Mediation Q&A: Turkey

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Turkey-specific information concerning the key legal issues that need to be considered when mediating a dispute.

This Q&A provides country-specific commentary on *Practice note, Cross-border mediations: an overview* and forms part of *Cross-border dispute resolution*.

Judicial attitude towards mediations

1. Is mediation a commonly used alternative dispute mechanism in your jurisdiction, especially in relation to cross border disputes? What proportion of commercial disputes are settled through mediation? What is the judicial attitude towards mediation in relation to commercial disputes?

The Code on Mediation in Civil Disputes numbered 6325 (Mediation Code) entered into force on 22 June 2013. However, it is only in recent years that mediation has become a more common practice in Turkey, in particular in relation to employment and commercial disputes where mediation is mandatory before taking legal action (see below).

According to statistics published by the Ministry of Justice, in the period between 2 January 2018 and 19 December 2019, 739,255 employment disputes were referred to mandatory mediation. The success rate of these mediations is 65%. In respect of commercial disputes, in the period between 2 January 2019 and 19 December 2019, 146,413 commercial disputes were referred to mediation. There is a reported 57% success rate in resolving such disputes through mediation.

In the period between 2013 and 19 December 2019, 239,927 disputes were referred to voluntary mediation. There is a reported 97% success rate in resolving disputes through voluntary mediation; 217,859 of the total disputes have been successfully concluded with a settlement. According to the latest statistics, mediation (including voluntary) is becoming more common and a mediation culture is now emerging in Turkey.

Mediation is not widely used in cross-border commercial disputes. We believe this is because the Mediation Code was not enacted with a cross-border perspective, in particular, it explicitly requires Turkish citizenship for mediators. Foreign parties prefer not to use mediation, since they are not able to appoint a foreign independent mediator. However, under Article 1 of the Mediation Code, the Code applies to the resolution of private law disputes arising out of actions and transactions that may involve a foreign element.

In recent years, legislation has been introduced to extend the application of mediation as a dispute resolution mechanism by making it mandatory and a pre-condition to filing a lawsuit before the courts in certain cases. Mediation is mandatory before filing a lawsuit in labour disputes (that is, debt and compensation claims arising from the law, individual or collective labour contracts or re-employment claims). Since 1 January 2019, a mediation process for commercial disputes has also entered into force, with mediation being mandatory in certain types of disputes (see *Question 5*). In addition, there is new draft legislation to introduce mandatory mediation in consumer related disputes exceeding a specific monetary limit.

Commercial attitude towards mediation

2. How do commercial parties commonly view mediation? Do parties typically opt for institutional mediations or do they prefer the flexibility of independent/ad-hoc mediations?

Turkish law regulates both ad-hoc and institutional mediation. The Hacettepe University Arbitration Practice and Research Centre and the Istanbul Arbitration Centre provide institutional mediation services. There are also other organisations set up by groups of individual mediators, which serve as institutional mediation centres. The centres providing institutional mediation services, although similar, usually have their own rules for the mediation process. They also provide secretarial services during the mediation process.

Since the introduction (in January 2019) of mandatory mediation for certain types of commercial disputes, mediation has become a widespread practice in commercial disputes (as it is already in employment disputes). In mandatory commercial mediations, parties must apply to the mediation bureaus in the related court's jurisdiction and the mediation process is conducted within the scope of Mediation Code. Commercial parties are still able to opt for voluntary mediation where the mandatory requirement does not apply using the mediation centres as described above.

Laws on mediation

3. Are there any national laws or regulations that govern the conduct of mediations in your jurisdiction?

The following national laws and regulations govern the conduct of mediation in Turkey:

- Mediation Code numbered 6325 of 7 June 2012.
- Civil Procedural Code numbered 6100 of 12 January 2011.

- Regulation on the Code on Mediation in Civil Disputes of 26 January 2013.
- Model Ethics and Rules for Mediators and Mediation System announced by the Ministry of Justice, Mediation Board in March 2013.
- Mediation Fee Schedule annually regulated by the Ministry of Justice Department of Legal Affairs, Mediation Department.
- Code on Labour Courts numbered 7036 of 12 October 2017 (Code on Labour Courts).
- Code on Commencement of the Proceedings Relating to Pecuniary Claims Originating from Subscription Contract numbered 7155, dated 6 December 2018.
- Turkish Code on Commerce numbered 6102, dated 13 January 2011.
- Procedures and Principles Regarding Mediation Specialising in Labour Law.

International treaties on mediation

4. Is your jurisdiction a signatory to any international treaties or directives on mediation? If so, please list the treaties.

Turkey was not a signatory to any international treaties or bilateral agreements on mediation until August 2019.

Turkey recently became a signatory party to The United Nations Convention on International Settlement Agreements Resulting from Mediation (Singapore Convention) on August 2019, along with 45 more states including the US, China, South Korea, Israel and India. The aim of the Singapore Convention is to facilitate the enforcement of settlement agreements executed in the context of cross-border commercial disputes and to encourage parties to mediate in these types of dispute. The Singapore Convention provisions apply to settlement agreements in certain specific conditions. It is expected that parties will increasingly opt for mediation over time since other dispute resolution methods, such as litigation and arbitration, are expensive and time consuming.

Mediation as a pre-condition to litigation

5. In the absence of a dispute resolution clause, which calls for mediation, are parties required to engage in mediation as a pre-condition to accessing the local courts?

In the absence of a dispute resolution clause there is no requirement to engage in mediation as a pre-condition to accessing the local courts, except in the case of employment disputes and certain types of commercial disputes.

Regarding employment disputes, Article 3 of the Code on Labour Courts requires parties to first apply for mediation if the dispute arises from debt claims, individual or collective employment contracts or re-employment claims.

With regard to commercial disputes, parties must first apply for mediation for disputes relating to any claim for receivables or compensation set out in Article 4/a of the Turkish Commercial Code (TCC) such as:

- IP related disputes.
- Banking and financial services disputes.
- Disputes relating to recourse lending transactions.
- Disputes arising from regulations concerning stock exchanges, anti-trust suits, agency, distributorship and dealership contracts, brokerage agreements.
- Disputes relating to publishing contracts.
- Disputes relating to business or asset acquisitions, mergers and reorganisations.

Costs consequences of refusing to mediate

6. Can local courts force parties to mediate, especially in commercial or employment disputes? Do local courts impose costs for:

- Delay in consenting to mediation?
- Failure to mediate?
- Refusal to participate in mediation, particularly if that party is also a losing party in subsequent court proceedings?

Local courts can only force parties to mediate in employment disputes and certain types of commercial disputes (see *Question 5*).

In other cases, the courts only have an obligation to encourage the parties towards settlement or mediation at the preliminary hearing of the lawsuit (*Article 320, Civil Procedure Code*). However, this is not mandatory and the parties are free to decide whether to mediate or not, and are able to end mediation at any time.

If the parties apply for mediation while a lawsuit is underway or pending and a delay occurs during the mediation, and the parties subsequently fail to resolve their dispute, the courts may rule that the entire litigation costs (such as counsel's fees, postage costs and judgment and writ fees) will be borne by the party that caused the delay (*Civil Procedure Code*).

In employment disputes and commercial disputes subject to mandatory mediation, if the parties do not apply for mediation before starting court proceedings, the lawsuit will be dismissed on procedural grounds during the first stage.

Furthermore, in mandatory mediations, if one of the parties does not participate in the first mediation meeting, it will be liable for litigation expenses even though it may be found partially or completely justified at the end of the litigation. In addition, the court will not grant counsel's fees in favour of this party.

Limitation period

> 7. What is the limitation period for filing a civil and commercial claim? Is the limitation period for initiating judicial or arbitral proceedings extended/suspended in cases where parties attempt to settle their disputes through mediation? What are the formalities required to trigger such extension/suspension?

According to the Turkish Code of Obligations, the Turkish Civil Code and the TCC, different limitation periods apply in different circumstances. The limitation period for civil or commercial claims is generally ten years, although in certain commercial matters it is five years.

The time elapsed between the start of mediation proceedings and their end is not taken into consideration when calculating the applicable limitation period (*Article 16, Mediation Code*). Where the parties apply for mediation in advance of initiating a lawsuit before a court, the mediation process starts from the date the parties are invited to the first meeting and the mediation agreement is signed between the mediator and the parties.

Where the parties apply for mediation at any stage following the beginning of a lawsuit before a first instance court, the initiation date of the mediation would be the date of either:

- Acceptance of the court's mediation invitation to the parties.
- Submission of a written agreement of the parties executed out of court.
- Record of statements of the parties in the hearing minutes in any of the hearings held in the first instance court.

Disputes suitable for mediation

8. Are there any class or type of disputes that are not considered suitable, either by law or otherwise, for mediation in your jurisdiction?

Mediation is available only for private law disputes originating from rights or transactions that the parties are free to dispose of. The Mediation Code does not make detailed provision on the scope and application of mediation. However, it does state that disputes regarding public law (including, but not limited to, domestic violence, allegations of family violence, divorce, administrative fines, bankruptcy and so on), which the parties are not free to dispose of, are not suitable for mediation.

Mediation is also available for disputes which contain a foreign element.

Parties are always entitled to apply for mediation for civil and commercial law disputes that fall under private law.

Claims for pecuniary and non-pecuniary damages originating from workplace accidents or occupational diseases, as well as any declaratory lawsuits, actions, objections or revocation lawsuits regarding these damages, are considered unsuitable for mediation under the Code on Labour Courts.

Mediation agreement

9. Is it customary in your jurisdiction to execute a written mediation agreement before the start of the mediation proceedings to record the rights and obligations of the parties and the mediator?

There is no legal requirement to execute a written mediation agreement before the start of mediation proceedings. However, in practice, it is customary to do so.

Before the mediation process starts, an agreement is usually signed by the parties and the mediator or mediation institution specifying the rights and obligations of the parties and the mediator or the mediation institution, and determining the procedural rules to be applied. The dates and duration of the mediation process, the place, representation, legal frame, document and confidentiality issues should be determined to ensure a sound and smooth mediation process.

In mandatory mediations, the mediator will be appointed by the mediation bureau. The appointed mediator has access to information about the parties on an online mediation portal. The mediator will send invitation letters to the parties containing brief information regarding the mediation process, the rights and obligations of the parties and the meeting place and time.

Standard clauses for mediation agreement

10. Are there any clauses that would be usual to see in a mediation agreement and/or that are standard practice in your jurisdiction?

Confidentiality is a key aspect of the mediation process. Clauses governing confidentiality during and after the mediation process are crucial, and the parties usually prefer to include them in a mediation agreement.

The parties may also agree to include clauses on how to conduct the mediation process in detail and who will pay the mediation fees. Other clauses may be included, depending on the nature of the dispute.

However, the following clauses set out in *Standard document: Mediation agreement: Cross-border* are not generally considered standard practice in Turkey:

- *Standard document, Mediation agreement: Cross-border: clause 2*. Since mediation proceedings normally involve several sessions/meetings, it is not usual practice to include a clause on time and place of the mediation. However, the details of the first meeting may be incorporated in such a clause.
- *Standard document, Mediation agreement: Cross-border: clause 3*. Since mediation is not commonly used for cross-border disputes, a language clause is not normally added to the agreement.
- *Standard document, Mediation agreement: Cross-border: clause 9.2*. The mediator is not entitled to continue to assist the parties after termination of the mediation. Therefore, clause 9.2 is not valid.
- In mandatory mediations, a memorandum of agreement regarding mediation is signed. The memorandum contains the mutual claims of the parties such as payment amount including mediation fees, waiver, payment term and instalments and so on.

Timing of mediation

11. When do parties usually mediate?

In employment and certain types of commercial disputes, it is mandatory for the parties to apply for mediation before starting court proceedings (see *Question 5*).

Until now, mediation has mostly taken place before the start of a lawsuit. Mediation is valued as a dispute resolution method because it is a faster and more economical way to resolve a dispute, especially taking into consideration the workload of the courts. Mediation (and arbitration) also have the advantage of the parties being able to ensure confidentiality, which is almost impossible for lawsuits before the courts, although there are certain mechanisms through which confidentiality of court proceedings can be maintained.

Regarding commercial disputes, there are some reservations of the parties to do with the diversity of commercial disputes and their suitability in relation to the mediation process.

It is very rare for parties to apply for mediation once court proceedings have started.

However, since mediation is now mandatory for employment-related disputes and certain types of commercial disputes as a pre-condition to filing a lawsuit (see *Question 5*), it is more and more frequently seen in practice.

Choosing a mediator

12. How do parties usually choose a mediator? What happens if the parties cannot reach an agreement?

Although it is not explicitly regulated under the Mediation Code, Article 14 of the Code has been understood to imply that, unless otherwise agreed, the mediator or mediators can be freely chosen by parties. The parties can also authorise a third person or an institution to choose mediators on their behalf.

Mediators must be chosen from the Mediators Registry, which is kept by the Ministry of Justice and only includes mediators who have successfully passed the relevant written and verbal examinations and are registered with the Ministry of Justice.

If the parties fail to mutually agree on a mediator, the mediation process will be deemed not to have started.

In mandatory mediations, mediators must be appointed by the mediation bureau within each court jurisdiction from a list announced by the Mediation Department. However, if the parties have mutually agreed on any mediator from the Mediators Registry, that person will be appointed for the related mandatory mediation (although this is rarely seen in practice).

Conduct of mediation

13. How are mediation proceedings conducted in your jurisdiction?

The first stage of mediation proceedings is for the parties to meet and agree on the terms of the mediation agreement, such as the date, duration, representation, legal frame, fees, documents, choice of mediator and so on (*Mediation Code*). The parties will also submit a short summary of the dispute, to present to the mediator and the opposing party the basic issues and essential details of the case.

In mandatory mediations, the appointed mediator sends an invitation letter to the parties setting the time and date for the first mediation meeting. The mediator will generally try to set a date and time that are convenient for the parties to avoid absence of the parties due to workload or other circumstance.

A mediation meeting examining the merits of the matter will then begin. The mediator will make an opening speech. Mediators will usually do the following at this stage (although this will depend on the character and approach of the individual mediator):

- Explain the sequence of events and reassure the parties regarding mediation (since mediation is still relatively new in Turkey).
- Clarify the roles of the parties and of the mediator.
- State that the parties have authority to settle at any stage.
- State that the process is confidential.
- Specify the basic rules for the process.
- Clarify any uncertainties that the parties may have.

After the mediator's opening speech, the parties will usually submit their opinions and assertions in brief. The purpose of each party's statement is to bring to the attention of the mediator and of the other parties the issues and details of the case. If the parties are represented by a lawyer, their statements may be submitted by either their lawyers or the parties themselves. As a rule, mediators try to establish a ground for agreement between the parties.

Meeting minutes are signed by the parties and the mediator at the end of the first meeting. If necessary and all the parties agree to it, a second and even a third meeting will be held and minutes of such meetings will be prepared. At the end of the mediation process, in addition to the meeting minutes, separate last meeting minutes are prepared and signed by the parties and the mediator.

If a mediator deems it necessary, they can arrange private meetings on equal conditions with the parties separately. In the interests of transparency, they must let the other party know.

Mediation proceedings may result either in an agreement between the parties, or an explicit or implicit declaration of their intent not to continue mediation proceedings. This intent could be expressed, for example, by not signing an agreement, even at the very final stage of mediation. This is due to the nature of mediation which requires total and free will of the parties.

Specific time limits apply to mandatory mediations (see *Question 15*). In practice, the mediation process takes a maximum of two or three weeks.

After signing a settlement agreement or a protocol which shows that the parties cannot reach a resolution through mediation, the mediator must prepare a report and send it to the Mediation Department of the Ministry of Justice

within one month. Preparing a report and sending it to the Mediation Department is not deemed to be in breach of any existing confidentiality clause, since the Mediation Department will keep such reports strictly confidential.

To ensure the confidentiality of the mediation process, if the parties do not reach a resolution, the mediator will only specify this fact in the last meeting minutes, without entering into any details about the mediation.

Facilitative or evaluative mediation

14. What approach does the mediator usually take to the mediation, is this facilitative or evaluative?

Mediators must take a facilitative approach while conducting mediation proceedings. According to the definition of mediation under the Mediation Code, a mediator's mission is to create the conditions which would allow the parties to voluntarily resolve their disputes by their own will, by attending meetings and negotiations.

A mediator should not intervene in the process of mediation between the parties, but only enable them to resolve their disputes through their own free decisions (*Ethics and Implementing Rules for Mediators*). A mediator cannot give the parties any legal or professional advice regarding the dispute, or manage or direct the proceedings in an evaluative manner.

However, in Turkey, both mediators and parties tend not to abide by this principle. In practice, mediators may evaluate the issues of the claim and advise the parties. The parties also frequently insist that the mediator give them their opinion and advice. Moreover, especially in mandatory mediations, mediators may feel under pressure to resolve the dispute by the Mediation Department. Under the latest regulations and general approach of the Mediation Department, mediators can provide information to the parties based on their education and professional experience provided it is consistent with the mediation activities. The mediator will endeavour to reconcile the parties and unite them around a result that would provide the optimum benefit for both sides. In the first phase, the mediator cannot offer a solution. However, if the parties are unable to find a solution, the mediator may offer a solution at the final stage based on the mutual interests of the parties. However, the mediator cannot force the parties to accept any offer.

Time frame for mediations

15. What is the general time frame for mediations in your jurisdiction? Is there any statutory period within which mediations must be completed?

If the parties apply for mediation before the matter is brought before the court, there is no time frame or statutory period within which the mediation must be concluded, except in the case of mandatory mediation.

The time limits for mandatory mediation are as follows:

- Employment disputes: mediation must be concluded within three weeks of appointing the mediator. This period may be extended for a maximum of one week, if necessary, at the discretion of the mediator. (*Mediation Code*.)
- Commercial disputes: mediation must be concluded within six weeks starting from the appointment of the mediator. This period may be extended for a maximum of two weeks, if necessary (under special circumstances), at the discretion of the mediator. (*Article 5/A, paragraph 2, TCC*.)

For non-employment and non-commercial related disputes, if the parties apply for voluntary mediation after a lawsuit has been filed, the court will give the parties three months to resolve their dispute out of court through mediation. If the parties cannot reach an agreement, they can request a further three months. The parties must complete the mediation proceeding and submit their agreement to the court by the end of this period of six months.

Professional advisors in mediations

16. Are parties required to be represented by professional advisors, such as lawyers in mediation proceedings? If there is no requirement, are professional advisers usually present?

The parties can choose to be represented by a lawyer, but it is not mandatory. In general, commercial parties prefer to involve their lawyers in mediation, while individuals do not, due to the costs involved.

Judges as mediators

17. Do judges ever act as mediators? If so, do they commonly give a view as to the merits of a dispute? Are they then removed from involvement in the case if the mediation is not successful?

Judges cannot be employed in any official or private capacity, other than those prescribed by law (*Article 140/5, Constitution of the Republic of Turkey*). Judges are not allowed to be registered as mediators or to act as mediators during a lawsuit.

Mediation and court proceedings are independent from each other. If the parties apply for mediation during a lawsuit, the mediation will be performed out of court and the judge is not permitted to interfere in the mediation process. Retired judges may serve as mediators, provided they meet the normal conditions (see *Question 24*).

Mediator's role post an unsuccessful mediation attempt

18. Are there any provisions under national law or institutional rules that prohibit a mediator to subsequently act as a judge, arbitrator or conciliator in relation to the same dispute?

A mediator cannot act as a lawyer in a lawsuit concerning a dispute where they acted as a mediator in the past (*Article 9, Mediation Code*). Article 9 does not address other roles such as judge, arbitrator or conciliator. However, based on the interpretation of the provision, and due to the fact that a judge cannot act as a mediator (see *Question 17*), a mediator cannot act as a judge, arbitrator or conciliator in a dispute that they previously mediated.

Court-annexed, judicial and online mediations

19. Are court-annexed or judicial mediations (conducted under the 'shadow' of the court) and online mediations popular in your jurisdiction? If so, what types of disputes are considered suitable for such mediations? Give details of any pilot schemes that currently exist in your jurisdiction. Are any of these schemes compulsory?

Mediation proceedings are not conducted under the shadow, control or safeguard of the courts in Turkey. Court proceedings and mediation proceedings are strictly independent of each other. Online mediation is not governed by Turkish laws. Mediation in Turkey mainly aims to bring parties together physically and to create a common ground for reconciliation between them. To date there is no judicial or infrastructural preparation for online mediation, but online mediation may be introduced in the future to increase the practice of mediation. Due to geographic size of the Republic of Turkey, mediation sessions conducted via teleconference are frequently seen in practice but it is at the sole discretion of the mediator. If one of the parties or the mediator refuse this type of mediation, the parties should meet in person.

The 2019 novel coronavirus disease (COVID-19) outbreak has affected mediation processes. Under the "Announcement on Coronavirus Measures" published by the Ministry of Justice, mediation processes which started before and are continuing during the pandemic should be carried out via teleconference. The measures also specify that in relation to any new mediation process, the date of the meeting should be fixed bearing in mind the end of the period specified in the relevant regulations (in Turkey, legal time limits were suspended between 13 March 2020

and 15 June 2020) and should be carried out via teleconference. In general, mediation processes carried out via teleconference are more popular (in comparison to online mediations) due to the pandemic.

Costs

20. Who bears the cost in mediations involving civil and commercial disputes?

Unless otherwise agreed by the parties, all costs related to mediation proceedings, including the fees of the mediator, will be borne by the parties equally (*Article 7, Mediation Code*). The mediator's fees should be determined in accordance with the minimum fee tariff published annually (unless otherwise agreed). In matters where the financial strength of the parties is unequal, such as employment disputes, employees may request that the employer bears all costs as a condition of an amicable settlement.

Regarding mandatory mediation, the Code on Labour Courts and Article 13 of the Mediation Code sets out the following rules:

- If the matter is settled after the mediation, the mediation costs will be borne by the parties equally, unless otherwise agreed. The costs cannot be less than two hours' worth under section 1 of the Mediation Cost Tariffs.
- In the case of a demand for reinstatement, the costs (limited to two hours, under section 2 of the Mediation Costs Tariffs) is to be paid by the Ministry of Justice when:
    - the mediation meeting did not take place because the parties did not participate;
    - the parties were unable to reach an agreement after a meeting of two hours; or
    - it is not possible to convene a second meeting.
- If the parties were unable to come to an agreement within the two-hour limit, the cost of exceeding this time limit will be borne by the parties equally, unless otherwise agreed. The costs which are to be paid by the Ministry of Justice and the parties are deemed as court expense. If the parties reach an agreement as a result of the mediation, they will then share the costs equally.
- When a mediation process is concluded due to the unjustified absence of one of the parties, the party that did not participate in the mediation will be responsible for all legal expenses regardless of the outcome of the mediation process. If both parties do not appear at the mediation meeting without a valid reason, both parties will be equally responsible for the legal expenses of the mediation.

Confidentiality in relation to mediation proceedings

21. Are mediation proceedings considered confidential? In the absence of an express clause in the mediation agreement, can confidentiality be implied in negotiations conducted through mediation?

Unless otherwise agreed, mediation proceedings are confidential (*Article 4, paragraph 2, Mediation Code*). Even in the absence of a confidentiality clause in the mediation agreement, the mediation negotiations and their entire content, such as related information, documents and meeting records must be kept confidential.

The parties can specifically agree on a provision to remove the confidentiality obligation from the mediation proceedings. However, if parties do not reach a settlement regarding the dispute, the parties cannot use the remarks, offers and any other contents disclosed and/or shared within the mediation negotiations during the litigation process.

Confidentiality obligations of the mediator

22. Does the confidentiality obligation extend to the mediator as well?

The confidentiality rule also extends to the mediator (*Articles 4-5, paragraph 1, Mediation Code*). The mediator must keep all information and documents that they have gathered in the mediation proceeding strictly confidential, unless otherwise agreed by the parties (*Article 4, Mediation Code*). The mediator cannot submit the opinions, claims, offers and suggestions made during the mediation process and documents prepared at any stage of the mediation process as evidence in a lawsuit or arbitration proceeding regarding the same dispute (*Article 5, Mediation Code*).

Disclosure of information and documents originated during a mediation proceeding is only possible if a provision of law requires it, or the execution of a mediation agreement requires disclosure to enforce the decisions taken by the parties during mediation.

The parties may agree not to appoint the mediator as a witness, expert or consultant in a lawsuit, arbitration or any other judicial process.

The parties may incorporate a provision in the first meeting record that sets out the damages payable if a party breaches the confidentiality obligation. According to the Mediation Code, a mediator also has civil and criminal liability if they breach the confidentiality rule. Confidentiality can be further protected by adding supplementary provisions to the mediation agreement.

Exceptions to confidentiality

23. Can the local courts override confidentiality provisions and permit confidential information arising out of, or relating to, a mediation to be disclosed under any circumstances?

Local courts, as a rule, cannot override confidentiality provisions governed by the Mediation Code. Even if there is no confidentiality clause in a mediation agreement, the courts cannot request documents, statements and information related to the mediation proceedings. The parties themselves are not entitled to disclose and submit any information and documents related to mediation proceedings to be used in court proceedings.

Such information and documents can be disclosed only if this is required by a provision of law, or if it is necessary for the execution of a mediation agreement (*Article 5, Mediation Code*) (see *Question 22*). Under Article 5, a court may override confidentiality provisions if this is required by law, although the likelihood of it is remote. It is also unclear how it may be achieved in practice, as some doubt remains as to the application of Article 5 and the power of a court to do this.

Documenting a settlement

24. How do parties usually formalise any settlement? Is the mediator involved in drafting the settlement agreement?

The scope of an agreement reached through mediation can only by stipulated by the parties. The mediator is not allowed to draft, or in any manner intervene in the preparation of, a settlement agreement. However, in practice, mediators do assist the parties in concluding a settlement agreement.

The parties and the mediator together sign the settlement agreement.

Disposal of court proceedings

25. How are court proceedings disposed of if settlement is reached at mediation?

If the parties decide to resolve a dispute (other than employment disputes and certain types of commercial disputes subject to mandatory mediation (see *Question 5*)) through mediation after a lawsuit has been filed, and they reach an agreement through mediation, the court has two options:

- Record the settlement agreement by including the provisions of the agreement in the hearing record or minutes on request of the parties.
- Rule that this is not necessary and simply finalise the lawsuit proceedings. A court cannot finalise the lawsuit proceedings unless the parties have mutually agreed on who will bear the litigation expenses.

Enforcing settlements

26. Are there any special procedures for enforcing a settlement agreement reached at mediation? Does this differ from a settlement agreement reached outside mediation? Is it easier to enforce a settlement agreement reached at mediation?

Under Turkish law, executing a settlement agreement is not sufficient to make it enforceable. To enforce a settlement agreement, the parties should obtain an annotation on the enforceability of the agreement from the competent court. Drafting a settlement agreement in an accurate manner which will be approved by a court is crucial in order not to waste time or give rise to any further costs.

An annotation on the enforceability of the agreement is similar to a verdict given by a court. A settlement agreement concluded by mediation does not differ from a settlement agreement concluded outside mediation. Both proceedings are implemented in the same way before a court, and the settlement agreement drawn up at the end of both proceedings resembles a court verdict.

During ongoing lawsuit proceedings, if the parties bring a settlement agreement reached through mediation or through any other alternative dispute resolution method before the court, the court will decide according to the agreement between the parties.

Mediation institutions and centres

27. What are the main institutions or centres that provide mediations services, including appointment of mediator in your jurisdiction?

There is a Mediation Department within the Legal Affairs of the Ministry of Justice. This entity is responsible for the correct performance of mediation services and for supporting academic work on mediation institutions. The Mediator's Registry records are kept by the Mediation Department.

The only official institutions that provide institutional mediation services are the Hacettepe University Arbitration Practice and Research Centre and the Istanbul Arbitration Centre. There are also other organisations set up by groups of individual mediators, which serve as institutional mediation centres.

The setting up of institutional mediation centres is currently not regulated by law but we believe that institutional mediation will expand in the future, following the enactment of the relevant legislation. For now, groups of individual mediators act in practice in the same way as mediation institutions.

Regarding mandatory mediation, there are mediation offices and mediation bureaus affiliated to the Mediation Department of the Ministry of Justice in courthouses. Any applications for mediation are made by the parties to these units.

Accreditation schemes for mediators

28. Is there an accreditation scheme or regulatory body for mediators in your jurisdiction? Describe the qualifications, continued professional education schemes and training courses that such institutions have in place for mediators.

The Mediation Department at the Ministry of Justice is the regulatory body for mediation. Mediators must meet the following conditions and achieve the prescribed legal qualifications to be registered as such:

- Sign up to the Mediator's Registry kept by the Mediation Department.
- Have Turkish citizenship.
- Have graduated from a law school.
- Have a five-year seniority in a profession (not necessarily a legal profession).
- Have full legal capacity.
- Not to have been sentenced for a crime committed intentionally.
- Successfully completed the studies for mediation and passed the written and practical exam of the Ministry of Justice.

The Mediator's Registry includes all contact and personal details of mediators, such as their name, surname, profession, work address and academic title.

The academic teaching for mediation candidates is provided by law faculties, the Turkish Bar Association and the Academy of Justice, with the permission of the Ministry of Justice.

Mediators should participate in refresher courses once every three years (*Article 32/6, Regulation of Mediation in Civil Disputes Code*). The refresher course must last for at least eight hours. If a mediator does not participate in at least eleven-twelfths of the required course without any reasonable excuse, the mediator will be prevented from completing the curriculum.

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