

# PROJECT ON DEVELOPING MEDIATION PRACTICES IN CIVIL DISPUTES IN TURKEY

ENDLINE RESEARCH/SURVEY REPORT

6/12/2017



***This project is co-funded by the Swedish International Development Cooperation Agency and the Republic of Turkey, and implemented by the Council of Europe.***

## Document Check

### Project Data

<b>Title</b>	Project on Developing Mediation Practices in Civil Disputes in Turkey
<b>Contract Number</b>	
<b>Beneficiary</b>	Council of Europe – Ministry of Justice, Mediation Department
<b>Consortium Partners</b>	Tandans Veri Bilim Danışmanlık A.Ş.

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### Document Status

<b>Date Delivered</b>	6/12/2017	
<b>Version</b>	V2.0	
<b>Status</b>	Draft	X
	Pending Approval	
	Approved	

### Document Revision Date

Version	Date	Originator	Version Description
V0.0	10/04/2017	Oğuz Önel	First draft
v1.0	10/05/2017	Dilan Oran	First draft
V1.1	30/05/2017	Gülper Kırac	First draft
V2.0	31/05/2017	Oğuzhan Akyıldırım	Delivered draft
V2.0	09/06/2017	Özlem Demirel	Comments
V2.1	11/07/2017	Jeremy Tagg	Comments
V2.2	13/07/2017	Zeynep Güllü	Comments
V2.3	24/07/2017	Jeremy Tagg/ Özlem Demirel	Comments
V3.1	07/08/2017	Oğuzhan Akyıldırım/Jeremy Tagg	Delivered draft Final/Comments
V4.1	14/08/2017	Oguzhan Akyildirim	Delivered Final

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## List of Abbreviations

ARAS	Mediator Assignment System
BS	Baseline Survey
CEPEJ	European Commission for the Efficiency of Justice
CoE	Council of Europe
ES	Endline Survey
İSTESOB	Union of Chambers of Craft and Trade Professionals of Istanbul
MoJ	The Ministry of Justice
SIDA	Swedish International Development Cooperation Agency
TESK	Confederation of Craft and Trade Professionals of Turkey
TOBB	Union of Chambers and Commodity Exchanges of Turkey
UYAP	National Judicial Informatics Network

## EXECUTIVE SUMMARY

The endline research presented in this report was conducted within the scope of the Project on “Developing Mediation Practices in Civil Disputes in Turkey”, co-funded by the Swedish International Development Cooperation Agency (SIDA), and the Republic of Turkey, and implemented by the Council of Europe. The Project started in December 2014, and is planned for completion on September 2017. The main beneficiary of the Project is the Ministry of Justice of the Republic of Turkey.

There are 4 specific objectives of the Project: (i) to support building a legislative environment that will ensure an effective implementation of mediation in civil disputes in Turkey; (ii) to develop a practical model suitable for Turkey based on effective mediation pilot practices for civil disputes; (iii) to strengthen the institutional and CEPEJ-compliant training capacity, its implementation by authorized institutions, and its nationwide use; and (iv) to raise awareness on the mediation, its practice, advantages and legal effects in civil disputes amongst judges, lawyers, civil society and members of the public.

The purpose of this research is to collect information about the current situation in Turkey on mediation practices, stakeholders and people's awareness of mediation practices, as well as their perspectives and expectations.

In order to design a format, which allows for comparisons, the same tools used for assessing the results of the baseline research and other project activities were employed in the online questionnaire prepared for the endline research. The forms were jointly developed and coordinated with experts from the Council of Europe and the Ministry of Justice. Focus group meetings and in-depth interviews were held with several stakeholders with a view to verify and reinforce the quantitative data obtained and to ensure completeness.

Since the inception of the project in 2014, significant change is attained in the visibility, promotion and adoption of mediation practices by the Turkish society. These changes are clearly presented in this research. As a project outcome, information on the success of mediation in mediation pilots is collected by the Ministry of Justice (MoJ). According to the statistics from the Department of Mediation, currently there are 107 active mediation bureaus. However, statistical data demonstrates that between January and May 2017, there are 14 final session minutes drawn per bureau on average per month. The increase in mediation practices also increases the number of applications per mediator. The number of cases per registered mediator increased from 0.51 in the baseline to 2.3 in the endline. Especially, higher rate in mediation practices per mediator in pilot provinces shows that the model for implementing mediation in civil law disputes has been successfully piloted in selected courts and it is ready for wider adoption and dissemination. Of all the pilot jurisdictions, Bursa and Izmir have the largest number mediation practices per mediator. It is observed that these jurisdictions owe their relatively higher success to the active functioning of mediation and allocation bureaus and their strong communication.

Referral of the parties to mediation is quite an important factor in terms of visibility and applicability. Referrals from the front office and allocation bureaus can be very effective in this regard. In order to make the referrals from the front office and the allocation bureaus more effective and frequent, it should be ensured that the staff in these bureaus receive proper training and have sound knowledge about mediation. However, an important obstacle to referrals is the workload especially in larger provinces. Additionally, the referrals by judges and lawyers appear to remain quite low for various reasons.

The need to attach importance to the quality rather than quantity of mediation practices especially in the initial stages is often raised as an issue in the interviews. How diligently mediators ensure to keep mediation as a core occupation is one of the important factors in increasing the number and reliability of mediation practices. However, this is strongly challenged due to the financial income concerns of the mediators.

The awareness levels of court users about mediation have increased compared to the baseline survey. The reason for this increase is primarily TV spots, followed by lawyers or legal counsel, and thirdly brochures and posters. This situation also varies from city to city. This proves the Turkish society as a whole is informed on mediation practices, their scope and advantages. Unfortunately, the increased visibility of mediation does not necessarily mean that people have sufficient knowledge in the matter.

In particular during in-depth interviews, judges expressed that in an environment where confidence in the legal system is diminishing, confidence in the mediator may be questionable, and thus overshadow the effectiveness of the practices. However, the confidence of the judiciary in the mediation referral process is slightly increased since baseline survey conducted in 2015. The group that has the most positive opinions about the effectiveness of mediation is the trainers. Almost four out of five court users have positive opinions about the effectiveness of mediation. The members of the judiciary and professional organisations often mention the importance of building confidence. The mediators themselves also think that the confidence in the practice is low. Despite a slight increase between baseline and endline surveys, this group has not yet built a full confidence in the mediation system. Ten percent of mediators had negative opinions in the baseline research but this number doubled in the endline. The reasons for this may include the failure to meet the financial expectations of the mediators, and delays in the enforcement of the legislation for mandatory mediation. The difference in the opinions of the trainers and lawyers may be interpreted to mean that mediation is rather useful in theory, but new practices have not yet created the expected impact. Emphasising the enforceability of the settlement agreement concluded at the end of the mediation in the communications with all court users and professional organisations appears as the most relevant factor for enhancing its effectiveness.

In the baseline survey, only 29% of court users thought that mediation practices would deliver more positive outcomes than courts, however presently this rate has exceeded 52%.

90% of legal professionals, who had negative opinions about mediation changed their views after the training. Yet, although the content of the training has been improved to a more satisfactory level, it is still inadequate. In this regard, it seems vital to standardise the training and eliminate its deficiencies. Besides, there are challenges caused by the failure to assess achievement levels in the examinations accurately enough, which may potentially compromise the effectiveness of practices.

For mediation to be a truly effective means of dispute resolution, it would be good to see it used across a wide range of disputes. Yet, to date, 91% of all mediations have been in employer-employee disputes.” Nevertheless, court users think that mediation can be practiced in many areas, and agree that it is not a waste of time. Particularly, members of professional organisations and court users have become more aware that mediation costs less than court proceedings. Judges think that their workload will be reduced once mediation becomes mandatory for labour, consumer and trade disputes.

Diverse views were expressed on the professionalization of the mediator profession, and which professions can practice it. The Mediation Department states that they have made it a profession by introducing identification cards for mediators and signage for their practices. 80% of mediators think that mediation is a distinct profession. However, there is still a dilemma in this regard. As demonstrated in the baseline survey, 13% of registered mediators indicated that they were not entirely sure, but in the endline survey 84% indicated that they wanted to practice mediation permanently. One in three registered mediators describe themselves as attorneys, the other one in three as a mediators, and last one in three are completely indecisive.

The effectiveness and efficiency of the practice seems to depend significantly on the creation of a perception for the mediator profession. The mediator is defined as a symbol of impartiality, whereas the function of the attorney is to defend rights with a view to prevent or reduce any loss, thus, it is emphasized that not only do

these two terms appear contradictory but also they are separated by a thick line. Therefore, it is important to form an image for the occupation.

Even though the views on the profession of the mediation are diverse, both quantitative and qualitative data indicate that mediators must be graduates of the Law Faculties. However, especially trainers and professional organisations think that non-lawyers not only can but must practice mediation. Members of professional organisations agree that knowledge about the law may not be sufficient to mediate in disputes of a commercial nature since these cases involve technicalities, which require knowledge of the specific terminology and subject matter. Both sides with differing viewpoints agree that the mediator should consult an expert in the relevant field.

Mandatory mediation is often well received and welcomed by lawyers and mediators for many reasons. But, the inadequacy of existing mediation bureaux stands as a cause for concern. It is suggested that regulation to the disadvantage of the employees is being introduced particularly in labour law. Underlining that the employer and the employee are not on an equal footing, it was also emphasized that it would be more reasonable to bring this rule to disputes where the parties are more equal, such as commercial disputes. Evidently, increased effectiveness of mediation practice and adoption of this profession depend on the introduction of mandatory mediation.

Significant progress was achieved since the Baseline Research/Survey (BS) in 2015 within the Mediation Department, the cockpit of mediation in Turkey. Significant yet incomplete progress was made including increasing the number of mediation bureaux from 6 to 107 in 46 provinces; ensuring a functional mediation document management system, and drafting the mandatory mediation legislation. Yet, the system may be jeopardised due to keeping the number of staff in the Mediation Department at almost a constant, and failing to provide adequate additional training to improve their quality.

# 1. INTRODUCTION

## 1.1 BACKGROUND

The Project on “Developing Mediation Practices in Civil Disputes in Turkey” is implemented by the Council of Europe between December 2014 and September 2017. The main beneficiary of the Project is the Ministry of Justice of the Republic of Turkey. There are 4 specific objectives of the Project:

- to support building a legislative environment that will ensure an effective implementation of mediation in civil disputes in Turkey;
- to develop a practical model suitable for Turkey based on effective mediation pilot practices for civil disputes;
- to strengthen the institutional and CEPEJ-compliant training capacity, its implementation by authorized institutions, and its nationwide use;
- to raise awareness on the mediation, its practice, advantages and legal effects in civil disputes amongst judges, lawyers, civil society and members of the public.

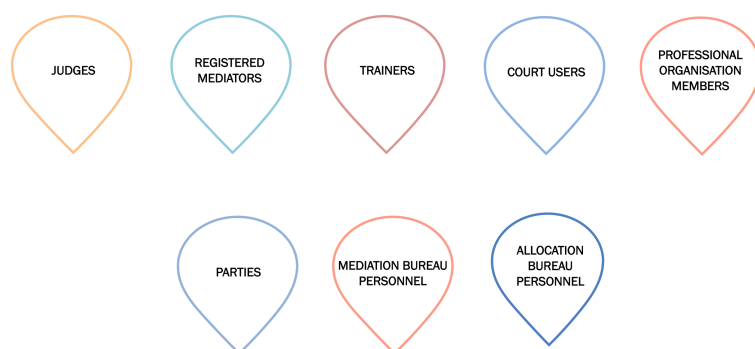
Two research surveys were held as part of the Project on Developing Mediation Practices in Civil Disputes in Turkey using a variety of methods: a baseline survey to collect initial data, and an endline survey to assess the effectiveness of project activities. The Baseline Research/Survey (BS) was performed between July and December 2015 to collect reference data. The basic objective of the Endline Research/Survey (ES), which is performed at the final stages of the Project and presented in this report, is to assess the current state of the Project prior to its conclusion, and to compare progress against the baseline. The overall objective of the research is to collect information on the current situation in mediation practices in Turkey, respective attitudes of the target groups in pilot cities (Ankara, Istanbul, Bursa, Izmir, Kayseri, Mersin) to mediation, and to determine the awareness, perspective and expectations of the stakeholders and the public regarding mediation practices. It is expected that the Endline Research/Survey also helps assess the contribution of project activities based on a comparison with Baseline Research/Survey (BS) data. The ES will measure the progress indicators of the project and its effect on mediation services, and serve as a guide in future efforts for mediation practices.

The surveys used for different target groups in the ES were prepared with the close cooperation of experts from the Council of Europe. Structured and semi-structured questionnaires were carefully designed to both measure the change in the data collected during the baseline study conducted online between July and November 2015, and to assess the impact of other project activities. The surveys, being online, were kept concise and focused on the intended measurements. The ES was launched in January 2017. The application was available for four months and taken offline in April.

The target groups of the research were registered mediators, judges and court personnel, parties who reached a settlement by mediation, trainers and academics providing education in mediation practice centres, selected members of professional organisations, court users, a small number of mediation parties, and Mediation Department personnel in six pilot cities (Ankara, Bursa, Izmir, Istanbul, Kayseri and Mersin).

## 1.2 PURPOSE AND CONTENT OF THE REPORT

### TARGET GROUPS



As explained in the project document, the endline research compiles the opinions of eight target groups including mediation parties regarding mediation practices. The purpose of this report is to present ERS data as well as to measure how perception has changed since the beginning of the project. Online and face-to-face questionnaires, in-depth interviews and focus group meetings were organised during the ES to collect data from target groups for determining,

analyzing and reporting on the current conditions and circumstances. This report contains conclusions from collected data, and their comparison to the conclusions obtained from the BS.

The information collected in the ES will contribute to the continuous improvement of the approaches to mediation practices after the conclusion of the project.

## 1.3 METHOD

The endline research is designed to track and capture change over the course of the project. Measurement tools are designed to both compare to the results of the baseline study and to measure the gains from other project activities.

*Figure 1 – Endline Survey*



## Mixed Survey Patterns

It is defined as hybrid method designs that include at least one quantitative method (those designed to integrate numbers) and a qualitative method (those designed to synthesize words), and no methods are inherently bound to any research paradigm.

The reference data collection process, which was initiated in July 2015 with mixed interlinked survey patterns, was concluded in 2017 with an end line research that also employed mixed survey patterns. The quantitative aspect of the ERS was supported with face-to-face and online surveys, while the qualitative aspect was supported with in-depth interviews and focus group meetings.

The results from the end line research were compared to the findings from the baseline study. Further comparisons were made by means of either comparing or supporting data collected by quantitative methods with data collected by qualitative methods.

## 1.4 CONFIDENTIALITY AND RESEARCH ETHICS

This research was designed exclusively for the Council of Europe, and the sole discretion in the use of its findings belongs to the Ministry of Justice Mediation Department and Council of Europe. TANDANS Veri Bilim Danışmanlığı adheres to CONFIDENTIALITY REQUIREMENTS established by national and international professional organisations (ISO 20252). Therefore, the findings of the baseline and endline surveys shall not be shared with third parties other than the managers and consultants responsible for the studies.

Once data collection is completed for the follow-up, all electronic transfers between the Data Collection Team and the Council of Europe (CoE) and the Ministry of Justice (MoJ) Mediation Department personnel responsible for data collection will be deleted and verified with reports. Information and documents obtained in all phases of the study shall be kept confidential and shall not be disclosed to third parties.

The approach to data collection followed human rights based and results-based management strategies that were appropriately integrated into the project. The study was conducted with respect for the regional customs, religious faith and practices, rules of interpersonal interaction, and ethical values that may vary according to gender, disability, age and ethnicity. Disclosures were made as required, all participants were asked for consent and necessary measures were taken for the protection of confidentiality.

All researchers and consultants involved in this study exercise maximum caution in "sensitivity to faith, privacy, modes of conduct and customs, and acting with integrity in engaging with all target groups included in the study," "respectful communication with individuals" and "protecting the confidentiality of names and personal information".



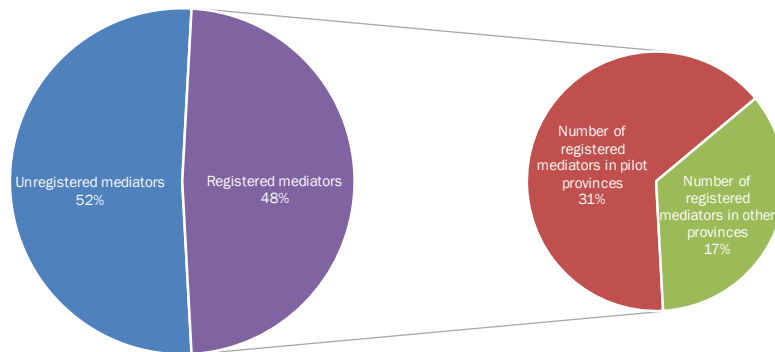
## 2. ANALYSIS SECTION

This section primarily discusses the available official mediation<sup>1</sup> statistics. The Mediation Department achieved progress in collecting and publishing statistics compared to 2015, despite some deficiencies. The number of statistical charts published has increased. As shown in the figure on the right, there are map-based statistics in the official website of the Mediation Department. Statistics may be presented by outcome, city and subject. Number of registered mediators, number of cases per mediator, and statistics kept by Mediation Bureaus are also discussed in this section. Subsequent sections discuss the data compiled from target groups with seven online questionnaires, information from face-to-face interviews, and data obtained from court users. During the course of these discussions, comparisons are made with 2015 results and details are provided for data obtained by qualitative survey methods.

### 2.1 CURRENT STATUS

There is an increase in the number of mediators as principal practitioners of mediation. Not all candidates who qualify in the examination register as mediators. As shown in the figure 2 below, only half of the candidates who pass the examination register as mediators and two third of registered mediators are in pilot provinces.

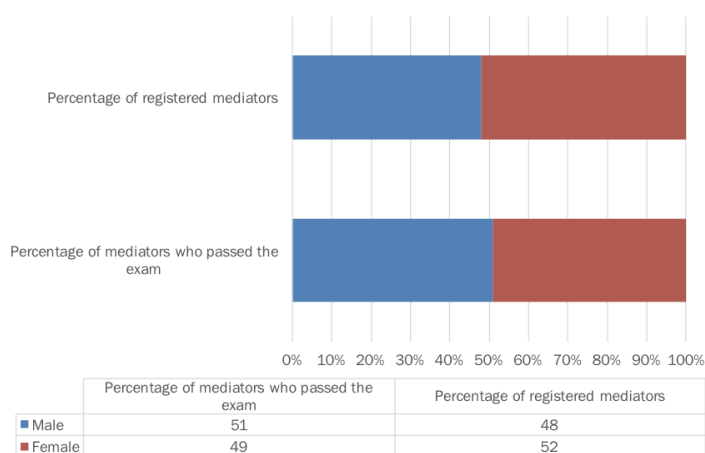
Figure 2 – Number of Mediators by Province



<sup>1</sup> <http://www.adb.adalet.gov.tr/Sayfalar/istatistikler/harita/toplamresim/toplam%20arabulucu.jpg>

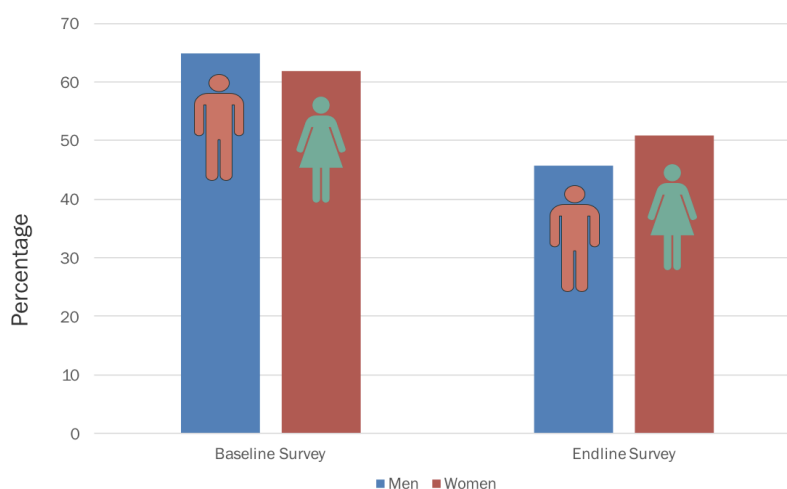
According to the latest statistics published by the Mediation Department, 13450 mediators have qualified in the exam so far. The numbers of men and women are almost equal to each other. However, only 6493 mediators or 48.3% of total candidates were registered. There has been a reduction in the rate which was 63% during the BS, basically because mediators state that they do not consider mediation as an alternative occupation yet, and they are expecting the enforcement of mandatory mediation law. Individuals, who have not registered despite having obtained the qualifications, state that they had taken the exam to acquire an entitlement, which might help down the road.

*Figure 3 – Number of Registered Mediators by Gender (%)*



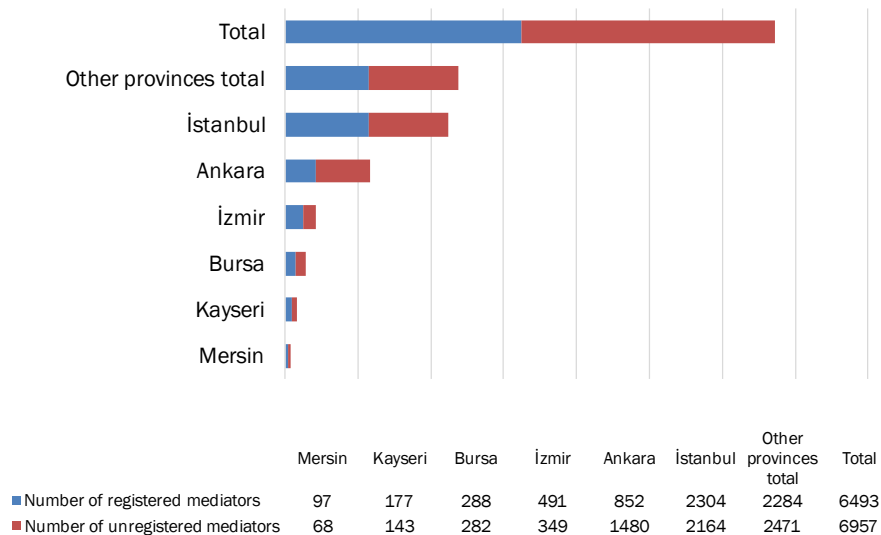
The figure 3 above and figure 4 below shows percentages of mediators who passed the examination and percentage of registered mediators by gender. Although rates are almost equally likely, females are more committed to be registered by the rate of 52%. In contrast to the BS, women have a slightly higher rate of registration than men during the period of ES. It shows that the desire and demand for registration in males decreased more than in females. During ES, the registered male and female mediators are 46% and 51% respectively, while these were 65% and 62% respectively in BS. The decrease in males is almost one-fourth in males and one-sixth in females.

*Figure 4 – Number of Registered Mediators by Gender (%)*



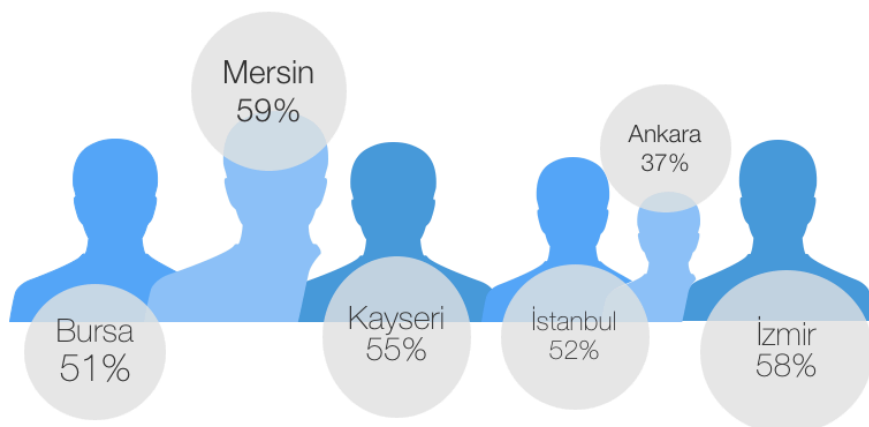
The figure 5 below shows number of mediators by pilot and the other provinces. One-third of the mediators who passed the examination are in Istanbul, while another one-third are in the other provinces not included in the project as a pilot provinces. The half of the remaining one third of the mediators are in Ankara and only the remaining half are in the other 4 pilot provinces. As mentioned less than half of the mediators who passed the examination has registered themselves as mediators.

Figure 5 – Number of Mediators by Province



The figure 6 below indicates registration rates by city. Among the pilot cities, Mersin has the highest registration rate while Ankara has the lowest. The rate of registration in non-pilot cities is same as the ratio of Turkey (48%). The low rate in Ankara proves that the civil servants passed the mediation examination has not registered themselves as a mediator. In addition, according to mediation association and trainers, the failure of the mediators to register themselves is associated with "Mediators not fully grasping the concept of mediation yet." Having 6493 registered mediators is viewed as a handicap for transition to mandatory mediation. The main reason for not registering as mediator is "the mediator's lack of faith in making money as a mediator."

Figure 6 – Registration Rate by Province (%)



However, the main reason for not registering themselves as mediators is not only they do not find the mediation as a valid profession or an alternative occupation for today or the job not making enough money, but also according to mediation department because almost one-third of the unregistered mediators who were successful at the exam are still civil servants.

It is mentioned that mediators, if they put in the effort, may help increase the number of mediation practices, which will in turn drive the process, and help the system perform better. It is expected that some 400,000 cases might be introduced to the mediation system once mandatory mediation enters into force. Besides, once the precondition is introduced, all of these mediators must work with diligence and refrain from causing any harm to the mediation system.

As shown in below table as the number of mediation practices increases, so does the number of practices per registered mediator. It can also be statistically said that the number of mediations has increased in pilot provinces by more than 14 times.

*Figure 7 – Number of registered mediators, number of mediation practices and mediation practices by registered mediators*

	Number of registered mediators	Number of mediation practices	Number of mediation practices per mediators
<b>Bursa</b>	288	1762	6.1
<b>İzmir</b>	491	2661	5.4
<b>Ankara</b>	852	2644	3.1
<b>İstanbul</b>	2304	5965	2.6
<b>Total</b>	6493	15045	2.3
<b>Mersin</b>	97	187	1.9
<b>Kayseri</b>	177	251	1.4
<b>Other provinces total</b>	2284	1575	0.7

As show in figure 7 above, Istanbul has the highest number of mediation practices with the ratio of 40% of all mediation practices. Although the top two cities in number of cases per mediator did not change since BS, the fact that the rate increased by 6.7 times in Izmir alone indicates considerable progress in this city. It must be underlined that the Mediation Commission formed by the Bar Association in Izmir accounts for much of the progress. The Izmir Mediation Bureau continues work at a rapid pace. In Ankara, the number of mediations per mediator increased by more than 10-fold since the baseline research in 2015. This makes Ankara third among pilot cities. Except for Kayseri, all pilot cities are above the Turkish national average (2.3) in terms of mediation cases per mediator. Mediation practices per registered mediator is 0.7 in provinces other than pilot provinces. This rate also shows the success of the project as this indicator for pilot provinces (3.2) is 4.5 times bigger than that in the other provinces.

Figure 8 – Rate of mediation practices by pilot provinces (%)

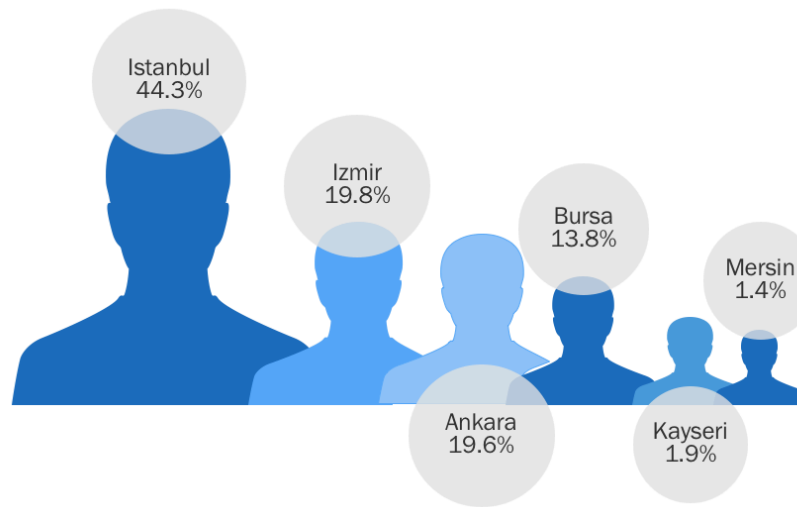
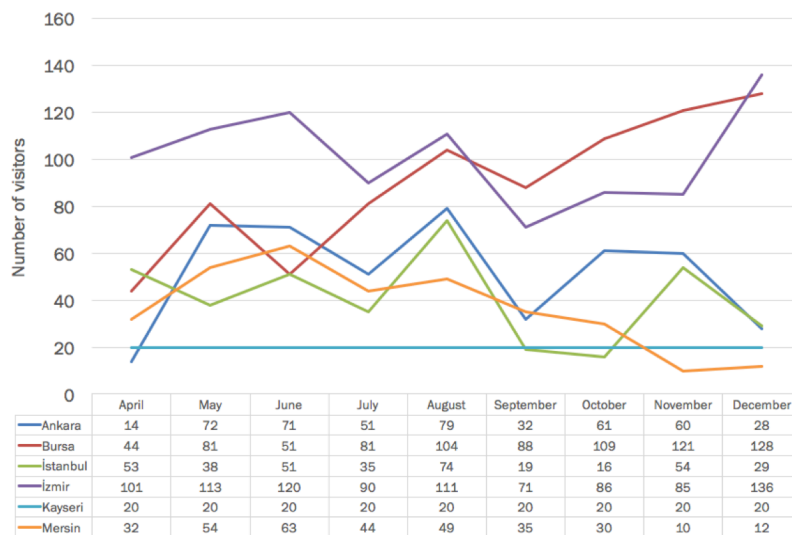


Figure 8 above shows rate of mediation practices by pilot provinces within total of mediations practised in those provinces. Istanbul has the highest number of registered mediators with 44.3%. Izmir and Ankara has almost two-fifth of the mediation practices. Remaining one-sixth of the total mediation cases practised in Bursa, Izmir and Kayseri

Figure 9 – Monthly Visits to Mediation Bureaus by Province (April - December 2016)

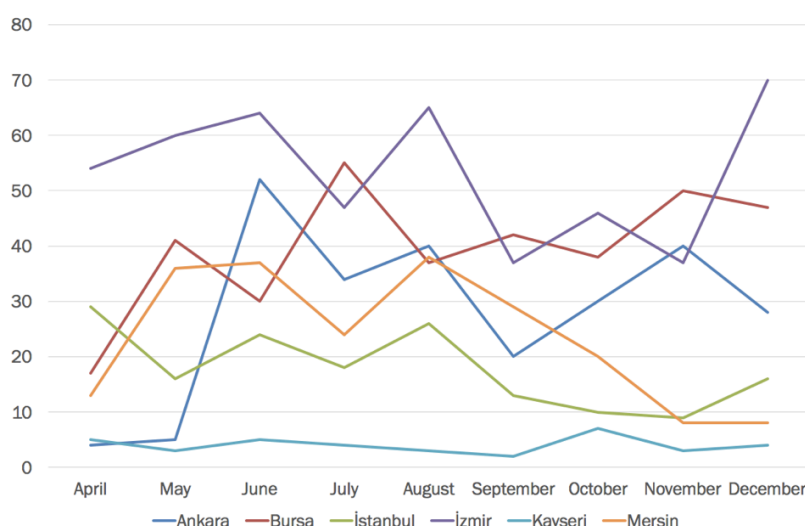


The table above contains the number of visitors per month according to the statistics submitted by mediation bureau personnel in pilot cities. Some of these numbers are generated by the statistics kept personally by the personnel, while others are observation-based. It must be kept in mind that these figures are local.

Another important issue is that these figures show court referred mediation practices, while the vast majority of mediations carried out are out-of-court mediations. For example, it is observed that the higher activity levels in Bursa and Izmir mediation bureaus played a role in the relatively higher number of practices in these cities.

The lack of a formal appointment in Kayseri and the periodical closure of the Istanbul bureau due to the medical condition of the bureau officer had an influence on the statistics.

*Figure 10 – Number of Applications to Mediation Bureaus by Province (April - December 2016)*



The majority of bureau visitors are citizens except in Bursa, where the numbers of citizens and mediation parties are almost equal. In all other bureaus, approximately 90% of visitors are citizens/parties themselves and 10% are attorneys representing the parties. Particularly in Izmir, it is indicated that visitors are referred by front offices or allocation bureaus. The referral rate of the front office or allocation bureau in Istanbul is 14% compared to 8% in Bursa. Referral by judges is only mentioned for Istanbul and Izmir, and the rate is around 4%. These results also support the mediation practices are more effective out of court.

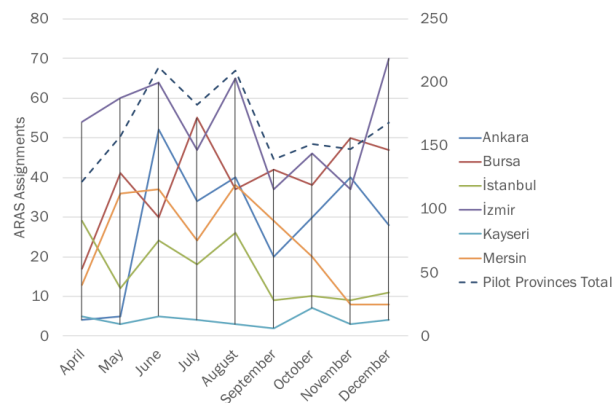
The figure 10 above shows the application rate of visitors. Izmir, Bursa and Ankara respectively have the three highest rates of visitors making an application. This suggests that when mediation bureaus work regularly and coordinate with front offices or allocation bureaus, they play a significant role in increasing number of practices.

The statistics from the Department of Mediation indicate that currently there are 107 active mediation bureaus. However, according to the same statistical data, as far as monthly average number of practices are concerned, only 14 final session minutes are generated per bureau per month on average between January and May 2017. The majority of these minutes were generated in pilot cities. Sizable in terms of their population, six pilot cities account for 38% of Turkey's population. Besides, the fact that 90% of all practices were held in pilot cities constitutes proof for the success of the project. These rates are expected to increase once the problems with bureaus are addressed, and mandatory mediation is introduced to the satisfaction of all target groups. However, as stated by a stakeholder in an interview, quality matters more than quantity.

As it is shown in figure 11 below, the number of mediators assigned by ARAS Mediation Portal in pilot cities increased by 38% between April and December 2016<sup>2</sup>. In this regard, it can be said that project indicator for expected result 2 was achieved. By the end of the Project, the number of civil disputes settled by mediation through judicial referral is increased by at least 10% in pilot courts compared to the baseline and data collected by the ARAS/UYAP Systems.)

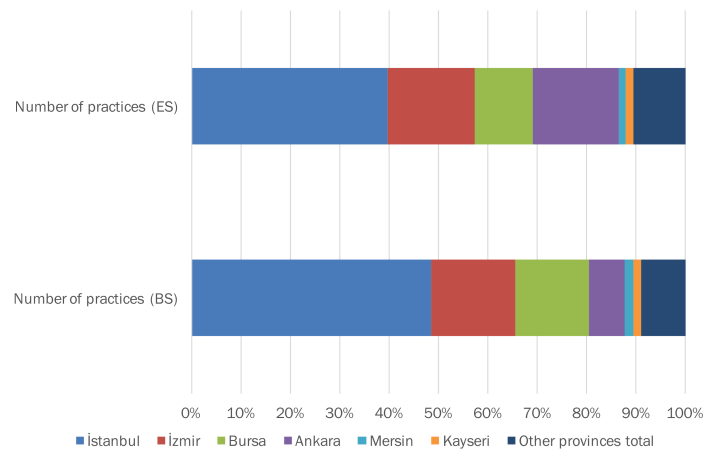
<sup>2</sup> ARAS system was replaced with UYAP in early 2017.

Figure 11 – Number of Mediators Assigned by ARAS by City (April - December 2016)



This increase was achieved despite a significant decline in Mersin and İstanbul as of August 2016 due to the judicial break period. The decline in İstanbul may be associated with the reduced effectiveness of the mediation bureau as well as the allocation bureau's inability to handle the referral workload or judicial break period. However, personnel in the allocation bureau in İstanbul stated that the time they spent to refer citizens to mediation solutions prevented them from doing their core work, so they stopped referral activities. The largest obstacle to implementation is the time spent for referrals: at three minutes per person for 700 to 750 applications daily, the total amounts to 2200 minutes (36 hours) or 4 man days. Besides, most of the applications are not submitted directly by citizens but by their counsels, who are still reluctant about the system; and this fact may also constitute an additional factor.

Figure 12 – Number of Mediation Practices by Province (2015 – 2017)



During the Endline Survey phase, there has been some change to the distribution obtained in the baseline research due to the increase in the number of final session minutes in Ankara. It is worth noting that while the number of minutes increased in pilot cities, they declined in non-pilot cities. This may be viewed as the positive effect of project activities. Period the two bars cover is from the beginning of the mediation system until the surveys conducted. In other words, the number of cases come from 2014 and 2015 for baseline survey and from 2014 till May, 2017 for endline survey. As it is shown in the figure 12 above, increase in mediation practices in Ankara is obvious.

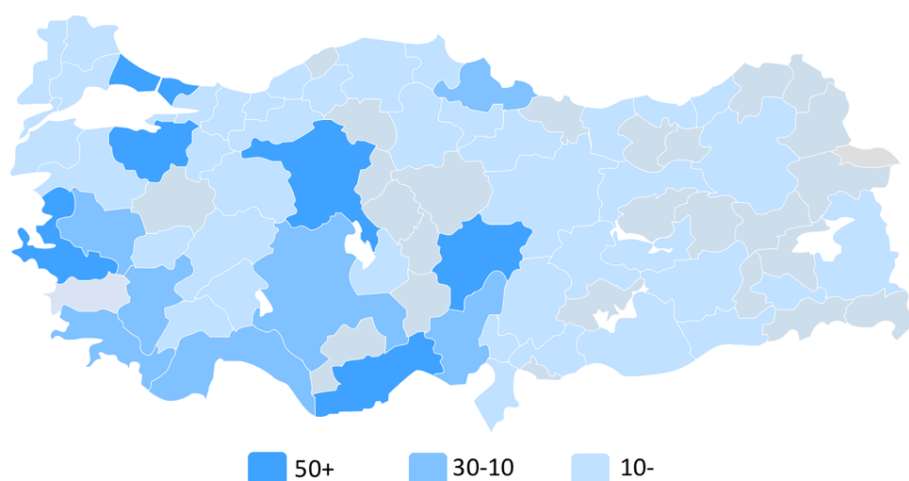
## 2.2 ENDLINE RESEARCH/SURVEY

As indicated in the Introduction section, the Endline Survey (ES) was conducted on 8 target groups between January and April 2017. Participants were 23 judges from 6 pilot cities, 1005 registered mediators from 53 cities, 54 trainers, 40 members of professional organizations, 213 court users in 6 pilot cities, 6 Pilot City Mediation Bureau personnel, 6 Allocation Bureau employees and 11 parties. However, the results for parties are not presented in the report due to lack of representability.



51% of the participants were men and 49% women. Furthermore, 13 in-depth interviews were held with professional organisations, bar associations and Ministry employees, and five focus group meetings were held with judges, mediators, trainers, and bureau and Mediation Department employees.

*Figure 13 – Participation by Provinces*



1005 mediators in 53 cities completed the Registered Mediators Survey, which is the largest section of the endline research. Participation in the online survey was higher for mediators in pilot cities compared to non-pilot cities. The main reason is the greater number of mediators in pilot cities. However, the participation in the survey qualifies as sufficient for the results to be representative of Turkey.

Almost all judges responded to the questionnaire sent by mail. All Mediation and Allocation Bureau employees also responded. Although the number of trainers responding to the survey was lower than the baseline survey, this was due to the revision in training practices, and the reduction in the number of training providers, so an

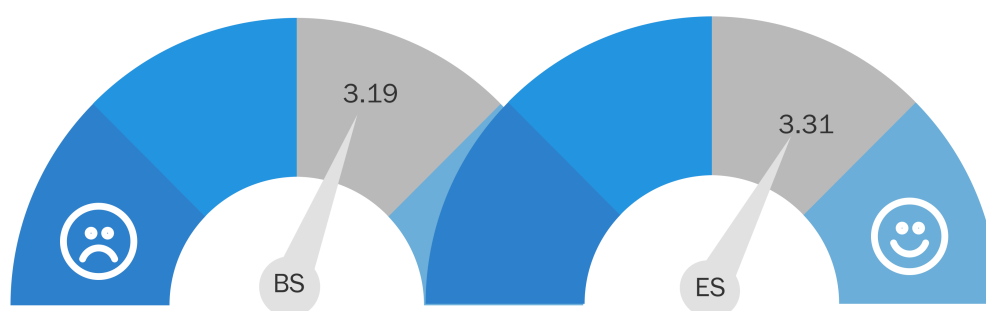


adequate number of respondents was reached. Face-to-face meetings were held with court users in pilot cities. Although the number of responses to the online survey by professional organisation members remained low, general trends were derived from in-depth interviews held with officials from Chambers of Crafts and Trades, and Chambers of Commerce in three pilot cities.

### 2.2.1 AWARENESS OF MEDIATION PRACTICES

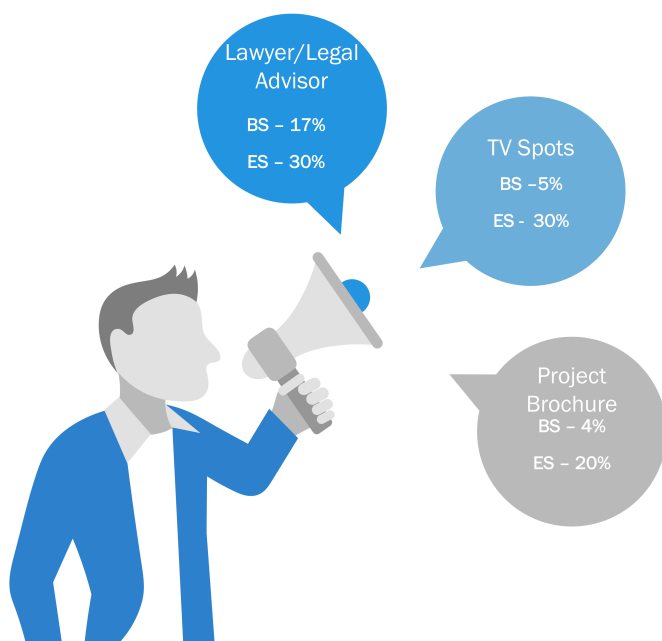
All target groups were asked about their awareness of mediation practices. However, the ultimate beneficiaries of practices are naturally court users.

Figure 14 – Court Users' Level of Knowledge on Mediation Practices (out of 5)



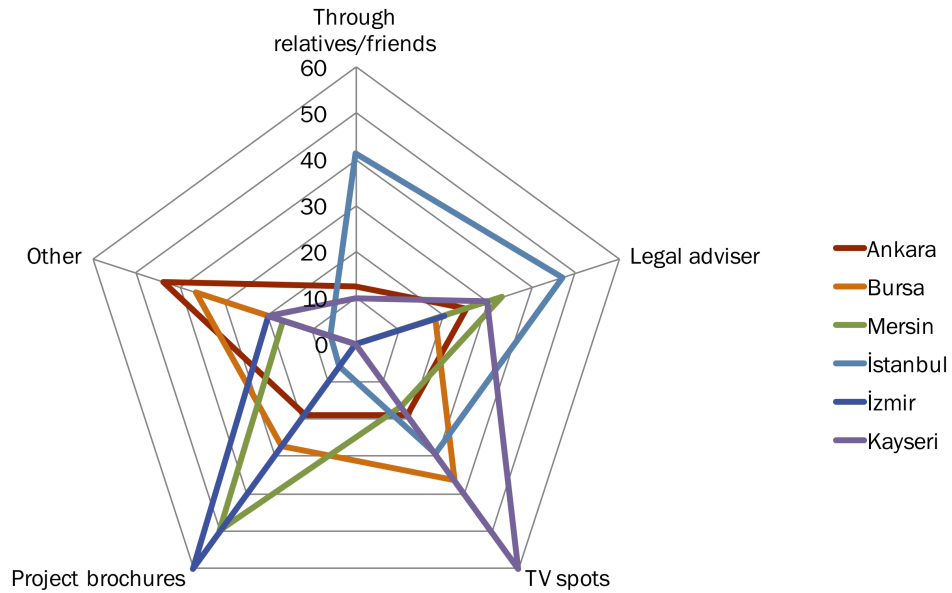
As seen in Figure 14 above, court users' level of knowledge on mediation practices<sup>3</sup> increased from 3.19 to 3.31 compared to baseline, albeit slightly. The largest shift in the scale is due to the progress observed in the level of knowledge of court users, which has improved above the average.

Among the tools that helped to advance level of knowledge, TV spots take the lead. Television, which was mentioned by 5% of court users in the baseline survey, because of a series they were watching, has proven itself as an effective medium for public information once again. Another leading source of knowledge is the attorneys or the legal counsels. As the practice gains widespread adoption and attorneys are better informed, they are likely to become one of the primary sources. Participants named project brochures and posters as the third source of information. These are followed by the internet, and family/friends. According to the comparative data it can be said that statistically here, for “TV Spots” and “Project Brochure” helped to increase public awareness more than 50%.



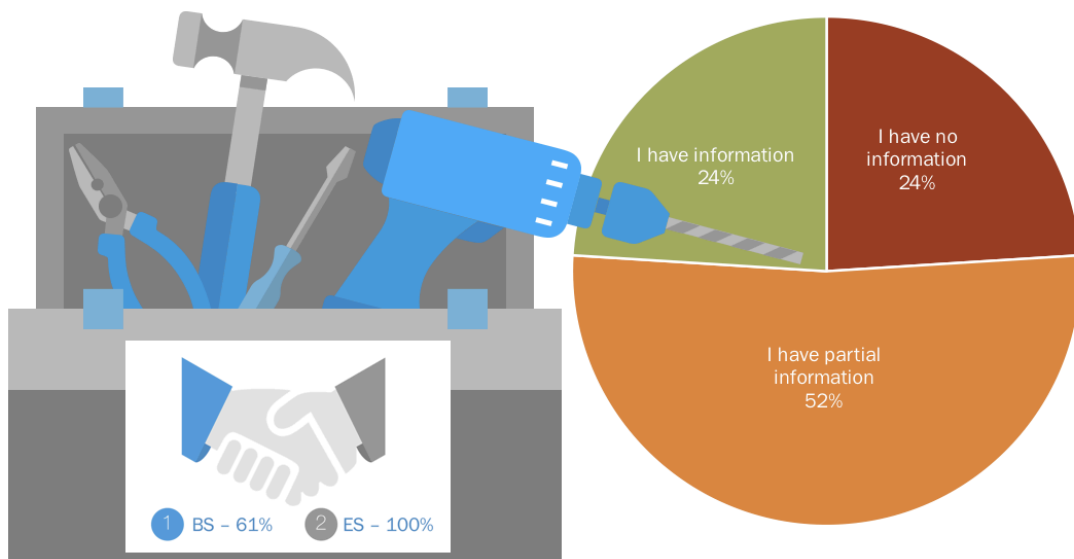
<sup>3</sup> The calculation of this value was based on the values on the scale for each question. It was asked as a Likert scale question from 1 to 5. “1= I definitely have no knowledge of mediation, 5 = I definitely have knowledge”. Then as a basic indicator, the average was calculated in both surveys to compare results with BS results.

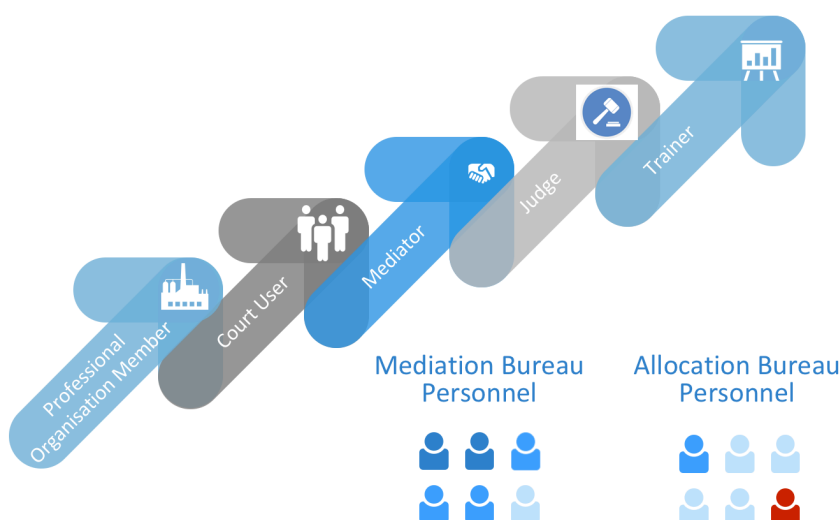
Figure 15 – Court Users' Source of Knowledge on Mediation Practices by Province (%)



According to the results of the endline survey, court users' source of information varies by city. For example, court users in İstanbul receive information mostly from legal counsel, friends and TV spots, while users in Bursa and Kayseri mention TV spots and legal counsel, and users in İzmir get their information on mediation mainly from project brochures.

Figure 16 – Professional Organisation Members' Level of Knowledge on Mediation Practices





All TOBB (Union of Chambers and Commodity Exchanges of Turkey) and TESK (Confederation of Turkish Tradesmen and Craftsmen) members responding to the online survey stated that they had heard of mediation practices. However, only one quarter of TESK and TOBB members stated that they had knowledge about these practices. More than half of TESK and TOBB members said that they had gained knowledge through the TV

spot, which is a key reason why they are only partially knowledgeable. The short public service announcement is noticed by the target audience, but can only provide superficial information. 30% of professional organisation members stated that they were informed by their chamber. Other sources of knowledge were leaflets, handbooks, legal counsel or attorneys. Compared to the baseline survey, respondents from all groups stated that their level of knowledge about mediation practices had improved. 96% of judges, 94% of mediators, 79% of court users and 76% of professional organisation members stated that they had knowledge about mediation practices, although partial. One-sixth of mediation bureau personnel felt weak regarding their level of knowledge, while all allocation bureau employees described their level of knowledge as weak, and one even stated that he had no knowledge at all. However, just after the mediation bureau staff and allocation bureau staff had given their views, they received two days of effective training on mediation in February 2017 by the Project. It is assumed that this training helped them to improve their knowledge.

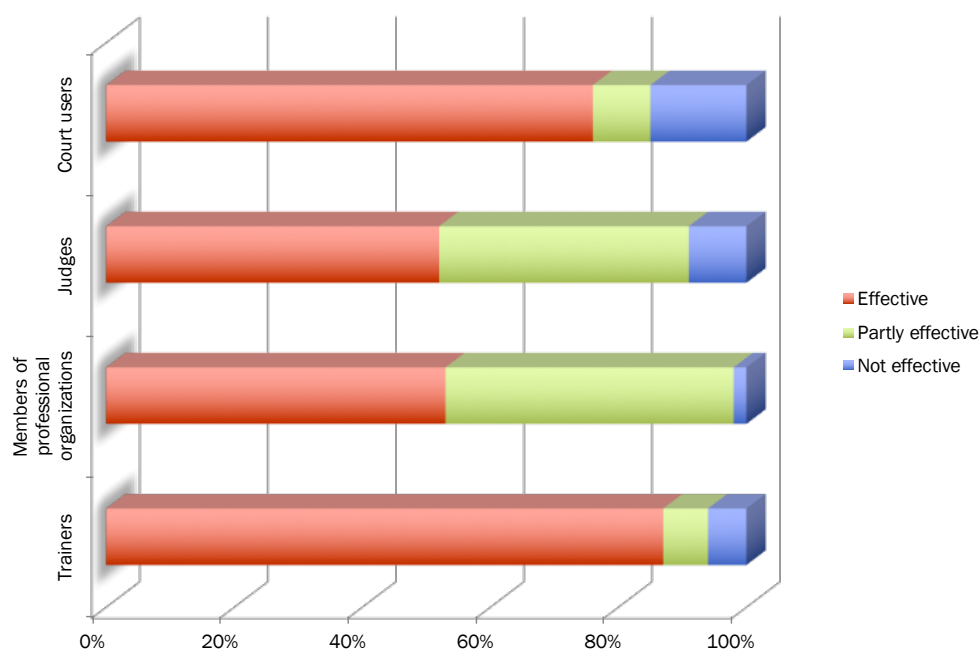
Court employees are one of the key factors in improving the level of awareness and popularity of mediation practices. During meetings, the majority of court users said that they had heard about the practice, but none had profound knowledge about mediation. A person who seeks to file a lawsuit must be introduced to mediation before the trial process begins and court fees are paid. Currently, citizens entering a courthouse go to the information desk for directions, and the information clerk, who does not have knowledge about mediation, refers the citizens to the relevant courts.

## 2.2.2 EFFECTIVENESS OF MEDIATION PRACTICES

Although different variables are used to assess the effectiveness of mediation practices, when asked directly, trainers have the most positive impression of effectiveness. Nine out of ten trainers consider practices to be effective. Four out of five court users agree that practices can be effective. Although judges and members of professional organisations are in agreement about effectiveness, they responded by indicating some reserve. In the in-depth interviews judges particularly expressed that confidence in the mediator may be questionable in an environment where confidence in the legal system is diminishing, which may eventually overshadow the effectiveness of the practices. Also, it is stated that the quality of mediation training is low; and the exams that follow the training fail to measure the success of candidate mediators, which may undermine the effectiveness of mediation activities. However, at the trainer focus group meeting, the trainers made good news about the introduction of the clear, adequate, standardised and CEPEJ-compliant training curricula for candidate mediators are developed and adopted for implementation by the Mediation Department.

Members of professional organisations agree that knowledge about the law may not be sufficient to mediate in cases of a commercial nature since these cases involve technicalities, which require knowledge of the specific terminology and subject matter. Nevertheless, it is strongly emphasized by the members of the professional organizations that the mediator should have a legal background. In addition, it is stated that the effectiveness of mediation practices will improve as long as the confidence of the parties in the mediator is translated into more confidence in the system.

*Figure 17 – Opinions of Target Groups on the Effectiveness of Mediation Practices (%)*

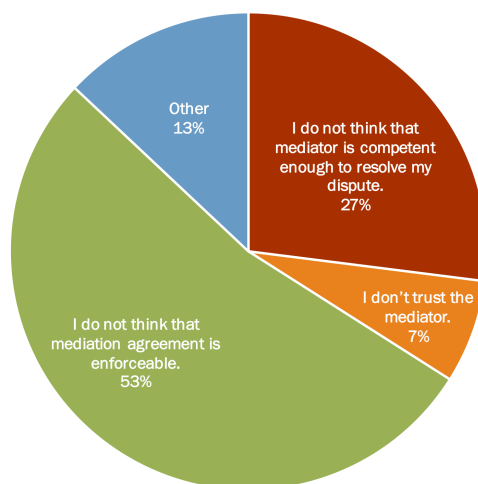


Since the effectiveness of mediation is built on the confidence of the parties in the mediator and each other, interviews demonstrate the importance of developing codes of conduct for mediation. Respondents state that the creation of codes of conduct and random audits of the mediation practices may prevent the dominant party from imposing their solution, whether intentionally or unintentionally. Respondents who are against mandatory mediation emphasize particular concerns regarding the possibility of malpractice due to the absence of the codes of conduct, and audits. It is stated that this concern reduces the effectiveness of mediation practices.

An important matter brought up in questionnaires and in-depth interviews is how the effectiveness of mediation practices depends on several variables. Key variables are awareness of mediation, knowledge about the enforceability of mediation settlements, the competency of the mediator, and the confidence in the mediator. Apart from these, the fact that the mediation institution is not established, the fact that the parties do not have this culture and the decrease of the adulterated trust are among the factors expressed by the respondents.

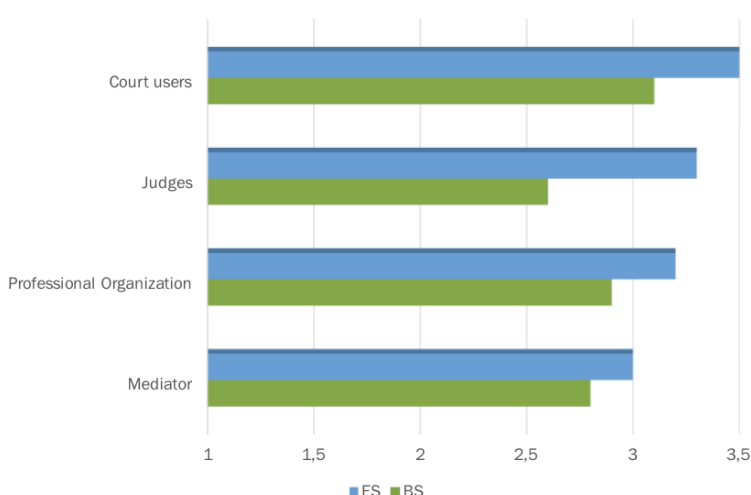
Both court users and professional associations agree that the enforceability of the settlement agreement concluded at the end of mediation is the most important factor in enhancing the effectiveness of mediation. The importance of this matter was emphasized in both the baseline and end line surveys. While the importance ranking of the reasons were similar between the baseline and end line surveys, competence of the mediator became slightly more prominent in the end line research. Positive progress was observed in the confidence in the mediator.

Figure 18 – Reasons for Lack of Effectiveness in Mediation according to Court Users - Endline (%)



Variables used in the measurement of the effectiveness of mediation practices include confidence in the mediator. Figures 19 and 20 below illustrate the opinions of four target groups on this matter. Court users appear as the target group who has the highest confidence in mediators when they need such services. When court users need to access justice, they first act out of confidence. They believe that a person authorized in the matter will be able to solve their problem when they need justice. The end line research captured that confidence in the mediator is on an upward trend. While judges had the lowest confidence in mediators in the 2015 baseline research, they ranked second in the end line research. All four groups analysed in the research believe that confidence in the mediator regarding a matter that can be settled by mediation keeps improving over time.

Figure 19 – BS - ES Comparison of Confidence<sup>4</sup> in Mediator by Target Group

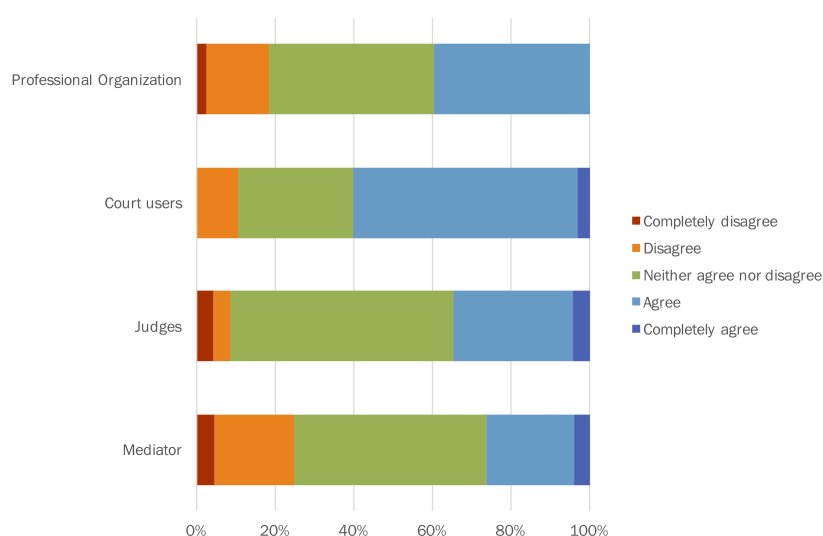


<sup>4</sup> It was asked as a Likert scale question from 1 to 5. The average was calculated in both surveys and compared.

Yet, the most interesting of all cases appear to be the mediators themselves. Mediators feel that they are the least-trusted target group with regard to disputes that may be settled by mediation. Mediators think that people who require mediation have relatively less confidence in them. This shows that mediators have not yet developed full faith in the effectiveness of the practice. Many mediators still think with their attorney hats on. The target group who comes next are the professional organisation members.

In the focus group meeting organised with mediation bureau staff, they stated that it was very difficult to explain the mediation system to people, and gain their confidence. People's confidence in the mediation system, when they need it, is a key indicator for effectiveness and awareness. There are many factors at play regarding user confidence, including occupation and age of the mediator, appearance of mediation offices, and the method of referral. For example, a person who is referred to mediation by a judge is inclined to feel more confidence in the practice.

Figure 20 – "People who need mediation trust the mediator" – ES (%)



Although confidence in the mediator has increased from 2015 to 2017, there is still room for improvement. Even though the confidence score of judges rose significantly compared to baseline, the reasons that prevent them from having full confidence in mediators must be studied and addressed. The effectiveness of mediation as an institution will improve as people have more confidence in mediation.

Confidence in the mediator seems to be directly correlated with the quality and experience of the mediator. There is further agreement that the quality of the mediator depends on personality as well as background. It is emphasized that an experienced and high-quality mediator makes the parties feel confident, which leads to an effective mediation with a positive outcome. In other words, mediation depends not only on the willingness of the parties to reach a settlement, but also on the facilitation abilities and neutrality of the mediator, in addition to how well he can relate to both parties. As a result, it was noted that the effectiveness of the practice must be considered from a wider perspective to include all of these matters.

Improving exams with a view to ensure an accurate assessment of quality appears as a potentially prominent issue for the effectiveness of the system after mandatory mediation is introduced. Description of objective criteria for assessment, and development of tools that ensure an equal assessment of quality and knowledge appear to be of significance. Skills of the trainers are also considered to be paramount for improving quality.

Figure 21 – Ratio of Mediators Engaged in Mediation Practices (%)



The opinion in the baseline research that the quality of mediation should be favoured over quantity is still valid. It is argued that the majority of the 15045 final session minutes in the statistics were not achieved by mediation, but rather they were disputes already on the verge of a settlement yet they were included in the data as if they were genuine mediation settlements. In case of genuine mediation, the practice seems to be more effective if parties are active; therefore, it is argued that parties should actively seek mediation.

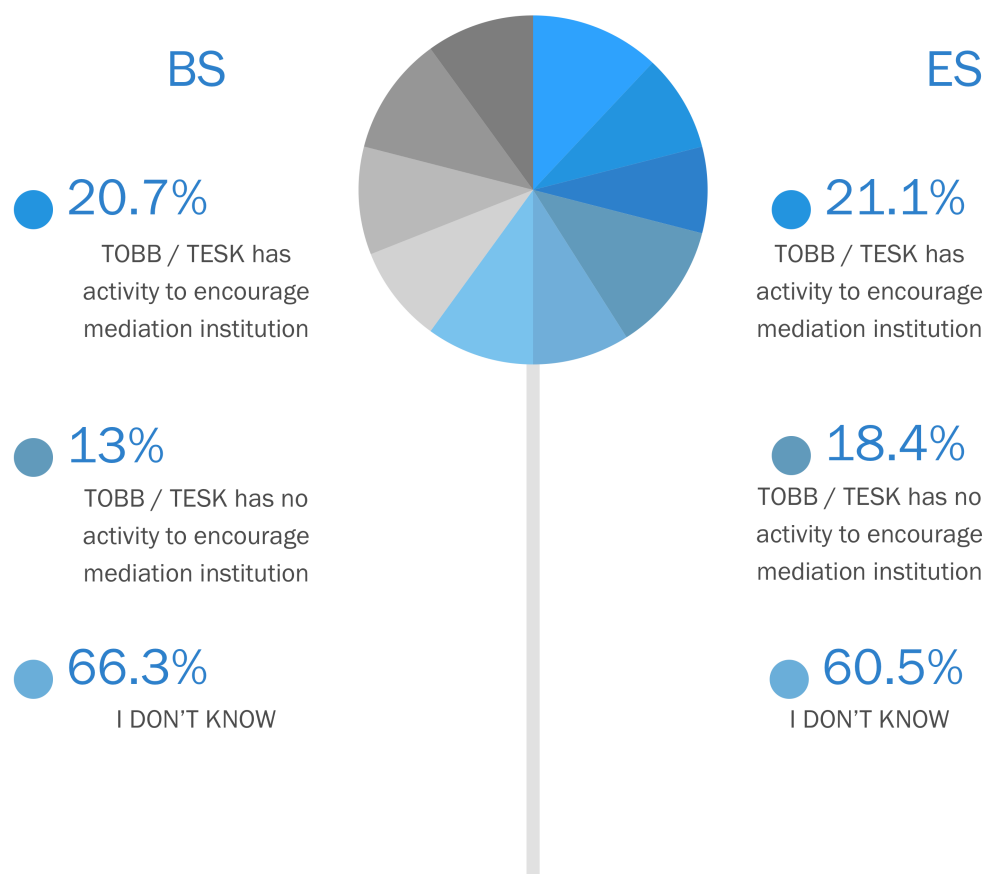
Comparing endline results to the baseline in 2015, it is observed that all target groups find mediation practices to be more effective. This has played a role in the increase in number of cases. For example, while only 20% of registered mediators responding to the 2015 questionnaire had practiced actual mediations, the rate doubled to 40% in the endline research.

During in-depth interviews, it was emphasized that the increase in the number of mediation practices had a dual effect. Some argued that bringing the parties to the mediation table was an achievement in itself, while others agreed that this was positive enough, they added that one also needed to take the prestige and credibility of the system into account. It was stated that since failure stories have the capacity to spread as fast as success stories, successful mediation practices are critical for the system to become a trustworthy mechanism in the future.

When professional organisations organise activities to promote mediation, awareness among their own membership increases, which has an indirect influence on improving the effectiveness of mediation in general. As shown in the figure 22 below, members of professional organisations state either that their organisation does not organise activities to promote mediation, or that they do not know whether there are such activities. During in-depth interviews, professional organisations stated that their members did not express any need for being

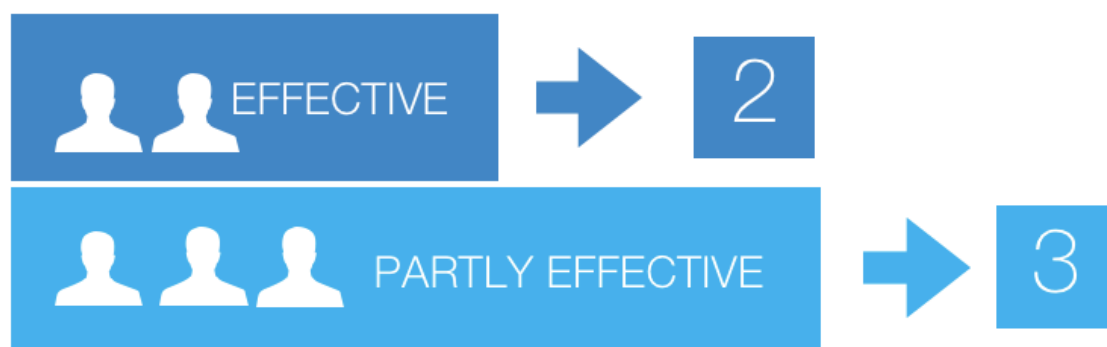
informed about mediation practices. Officials in one professional organisation in a different city stated that they were in contact with the bar association and held promotional meetings, albeit seldom, but their membership did not show much interest in such meetings.

Figure 22 – Activities by Professional Organisations to Promote Mediation



Organisations state that their members are interested in mediation particularly for settling employee-employer disputes, but they are planning to announce the system to their members only after the Law on Mediation is amended to make mediation a prerequisite for going to trial (mandatory mediation).

Figure 23 – Opinions of Mediation Bureau Personnel on Effectiveness

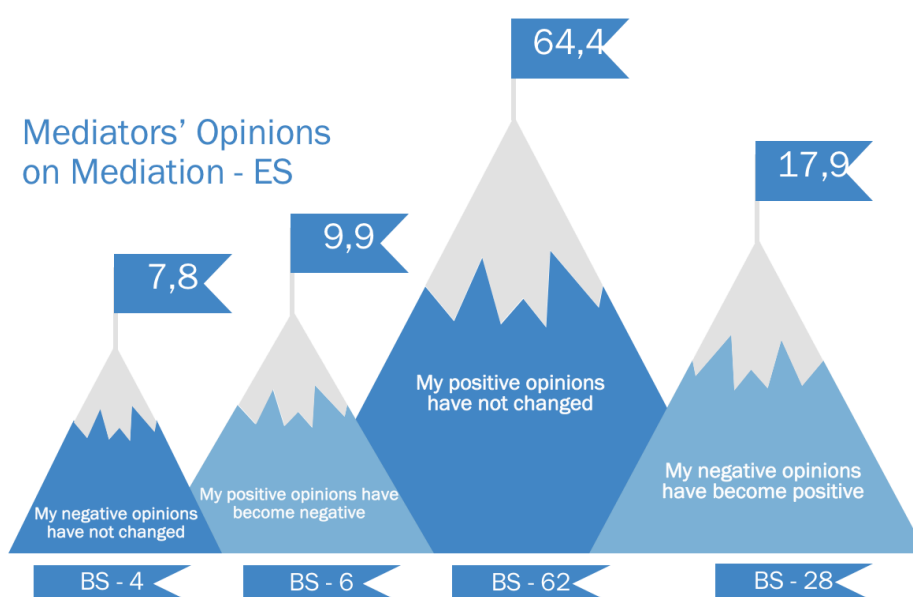




Additionally, it is stated that improving the level of knowledge of the mediation bureau personnel in courts will potentially improve the effectiveness of mediation. As illustrated in the figure 23 above, mediation bureau personnel also suggest that the mediation process is partly effective. Factors reducing effectiveness include incompleteness of the system, issues regarding the assignment of mediators through UYAP Mediation Portal, reassignment requirements due to mediators failing to respond to case requests on time, the inability of parties to access the mediator following their application or parties withdrawing their application. It was observed that, despite training and other activities organised during the course of the project, even in pilot cities, personnel were not fully comfortable with their level of knowledge on mediation. Therefore, it is critical to offer continuous training to mediation bureau personnel in non-pilot cities with a view to prevent a potential systematic failure in the system.

As shown in figure 24 below, in both baseline and endline surveys, registered mediators were the most accessible/responsive group, which represent the core target group in respect of mediators. The opinions of mediators on the institution potentially have a direct influence on the functioning and effectiveness of the system. Two-thirds of the mediators, who held positive opinions in the baseline maintained their positions, and an additional 18% changed their opinion from negative to positive; however, one-fifth of mediators still hold negative opinions about the mediation practice.

Figure 24 – Mediators' Opinions on Mediation (%)



This rate was at 10% in the baseline research. It was observed that some factors cause frustration in the mediator community. Probably one of the most prominent is the failure of the system to meet the financial expectations of the mediators. Particularly professionals who are wearing both hats at the same time- lawyer and mediator- think that mediation practices may cannibalize their income. Therefore, it was observed that negative opinions of the mediators either remained the same or increased.

Mediators state that they particularly try hard to bring the parties together, but they are not rewarded for this effort. For example, when an attorney-mediator contacts the parties, and discusses mediation with them, the parties may exclude the mediator and negotiate a direct settlement. Employees of mediation bureaus state that such cases not only discourage attorney mediators but also deprive them of potential income. Nevertheless, the overwhelming majority agree that the fee prescribed by law is reasonable, and they still hold positive

opinions regarding mediation. Mediators, who see that the system is functioning or are hopeful because of mandatory mediation, have changed their opinion from negative to positive, however others feel less hopeful.

Figure 25 – Court Users Utilizing Mediation Practices (%)

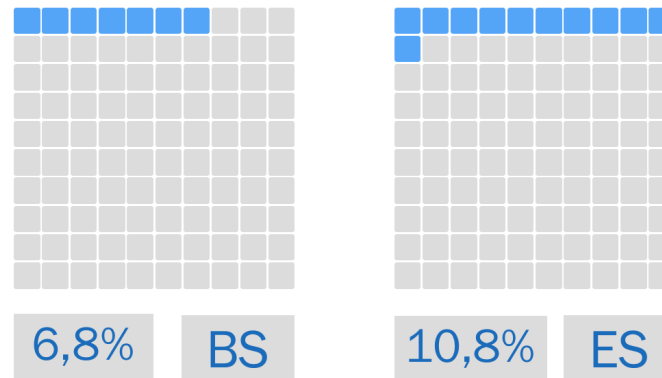
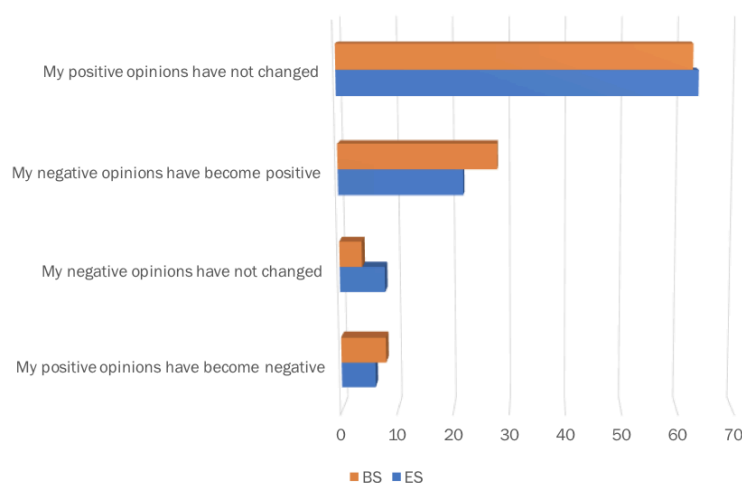


Figure 25 above shows court users who benefit from mediation practices. It is clear that there is a lot of room for improvement. This rate has increased from 6.8% at the baseline research to 11%. This is nearly a twofold increase. The opinion that mediation settles disputes with a more positive outcome than courts constitutes an example to the effectiveness of mediation. In the baseline survey, only 29% of court users believed that mediation practices could deliver more positive outcomes than courts, but now this rate has exceeded 52%.

### 2.2.3 MEDIATION TRAINING

Training is the factor that has the highest effect on mediation. As shown in Figure 26 below, two-thirds of registered mediators who attended training, and registered as mediators have positive opinions about mediation. Almost 90% of negative opinion holders state that they started to think positively after the training. This effect of training is observed to degrade since baseline. The ability of the training to transform negative opinion holders declined from 87% to 75%. It is believed that the increase in the number of lawyers receiving mediation training will help in reducing- albeit partial- the resistance of the lawyers against mediation.

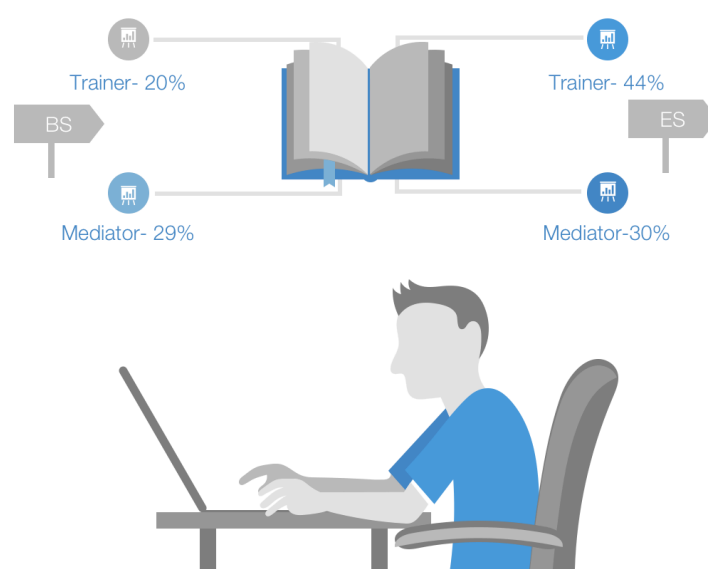
Figure 26 – Effect of Mediation Training on the Opinions of Mediators on Mediation (%)



In spite of this, 94% of trainers stated that they received positive feedback from candidates. This was 67% in the baseline research. Figure 27 below presents the opinions of mediators and trainers on the content of mediation training. Although the percentage for Trainers has more than doubled compared to baseline, only 44% of trainers state that the training content is adequate. An even lower percentage of mediators (30%) are satisfied with the training content, and this has not really changed since the baseline survey.

One of the reasons for slow progress is that a group of national module writers and national curriculum development expert was composed in August 2016 and training modules and programme have been developed since then with the involvement of two CEPEJ experts under the Project. The most important criteria in module writing were to plan an interactive training programme with practical exercises to develop mediation skills. Three materials are being developed as a result of these activities and all will be in use by trainers and participants as of September 2017 and onward.

Figure 27 – Adequacy of Mediator Training Content (%)



In focus group meetings with trainers, it was noted that refresher training in particular were problematic due to lack of standardization in training, which was a concern. Some organisations, which offer mediation training, are said to have inadequate infrastructure or human resources; besides it was emphasized that it was rather difficult to make an objective assessment of training success due to the absence of a standard training. In focus group meetings and in-depth interviews, training materials were described as non-standard and inadequate. Trainers stated that the objectivity of measurement and assessment in examinations could benefit from uniform curricula and training materials, and the standardization of training modules. A recurring issue was the omissions and contradictions with current law, which were discovered in the training notes prepared by the Ministry. It was emphasized that it is critical to ensure infrastructure and trainer quality, and accredit both the trainers and the institutions, and that there needs to be regular inspections. In focus group meetings with trainers, it was stated that in fact, training quality would benefit from a reduction in the number of training institutions, and the quality of refresher training would improve with standardized refresher training material. Furthermore, the need for expertise-based mediation and appropriate training was discussed. It was suggested that specialisation is required in mediation practice; and there has to be different mediators for handling family disputes and labour disputes.

Figure 28 – Allocation Bureau Personnel's Level of Knowledge on Mediation

## ALLOCATION BUREAU PERSONNEL

I have information



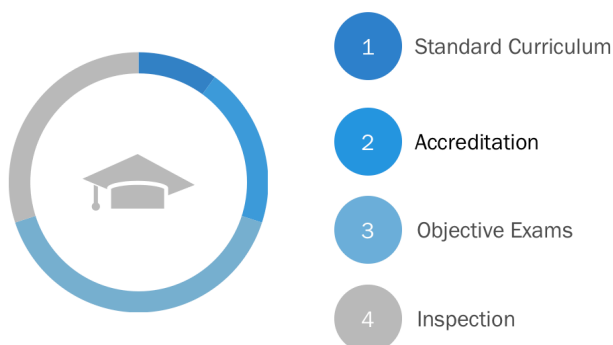
I can give information



Training is important not only for mediators, but for all target groups. Training for mediation and allocation bureau personnel will improve the effectiveness, and efficiency of mediation. For example, allocation bureau personnel must have adequate knowledge to be able to refer applicants to mediation when appropriate. The level of knowledge of allocation bureau personnel is presented in the figure 28 above according to their self-assessment. Only one employee describes himself as having adequate knowledge about mediation, and is able to inform parties about mediation. The majority state that they have some knowledge, while one respondent declares no knowledge at all. In fact, one person states some knowledge, but not enough to inform others. Therefore, it is critical that allocation bureau personnel, as a key element in mediation, receive mediation training to improve the effectiveness and efficiency of the process. Similarly, it is imperative that Mediation Bureau employees also receive training. Even the six select employees of Bureaus cannot state full knowledge about mediation. Mediators who took part in focus group meetings said that although the training were not excellent, the project created considerable synergy.

Participants said that trainers who were training mediators back when the system was gradually being commissioned in 2015 were trying to learn and understand the process themselves, and although training material was prepared in light of the challenges experienced in real cases, initial training suffered due to the lack of experience of the trainers, therefore they concluded that mediators who take the training today are luckier.

It is stated that both the Project and the Mediation Department have many activities in the pipeline to improve the system. These include a variety of subjects from preparing notes for refresher training to accreditation. It was discussed that although it was perhaps wrong to increase the number of mediators so quickly from the point view of providing adequate training, it was impossible to prepare for the system without setting targets; it was also emphasized that quality matters more than quantity.



It is said that while refresher training can reduce the gaps in knowledge, mediators are becoming more reluctant to receive refresher training. The ratio of mediators who intend to receive refresher training declined from 78% in the baseline research to 64% in the endline survey.

The necessity for case studies and roleplaying in training was emphasized at a rate of 80% in both the baseline and endline surveys. Additionally, participants in focus groups agreed that roleplaying provides safe environment to encounter

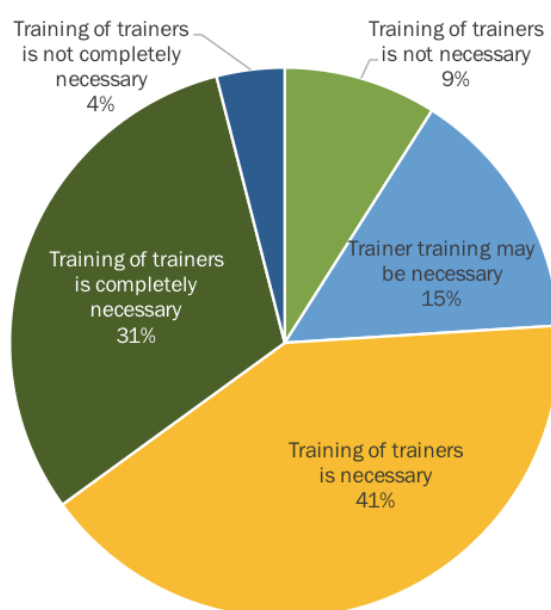
some scenarios for the first time, which builds confidence in potential mediators that can help them in their day-to-day roles. Moreover, they also agreed that role-playing at least gives potential mediators the chance to get some experience in handling difficult situations and in developing creative problem-solving skills.

Figure 29 – Adequacy of Training Length (%)



Figure 29 above demonstrates the opinions of mediators, trainers and judges on the adequacy of the length of training. Mediators' opinion has not changed since baseline research. However, while trainers had said that the length of training was inadequate in the baseline research, they now argue that training lengths are better. Judges believe that training length is adequate. The figure 30 below illustrates opinions on training of the trainers in the endline research. The emphasis on the necessity for training of trainers has increased from 68% in the baseline research to 72% in the endline. The percentage of participants, who argue that training of trainers is unnecessary, turns out almost identical in the two surveys.

Figure 30 – Trainer's Training (%)



As shown in Figure 31 below, one of the areas of significant improvement in training is in orientation training of trainers. Trainers state that training of trainers has been improved significantly. While the adequacy of orientation training among trainers was 18% in the baseline research, it is currently 60%. Five per cent of trainers find orientation training inadequate.

Figure 31 – Training of Trainers (%)



The opinion of mediators on training facilities and conditions did not change from the baseline to the endline research; however, trainers argue that facilities and conditions have deteriorated.

Figure 32 – Training Facilities and Conditions (%)



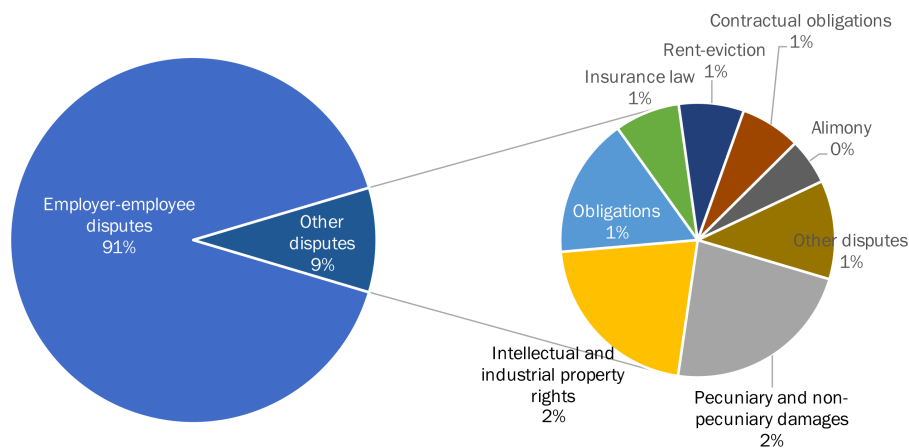
## 2.2.4 THE EFFECTIVENESS OF MEDIATION

This section correlates the effectiveness of mediation with the time, costs and confidentiality aspects of the mediation practice. Specifically, this section discusses the workload of judges and whether mediation is a waste of time, considering the impact of mediation on these factors. The leaflet prepared by the project addresses these three issues. The opinions of target groups on these issues and whether their opinions have changed are examined in this section. The section on the effectiveness of mediation also includes the cases where mediation is practiced. According to the case breakdown by subject published by the Mediation Department on its website, mediation is most frequently



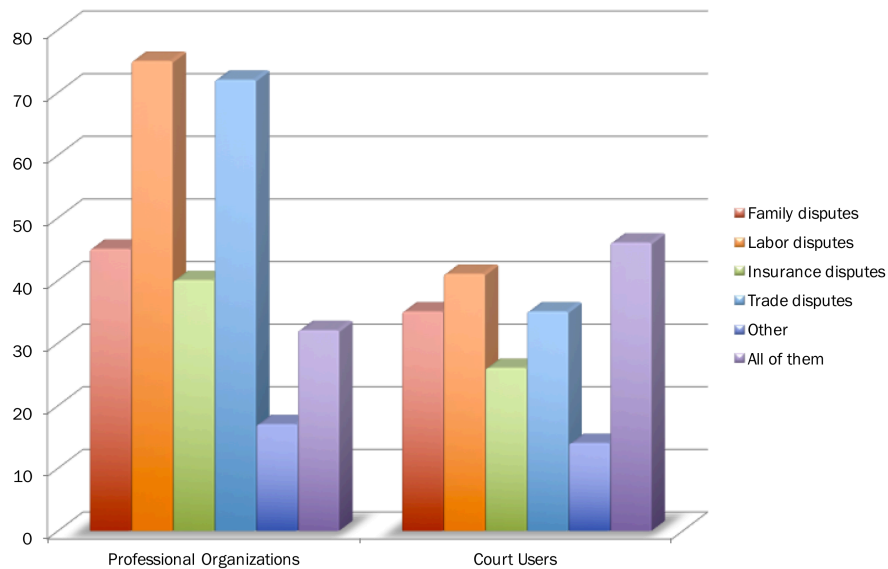
practiced in employer-employee disputes as illustrated in Figure 33 below. While this type of dispute accounted for 67% of mediation cases in the baseline research, it is currently at 91% the total. Therefore, it is not possible to argue that mediation is entirely effective. The effectiveness of mediation regarding its practice in all fields of law may be better calculated by referring to the numbers of all lawsuits in the UYAP system. In 9% of mediation cases, which are other than employer-employee disputes, non-pecuniary damages has the largest share with 2% of the total, followed by intellectual and industrial property rights, liabilities, insurance law, rent and eviction, and contractual obligations respectively. In order to conclude that mediation is effective as an institution, the breakdown of mediation practices should approximately correspond to the breakdown of lawsuits available in UYAP.

Figure 33 – Breakdown of mediation cases by subject (%)



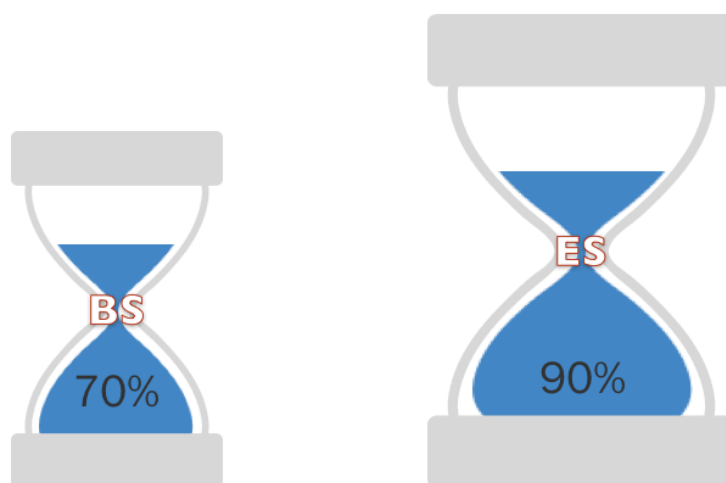
As shown in Figure 34, the increase in the awareness of court users about mediation subjects signal a potential improvement of the effectiveness of mediation for each subject. Members of professional organisations believe that mediation is most often practiced in labour law and commercial disputes.

Figure 34 – Awareness of Fields of Law Eligible for Mediation (%)



According to court users, mediation is not a waste of time. The ratio of court users, who think that mediation is not a waste of time, increased from 70% in the baseline research to 90%. The ratio of court users, who said that they would first try mediation when appropriate, increased from 44% in 2015 to 72%. This is indicative of the confidence in the system, and a noteworthy finding regarding its effectiveness.

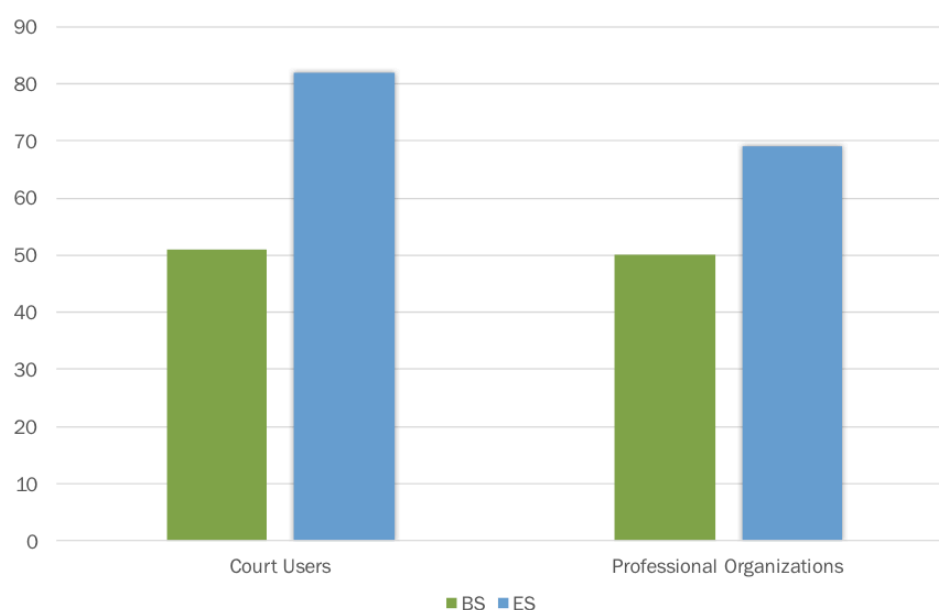
Figure 35 – Mediation Is Not a Waste of Time (%)





Both court users and members of professional organisations have increased awareness that mediation can resolve disputes more quickly. The prevalence of this opinion among court users increased by 32 percentile points from baseline to endline, while the increase among professional organisation members was 18 percentile points.

*Figure 36 – Mediation May Lead to Quicker Dispute Resolution*



With respect to the effect of mediation on costs, the ratio of professional organisation members who stated that the cost of mediation is lower than that of lawsuits increased from 44% in the baseline to 67%. Professional organisation members state that the cost of mediation is lower than lawsuits; in other words, mediation is more cost-effective. Awareness has increased among court users about the relatively lower cost of mediation compared to that of court proceedings. This ratio increased from 47% in the baseline to 72% in the endline.

Although the expectation of judges that mediation would reduce their workload declined from around 90% to 80% since the baseline, this was mainly due to a further increase in judicial workloads for various reasons; and judges remain confident that although mediation practice at its present state cannot prevent the potentially expected backlog in judicial proceedings entirely, it is nevertheless instrumental in relieving it. They also believe that mandatory mediation, when introduced, will bring a significant reduction in their workload. Judges state that, despite its shortcomings, mandatory mediation in labour law, consumer law and trade courts will reduce their workload.

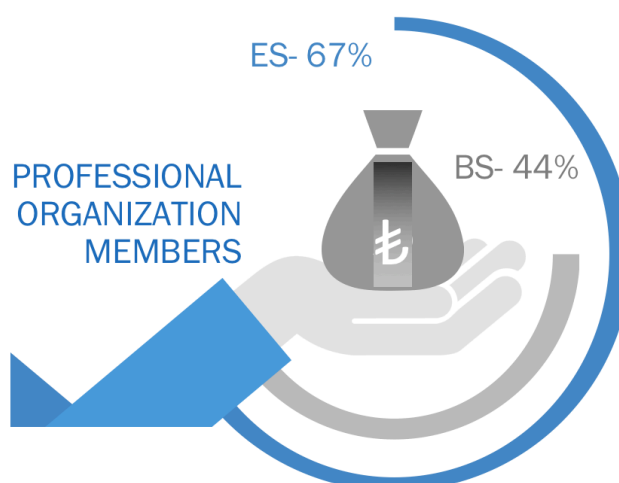


Figure 37 – Opinions of Judges on Mediation Practices

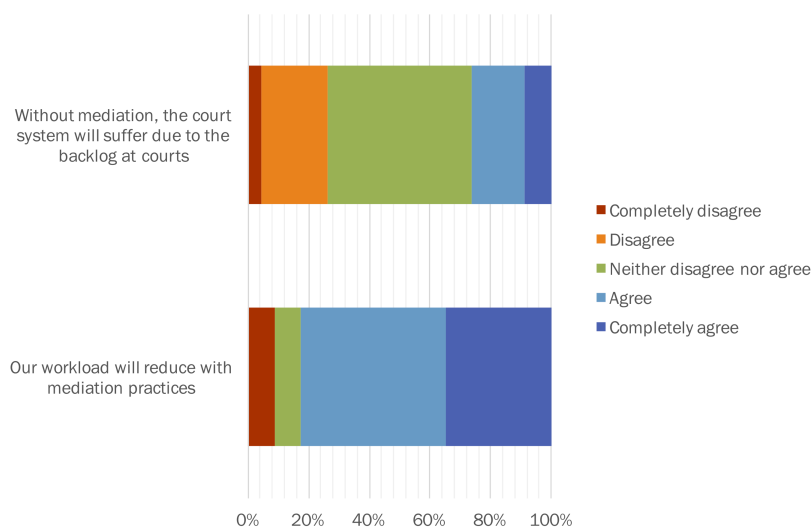
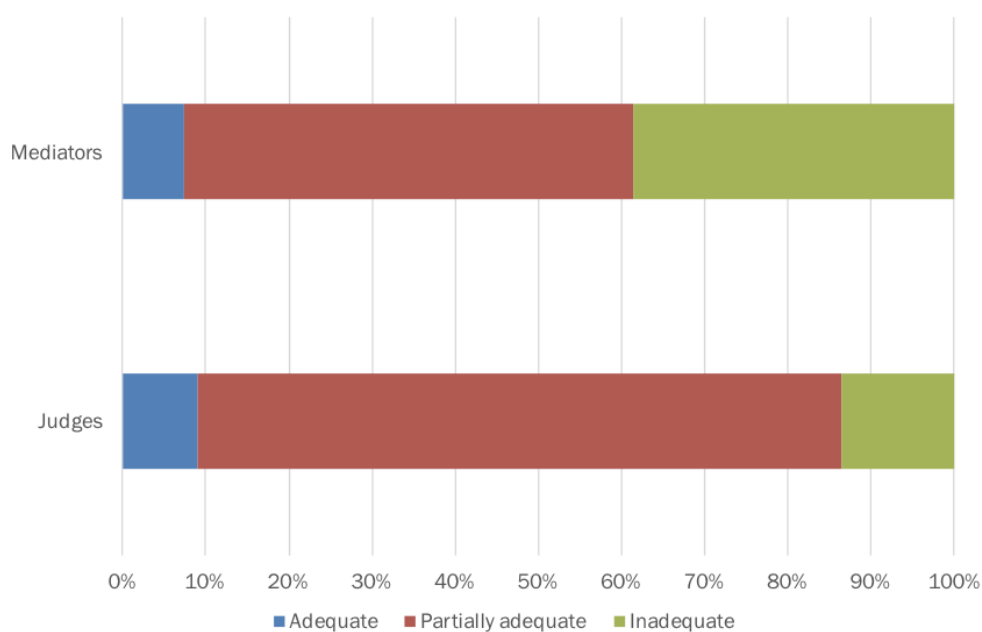


Figure 38 presents the opinions of judges and mediators on the regulatory framework on mediation practices. Only 9% of judges and 7% mediators describe the regulatory framework as adequate. The opinion that regulatory framework is inadequate has declined since baseline. While five out of 10 registered mediators stated that the regulatory framework was inadequate in baseline, currently four out of 10 hold the same position. The ratio of judges, who believe that the regulatory framework is inadequate, declined from one out of three to one out of seven in the endline research. However, the majority in both target groups believe that the framework is only *partly adequate*.

Figure 38 – Evaluation of Regulatory Framework on Mediation by Judges and Mediators (%)



Judges call for further regulation especially in family courts. It is also stated not only legislation but also encouraging the parties is important. Participants in the focus group discussion with judges believe that mediation practice was hampered, and the work of mediators failed to pick up, because it has taken too long to introduce mandatory mediation.

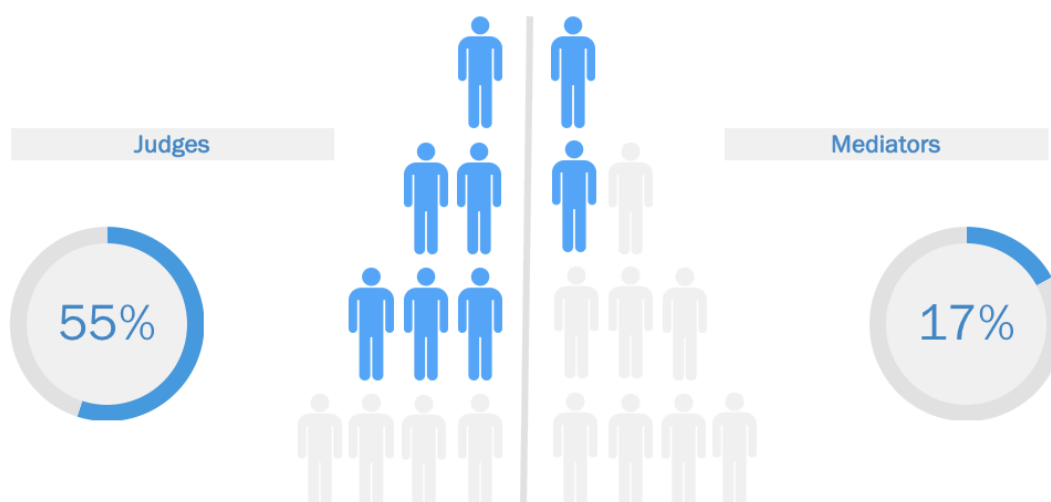
## 2.2.5 MEDIATION SEEN AS A PROFESSION

This section is dedicated to understanding whether the perception of mediation has changed. This section discusses whether individuals who are not attorneys or law school graduates can practice mediation, and it explores the possible effects of introducing mandatory mediation.

In-depth interviews revealed that mediation was not viewed as a profession in the early years of the practice, instead it was defined as an occasional job like court experts, but over time it evolved into a profession. The Mediation Department expresses that they have made mediation a profession by introducing identification cards and badges for mediators, and signage for their practices.

The perception of whether mediation is a distinct profession has not changed since the baseline. Approximately 80% of mediators think that mediation is a distinct profession. There is no difference of opinion between people who have and have not practiced mediation. It was obvious that mediators had identity issues. There was a dilemma regarding whether they were attorneys or mediators. One in three registered mediators describe themselves as attorneys, the other one in three as a mediators, and last one in three are completely indecisive. On the other hand, individuals who actively practice mediation feel more like mediators than others. While 13% of registered mediators were not entirely sure in the baseline survey, 84% indicated that they want to practice mediation permanently in the end-line survey.

Figure 39 – Mediation by Persons of Other Professions (%)



Some judges stated that the profession has not fully established, yet. More than half the judges and only 17% of mediators said other professionals should be able to practice mediation. The percentages were slightly higher for both groups in the baseline research. There was no change of opinion among court users or professional organisation members compared to baseline. 80% of court users and 55% of professional organisation

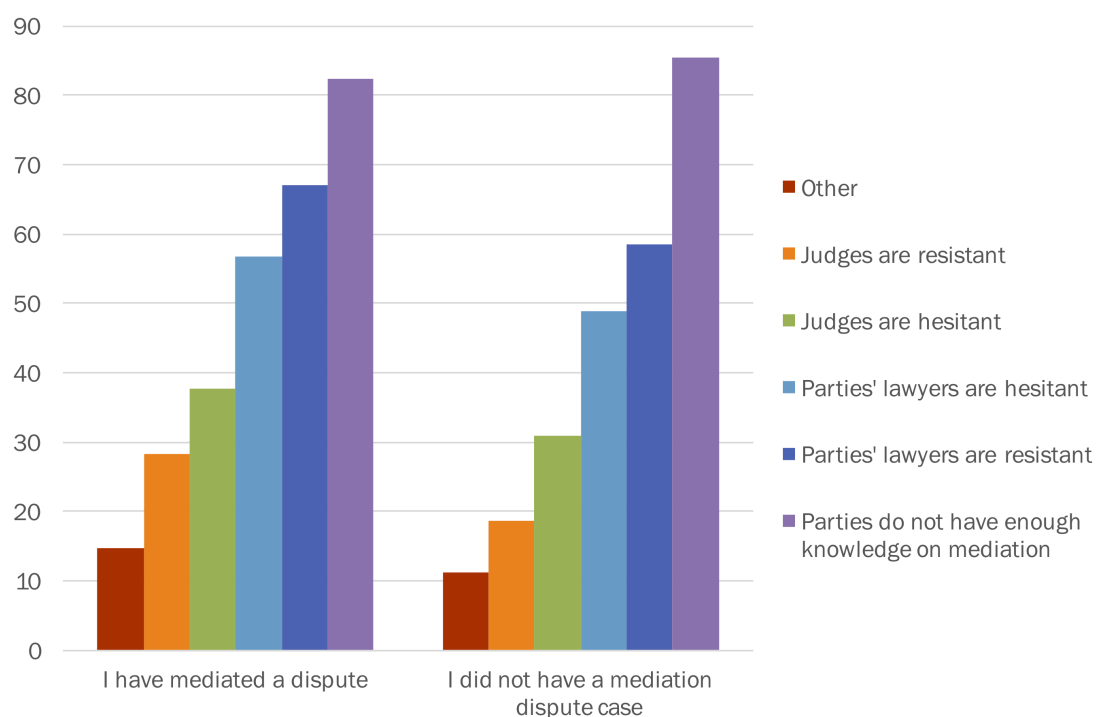
members believe that mediators must have a background in law. Close to half of professional organisation members state that not only attorneys but also other professionals, who do not have a background in law, can practice mediation.

There are diverse opinions on the appropriate profession for a mediator. For example, a number of trainers believe that persons other than lawyers can and should practice mediation. According to this opinion, mediation is not merely a legal profession. Mediation is a flexible system, so confining it to the legal profession might potentially lead to the creation of a second court procedure. Interviewees, who represent this position, also stated that this was how mediation was practiced globally. It has been frequently emphasized that mediators should particularly specialize in labour law. Participants from public institutions and civil society agree on this opinion. For instance, one participant believes that chartered accountants are in a better position than attorneys in settling foreclosure cases.

Groups, who believe that only people with a background in law should practice mediation, have a number of concerns. For example, a trainer stated that it is challenging enough to explain mediation to attorneys let alone non-legal professionals, so there is a need to simplify the legal terminology to address non-lawyers. There is agreement that law schools do not simply train for the legal profession, but also foster the notion of justice in their alumni, and people without a notion of justice are not fit to serve as mediators. One of the reasons for the general opinion that mediation should exclusively practiced by people with a background in law seems to be the recent introduction of mediation in Turkey.

It is emphasized that the practice of mediation should be limited to attorneys at least in the initial stages to ensure that the practice gains recognition and trust. Current practice allows the mediator to consult experts when necessary.

Figure 40 – Difficulties in the Mediation Practice according to Mediators (%)

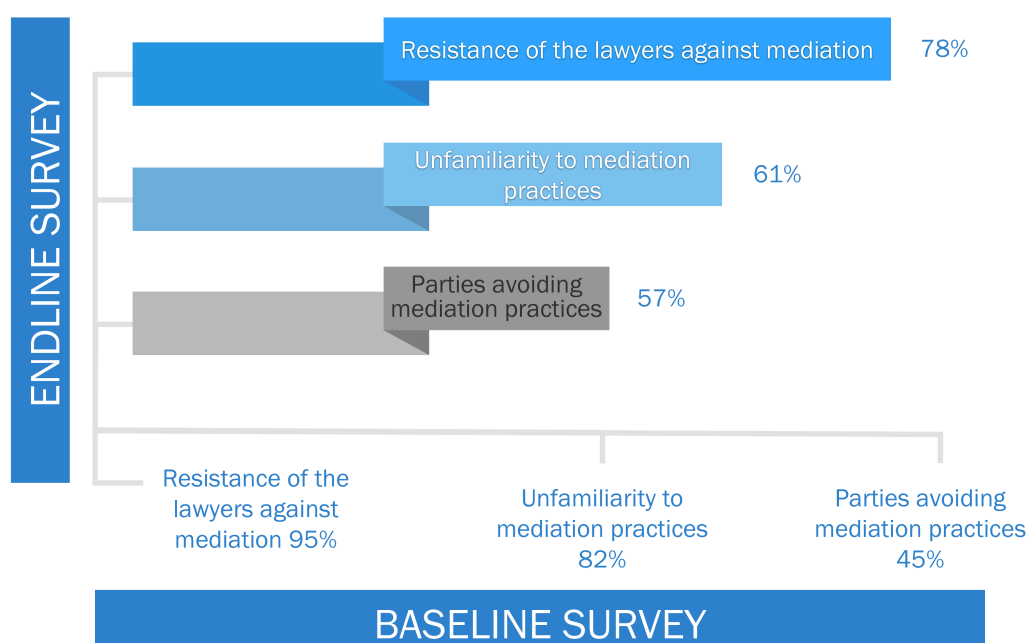


There is also a third opinion, which states that mediation should be practiced both by subject matter experts and by attorneys, and that both are equally important. For example, it is stated that a mediator working on family disputes should be an attorney, but should also consult an expert psychologist, or that an attorney working on labour law cases may not have comprehensive knowledge of business and management, and should consult an expert. It is considered important that these people are court experts who are sworn to impartiality. An alternative opinion has been asserted that mediation should be performed by an expert in the specific field, but settlement minutes should be drawn up by an attorney. However, the dominant opinion in interviews was that mediators should primarily be lawyers.

Regardless of whether they are practicing, mediators have maintained the same ranking of challenges in practicing mediation since baseline. However, insufficient knowledge of the mediation practice became more pronounced; and there has been a reduction in the reservations or oppositions expressed by judges compared to baseline. It was observed that practicing mediators felt these challenges more.

According to judges, the ranking of challenges has not changed, but percentages have. While almost all judges expressed opposition by attorneys of the parties in the baseline research, this rate has currently dropped to three out of four. Similarly, the rate of unawareness of mediation practices has declined from 82% to 61%. However, the reluctance of parties to accept mediation has increased since baseline.

Figure 41 – Challenges in the Mediation Practice according to Judges (%)



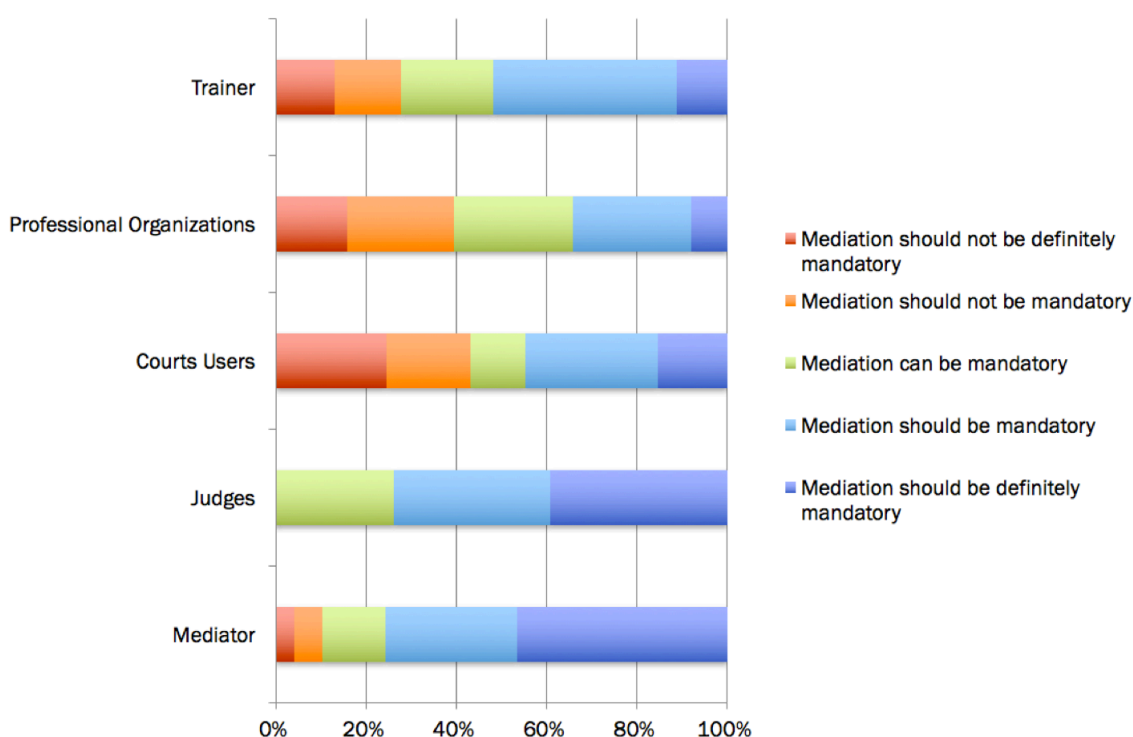
Mediators state that the introduction of mandatory mediation is critical for the adoption and permanence of the profession. The Draft Law on Labour Courts, which includes provisions on mandatory mediation, was submitted to the Parliament in May. According to this draft: "(1) Seeking mediation is a mandatory mediation in claims of employee or employer debts, and compensation or reinstatement based on law or individual or collective employment contracts. (2) The plaintiff will be required to attach the original or a mediator-certified copy of the final minutes stating that no settlement was reached when initiating a lawsuit." All groups involved pronounce a wide range of diverse opinions regarding the longstanding debate on employer-employee disputes. As mentioned above, a great majority of registered mediators are looking forward to the mandatory mediation. When mediation becomes mandatory, there will be a need for a series of legal regulations and a

number of dedicated mediation centres. Head of the Mediation Department also stated that dedicated private mediation centres will create new employment opportunities. Private Mediation Centres may be equipped with call centres, and ultimately provide employment to 40 or 50 thousand people including auxiliary staff.

It is argued that once mandatory mediation is introduced, the success of mediation will be better appreciated. This will be led by the success of individual mediators, and once the system begins to function smoothly, there will be more success stories, and this, in turn, will translate into better income for lawyers, and make the profession more popular. Once mediation becomes mandatory, people will see the effectiveness and efficiency of mediation, and decide to invest in dedicated mediation centres.

Mediators and judges are the two target groups who defend mandatory mediation most. Although 10% of mediators oppose mandatory mediation, none of the judges agree with them. This group of mediators who oppose to mandatory mediation has concerns that once mandatory mediation is introduced there may be an exponential increase in the number of certified mediators, which may damage the mediation system. They want to have limitations introduced to numbers, and more stringent examinations. One mediation trainer expressed scepticism about mandatory mediation, since the challenges of mandatory mediation in labour law were not being addressed adequately. It is suggested that regulation to the disadvantage of the employees is being introduced particularly in labour law. Underlining that the employer and the employee are not on an equal footing, it was also emphasized that it would be more reasonable to bring this rule to disputes where the parties are more equal, such as commercial disputes. It is further argued that there would be some inevitable mistakes in labour disputes due to their complexity. There is also a concern that there may be attempts to make mediation a settlement method, which favours the employer in employer-employee disputes. Some interviewees expressed concerns that mandatory mediation in Turkey might cause an increase in the breach of rights considering the already high prevalence of human rights violations in the country.

Figure 42 – The Opinions of Target Groups on Mandatory Mediation



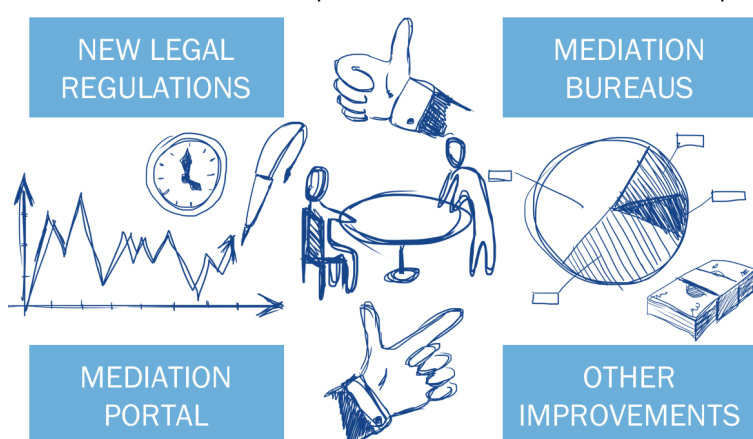
The groups that oppose mandatory mediation most are court users and members of professional organisations. Meanwhile, more than half of trainers argue that mediation should be mandatory. The Mediation Department itself admits that mandatory mediation entails a number of risks. The Department expresses that the true success of mediation depends on it being selected as an optional remedy, which marks a contrast to the positions in the baseline research. It is stated that mandatory mediation will not yield a major return except a boost in awareness. These opinions suggest that there may be revisions to the mandatory mediation practices prescribed by law in the short term.

## 2.2.6 MEDIATION DEPARTMENT

Discussion topics in focus group meetings and in-depth interviews with Mediation Department personnel included developments in mediation since the baseline research, change in the number and qualifications of Department of Mediation personnel, and mediation bureaus. Interviews were held with the Head of the Mediation Department, judges, and employees of the Department.

Changes since baseline were classified into new legal regulations, expansion of mediation bureaus, the mediation portal, and other developments. The Head of the Mediation Department states that mediation made a good place for itself in the judicial community over its three and a half years of implementation. Department statistics show that there were an average of 1535 cases settled via mediation between January and May 2017. This is a six to seven fold increase compared to the baseline.

As explained in the previous sections, new legislation will introduce mandatory mediation in claims of employee or employer debts and compensation or reinstatement based on law or individual or collective employment contracts. These disputes account for 625000 lawsuits per annum, or 18% of the total workload of 3.5



million cases. The Mediation Department expects some four hundred thousand cases would be referred to mediation once it becomes a pre-condition to court proceedings. This is almost 26 times the number of total mediation practices since the beginning, which are 15045. As stated by the Mediation Department, mediation is about to enter its second phase.

Although Department personnel are familiar with the workflow of mediation, it is

noted that any disruption in the system will lead to problems. Department personnel state that they have no calculations or forecasts regarding the additional workflow that will be brought by a colossal spike. Since the Department focuses solely on mediator applications, training, examination and registration, any additional unforeseen workload might be like the underwater portion of the iceberg. Department personnel indicate that they receive 7 or 8 complaints per year under current circumstances. If complaints were to increase on par with the potential increase in number of cases, it could mean 250 complaints received per year. The number of expected complaints alone requires the appointment of an additional, dedicated employee.

It is also forecasted that the introduction of mandatory mediation will increase the number of registration requests by mediators. Considering only 48% of mediators are currently registered, it is highly probably that many more will want to be registered in the near future.

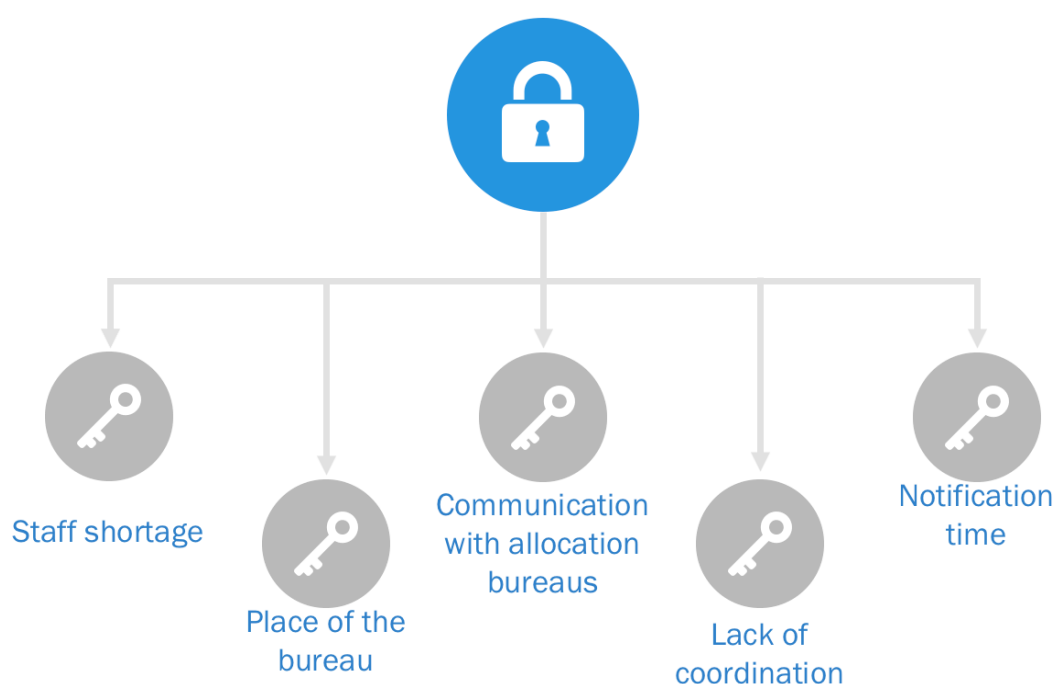
The Department believes that dedicated mediation centres will practice mediation in the second phase of the implementation. The institutional practice of mediation will translate into higher expectations in terms of the quality and quantity of personnel.

However, it is clear that the Mediation Department will be responsible for monitoring, problem solving, audits and assessments. It is stated that the management structure of the institution must be organised in an excellent manner.

Although some interfaces are still in the work-in-progress stage due to the shortage of programmers in the Information Department, the UYAP Mediation Portal is said to have been effective in organizing the Mediation Department's work. The Mediation Portal, as a document management system, is considered to save significant time for personnel. The portal is in development for various other functionalities. However, personnel have stated that they are still required to keep track of manual submissions and undelivered minutes, and put together statistical data on them. It is emphasized that the completion of the portal will have great benefits for both mediation bureaus and the Mediation Department personnel.

107 mediation bureaus in 46 cities have been put in service so far. These bureaus report to the court presidencies in their respective provinces, and organise the mediation practice locally. Their personnel are appointed by commissions. However, mediation bureaus experience some unique challenges.

*Figure 43 – Issues of Mediation Bureaus*



It was observed during focus group meetings that some mediation bureaus experience staffing issues either because personnel has not been completely assigned yet or they take sick leave. This causes the bureaus to close from time to time, and makes it difficult for court users to file an application or receive information. Court staff expect that the introduction of mandatory mediation will reduce the workload of court staff, and thus some of them may be assigned to mediation bureaus. This will make mediation bureaus more effective, and interested parties will be able to access the bureaus and the mediation system more swiftly.



Another issue that was brought up in focus group meetings was the location of mediation bureaus or their distance to front offices and allocation bureaus.

The excessive workload of allocation bureaus is considered to pose an additional challenge to referrals to mediation bureaus. When bureaus are located on different floors or in different buildings, applicants may be more reluctant to follow through on their referral to mediation.

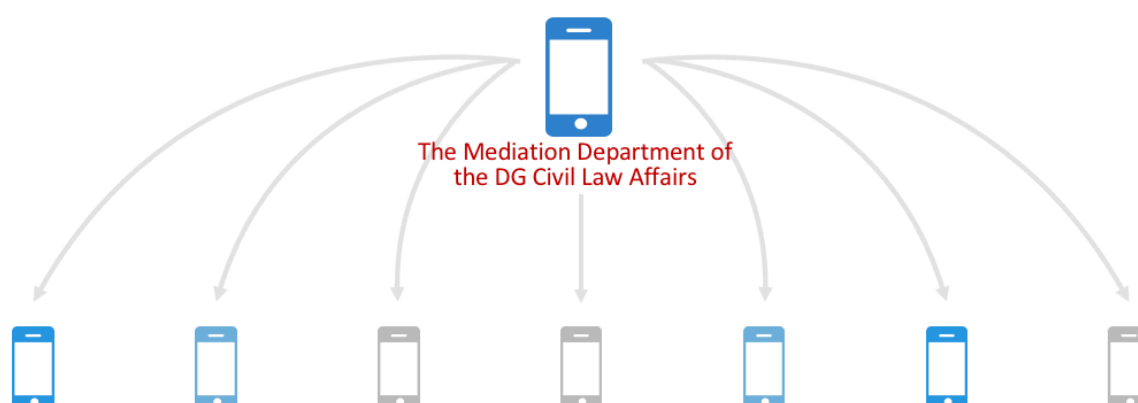
The lack of coordination meetings in courthouses appears as a significant deficiency. For instance, it is important that allocation and mediation bureaus work in coordination. Besides, the coordination between judges and bureaus is considered to be of great significance.

During the focus group discussions, one issue brought up by the court staff as well as the Mediation Department personnel is the exclusion of the mediator by the parties. This means that after the mediator is assigned, parties take the mediator out of the process and reach a settlement directly. In this case, the mediators suffer a loss since they are not paid for their time. However, there are some contradictory reports, as well. Some claim that citizens lose their interest in the practice, because some mediators are reported to demand payment of attorney's fees.

The notification of mediator assignment expires within 24 hours, which is said to cause problems. If a mediator does not confirm the assignment within 24 hours, the case is assigned to the next mediator, and this potentially causes confusion. Extension of the notification period and the addition of some control procedures were named as remedies for addressing this problem.

It was noted that the templates, the lack of which was pointed out in the baseline research, were completed, and shared on the mediation website as a mediator's handbook explaining implementation guidelines, and that all mediators received text messages notifying them of this update. Nevertheless, it is also stated that the templates are not mandatory, and are provided as guidance only, and that mediators are free to create their own templates.

One cause of concern was the helpline, where there are major challenges with services due to a number of shortcomings. Target groups have stated particularly during the process of introducing mandatory mediation it would become necessary to set up a 24/7 Mediation Call Centre.



## ANNEX A – PROGRESS BY PROJECT INDICATORS

**Expected Result 1- The Ministry of Justice is supported in the preparation of draft legal amendments to strengthen the implementation of mediation in civil disputes – *In Progress***

(1) By end of the Project, at least the 75% of the draft legislative changes prepared by the Project Team will be accepted by the Mediation Department of the MoJ. - ***Mostly Achieved***

(2) By the end of the Project, the Mediation Department of the MoJ will integrate these draft changes into a law proposal for adoption by the relevant institutions. - ***In progress / Achieved***

**Expected Result 2- A model for implementing mediation in civil law disputes has been successfully piloted in selected courts and is ready for wider adoption and dissemination.**

(1) By the end of the Project, the number of judges who have referred at least one case to mediation in pilot jurisdictions will increase by 7% (baseline: number of pilot judges selected at the beginning of the Project) - ***Achieved***

(2) By the end of the Project, the number of civil disputes settled by mediation through judicial referral is increased by at least 10% in pilot courts compared to the baseline and data collected by the UYAP System. - ***Achieved***

(3) By the end of the Project, the MoJ will have adopted a Strategic Road Map and Action Plan for Mediation, incorporating at least 75% of the elements to be developed as a result of the Project activity 2.5. By the same date, resources allocated to the Mediation Department will be consisted with its duties.- ***In progress/ Achieved***

**Expected Result 3- Clear, adequate, standardised and CEPEJ-compliant training curricula for candidate mediators are developed and adopted for implementation by the Mediation Department.**

(1) By the end of the Project, the training materials developed by the Project according to the CEPEJ guidelines will be used by training institutions. ***Achieved***

(2) By the end of the Project, the MoJ will formally adopt the training guidelines for candidate mediators to be developed by the Project. ***Achieved***

(3) By the end of the Project, at least 75% of the institutions providing training for candidate mediators will assess, positively, the training guidelines to be developed by the Project.- ***In progress- no data available***

**Expected Result 4- A public awareness and communication strategy about mediation in civil disputes is developed and adopted for implementation by the Mediation Department. Limited and targeted communication initiatives are carried out and contribute to an increase in awareness about mediation. Selected decision makers are given a clearer understanding of mediation practices in other European countries.**

(1) By the end of the Project, the MoJ (even in partnership with other institutions) will embark on recurrent promotional initiatives about mediation that are consistent with the Public Awareness Strategy to be developed by the Project. ***Achieved***

(2) By the end of the Project, at least 6 Memoranda of Understanding to encourage the use of mediation will be signed among: the MoJ, or Mediation Associations or Mediation Centres, and different professional organisations. - ***Partially achieved***

(3) By the end of the Project, the number of professional organisations offering mediation services to their members will be increased by 25% (baseline: number of Professional Organisations offering this service at the beginning of the Project) - **Achieved**

(4) By the end of the Project;

The number of parties which have heard about mediation through different sources including public awareness materials will be increased by 50%. - **Achieved**

The number of parties who satisfactorily used mediation services will be increased by 30%. **Achieved**