

CODES OF CONDUCT FOR MEDIATORS IN TURKEY

Introduction

The Codes of Conduct for Mediators in Turkey was prepared by the Mediation Department of the Directorate General for Legal Affairs of the Ministry of Justice, in accordance with the mediation system and social and cultural values of Turkey, taking into account the ethical and practical rules in comparative law, and was reviewed and adopted by the Mediation Board.

Mediation is a dispute resolution method that brings the parties together to meet and negotiate by applying systematic techniques, that establishes a communication process between the parties to ensure that they understand each other and thus produce their own solutions, that can offer a solution if the parties fail to find a solution, that is carried out with the participation of an impartial and independent third party who has received specialised training, that is voluntarily performed in the application of the process and in any case, in the execution and termination of the process, except for the mediation which is regulated as an obligation for a lawsuit.

Similarly, mediation is a dispute resolution method widely used in peaceful dispute resolution methods, which is applied in the resolution of private law disputes, including those with foreign elements, but arising from works or procedures on which the parties can freely dispose.

Mediation serves a variety of purposes, including providing the parties with the opportunity to identify and clarify issues of dispute, understand different points of view, define their interests, put forward and evaluate possible solutions, and, if desired, reach mutually satisfactory agreements.

Although both the Law on Mediation in Civil Disputes (hereinafter referred to as “the Law”) and the Regulation of Law on Mediation in Civil Disputes (hereinafter referred to as “the Regulation”) contain general guidelines for mediation as well as the fundamental principles and responsibilities of mediators, determining the codes of conduct for mediators is not only an obligation to meet an important need, but also the fulfillment of a task that the mediation legislation imposes on the Mediation Department and the Mediation Board.

The Codes of Conduct for Mediators possess three main purposes specified below:

- 1.** Guide and direct mediators in the performance of their duties;
- 2.** Inform and protect the parties of mediation;
- 3.** Increase public confidence in mediation as a means of amicable resolution method.

The Codes of Conduct for Mediators is deemed to have been accepted by the mediators who will conduct the mediation process and are registered in the Mediators Registry. Mediators must give due consideration to fully comply with these rules.

The Codes of Conduct for Mediators are read and interpreted as a whole. There is no priority given to the order of the rules in order of importance.

The Mediation Board may apply other sanctions stipulated in the mediation legislation, including the deletion of the relevant mediator from the registry within the scope of the second paragraph of Article 21 of the Law, in case of violation of the Codes of Conduct and finding out of this situation.

Obligation to Maintain Equality

Article 1- (1) The mediator is obliged to maintain the principles of treating the parties equally and being fair in line with their needs throughout the process.

Right to Make Own Decisions

Article 2- (1) The right to make their own decisions includes the parties' free and enlightened will, voluntarily and without pressure, before the process begins, during the process and at the conclusion stage.

(2) The mediator is obliged to maintain the right of the parties to make their own decisions at every stage of the mediation, including selection of the mediator, performance of the process, participation in the process, withdrawal from the process and termination of the process.

(3) The mediator must inform the parties about her/his role in the mediation process during the preparation phase or the initial mediation meeting. The mediator must specifically emphasize that the authority to make a decision lies with the parties, and not with the mediator.

(4) The mediator may not provide legal or professional advice to the parties with respect to the legal dispute. However, when necessary and appropriate, s/he should remind the parties of the importance of consulting experts to help them make choices with an enlightened will and inform the parties on this matter.

(5) The mediator should not interfere with either party's right to make their own decisions in order to secure a higher settlement fee or mediation fee.

Impartiality

Article 3- (1) Impartiality involves the mediator not taking sides and not being biased about the parties.

(2) The mediator must not take sides or act prejudiced based on the personality, background, beliefs and values of one of the parties, their attitudes and behaviours during the mediation process or for any other reason.

(3) While performing the mediation process, the mediator must be impartial and refrain from acts that would make her/his impartiality questionable. The mediator must not give or accept any valuable gift, aid, loan or other property of value to/from the parties in a way that casts doubt on her/his behaviour and apparent impartiality.

- (4) In case the mediator cannot manage the mediation impartially, s/he must reject the mediation offer and withdraw from the mediation at any stage.
- (5) In the event that there are significant circumstances or situations that will make the mediator's impartiality questionable or this becomes apparent in later stages, if the parties mutually request the mediator to assume the duty despite informing the parties about this issue, the mediator may undertake this duty or continue the duty s/he has undertaken.
- (6) Unless otherwise agreed by the parties, the mediator must conduct the mediation process in a neutral setting suitable for mediation.

Relationship or Conflict of Interest

Article 4- (1) There must not be any relationship of benefit or conflict of interest between the mediator and the parties for any reason. The mediator must avoid conduct that creates the appearance of a relationship of benefit or conflict of interest between the mediator and the parties.

- (2) The relationship of benefit or conflict of interest between the mediator and the parties may arise after the parties resort to mediation; it may also pre-exist due to any current or past personal or professional relationship between the mediator and the parties.
- (3) In carrying out the mediation process, the mediator must conduct a reasonable research and examination to determine whether there is an event that would cause a bona fide third party to think that there is a relationship of benefit or conflict of interest that has arisen or may arise between the parties. The research that the mediator will conduct to reveal a relationship of benefit or conflict of interest that has arisen or may arise between the parties may vary depending on the circumstances of the concrete case.
- (4) The mediator must inform the parties as soon as possible about the relationship of benefit or conflict of interest that has arisen or may arise, which may be known to her/him under reasonable conditions and which may raise doubts about her/his impartiality.
- (5) If the relationship of benefit or conflict of interest that has arisen or may arise between the mediator and the parties is of a nature that would clearly harm the mediator's impartiality and the mediation process, the mediator must reject the mediation offer and withdraw from mediation at any stage, regardless of the parties' requests and agreement to the contrary.
- (6) The mediator cannot later act as a lawyer in the lawsuit filed regarding the dispute in which s/he served in this capacity. However, if the parties request together with their clear and written consent, s/he can act as an arbitrator in the arbitration proceedings.

Nature of the Process and Diligent Fulfilment of the Duty

Article 5- (1) The mediator must perform her/his duties personally, diligently, in a reasonable time, with confidence, with the active participation of the parties, in a fair manner, giving the parties sufficient voice and ensuring mutual respect between the participants.

(2) The mediator must undertake the mediation duty after s/he has completed all the preliminary preparations for the mediation process and has had the necessary time to carry out the mediation process.

(3) The mediator must act in accordance with the requirements of the profession throughout the mediation process. The mediator cannot engage in any behaviour that may harm herself/himself or the mediation system's trust and reputation. The mediator should be sensitive to the socio-economic and cultural differences of the parties and between the parties and herself/himself as well as the effects of gender roles on the parties and especially on the mediation process.

(4) The mediator must promote honesty, respect, sincerity and courtesy between the parties throughout the mediation process and must not knowingly or willingly provide false information about any document, event or situation to the parties during the mediation process.

(5) The role and function of the mediator differ significantly from other professions. The function of the mediator should not be confused with the function of another profession. The mediators should distinguish between the functions of their profession. The mediator can only give information to the parties based on her/his education and experience, provided that it is compatible with mediation.

(6) The mediator cannot carry out any other dispute resolution method other than mediation during the mediation process. The mediator cannot refer any remedy as mediation in order to use the advantages arising from the mediation legislation. However, when deemed necessary and appropriate, the mediator may recommend that the parties consider resolving their disputes through arbitration, impartial assessment, consultation, or other dispute resolution methods.

(7) If mediation is used to commit an offence, the mediator must take appropriate action immediately and withdraw from mediation regardless of the stage of mediation.

(8) If one of the parties has difficulty in understanding the mediation process, the issues in dispute and the options for conciliation, or has difficulty in participating effectively in mediation, in such a case, the mediator must propose the necessary amendments, including proposing to seek legal assistance, in accordance with the right of the party to participate, understand and make her/his own decision, and even terminate the mediation if necessary.

(9) If the mediator thinks that the behaviour of a participant, including herself/himself, may harm the conduct of the mediation process, s/he must take the necessary measures immediately, including postponing, withdrawing from, or terminating mediation, if necessary.

Confidentiality

Article 6- (1) Unless otherwise agreed by the parties, the mediator is obliged to keep confidential the information, documents and records submitted or otherwise obtained as part of the mediation activity.

(2) The mediator must not disclose any information to the third parties who do not participate in the mediation process about how the parties acted in the mediation process.

(3) The mediator, who meets with one of the parties in the mediation process in a private session, must not transmit any information obtained in this private session to the other party, directly or indirectly, without the consent of the party disclosing the information.

(4) If the mediator participates in a mediation process for training or research purposes, s/he must comply with the parties' rightful expectations of confidentiality, including their credentials.

Professional Competence

Article 7- (1) If the mediator does not have the professional competence required in the concrete dispute and is unable to meet the reasonable expectations of the parties, s/he must reject the mediation offer and withdraw from mediation at any stage.

(2) The mediator is responsible for her/his own professional competence and development. In this sense, s/he must be aware of the limits of her/his professional knowledge and skills. The mediator must participate in all kinds of scientific and professional studies related to mediation, particularly the refresher training, in order to increase her/his professional competence and to ensure professional development.

(3) The knowledge and skills gained through training, mediation experience, awareness of gender, socio-economic and cultural differences are important elements for a mediator's professional competence and development.

(4) Parties should have easy access to information about the mediator's education, experience, and professional competence in conducting the mediation process.

Use of Title, Advertising and Promotion

Article 8- (1) The mediator is obliged to indicate this title during the mediation activity.

(2) The mediator must act in accordance with the mediation legislation in the use of signboard and printed papers.

(3) The mediator must exhibit an attitude and behaviour in accordance with the rule of honesty while advertising and promoting. The information provided by the mediator regarding her/his qualifications, experience, services and fees must be accurate (**A motion for stay of**

execution was filed with the decision of the Tenth Chamber of the Council of State, dated 16/07/2018 and Merits No. 2018/62.).

(4) The mediator must not include, even partially, the outcome and success of the mediation process in her/his signboard and printed papers or in communications for advertising and promotion in electronic media (**A motion for stay of execution was filed with the decision of the Tenth Chamber of the Council of State, dated 16/07/2018 and Merits No. 2018/62.).**

(5) The mediator cannot advertise in a way that conflicts with the codes of conduct (**A motion for stay of execution was filed with the decision of the Tenth Chamber of the Council of State, dated 16/07/2018 and Merits No. 2018/62.).**

Fees and Other Expenses

Article 9- (1) The mediator has the right to claim a mediation fee and any expenses made for the mediation process. The mediator is also entitled to request the payment of an advance for the fees and expenses.

(2) The mediator is required to inform the parties or their representatives of the mediation fee, expenses and other costs that may arise in connection with mediation as soon as possible following their appointment as mediator.

(3) The mediator must ensure that the parties reach an agreement regarding the mediation fee and expenses before the mediation process begins.

(4) While determining the fee, the mediator must act in a fair and honest manner, while taking into account her/his own qualifications, the nature and complexity of the dispute, the time required in the mediation process and all other factors, provided that the mentioned fee is not below the minimum wage tariff and does not impede the freedom to seek legal remedies.

(5) In cases where the parties agree to pay an unequal amount of fees, the mediator must not compromise her/his impartiality and must not engage in attitudes and behaviours that will favour the one who pays more than the other.

Promoting Mediation Practice

Article 10- (1) The mediator is responsible for promoting mediation and the adoption of mediation as a peaceful dispute resolution method, creating and increasing public awareness of the issue and publicising the institution.

(2) The mediator must pay attention and care to act in a way that will improve the mediation practice while engaging in mediation activities. Studies should be carried out to ensure that mediation can be applied in different types of disputes.

(3) The mediator must respect different views in the field of mediation and exchange information with other mediators and conduct scientific and professional studies with them in order to improve their profession and provide better service to the parties in conflict.

(4) Mediators should encourage each other to act in accordance with these Rules (the Codes of Conduct).