the given (own) mental context - in other words, whenever contexts are interpreted by locals. This is again something which cannot mainly be learnt in books but mostly through experience.

Maybe it is also a result of this mentality that the attitude towards the Swedish legal system has been extremely positive in Finland.⁴⁰ Sweden is usually seen as a good model which can safely be followed. Accordingly, comparative studies are mainly used to allocate examples of good practice. Situations where Sweden would have been a warning example are rare. However, sometimes the Finnish legislator is careful and waits for more thorough evaluation based on experience before the Swedish model is followed. This has happened, for instance, in the case of group actions, which are much more prevalent in Sweden⁴¹ and in the case of the recent Swedish reform called ‘More Modern Trial’, where the proceedings at the court of appeal are widely based on video tapes made during the proceedings at the district court.⁴² However, in the latter example, the carefulness changed into the admiration in a couple of years and just recently a similar model was proposed for adoption into Finnish legal practice, supported by remarks like “all rational countries like Sweden and Germany have it already; the current Finnish system is strange”.⁴³ This topic illustrates again very well the typical Finnish propensity to criticize its own system and to be very willing to find better systems from abroad. The attitude has – of course – its positive sides in the sense of a reformist mentality but can also have drawbacks if the foreign

Finnish Reports to the 18th Congress of the International Academy of Comparative Law (IACL) Washington D.C. 25th July – August 1st 2010, p. 9.

40 This may be connected with the more common “mentality”, according to which Finland is a good example of countries where legal transplants or legal recycling has been widely and easily used and seen as fruitful instead of having a missionary goal of exporting domestic solutions. In this context, *Husa* picks up the fundamental change in the Finnish human rights doctrine since the 1990s. In that change of paradigm the Europeanization has played the main role. Other foreign/imported examples have otherwise had a fruitful effect in that development and, like *Husa* writes, there is nothing shameful in that type of “copying”. There are always lessons to be learnt and not everything should be learnt the hard way. Consequently, it is easy to follow *Husa*’s way of thinking and agree with the opinion that the main point is to know and understand what is copied and why. *Husa, Jaakko, Rajat ylittävä oikeuskulttuurinen johtajuus – jäähyväiset impivaaralaisuudelle?* Lakimies 7-8/2014, pp. 935 - 936.

41 Lakivaliokunnan mietintö Hallituksen esityksestä ryhmäkannelaiksi ja laiksi Kuluttajavirastoista annetun lain muuttamisesta, LaVM 30/2006, p. 4.

42 *Todistelu yleisissä tuomioistuimissa*. Oikeusministeriön mietintöjä ja lausuntoja 69/2012, p. 9.

43 Turun Sanomat, 2015-01-11.

and domestic systems are not considered and evaluated carefully enough and/or if the exported system is automatically seen as a better one just because of its foreign origin. The trust in the well-functioning Swedish system⁴⁴ is – of course – one factor which promotes comparative studies focused at Sweden. Another reason may be the deep trust embedded in the common East-Scandinavian jurist identity, which is affected mostly by Nordic contacts.⁴⁵

One curiosity may be introduced here from the 1910s when Finland was still an autonomous part of Russia and could not participate in the Nordic legislative co-operation. At that time Sweden, Norway and Denmark had – owing to their successful co-operation – almost identical laws on the sale of goods. Iceland copied more or less similar rules into its act in 1922. Because of the political situation, rules on the same field were seriously lacking in Finland but the problem was solved in a way where foreign (in this case Swedish) legislation was simply applied in Finland by using it in a comparative way to solve difficult cases where the own domestic rules were found inadequate. In fact, the Swedish Act was even added to the Finnish text books on the sale of goods; if the textbook was written in Finnish, the Swedish Act had been translated into Finnish.⁴⁶

The domestic “climate”, or, in other words, this type of general systemic mentality evidently has an effect on legal decision making, and especially on interpretation and application.⁴⁷ Therefore, the researcher or comparer should be particularly aware of prevalent mentalities, among other things.⁴⁸ Additionally, decision makers’ personal ways of thinking, her/his ideology and such elements are always in play whenever legal decisions are made. Adjudication is not an exact science or a strictly technical subject where ideology and its significance in the decision-making can be totally avoided – however sensitive this is issue is because of the very fundamental legal principles of courts’ objectivity and judges’ impartiality.⁴⁹ Court mentality

44 One reason for that may be that researchers in history have highlighted Finland’s common history with Sweden and displayed especially that part. The Nordic background became even more important after the Second World War in Finland. Sallila, Jussi, *Eurooppalainen oikeuskulttuuri, pohjoismainen perinne ja juristi-identiteetti*. Oikeushistoria Suomen oikeustieteellisissä aikakauslehdissä. 1945–1970, Oikeus 2011, pp. 458, 462–463 and 472.

45 Sallila, Jussi, *Eurooppalainen oikeuskulttuuri, pohjoismainen perinne ja juristi-identiteetti*. Oikeushistoria Suomen oikeustieteellisissä aikakauslehdissä n. 1945–1970, Oikeus 2011, p. 457.

46 Mattila, Heikki E. S., *Oikeuslingvistiikka ja oikeusvertailu*, Lakimies 5/2010, pp. 721 - 722.

47 As *Strömholm* has said, all legal orders illustrate the sociological and intellectual climate which cannot be replaced only to the level where the technical legal solutions in that legal order are. *Strömholm, Comparative Legal Science – Risks and Possibilities*, in *Law Under Exogenous Influences*, University of Turku 1994, pp. 11 – 13.

48 *Tuulikki Mikkola* has stressed that legal transplants cannot be replaced without the “recepte” for how the “baking” (interpreting) should be made. This is due to different mentalities when “baking”. Mikkola, Tuulikki, *Oikeudellisten siirräntäisten perusteista: esimerkinä fidusiarivastuu*, Lakimies 5/2010, p. 830.

49 Hautamäki, Veli-Pekka, *Teleologisk tolkningsinställning och judiciell aktivism – några teoretiska synpunkter*, JFT 2/2004, p. 133.

exists and it has been defined as the judge's mental set of tools, those psychological instruments and habits with which s/he fulfills her/his professional duties and acts as a citizen in society. Her/his characteristics, education, environment and world view are included into the set.⁵⁰

This court mentality is one crucial factor in so-called judicial activism or judicial law-making and in its opposite, i.e. judicial self-restraint. These concepts refer to judges' activity in creating new interpretations and, in difficult cases, even new solutions to problems. Judges can be like passive civil servants who just apply the law more or less technically, or they may closely resemble political actors where they actively create law and up-date interpretations.⁵¹ *Mattila* wrote in 1998 that judges in Finland and Sweden see themselves as executors of the legislator.⁵² *Husa* (2010) shares the same opinion, but adds that activism in the Nordic countries is increasing.⁵³ As concerns judicial self-restraint, the question of the level of restraint arises like the comparative law as well. It might still be true today that courts are self-restrained in both countries to some degree, but despite this fact there are differences in the Finnish and Swedish mentality in this respect. This is at the same time connected to the sources of law. In Finland, judges use their discretion much more than colleagues in Sweden do. Again, the culture and mentality in Finland is to *do*, whereas in Sweden it is more to reflect and *discuss* to find consensus together. In the field of law this means that individual solutions are rare in Sweden and courts wait for the legislator's reaction whenever new solutions are needed.⁵⁴ In Finland, it is not considered that risky to make fair and rational decisions in the situation where the law seems to be old-fashioned or otherwise lacking or to include the possibility for discretion. According to a specific research project where 11 countries were studied for this aspect, Sweden was one of the most self-restrained countries together with the Soviet Union, whereas the United States was the most active one.⁵⁵ (Finland was unfortunately not among the countries included in the research).

50 Kempainen, Jukka, *Tätä kaikki asianomaiset noudattakoot*, VAPK-kustannus 1992.

51 Hautamäki, Veli-Pekka, *Tuomioistuimien aktivismi tutkimuskohteena*, Oikeus 2/2003, p. 171.

52 Mattila, Heikki E.S., *Pohjoismainen oikeus*, in *Encyclopædia Iuridica Fennica*, Suomalainen Lakimiesyhdistys 1998, p. 706.

53 Husa, Jaakko, Husa, Jaakko, *The Stories We Tell Ourselves – About Nordic Law in Specific*, in *Finnish Reports to the 18th Congress of the International Academy of Comparative Law (IACL) Washington D.C. 25th July – August 1st 2010*, pp. 7 - 8.

54 See, for instance, Tuori, Kaarlo, *Tuomarit ja tuomioistuimet suomalaisessa oikeuskulttuurissa*, Lakimies 7-8/2000, pp. 1049 - 1050.

55 Holland Kenneth M., Introduction, in *Judicial Activism in Comparative Perspective*, Macmillan, Houndmills 1991, p. 2.

6 Morality

There is always a link between the law and morals. To be justifiable, the law should correspond with the common morality in the area where it is applicable.⁵⁶ If not, there are problems in legislative democracy. The more law includes moral concepts like “fair” or “reasonable” or other types of discretion in the form of open norms, the more difficult it is to replace it as such into the new context as a “legal transplant”. Or perhaps it is indeed easier because in that case the transplant can be fulfilled with contents which are valid in its new home. However, there is no guarantee that the transplant will work in an identical way in its new surroundings whenever there is a strong connection to moral aspects.⁵⁷

Still, the moral basis of Finland and Sweden is so identical that no moral hindrances⁵⁸ or risks are taken into consideration in comparative studies. The minor differences in this field are more in the line of political or cultural emphasis.⁵⁹

7 Possibilities, Challenges and Visions

Comparative studies between East-Scandinavian countries harbor a number of promises of useful application as well as challenges. The common history and almost identical morality are those main bases which assist comparison, especially at the macro level. Still, there are more differences than usually thought at societal, cultural and mental levels, causing challenges to the comparisons especially when comparing at the micro level. The risk in that case is that the comparer from the neighboring country does not pay any attention to those differences but compares from her/his context, which can lead to misunderstandings in interpretations and misguided applications of foreign norms. Too often it has been forgotten that even Swedish norms are foreign ones and not fully paralleled in Finnish culture.

I should like to introduce at this point *Kaarlo Tuori's* model of legal systems based on three levels of law, where the uppermost level is (1) the visible law, (2) The middle mediating level in the law consists of principles that guide interpretation of the law and which may - at times - invalidate or limit some of the legal activity at the surface (they are more enduring than the

56 Ervo, Laura, *Ylimmät prosessiperiaatteet - oikeudenmukaisen oikeudenkäynnin osatekijät*. Lakimiesliiton Kustannus 1996, p. 15.

57 As *Tuulikki Mikkola* has written, it is impossible to import the domestic morality together with transplants from country to country, which means that the moral concepts will get different contents whenever transplanted. Mikkola, Tuulikki, *Oikeudellisten siirännäisten perusteista: esimerkkinä fidusiaarivastuu*, Lakimies 5/2010, p.830.

58 The main religion in both countries is *Lutheranism* and this can be seen as one common factor where identical moral values are concerned.

59 Above, I have already introduced the differences concerning the *folkhem* concept and there is also a gradation in multiculturalism and how to tolerate differences.

specific statute or individual case). The most stable level of all is (3) the deep structure of law where both the most basic principles (e.g. human rights) and the habits of mind or forms of rationality by which we think and argue about the law are rooted.⁶⁰ In comparative studies of Finland and Sweden, the deep structure is the same. In many instances also the uppermost level (that is the visible law) is also very similar or even identical. However, I detect some crucial differences in the mediating level, despite the identical visible level. This is the risky ‘domain’ which the comparer should be aware of not to interpret from her/his domestic perspective only and therefore potentially in a misguided way. A legal system is not only articles but also always the legal culture underpinning the articles.⁶¹ Even if the goal of comparative jurisprudence is to study the intellectual foundations of foreign law, the purpose is not to turn comparative law into a division of legal philosophy. Despite this fact, it is, however, important to know the underlying philosophy of the compared law.⁶²

Comparative studies are more sensitive than we often think. Still, Husa encourages comparisons not only in research but also in adjunction. He argues that comparative studies and their results do not constitute a risk to the doctrine of the sources of law if the comparisons are used to find inspiration to solve difficult cases and if the results of the comparative studies have been exploited by using a *pro et contra* method. If not, however, there is a risk that the democracy becomes distorted.⁶³

In the case of the East-Scandinavian countries, there are good possibilities of identifying best practice by using the comparative method. It is possible to learn from both legal orders/both justice systems, to combine the best solutions – not only at the visible level of law but also through learning from the cultural and mental levels. For instance, in Finland domestic solutions could be appreciated more often whenever they are working well. Sometimes Finnish legal tools could even be exported. A more critical way of thinking is would thus be warmly welcome to Finland whenever domestic solutions are evaluated. “Home sweet home” can sometimes be true and it is not always necessary to go beyond the sea to fish. The same applies to Sweden. The more

60 Tuori, Kaarlo, *Critical Legal Positivism*, Ashgate 2002, p. 192.

61 As Tuulikki Mikkola has said, the interpreter has just started her/his trip when s/he has found the norm, but s/he is not even close to cross the finishing line yet. Mikkola, Tuulikki, *Oikeusvertailun merkitys kansallisten yksityisoikeudellisten normien tulkinnassa*. Asiantuntijakirjoitus, 21.3.2001. Can be found in database Edilex (“edilex.fi”) visited 2015-01-08.

Identical wording norms in harmonized Europe lead to European diversity thanks to different domestic legal cultures which affect interpretations. The real diversity can be located by means of comparative studies which cover legal culture. Liukkunen, Ulla, *Oikeuden yhdentäminen ja kansallinen diversiteetti – näkökulma eurooppalaiseen kansainväliseen yksityisoikeuteen ja oikeusvertailuun*, Lakimies 5/2010 s. 740.

62 Ewald, William, *Comparative Jurisprudence I*, University of Pennsylvania Law Review. 1995, pp. 1889 - 2149.

63 Husa, Jaakko, *Praktinen oikeusvertailu ja ratkaisargumentaatio – opittavaa Euroopasta?* In *Iura novit curia – Juhlakirja Veijo Tarukannel 60 vuotta*, Edita Publishing Oy 2013, p. 16.

critical an evaluation is the more warmly welcome it will be in that context. The domestic solutions, even if well-functioning, are not always of superior quality, and sometimes a more open-minded attitude may help identify measures worth importing.⁶⁴ The Finnish legislator could learn from Swedish lessons and start being more discursive in order to reach the best acceptability of norms among individuals, and *vice versa*: to make rapid and effective solutions, quick reforms are sometimes necessary.

Recently, it seems to have become a trend to exchange experiences internationally, and even to quote foreign cases in domestic case law. This leads to new possibilities which fit well into our East-Scandinavian pragmatic, flexible and situationally sensitive legal culture, and this development may yet prove extremely fruitful for the reformistic Nordic legal culture. From this trend we may yet gain new and useful stimulus. Finally, this exchange of inspiration underpins the notion that new ideas develop alongside real problems and the need to solve them -not as inanimate systems.⁶⁵

64 Modéer is already of the opinion that much development has happened in this area and that Swedish legal culture is nowadays transparent and transnational. Modéer, Kjell Å, *Jurister på politikernas arenor, Det svenska kommitté- och utredningsväsendet i ett historiskt perspektiv*, Svensk Juristtidning 2011, p. 752.

65 Wilhelmsson, Thomas, *Suomen kansanomaisen oikeuskulttuurin uhat*, Lakimies 1/2003, p. 87.