



Dominik Helmut Carle

A Comparative Analysis of Mediation

**Examination and critique of the Theory and Practice
in Germany, Switzerland and Scotland**

**WISSENSCHAFTLICHE BEITRÄGE
AUS DEM TECTUM VERLAG**

Reihe Rechtswissenschaften

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Band 96

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Wissenschaftliche Beiträge aus dem Tectum Verlag:

Reihe: Rechtswissenschaften; Bd. 96

© Tectum – ein Verlag in der Nomos Verlagsgesellschaft, Baden-Baden 2017

eISBN: 978-3-8288-6928-8

(Dieser Titel ist zugleich als gedrucktes Werk unter der ISBN
978-3-8288-4087-4 im Tectum Verlag erschienen.)

ISSN: 1861-7875

Umschlagabbildung: © Frank Wagner/fotolia.com

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www.tectum-verlag.de

Bibliografische Informationen der Deutschen Nationalbibliothek

Die Deutsche Nationalbibliothek verzeichnet diese Publikation in der
Deutschen Nationalbibliografie; detaillierte bibliografische Angaben sind
im Internet über <http://dnb.ddb.de> abrufbar.

Abstract

Mediation is a special form of alternative dispute resolution which is becoming more and more popular. This thesis is concerned with the development of the legal framework and the practical use of mediation in Germany, Scotland and Switzerland.

To harmonize the rules on mediation within the European Union, Directive 2008/52/EC was created imposing mandatory standards on certain aspects of mediation. The Directive is binding only in respect of cross-border dispute mediations (i.e. where at least one of the parties to the dispute is domiciled or habitually resident in a Member State other than that of any other party), but its provisions may also be applied to internal dispute mediation processes.

This led to the monistic approach on the one hand, where a legislation system simultaneously seeks to regulate both internal dispute and cross-border dispute mediations and thus treats them equally, and the dualistic approach, on the other hand, where cross-border dispute mediations are regulated separately, and thus internal dispute and cross-border dispute mediations may be treated differently.

In particular, this thesis is concerned with the question whether the distinction between internal dispute and cross-border dispute mediations drawn by Directive 2008/52/EC complicates the harmonization of the rules on mediation.

The implementation of Directive 2008/52/EC by the monistic approach in Germany, and by the dualistic approach in Scotland, and the autonomous handling of mediation legislation in Switzerland (which is not a Member State of the European Union and thus not bound by Directive 2008/52/EC) show different patterns of development with regard to mediation in Europe. The comparison among those different developments (regarding domestic dispute mediation and cross-border-dispute mediation) finally answers the question whether Directive 2008/52/EC in its current form was appropriate.

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