

Conciliation Informational Paper

If you are considering filing a lawsuit under the General Equal Treatment Act (AGG), you have to undergo a conciliation before you can file a complaint with the respective court. This fact sheet provides you with the following information:

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1. What is a conciliation?

A conciliation is an out of court settlement of a dispute between contending parties through mediation. It is a compromise, which is proposed by a neutral party and accepted by the affected parties. This neutral body can, for example, be a conciliation office set up by the Regional Judicial Administration. (<http://www.juraforum.de/lexikon/obligatorische-streitschlichtung>)

2. What is the difference between an arbitration proceeding and a conciliation proceeding?

Arbitration and conciliation procedures are not the same. In the case of arbitration procedures, it is only decided which of the parties is right. By contrast, a conciliation serves to find a solution to the conflict.

3. Intent of Conciliation Law

Not every dispute between two parties must inevitably end up in court. The Introductory Act of the Code of Civil Procedure states in § 15a para. 1 EGZPO (<http://www.gesetze-iminternet.de/zpoege/15a.html>) that each state can set a law that certain cases must be tried first by a conciliation body, in order to settle amicably. A compromise between the parties should be reached which can satisfy both sides, whereas a trial would not.

The conciliation body is set up by the states or an existing authority, which must be recognized by the state. This can, for example, be notaries or lawyers.

§ 15a para. 1 No. 4 EGZPO stipulates that such a possibility for conciliation exists in disputes over claims under section 3 of the General Equal Treatment Act (AGG). Section 3 of the AGG regulates the prohibition of discrimination in civil rights. Civil law governs the legal regulations between individuals, for example, the relationship between consumers and traders.

However, an attempt to reach an agreement is not required if the opposing parties reside or do business in different court districts.

4. Different Conciliation Procedures by State

Based on the above mentioned Code of Civil Procedure, the following states make use of the obligatory arbitration attempt in AGG procedures (Section 3 Access to goods and services):

1. Lower Saxony Law on Conciliation (NSchlG): § 1 NSchlG
(<http://www.rechtniedersachsen.de/32230/nschl.g.htm>)
2. Bavarian Conciliation Act (BaySchlG): Art. 1 BaySchlG
(https://www.justiz.bayern.de/media/schlichtungsgesetz_010109.pdf)
3. North Rhine-Westphalian Conciliation Body and (GüSchlG NRW): § 10 GüSchlG
(https://recht.nrw.de/lmi/owa/br_bes_text?anw_nr=2&gld_nr=3&ugl_nr=321&bes_i d=4899&aufgehoben=N&menu=1&sg=#det234054)
4. Schleswig-Holstein Conciliation Law (LSchlG): § 1 LSchlG
(http://www.gesetzerechtsprechung.sh.juris.de/jportal/portal/t/mlq/page/bsshoprod.psm1?doc.hl=1&doc.i d=jlrZPOEG%C2%A715aAGSHV2P1&documentnumber=4&numberofresults=16&showd_occase=1&doc.part=S¶mfromHL=true#focuspoint)

5. What are the deadlines?

It is important that a discrimination claim from the AGG is filed within two months of the incident. Then the mediation can take place. However, the application for mediation does not inhibit the statute of limitation, which means claims do not last longer than the conciliation proceedings.

6. To who must one apply?

First you must find out which mediator is responsible for the mediation process. For this, you can turn to your local district court, to the German Association of Arbitrators (BDS), the associations of towns and municipalities, or the local police station. A mediator from the residential area of the defendant is usually responsible.

- In Lower Saxony the execution of a mediation can be requested online, and the responsible mediator is notified: <http://www.supersaas.de/form/schiedsamtschiedsamts>
- In North Rhine-Westphalia you can look under the following link for the responsible mediator: <http://www.streitschlichtung.nrw.de/streit/streitsuch.php>
- North Rhine-Westphalia offers a so called rights special service “Schlichten statt Richten” (eng. Mediation instead of judge) on the first Thursday of the month. A team of mediator experts will answer any questions for dispute resolution. Information about the possibilities and limits of conciliation proceedings are given, as well as tips and hints of mediating arguments. No individual legal advice takes place.

- You can find the next most available appointment here:
<http://www.nordrheinwestfalendirekt.de/specials/schlichten-statt-richten/>
- In Bavaria, you can contact the Chamber of Notaries, or any recognized conciliation office. The parties can turn to a lawyer that is not a party representative, a notary or mediator established by the board of chambers, guilds, professional associations or similar institutions during conciliation attempts as it pertains to § 15a para . 3 contact EGZPO.
- The requesting party has the choice among several other conciliation offices of the district court. The applying party can choose conciliation offices only from districts courts within their place of residence or place of business. The first seised conciliation office is also responsible for a counter proposal.
https://www.justiz.bayern.de/media/pdf/gesetze/schlichtungsgesetz_010109.pdf
- More information about conciliation offices in Schleswig-Holstein can be found here:
<http://www.schleswigholstein.de/MJKE/DE/Justiz/DasIstIhrRecht/SchlichtenStattRichten/quetestellen.html>

7. How much do the proceedings cost?

The applicant must pay an advance for carrying out the mediation process. This includes the fee for the implementation of the settlement, and a lump sum for expenses of presumed expenses. The fee for the implementation in North Rhine-Westphalia, for example, costs between 10 EUR and if successful 25 EUR, and in Bavaria 50EUR-100 EUR. If it comes to trial, the loser of must bear the costs of the of the unsuccessful mediation attempt. According to § 15 Para. 4 EGZPO the cost of the proceedings are to be paid by the loser of the proceedings as stated in§ 91 ZPO

8. How does conciliation proceed?

- a) You have experienced discrimination in access to goods and services, and have decided to file a lawsuit.
- b) The complaint must be filed against the source of the discrimination within two months.
- c) You identify the responsible mediator, and get into contact with them.
- d) You apply for conciliation, present the mediator with ID, and pay the advance amount.
- e) You and the mediator agree on a date for the mediation.
- f) The responsible mediator then summons the person affected by the discrimination (applicant) and the person accused of discrimination (defendant) to the date of mediation. Both parties appear on that date, and the mediator tries to conciliate between the two

parties and reach an agreement. The mediator can make proposals for agreement, but does not decide alone on the contents of the agreement.

- g) Mediation proceedings take place out of the public eye. The parties can each appear accompanied by a lawyer or an advisor.
- h) If an agreement is reached, it takes legal effect. It involves an agreement within the meaning of § 794 Para 1 Nr. 1 ZPO (http://www.gesetze-iminternet.de/zpo/_794.html). . This means that one has attained an enforcement order. Similar to a judgment, if an agreement is broken, one can take enforcement measures against the opposing party, such as a bailiff commission.
- i) If no agreement is reached, a certificate of failure is issued, and the applicant can then file a lawsuit in court. A certificate of failure is also issued if the defendant does not appear at the mediation procedure. There is also then an option to levy a fine against the defendant. In Niedersachsen the mediator can impose an administrative fine between 10 EUR- 15 EUR against the non-appearing party (applicant or defendant).
(http://www.lexsoft.de/cgi-bin/lexsoft/niedersachsen_recht.cgi?chosenIndex=Dummy_nv6&xid=147358,24)

It should be noted that the success of an out-of-court mediation is not very likely. This is why some states have restricted or completely abolished the obligatory conciliation proceeding. The Baden-Wittenberg law of conciliation was abolished in May 2013, and limited in Saxony-Anhalt to neighborhood disputes and marriage protection lawsuits.