

Kluwer Mediation Blog

Conciliation with a Mediation Touch – 10 Years of Consumer Conciliation for Public Transportation in Germany

Greg Bond (Bond & Bond Mediation / University of Wildau) · Friday, January 24th, 2020

Two days ago I attended a birthday party – one of Germany’s most active consumer conciliation bodies celebrated its ten-year anniversary. There was an interesting panel discussion on the role of consumer conciliation in Germany and in Europe, particularly given that the European Union has attempted to promote this service through its DIRECTIVE 2013/11/EU on alternative dispute resolution for consumer disputes, and Germany followed this up with the 2016 Consumer Dispute Resolution Law, requiring companies to make their willingness or non-willingness to participate in consumer conciliation programmes transparent, though still giving them the option not to take part.

The ten-year old [Conciliation Body for Public Transportation](#) (söp) managed more than 30,000 cases in 2019, which is a great increase compared to the beginnings with 1500 in the first year. Nonetheless, opinion on the panel at the anniversary event was united that the number of cases that go to consumer conciliation is still too low and that a lot can still be done to improve awareness and access.

Whether this is a task the legislator should be concerned with is one of the questions I asked the director of the Conciliation Body, Dr. Christof Berlin, at the birthday event. He affirmed the voluntary nature of ADR processes, and the autonomy of the parties, and was sceptical about legislating to make ADR mandatory, although he did see the merits of the 2013 Law on Conciliation in Air Traffic, which requires all airlines operating in Germany to participate in a consumer conciliation scheme. There are no provisions for mandatory mediation in Germany.

Dr. Berlin is a qualified attorney, and he practiced law for a while before joining the Conciliation Body. He is also a trained mediator, so I was particularly interested in how each of these backgrounds complement each other – or stand in each other’s way – in his work. In consumer conciliation it is crucial that the law is taken into account, and all the conciliators at the Conciliation Body for Public Transportation are fully qualified lawyers. Their settlement proposals, which the parties are free to accept or reject, never undercut what the complainant consumers would be entitled to by law.

The innovation at the Conciliation Body for Public Transportation is in incorporating elements of mediation into the preparation of conciliation proposals. This is made easier by the fact that a significant number of the conciliators also have mediation training and practice. When considering cases, they take non-legal interests into account, and may include these in their proposals, which thus are not always based only on legal norms, one example being recommendations for travel

vouchers. The amicable settlement rate is higher than eighty per cent.

Dr. Berlin and his team have also done much to bring the mediation mindset into their work together, focusing on creating an appreciative workplace, where staff work autonomously and responsibility, with flat hierarchies, a listening approach, and feedback focusing on resources.

I wondered if the success of the Conciliation Body for Public Transportation reflects a sea change in German society toward more amicable resolution, as numbers of civil claims before the courts have been steadily and significantly dropping for many years. Dr. Berlin was unable to confirm any proven connection here to an increase in mediation or other ADR services. While civil claims have been decreasing, court-annexed mediation has not seen a significant increase. It is possible to speculate, however, that there is a greater trend to resolving disputes before they need to be brought before a court.

At your birthday, you are free to make a wish. So Dr. Berlin made a couple of wishes for the next ten years of consumer conciliation and ADR. “Many consumers,” he said, “are today not aware of consumer conciliation services, and many industries are still not willing to participate. In ten years I want this to be different.”

Wishing the Conciliation Body for Public Transportation a very happy birthday, and that Dr. Berlin’s birthday wishes may come true.

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