Teka Komisji Prawniczej PAN Oddział w Lublinie
vol. XIX, 2026, no. 1, pp. 565-576
https://doi.org/10.32084/tkp.10661

OUT-OF-COURT RESOLUTION OF CONSUMER DISPUTES IN TOURISM – THEORETICAL AND LEGAL ISSUES

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Abstract. The article presents the results of a study devoted to the issue of implementing in tourism the obligation of to inform travellers about the possibility of using alternative dispute resolution (ADR) methods in cases where the dispute arises from non-performance or improper performance of a contract for participation in a package travel. This obligation was introduced by Article 42(4)(5) of the Act of November 24, 2017, on package travel and linked travel arrangements. This provision obliges tour operators to provide travellers with whom they conclude package travel contracts with information on the possibility of using alternative dispute resolution methods. Observation of the package travel market shows that despite the long-standing validity of this provision, knowledge about the possibility of using ADR is not widespread. Therefore, the purpose of this article is to obtain a general picture of the functioning of ADR in tourism and to disseminate information about it, thereby improving the awareness of tour operators and consumers regarding the possibilities of using ADR methods of consumer dispute resolution in Poland.

Keywords: consumer dispute; out-of-court settlement of consumer disputes; mediation; conciliation; arbitration.

INTRODUCTION

Directive (EU) 2015/2302 on package travel and linked travel arrangements, amending Regulation (EC) No. 2006/2004 and Directive 2011/83/EU of the European Parliament and of the Council and repealing Council Directive 90/314/EEC,[1] obliged the Member States of the European Union,

[1] Directive (EU) 2015/2302 on package travel and linked travel arrangements, amending Regulation (EC) No. 2006/2004 and Directive 2011/83/EU of the European Parliament and of the Council, and repealing Council Directive 90/314/EEC, OJ EU L 326, 2015, p. 1.

ISSN 1899-7694
e-ISSN 2719-7379

inter alia, to ensure that the content of package travel contracts includes, in a clear, comprehensible and visible manner, information "on available internal complaint-handling procedures and on alternative dispute resolution ('ADR') mechanisms in accordance with Directive 2013/11/EU of the European Parliament and of the Council and – where relevant – on the ADR entity by which the trader is covered."

Following this, the Polish Act of 24 November 2017 on package travel and linked travel arrangements,[2] implementing the above Directive into the Polish legal system, imposed on tour operators the obligation to inform purchasers of package travel about out-of-court methods of consumer dispute resolution. Pursuant to Article 42(4)(5) of that Act, a package travel contract or its confirmation must include, *inter alia*, "information on available internal complaint-handling procedures and on out-of-court consumer dispute resolution methods referred to in the Act of 23 September 2016 on out-of-court consumer dispute resolution (Journal of Laws, item 1823), as well as – where applicable – information on the entities authorised to conduct out-of-court consumer dispute resolution proceedings to which the tourism entrepreneur is subject, and on the online dispute resolution platform in accordance with Regulation (EU) No. 524/2013 of 21 May 2013 on online dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (ODR Regulation) (OJ EU L 165, 18.06.2013, p. 1)."

It follows from the cited provision that tour operators are obliged to provide travellers with whom they conclude contracts with information on the possibility and conditions of using out-of-court dispute resolution methods available to them in the event of rejection or partial acceptance of a complaint concerning the non-performance or improper performance of a package travel contract.

In connection with the above, the following questions arise, among others: 1) What is the purpose of informing travellers about out-of-court consumer dispute resolution methods? 2) What obligations does this provision impose on tour operators? 3) What are the methods of out-of-court consumer dispute resolution? 4) What must be done in order to use the individual methods? 5) How is this provision applied in practice?

This article presents the results of a preliminary study aimed at seeking answers to the above questions. In order to achieve this objective, the relevant legal regulations relating to this issue were first identified, and subsequently, on the basis of an analysis of these provisions, the models of out-of-court consumer dispute resolution applied in Poland were identified and characterised.

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[2] Act of 24 November 2017 on package travel and linked travel arrangements, Journal of Laws of 2017, item 2361, as amended.

The next step involved presenting the procedures in force in Poland concerning the individual models of out-of-court dispute resolution between consumers and tour operators arising from the performance of a package travel contract. Subsequently, based on information obtained from branches of the Trade Inspection, as well as information published on the websites of tour operators and the Office of Competition and Consumer Protection, an attempt was made to assess how this obligation is implemented in practice.

1. PURPOSE OF INTRODUCING THE OBLIGATION TO INFORM PURCHASERS OF PACKAGE TRAVEL ABOUT OUT-OF-COURT CONSUMER DISPUTE RESOLUTION METHODS

Non-performance or improper performance of a package travel contract constitutes a source of disputes between tour operators and consumers participating in package travel. A consumer dissatisfied with the performance of the contract concluded with a tour operator first submits a complaint, specifying their claims and using the information provided in the contract regarding the complaint-handling procedures applicable to that particular organiser. A positive decision on the complaint by the organiser ends the dispute.

However, the question arises: what options does the consumer have if the tour operator does not accept their claims or accepts them only partially? In such a case, is the consumer left only with the possibility of abandoning the claim or pursuing it through court proceedings?

Observation of the tourism market shows that purchasers of package travel often resign from pursuing claims before a court arising from non-performance or improper performance of a package travel contract. The reasons for resignation generally include circumstances such as: the relatively low value of the claim, fear of high court costs, the length of judicial proceedings, the risk associated with confronting stronger entities (tourism entrepreneurs), difficulties in understanding legal complexities, and uncertainty as to the outcome of the proceedings.

For this reason, at EU level – beginning in the 1970s – actions have been undertaken aimed at ensuring that consumers have the possibility of effectively pursuing claims against traders without resorting to court proceedings. One such possibility is the use of out-of-court claim enforcement, i.e., recourse to one of the dispute resolution methods in force in a given Member State that allows disputes to be resolved without the involvement of a court.

As indicated in the Introduction, the obligation introduced in Poland to inform purchasers of package travel about out-of-court consumer dispute resolution methods is a consequence of actions undertaken at EU level in this area and, in particular, constitutes one of the measures serving the implementation

of the objectives of EU consumer policy. Among the key objectives of this policy is strengthening the position of consumers in the internal market and protecting their interests. It has been assumed that "by achieving a high level of consumer protection – contributing to the proper functioning of the internal market by enabling consumers voluntarily to submit complaints against traders to entities offering independent, impartial, transparent, effective, rapid and fair alternative dispute resolution methods."[3]

The fundamental directions of EU actions in this area were defined in the "New Consumer Agenda" adopted on 13 November 2020, which presents an updated vision of consumer protection policy for the years 2020-2025 under the slogan "Strengthening consumer resilience for sustainable recovery."[4] The aforementioned programme provides for actions in five key priority areas. One of these is the continuation of long-standing efforts aimed at ensuring that consumers can effectively pursue claims and enforce their rights.

The legal instrument used for this purpose consists of regulations concerning out-of-court consumer dispute resolution systems in the Member States of the European Union, in particular Directive 2013/11/EU of 21 May 2013 on alternative dispute resolution for consumer disputes (ADR Directive).[5]

It is worth adding that until 20 July 2025 there also operated the European online dispute resolution platform (ODR – Online Dispute Resolution), introduced by Regulation (EU) No. 524/2013 of 21 May 2013 on online dispute resolution for consumer disputes.[6] However, due to limited interest from consumers, the ODR platform was abolished by Regulation (EU) 2024/3228 of 19 December 2024 repealing Regulation (EU) No. 524/2013 and amending Regulations (EU) 2017/2394 and (EU) 2018/1724 with regard to the discontinuation of the European online dispute resolution platform.[7]

According to Recital 4 of the ADR Directive, ensuring access to simple, efficient, fast and low-cost ways of resolving domestic and cross-border disputes arising from sales or service contracts should benefit consumers and thus

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[3] New Consumer Agenda – Communication from the Commission to the European Parliament and the Council: *Strengthening consumer resilience for sustainable recovery*, COM(2020) 696 final.

[4] Ibid.

[5] Directive 2013/11/EU – Directive of the European Parliament and of the Council of 21 May 2013 on alternative dispute resolution for consumer disputes and amending Regulation (EC) No. 2006/2004 and Directive 2009/22/EC (Consumer ADR Directive), OJ L 165, 18.6.2013, p. 63-79.

[6] Regulation (EU) 524/2013 – Regulation of the European Parliament and of the Council of 21 May 2013 on online dispute resolution for consumer disputes (Consumer ODR Regulation), OJ L 165, 18.6.2013.

[7] Regulation (EU) 2024/3228 – Regulation of the European Parliament and of the Council of 19 December 2024 repealing Regulation (EU) No. 524/2013 and amending Regulations (EU) 2017/2394 and (EU) 2018/1724 regarding the abolition of the European Online Dispute Resolution Platform, OJ L 2024/3228, 30.01.2024.

increase their confidence in the market. Such access should be ensured both for online transactions and for other transactions, and is particularly important when consumers make cross-border purchases of goods or services.

In general terms, alternative dispute resolution (ADR) methods constitute simple, fast and inexpensive out-of-court solutions [Wach 2005, 117] in disputes between consumers and traders [Ballard and Easteal 2016]. When justifying the need to adopt the Directive, it was stated that consumers and traders are still not sufficiently aware of the existence of alternative redress mechanisms, and only a small percentage of citizens know how to submit a complaint to an ADR entity. Where ADR procedures are available, their quality differs significantly between Member States and cross-border disputes are often not resolved efficiently by ADR entities.

Pursuant to Article 1 of the ADR Directive, its objective is to achieve a high level of consumer protection and to contribute to the proper functioning of the internal market by ensuring that consumers can voluntarily submit complaints against traders to entities offering independent, impartial, transparent, effective, fast and fair alternative dispute resolution procedures.

The ADR Directive imposes on Member States the obligation to ensure that traders established in their territory inform consumers about the ADR entity or entities competent for those traders, where such traders commit or are obliged to use those entities for resolving disputes with consumers.

In Poland, the ADR Directive was implemented by the Act of 23 September 2016 on out-of-court consumer dispute resolution. This Act regulates, *inter alia*: the obligations of entities authorised to conduct out-of-court consumer dispute resolution proceedings; the rules for maintaining the register of such authorised entities; the obligations of traders; the rules for conducting out-of-court consumer dispute resolution proceedings; and the tasks of the President of the Office of Competition and Consumer Protection in the field of out-of-court consumer dispute resolution.

Simultaneously, the aforementioned Act introduced the principle (Article 31(1)) according to which: "A trader who has committed himself or is obliged under separate provisions to use out-of-court dispute resolution with consumers shall inform consumers about the authorised entity competent for that trader. The information referred to in paragraph 1, including at least the website address of the authorised entity, shall be provided in a clear and easily accessible manner for the consumer, including: (1) on the trader's website, if the trader operates such a website; (2) in model contracts concluded with consumers, if the trader uses such model contracts."

As already indicated, in the case of tourism entrepreneurs [Borek 2025], the obligation to inform consumers about out-of-court consumer dispute resolution methods follows directly from Article 42(4)(5) of the Act on

package travel and linked travel arrangements cited above. It imposes on the organiser of a package travel the obligation to provide the traveller not only with information on internal complaint-handling procedures, but also with information on the possibility and conditions of using out-of-court dispute resolution in the event that the organiser rejects or only partially accepts the traveller's complaint concerning non-performance or improper performance of the package travel contract (e.g., services included in the package not conforming to the contract).

In conclusion, the imposition on traders – deriving from EU regulations – of the obligation to provide consumers with information on the possibility of using out-of-court consumer dispute resolution methods in disputes arising from the performance of a package travel contract is intended to facilitate the pursuit of claims by providing consumers with information about the existence of cheaper, faster and simpler out-of-court methods of resolving disputes, significantly accelerating and streamlining this process.

2. METHODS OF OUT-OF-COURT CONSUMER DISPUTE RESOLUTION

As already mentioned, the available methods of out-of-court consumer dispute resolution are defined in the Act of 23 September 2016 on out-of-court consumer dispute resolution,[8] which implements the ADR Directive into the Polish legal system. This Act constitutes the legal basis for the functioning of ADR in Poland. It contains, *inter alia*, statutory definitions of key terms relevant to this issue, in particular such terms as "consumer dispute" and "out-of-court consumer dispute resolution."

Pursuant to Article 2(3) of the Act, a *consumer dispute* is defined as "a dispute between a consumer and a trader arising from a contract concluded with the consumer."

The term *out-of-court consumer dispute resolution* is defined (cf. Article 3) as "proceedings aimed at resolving a consumer dispute, conducted in accordance with the principles set out in the Act and consisting in: 1) enabling the parties to bring their positions closer together in order to resolve the dispute by the parties themselves; 2) presenting the parties with a proposal for resolving the dispute; 3) resolving the dispute and imposing a solution upon the parties."

It follows from the cited provision that out-of-court consumer dispute resolution proceedings are proceedings aimed at: 1) enabling the parties to bring their positions closer together in order to resolve the dispute

[8] Act of 23 September 2016 on out-of-court resolution of consumer disputes, Journal of Laws of 2016, item 1823.

through mediation; 2) presenting the parties with a proposal for resolving the dispute, i.e., through conciliation; 3) resolving the dispute and imposing a solution upon the parties through arbitration.

Thus, the essence of out-of-court resolution of disputes arising from the performance of a package travel contract lies in resolving the dispute between the consumer and the trader without the involvement of a court.

The regulations provide for three basic methods of out-of-court consumer dispute resolution that a consumer may use. These methods differ in terms of the role of the parties and of the entity participating in the proceedings, as well as in terms of the binding nature of the solution developed or imposed.

The decision as to which of the above methods will be used belongs to the parties to the dispute, and in particular to the consumer. However, the other party – in this case the tour operator – must consent to the use of the method proposed by the consumer.

3. MEDIATION

The first of the methods of resolving a consumer dispute mentioned in Article 3 of the Act on out-of-court consumer dispute resolution is mediation, regulated in Articles 183^{1}-183^{15} of the Code of Civil Procedure.[9]

It follows from these provisions that mediation is a method of reaching an agreement by the parties themselves with the assistance of a third person – a mediator – who does not determine who is right and does not impose a solution upon the parties. The essence of mediation therefore lies in the parties themselves finding a solution to the dispute that will satisfy each of them. The mediator's task is to facilitate the parties' reaching an agreement and to assist in concluding a settlement.

According to the principles introduced by the Code of Civil Procedure, mediation is characterised by[10]: 1) voluntariness (which means that both parties – i.e., the consumer and the trader – must consent to mediation); 2) party autonomy (which means that the parties themselves decide how to resolve the dispute); 3) confidentiality of the proceedings (which means that the mediator is obliged to keep confidential the facts learned in connection with conducting mediation and may not testify as a witness regarding those facts unless the parties release the mediator from this obligation); 4) acceptability

[9] Act of 17 November 1964, the Code of Civil Procedure, Journal of Laws of 2024, items 1568, 1841; 2025, item 620 [hereinafter: CCP].

[10] See also Article 183^{1}-183^{5} CCP and information available at: https://www.bisou.pw.edu.pl/Uczelniany-Rzecznik-Zaufania/Alternatywne-metody-rozwiazywania-konfliktow-ADR-dlaczego-warto-je-stosowac [accessed: 04.03.2026].

(which means that the final agreement is the result of a solution developed by the parties to which both parties consent); 5) impartiality of the mediator towards the parties (the mediator may not be biased, does not represent either party and does not assess their claims, but merely assists in communication and in seeking compromise); 6) speed of the proceedings (in comparison with court proceedings, mediation is usually faster); 7) low costs.

Mediation may be used where the consumer has submitted a complaint to the trader and the trader has not accepted the claim in whole or in part.

In summary, where the trader does not uphold the consumer's complaint (in whole or in part), recourse to mediation allows for a faster and less expensive resolution of the dispute. It also enables the preservation of good relations with the trader. The fact that the parties independently develop the solution by concluding a settlement increases the likelihood of its acceptance by both parties.

The disadvantages of this method include: the requirement to obtain the consent of the other party to the dispute; the possibility of withdrawal from mediation at any stage; the possibility that the trader may fail to perform the settlement if it is not satisfactory to them. Another disadvantage is that a settlement concluded as a result of mediation acquires the legal force of a court settlement and becomes enforceable only after being approved by a court.

In the literature, it is pointed out that "mediation may contribute to relieving the burden on the judiciary and to a positive transformation of legal culture" [Morek 2011, 3]; mediation is a voluntary and confidential process [Wajerowska-Oniszczuk 2011, 4]. A very similar position is presented by A. Rękas, who adds that mediation makes it possible to resolve a case without coercion [Rękas 2011, 3].

4. CONCILIATION

The second method of amicable resolution of a consumer dispute mentioned in the Act on out-of-court consumer dispute resolution is conciliation. In the simplest terms, it is an attempt to resolve a dispute amicably by an independent and impartial conciliator who, after examining the case, presents the parties with a proposal for its resolution.[11]

There is no statutory definition of conciliation. It is only indirectly referred to in Article 183^3a CCP, which grants the mediator (conciliator) the right to indicate to the parties a possible method of resolving the dispute,

[11] This procedure, including its mandatory application, is regulated in other laws, e.g., public procurement law, which in 2019 introduced provisions on compulsory conciliation in certain disputes.

although such an indication is not binding upon them. The fact that conciliation proceedings are not expressly regulated in the Code of Civil Procedure means that the Code does not contain specific provisions concerning conciliation proceedings.

The advantages of conciliation include: 1) confidentiality of the proceedings; 2) speed and effectiveness in resolving the dispute; 3) the conciliator's specialist knowledge, i.e., knowledge of the specific characteristics of the sector in which the parties operate; 4) the parties' obtaining the opinion of an external authority; 5) no risk of deterioration of the parties' situation – in the worst-case scenario, if the conciliation proposal is not accepted, the existing situation remains unchanged.

Conciliation begins with the conciliator becoming acquainted with the positions and claims of both parties, together with the attached evidence. As a rule, it is conducted without the presence of the parties. Within conciliation proceedings, evidence is not taken from witnesses, from the examination of the parties, or from expert opinions. The conciliation proposal is formulated on the basis of the application, the response to the application, and the documents attached thereto.

On the basis of the analysis of the collected material, the conciliator presents the parties with a conciliation proposal, which is not binding upon them. Upon receiving this proposal, the parties may: 1) accept the proposal presented, thereby ending the dispute; 20 consider the proposed solution insufficient and submit the matter to further negotiations (without the conciliator's participation); 3) conclude a settlement by modifying the conciliator's proposal; 4) refuse to accept the conciliation proposal altogether, without incurring any consequences.

As in the case of mediation, a condition for the use of conciliation is the trader's failure to recognise the consumer's claims in whole or in part and the trader's consent to the use of this method of amicable dispute resolution. Within conciliation proceedings, it is possible to conclude a settlement which, similarly to mediation, may be approved by a court and become enforceable.

From the above characteristics, it follows that the objective of mediation and conciliation is the same – to conclude a settlement satisfactory to both parties to the dispute. However, the path to achieving this objective differs. In mediation, the parties are active and conduct negotiations between themselves, while the mediator merely assists them in reaching an agreement, focusing on the negotiation process rather than on the content of the settlement. In conciliation, by contrast, the conciliator is primarily active, and the parties, as a rule, passively await the conciliator's position in the form of a proposed settlement.

Thus, the main difference between conciliation and mediation concerns the role of the third party. In mediation, the mediator facilitates the parties' independent development of an agreement, whereas in conciliation the conciliator actively proposes specific solutions to the conflict.

In conclusion, conciliation, similarly to mediation, constitutes a faster, simpler and less costly method of resolving a dispute between a consumer and a tour operator. The conciliator's knowledge of the specific characteristics of the tourism sector enables them to propose an appropriate solution – one that may be acceptable to both parties.

5. ARBITRATION COURTS (COURTS OF ARBITRATION)

Consumer disputes may also be resolved by arbitration courts – also referred to as courts of arbitration. Their functioning is regulated by Articles 1154-1217 CCP. It follows from these provisions that an arbitration court is not a state authority, but an institution that resolves disputes on the basis of an agreement of the parties in which they have expressed their consent to arbitration.

The fundamental difference between an arbitration court and a common court lies in the voluntary nature of participation in arbitration proceedings. This means that, similarly to mediation and conciliation, the parties to the dispute must consent to the use of this method of dispute resolution. Submission to arbitration usually takes place through an arbitration clause included in the contract or through a separate arbitration agreement.

In the case of disputes arising from contracts to which a consumer is a party, an arbitration agreement may be concluded only after the dispute has arisen and must be made in writing (Article 1164(1) CCP). Under pain of nullity, such an agreement must also state that the parties are aware of the effects of the arbitration agreement, in particular with regard to the legal force of an arbitral award or a settlement concluded before the arbitration court.

An arbitral award or a settlement concluded before an arbitration court has the same legal force as a judgment of a common court; however, it becomes enforceable only after its enforceability has been declared or it has been recognised by a common court (Article 1164(2) CCP). An application for a declaration of enforceability of an arbitral award is submitted to the court of appeal competent for the debtor's seat or place of residence, together with the original award and the arbitration agreement (Article 1213^1 CCP).

Depending on their organisation and structure, arbitration courts are divided into permanent courts, ad hoc courts, and specialised courts. Each of these types of courts has its own specific characteristics. An example of a permanent arbitration court is the consumer arbitration court operating

at the Trade Inspection, competent to hear cases in the field of tourism. It is precisely the proceedings before this court that will be the subject of further analysis.

6. PERMANENT CONSUMER ARBITRATION COURTS AT THE TRADE INSPECTION

In order to create the possibility of more effective resolution of disputes between traders and consumers in Poland, beginning in 1991 consumer arbitration courts were established at the inspectorates of the Trade Inspection.[12] Such courts may also be established by organisations associating persons conducting a specific type of economic activity or practising a liberal profession, such as chambers of commerce. Unfortunately, in the tourism sector such a specialised court has not been established. Consequently, disputes arising from non-performance or improper performance of package travel contracts may be examined by the Permanent Consumer Arbitration Courts operating at the provincial inspectorates of the Trade Inspection.

Permanent Consumer Arbitration Courts (PCACs) are out-of-court institutions established to resolve property disputes arising from contracts concluded between consumers and traders. In order for a case to be submitted to such a court, an application for dispute resolution together with an "Arbitration Agreement" must be filed with the arbitration court competent for the consumer's place of residence or the trader's seat.[13]

In summary, disputes between consumers and tour operators arising from non-performance or improper performance of a package travel contract may also be resolved by arbitration courts, in particular by the Consumer Arbitration Courts operating at the inspectorates of the Trade Inspection.[14]

The advantages of this method of dispute resolution include lower costs, speed of proceedings (often 1-2 months), procedural flexibility, confidentiality, and the possibility for the parties to select competent arbitrators.

The main disadvantage is the necessity of concluding an arbitration agreement, which makes this form of dispute resolution voluntary and therefore

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[12] The first permanent consumer arbitration court in Poland was established in 1991 at the then District Inspectorate of Trade Inspection in Warsaw. During the 1990s, additional courts were created. Since 2003, there have been 16 permanent consumer arbitration courts and 15 branch centers operating to date. See http://spsk.wiih.org.pl/index.php?id=115 [accessed: 03.04.2026].

[13] Permanent Consumer Arbitration Courts were established under the Act on Trade Inspection and the Act on Out-of-Court Resolution of Consumer Disputes.

[14] Templates of such documents are available, among others, on the website of the Permanent Consumer Arbitration Court at the Provincial Inspectorate of Trade Inspection in Warsaw. See http://spsk.wiih.org.pl/index.php?id=111&id2=109 [accessed: 03.04.2026].

impossible to apply if one of the parties does not consent. Another disadvantage may be considered the limited enforceability of an arbitral award, since, as already mentioned, its enforceability must be declared by a common court.

CONCLUSIONS

In conclusion, alternative methods of resolving consumer disputes in the field of tourism are possible within the framework of conciliation, mediation, arbitration, and proceedings before consumer arbitration courts. The choice of the method of resolving the dispute rests with the consumer and the tourism entrepreneur.

Unfortunately, it must be stated that this area remains very poorly developed on the tourism services market. *De lege lata*, it would be advisable to postulate the establishment of a permanent arbitration court at the Office of Competition and Consumer Protection dedicated to handling tourism-related cases.

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