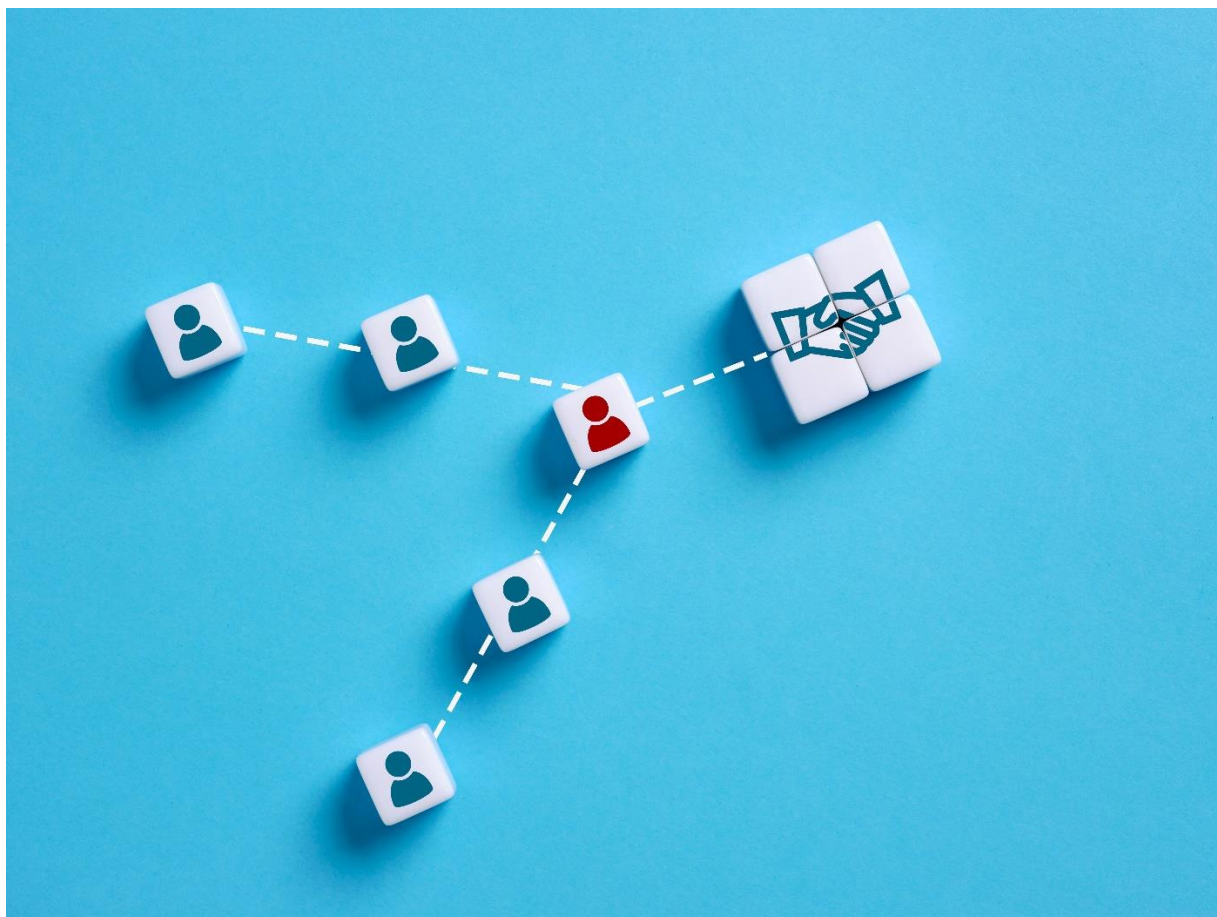




HANDBOOK FOR MEDIATORS

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Handbook for mediators

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1. Overview

a. The mediation process

Definition of the Mediation Process

Mediation is an alternative tool used for resolving disputes and facilitating discussion processes in various negotiations (cases). While the mediation process may be defined in different ways, its core essence remains unchanged. In order to understand what kind of process mediation is and to provide a general definition, it is essential to be familiar with all its elements, characteristics, and objectives.

- Mediation is an alternative, extrajudicial method of dispute resolution. This process offers the possibility to achieve results that **align with the genuine interests** of the parties involved in the conflict, and that are **satisfactory to all participants**. The **subject matter** of this process may include not only disputed issues, but also negotiations related to various agreements between the parties.
- Mediation is a process based on the principle of **voluntariness**. As such, the disputing parties retain control over the process.
- Mediation is a **confidential** process. Since the protection of confidentiality applies to all participants in the mediation process, the information disclosed in this process may not be disseminated.
- Moreover, mediation also offers the parties an opportunity to **spend less money and time**. It presents the process and its rules to the parties within the framework of a **confidential process** and enables the parties to reach **forward-looking agreements**.¹
- The mediation process is conducted by independent, neutral, but professional individual(s) - namely, **mediator(s)**. While mediators **do not have the authority to impose decisions**, the successful resolution of the dispute depends on their professional competence. In order to reach an agreement that corresponds to the genuine interests of the parties, the mediator assists the conflicting parties in identifying a mutually acceptable solution to the dispute and encourages the parties to resolve the disputes themselves², all of which require professionalism.

The mediation process follows a **specific structure**. This structure (the stages and sequence of the process) is outlined in the **Law of the Republic of Azerbaijan "On Mediation"** (*hereinafter referred to as "the Law" in some cases*) and the **"Rules for the Implementation of the Mediation Process"**, approved by Decision No. 385 of the Cabinet of Ministers of the Republic of Azerbaijan, dated 5 September 2019 (*hereinafter referred to as "the Rules" in some cases*). Nevertheless, mediator(s) have discretion in planning the steps and sequence of the mediation process. However, in all cases, the mediator must inform the parties to the dispute in advance about the structure of the process.

Thus, mediation can be defined as follows:

¹ Blake S., Browne J., Sime S., The Jackson ADR Handbook, 2nd Ed, Oxford University Press, Oxford, 2016, p. 21, 22

² Creutzfeldt N., Vertrauen in Außergerichtliche Streitbeilegung, Zeitschrift für Konflikt-Management, Verlag Otto Schmidt, Köln, Heft 1/2016, p. 15

The mediation process is a voluntary, confidential, non-judicial process with a specific structure, in which an independent, neutral, and professional mediator (or mediators), who does not have the authority to impose a decision, assists the parties to the conflict in finding a mutually acceptable solution and encourages the parties to resolve the disputed issues themselves.

Let us also consider other definitions that are similar to the definition of mediation provided above.

Definition of mediation in the glossary (2019) of the European Commission for the Efficiency of Justice (*hereinafter CEPEJ*)³:

Structured and confidential process in which an impartial third person, known as a mediator, assists the parties by facilitating the communication between them for the purpose of resolving issues in dispute

Definition of mediation as provided in Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on mediation (hereinafter referred to as “the European Directive”):

‘Mediation’ means a structured process, however named or referred to, whereby two or more parties to a dispute attempt by themselves, on a voluntary basis, to reach an agreement on the settlement of their dispute with the assistance of a mediator⁴.

Definition of mediation in the Law “On Mediation”⁵:

Mediation is the process defined by this Law for the resolution of a dispute between the parties on the basis of mutual agreement through the mediation of a mediator(s).

The International Mediation Institute⁶ defines mediation as a specific negotiation and provides the following definition:

The mediation is a negotiation process facilitated by a trusted neutral person having no power of decision

In Azerbaijan, mediation is primarily used as a method for resolving disputes, and this tool is still rarely employed in other negotiations (negotiations, deals, discussions in the business environment).

³ CEPEJ - Council of Europe European Commission for the Efficiency of Justice

⁴ Article 3(a) of the European Directive on Mediation

⁵ Law of the Republic of Azerbaijan “On Mediation”, Article 1.0.1

⁶ Leonardo D’Urso, Constantin-Adi Gavrilă, “ADR CENTER” accredited methodology. Training manual for the training of key mediation participants”, 2020, p. 37

This process can be initiated by the parties themselves, be proposed by the court, or be required as per the Law⁷ (such as an initial mediation session in disputes arising from family or labour relations).

The purpose of mediation

The primary purpose of mediation is to resolve the dispute outside of court and in a manner that satisfies the parties, to provide the parties with the opportunity to bring an end to the dispute, and eliminate the conflict through a solution that best serves their interests. Put simply, the goal of mediation is to reach an agreement between the parties⁸. This agreement should satisfy both sides. This means that mediation enables the conflicting parties to conclude an agreement on the settlement of disputes on mutually agreed terms, whereby the outcome is the result of prior agreement between the parties⁹.

In the mediation process, the parties not only work toward resolving the dispute between them, but also act in a way that supports the continuation of their business or personal relationships in the future - which is a positive side of mediation. According to Clause 4.2 of the Rules, "Mediation is carried out with the **purpose** of reducing the level of conflict between the parties and ensuring the resolution of the dispute in a way that **satisfies them**". Through mediation, the parties strive to agree on what is true between them¹⁰, so that they do not have to decide on what they consider to be correct in terms of the norms of the law at the legal level. Since, as is well known, in some cases justice and legality may not align with the interests of the parties. Therefore, with the use of mediation, the parties try to arrive at a solution that reflects their interests through mutual agreement.

The reason why the parties are often able to reach an agreement in accordance with their true interests as a result of successful mediation stems from the strategy of forgetting past grievances and focusing on the future. During mediation, the actions of the parties in the past are not the concern of the mediator. This approach ultimately guides the parties toward reconciliation. However, this does not mean that mediation necessarily aims to reconcile the parties. Mediation does not aim to restore violated rights or to reconcile the parties at any cost. Rather, mediation (and the mediator) facilitates the parties' self-understanding and helps them identify the real reasons behind, and the perspectives underlying, their demands toward each other.

Through mediation, the parties gain the following opportunities¹¹:

- to define the nature of the conflict together,
- to clarify the core of the problem together,
- to understand the actual causes of the conflict¹²,
- to resolve the conflict peacefully,
- to manage the conflict,
- to create a mutually beneficial outcome (a so-called "win-win situation"¹³),
- as well as to prevent the conflict from escalating further,

⁷ Law of the Republic of Azerbaijan "On Mediation", Articles 3.2, 28, 29

⁸ Goodman A., Basic Skills for the New Mediator, Solomon Publications, 2nd Ed, Maryland, 2005, p. 20

⁹ Willis T., Wood W., Alternative Dispute Resolution in Golden J., Lamm C., International Financial Disputes, Arbitration and Mediation, Oxford University Press, Oxford, 2015, p. 73

¹⁰ Wendland M., Mediation und Zivilprozess, Mohr Siebeck, Tübingen, 2017, p. 216, 217

¹¹ Boule L., Kathleen K.J., Mediation Principles, Process, Practice, Butterworths Canada, 1998, p. 12.16

¹² Kumar A., Alternative Dispute Resolution System, K.K. Publications, 2016, p. 233

¹³ Haft F., von Schlieffen K.G., Handbuch Mediation, C.H.BECK, München, 3 Auflage, 2016, p. 85

- and to preserve relationships¹⁴.

Parties who are able to take the aforementioned steps with the assistance of a mediator are better positioned to resolve their disputes, which is the main purpose of mediation.

Mediation as an alternative to litigation

In its Guide to Mediation for Lawyers, elaborated jointly with the Council of Bars and Law Societies of Europe (CCBE) to promote the implementation of its guiding principles on mediation, CEPEJ considers mediation as an alternative to litigation¹⁵:

“Mediation is a very practical and flexible method for resolving disputes. It may in some cases be faster, more effective and cheaper than adjudicative processes. Due to their specific and collaborative nature, mediation techniques can produce high value solutions to a conflict that may not even be available through the judicial process. A third actor which is alien to and remote from the parties, such as a court, and acts within procedural restraints that typically exist in any judicial process, might not be in a position to elaborate on more creative or complex solutions. These limitations are compounded by the fact that parties proceed as adversaries in the judicial process, so their communication tends to be more tactical and co-operation more difficult and impeded. This should by no means be taken as a critique of courts or the judicial system, but these are possible consequences of the adopted process and procedure. As a matter of fact, courts’ or arbitrators’ role is adjudicative; i.e. they are expected to decide on “*who is right and who is wrong*”. Such moralistic or legalistic approach makes perfect sense, and often may even be necessary, but certainly this is not the only conceivable technique. Finally, it is also worth noting another limitation of adjudicative processes – namely, that they not always take account of the parties’ needs and interests. Sometimes, litigated claims are not really the crux of a matter and the parties are unable to exit such a dead end. Moreover, a “*question of right or wrong*” may be irrelevant or even unanswerable; sometimes it does not even have to be answered to resolve a dispute, or such a search for an answer may become destructive for the parties’ relationship. Mediation is a process of self-determination in which parties act within the freedom of contract paradigm and with full autonomy, which might be more conducive to resolving complex managerial problems. Also, in mediation, only the process is controlled by the mediator. The parties retain control of the outcome and so quite naturally they have more options and space for manoeuvre than those in an adjudicative process. This is an inherent feature of any consensual decision-making process which is more co-operative and free from many conceptual or procedural limitations.”

Key aspects that distinguish mediation from court proceedings:

<i>Aspect</i>	<i>Mediation</i>	<i>Litigation</i>
<i>1.Process:</i> <i>1.1.General Points</i>	1.1.Flexible Informal It can be held at any location (subject to the preferences of the parties)	1.1. Inflexible Formal Only held in the courtroom

¹⁴ Englert K., Franke H., Grieger W., Streitlösung ohne Gericht – Schlichtung, Schiedsgericht und Mediation in Bausachen., Werner Verlag, 2006, p. 242

¹⁵ The “Guide to Mediation for Lawyers” prepared within the “Mediation Development Toolkit. Ensuring implementation of the CEPEJ Guidelines on mediation”, 27 June 2018, CEPEJ(2018)7, p. 3.

<i>1.2. Voluntariness</i>	1.2. The parties enter the process voluntarily and may withdraw at any time	1.2. There is a need to adhere to the rules of legal obligation.
<i>1.3. Confidentiality</i>	1.3. Closed and confidential: Mediation is a confidential process. All information, discussions, and agreements arising during the process are kept confidential. Disclosure of what was discussed is only possible with the consent of the parties (or in exceptional cases provided for by law). This ensures that the discussion is conducted without the risk of disclosing the parties' private information.	1.3. Predominantly open and public: In court, hearings are often held in open sessions and the proceedings are videotaped. However, due to the narrow interests of the parties, in some cases it is not advisable to discuss a dispute that involves their personal or business interests in a public, open forum.
<i>1.4. Control over the process</i>	1.4. The parties retain full control over both the process and its outcome. The parties may actively participate in the process, choose among the styles offered by the mediator, and hold separate sessions with the mediator for private discussions.	1.4. Parties are required to act strictly in accordance with procedural law. Direct, one-on-one communication between the parties and the judge is not permitted.
<i>1.5. Attitude towards the parties in the process</i>	1.5. The interests of the parties are approached on an individual basis. The process does not determine who is right and who is wrong. Instead, it seeks to foster mutual understanding (regardless of whether the parties agree with the other side) and to identify opportunities for reconciliation based on the parties' genuine interests.	1.5. While the positions of the parties are heard, their genuine interests often remain undisclosed, as the process is focused only on the demands of the parties. The parties submit the evidence they can collect to the court, and the court makes a decision within the legal framework, provided that the uniformity of judicial practice is not violated. For this reason, an individualized approach to the parties is not possible.
<i>1.6. Consideration of the same claims of the parties</i>	1.6. The same issues can be discussed multiple times between the same parties during the process.	1.6. A claim brought by the same parties regarding the same matter is considered only once by the court.
<i>1.7. Conclusion of the process</i>	1.7. Participants may leave or terminate the process at any stage.	1.7. When the process will conclude depends on the law and the court.

2. Decision making	2. Decisions are made by the parties themselves (the mediator plays a guiding role).	2. A judge or collegial court panel (the court plays a decisive role).
3. Result	3. Mutually agreed solutions: An agreement is reached that satisfies the parties outside the legal framework. If no agreement is reached, the parties retain the right to pursue litigation.	3. The court determines a winner and a loser. Decisions are limited to legal frameworks, that is, the court makes a decision based only on the legislation and in accordance with regulatory norms. If the judgement does not satisfy the parties, it is not possible to appeal to the court again with the same claim.
4. Implementation of the result	4. Since the parties come to an agreement themselves, the agreements are typically implemented more quickly and with greater ease.	4. Despite their legally binding nature, court decisions are rarely enforced voluntarily, and long enforcement procedures are required if they are not executed.
5. Duration	5. Typically, fast	5. In most cases, extend over long periods
6. Costs	6. Lower costs	6. Mostly high
7. Subsequent relations.	7. Because mediation occurs in a more peaceful and cooperative environment, it fosters mutual understanding between the parties, reduces the level of hostility, and contributes to a more constructive dialogue. When a settlement is achieved, it creates the conditions for the restoration of normal relations between the parties following the process.	7. The litigation process places people against each other. It can create competition and hostility between the parties, because it is a process in which one party wins and the other loses. While the court does not intend to cause this, as a result of the process, relations between the parties are damaged and impossible to restore in most cases.

The above differences make mediation a more peaceful, flexible, effective, and convenient method of dispute resolution. Mediation is particularly suitable in cases where the parties prefer to make their own decisions and maintain their mutual relationships. A mediator must have a deep understanding of these differences in order to promote the use of mediation and ensure that more individuals opt for this method.

To illustrate the aspects that differentiate mediation from litigation, we present the following example:

EXAMPLE: A Supplier-Manufacturer Dispute

The main essence of the dispute: Manufacturer ABC identified quality issues in certain components of the goods supplied by Supplier XYZ over the past year. These issues resulted in a decline in the quality of the final product and customer complaints. ABC claims compensation in the amount of 100,000 AZN for the damages incurred. XYZ argues the issues arose from ABC's improper handling and storage of the components.

The progress of each procedure in this dispute is described below:

Litigation process:

- a. ABC files a civil lawsuit against XYZ in court; the trial begins.
- b. Legal representatives for both parties exchange legal documents.
- c. The court of first instance holds multiple hearings over the course of 11 months.
- d. Evidence and expert assessments regarding the technical specifications of the components of the supplied goods and the rules for their handling and storage are examined.
- e. The judge issues a decision based on the contract terms, the submitted evidence, and the relevant legislation.
- f. One party prevails, the other party loses.
- g. Appeals and cassation procedures may be initiated, and the time limit may be subsequently extended.
- h. The business relationship is effectively terminated.
- i. Total cost: based on the claim amount, the state duty, expert fees, legal representation services, and other legal costs amount to 5400 AZN.
- j. Dispute resolution takes 11 months at the first-instance court, the appeal process takes 3 months, 12 months are spent on the review of the case in appeal and cassation instance courts, and 1 month is spent on technical procedures. Thus, the entire process takes 27 months through the three-tier court system, unless other procedural delays occur or the cassation court annuls the decision and remands the case for retrial.

Mediation process:

- a. The parties agree to mediation and jointly select a mediator.
- b. The mediation consists of one full-day session or two half-day sessions.
- c. Both parties present their perspectives.
- d. New information emerges during the mediator-facilitated discussions: ABC has experienced issues with temperature regulation in its storage facility, while XYZ has recently modified its production process.
- e. The parties reach a creative solution: XYZ provides replacement components at cost (i.e., without profit); ABC upgrades its storage conditions; the parties jointly develop a quality control protocol; a future supply contract is amended to the mutual benefit of both sides.
- f. The business relationship is preserved and strengthened.
- g. Total cost: approximately 1,250 AZN (including 600 AZN for mediation fees, 600 AZN for attorney fees, and 50 AZN for additional costs).
- h. The dispute is resolved within 1 month.

Parties in mediation and their rights and obligations

The parties to the mediation process may include legal and natural persons (including natural persons who carry out entrepreneurial activities without forming a legal entity), as well as administrative bodies that have consented to the application of the mediation process.¹⁶

Rights of the parties	Obligations of the parties
- To select or reject a mediation organization or mediator; - To participate in the mediation personally or through a duly authorized representative on the basis of a power of attorney; - To receive information about the mediation process and its potential outcomes; - To freely determine, by mutual agreement and in accordance with the Law, all conditions related to the application, implementation, and completion of the mediation process; - To exercise their substantive and procedural rights at their own discretion; - To increase or reduce the scope of their claims; - To submit proposals for the resolution of the dispute; - To make additions and amendments to the "agreement on the application of the mediation process" by mutual consent; - To hold separate meetings with the mediator; - To exercise other rights as provided by law.	- To ensure the implementation of the settlement agreement; - To maintain the confidentiality of the mediation process; - To cover the costs of mediation, except for the cases when the mediation costs are paid from the state budget¹⁷; - To comply with the Law, this Regulation, as well as the terms of the "agreement on the application of mediation process"; - To fulfil other obligations as established by law.

Conducting Mediation: General rules

Mediation is conducted not only in accordance with the Law, but also in accordance with the Rules for the Implementation of the Mediation Process, the internal regulations of the mediation organization developed pursuant to these Rules (where applicable), and the code of professional ethics¹⁸ for mediators.¹⁹

The Rules for the Implementation of the Mediation Process provide a more detailed framework governing the mediation procedure. Mediation is carried out either on the basis of an "agreement on the implementation of the mediation process" concluded between the parties or through participation in an initial mediation session, in accordance with Articles 28 and 29 of the Law.²⁰ Each mediation process should be carried out taking into account the circumstances of the dispute, the preferences of the parties, and the need for an expeditious resolution of the dispute for each dispute under consideration.²¹

¹⁶ "Rules for the Implementation of the Mediation Process," approved by the Decision No. 385 of the Cabinet of Ministers of the Republic of Azerbaijan dated 5 September 2019, Article 2.1

¹⁷ Law of the Republic of Azerbaijan "On Mediation", Articles 9.3.2-1, 36.7

¹⁸ "Rules of Professional Ethical Conduct for Mediators" was approved by the Decision No. 384 of the Cabinet of Ministers of the Republic of Azerbaijan dated 5 September 2019.

¹⁹ "Rules for the Implementation of the Mediation Process," Article 1.2

²⁰ "Rules for the Implementation of the Mediation Process," Article 4.1

²¹ "Rules for the Implementation of the Mediation Process," Article 4.5

The parties may agree in advance on various conditions related to the conduct of the mediation process. For example, they may express their wishes regarding the language²² in which the mediation will be conducted or the venue where the mediation sessions will be held.

The duration of the mediation process is regulated by the Law²³ and the Rules. The total duration of the mediation process may not exceed 30 days. However, in view of the complexity of the dispute, the duration of the mediation process may be extended by an additional 30 days upon mutual agreement of the parties.²⁴ The specific timeframe of the mediation process is stipulated in the "agreement on the application of the mediation process", taking into account the total duration.

b. Guiding principles

Mediation enables dispute resolution through mutual consent, providing satisfactory outcomes for both parties, the society, and the mediator. However, this does not imply that mediation is a simple process. Mediation is a complex process for both the parties and the mediator, and its success depends on the mediator's knowledge, skills, and personal qualities, as well as the approach of the parties involved in the process. Furthermore, the success of mediation relies on adherence to the fundamental principles of this process.

*The fundamental principles of the mediation process:*²⁵

- *Voluntariness*
- *Equality of rights and cooperation between the parties*
- *Impartiality*
- *Neutrality (independence)*
- *Inadmissibility of interference in the mediation process*
- *Confidentiality (secrecy)*

*Principle of Voluntariness*²⁶:

The principle of voluntariness is one of the key factors ensuring the effectiveness and efficiency of the mediation process. This principle enhances the parties' trust in the process and directs them towards resolving the dispute.

The principle of voluntariness in mediation implies that the parties enter into and continue the mediation process voluntarily.

²² "Rules for the Implementation of the Mediation Process," Article 4.4

²³ Law of the Republic of Azerbaijan "On Mediation", Article 24.7

²⁴ "Rules for the Implementation of the Mediation Process," Article 4.6

²⁵ Law of the Republic of Azerbaijan "On Mediation", Article 42; "Rules for the Implementation of the Mediation Process," Article 4.3

²⁶ "Rules for the Implementation of the Mediation Process," Article 5

According to the Law "On Mediation",²⁷ the mediation process is voluntary. That is, the parties participate in the process by their own decision and have the right to withdraw from the process at any time. The mediator must explain this right to the parties and ensure it is upheld throughout all stages of the process.

This principle encompasses the following core elements:

1. **Voluntariness in the selection of the mediator:** The parties are free to choose a mediator of their own preference.²⁸
2. **Voluntariness of initial participation:** The parties enter the mediation process at their own free will. This means that neither party can be forced or coerced into the mediation process.
3. **Voluntary continuation of the process:** The parties participating in the mediation process are entitled to withdraw from the process at any stage. Neither party can be forced to remain in the process. Even when there is only one step left for the completion of the process, that is, when the mediation agreement (settlement agreement) is ready for signature, the parties may opt to exit the process without signing the agreement. Unlike court proceedings, a party's withdrawal from the process does not entail any legal consequences.
4. **Voluntariness of consent:** In the mediation process, any agreement reached must be a result of the voluntary will of the parties (*for example*, in some mediation processes, a dispute may arise between the parties regarding who should or should not participate. The decision in such cases must be made by the parties themselves, not by the mediator. The parties determine who will participate in the mediation process, and if they cannot reach an agreement, they may choose to abandon mediation altogether. In this case, the mediator should not intervene in the issue and make a decision, expel any participant from the mediation process, or prohibit a party from participating in the mediation process. Instead, the mediator should explain the procedure and outcomes to the parties. In many cases, the mediator's explanation helps the parties reach a positive decision on the issue). No agreement should be signed under coercion or pressure.
5. **Voluntary exchange of information:** The parties exchange information at their own discretion. No one can be compelled to disclose information. In the mediation process, a party may provide the mediator with any information they choose. Even if the information is not truthful, it does not result in legal liability (except in cases involving information about the commission of a criminal offence).
6. **Voluntariness regarding the outcome of the mediation process:** The parties are free not to sign the mediation agreement (settlement agreement) even after lengthy discussions and mutual understanding. They may reject the agreement in full.

Principle of Equality of Rights and Cooperation of the Parties²⁹

This principle comprises two key elements:

1. **The parties have equal rights and obligations during the mediation process.**
2. **The parties engage in mutual cooperation and interaction.**

²⁷ Law of the Republic of Azerbaijan "On Mediation", Article 5.1

²⁸ Law of the Republic of Azerbaijan "On Mediation", Article 5.1

²⁹ Law of the Republic of Azerbaijan "On Mediation", Article 6

The parties enjoy equal rights and bear equal responsibilities at all stages of mediation and in relation to all aspects of the process. The parties must mutually cooperate in the mediation process so that the mediation can produce a positive result. For this, the mediator must communicate with the parties on the basis of the principle of equality, so that the parties have confidence in the mediator and are open to cooperation.

Principle of Impartiality ³⁰

The principle of impartiality ensures that the mediation process is fair and effective, strengthens the parties' trust in both the mediator and the process, and helps achieve an effective resolution of the dispute.

Impartiality refers to the mediator's duty to treat the parties equally.

According to the Law ³¹, the mediator must remain impartial throughout the mediation process. The Law has established clear rules on impartiality. Thus, the mediator must **treat both parties equally** during the mediation, **ensure equal participation** of the parties during the mediation, and **create equal opportunities** for both parties to present their positions during the process. ³²

The impartiality of the mediator is addressed in Section 3.8 of the “**Code of Professional Ethical Conduct for Mediators**” under the heading “Impartiality of the Mediator”. In that section, it is stipulated that the mediator must act independently and impartially during the mediation. Subsequently, in the same section, it is also indicated which cases are considered a breach of impartiality.

The requirements of the principle of impartiality include:

- The mediator must treat both parties equally during the mediation, ensure equal participation of the parties in the mediation process, and create equal opportunities for both parties to present their positions during the process;³³
- When performing duties, the mediator must not allow any party to gain an advantage or create conditions that may lead to such an advantage based on race, ethnicity, language, gender, origin, property status and service position, attitude to religion, beliefs, political affiliation, membership in trade unions or other public associations.³⁴
- Moreover, the mediator is obliged to observe political neutrality in the performance of his/her duties.³⁵

The principle of impartiality encompasses the following key aspects

1. Impartiality of the mediator: The mediator must remain objective and neutral toward both parties. They must not support any party or decide in favour of one party. The personal interests or emotions of the mediator must not interfere with the process. If a mediator believes they cannot remain impartial in a particular case, they must refrain from accepting the mediation in such a case and must withdraw from an ongoing process.³⁶

³⁰ Law of the Republic of Azerbaijan “On Mediation”, Article 7

³¹ Law of the Republic of Azerbaijan “On Mediation”, Article 7.1

³² Law of the Republic of Azerbaijan “On Mediation”, Article 7.2

³³ “Code of Professional Ethical Conduct for Mediators,” Clause 3.8.2

³⁴ “Code of Professional Ethical Conduct for Mediators,” Clause 3.8.3

³⁵ “Code of Professional Ethical Conduct for Mediators,” Clause 3.8.4

³⁶ Law of the Republic of Azerbaijan “On Mediation”, Article 7.2

2. Transparency of the process: The mediation process must be transparent to the parties, ensuring their confidence in the fairness and integrity of the proceedings. All parties must have equal access to the same information and enjoy the same rights and privileges at every stage of the process.

3. Equal opportunities: The mediator must provide all parties involved in the process with equal opportunities (time, attention, discussion, information, attitude) and rights. No party should be given special privileges or advantages. The views and positions of all parties must be heard and considered equally.

4. Equal treatment and absence of bias in decisions regarding the course of the process: The mediator must treat both parties equally and must not display any preference for either side. In considering the interests and needs of both parties, the mediator should make objective decisions regarding the course of the process. This means the mediator must not make any procedural decisions that are biased or contrary to the interests of either party under any circumstance. (Here, the term “decision” refers to decisions regarding the conduct of the mediation process. For example, postponing the mediation session to another time, shifting the discussion from a joint session to private caucuses, holding the process exclusively in a joint session, etc.).

Application of the principle of impartiality in practice:

The mediator must not only declare his/her impartiality but must also demonstrate it through his/her conduct and instil confidence in the parties that the process is impartial.

a) The mediator must declare his/her impartiality: To achieve this, the mediator must conduct a self-evaluation and make an explicit statement to the parties regarding his/her impartiality (no conflict of interest or bias in Favor of any party, etc.).

For example, the mediator may say: “You can confirm that I have no prior acquaintance with either of you (the parties involved in this process), that I have met both parties during the preparatory phase of this process, that I treat both of you equally, have no bias toward either party nor do I have any conflict of interest. I assure you that I am completely impartial in this matter and that I will remain impartial at every stage of the process. Both parties will be contacted in the same manner, given the same opportunities, and allotted equal time during both joint sessions and separate meetings. The opinions of both parties regarding the time allocation and the conduct of the process will be taken into account, and we will determine a common ground together.”

This statement of impartiality should be made both during the joint session stage, and in the initial private sessions.

b) The mediator must demonstrate impartiality through conduct: This means that the mediator must actively demonstrate impartiality at all stages of the process. Demonstrating impartiality begins with the public statement during the joint session and continues through consistent treatment of both parties (body language, facial expressions, affirmative words, etc.) throughout the proceedings until the case is closed.

For example, one way to demonstrate impartiality is to listen to all parties equally and give them equal opportunities. If one party is given a one-hour private session, the other party must also be allocated a one-hour private session. Equal opportunity must be consistently upheld throughout all phases of the process.

c) The mediator must convince the parties of his/her impartiality: The mediator must engage sincerely with the parties at all stages of the case to convince the parties of his/her impartiality. This is particularly important in one-on-one meetings, where he/she can communicate more sincerely and get the parties to believe him/her. The mediator can achieve this by employing an objective approach to the circumstances of the case. The mediator can reassure the parties of his/her impartiality throughout the process with the use of the appropriate body language, well-chosen language and emotions, statements made in the same direction, shared examples of past positive experiences, and equitable time allocation to each party on an individual basis.

Manifestations of violations of impartiality

Violations of the principle of impartiality may manifest in both active and passive forms.

Active: An active violation occurs when the mediator demonstrates a negative attitude toward one party in comparison to the other through direct means (direct influence: words, condemning questions, rude interruptions, etc.).

For example, a mediator must not pose judgemental rhetorical questions to a party, such as: "Is this behaviour appropriate for an Azerbaijani woman?" Regardless of the mediator's gender, such remarks can evoke a deep sense of guilt in the party, and that person may subconsciously stop communicating, potentially preventing the continuation of the mediation. Especially in joint sessions, displaying more compassion to one party and less empathy to the other can be considered a violation of impartiality.

Passive: When the mediator conveys his/her attitude by expressing different emotions or making the parties sense them (indirect influence: through body language, such as the change of facial expression, nodding; or other emotions, such as sarcastic smiles, etc.), he/she passively violates the principle of impartiality.

For example, a dispute between husband and wife is handled by a male mediator; during the process, if the mediator nods to indicate agreement while the husband speaks, and shakes his/her head to indicate disagreement while the wife speaks, this may lead to a misunderstanding and, as a result, be interpreted as a violation of impartiality. Such conduct should not be tolerated.

Decisions about impartiality, managing bias

A mediator may make the following three decisions when addressing impartiality:

- Recognizing one's bias and overcoming it: The mediator must first know him/herself, maintain inner peace, be understanding and tolerant, and avoid harsh positions. To achieve this, the mediator must conduct a self-assessment.

The mediator must first conduct a self-assessment and answer the following key questions: "*Can I remain impartial in this case?*", "*One of the parties is a person I know from afar, could this situation affect my impartiality?*". Based on the responses, the mediator must determine the appropriate course of action.

Example: Let's assume that the mediator answered "yes" to the first question and "no" to the second, thus, the mediator has evaluated his/her bias and believes he/she can get rid of it. Alternatively, the mediator believes that knowing one of the parties does not give him/her a reason to be biased in favour of that person. If he/she is sure of this opinion, he/she should inform the parties about this situation, declare that he/she will remain impartial, and await the decision of the parties.

Example: Sometimes, even when the mediator has no prior acquaintance with the parties, there are moments when one party does not agree with the position, or the worldview of the mediator does not coincide with the views of the party. That said, after conducting a self-assessment, the mediator is sure that this situation will not hinder his/her impartiality and that it is possible for him/her to remain unbiased. In such cases, there is no need to inform the parties. The mediator proceeds to conduct the mediation process professionally and does not reveal his/her biases. Alternatively, the mediator is completely free from bias, as in, he/she has relinquished any previous biased views. For instance, during a mediation involving parties of different religious backgrounds, the mediator may personally identify more closely with one party's beliefs. However, if the mediator determines that this alignment does not impair impartiality, he/she may choose to proceed without disclosing this bias.

- Recognizing one's bias and managing it: There are certain cases where a mediator cannot remain impartial due to a conflict between the backgrounds of the people being mediated and the mediator's own life principles. In order to manage bias, the mediator must first be well aware of his/her biases and be very honest with him/herself. To do this, the mediator can ask him/herself a few questions: *"Is there anything in this case that might affect me personally (for example, related to my life principles, worldview, etc.)?"*, *(Am I biased in relation to this case?)*". If the mediator answers "yes" to any of these questions, then he/she must seriously assess the matter of impartiality. Of course, this does not mean that the mediator cannot conduct this case. If he/she can manage the bias and the parties consent to it, the mediator can conduct the process.

For example, in the preparatory stage of a mediation concerning a family conflict, the female party informs the (male) mediator that her husband has persistently behaved rudely, insulted her in front of their children, discarded food she prepared, and did not come home for days. The male party, on the other hand, admits that he is rude and often loses his temper, but does not wish to divorce. The mediator believes that under no circumstances should a husband behave in this way, and that a woman and a mother should be respected at home so that the children are also brought up properly. In this situation, the mediator believes that although the woman seems justified in her complaints and as a result, a bias arises in her favour, these thoughts will not prevent him from conducting the process impartially, because people are different, and it may be more beneficial for a male mediator to conduct this work. The mediator should not think about who is right and who is wrong, but rather focus on how the parties can come to a common denominator and how to guide the parties to adopt mutually beneficial behaviours (**for example**, the woman learning to cook better and the man being more patient can help reconcile the parties).

Alternatively, the mediator has formed specific opinions on who is wrong and who is right, and those opinions were formed precisely due to the case's personal relevance. **For example,** the dispute of the parties is related to an establishment located near the building where the mediator lives. The mediator agrees with one of the parties to the dispute and believes that he/she is right, because the mediator has indirect knowledge of the dispute from the first source. In such a case, the mediator must seriously consider the ability to manage impartiality. If the mediator recognizes his/her bias and is confident in managing it, he/she can conduct the process based on the consent of the participants. Some mediators refuse to work in such situations. This is also a valid course of action. However, a professional mediator does not refuse to work if there is no serious conflict of interest or if his/her bias is unlikely to interfere with his/her professional attitude, and if the parties believe and agree that his process can continue impartially.

- Recognizing one's bias and withdrawing from the process: In some cases, upon assessing his/her own bias, the mediator may realize that he/she is unable to overcome it or has difficulty

managing it. In such a case, the mediator should refuse to conduct the process, and should only disclose the decision and its reason to the parties.

For example, during the preparation stage for a mediation case, a female mediator learns that the husband in the case wishes to divorce his wife due to his relationship with another woman and that he intends to evict her and their children from their home. The mediator, remembering that she was in the same situation in the past and suffered a lot from being homeless with her children for many years, cannot withhold her attitude against the husband. The mediator evaluates herself and decides that, although she does not know the parties involved in the case, the circumstances of the case will not allow her to remain impartial. A negative attitude towards one party and a desire to help the other party makes the mediator withdraw from the case.

Thus, after answering the self-assessment questions, the mediator can determine whether he/she is capable of managing bias and how it might impact his/her mediation. If such bias would prevent him/her from conducting the case, including from stating, demonstrating, and proving impartiality to the parties, he/she should withdraw from the case.

Key points a mediator should know about impartiality:

- **Self-assessment of the mediator:** Under all circumstances and in all cases, the mediator must conduct an honest self-assessment. If any internal bias prevents him/her from conducting the case, he/she must withdraw from the case.
- **Disclosure of interests is a crucial factor:** If the mediator has a conflict of interest with one of the parties, this must be disclosed to the parties and, if necessary, he/she must withdraw from the process. In most cases, it is necessary to act based on the disclosure of interests and the decision of the parties.
- **The mediator is not a lawyer for any party:** To preserve impartiality, the mediator must not act as a lawyer for any one party. When it is necessary for parties to receive any information, the mediator must demonstrate the same approach to all parties involved in the process, and may provide some information with the joint consent of the parties. Another solution is to recommend that the parties contact professionals (lawyer, specialist, expert) regarding the questions that arise and to ensure the participation of both (or more) parties in the process with a lawyer present. (Here, if one of the parties cannot afford a lawyer, it would be appropriate to inform the party about free legal aid services).
- **Mediation is not a court, and the mediator is not a judge!**

Challenging situations related to impartiality:

By adhering to the principles of mediation, the mediator can ensure the management of challenging situations. Below are some examples of challenging situations related to impartiality.

Challenging situation 1. There is a power imbalance between the parties. The solution should be such that none of the principles and rules of mediation are violated. If the mediator tries to correct the power imbalance, it may give the impression of bias in favour of the weaker party. Conversely, if the mediator ignores the power imbalance, then the weaker party will not be able to participate effectively in the process. The best solution here is for the weaker party to participate in the process with the support of a lawyer. Moreover, the parties must be aware of the consequences of their actions and the various decisions they make in the mediation; only in this

case can mediation lead to a lasting agreement. Therefore, the mediator should be interested in whether the parties are aware of the consequences and should make efforts to ensure that they are informed.

Challenging situation 2: The mediator is truly free from bias, expresses and demonstrates impartiality, and convinces the parties of it. However, the parties are unable to accept it correctly.

For example, there may be a participant in the process who believes that his/her position is correct and thinks that any reasonable person would unequivocally support him/her. Assume that you are in a discussion about a case concerning labour relations and one of the parties is an employee. The employee works as a lawyer in an enterprise without any legal education. The employee instead has a degree in the field of international relations. The new management of the enterprise opposes this arrangement and offers the employee a job that is appropriate for his profession. However, the employee refuses this offer. The management of the enterprise does not extend the term of the employment contract with this employee and terminates the employment relationship. The employee argues that he worked as a lawyer in this enterprise prior to the arrival of the current management, everyone was satisfied with his performance, he is passionate about the legal field and, based on his experience, he can continue to work in this position, but the new management does not know him well and thus evaluates him incorrectly. The mediator understands this approach, but states that he/she is impartial, while the employee is dissatisfied with this, because he believes that the mediator must be biased in his favour; after all, everyone should unequivocally support an employee who has devoted 5 years of his life to working as a lawyer in a company, loves the legal field very much, and works hard on self-development. Additionally, the employee believes that he is in a weaker position as an employee as opposed to an employer, and that the mediator should inform the other party that the employer is unfair in this situation. **Possible solutions for the mediator:** to explain to the party once again what impartiality is, what benefits it provides, and the functions of the mediator, to recommend that he contact a lawyer for advice on the prospects of the case and the provisions of labour legislation, and to discuss all possible solutions in a separate meeting with the party from beginning to end. If the party still continues to refuse to understand the mediator, the mediation process may be terminated.

Challenging situation 3: Being biased towards both parties (Showing complete impartiality without being completely impartial). Without complete impartiality, the mediator presenting themselves as fully impartial may create the impression of the mediator being insensitive to the party. Demonstrating full impartiality can sometimes hinder gaining the parties' trust and conducting sincere discussions. In such situations, it is important for the mediator to provide a more detailed explanation in a separate meeting with the party. The mediator must convince that party that impartiality benefits the entire process as well as the party's own interests. For this purpose, the mediator can show empathy and use the technique of "Understanding and sincere conversation with the party."

For example, the mediator may say: "I understand you very well. It is very difficult to be unemployed in this day and age. The mediation process is the best means for resolving such issues. To explain your situation to the other party, we need to review their proposals once again, and for that, the other party must be assured that the process is conducted according to the fundamental principles of mediation. My impartial position does not mean indifference to your problem; if you get such an impression, I would be disappointed. Because I understand you and can imagine how empty you felt when you lost your job. Twenty years ago, when I became unemployed, I fell into a serious depression. You are a very strong and self-confident person, and in this situation, you have chosen to fight. Based on my experience in such matters, I can say that now we must use all the possibilities of mediation to resolve the dispute, and for that, the process must proceed with adherence to all principles. Otherwise, the other party may refuse the process, and your only option

will be a long court dispute with an uncertain outcome. Presumably, the lawyers you consulted have explained the prospects of the case to you. Participating in this process with your lawyer may also be more comfortable for you.”

Thus, the mediator, on the one hand, emphasizes the importance of impartiality, and on the other hand, by expressing understanding towards the unemployed person, tries to gain their trust and steers the conversation towards seeking and finding solutions. In this case, the mediator must show the same attitude towards the other party as well. The mediator does not discuss whether the employer institution’s position is right or wrong, but tries to discuss the consequences of not extending the contract and demonstrates understanding towards the employer’s chosen course of action in the current situation (not extending the contract). In fact, internally, the mediator analyses the positions of both parties and thinks: “The employee does not understand that, although he has resolved some legal matters, he is not a lawyer. He has been offered a job with the same salary according to his education, he should have agreed to the employer’s offer. The employer, on the other hand, immediately expels the employee, as if it is easy to find a good employee. The employer could have considered that this employee has spent years at this institution and could have found another solution...” **Thus, here the mediator is not fully impartial, but equally biased towards both parties.**³⁷ This helps the mediator to find possible and discussable solutions. As a result, with the help of the mediator, the parties agree that the employee will work as a chief specialist in the institution’s international relations department and concurrently will pursue a legal education; legal education will give the employee the opportunity compete for legal vacancies in the future.

Challenging situation 4: Being biased while trying to appear impartial. If a mediator, who views mediation merely as a profession, bases his/her actions not on his/her internal thoughts but rather on how he/she should act as a fundamental principle, this may **create an impression of insincerity to others**. Parties who sense this may not trust the mediator in the negotiations, and as a result, this situation may affect the quality of mediation. In order to prevent such situations, the mediator must instil certain habits in him/herself. First of all, the mediator must be honest and compassionate, free him/herself from rigid positions, and demonstrate understanding towards the parties. When the mediator is biased but demonstrates impartiality, he/she must be convincing so as not to appear artificial and insincere. Parties trust a mediator who approaches people with understanding and without judgment, and does not hesitate to be sincere in negotiations.

Principle of Independence

The principle of independence is one of the fundamental principles of mediation³⁸ and is closely linked to the principles of neutrality and impartiality of the mediator. However, these principles do not have the same meaning and require different behaviours, approaches, and sensitivities from the mediator. It should be noted, though, that these principles aim at the same goal: ensuring that the mediator acts by equally considering the interests of the parties in resolving the dispute. In this regard, independence, impartiality, and objectivity complement each other while pursuing the same objective; the difference between the principles lies in imposing different instructions and prohibitions on the mediator.

³⁷ "Mediator Kennet Klok first used the term 'omnipartial', meaning being comprehensively partial. That is, the mediator must fully understand both parties and strive to assist both. This approach is frequently observed in real mediations. The mediator establishes such a relationship with each party that each side believes the mediator genuinely wants to help them." — Ruslan Mirzayev, *Mediation. Theory and Azerbaijani Practice*, 2020, p. 35.

³⁸ Council of Europe Committee of Ministers, Recommendation R (98) 1 on Family Mediation, part II-ii

The **principle of independence** requires the mediator to conduct their work free from external interventions and influences, ensuring that the mediation process is carried out fairly and objectively. This increases the parties' trust in the mediator and the process, ultimately contributing to more sustainable and effective agreements.³⁹ **Impartiality**, on the other hand, demands that even in the absence of external influence, the mediator maintains equal distance from the parties, treats them equally, refrains from making "right or wrong" judgments regarding any party's demands or objections, provides equal opportunities to the parties, and approaches their interests and positions without mixing in personal emotions, applying the same reasoning to all.

The principle of mediator's independence is reflected in Article 4 of the Law "On Mediation," titled "Objectives and Principles of Mediation." Clause 2 of this Article sets out the principles of "mediators' impartiality and independence" and the "inadmissibility of interference in the mediation process." Although the "inadmissibility of interference" is directly related to independence, as protecting mediation from external interference ensures the mediator's independence. Article 7.1 of the Law, titled "**Mediator's Independence, Impartiality, and Inadmissibility of Interference in the Mediation Process,**" explains the principle of independence as follows:

"During mediation, the mediator must be independent and impartial. The mediator must not be dependent on the parties, state, and local self-government bodies, legal or natural persons while conducting the mediation process, and interference by the aforementioned bodies and persons in the mediator's activities during mediation is not permitted."

The second Clause of the same Article stipulates that the mediator must ensure impartiality, equal treatment of both parties during mediation, equal participation of the parties in the mediation process, and must create equal opportunities for both parties to present their claims during the process. According to the Law, if there are circumstances that impede the mediator's impartiality, the mediator must refuse to conduct the mediation.

The independence of the mediator is also regulated by subordinate normative legal acts. According to Article 4.3 of the Rules for Conducting the Mediation Process: "Mediation is carried out on the basis of the principles of voluntariness, equality of rights and cooperation of the parties, impartiality and independence of mediators, inadmissibility of interference in the mediation process, and confidentiality."

According to Article 7.7 of the same Rules, the mediator must disclose to the parties any information about being related, friends, or acquaintances with any party, as well as any information that could affect or is likely to affect their independence or impartiality, that could create any doubt in the parties regarding their independence or impartiality, or that could lead to a conflict of interest. In these Rules, being related, friends, or acquaintances with one of the parties is given as an example of circumstances that may cast doubt on the mediator's independence and impartiality.

Circumstances affecting the independence of the mediator may be objective or subjective.

Objective circumstances affecting independence are criteria that can be measured by objective standards, such as kinship, subordination, or having a share in a company with one of the parties.

³⁹ Standards of Conduct for Mediators, p.2 Published by New York Stated Unified Court System, see: <https://ww2.nycourts.gov/doc/35261>

Subjective factors affecting independence are more related to personal relationships, requests, or the mediator having information that may influence them positively or negatively towards one of the parties.

The mediator's independence is also addressed in the Rules of Professional Ethical Conduct for Mediators, under Section 3.8 "Impartiality of the Mediator," which states that during mediation, the mediator must remain independent and impartial. The same section further specifies which situations are considered violations of independence and impartiality.

The requirements of the principle of independence include the following:

- The mediator must not allow any person, including relatives, friends, or acquaintances, to interfere in their mediation activities in any form; at the same time, the mediator must not come under the influence of state or local self-government bodies, legal or natural persons, and public opinion or criticism must not affect the legality or validity of their activities;
- The mediator is obliged to observe political neutrality in the performance of his/her duties.⁴⁰

Although other points mentioned in the same section relate to impartiality, they are also relevant to independence (*see: the "Principle of Impartiality" section in this handbook*).

Thus, the following explanation is understood when referring to the independence of the mediator:

The principle of independence (neutrality) requires that the mediator act without being subject to any external influence and remain completely objective and impartial towards the parties.

If we summarize all that has been written above, the principle of independence encompasses the following key points:

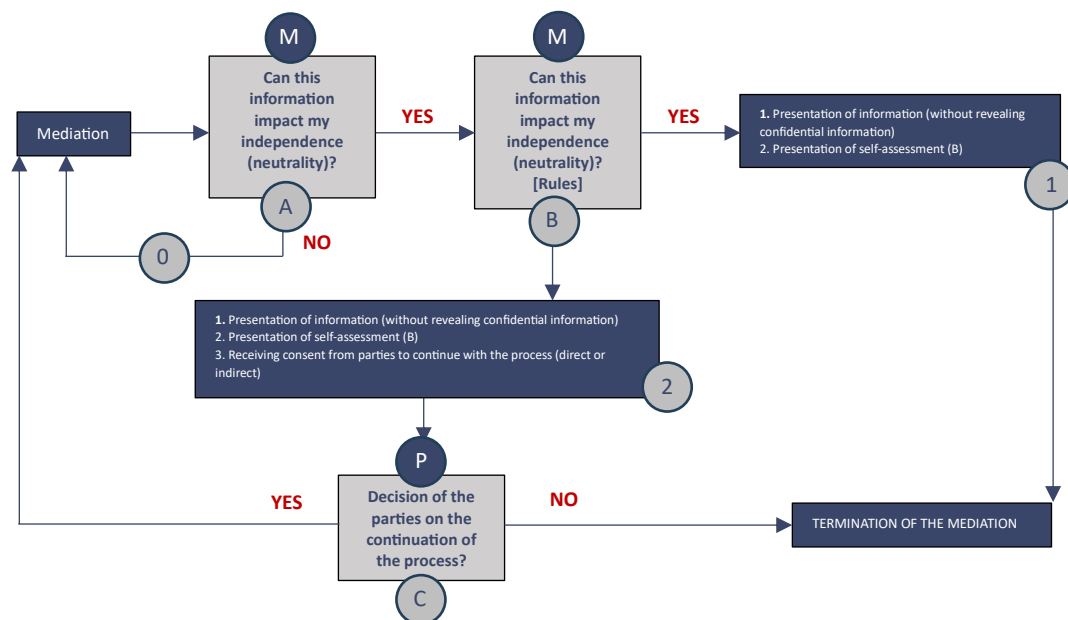
1. **Neutrality:** The mediator must not give preference to any party and must not be biased against any party. The mediator must equally consider the interests of all parties involved in the mediation. To ensure this, the mediator a) must first clarify his/her relationship with the parties (whether there is any personal or professional acquaintance); then determine whether there are any interests arising from such relationships; if the mediator has any interest, he/she must refuse to conduct the mediation. b) The mediator must determine whether he/she has any connection to the subject matter of the dispute; if the mediator has an interest (personal, financial, or any relationship from which indirect benefit may be obtained), or if there is any factor that may affect his/her neutrality, the mediator must refuse to conduct the mediation (these points also relate to the principle of impartiality).
2. **Independence:** The mediator must be free from external influence. He/she must be able to act independently and must not be subjected to the pressure or influence of any party.
3. **Absence of Personal Interests:** At no stage of the process should the mediator involve personal interests or other personal relationships in the process. The mediator's sole purpose should be to assist the parties in reaching a sustainable agreement.
4. **Objectivity:** The mediator must assess the information and positions presented by the parties objectively and fairly. The mediator must give equal attention to the parties and carefully listen to the position of each.

⁴⁰ This rule pertains to both the principles of independence and impartiality.

5. **Disclosure of Interests:** If the mediator has any conflict of interest with either party or if there is any external interference, the mediator must immediately inform the parties and, if necessary, withdraw from the process.
6. **Transparency:** Every stage of the mediation process must be transparent for the parties so that they are assured of the mediator's objectivity and neutrality. The mediator must inform the parties of any connections with them or of any facts that may give rise to doubts about his/her independence and impartiality; furthermore, if the mediator, based on their internal conviction, believes that any relationship does not affect his/her neutrality, independence, or impartiality, the parties must be informed that they will decide whether the mediation process should continue, and, if the parties do not wish to proceed, another mediator may be engaged in the process (these points also relate to the principle of impartiality).

The mediator may use the ethics filter developed by the “ADR Centre” to check his/her own independence:

Ethics filter:



This filter can be applied on any information received by the mediator in the context of mediation

Principle of the Inadmissibility of Interference in the Mediation Process

This principle is closely linked to the principles of mediators' independence and impartiality. Article 7 of the Law “On Mediation” is titled “Independence and Impartiality of Mediators and Inadmissibility of Interference in the Mediation Process,” and according to Article 7.1, the mediator must not be dependent on the parties, state and local self-government bodies, legal or natural persons while conducting the mediation process, and interference by the aforementioned bodies and persons in the mediator's activities during mediation is not permitted. To ensure compliance with this requirement of the Law, the mediator must be principled and adhere to the professional code of ethical conduct for mediators. According to Clause 3.8.5 of these rules, “the mediator must not allow any person, including relatives, friends, or acquaintances, to interfere in their mediation activities in any form; at the same time, the mediator must not come under the influence of state or local self-government bodies, legal or natural persons, and public opinion or criticism must not affect the legality or validity of their activities.”

Principle of Confidentiality⁴¹

One of the greatest advantages of mediation is its confidential nature. There is a classical rule in the mediation process: **the issues discussed and the information obtained must be kept confidential, and this information may only be disclosed with the consent of the parties.** The principle of confidentiality in the mediation process ensures the effectiveness of mediation and the parties' confidence in continuing the process, as well as the protection of their personal and legal interests.

The importance of maintaining this principle becomes even more evident when the parties do not reach an agreement in mediation. In such cases, the parties have to apply to the court. Therefore, the parties must be assured that any factual circumstance disclosed by them during the mediation process will not harm their interests during court proceedings, since mediation is a reliable process conducted only with the participation of the disputing parties and the mediator.

The principle of confidentiality requires that the issues discussed by the parties and the information provided be kept secret.

As a rule, the mediation process is conducted in private.⁴² This rule is clearly established in the Law,⁴³ and its main purpose is to ensure the principle of confidentiality.

In mediation, confidentiality is understood at two different levels: internal confidentiality within the mediation process and external confidentiality in the mediation process.⁴⁴

Internal⁴⁵ confidentiality in the mediation process means that confidential information disclosed by one party to the mediator may not be revealed to the other party.⁴⁶ In particular, if a party requests that the information provided to the mediator not be disclosed to the other party, the mediator must keep that information confidential and must not disclose it. One may ask, how can the mediator use undisclosed information? When the mediator is aware of confidential information, they can identify the real interests of the party and encourage discussion of various solutions to address those interests, which may ultimately reveal opportunities for settlement.

External⁴⁷ confidentiality in the mediation process means that information disclosed to one of the parties, the mediator, or other participants in the mediation process is not disclosed to third parties or organizations. According to the Law, the confidentiality of all information obtained during mediation is protected by the participants in mediation and other persons involved in the mediation process.⁴⁸ Despite the provision of the Law, ensuring confidentiality at this level is more difficult and places greater responsibility on the mediator. The mediator must not only protect this principle themselves, both during and after the process, but also effectively explain the essence of this principle, its exceptions, and the liability for breach of confidentiality to the parties and other

⁴¹ Law of the Republic of Azerbaijan "On Mediation", Article 8

⁴² Law of the Republic of Azerbaijan "On Mediation", Article 8.1

⁴³ Law of the Republic of Azerbaijan "On Mediation", Article 8.1: "Unless a separate condition has been established between the parties, mediation is held in private."

⁴⁴ Ruslan Mirzayev, Mediation. Theory and Azerbaijani Practice, 2020, p. 40

⁴⁵ Ruslan Mirzayev, Mediation. Theory and Azerbaijani Practice, 2020, p. 41

⁴⁶ "Code of Professional Ethical Conduct for Mediators," Clause 9.1

⁴⁷ Ruslan Mirzayev, Mediation. Theory and Azerbaijani Practice, 2020, p. 41

⁴⁸ Law of the Republic of Azerbaijan "On Mediation", Article 8.2

participants so that they also ensure the protection of confidentiality. For this, the mediator must take the following into account:

A. Confidentiality of information, statements, documents, and correspondence: All information provided by the parties during the mediation process, oral and written statements, objections, opinions, and proposals, drafted protocols, notes, and other written documents must be kept confidential. This rule is established in Article 8.2 of the Law:

Unless otherwise agreed between the parties, and except in cases required for the confirmation and enforcement of the settlement agreement, the confidentiality of all information obtained during mediation (including the initiative of one of the parties to conduct mediation, consent to mediation and possible solutions to the dispute, opinions or proposals of one of the parties or the mediator regarding possible resolutions of the dispute, statements or admissions made by one of the parties during mediation, documents prepared for the purpose of conducting mediation, etc.) is protected by the participants in mediation and other persons involved in the mediation process.

Hence, as a rule, information obtained in mediation is kept confidential and is not disclosed to third parties. At the same time, the exceptions provided in the Law indicate that the mediation process is not an entirely confidential process ⁴⁹ (*this will be discussed further below*).

The protection of confidentiality is the responsibility of the mediator, the parties, and other persons participating in the process. This rule is clearly established both in the Law and in the Rules on Mediation. According to Clause 3.10.2 of the “Code of Professional Ethical Conduct for Mediators” (hereinafter in some cases referred to as the “Code of Ethical Conduct”), in accordance with the Law of the Republic of Azerbaijan “On Mediation,” the mediator may not disclose or refer to information obtained during mediation in court or arbitration proceedings, in another mediation, or in any other circumstances (except in cases where the party providing the information has given written consent), nor may the mediator participate as a witness concerning such information. The same rule applies to participants in mediation (the parties and other persons participating in mediation) ⁵⁰ (*for more practical guidance on the application of the principle of confidentiality, see section 4e of this handbook*).

B. Exceptions: The principle of confidentiality is not absolute and does not apply in certain cases. Exceptions are provided in the Law, the Rules, and the European Directive “On Mediation.”

Articles 8.2 and 8.4 of the Law “On Mediation” set out exceptions where the principle of confidentiality does not apply:

- a) If separate conditions have been agreed upon between the parties.
- b) If required for the confirmation and enforcement ⁵¹ of the settlement agreement.
- c) If information regarding serious or especially serious criminal offenses is obtained during mediation (such information must be provided to the relevant authorities).
- d) If, during criminal proceedings, a court decision requires the disclosure of information related to mediation.

The approved version of the “European Directive” ⁵² provides for the following exceptions:

⁴⁹ You can find a more detailed explanation of this in Chapter 4 of this book.

⁵⁰ Law of the Republic of Azerbaijan “On Mediation”, Articles 8.2, 8.3

⁵¹ You can find more comprehensive information on this topic in Chapter 4 of this book.

⁵² The Mediation Directive, Article 7

- a) public interest requirements;
- b) when it is a necessity for the enforcement of the mediation agreement;
- c) when information is disclosed as a means for preventing a harm or a crime;
- d) when related to the protection of the rights of a minor;
- e) may be disclosed with the consent of both parties.⁵³

Moreover, Clause 11.3-1 of the Rules for Conducting the Mediation Process states that “a settlement agreement affecting the upbringing, development, and other interests of a child must be submitted by the mediator to the guardianship and custody bodies of the local executive authorities.” This provision may give the impression that this obligation of the mediator violates the principle of confidentiality. In reality, both the Law and the Rules indicate that the principle of confidentiality is not absolute and that its limitation is envisaged in necessary cases. The list of limitations is not extensive, and just as the mediator must take the principle of confidentiality seriously, they must also pay careful attention to the exceptions.⁵⁴ The mediator must clearly explain all exceptions to the parties and other persons participating in mediation.

An example of a mediator’s statement regarding confidentiality is provided in Chapter 4 of this handbook. As a general statement on confidentiality, you may also refer to the following example:

“The mediation process is a confidential process. As a rule, all the opinions you express, all the information you provide, and all documents and opinions related to your dispute will be kept confidential and will not leave this room. Protecting the confidentiality of the process is not only my duty but also yours. You may not disclose or refer to information obtained during mediation in court or other proceedings, or in any other circumstances, nor may you participate as a witness regarding such information. Telling others about what happens during the mediation process may also violate the principle of confidentiality. Even after this process is completed, it is the duty of each of us to maintain the confidentiality of the information provided. If this principle is violated by you, it may lead to serious liability. Please note that, according to the Law, you may be fined 800 manats for such a violation. Disclosure of any information is only possible with your written consent. This means that keeping information confidential depends largely on you.

However, there are certain cases where the principle of confidentiality does not apply. For example, if I receive information about serious or especially serious criminal offenses during the process, I must report this information to the relevant authorities. Or, if a settlement agreement is concluded between you and I am called to court for the purpose of confirming and enforcing the agreement, I will have to provide information about the compliance of the agreement with the principles of mediation.

In family disputes, where there are issues related to children, the mediator may also add the following to their statement:

“I would also like to inform you that if there are issues affecting the upbringing, development, or other interests of a child, I am required to report this to the relevant authorities. According to the Law, if there are issues in the settlement agreement that affect the interests of a child, I must submit a copy of the agreement to the guardianship and custody bodies of the executive authority.”

⁵³ This rule is also stated in clause 3.10.2 of the Code of Professional Ethical Conduct for Mediators.

⁵⁴ Information on exceptions is additionally provided in Chapter 4 of this book.

C. Continuity of the principle of confidentiality: The confidentiality of information in mediation must be maintained both during the process and after it is completed. The European Directive “On Mediation” obliges member states to ensure the confidentiality of the process both during and after mediation.⁵⁵ As the principle of confidentiality remains in force after the completion of the mediation process, the mediator and the parties must not disclose confidential information to third parties or the public after the process. Even if the mediator ceases their activities, they must still comply with this principle regarding information obtained during past processes. Both the Law and the Code of Ethical Conduct for Mediators require the mediator to ensure the confidentiality of all information obtained during mediation processes during his/her professional activity, as well as after the right to carry out the relevant activities of the mediation organization has been terminated or after being removed from membership of the Mediation Council.⁵⁶ The same rule applies to the parties and other persons participating in the mediation process, and the mediator must explain this point to the participants in mediation.

D. Ensuring Confidentiality by the Mediator: To protect the principle of confidentiality, the mediator must fulfil the following duties:



The mediator must explain the essence of the principle of confidentiality to the parties, clearly inform them of the liability for its breach, and provide specific information about possible sanctions. The mediator may provide this information both orally and in writing.

Orally, the mediator should make a confidentiality statement at every stage of mediation: during preparation, in the opening speech at the joint session, in separate meetings, at the final session, and as a concluding statement when the process ends.

For **written** statements on confidentiality, the mediator may use various methods; for example, by providing a written notice to the parties for the purpose of protecting confidentiality, proposing (or requiring) the signing of an undertaking, or by sending an explanatory letter on confidentiality to the parties during the preparation phase using written communication tools.



The mediator must provide information about confidentiality at all stages of the process - during preparation (by phone or in person), at the joint session (in the opening speech), during separate meetings (with a reminder about confidentiality), and at the final session (by once again emphasizing that the principle of confidentiality must be observed even after the process ends). *(Examples of such statements are provided in Chapter 4 of this handbook.)*

Furthermore, it should be noted that the mediator must pay special attention to ensuring that the confidentiality obligation applies to the separate meetings held between the mediator and either party. It is prohibited by Law for the mediator to disclose confidential information shared by one party to the other party without the explicit consent of that party.⁵⁷ The mediator must know and comply with this requirement and remind the party about it.

⁵⁵ Esplugues C., *Civil and Commercial Mediation in Europe*, Intersentia (Cambridge-Antwerp-Poland), Vol. II, 2014, ISBN 978-1-78068-130-6, p. 7

⁵⁶ Law of the Republic of Azerbaijan “On Mediation”, Article 8.5; “Code of Professional Ethical Conduct for Mediators,” Clause 3.10.1

⁵⁷ “Rules for the Implementation of the Mediation Process,” Article 9.1

For example, in an initial private meeting with one party, the mediator may begin the discussion with the following statement on confidentiality:

“Dear Ms. [Name], a separate meeting is a good opportunity for the parties to express their views more comfortably for the positive resolution of the dispute. You may freely express all matters you wish to share with me about the dispute; our entire conversation will remain confidential. You can be assured that all conversations with me will be kept confidential by me, and unless you wish, no information will be communicated to the other party or to any other person. Because mediation is a closed process, and the Law prohibits disclosure of what is obtained in the process. I would also like to mention one other point that may make you feel more comfortable - if there is any information you do not want communicated to the other party, please highlight it, and I will pay special attention to the confidentiality of such information. If you also indicate which information you do not consider confidential, I may communicate it to the other party in the form you wish during negotiations, or, at my discretion, use it to facilitate a positive resolution of the process.”

In subsequent separate meetings, the mediator may provide a shorter reminder about confidentiality.



The mediator must also take certain specific measures to prevent the dissemination of information and to maintain confidentiality. **For example**, the mediation venue should be private, the involvement of unauthorized persons in the process should be prevented, documents and information obtained during the preparation and other stages of the process should be stored in locked filing cabinets to protect their confidentiality, and appropriate instructions should be given to staff.

E. Liability for the breach of the principle of confidentiality: Compliance with the principle of confidentiality is the duty of the mediator, the parties, and other persons participating in mediation, and violation of this duty results in corresponding liability⁵⁸.

The mediator’s liability: Observing the principle of confidentiality is not only a legal requirement but also a matter of professional ethical conduct for mediators. According to paragraph 4.3 of the Code of Professional Ethical Conduct for Mediators, “violation of the rules of ethical conduct is grounds for the disciplinary liability of the mediator.” The types of disciplinary liability are specified in the Law.⁵⁹ Disciplinary liability does not exempt the mediator from civil, administrative, and criminal liability for damages caused by violating duties established by law, nor from disciplinary measures imposed by the mediation organization where he/she works. Additionally, certain violations (including improper observance of the principle of confidentiality and its exceptions) entail administrative liability, as reflected in the Code of Administrative Offenses.⁶⁰ For example, according to Article 602-2.5 of the Code, a mediator who fails to provide information about circumstances arising from family disputes affecting the interests of a child that pose a danger to the child’s normal development or harm the child’s interests, or who fails to submit a settlement agreement affecting the child’s interests to the relevant body designated by the executive authority, may be fined **500 AZN**. On the other hand, the mediator bears no liability for the failure to resolve the dispute between the parties, not concluding a settlement agreement, or the non-enforcement of a settlement agreement.

⁵⁸ Law of the Republic of Azerbaijan “On Mediation”, Article 37

⁵⁹ Law of the Republic of Azerbaijan “On Mediation”, Article 16

⁶⁰ Code of Administrative Offenses of the Republic of Azerbaijan

Liability of the parties: According to Article 8.6 of the Law, violation of confidentiality rules by participants in mediation and other persons involved in mediation leads to liability as provided by law. The Code of Administrative Offenses prescribes strict sanctions, as established in Article 602-2.3: “For the violation of confidentiality rules provided for in the Law of the Republic of Azerbaijan ‘On Mediation’ by participants in mediation and other persons involved in mediation - **individuals are fined 800 AZN, officials 1,500 AZN, and legal entities 3,000 AZN.**”

The mediator must inform the participants in mediation about the liability and specific sanctions provided for by law. *(Sample statements by the mediator on how to provide this information, as well as additional information on the practical application of the principle of confidentiality, can be found in Chapter 4 of this handbook.)*

c. Understanding conflict

What is conflict?

Conflict is an integral part of human behaviour. Personal development does not occur without this phenomenon.⁶¹ On the other hand, it can be noted that conflict is a natural part of human and social life. For this reason, it arises constantly and will always do so. In the mediation process, understanding conflict means deeply studying the causes, positions, and interests underlying the dispute between the parties and based on this information, proposing effective solutions.

A deep understanding of conflict helps to find more effective and sustainable solutions in the mediation process. This enables the parties to show greater understanding and respect towards each other, and ultimately to reach more satisfactory agreements.

Various definitions can be given regarding what constitutes a conflict. In conflict, the parties have differing desires, serious disagreements, differences in views and approaches, clashes of interests, and competition.

Conflict arises from the clash of ideas, actions, interests, or goals that have an adverse impact on the interests of the parties (individuals or groups).⁶² Unlike ordinary disagreement, conflict has a long-term effect.⁶³ Therefore, it is necessary to distinguish conflict from ordinary disagreement; the latter is short-term and usually resolved. To see these differences, it is important to identify the **main characteristics** of conflict.

Main characteristics of conflict	Disagreement
Conflict usually arises in situations where the parties influence each other or have mutual interests. In most cases, the interests of the parties are interdependent.	There is no mutual dependence.

⁶¹ Acland A.F., *A Sudden Outbreak of Common Sense: Managing Conflict through Mediation*, (London: Random House Business Books, 1990), p. 69

⁶² What is Conflict? Scottish Center for Conflict Resolution; see: <https://www.scottishconflictresolution.org.uk/learning-zone-what-is-conflict>

⁶³ Understand conflicts, disputes and complaints – AIGI; Indigenous Governance Toolkit, see: <https://aigi.org.au/toolkit/understand-conflicts-disputes-and-complaints>.

The basis of conflict is the contradiction of ideas and interests ; the goals or positions of the parties do not coincide.	Usually, there is no serious difference of opinion; it is a misunderstanding, as goals and interests do not conflict.
It is usually accompanied by an emotional state, which affects its course.	Usually, there is no emotional background, and if it exists, it does not create heightened tensions.
Conflict can have a dynamic nature - it may develop, intensify, or be resolved over time.	It is short-term and usually resolved quickly.

Factors that drive conflicts: Conflicts may arise from a variety of causes - clash of interests, lack of resources, stereotypes, different approaches to the same issue, divergent beliefs and cultures, communication problems, etc. By grouping these causes, we can categorize them into several key factors that provoke or intensify conflict. Such factors influence the emergence and course of conflicts. Below are five primary factors that drive conflict:

A. Lack of resources

- Competition for basic needs (for example, water, food, land, finances) is one of the main causes of conflict.
- Example: conflicts over natural resources (disputes over water sources or land). Two neighbours have a single well in their garden and agree to use the well in turns. However, when one neighbour does not follow the rules of rotation, a conflict arises.

B. Divergent interests

- Conflict can arise when the goals and interests of the parties do not align.
- Example: Disputes over working conditions or salary between management and employees in the workplace. In a workplace where employees holding the same position are granted different privileges, a conflict arises between management and an employee who, despite working 10 hours, receives a lower salary than another employee with less experience who works only 6 hours.

C. Lack of communication

- Miscommunication, lack of information, or misunderstandings provoke conflicts.
- Example: Tension arising from unspoken expectations or the use of inappropriate language between two people. A husband does not allow his wife to meet her friends because he has information that one of them poses a threat to their family. The inaccuracy of this information leads to conflict between the husband and wife, as the people the wife wants to meet do not have bad intentions.

D. Cultural and value differences

- Contradictions between different cultures, customs, values, and beliefs can lead to conflict.
- Example: Social conflicts arising when two different ethnic groups or individuals with different religious beliefs live together in the same area. For instance, a conflict over religious rituals between supporters of the Sunni and Shia sects in Zagatala can be classified in this category.

E. Distrust and negative attitudes

- Lack of trust, negative attitudes, and stereotypes towards each other further inflame conflict.
- Example: Rival groups displaying hostility towards each other. The methods employed by opposition parties in society against each other or against representatives of parties close to the government can lead to conflict.

These factors not only cause the emergence of conflict but also contribute to its escalation. Effective management of conflicts depends on the proper analysis of these factors.

Thus, from a practical perspective, the concept of conflict can be presented in different ways. To summarize, the concept of conflict can be defined as follows:

Conflict is a confrontation or disagreement arising from the clash of interests, values, resources, goals, or perspectives between two or more parties.

Types of conflict

Conflict can be **interpersonal, intrapersonal, intergroup, or intragroup**, and the factors influencing the conflict may differ accordingly.

Interpersonal conflict is a situation of misunderstanding, disagreement, or confrontation that arises between two or more individuals. This type of conflict may emerge due to differences in people's interests, values, opinions, or emotions. Interpersonal conflict can occur among family members, friends, colleagues, spouses, or people in other social relationships.

Interpersonal conflicts usually arise due to the following reasons:

- **Differences in perspectives and values** – People may argue because they have different worldviews and values. (*Example:* People may argue on religious grounds, and sharp differences in perspective can lead to intense disputes. The mediator can remind the parties to respect each other's religious beliefs, thereby de-escalating the conflict.)
- **Clash of interests** – When people have different interests and desires, this can lead to conflict. (*Example:* A father wants his son, who graduated from law school, to work in the prosecutor's office, but the son does not want to work in the legal profession at all and prefers to pursue music. This situation can cause conflict. The mediator can talk to the parties separately, creating a basis for mutual understanding.)
- **Misunderstandings** - Miscommunication or misunderstanding can create disagreements. (*Example:* One party uses a rude expression - "you made a mess" - during a conversation. This leads to an argument. In this situation, the mediator can point out that the word "mess" means "mistake," thus preventing the conflict from escalating.)
- **Unclear roles and responsibilities** – Especially in work or home environments, conflict may arise when roles and responsibilities are not clearly defined. (*Example:* An elderly woman marries off her son Ali, and lives in the same apartment with her son's family. The daughter-in-law and mother-in-law argue over domestic matters, but both love Ali and try to make him happy. The mediator can use this feature to help resolve the conflict.)

To resolve interpersonal conflicts, it is important to use methods such as effective communication, empathy, active listening, and compromise. By using these methods, the mediator helps to resolve the conflict constructively and ensures the healthy development of relationships.

Intrapersonal conflict (internal conflict with oneself) is an internal disagreement or struggle that a person experiences within themselves. This arises from contradictions between a person's own thoughts, feelings, values, and desires. Intrapersonal conflict can also be described as "struggling with oneself" or "internal strife," and usually leads to emotional states such as stress, anxiety, and indecision.

Intrapersonal conflicts arise due to several main reasons:

- **Clash of values and desires** – Sometimes a person may have desires or goals that do not align with their own values. In this case, the person is torn between remaining true to their values and fulfilling their desires.
- **Difficulty making choices** – The inability to decide between two or more options can cause internal conflict. This occurs when a person is forced to choose between their desires and responsibilities.
- **High expectations from oneself**– People who expect too much from themselves or are excessively demanding (perfectionists) may sometimes experience conflict within themselves. For example, trying to do a perfect job while facing limitations in skills and time can lead to internal distress.
- **Feelings of guilt and regret** – People who regret their past choices or behaviours often experience internal conflict. In this case, the person feels guilty and harbours negative feelings towards themselves for their past actions.

Intrapersonal conflicts affect people's relationships with themselves and reduce their quality of life. To resolve such conflicts, the mediator should remind the party of the usefulness of approaches such as self-understanding, self-acceptance, self-criticism, and self-empathy. In this way, the mediator can, to some extent, encourage the party to be more compassionate towards themselves and the other party, and to seek compromise in the conflict.

Intragroup conflict is a disagreement, misunderstanding, or confrontation that arises among members of a single group. This type of conflict stems from the differing opinions, values, goals, or interests of the individuals comprising the group. Intragroup conflicts can occur in work groups, teams, circles of friends, or any other social or professional groups.

The main causes of intragroup conflicts are as follows:

- **Different goals and priorities:** Group members may have different approaches to the group or to a particular issue (such as a joint project). This can lead to incompatibility between goals or priorities and result in conflict.
- **Unclear roles and responsibilities:** When roles and responsibilities among group members are not clearly defined, misunderstandings and confusion may arise. For example, conflict may arise if someone is perceived as fulfilling their duties improperly or if there is perceived unfairness in the distribution of tasks.
- **Communication problems:** If there is no open and effective communication among group members, problems such as improper transmission of information or misunderstandings may occur, which can lead to conflict.
- **Individual characteristics and personality clashes:** Each person has a unique personality and behaviour style. These differences can sometimes lead to misunderstandings, competition, or disputes.
- **Lack of resources:** When resources within the group (such as time, financial means, tools, etc.) are limited, disputes may arise over how to allocate these resources.

Managing intragroup conflicts is important both to maintain the group's work efficiency and to strengthen intra-group relationships. Effective ways to resolve these conflicts include open communication, respecting the opinions of group members, showing mutual empathy, and, in some cases, mediation (helping the parties to reach common ground). If not resolved constructively, intragroup conflicts can weaken the group and negatively affect the process of achieving goals.

Intergroup conflict is a situation of confrontation, disagreement, or misunderstanding that arises between two or more groups. This type of conflict occurs due to the differing interests, goals, values, or perspectives of the groups. Intergroup conflict can occur in workplaces, organizations, between political and ethnic groups, as well as among social communities or nations.

Intergroup conflicts can arise due to several main reasons:

- **Competition and lack of resources:** If two groups compete for the same resources (material or non-material), this can lead to conflict. *For example*, confrontation may arise when two teams compete for the same budget or position.
- **Differences in values and ideologies:** When different groups have different values and ideologies, contradictions arise; these contradictions can lead to conflict. *For example*, confrontations may occur between groups with differing political or religious views.
- **Social and cultural differences:** Social differences such as culture, language, and traditions can also cause intergroup conflicts. These differences may start as minor misunderstandings and later develop into serious conflicts. *For example*, when two young people of different nationalities marry, family matters may lead to disputes between their respective families (parents or other close relatives).
- **Social bias and stereotypes:** Sometimes groups evaluate each other with negative bias and stereotypes. This can cause one group to misunderstand and negatively approach the other, resulting in tension in intergroup relations. *For example*, according to Azerbaijani traditions, a woman (especially a young girl) spending time at a nightclub is viewed negatively. This stereotype may not be welcomed by the family of a man who wishes to marry that woman (girl), leading to mutual misunderstanding, dissatisfaction, and dispute.
- **Disconnection and lack of communication:** Ineffective communication between groups can lead to misunderstandings or misinterpretations. *For example*, if the purpose of a decision or action by one group is not properly communicated to another group, confrontation may arise: two organizations are organizing an event, and one takes on the responsibility of welcoming guests. They believe they have reached an agreement because they informed their partners during one of the meetings that they would handle organizational matters. Their intention is to reduce the workload of the other party. However, the other party misinterprets this action as disrespect from their partners, believing that representatives from both organizations should have participated in welcoming the guests.

Managing intergroup conflicts is essential for cooperation and mutual understanding. Methods such as negotiation, mediation, and collaboration in joint projects (careful planning, clear division of tasks, appointment of tutors, etc.) are used to resolve intergroup conflicts. These approaches help groups understand each other better and reduce tension. Thus, when intergroup conflicts are resolved constructively, cooperation between groups is strengthened and common goals are more easily achieved.

Understanding the conflict

In order to have a deeper understanding of the conflict, the concept of the “conflict triangle” is employed.⁶⁴ The **conflict triangle**⁶⁵ is a model used to explain the structure and dynamics of conflict. This model describes the main components of conflict and their interrelationship.

This triangle includes: attitude (approach), behaviour, and context/contradiction. The ABC⁶⁶ conflict triangle is a useful tool for mediators when resolving conflicts.

The components of the conflict triangle:

A. Attitude encompasses the parties’ feelings, perceptions, emotional and psychological states, as well as their beliefs. It also includes feelings one party may have toward the other, such as hostility, distrust, anger, or respect. Negative attitudes can deepen the conflict.

Example: In the workplace, an employee may feel resentful toward their manager and believe they are not valued.

The mediator’s responsibility: Through active listening and questioning, investigate and identify whether such feelings exist. Help the parties understand their emotions correctly and express them constructively.

B. Behaviour: Refers to the visible actions and reactions of the parties involved in the conflict. It includes the overt actions and interactions demonstrated by the parties during the conflict process. This may manifest as arguments, threats, violence, passive aggression, or mutual cooperation. Behaviour determines the course and outcomes of the conflict.

Example: An employee may begin arriving late to work or performing tasks reluctantly.

The mediator’s responsibility: Identify and address problematic behaviours. Encourage the parties to consider how their actions affect other employees and the conflict itself.

C. Contradiction: This represents the core issues, conditions, or incompatible interests and goals that drive the conflict. This means that the parties may enter into conflict due to conflicting interests.

Example: Contradiction may arise from a lack of clear communication about job expectations, from unfair distribution of workload, or from struggles over material resources or power.

The mediator’s responsibility: Help parties explore the root causes of the conflict. Facilitate discussions about systemic issues or misunderstandings that need resolution.

Practical application of the conflict triangle in mediation:

- The conflict triangle helps to understand the causes and dynamics of the conflict more deeply.
- It is used to analyse the relationships and interests between the parties to identify solutions.

⁶⁴ Galtung J., “Conflict as a Way of Life”, in Galtung J. (ed.), *Peace and Social Structure: Essays in Peace Research*, Vol. III (Ejlers, Copenhagen, 1978), p.72

⁶⁵ Johan Galtung was the first to propose the conflict triangle, dividing conflict into three main elements.

⁶⁶ In English, the abbreviation is ABC – attitude, behaviour and context/contradiction.

- The triangle helps mediators decide where to begin in resolving the conflict.
- The ABC triangle can be used to create a visual map of the conflict. This helps the parties see the full picture and the interrelations of different elements.
- It is crucial to consider each corner/element of the triangle. A solution that addresses only behaviours, without considering attitudes or context, is likely to be short-lived.

Taking into account the aforementioned ABC triangle, the process of understanding conflict also includes the following main stages and activities:

- Listening and information gathering:

- **Learning the facts:** The mediator listens to the parties about the facts of the dispute (conflict, events) and learns how they perceive what happened. It is sufficient to ask the party what happened, take notes, and listen attentively.
- **Listening to the parties' positions:** It is important to hear each party's position and the reasons for holding that position. The mediator may use several tactics here: a) carefully listening to the party's free narrative; b) asking open-ended questions; c) listening silently and taking notes, among others. By using such techniques, the mediator can demonstrate understanding through body language.
- **Evaluating emotions and feelings:** The emotional reactions and feelings of the parties related to the conflict are also important, as these can provide additional insight into the main causes and possible solutions. The mediator can allow for the expression of emotions. *For example*, if someone is very emotional, speaks loudly, or cries, it is necessary to listen patiently and give them time to calm down.

- Identifying interests and needs:

- **Revealing hidden interests:** Identifying the hidden interests and needs behind the parties' explicit positions helps the mediator understand the true sources of the dispute. To reveal hidden interests, the mediator may share an external story or case, or provide examples.
- **Considering long-term needs:** Understanding the long-term needs behind short-term positions is also important. These needs can form the basis for more sustainable and satisfactory solutions. *For example*, in an employment dispute, a person may state during mediation that they do not actually want to be reinstated at the company, but would be satisfied with resigning voluntarily and receiving a formal reference to secure another job. Thus, the person's main goal is not reinstatement. Their long-term goal is to obtain another job. Dismissal negatively affects them and creates obstacles to finding good employment, so they try to remove these barriers. The mediator can conduct negotiations with the other party based on this main objective.

- Fostering communication and mutual understanding:

- **Promoting effective communication:** The mediator encourages open and sincere communication between the parties so that they better understand each other's positions and interests.
- **Eliminating misunderstandings:** To resolve the conflict, misconceptions need to be clarified. The mediator can conduct active discussions and correct all misunderstandings.

- Exploring creative solutions:

- **Developing joint solutions:** The mediator encourages the parties to seek a variety of solutions to resolve the conflict. Many options can be proposed here.
- **Identifying solutions that meet both parties' interests:** It is important to ensure that proposed solutions address the interests of both parties. By discussing mutually beneficial solutions, the mediator can bring the parties closer together and achieve a positive outcome.

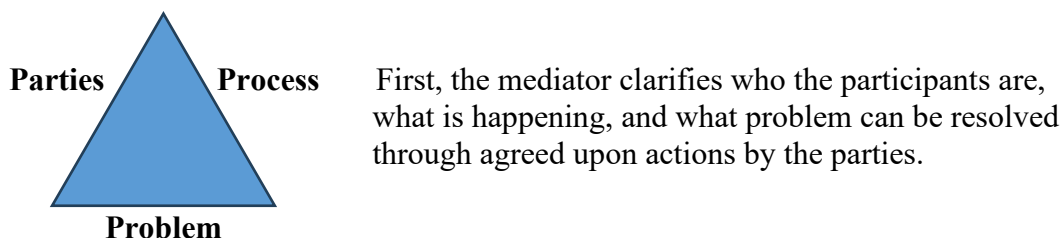
- Strengthening relationships:

- **Prevention of future conflicts:** The work done to understand and resolve the conflict strengthens the relationship between the parties and helps prevent conflicts that may arise in the future. With this in mind, the mediator should, throughout the entire process, highlight constructive proposals for improving future relations between the parties and emphasize positive opinions the parties have about each other, while keeping negative aspects in the background.

Thus, the conflict triangle is a useful framework that demonstrates the complex nature of conflict and the mutual influences involved. This model is widely used in both theoretical and practical approaches to conflict management and resolution.

Conflict Analysis

The mediator must analyse the conflict in order to structure all the information obtained and gain a deeper understanding of the dispute. For this analysis, another “conflict triangle” can be presented.



After this, the mediator examines the factors that escalate the dispute and determines the nature of the conflict. To do so, the mediator must identify the underlying drivers ⁶⁷ of the dispute and understand their essence:

Information	Structure	Values	Attitude	Interest
Incorrect information, excessive information, insufficient information,	Destructive behaviours, unequal access to resources, unequal authority, time constraints.	Different criteria for evaluating ideas or behaviours, different perspectives on	Strong emotions, misunderstandings, stereotypes, poor communication, negative behaviour.	Competing interests.

⁶⁷ The manual prepared by the ADR Center within the framework of the project titled “Enhancing the Institutional Capacity of the Ministry of Justice of the Republic of Azerbaijan in the Application of Alternative Dispute Resolution Mechanisms and the Provision of Legal Aid Services to the Population”, 2019, p. 29-30

misinterpretation, etc.		life, religion, ideology.		
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Information dispute: This type of dispute arises from disagreements about what the facts are or how the parties interpret the facts. *Example:* Two witnesses who saw the same event at the same time give different statements.

Structural dispute: This type of dispute arises from different understandings of roles and responsibilities between people. *Example:* A supervisor expects an employee to perform tasks outside their job description.

Value dispute: This type of dispute arises from deep beliefs about what is right or wrong. *Example:* Two workers from different countries and cultures, who understand the concept of “respect” very differently, may evaluate the same action in different ways.

Attitude dispute: Such disputes arise when unresolved issues from the past are carried into the present. An unresolved dispute keeps the parties in a state of discomfort, and this discomfort itself can generate new disputes.

Interest dispute: This type of dispute may arise when one party satisfies the needs of the other. *Example:* One company purchases all the supplies necessary for another company’s production process and believes this will obstruct that company’s production.

Correctly identifying the form of the dispute allows one to predict how it may develop.

Understanding and analysing conflict are the first steps to resolving it. The mediator must have knowledge of conflict dynamics. Studying conflict dynamics is crucial for its management and resolution.

What are conflict dynamics?

Conflict dynamics are the system of stages and factors that explain the emergence, development, escalation, and resolution of conflict.

Stages of conflict dynamics:

1. **Pre-conflict stage (potential contradictions, tension)**
 - At this stage, the conflict has not yet begun, but there are disagreements, differences of opinion, and conflicting interests between the parties.
 - Main factors: lack of resources, divergent interests, cultural and social differences.
 - Often, the tensions arising at this stage form the basis of the conflict.
2. **Conflict initiation (visible confrontation, incident)**
 - Differences of opinion and contradictions become explicit. Provocative, often unintentional actions lead to misunderstandings.
 - The first confrontations and disputes occur between the parties.
 - Insufficiently clear expression of opinions leads to heightened emotions and makes communication between the parties more difficult.
3. **Conflict intensification (heightened tensions)**
 - The confrontation escalates, and the parties’ positions become more rigid.

- The parties display negative attitudes toward each other and are not inclined to compromise. Negative attitudes become entrenched, and relationships deteriorate.
 - Escalation may occur at this stage - the conflict expands in scope and becomes harder to resolve.
4. **Conflict peak (critical point, crisis)**
- This is the stage where the conflict reaches its peak - an open dispute.
 - Emotional tension heightens, communication between the parties breaks down, and even physical confrontation may occur.
 - At this stage, relationships are damaged, previous connections are disregarded, personal relationships are broken, and the parties try to prevail over each other through various means. Finding solutions becomes even more challenging.
5. **Resolution or diminishment stage (de-escalation)**
- The parties attempt to reduce or completely resolve the conflict through dialogue.
 - Mediation, compromise, or concessions by one of the parties can soften the conflict.
 - If no result is achieved at this stage, the conflict may restart or remain as a long-term tension.
6. **Post-conflict stage (restoration)**
- The consequences of the conflict are analysed, and steps are taken to restore relations between the parties.
 - Any harm or tension in relationships that arose during the conflict should be addressed to prevent similar conflicts from recurring in the future.

By understanding the nature and stages of conflict dynamics, the mediator can better manage the conflict, thereby facilitating peace and agreement.

Additionally, to manage conflict effectively, it is necessary to understand the factors that influence its dynamics. **Emotions, communication issues, the parties' objectives, and external interventions** can all affect the dynamics of a conflict. For a mediator to be successful, they must obtain information that the parties do not always share openly. Among this information, the mediator can identify the parties' true objectives and may be able to alter the tone of negotiations between them. Thus, determining the real interests and objectives of the parties can influence both their communication and their emotional responses. In order to identify the parties' objectives and interests, the mediator must protect the process from **external influences** and free the parties from people and opinions that have a negative, non-constructive impact on them. In Azerbaijan, it is common for close or distant relatives to have a significant influence on a party to the conflict (negative external influence).

Example: In the case of a divorcing couple, the woman requests 1,000 manats per month in child support and two rooms of a three-room apartment acquired during the marriage. The husband is willing to pay more than 1,000 manats in child support and, by relinquishing his share of the three-room apartment, is ready to transfer full ownership of the apartment to his wife. The husband wants the children to continue living in the same conditions as before. However, the husband's close relatives (his mother and sisters) try to dissuade him from this decision. The husband hides his true intentions. In this situation, the mediator should focus on the father's love for his children and minimize interference from other relatives, aiming to conclude the process quickly and secure a mediation settlement (settlement agreement). To do this, the mediator may discuss with the other party the possibility of taking conciliatory steps, starting with questions and later presenting them as a hypothetical scenario. **For instance**, if the mediator learns the husband's intention during the process but cannot share this information with the other party due to the principle of confidentiality, the mediator may ask the wife the following questions in a separate private meeting:

Mediator: You say your husband is very attached to the children. So, he would want to see them often?

Answer: Yes, being apart from the children is very hard for him.

Mediator: Ideally, after the divorce, where would you want to live with the children? Have you ever thought about how much better it would be for the children if the three-room apartment were not divided?

Answer: Of course, that would be wonderful, a great gift for the children and for me, even a miracle, but it is impossible because his mother and sisters would not allow it.

Mediator: Have you talked to your husband about this? Do you know his opinion?

Answer: There has not been an opportunity to talk. Also, I know my sisters-in-law well; I do not think it is worth discussing.

Mediator: If such an agreement were possible, would you feel happy?

Answer: Absolutely, I would be very grateful. I would even try to forget the reasons for the divorce so that we can retain normal relations, after all, we have children.

Mediator: If such a miracle happened, what steps would you take towards your husband?

The mediator can skilfully use any positive answer to this question; as a result, the mediator can help the father realize his intention - to relinquish his share of the three-room apartment - by enabling him to free himself from external influences and act more decisively. Because, in this situation, the “sacrifice” the father makes (the property share) is not as valuable to him as the intangible benefits he would gain (for example, unlimited contact with his children, normal relations with the other party, protecting the children from emotional harm, etc.).

External influences can also be positive. If external influences are directed towards resolving the dispute between the parties, the mediator can use them. *For example*, in the previous example, if the close relatives had supported the husband or proposed the property solution themselves, the dispute could have been resolved more quickly.

It should also be noted that conflict should not always be seen as something negative. Given the characteristics of human society, conflict is inevitable, but when resolved positively, conflict can drive development. Conflict also brings emotions to the surface and reveals the parties’ true thoughts, sorrows, and concerns. Sometimes, parties come to mediation with very deep-seated disputes. In such cases, the level of conflict is high, relationships between the parties are completely broken, and negotiations continue in an aggressive atmosphere. The mediator must have knowledge of conflict dynamics so that even the most aggressive and difficult conflicts do not deter them from seeking resolution; in other words, the mediator should patiently seek a solution in any situation, without succumbing to pessimism.

d. When is mediation useful?

Mediation can often be beneficial in resolving disputes between parties, as it provides a faster, more efficient, and confidential way for parties to reach understanding and agreement. At the same time, mediation enables parties to resolve conflicts through mutual understanding and cooperation, creating an environment for active listening, identifying mutual needs and interests, as well as seeking creative solutions.

Differences between mediation and court proceedings make mediation a more effective and convenient tool for dispute resolution. The mediation process is more suitable when parties prefer

to make their own decisions and preserve their relationships. Because parties make decisions themselves in mediation, this process allows for more sustainable and satisfactory solutions.

Mediation is beneficial in the following situations:

1. **When it is important to preserve or restore relationships:**
 - Family disputes
 - Workplace conflicts
 - Disputes between business partners
2. **When ongoing relationships exist:**
 - Conflicts between neighbours (property rights, domestic and communication issues in the neighbourhood, violations of shared living rules, etc.)
 - Disputes between schools and parents
3. **When greater control over decision-making is required:**
 - Parties may choose mediation if they do not trust court decisions and prefer to make their own decisions
4. **When rapid dispute resolution is necessary:**
 - Court proceedings often take a long time, whereas mediation is relatively shorter and can yield quicker results. *For example*, disputes related to healthcare institutions or child or parental support payments require swift resolution.
5. **When confidentiality must be ensured:**
 - Unlike court processes, mediation is confidential, and parties' personal information is not openly discussed. *For example*, in family, labour, and health-related cases confidentiality holds significant importance.
6. **When cost reduction is necessary:**
 - Compared to court proceedings, mediation can be more cost-effective. Thus, resolving any dispute through mediation is financially more advantageous
7. **When there is a need to reduce emotional burden:**
 - Since mediation takes place in a more friendly environment, it can reduce the emotional burden on the parties.
8. **When creative and flexible solutions are required:**
 - Because mediation is a flexible process, it allows for finding creative solutions that suit the parties' interests.

Examples of cases where mediation is beneficial:

1. Family disputes:

- **Disputes during divorce** regarding child custody, child support payments, child upbringing and development, disputes over division of joint property.
- **Conditions for the continuation of marriage.**
- **Parent-child relationships:** disagreements between parents and children, including communication problems and financial support issues.
- **Other family disputes.**⁶⁸

2. Employment and labour relations:

- **Disputes between employee and employer:** breach of employment contracts, dismissal, disciplinary actions, cases of discrimination or injustice at the workplace.

⁶⁸ Law of the Republic of Azerbaijan "On Mediation", Article 26

- **Disagreements among colleagues:** disputes arising from personal or professional differences among employees.

3. Commercial and business disputes:

- **Contract-related disputes:** disputes arising from breach or modification of contract terms between business partners, failure to properly fulfil obligations, etc.
- **Customer complaints:** dissatisfaction of customers regarding products or services.

4. Community and neighbourhood disputes:

- **Conflicts between neighbours:** property ownership and usage rights, shared living rules, disputes related to domestic issues.
- **Community projects:** disagreements related to community projects.

5. Disputes related to the education system:

- **Conflicts between schools and parents:** disagreements about school rules, educational programs, or children's behaviour.
- **Conflicts among students:** personal or academic problems among students.

6. Health and medical disputes:

- **Disputes between patients and doctors:** disagreements about quality of medical treatment, diagnosis, or treatment methods.
- **Disputes related to health insurance:** problems and complaints related to health insurance.

7. Property and land disputes:

- **Disputes related to ownership and other rights over immovable property:** disputes concerning ownership, rights of use, etc.
- **Disputes related to land use:** disputes about land use, boundary determination, or land plots.

8. Other civil disputes: inheritance disputes, rights of use of residence, disputes arising from civil contracts and torts, etc.

9. Consumer rights disputes

10. Disputes related to administrative proceedings

e. When is mediation mandatory?

Mandatory mediation helps reduce the workload on the courts and contributes to more efficient and expedited legal proceedings.

Mandatory mediation refers to the requirement for parties to participate in a mediation process in an attempt to resolve their dispute before initiating court proceedings.

According to Articles 3.2 and 28 of the Law of the Republic of Azerbaijan “On Mediation,” participation in an initial mediation session is required before applying to court for disputes arising from family and labour relations. This means that, in these cases, unless the parties participate in the initial mediation session, the first instance courts will not accept the statement of claim and supporting documents for consideration.

The cases and grounds in which mediation is mandatory are as follows:

1. **Cases required by law:** For disputes arising from family and labour relations, it is mandatory to apply to mediation before submitting documents to the court. If the parties jointly apply to participate in the mediation session, the initial mediation session is not required.⁶⁹ This is a legal requirement.
2. **Cases required by contract:** If the contract between the parties provides that, in the event of a dispute, the parties must first apply to mediation, then in such cases, when a dispute arises, the parties must attempt to resolve it through mediation in accordance with the relevant clause of the contract. Thus, under the contract, applying to mediation before going to court is mandatory, and without undergoing the mediation process (regardless of the result), the court will not accept the documents for consideration.

Court mediation: Disputes may also be referred to mediation by the court. Although this type of mediation is not mandatory, it has certain specific features. Thus, according to the Law, the court, taking into account the circumstances of the case, may, at any stage of the process, on its own initiative or upon the application of one of the parties, propose to them the resolution of the dispute through mediation.⁷⁰ The court first explains to the parties that mediation may be a more appropriate and effective way to resolve the dispute and proposes that the case be referred to mediation. **If the parties agree**, the court suspends the proceedings.⁷¹ As can be seen, the consent of the parties is required for the case to move from the court to mediation. The court issues a ruling to refer the case to mediation and suspends the proceedings. After this, unless the dispute is discussed in mediation (regardless of the outcome), the proceedings will not resume. For this reason, some describe court mediation as mandatory mediation. However, mediation is a voluntary process, and despite the court’s referral, it is the parties themselves who decide whether or not to participate in mediation. Therefore, court mediation cannot be considered a mandatory process, but rather a process encouraged by the court.

⁶⁹ Law of the Republic of Azerbaijan “On Mediation”, Article 28.1

⁷⁰ Law of the Republic of Azerbaijan “On Mediation”, Article 31.1

⁷¹ If an “Agreement on the Application of the Mediation Process” is concluded between the parties, court proceedings are suspended until a settlement agreement and a protocol on the results of the mediation process are submitted.

2. The mediation session

a. Stages of mediation

The stages of mediation are determined by the nature of the issues addressed during the mediation process. Different schools of mediation offer varying views on the objectives and number of mediation stages. The generally accepted approach is that the mediation process consists of two main stages: the stage up to the submission of the case to the mediator or mediation organization, and the stage following submission. The first stage is referred to as the phase of selecting the mediator or mediation organization and determining the procedure for conducting mediation. This approach is also accepted by the Azerbaijani national mediation school and legislation. According to Article 21.1 of the Law of the Republic of Azerbaijan “On Mediation,” the mediation process is conducted either on the basis of a “mediation process agreement” concluded between the parties or by participating in an initial mediation session in accordance with Articles 28 and 29 of this Law. Based on this provision, it can be concluded that the mediation process begins either at the moment the parties voluntarily sign an agreement to apply the mediation process, or from the moment one party sends a proposal to the other party to initiate mediation.

Analysis of the first stage is important both for verifying compliance with mediation legislation requirements and, in the event the dispute is later brought before a court, for the suspension of the limitation period and the fulfilment of certain evidentiary burdens (for example, proving that the de facto marital relationship has ended and that a dispute has actually arisen). Although the mediator is not responsible for actions taken before the case is submitted to them, if the mediator identifies a violation of legal requirements at this stage (for example, failure to observe the waiting period for the other party’s response after a proposal is sent), they are obliged to inform the organization or party that submitted the case (in the case of individual practice). Nevertheless, the mediator’s main rights and obligations arise in the second stage. It is at this stage that the mediator becomes actively involved and fulfils specific duties. The second stage includes the following phases (steps or stages):

- Preparation or planning
- Initial meeting with the parties, opening statement, expression and exchange of claims
- Discussions (exchange of proposals and concessions)
- Summarizing and reviewing results
- Finalization

The national legislation of the Republic of Azerbaijan defines the mediation process as consisting of eight stages.⁷² These include preparation for the mediation process; initiation of the mediation process; parties’ presentation of the substance of the dispute; separate discussions with each party; preparation of proposals for dispute resolution; finalization of the mediation process; termination of the mediation process; and execution of the settlement agreement. Although there has been an attempt to establish a national style at the legislative level, mediators are free to manage the mediation process as they see fit, provided that this does not contradict the joint interests of the parties, does not seriously harm the legal interests of one or both parties, and does not violate the principles of mediation, especially the principle of voluntariness. Regardless of the number of stages, almost all theories agree that the stages listed above are substantively included in the mediation process. Whether the execution of the agreement reached

⁷² “Rules for the Implementation of the Mediation Process,” approved by the Decision No. 385 of the Cabinet of Ministers of the Republic of Azerbaijan dated 5 September 2019

as a result of mediation is considered part of the mediation process is also a matter of theoretical debate. Unlike court proceedings, the mediator bears no responsibility for the failure to resolve the dispute by mutual agreement or for the non-enforcement of the settlement agreement. While contacting the parties to inquire about the execution of the agreement may have positive aspects (such as increasing the parties' confidence in mediation), it may also lead to undesirable consequences. In cases of non-execution, the aggrieved party may seek support or at least advice from the mediator. Such contact may create the impression that the mediator has a specific duty in this regard, and providing support may compromise impartiality, while failing to provide support may cause resentment in the party concerned.

The above-mentioned stages can be conducted either in joint meetings with both parties or separately (privately) with each party. This decision can be made by either the mediator or the parties. For example, as a rule, those at the final stage of conflict escalation, victims of domestic violence, and similar individuals generally do not wish to meet each other face-to-face. If the mediator senses that a complete emotional outburst in a joint session would escalate the conflict, or if there is a need to learn the interests of one party, the mediator may invite the parties from the joint session to separate meetings. Therefore, the stages of mediation should not be equated with its format. While some theories consider joint and separate meetings as stages of mediation, in reality, they are formats of mediation sessions. At any stage of mediation, and even during the preparation stage if the parties wish and it does not contradict the mediator's style, separate meetings can be held instead.

Although the organization and conduct of the mediation process are regulated at the legislative level in certain countries (for example, the Decision of the Cabinet of Ministers of the Republic of Azerbaijan on the Approval of the "Rules for Conducting the Mediation Process"), such regulation only sets minimum standards for the process. However, the principle of voluntariness in mediation allows the parties to organize and manage the process according to their mutual preferences. In many cases, regardless of which mediation style the mediator chooses, the parties' mutual will can control the process, extend or shorten its duration, abbreviate or repeat its stages. Unlike other mandatory resolution methods and processes, these stages are not "final." This means that, if necessary, the mediator can return to a previous stage, proceed to separate meetings without a joint session, or, if the parties have already drafted a settlement agreement themselves, hold a direct final session. In addition to skipping stages, if the parties reach agreement more quickly, the mediator can shorten the duration of the planned stages. Furthermore, if, at the stage of drafting or signing the settlement agreement, the mediator or the parties decide that some detail of the dispute has not been discussed or that execution of the agreement is not possible without agreeing on a detail, the mediator may return to an earlier stage or stages.

Duration of the mediation process:

The amount of time required to resolve a dispute through mediation depends on the complexity of the case, the parties' willingness to reach an agreement, and the mediator's professionalism. While some simple disputes are resolved quickly, more complex cases may require several days of mediation. Since interruptions in mediation are not recommended, continuous negotiations should be encouraged. Of course, in sessions lasting several hours that have exhausted the parties, postponing to another day is normal. However, experience shows that after a break, parties often attempt to restart negotiations from the beginning or based on new, unrelated proposals. Naturally, this is influenced by factors such as reassessing the situation alone during the break or consulting with others. Therefore, to ensure continuity in mediation, it is not recommended to schedule several mediation sessions on the same day.

Preparation or planning stage – This stage is very important both for the mediator seeking a successful mediation outcome and for the parties themselves. The main goal of this stage is to

make the necessary preparations for the upcoming mediation process. During this stage, the mediator may organize an information session with the parties, either separately or together (especially in voluntary mediation processes). Information can be provided through various means of communication or by meeting in person. However, many mediators prefer the first option, considering that meeting in person involves additional resource expenditure. Preparing for the information process itself is also essential. At a minimum, the age, gender, education level, health status, social or public service position, etc. of the parties should be considered, and the communication style and amount of information should be chosen accordingly. This is because the first contact between the mediator and the parties begins here, and the impression formed at this stage affects both the mediator and the parties in subsequent stages. The main issue the mediator should focus on at this stage is, on the one hand, resource efficiency, and on the other hand, ensuring that the parties are initially informed and all logistical issues are fully agreed upon. Experience shows that mediators sometimes delegate the initial conversation with the parties to technical staff. This is considered a mistake at the preparation stage. During initial contact, parties unfamiliar with mediation may have specific questions that technical staff without special knowledge may answer incorrectly, or may answer questions that, if answered, could undesirably affect impartiality. Additionally, in disputes where participation in the initial mediation session is mandatory, one or both parties may be reluctant to participate in the process or attend meetings. Experience shows that in such cases, it takes more effort to involve that party in the process, and technical staff may not devote sufficient energy to this. However, involving both parties in the process and bringing them to the initial session is almost half of the success and is very important for the mediator.

Depending on whether mediation is voluntary or mandatory, the scope of the mediator's tasks during the preparation stage may differ. For example, in voluntary mediations, the mediator must verify the conclusion of a bilateral agreement between the parties on the application of mediation, assist in obtaining or drafting such an agreement at the parties' joint request, and, in both voluntary and mandatory mediations, assess whether the dispute is generally suitable for mediation (for certain disputes, especially in cases of severe domestic violence, if it is found that one party has come to mediation under pressure or threat from the other, mediation may be refused⁷³), among other actions. National legislation requires the following actions at this stage:

- Obtain a brief description of the dispute from the party applying for mediation, as well as the contact details of the parties to the dispute and, if applicable, their lawyer or representative who will participate in mediation.
- Before the mediation process begins, advise the parties to assess their positions, consider the possibilities for settlement and compromise, and, if necessary, consult a relevant specialist (lawyer, legal expert, technical specialist, etc.), and allow time for these actions.
- Recommend that the parties provide any additional information and documents that may help better understand the case, either on their own initiative or at the mediator's request. If one party provides such information or documents, the other party should also be invited to submit information and documents explaining their position.
- Before the mediation process begins, inform the parties participating in the mediation session about the mediator's fee and costs (some mediators do this during the initial meeting).

⁷³ The mediator must decide whether to continue the process, taking into account whether the relevant authorities have been contacted regarding past exposure to violence, whether such contact will be made in the future, and whether this may influence the parties' positions during the negotiation process. (Council of Europe Committee of Ministers, Recommendation R (98) 1 on Family Mediation, Article 3.9)

As can be seen, the thoroughness of the preparatory actions determines the subsequent course of the process. Let us consider the preparation stage using a simple example:

Situation:

Gulnara Azimova and Fariz Asadov are on the verge of divorce. They have an 8-year-old daughter, and the main issues in dispute are custody of the child and agreement on child support. Each party sees the other as the less suitable parent for the child, and before applying to court, G. Azimova has applied for mediation.

Preparation Stage of Mediation:

1. **The case is submitted to the mediator by the organization.**
2. **Each party is contacted separately by phone:**
 - **Conversation with Gulnara:** She states that although Fariz works a lot, he does not take care of the family, does not spend enough time with their daughter, and she is mainly responsible for the child's care.
 - **Conversation with Fariz:** He claims that he loves his daughter very much, agrees to the divorce, but insists that his daughter should stay with him. Although his salary is high, he does not intend to pay any child support to Gulnara.
3. **Understanding the roots of the dispute:**

The mediator examines the positions of both parties, collects only initial information about the reasons for the divorce and the possibility of continuing the marriage under certain conditions, and also assesses the situation with the child's welfare as a priority.
4. **Planning the mediation session:**
 - The time and place of the meetings are determined.
 - It is clarified whether mediation will be conducted in joint meetings or separately (in cases of domestic violence, one or both parties may request only separate meetings).
 - The purpose of mediation is explained to the parties: to protect the best interests of the child and to reach an amicable agreement if possible.
5. **Establishing ground rules:**
 - Both parties should refrain from emotional outbursts.
 - Insults and accusations are not allowed.
 - The goal is to find the best solution for the child.

After this preparation stage, the mediator organizes the initial mediation session.

b. Joint and separate meetings

Initial meeting with the parties, opening statement, expression and discussion of claims – While the main goal of the preparation stage is to prepare the parties for mediation and resolve logistical issues, in this stage the mediator moves directly into mediation. If the initial session is conducted as a joint meeting with the parties, it is very useful for the mediator to hold brief separate greeting meetings (usually 1–2 minutes in practice) with each party to clarify whether there have been any changes in the information provided during preparation or in the intensity of the dispute. In cases of domestic violence, such greetings may even be considered the mediator's duty. This is

because the party subjected to violence may be seriously threatened by the other party, refuse to attend a joint meeting, or wish to express this need discreetly, and the best environment for this can be created during the initial separate greeting meeting. Therefore, to begin this stage, the mediator should strive to create a calm and neutral environment where the parties feel comfortable and ready to participate. This initial impression will affect the subsequent negotiation process. Especially in labour disputes, the employee's demand often does not reflect their true interest. The majority of employees who request reinstatement do not actually want to return to their previous job; rather, they use this demand to pressure the employer for higher compensation. It is usually during the initial meeting that the mediator, having gained some trust, can uncover this. The following example relates to an initial greeting meeting in labour mediation:

Mediator: Thank you for meeting with me today. Before we begin the joint session, I would like to hear your perspective on the situation. This conversation is confidential, I may only share certain points with the other party if you consent to it. Could you please explain the problem from your point of view?

Employee: Thank you. I feel undervalued at work and believe my contributions are not properly appreciated by my manager. Recently, I was passed over for a promotion without any clear explanation. This has created tension between us, and I do not know how to resolve the situation.

Mediator: I understand how disappointing that must be. What would you like to achieve through this mediation?

Employee: Ideally, I want clear communication about career development opportunities and a fair evaluation of my work. I also want to improve my working relationship with my manager. If I don't gain this energy from the discussions, reinstatement is not that important to me.

Mediator: That is very helpful to know. In our joint session, we will try to establish constructive dialogue between you and the employer. Are there any specific issues you would like me to consider during the discussion?

Employee: Yes, I would like the conversation to remain professional and not turn into personal criticism. I want to express my concerns but without escalating the tension.

Mediator: That is completely understandable. I will ensure we have a respectful and solution-oriented discussion. Now, let us prepare for the joint session.

This separate meeting helps the mediator better understand the concerns of both parties and lays the foundation for a more productive mediation process. Sometimes, the mediator can identify the parties' true interests from the very first meeting, which helps facilitate subsequent stages and achieve successful results more quickly.

The initial joint mediation session typically takes place with the physical presence of the parties and their lawyers. The session begins with introductions by the mediator and other participants in the process. Then, the mediator provides a more detailed explanation than in the preparation stage about the nature of the mediation process, its stages, how it differs from other forms of dispute resolution, and its principles (if only lawyers attend instead of the parties, a more detailed explanation is usually unnecessary). Afterwards, the mediator discusses the procedural rules, the time available for the current case, the mediation fee (for mandatory mediations), and the service fee with the parties. Additionally, in international practice, a confidentiality agreement is often signed at this stage. Since many countries' legislation criminalizes breaches of confidentiality, the mediator has the duty to prove that the parties have been informed about this. To avoid this burden

and to have proof that the parties were informed, thus enabling the sanctioning of any party breaching confidentiality, the preparation of such an agreement is recommended.

After the opening statement, the mediator creates an environment for the parties to provide information about the nature of the dispute and their claims. Typically, the party who initially applied for mediation is given the first opportunity to speak. This part is also considered an opportunity for the parties to express their emotions and articulate their interests. This approach allows the parties to share their stories; it enables the mediator to hear information directly from both parties; it gives each party the chance to hear the other's perspective firsthand; and it helps identify the main issues, interests, and disagreements.

A party that was unable to overcome certain barriers during the preparation phase and hesitated to provide some information to the mediator, either intentionally or unintentionally, usually fully expresses themselves at this stage. This gives the mediator a new tool, helping to re-plan and forecast. In a well-structured mediation process, there should be a clear distinction between the parties' initial presentations (which often focus mainly on presenting their positions) and the exploration of the interests behind those positions before negotiations begin. This stage is very important because it helps the parties go beyond the limits of their stated positions to reveal their real needs and concerns; it can uncover common ground not visible from the initial positions; it creates a foundation for more creative and mutually beneficial solutions; and by promoting understanding between the parties, it helps reduce the tension of the conflict.

Although there are no specific guidelines regarding the duration of this meeting, the mediator should independently regulate it, taking into account the parties' personal characteristics, the circumstances of the case, the escalation level of the dispute, and other factors. While the emotional release of the parties is important for the mediator, this process should end before the parties begin insulting each other or escalating the tension. Otherwise, a difficult situation may arise that is irreversible or only possible to resolve at a high energy cost.

Afterwards, the mediator helps clarify certain issues and fill in gaps in the information. To complete this, the mediator asks questions, reflects on the information obtained and the emotions observed, and establishes initial trust relationships with the parties. By doing so, the parties can share their thoughts with each other and understand each other's concerns and fears. At this stage, in addition to the main positions, it is important to ask open-ended questions to reveal the parties' needs, problems, and motivations; encourage the parties to express what is truly important to them beyond their initial demands; help the parties understand not only each other's positions but also their interests; and identify common interests or additional needs that can form the basis for agreement. After this, the mediator lists the details of the dispute that need to be resolved and confirms them with the parties once again.

In cases where the initial mediation session is mandatory, after ensuring that the parties and the mediator fully understand the demands and the real situation, the mediator declares this stage complete and learns the parties' wishes regarding the full mediation session. When the parties agree to proceed with full mediation, they enter into the relevant service contract with the mediator at this point. In voluntary mediations, this contract is signed at an earlier stage. Some theories hold that the mediator should actively encourage the parties to proceed to full mediation at this point and share their experience regarding the resolution of such disputes. This depends entirely on the mediator's chosen style. For example, a facilitator-style mediator remains neutral at this stage and leaves the initiative entirely to the parties.

Negotiations (exchange of proposals and concessions) - At this stage, the parties discuss the disputed issues with the mediator's assistance, who tries to align common interests against the background of proposals and concessions. Although separate meetings are more effective at this stage, joint meetings can be held based on the parties' wishes and the mediator's assessment.

The mediator's negotiation skills are especially important at this stage. It is here that the mediator asks questions planned in advance or arising during negotiations and assists the parties in preparing new proposals and concessions. The parties are encouraged to exchange ideas on the spot and manage to find one or several solutions.

Although theory generally advises mediators not to give suggestions in order to preserve impartiality, in cases of deadlock this may become unavoidable. According to national legislation, at any stage of the mediation process, the mediator may offer a verbal or written proposal for settlement that does not impose any obligations on the parties, provided that such a proposal is disclosed to both parties and given with their mutual consent.⁷⁴ Deadlock at this stage is natural, as parties often come to mediation with unrealistic demands and perceptions, describing the dispute and the situation from their own perspectives. At this stage, the mediator encourages the parties to think differently and to approach issues from another perspective. Naturally, the mediator must do this with great sensitivity, as parties are often not open to having their positions questioned or to thinking differently. Sometimes, this can be achieved by asking questions such as "Why do you think that?" or "If you chose this approach, what do you think the other party would do?" In other cases, such questions may not be sufficient.⁷⁵ Considering the person's character, approach, and the specifics of the case, asking such questions without first building empathy and trust with the party can sometimes even be risky. Therefore, at this stage, the mediator must expend more energy and devote most of their resources.

Summarizing and reviewing results- When the parties have discussed and reached a common outcome regarding all or some of the disputed issues, whether initially or during negotiations, the mediator assists them in summarizing the results. At this stage, the elements of the dispute that entered the "negotiation conveyor" and the resulting outcomes are listed, and any elements not discussed or agreed upon are, with the parties' consent, returned to the "negotiation conveyor" or referred to future mediation or alternative resolution methods, or to court proceedings. The mediator helps the parties review the results, discuss the details, evaluate the relevant options, clarify how the agreed elements will work in practice and whether they meet the parties' interests, and verify their feasibility.

At the beginning of this stage, it sometimes happens that the parties believe they have reached a complete agreement on the subject. However, upon review, it may become clear that an agreed action or objective is unrealistic or can only be implemented at the cost of excessive resource deprivation for one party. Or, it may be that one party has undertaken an obligation, but the mechanism for its implementation has not been discussed. In all such cases, with the parties' consent, the mediator returns them to the negotiation stage. This process may be repeated twice or more in the same case.

Finalization – The mediation process concludes with one or more of the following outcomes (if there are several disputed issues and different outcomes for one or more of them):

- a. Full agreement of the parties on the subject(s);
- b. The mediator determines after negotiations that further efforts at mediation are unnecessary and terminates the proceedings;
- c. One or both parties refuse to continue the mediation process and the mediator terminates the process;

⁷⁴ Rules for the Implementation of the Mediation Process, approved by Decision No. 385 of the Cabinet of Ministers of the Republic of Azerbaijan, 5 September 2019

⁷⁵ A Practical Guide for Mediators, Macmillan Keck

d. It is determined that mediation is not suitable or not advisable for resolving the dispute (for example, under the laws of some countries, reconciliation efforts to preserve a marriage are either prohibited or discouraged in cases involving domestic violence);

e. In cases where initial mediation is mandatory, the time period set by national legislation for the mediation process expires, and both parties do not submit a joint written request to the mediator to extend the process.

These situations depend subjectively on the will of the parties and the mediator. Additionally, there are certain objective circumstances in which the mediation process must be terminated automatically. These include the death of a party who is a natural person, the dissolution or cessation of activity of a legal entity; one party being declared deceased or missing by a court; one party being found by a court to lack legal capacity or to have limited legal capacity; the removal of the mediator or mediation organization from the Mediation Council, and so on.

Thus, if there is an agreement, this stage involves recording the results on paper (in international practice, business relationships may establish this electronically), and confirmation by the signatures of the mediator and the parties; if there is no settlement, the process is formally documented as concluded, the relevant service fees are paid, and the process is thereby closed.

Finally, if the preparation stage has been completed, all meetings in all stages, including those preparation meetings, are held physically either as joint meetings of the parties and the mediator, separate meetings between the mediator and the parties, or, if initiated by the parties, as joint meetings of both parties together. Joint and separate meetings (also known as joint sessions and group sessions) are the primary methods used by the mediator to facilitate communication and negotiations between the parties to the conflict. The purpose and elements of both types of meetings can be summarized as follows:

Joint meetings (Joint sessions)

Purpose: To facilitate open communication, allow each party to hear directly the demands and perspectives of the other, and work collaboratively toward a resolution.

Advantages:

- Promotes transparency and trust.
- Enables direct communication and immediate feedback.
- Helps clarify misunderstandings in real time.
- Encourages joint problem-solving.
- Facilitates emotional expression and sometimes reveals hidden interests.

Challenges:

- May lead to confrontation or emotionally uncomfortable situations.
- Parties may hesitate to speak openly in front of the other party.
- Power imbalances may become more apparent and problematic.

Separate meetings

Purpose: To explore each party's concerns, interests, and positions in a more confidential and less confrontational setting.

Advantages:

- Allows parties to speak more freely and openly.
- Provides an opportunity to address sensitive issues and emotions.
- Helps understand each party's core interests and positions.

- Can reduce tension and emotional intensity.

Challenges:

- Information shared that needs to be conveyed to the other party may not be fully communicated (information loss). The mediator must carefully consider which information (if any) should be transmitted between the parties. This requires skill, as not all information shared in sessions needs to or should be passed on. The mediator's role is not merely to transmit information but to help parties communicate effectively.
- Because the mediator serves as an intermediary between the parties, the process may take more time.
- If one party perceives that the mediator is spending more time with, or giving more attention to, the other party, there is a risk of perceived bias.

The mediator decides when to use joint sessions or separate meetings based on the conflict dynamics, the relationships between the parties, and the stage of the mediation process. A skilled mediator often combines both techniques to manage the process effectively and move toward resolution. Usually, logistical issues, scheduling, setting basic rules, and voicing initial demands are addressed in joint sessions. However, if one or both parties request it, the entire process may take place solely in a separate meeting format. If discussions in joint meetings become ineffective or overly heated, the mediator may switch to separate meetings to cool emotions and work on specific issues. As progress is made in these meetings, the mediator can bring the parties back together to discuss potential solutions and finalize agreements. A successful mediator creates a balanced process that responds to all parties' needs and concerns by effectively using both joint and separate meetings, resulting in more sustainable and mutually acceptable solutions.

c. Drafting and writing the agreement

Although controversial in theory, the drafting of the settlement agreement is generally carried out by the mediator, who then presents the final document for the parties' approval. However, in practice, it is not uncommon for the parties themselves or their lawyers to draft the agreement. International theory and national legislation exclude mediator liability for the terms and outcomes of the settlement agreement, but considering professional standards, reputation protection, and prevention of unnecessary claims, mediators drafting the agreement are advised to adhere to the following (these recommendations are also beneficial for the parties):

1. The agreement should be prepared as much as possible on the day of the final session without interruption. As noted above, otherwise, unjustified interference or advice by third parties, the emergence of negative emotional exchanges between the parties, or a decline in the willingness to cooperate due to a prolonged break may reduce a party's motivation to confirm the agreement.

2. The agreement should be S.M.A.R.T. These letters stand for five key requirements - Specific, Measurable, Achievable, Relevant, and Time-bound. The essence of these requirements can be explained as follows.

- **Specific** – The agreement must be directly related to the circumstances of the case, fully express the settlement, and avoid any possibility of misinterpretation.

- **Measurable** – The agreement should include criteria to measure the obligations undertaken by the parties and the outcomes to be achieved.

- **Achievable** – The terms of the agreement must be realistically implementable, considering the parties' capabilities and limitations.

- **Relevant** - The terms of the agreement must correspond to the parties' objectives and interests and relate directly to the main issues of the dispute.

- **Time-bound** - The actions or obligations in the agreement must be linked to specific timeframes.

Let us consider a settlement in an employment dispute that meets these requirements:

Nature of the dispute: The employment contract was terminated because the employee failed to submit the weekly sales forecast on time. During mediation, it is revealed that one of the obstacles to timely preparation of the forecast was the lack of time allocated for discussions with management.

Specific: Both parties will hold a 30-minute review meeting every Monday at 10 a.m. to discuss the previous week's sales report and plan for the upcoming week.

Measurable: Sales forecasts will be reviewed at the end of each week and compared with actual sales results; accuracy will be assessed according to this criterion.

Achievable: The 30-minute duration is considered sufficient to discuss the report and forecast.

Relevant: The meetings are directly aimed at improving communication and working relations between the parties and helping the employee properly fulfil their duties.

Time-bound: This agreement will remain in force for the next six months, after which the employee's performance will be evaluated. If the results are not satisfactory, the employment contract will be terminated.

The following can be an example of a settlement text that meets these requirements:

Subject of the dispute:

The employee claims that their performance over the past three months has not been fairly evaluated and that the promised bonus was not paid. The employer states that the performance evaluation was based on the company's system.

Bonus payment: The employer will pay the employee a bonus of 1,500 AZN by 1 January 2025. (Measurable and time-bound)

Performance evaluation: The employee's performance will be independently evaluated twice, in March and June, and the results will be clearly communicated to the employee. (Specific and relevant)

Communication: To ensure more transparent communication between the employer and employee, formal meetings will be held during the first week of each month. (Achievable and time-bound)

Internal grievance procedure: By the end of March, the employer will prepare a new, more transparent grievance procedure and share it with employees. (Achievable and relevant)

Responsibility for implementation: Both parties agree to comply with this agreement. In case of non-compliance, the dispute will be resolved through the courts.

3. Terms affecting the interests of third parties cannot be confirmed without involving them in the process and obtaining their consent. It is common in mediation for parties to seek to dispose of property not belonging to them or to impose obligations on third parties when resolving their dispute. For example, during property division, the parties may divide an apartment belonging to the husband's mother between themselves, impose an obligation on the grandfather to pay child support, or agree for the wife to move into a house belonging to the husband's sister. According to national legislation, if a dispute in mediation affects the rights of third parties who are not participating in the mediation, or of persons declared legally incapable or with limited legal capacity by the court, such disputes cannot be mediated.⁷⁶ If the parties wish to dispose of the rights of persons not participating in the mediation process, those persons must be involved in the process and must confirm the terms of the settlement agreement that concern them. Below are some examples of types of disputes that may affect the interests of third parties:

- ➔ Assignment of obligations, waiver of child support claims, agreements with one of several joint creditors without the consent of the others;
- ➔ Restructuring the main elements of a bank loan with the principal debtor without involving the guarantor;
- ➔ Settling a dispute with one shareholder in a company with multiple shareholders without involving the others;
- ➔ Unilateral disposition of jointly owned property without involving the other co-owners;
- ➔ Agreements between spouses concerning property belonging to third parties;
- ➔ Determination of paternity - reaching an agreement with the biological father without informing the legal father;
- ➔ Disposing of mortgaged property without the consent of the mortgagee;
- ➔ Dividing a bank loan taken during marriage between husband and wife without the bank's consent;
- ➔ Disposing of the property of a person under guardianship or trusteeship without the consent of the guardianship or trusteeship authority.

4. Agreements that seriously affect the interests of the child are not permissible – In resolving family disputes, the requirement to consider the child's interests is paramount. Both national legislation and international standards on children's rights establish a superior standard of protection for the rights of the child in matters affecting their interests. In all measures concerning children, the primary focus is on ensuring the best interests of the child, whether these measures are taken by public or private social welfare institutions, courts, administrative authorities, or legislative bodies. States Parties undertake to provide the child with the necessary protection and care for their well-being, taking into account the rights and duties of their parents, guardians, or other persons legally responsible for them, and to take all legislative and administrative measures to this end. States Parties ensure that agencies, services, and institutions responsible for the care or protection of children conform to standards established by competent authorities, particularly in the areas of safety, health, staff numbers and suitability, as well as proper supervision⁷⁷.

In practice, there is no specific standard for what constitutes the interests of the child or which measures would seriously violate those interests. However, from legislation and its application, it can be concluded that disputes or mediation agreements that may negatively affect the child's life and health, education, result in a significant change in their habitual way of life, disposal of their property, or separation from siblings, are considered to affect the child's interests.

⁷⁶ Law of the Republic of Azerbaijan "On Mediation", Article 3.3

⁷⁷ Convention on the Rights of the Child, Article 3

According to Article 26.3 of the Law of the Republic of Azerbaijan “On Mediation,” in family disputes affecting the interests of the child, the mediator must obtain the opinion of the authority designated by the relevant executive body. Article 26.4 of the same Law states that if, during the resolution of family disputes, there are circumstances that pose a risk to the child’s normal growth and development or may harm their interests, or if there is a likelihood of such circumstances, the mediator is obliged to inform the relevant authority and may refuse to conduct the mediation process in such cases. As can be seen, national legislation places the obligation on the mediator to distinguish between situations that affect the interests of the child and those that harm or endanger those interests. In the first case, the agreement may be approved with a positive opinion from the relevant authority; in the second case, the mediator is advised to terminate the proceedings. Let us consider some examples of situations in mediation that may affect the interests of the child:

- ➔ Disposing of the child’s property without the consent of the guardianship or trusteeship authority (*if the child’s property is managed by the parents, the rules for managing the property of a person under guardianship apply, and consent from the relevant executive authority is required*).⁷⁸
- ➔ Placing the child under the care of non-parental individuals or in children’s homes.
- ➔ Placing the child in the custody of a parent who is dependent on alcohol or drugs, or suffers from a severe mental illness.
- ➔ Placing the child in the custody of a parent who is a member of radical religious groups and whose beliefs are known to negatively affect the child’s education, upbringing, and health.
- ➔ Placing the child in the custody of a parent whose behaviour is known to negatively affect the child’s education, upbringing, or health.
- ➔ Placing the child with a parent who threatens the other parent with a crime or exerts pressure using the other parent’s severe psychological state.

Ultimately, in resolving family disputes involving the child, their rights, and interests, the child’s best interests must be at the centre of all discussions, and the agreement should be particularly detailed in this regard. The following settlement agreement attempts to adhere to this as much as possible:

Subject of the dispute:

Establishment of a contact schedule with the child, determination of financial support, and allocation of parental responsibilities

Agreement Terms

1. The physical and emotional well-being of the child

- 1.1. Both parents undertake to protect the child’s physical, psychological, and emotional well-being.
- 1.2. All decisions concerning the child will be made with their best interests in mind.

2. Contact schedule

- 2.1. The child will stay with the mother on weekdays.
- 2.2. Every week from **Saturday at 10:00 a.m. to Sunday at 6:00 p.m.**, the child will be with the father.

⁷⁸ Family Code of the Republic of Azerbaijan, Article 55.5

2.3. During summer holidays, **from July 1 to July 15 each year**, the child will stay with the father.

2.4. Both parents will strive to celebrate the child's birthday and holidays together.

3. Financial support and educational expenses

3.1. The father undertakes to pay **300 AZN** per month in child support.

3.2. The costs of the child's tuition and school supplies will be shared equally (**50%-50%**) by the parents.

3.3. In case of emergencies related to the child's health and development, both parents must provide joint financial support.

4. Communication and mutual respect

4.1. Parents must communicate regularly regarding the child's upbringing and development.

4.2. Both parties must refrain from insults or negative remarks about the other parent in the child's presence.

4.3. Parents will seek to make decisions regarding the child's welfare jointly.

5. Dispute resolution

5.1. If this agreement is not observed or new issues arise, **the parties will first attempt to resolve the problem through mediation.**

5.2. If mediation is unsuccessful, legal procedures may be applied.

d. Enforcing the agreement

Another guarantee is enforcement by state authority. Methods for compulsory enforcement include a court order, notarial certification, or a direct enforcement writ. Azerbaijani legislation provides only for court approval among these. Article 34.3 of the above-mentioned Law states that if voluntary execution of the settlement agreement is refused, a party (including a party to a case pending in court) may apply to the court for compulsory enforcement of the settlement agreement. According to Article 34.4, the settlement agreement is approved by the court in accordance with the relevant procedure for compulsory enforcement. Civil procedural legislation provides for simplified proceedings and shortened deadlines for such cases. Applications are considered under special proceedings, without the mandatory participation of the parties, and the court reviews the application within 10 days of its submission.

The parties themselves must keep track of such deadlines, and under national legislation, the mediator bears no obligation in this regard. However, according to international practice, the parties may request assistance from the mediator or a third party to monitor the implementation of the agreement. In such cases, any deficiencies or disputes arising in the execution of the agreement may be resolved through renewed mediation or simplified negotiations, without the need for additional legal proceedings.

Several types of guarantees may be provided to ensure execution of the agreement. One such guarantee is the inclusion of compensation for non-performance within the agreed period. Compensation may be stipulated directly in the agreement, or under legislation, a minimum amount may be set. National legislation allows for a monetary claim at the annual bank rate in case of delayed payments.

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provides only for court approval among these. Article 34.3 of the above-mentioned Law states that if voluntary execution of the settlement agreement is refused, a party (including a party to a case pending in court) may apply to the court for compulsory enforcement of the settlement agreement. According to Article 34.4, the settlement agreement is approved by the court in accordance with the relevant procedure for compulsory enforcement. Civil procedural legislation provides for simplified proceedings and shortened deadlines for such cases. Applications are considered under special proceedings, without the mandatory participation of the parties, and the court reviews the application within 10 days of its submission.⁷⁹

Additionally, the legislation does not provide for automatic court approval to ensure compulsory execution of the agreement. The judge is authorized to refuse to approve the settlement agreement or any part thereof if it is contrary to the law, or if it was concluded as a result of a mediation process concerning the rights of third parties not participating in the mediation or persons declared legally incapable or with limited legal capacity by the court.

⁷⁹ Civil Procedure Code of the Republic of Azerbaijan, Chapter 40-7

3. Mediator

a. Qualities of the mediator

Mediator – is a natural person who meets the requirements of the Law and is engaged by the parties or appointed by a mediation organization to conduct the mediation process on a professional basis.⁸⁰ The profession of mediator is a challenging one and may require certain personal attributes and skills.⁸¹ According to the Code of Professional Ethical Conduct for Mediators, the mediator must always preserve their honour and dignity and must not engage in any conduct that could undermine the reputation of the mediation profession.⁸² This requirement of the Law is of great importance for mediation. A mediator's reputation as a trustworthy and upright person in society can help gain the trust of the parties. The mediator's reliability leads the parties to take their opinions and recommendations more seriously and also encourages the parties to speak freely and express their interests.⁸³

To be successful, a mediator must possess certain qualities and skills. These qualities help the mediator to lead the process effectively, listen to the parties, and resolve the conflict.

Below are the **main qualities** a successful mediator should possess:

1. Impartiality and objectivity:

The mediator must be objective and impartial towards both parties. They must not show preference or bias towards either party. The mediator should pay attention to these aspects throughout the process.

2. Empathy and emotional intelligence:

- Empathy: The mediator must understand the feelings and emotions of the parties and approach them with respect and compassion, but should not be influenced by their emotions.
- Emotional regulation: The mediator must be able to manage their own emotions and remain calm in stressful situations.

3. Self-awareness:

The mediator must be aware of their own values, beliefs, and biases, and keep their ego in the background. Otherwise, it will not be possible to conduct the process in accordance with the principles of impartiality, voluntariness, and neutrality..

4. Simplicity (sincerity, humility):

These qualities are very important for building trust and confidence between the parties. If the mediator does not behave sincerely and simply with the parties, it may be difficult to obtain the necessary information, as the parties may be reluctant to talk about their true interests. Obtaining information from particularly reserved individuals may require additional tactics in such situations.

5. Patience and endurance:

- **Patience:** The mediation process can often take a long time and the discussions may be complex. For this reason, the mediator must be patient. Sometimes the parties repeat the same issues multiple times, digress from the main topic and speak at length, or behave rudely and say unpleasant things

⁸⁰ Law of the Republic of Azerbaijan "On Mediation", Article 1.0.3; "Rules for the Implementation of the Mediation Process", Clause 3.1

⁸¹ Ruslan Mirzayev, "Mediation. Theory and Azerbaijani Practice", 2020, p. 138

⁸² "Code of Professional Ethical Conduct for Mediators", Article 3.5.1

⁸³ Ruslan Mirzayev, "Mediation. Theory and Azerbaijani Practice", 2020, p. 139

to the mediator. The mediator must never respond with rudeness and should manage the process as politely as possible. According to Article 3.7.1 of the Code of Professional Ethical Conduct for Mediators, “the mediator must observe standards of speech, and be polite, attentive, and patient with all persons.” When the mediation process is prolonged, the mediator’s patience is essential. Carrying out such a demanding activity also requires physical endurance.⁸⁴

- **Endurance:** The mediator often spends considerable time and effort to resolve disputes between the parties. To manage the process calmly and hide their fatigue from the parties, the mediator must be resilient and believe in achieving a positive result.

6. Optimism:

This quality helps the mediator not to lose hope even in the most unpromising situations. An optimistic mediator sees the positive aspects of every situation and helps the parties see them as well. In long mediation processes where the parties’ positions are very far apart, in addition to patience, optimism is also important. This is because the dynamics of the negotiations can change unexpectedly. The mediator’s persistence during this process is also a factor that can lead the parties to agreement.⁸⁵

7. Being open-minded:

This quality helps make even the most difficult mediation process more comfortable for the parties, for others, and for the mediator themselves. Sometimes the parties respond rudely to the mediator’s questions, making communication difficult. In such cases, the mediator’s sense of humour and open-mindedness can help defuse tension. For example, the mediator may share various humorous anecdotes from their own experience with the parties. This creates a friendly relationship with the participants and encourages the parties to share with the mediator as with a friend.

8. Self-confidence:

A self-confident mediator can manage complex mediation processes effectively. Such a mediator tries to understand the parties with a positive approach, without exaggerating the parties’ rude behaviour towards the mediator in stressful situations. For example, a lawyer-mediator may know the court perspective of the case, but does not get involved in the dispute. If a party’s lawyer does not take the mediator’s legal knowledge into account, a self-confident mediator continues the mediation without intervening or escalating the dispute. Such a mediator ensures the effectiveness and efficiency of the mediation process while maintaining objectivity.

9. Honesty:

Being known as an honest and trustworthy person in society helps the mediator gain the trust of the parties. The mediator’s honesty increases their credibility and leads the parties to take their opinions and recommendations more seriously. The mediator’s reliability allows the parties to speak freely and express their interests openly. Creating this environment of trust and open communication increases the effectiveness of the mediation process and encourages the parties to participate more actively in resolving the dispute.

10. Creativity:

This quality enables the mediator to demonstrate that there are various ways to resolve the dispute. The parties to a dispute are usually under stress and may feel resentment or anger towards each other. This emotional state makes it difficult for them to think about broad possibilities and different solutions. A creative mediator presents different solutions as examples, helping the parties

⁸⁴ Ruslan Mirzayev, “Mediation. Theory and Azerbaijani Practice”, 2020, p. 139

⁸⁵ Ruslan Mirzayev, “Mediation. Theory and Azerbaijani Practice”, 2020, p. 139

to evaluate their problems from various perspectives. The different options presented by the mediator broaden the parties' thinking and lay the groundwork for considering alternative solutions.

The essential skills for a successful mediator are as follows:

Strong listening skills:

- **Active listening:** The mediator must be able to listen actively and attentively. They should carefully listen to the parties to understand their positions and feelings.
- **Understanding:** During listening, the mediator should strive to understand what both parties are saying and confirm this understanding to them.

Excellent communication skills:

- **Clear communication:** The mediator must be able to communicate clearly and effectively. Their manner of speaking and choice of words should be clear and understandable to the parties.
- **Neutrality:** The mediator must remain neutral and maintain equal distance from both parties during communication.

Problem-solving skills:

- **Creativity:** The mediator should be able to propose creative and non-traditional solutions to resolve the conflict.
- **Analytical skills:** The mediator must be able to analyse issues and, by understanding the parties' interests, propose appropriate solutions.

Negotiation and agreement skills:

- **Conducting negotiations:** The mediator should be able to engage the parties in effective negotiations and guide them toward joint agreements.
- **Encouraging agreements:** The mediator should promote the achievement of mutually beneficial and sustainable agreements between the parties.

Confidentiality and trust:

- **Confidentiality:** The mediator must protect the confidentiality of information provided during the mediation process.
- **Building trust:** The mediator must gain the trust of the parties and ensure their confidence in the process.

Knowledge of legislation and ethics:

- **Laws and regulations:** The mediator must have a good knowledge of relevant laws, regulations, and the ethical principles governing the mediation process.
- **Ethical conduct:** The mediator must always demonstrate professional and ethical behaviour.

b. Styles of mediation

Mediation uses different styles to resolve various issues. By “style,” we mean the mediator’s negotiation strategy or approach to the negotiation process. Depending on the objectives of a specific strategy, certain tactics (which may also be called methods or behaviour patterns) are used:

1. **Dialogue with the parties to the conflict:** The mediator organizes direct dialogue between the parties involved in the conflict, encouraging them to resolve the conflict or reach an agreement themselves.
2. **Understanding the problem and clarifying details:** The mediator ensures that the problem is fully understood and that the details and differences between the parties are clear, so that the path to resolution is evident.
3. **Empathy and understanding:** The mediator approaches all parties with empathy and respects their current views and life experiences. This approach encourages more constructive behaviour.
4. **Proposing creative solutions:** The mediator proposes creative solutions to the problem, which helps protect the parties’ interests and achieve appropriate resolutions.
5. **Negotiation and mutual agreement:** The mediator plays a leading role in discussing and resolving contentious issues in the process, effectively “guiding” the parties, which helps achieve mutual agreement.

The above are not exhaustive and can be used in various mediation styles. Mediation styles help create peace between the parties and find lasting solutions.

There are various publications on mediation styles, and there is no consensus on the content of certain approaches - for example, the tools of facilitative mediation. Nevertheless, the main styles used by mediators can be summarized as follows:

1. **Passive (non-directive) approach:** In this style, mediators intervene very little in the resolution of disputes and mainly allow the parties to talk among themselves. Sometimes, even if the parties are willing to reach an agreement, they are unable to sit down and discuss the issues; in such cases, mediators focus on transmitting information and fostering mutual understanding. This method is effective when parties voluntarily seek mediation and there are no serious points of friction or conflicting interests. The passive approach shares features with both facilitative and transformative styles.
2. **Active (directive) approach:** Here, mediators play a more active role in the resolution process. They ask questions, guide the parties toward certain solutions, and direct the discussions. This approach is more evident in settlement-oriented (evaluative) mediation, where the mediator is more interventionist and may provide assessments or recommendations.
3. **Facilitative mediation:** Also known as the traditional style, in facilitative mediation the mediator refrains from giving advice or suggestions, instead asking questions that help parties understand their own interests. These questions are designed to elicit positive responses and help the parties identify mutual benefits. Facilitative mediation encourages dialogue and active listening between the parties.⁸⁶
4. **Settlement-Oriented mediation:** In this style, mediators work towards concrete outcomes and solutions. They use various strategies and techniques to help the parties reach

⁸⁶ Nicole Levy, Comparing the 3 Major Styles of Mediation, South Shore Divorce Mediation, 14.10.2018, see: <https://madivorcemediators.com/comparing-the-3-major-styles-of-mediation/>

agreement, and offer proposals. The mediator's goal is to resolve the disputed issues and bring the parties to agreement.

5. **Transformative mediation:** Transformative mediators focus on changing the parties' relationship, perspectives, and communication styles. They emphasize mutual understanding and empathy. Unlike settlement-oriented mediation, the aim is to help the parties recognize each other's interests and find their own solutions, often restoring the relationship before resolving the dispute itself.⁸⁷
6. **Narrative mediation:** In narrative mediation, mediators encourage the parties to revisit the period before the dispute and share their stories about its roots and causes. After both parties have told their stories, the mediator helps construct a joint narrative that explains the dispute and leads to its resolution.⁸⁸ This approach helps the parties better understand each other's interests and perspectives.
7. **Process-Oriented mediation:** This style focuses on the mediation process itself and the parties' experiences during the process. Mediators ensure transparency and fairness at every stage. This method has some of the characteristics of facilitative and transformative mediation: the mediator's goal is to manage the process in such a way that the parties negotiate with each other; the aim is not necessarily a specific outcome but to ensure that the process is conducted properly.
8. **Evaluative mediation:** In this style, with the request and consent of all parties, the mediator, drawing on his/her expertise, may provide professional opinions or assessments about the merits and possible outcomes of the case. This approach can be useful when negotiations have stalled and a resolution cannot be reached, but both parties still desire a fair solution without going to court.

These styles represent different approaches and behaviours used by mediators in the dispute resolution process. It must be considered that each style has its own advantages and disadvantages. In practice, a mediator may use several of these styles in sequence within a single process, which can contribute to a successful mediation outcome. *For example, a) facilitative mediation* is often the initial approach in any mediation process⁸⁹. For it to be effective, the parties must understand each other's interests and be willing to make mutual concessions.

However, if empathy cannot be established or parties are unwilling to recognize each other's interests, the mediator may shift to a different style - *b) transformative mediation*, aiming to help the parties see the dispute from a new perspective. In this direction, the questions posed during the mediation are also different. For example, the mediator asks, "How would you feel if you were in the other party's position?" (without being accusatory). The tools of the transformative mediator also consist mainly of questions; with these, the mediator aims to recognize and accept the interests of one party in the other, because the moment one party accepts the interests of the other as legitimate, they will work to resolve them.⁹⁰

However, the conflict between the parties may be so deep that they refuse to recognize each other's interests. In such cases, the mediator adopts a different style. If transformative efforts are

⁸⁷ Ehsan Ali and Alnoor Maherali, Mediation Styles - Choosing the Right Style for Your Dispute, see: <https://vennmediation.com/blog/article/Mediation+Styles+-+Choosing+the+Right+Style+for+Your+Dispute/>

⁸⁸ Ehsan Ali and Alnoor Maherali, Mediation Styles - Choosing the Right Style for Your Dispute, see: <https://vennmediation.com/blog/article/Mediation+Styles+-+Choosing+the+Right+Style+for+Your+Dispute/>

⁸⁹ Nicole Levy, Comparing the 3 Major Styles of Mediation, South Shore Divorce Mediation, 14.10.2018, see: <https://madivorcemediators.com/comparing-the-3-major-styles-of-mediation/>

⁹⁰ Katie Shonk, Types of Mediation: Choose the Type Best Suited to Your Conflict, 13.06.2024, Harvard Law School, Program on Negotiation, see: <https://www.pon.harvard.edu/daily/mediation/types-meditation-choose-type-best-suited-conflict/>

unsuccessful, the mediator shifts to **c) evaluative mediation** and asks the parties to assess their positions from a legal perspective: the mediator poses challenging questions, recommends consulting with legal counsel, and, if these measures do not work, proposes a non-binding evaluation. Only with the consent of all parties does the mediator provide an assessment of the legal merits of each side's position. However, the purpose of the mediator's evaluation is not to secure a victory for one party over the other, nor to cause a party to leave the negotiation table believing they will win in court. The mediator's evaluation is intended to encourage a resistant party to make concessions.

It should be noted here that while evaluative mediation may bring progress in resolving the dispute, it does not always guarantee a complete resolution; for example, a party willing to make concessions may be uncertain about how and in what form to do so, and the parties may not have common ground on this issue. In such cases, the mediator begins to use **d) a problem-solving approach** (that is, its tactics), discussing various options with the parties, encouraging them to consider how possible solutions would affect their interests, and employing "brainstorming" techniques.

There are many mediation styles, each with its own advantages and disadvantages. Depending on the mediator's creativity, a single process may involve several styles. As described above, the explanation shows how mediation styles complement each other and are applied to facilitate agreement between the parties. The mediator must decide which style to use, when, and how.

Adapting mediation styles to the mediator's activities

As noted above, it is possible to resolve a dispute in mediation by using different styles. The mediator's professionalism is reflected in adapting the chosen style to the specific needs of each case and the parties involved. This means the mediator should tailor the selected styles to the characteristics of each case.

The following practical example of adapting mediation styles to the mediator's activities demonstrates the importance of adapting mediation styles in the mediation process:

Initial situation: The mediator begins a session regarding a workplace dispute using a facilitative style with both parties. Party **A** is very loud and emotional, while Party **B** is calm and logical.

Adaptation 1: The mediator notices that Party B has difficulty expressing their views due to Party A's dominant communication style. In this situation, the mediator a) applies stricter turn-taking rules; b) uses more questions directed specifically at Party B; c) summarizes Party B's views to ensure they are fully heard, thus adapting to the situation.

Adaptation 2: As emotions rise, the mediator shifts to a more transformative approach: focusing on helping the parties better understand each other, encouraging them to recognize and appreciate the other's perspective, and using reframing techniques⁹¹ to highlight common interests.

⁹¹ **Reframing** - a personal development technique, a method by which a person's outlook and perspectives, as well as the meaning they attribute to any object, can be changed. The reframing technique alters how people perceive events and objects, encouraging them to view ordinary tendencies from a different perspective. For example, imagine Leonardo da Vinci's original painting, the Mona Lisa, placed in a cheap frame. You might think, "It's a fake." However, if you see the same painting in an expensive and elegant frame, you would say, "This is the original." The artwork itself remains unchanged; it is simply your perception, shaped by the different frames, that creates distinct

Adaptation 3: When the discussion stalls on a technical issue, the mediator, with the consent of both parties, briefly adopts an evaluative style: providing general information about industry standards relevant to the dispute and helping the parties understand potential outcomes if the dispute were to go to court.

Adaptation 4: When the parties become more open to resolution, the mediator shifts to a problem-solving style: uses "brainstorming" techniques, helps the parties evaluate potential solutions in relation to their stated interests, and encourages them to build on each other's ideas.

Outcome: By adapting the mediation style to changing needs and the dynamics of the session, the mediator helps the parties move from conflict to joint problem-solving, ultimately reaching an agreement that satisfies both sides.

This example also demonstrates how different mediation styles can be effectively combined within a single mediation process. For instance, in the workplace dispute, the mediator starts with a **facilitative** style, allowing both parties to express their views. However, it becomes clear that one party is highly emotional while the other is more reserved and logical. Recognizing this dynamic, the mediator adapts by using questions that ensure the calmer party's perspective is fully heard and acknowledged. As emotions escalate, the mediator adopts a **transformative** approach, focusing on helping the parties understand each other's perspectives and mutual interests. When the discussion reaches an impasse on a technical issue, the mediator, with both parties' consent, briefly uses an **evaluative** style to provide information about relevant industry standards. Finally, as the parties become more open to resolution, the mediator guides them through "brainstorming" sessions, helping them evaluate potential solutions based on their expressed interests and shifting to a **settlement-oriented** approach.

The continuous use and combination of these styles (shifting from facilitative to transformative, then to evaluative, and finally to settlement-oriented styles) helps the parties progress from conflict toward joint problem-solving and ultimately reach a mutually satisfactory agreement.

This example illustrates how the mediator's ability to read the situation and flexibly adapt his/her style to the changing needs of the parties and the process is essential for successful mediation

reactions. With the help of reframing, you can find positive aspects in negative events happening around you, and even in the most destructive situations, you may hope that you have learned a valuable lesson from life and that this will benefit you. For instance, you can either become a victim of a negative event or learn from it and move forward. As the saying goes, "Every cloud has a silver lining", in other words, do not become a victim of negativity; skillfully turn negatives into positives and keep your spirits high.

4. Supporting the people

a. Giving good attention (active listening)

When communicating with the parties, it is essential for the mediator to listen to them attentively. If a party perceives that the mediator is not listening, they will believe that the mediator does not understand them or take their interests into account, which may result in that party refusing to reach an agreement.⁹²

When a party sees that they are being listened to attentively, their trust and confidence in the mediator may increase, which is crucial for reaching a settlement agreement. Only in such circumstances can a party genuinely believe that the mediator understands and will protect their interests.

Additionally, attentive listening and note-taking by the mediator are very helpful for understanding the party's interests, including issues they may be hiding or not fully aware of themselves. Active listening also requires asking questions at the right time. When the mediator practices active listening, they ask questions not just about words but about the substance of the party's statement, seeking to understand the content more deeply. By noting important points expressed by the party, these can later be discussed in order. The mediator should also strive to create an environment where the parties listen to each other.⁹³

Efforts should be made to practice active listening in both joint sessions and separate meetings. The following techniques can be used to implement active listening:

- Sit facing the party and lean in slightly.
- Use words like “uh-huh,” “I understand,” and nod your head while listening.
- Do not form conclusions in your mind before the party finishes; wait for them to complete their thoughts.
- Do not interrupt the party; if you want to ask a question, wait for the appropriate moment.
- Ask clarifying, open-ended questions.
- Use silence, encourage the party to speak more, and use phrases such as “I would like to hear more.”
- When the party shares sensitive matters, you can say, “I can see that this situation has been very upsetting for you,” because the speaker wants you to notice and feel this (responding to their emotion and expectation can be done verbally or through body language, without compromising your neutrality).
- Avoid any distracting actions, such as playing with a pen or phone, rocking in your chair, or answering calls.⁹⁴

b. Setting the tone

Not only in mediation, but in all negotiations, how you say something is more important than what you say. The mediator should keep this in mind and, from the opening statement, use an optimistic,

⁹² Temara Willis, *Actively listening in mediation*, 2021, see:

<https://www.adelaidefamilymediation.com.au/post/actively-listening-in-mediation>

⁹³ Sarathi Susheela, *Navigating the Listening in Mediation*, 2020, see:

<https://mediate.com/navigating-the-listening-in-mediation/>

⁹⁴ *Active Listening for Mediators*, U.S. Department of Veteran Affairs, Alternative Dispute Resolution, see: <https://www.va.gov/ADR/ALM.asp>

confidence-inspiring tone and words to draw the parties into the mediation process. An optimistic expression and a smile will contribute significantly to creating a positive atmosphere.⁹⁵

The mediator serves as both the manager and supervisor of the process. At times, it may be appropriate for the mediator to encourage a degree of informality, while at other times, maintaining a certain level of formality is necessary. For example, with highly formal individuals, encouraging informality may be appropriate. Conversely, with parties who tend to be overly informal or display uncivil behaviour, reinforcing formality can help maintain control over the process.

The issue addressed above concerns the mediator setting the tone for the negotiations before the joint sessions begin. We can point out the following issues which are involved in setting the tone of communication: initiating the negotiations with an optimistic tone, explaining the rules of discussion, outlining how participants should speak, ask questions, raise objections, and manage the negotiations.

Why should the mediator set the tone? Parties coming to mediation do not always have the same level of education, professionalism, or cultural background. People can be passive or active, aggressive, talkative or reserved, with different personalities. Without any rules, they may display highly unconstructive or disruptive behaviour in negotiations. Therefore, the mediator must guide the process (the negotiations) in the right direction, adapt their tactics as needed, switch topics if necessary, and so on. When the situation becomes tense, the mediator can use humour to defuse it or encourage informal language.

By establishing the environment and rules for negotiations, the mediator does part of this during the opening statement (by stating the process rules, discussion rules, how to ask questions and raise objections), and the rest during the process, both in joint sessions and individual meetings. In other words, setting the tone for discussions is a task for the mediator throughout the entire process. When necessary (to restore control or a constructive environment), the mediator repeats and reminds the parties of these matters.

c. Acknowledging

In mediation, acknowledging means that the mediator must be familiar with the parties and the dispute. On the other hand, by acknowledging the conflict, the mediator should be able to have a certain idea in advance about the possible solutions; however, this opinion can of course change during the course of the dispute.

When it comes to ***acknowledging the parties***, the mediator's field of interest may encompass everything from their living conditions to their psychology, past traumas, and even their outlook on life. People may be introverted or extroverted, suffer from various personality disorders, or experience prolonged psychological anxiety that prevents them from making decisions.

Before discussing possible solutions to the dispute, you may begin by asking the party how they feel as a result of the problem they are currently experiencing. During this process, you must listen attentively and may ask additional questions in a certain sequence to get to know them better. For example, your second question could be: "Before starting a family, what did you think about family life? For instance, how did the relationship between your mother and father shape your ideas about family?" With this question, you begin to learn about the party's past and their superego.

⁹⁵ Nick Peluso, *Mastering Tone in Negotiations & Why It Matters*, Black Swan Group, 2023, see: <https://www.blackswanltd.com/the-edge/mastering-tone-in-negotiations-why-it-matters>

When it comes to *acknowledging the dispute*, it is not limited to “A wants a divorce because B was unfaithful.” It is also essential to explore why B was unfaithful. The issue to be investigated should aim to identify and overcome the obstacles to an amicable divorce. Naturally, just as there are couples who forgive infidelity, there may also be misconceptions or inaccurate conclusions about infidelity. However, the mediator’s role is not to justify one party or blame the other; the purpose of examining the dispute is not to assign fault. Understanding the dispute is crucial for identifying the obstacles to reaching an agreement.

Another outcome of acknowledging the parties and the dispute is that a professional mediator, having learned these aspects, can anticipate how the dispute will be resolved and how the parties’ relationship will develop after the dispute. This anticipation assists the mediator in assessing whether the solutions proposed at the table are sustainable and effective. Nevertheless, this anticipation should not take the form of speculation; the mediator must ensure that their predictions are impartial and free of bias. The mediator should pay attention to presenting probabilities to the parties in the form of questions.

Let us provide an example of the above paragraph. In one mediation case, the husband proposed an agreement to continue living in the same house with his wife after divorce, and the wife agreed. As mediators, we informed the parties that such a solution was likely to fail and that continuing to live together could increase the risk of conflict between them. Although they concluded the agreement as they wished, they returned to mediation sometime later regarding the division of property. In another case, the mother agreed for her 7-year-old child to stay with the father. In this case, the father had applied for mediation to divorce because the mother consumed alcohol. At our insistence, the husband accepted an amendment in the agreement allowing the child to stay with the mother three days a week. Although the mother did not wish to take the child at first, after some time, she contacted the mediator, stating that the father was unwilling to give her the child and that if he did not allow her to have the child for half the week, she would apply to the court for the annulment of the settlement agreement as a whole.

In general, when both parents agree that the child will reside with the father and approach a mediator, it is essential for the mediator to investigate the underlying reasons for such an agreement. Experience shows that these situations often arise due to factors such as, a) the mother’s infidelity, b) expectations that the mother will remarry, c) the mother leaving the country for reasons such as education, d) the mother receiving property in exchange for custody. Other scenarios may also exist. In each case, the mediator should not limit themselves to the surface agreement but must consider the potential future consequences and possible changes in the parties’ circumstances. Accordingly, the mediator should thoughtfully decide which questions to ask the parties. An agreement that does not take such circumstances into account will likely not be implemented and will later be challenged in court. In any case, the mediator must ensure that each party makes their decision freely, with full understanding and awareness, without any undue pressure. This should also be explicitly documented in the agreement. As a precaution, you may offer to include a clause at the end of the settlement agreement stating that the parties will return to mediation to resolve any disputes arising during the execution of the agreement.

When parents agree for the child to live with the father, mediators must be mindful of the local legal context. Courts often grant custody to mothers in the majority of cases. While respecting party autonomy and maintaining neutrality, mediators should ensure that the mediation process includes a comprehensive discussion of the proposed agreement. This should involve assessing the best interests of the child, considering practical care arrangements, and confirming that both parents genuinely consent to and understand the agreement. The mediator should facilitate open dialogue about any potential concerns either parent may have and the long-term sustainability of the agreement. Given that such agreements may be subject to more rigorous judicial scrutiny, mediators must ensure that the rationale behind the parties’ decision is clearly documented in the

settlement agreement. This record should demonstrate that both parents made an informed, voluntary choice prioritizing the child's welfare. However, this additional focus on justification and discussion should not be perceived as doubting the parties' decision-making capacity or favouring any particular outcome.

d. Encouraging

Encouragement of a party by the mediator involves strengthening the party's hope for a positive resolution. From the outset, the mediator should maintain an optimistic demeanour. Where appropriate, the mediator may draw on his/her experience to instil confidence in the parties that the dispute can be resolved.

Parties who voluntarily come to mediation already hold some hope that the mediator can help resolve their dispute. Nevertheless, there is always a possibility that negotiations may result negatively. Therefore, even during voluntary mediation sessions, it is crucial for the parties to remain positive and constructive throughout the process. To this end, the mediator can employ transformative mediation techniques, empowering the parties to find a positive resolution. If necessary, and while maintaining a constructive atmosphere, the mediator may also adopt an evaluative approach. Encouragement is typically a tool of the facilitative type of mediation.⁹⁶

Another aspect of encouragement is to motivate the parties to participate more actively in the sessions and to ask each other questions. However, here the mediator should not be accusing the party, but rather encouraging the party to clarify matters they do not know or understand. This is a method that can help eliminate possible misunderstandings.⁹⁷

Other examples of encouragement include: the mediator noting progress made on specific issues, or the mediator reiterating his/her optimism and belief that the parties can resolve their issues. Moreover, the mediator can tell the parties that he/she has had experience with such seemingly difficult disputes and has been able to resolve most of them positively.

e. Confidentiality in practice

Confidentiality in mediation encompasses obligations for both the mediator and the other participants in the process, as well as third parties.

As a general rule, participants in the mediation process are prohibited from disclosing information learned *from other mediation participants* to external persons or the public during the mediation session without the consent of the interested party. If a party to mediation obtains information from an external source, such information is not considered confidential unless it infringes on personal privacy or dignity. If a party shares information learned during mediation with close family members, such as parents, those individuals are also bound by the duty of confidentiality.

⁹⁶ Susan Naus Exon, The Effects that Mediator Styles Impose on Neutrality and Impartiality Requirements of Mediation, University of San Francisco Law Review, 2008, Volume 42, p. 591.

⁹⁷ Law Council of Australia, Guidelines for Parties in Mediation, 2018, p. 7 See: https://lawcouncil.au/docs/804a3952-33d8-e911-9400005056be13b5/Guidelines%20for%20Parties%20in%20Mediations_Final%202018.pdf

When it comes to the mediator, there are some points where the mediator must be sensitive to confidentiality. The most important points among these are to inform the parties about the confidentiality of the process, explain which information is considered confidential, detail the prohibition on disclosure, and relay information on related sanctions. The mediator may fulfil these duties at various stages: in a phone conversation during the preparation phase, while delivering the opening statement and explaining the principle of confidentiality, at the start and throughout separate meetings, as well as during the final session or upon termination of the mediation process.. The mediator can convey this as follows:

1. In the preparation stage: “Ms. Firangiz, can you provide further details about your dispute? Please do not worry about confidentiality; I want to emphasize that mediation is a closed, confidential process, and any information you provide to me cannot be disclosed to anyone else, including your family members, by law.”
2. In the opening Statement: “Apart from the principle of voluntariness, another important principle of mediation is confidentiality: what we hear and learn in this room cannot be discussed outside, in court, with the police, or elsewhere. The penalty for disclosing such information is a fine of 800 manats.”
3. During separate meetings: “The reason for our separate meeting is to discuss some issues that are unclear to me. I remind you that any information you share with me will not be disclosed to the other party or anyone else; only if you wish and in the manner you wish can I share such information with the other party.”
4. At the final session: “Although we have reached agreement on some issues, others could not be resolved through negotiation. You may have to continue your dispute in court. I remind you once again that all information obtained during mediation, whether included in the settlement agreement or not, cannot be disclosed to anyone. The only exception is presenting the settlement agreement to the court for enforcement.”

However, the main challenge for the mediator is not in these formalities, but in situations where, to reduce conflict, the mediator may need to disclose information that appears confidential to the other party, sometimes modifying the information. In all cases, the mediator must ensure that such disclosure does not widen the gap between the parties and instead positively contributes to resolving the dispute.

Suppose a husband is fined a large amount for an administrative offence and experiences financial difficulties for several months but does not inform his wife about the fine. If the wife raises a conflict about the husband not contributing his earnings to the household (possibly suspecting him of giving money to others), the mediator should first seek the husband's consent before discussing this with the wife. If consent is not given, the mediator might approach the conversation as follows: “Have you considered the possibility that your husband may have given his salary to someone in need, perhaps to help a close relative with medical expenses, or maybe he encountered a problem and is paying a fine? Have you discussed these possibilities with your husband?” If the wife responds, “If I knew something like that, I would be understanding,” it may be worth revisiting the issue with the husband regarding disclosure of the confidential information.

In some cases, a citizen approaches a mediator to ask, “I wanted to learn whether a particular person has applied for mediation or not”. The mediator must not answer this question unless the inquirer is a party to the specific dispute.

The 2nd part of Article 8 of the “Law on Mediation” defines the scope of matters protected by confidentiality in mediation, with an exception: “...except in cases required for the confirmation

and enforcement of the settlement agreement...” This means that most information obtained during the mediation session is considered confidential. The only exception being cases related to the confirmation of the settlement agreement in court (the term “enforcement” in the law is a necessary extension of the confirmation stage). In such cases, courts involve the mediator as a third party who does not make independent claims. It should be noted that, unless both parties consent (as per Article 8.3 of the same Law), the mediator cannot disclose what was discussed between the parties. The main information the mediator may provide regarding the court confirmation of the settlement agreement is whether the party signed the agreement voluntarily, and whether the party’s will was free from pressure and their consciousness intact.

f. Staying impartial

Impartiality is fundamentally linked to the mediator’s independence and neutrality. While many of us are familiar with the concept, there are two main situations where impartiality may be compromised. We must also note that impartiality and neutrality challenges especially arise in evaluative mediation, because in this style, the mediator may conduct reality testing, guide the parties toward a particular outcome, or encourage logical and adequate solutions.⁹⁸

The first risk arises when a party’s behaviour conflicts with the mediator’s internal sense of justice, leading to subconscious opposition. The second risk occurs in disputes that challenge the mediator’s worldview, stereotypes, or even trigger personal traumas. It is important to recognize that mediators, like everyone else, have their own perspectives, sense of justice, and values.

Remaining impartial means listening to the parties and offering them solutions free from the obstacles listed above, which may seem "harmless", hidden, and not even sensed during our internal impartiality checks, without imposing one’s own sense of justice or values. This also means that, in general, it is necessary to delay evaluative mediation and apply more facilitative, and if unsuccessful, transformative mediation methods instead. When offering something to the parties or trying to guide them to a certain position, the mediator should focus on the interests of the parties, not on what the law or custom requires.

The mediator must act cautiously when providing assistance to parties and must ensure that any assistance provided does not result in an outcome favouring any one party. In other words, neutrality should be evaluated not by the mediator’s overall conduct, but by each individual action. It is unacceptable for the mediator to alternate support between parties in a way that appears balanced overall but is, in fact, partial in each instance.

Let's say, in a family mediation, the parties agree that the children will reside with the father and approach the mediator to formalize this agreement, The mediator should confirm the arrangement by asking, “If I understand correctly, you have agreed that the children will stay with the father.” The mediator must then consider whether to inquire about the reasons for this arrangement and, if so, what questions to ask.

The primary concern for the mediator is that the parties have reached the agreement of their own free will - that is, voluntarily, without pressure, threats, coercion, or the influence of difficult life circumstances. Questions should be designed to assess the voluntariness of the agreement and must

⁹⁸ Susan Naus Exon, *The Effects that Mediator Styles Impose on Neutrality and Impartiality Requirements of Mediation*, University of San Francisco Law Review, 2008, Volume 42, p. 593.

be asked confidentially, not in the presence of the other party, to ensure the absence of undue influence. The mediator should never ask, “Why are you giving up your children? Why don’t you want to keep them with you?”, because such questions compromise impartiality and are accusatory, contradicting the principles of neutrality and fairness in mediation.

We must also note that the absolute impartiality and neutrality of the mediator in every dispute may, in some cases, be criticized for leading to the violation of the rights of vulnerable parties or resulting in agreements that conflict with social norms⁹⁹. When faced with such situations, mediators may check whether the party understands the consequences of the agreement and, if necessary, ask whether they wish to consult a lawyer. If the party answers affirmatively and is entitled to free legal aid, the mediator may advise them on how to access the appropriate organizations. However, such conduct of the mediator should be considered exceptional and only contemplated by the mediator when a party faces a disproportionately serious loss. Regardless of the circumstance, the mediator him/herself should refrain from giving legal advice to the weaker party.

The mediator must maintain impartiality in all matters, including the manner of questioning the parties, the form of questions, the way the parties are greeted upon entering the room, facial expressions, the time allocated to each party, and must strive to display similar behaviour throughout.¹⁰⁰

g. Cultural patterns

Mediators in Azerbaijan predominantly deal with family disputes. Labour disputes are still to be addressed at the pre-court stage in the form of an initial mediation session. Nevertheless, voluntary commercial and civil mediations may also be brought to the mediator for resolution. What distinguishes family disputes from other types of disputes is that they are characterized by a high emotional load.

In the context of family disputes, the main challenge faced by the mediator is to bring the parties into an atmosphere conducive to dialogue and to foster a willingness to negotiate. The primary reason for this is the parties’ inability to establish communication with each other; by nature, when offended or hurt, they tend to cut off communication with the other party. Generally, in terms of conflict resolution, individuals can be categorized as follows:

- Those who express their discontent by cutting off communication,
- Those who engage in communication based on accusations,
- Those who prefer communication aimed at investigating the issue,
- Those who favour communication aimed at resolving the issue.

It should also be noted that while some individuals have a disposition to approach all conflicts in the same manner, others may exhibit different behavioural models depending on the specific conflict and interests involved. For example, a person may approach a conflict in the family one way and a workplace conflict another way. Furthermore, the behaviour exhibited by one party and

⁹⁹ William F.Fox, Review of the book of Jerold AUERBACH “JUSTICE Without LAW?», Catholic University Law Review, Volume 33 Issue 2 Winter 1984 Catholic University Law Review Oxford University Press, (1986), p. 521.

¹⁰⁰ Susan Naus Exon, The Effects that Mediator Styles Impose on Neutrality and Impartiality Requirements of Mediation, University of San Francisco Law Review, 2008, Volume 42, p. 581.

the approach taken by the other may not always be conducive to a positive resolution of the conflict. For instance, one party may prefer to resolve the problem through discussion, while the other prefers silence or withdrawal. In such cases, whether in joint sessions or separate meetings, the mediator should encourage the person who prefers silence to express their thoughts.

The mediator must also be aware of the reasons and content behind silence. For example, in Western cultures, where people are open to dialogue, silence may mean either an admission or a complete lack of hope for resolution. In Eastern societies, where people are not as open to dialogue, silence does not always mean admission or acceptance. In the East, silence can indicate feelings of disappointment or dissatisfaction, or it may be understood as something the individual wishes to keep hidden. Silence can also be a sign of hopelessness.

A party's reluctance to speak may also stem from being introverted or having grown up and lived in a closed environment. In such cases, the mediator should use indirect questions to try to understand the party and to estimate the reason for their silence. Questions such as, "Have you tried to talk to them about this?", "Do you think anything would change if the two of you could sit and talk without anyone else intervening?", or "Why do you think your dispute escalates when you try to talk?" can help us better understand the party.

A party's silence may also occur after a particular question or proposal and may last for a certain period. This silence can arise for various reasons:

- The party is not ready to answer the question,
- The party wants to think about the question/proposal,
- The party is dissatisfied with the question/proposal,
- The party is not listening and is distracted.

To understand the reason for the silence, it is useful to observe the party's subsequent responses and body language. In addition, the mediator may ask the party, for example, "Perhaps I did not explain my question/proposal well; this is what I meant," or "If you are dissatisfied with the question/proposal or would like to make a comment about it, I would be happy to listen to you; it is possible that I have not fully understood certain matters myself."

In family mediations, regardless of which party initiates the process, men and women exhibit different behavioural patterns. Men, even when they are the ones who apply for mediation (which is less common), generally do not wish to speak much. In situations where neither the man nor the woman is willing to talk, the question of whether infidelity is the reason for the divorce can be explored in separate meetings.

Azerbaijani mediators are aware that the challenging aspects of family mediations often arise in matters of property division, ensuring communication with the child, and issues related to alimony. The traditional behavioural patterns demonstrated by the parties are influenced by two factors: firstly, the worldview and personality of the party, and secondly, the reason for seeking mediation.

Why is it important for the mediator to know these factors? By understanding the parties and the dispute, the mediator increases the chances of resolving the conflict.

It should also be noted that the mediator must form a certain impression about the citizen sitting before them at the initial mediation session. The mediator should be informed about the person's social status, education, age, life experience, values, and code of conduct. For example, while shaking hands with men is considered normal, it may not always be appropriate to do so with women, depending on the context. In general, shaking hands with one party may raise doubts about

the mediator's impartiality in the eyes of the other party, and such situations should be taken into account. Throughout the entire process, the mediator must maintain the parties' perception of their impartiality. To achieve this, the mediator should adjust their behaviour according to the aforementioned factors such as social status, gender, education, and region of origin. In other words, the mediator should not behave identically in every case.

Understanding these factors can be particularly beneficial for the mediator in implementing transformative mediation. For example, if a woman seeking divorce due to infidelity adopts an unforgiving stance and takes a strict position on uncompromising divorce, property claims, and child custody, and her husband disagrees, transformative mediation tools may not always be effective. However, even in such cases, there are still chances for mediation; after achieving some progress in property division and communication with the child, it may also be possible to reach a compromise regarding alimony. In property division, the mediator can act as a reality agent by explaining the difficulties of court proceedings - such as timeframes and costs - or by proposing solutions such as transferring property to the child's name or arranging payment in instalments.

The mediator must not provide legal services or advice to the parties. Nevertheless, in a mediation case concerning the right to communicate with the child, the mediator had sent the parties the 2011 Plenum decision of the Supreme Court before the initial mediation session, without offering any interpretation, simply recommending that the parties familiarize themselves with judicial practice in advance. As a result, the parties acted more moderately during the initial session. The mediator's motivation for this approach was to maintain independence and impartiality. When acting as a reality agent, if the legal assessment is unfavourable for one party, that party may perceive the mediator as biased. In that case, the mediator's action was a strategic move, aimed at encouraging the parties to reformulate their positions in a reasonable manner before coming to mediation.

It is also possible to observe that the parents of the parties (grandfathers and grandmothers) can play a significant role in resolving disputes in family mediations. The mediator may consider, perhaps indirectly, involving them in the negotiation process. In Eastern societies, parents influence the resolution of disputes in two ways: first, as respected figures whose opinions are valued, and second, through the support they provide to the party after divorce. For example, in disputes over property division, if the share received by a party is insufficient to purchase a new home, or if the party does not receive any real estate after divorce, parents may help the party acquire a home by making the initial payment on a mortgage. Therefore, when considering possible solutions to the dispute, the potential influence of parents should not be overlooked.

h. Imbalance of power

How can the balance of power between the parties be disrupted during negotiations, and what should a mediator do in such cases?

First and foremost, it should be noted that one of the fundamental principles of mediation is impartiality and neutrality. For this reason, the mediator must refrain from taking any steps that would empower one party over the other.

At the same time, the principle of "voluntariness" in mediation also has several aspects. One of these is that the party must make decisions resulting from negotiations of their own free will,

without being under pressure, and with a clear understanding of what they are signing off to and the legal consequences involved.

These requirements are also general principles of contract law. If a party's will is compromised due to threats, deception, or significant error, it is possible to seek the invalidation of such an agreement.

Thus, the balance of power between parties during negotiations can be disrupted in various ways, and depending on the situation, the mediator may need to intervene or, conversely, refrain from intervening.

For example, if one party lacks the resources to maintain their position due to being in need, the mediator should not intervene in such a situation.

If the mediator observes that the balance of power is disrupted because one party is psychologically aggressive and the other is timid and lacking in willpower, the mediator should split the parties into separate sessions and attempt to restore the balance of power in another way. When the parties are separated, the aggressive party's influence over the weaker party is removed, and the balance of power is restored.

If the balance of power is disrupted because one party's arguments are much stronger, the other party's arguments are weak, or one party holds the subject of the dispute, the mediator cannot intervene in such cases.

The disruption of the balance of power can also occur when one party is represented by counsel and the other is not. If the "weaker" party is a beneficiary of state social assistance and the subject of the dispute is significant for that party, the mediator may recommend that the party seek free legal aid and adjourn the mediation session.

To address power imbalances in mediation, eleven steps are recommended: (1) avoid making unnecessary assumptions about existing power relations, (2) use the filtering capacity of mediation to address power imbalances, (3) encourage parties to share their knowledge, (4) use the parties' willingness to reach agreement as leverage, (5) compensate for low negotiation skills through encouragement, (6) prevent intimidating negotiation tactics, (7) adapt to language differences, (8) consider the characteristics and needs of young people, (9) prevent agreements resulting from fear of violence or retaliation, (10) act proportionately when offering information and support to both parties, and (11) do not rush to resolve the dispute. If any of the following six conditions are present, it is appropriate to terminate the process. These include if (1) a party does not fully understand the mediation process, (2) a party does not wish to comply with the basic rules of mediation, (3) a party lacks the ability to determine or express their interests and cannot comprehend the legal consequences of the agreement, (4) there is a significant lack of information that prevents "informed consent" by one of the parties, (5) a party agrees out of fear of the other party, and (6) one or both parties express their wish to end the session. The decision to terminate the process should be made in a way that does not further increase the power imbalance and should be carried out with complete and equal respect for both parties.¹⁰¹

¹⁰¹ A. M. Davis and R. A. Salem, *Dealing with Power Imbalances in the Mediation of Interpersonal Disputes*, *Mediation Quarterly* Issue: 6, December 1984, p. 17.

i. Emotionally difficult situations

There are certain challenges mediators face during negotiations. These difficulties often arise not from the dispute itself, but from the parties involved. One such challenge is the presence of intense emotional states in one or both parties. Alongside the parties, the mediator may also be subject to emotional influence, which can negatively impact the resolution of the problem.

Emotionally challenging situations may occur when an important social or personal value has been violated. Examples include one party experiencing severe living conditions, significant losses, betrayal, post-traumatic stress disorder (PTSD), or prolonged domestic, psychological, or physical violence.

A person in a severe emotional state finds it difficult to make rational decisions. Such individuals are more likely to make decisions against their own interests, and it becomes challenging to conduct negotiations aimed at protecting their interests. These individuals must first release their emotions; at the preparation stage, the mediator may recommend consulting a psychologist or psychiatrist. During the mediation session, the mediator should listen attentively to such individuals and pose questions with care.

The mediator should use emotions as an opportunity. The best approach is to sit calmly, listen to the party, and allow them to express all their emotions. The mediator should not interrupt the party; however, if this occurs in a joint session, the mediator must keep the process under control and intervene only when necessary.¹⁰²

j. Steering clear of pitfalls

A mediation session can be full of surprises for the mediator. While the mediator may be well-versed in theoretical knowledge, only years of experience can prepare him/her for how these complex issues will manifest in practice. The process can be marked by emotional intensity, false information, slander, one party dominating the other, or one party being in a particularly vulnerable state. Nevertheless, certain rules and approaches can be highlighted. The mediator must avoid the following situations, as seeking truth and justice may compromise their impartiality and neutrality. The principles of mediation do not include the investigation of truth; impartiality and neutrality are the mediator's primary indicators.

We can cite the following as examples of common mistakes made:

1) Questioning the disputing party together with the other party

This occurs when the mediator asks questions in the same direction and with the same content as the questioning party, or when the mediator asks questions that weaken the position and accusations of the questioning party. One party may perceive the mediator as biased.

¹⁰² Mediation Training Institute East Africa, Dealing with Emotions During Mediation, 2022
See: <https://mtieastafrica.org/dealing-with-emotions-during-mediation/>

Solution: Note the questions you wish to ask and wait. These questions can be asked more cautiously in a joint session or during a separate meeting. Pay attention to the form and sequence of the questions, ensuring they are posed impartially.

It should also be emphasized that while learning the truth may help understand the dispute, it is not always necessary for its resolution. The goal is not to uncover the truth but to resolve the dispute; learning the truth is merely a means to that end.

2) Providing legal advice to the parties, either separately or jointly

It may not be appropriate to begin with an evaluative mediation style; it is advisable for the mediator to first employ other mediation approaches. Similarly, by providing legal advice, the mediator creates two obstacles:

- The party for whom the advice is not beneficial may perceive the mediator as biased.
- The party whose position aligns with the advice may refuse to compromise, even if such compromise does not harm their interests.

Solution: At the outset, explain the mediator's role to the parties, indicate that they may consult with a lawyer, and offer non-binding legal assessments only if negotiations are unsuccessful.

3) Showing patronage to one party

Another mistake the mediator may make during the mediation process is appearing to favour one party, questioning only one party, intervening only in one party's negotiations, or giving advice only to one party. Such actions cast doubt on the mediator's impartiality and may cause the favoured party to become entrenched in their position. The mediator is not a judge and should support both parties equally in any solution that does not contradict their interests.

For example, if the mediator pressures the party from whom alimony is sought, conducts a legal assessment in favour of the party seeking alimony, and the parties ultimately reach a settlement in line with a court judgment, such an agreement may reduce the court's workload but may not align with the interests of the pressured party and is not truly a voluntary choice. If the mediator adopts the same approach in another dispute over property division, their bias becomes even more apparent.

4) Judging, putting forth a condemnatory position

Even if a party's position is in serious violation of the law, the mediator must refrain from judgmental questions, statements, attitudes, or facial expressions. Such conduct casts a serious shadow over the mediator's impartiality and may terminate their right to oversee the dispute. Under no circumstances should the mediator, for any reason, adopt a blaming stance toward either party or both parties simultaneously. As noted, even if the mediator expresses equal blame toward both parties in a divorce, impartiality may be maintained, but neutrality will be lost; moreover, the mediator may lose the parties' trust and the opportunity for sincere dialogue. For example, a party who fears being blamed by the mediator may not disclose important matters during individual meetings. Blame does not

contribute to conflict resolution; rather, it escalates the conflict and negatively affects the resolution of the dispute.¹⁰³

To ensure that a question does not sound accusatory, it is advisable to phrase it as an open-ended question.

5) Imposing the mediator's own values on the parties

Inviting parties to unite around shared values for the sake of resolving the dispute is a useful method and can help facilitate an agreement. For example, the mediator may ask: "Let us consider together - should spouses, even after divorce, have shared values regarding the upbringing and education of their children? If so, what should these values be?" By asking this question and identifying shared values, the mediator seeks to bring the parties' positions closer together.

However, such questions do not mean that the mediator is presenting their own position as dominant. If the mediator does not ask questions but instead states their own position and invites the parties to comply, this is an error. Statements such as "One does not dissolve a family for this reason," "A parent is obliged to provide for their children," or "A person must keep their word" constitute interference with the parties' voluntary choice and serve as manipulation.

6) Excessive control or loss of control over the process

Both excessive control and loss of control over the process undermine the success of mediation. The mediator is the moderator of the session and conducts it according to the structure. Nevertheless, the mediator should not exercise unnecessary control over the process; for example, he/she must know when it is appropriate to limit a party's speech, avoid excessive instruction, and refrain from conducting the session as a hierarchical meeting.

The above does not mean that the mediator can never interrupt a party. However, to maintain the appearance of neutrality, it is important for the mediator to explain the rules of procedure in the opening statement. For instance, the mediator may state: "During our discussions, parties should avoid insulting expressions and refrain from repeating the same issue multiple times, as this can prolong the negotiations indefinitely, which is not our purpose here. Also, we will not interrupt each other and will allow everyone to express themselves, but I would ask that each statement not exceed 10 (perhaps 15) minutes." After explaining these rules at the beginning of the session, referring to them during the negotiations does not compromise the mediator's neutrality.

7) Discouraging or demoralizing a party

Mediators use various tools to encourage parties toward settlement. For example, in addition to highlighting interests, the mediator may act as a reality agent, illustrating the challenges of litigation. However, the mediator must not lead the parties to discouragement or hopelessness regarding the overall resolution of the dispute. The mediator should strive to convince the parties that the resolution is within their own hands and capabilities, and

¹⁰³ Ellen Kandell, "Is it ever OK to Blame?" The University of California Irvin Publications. See: <https://hr.uci.edu/partnership/mediation/pdf/Is-It-Ever-OK-to-Blame.pdf>

should encourage them to pursue a solution. In training materials for mediators, one may encounter the recommendation to “offer a proposal that equally disappoints both parties.” This tool can be used when negotiations and compromise fail, either before or after acting as a reality agent, but even then, the mediator should not dwell on this discouraging proposal and should return to reviewing the negotiations and positions.

5. Controlling the process

a. Directing

This function coincides with the mediator's role in structuring and managing the mediation process. In this context, the mediator assists the parties involved in the dispute to establish effective communication, identify problems, explore potential solutions, and ultimately reach a mutually acceptable agreement. Depending on the mediation style, this function may manifest itself to a very limited extent or as the most prominent aspect of the mediator's conduct in the process. That is, in some styles, if the mediator's role in managing the negotiations is strong, this function will be more pronounced in that process, and vice versa. Let us consider this issue in relation to mediation styles: facilitative (the mediator facilitates the conversation between the parties without making proposals or presenting their own views, guiding them toward mutually acceptable solutions), evaluative (the mediator assesses the strengths and weaknesses of each party's arguments and may provide opinions or suggestions based on legal standards or potential court outcomes), transformative (the mediator helps the parties change their relationship through dialogue and understanding, fostering empathy and recognition of each other's perspectives, and, with additional tools such as psychological intervention, prepares the parties for negotiations), narrative (the parties are encouraged to share their stories in order to reframe their perspectives and create a new narrative around the dispute; the mediator helps narrate the dispute in a way that avoids details that may provoke the parties, so that they can reach an agreement), restorative (the mediator focuses on the harm caused by the dispute, assisting the parties in repairing that harm and restoring relationships), and so on. Unlike facilitative mediation (where the mediator helps reduce the level of conflict and assists the parties in finding a solution that meets their interests), in evaluative mediation (where the mediator supports the application of legal norms to the dispute and its resolution in the legal domain rather than focusing on the parties' interests), the mediator makes greater use of the directing function in the negotiations and, using their knowledge and skills in the relevant field, is free to provide opinions (which, in any case, are not binding on the parties). In general, directing in mediation is about balancing structure and flexibility, enabling open dialogue and creativity in dispute resolution, and helping the parties see the process through to the end.

The Azerbaijani legislator has defined the type of this institution for state-promoted mediations. Thus, Article 4.1 of the Law "On Mediation" states that mediation aims to reduce the level of conflict between the parties and ensure the resolution of the dispute in a manner satisfactory to them. In facilitative mediations, the directing function helps the parties establish effective communication, identify problems, explore potential solutions, and ultimately reach a mutually acceptable agreement.

The following directing actions are relevant to almost all types of mediation:

1. **Setting the agenda** – The mediator helps describe the topics and issues to be discussed during the mediation. This ensures the conversation remains focused and that all relevant matters are addressed.
2. **Facilitating communication** – The mediator directs the flow of communication, ensuring each party has the opportunity to speak and be heard. This may include summarizing ideas, asking clarifying questions, and ensuring the discussion is productive and conducted in a spirit of mutual respect.
3. **Managing the process** – The mediator is responsible for managing the pace and structure of the process. This includes establishing ground rules, determining the order in which issues will be discussed, and ensuring progress is made without getting stuck in unproductive conflict.

4. **Encouraging collaboration** – A key aspect of directing in mediation is encouraging the parties to work together toward a solution. The mediator may propose brainstorming sessions, suggest options for consideration, and help the parties evaluate the advantages and disadvantages of various solutions.
5. **Exit management** – If the parties reach an impasse or deadlock, the mediator may guide the conversation toward alternative approaches, such as reframing issues, exploring underlying interests, or temporarily shifting the focus to less contentious topics.
6. **Drafting agreements** – Once an agreement is reached, the mediator can assist in drafting the terms of the agreement to accurately reflect the parties' consensus.
7. **Ensuring understanding** – The mediator ensures that all parties understand the terms of any agreement reached, and that any final agreement is clear, specific, and enforceable.
8. **Providing mediator suggestions or evaluations** – While this function is not generally recommended in facilitative mediation, it is permitted in rare cases.

b. Intervening

In mediation, intervention refers to the mediator's active measures to manage the process, especially when threats arise that could create difficulties or deprive the process of a successful outcome. While mediation is generally a facilitative process in which the mediator assists the parties in communication and negotiation, there are situations where intervention by the mediator becomes inevitable.

The intervention of the mediator in the process can be manifested in the following forms:

1. Ensuring the balance of power

The requirement to remain neutral limits the mediator's right to strive for a "fair agreement." The agreement belongs to the parties; the mediator cannot oppose a party's wish to accept an agreement that is not in their own interest. Sometimes, a party may consciously choose this due to underlying interests. For example, one party may forgo alimony or their share of property to expedite separation. However, there may be cases of legal illiteracy, financial hardship, or physical disability, where a party may be unable to clearly express their interests or understand the demands and concessions of the other side. If one party has significantly greater resources, especially when one is represented by counsel in a complex legal dispute and the other is not, the mediator may intervene to ensure the less dominant party has a fair opportunity to express their views. This may include giving them more time to speak, rephrasing their statements for clarity, allowing extra time to engage counsel, or establishing special rules to ensure balanced participation.

2. Managing the escalation of conflict

When tensions rise and discussions become heated, the mediator may intervene to de-escalate the situation. This can involve calling for a break, steering the conversation to less contentious topics, or using reframing and summarizing techniques to cool emotions. The mediator must be prepared to handle situations characterized by strong emotional expression and personal attacks, which are common and must be addressed properly. The mediator should be ready to manage outbursts of anger, sadness, or despair, as emotions play a significant role in mediation. Reflecting the parties' feelings and helping them process these emotions in stages is crucial for success. When discussions devolve into personal accusations, such as one party saying, "you are

simply being unscrupulous”, the mediator should remind the parties of the rule of mutual respect or explain its meaning anew.

3. Clarifying misunderstandings

Misunderstandings often lead to conflict. The mediator may intervene to clarify what has been said, request further details, or ensure both parties understand each other correctly. This helps prevent minor misunderstandings from escalating into larger problems.

4. Preventing or addressing unfair tactics

If a party employs manipulative or unfair tactics, such as deceptive statements or undue pressure, the mediator may intervene to address this behaviour. This can include reminding the parties of the ground rules, discussing the issue privately with the offending party, or, if necessary, suspending the mediation.

5. Reframing issues

Sometimes parties become stuck on a particular issue because they are viewing it from a single perspective. The mediator may intervene by reframing the issue to allow the parties to see it from a different angle, thereby opening up new possibilities for discussion and resolution.

6. Ensuring reality testing

If a party’s expectations or demands are unrealistic, the mediator may intervene to “test reality.” This involves gently reminding the party of limitations or practical considerations that may make their position untenable and encouraging them to consider more viable options. For example, if a party overvalues an asset acquired during marriage, the mediator may suggest market research or recommend consulting an appraiser.

7. Moving beyond a standstill

Parties may sometimes become so entrenched in their initial positions that negotiations stagnate. The mediator can intervene by asking thought-provoking questions that prompt the parties to consider their own interests, the other party’s perspective, or the consequences of different options. This helps the parties move beyond rigid positions and explore alternative solutions.

8. Guiding the focus of the discussions

If the conversation strays off-topic or becomes unproductive, the mediator may intervene to steer the discussion back to the central issues. In all cases, the aim of intervention is to maintain the pace of negotiations, foster constructive dialogue, and help the parties reach an agreement that is fair and acceptable to all participants.

c. Setting boundaries and ground rules

Establishing boundaries and fundamental ground rules in advance is essential to ensure transparency and to strengthen confidence in the mediator’s impartiality. Ground rules provide the parties with a clear understanding of the duration of the negotiation process, codes of conduct, expectations, and other relevant aspects, thereby contributing to the creation of a

constructive and safe negotiation environment. At the outset of mediation, parties must know what is not permitted, what can be changed by mutual agreement, and the limits of the mediator's authority. Boundaries related to the substance of the dispute differ from those arising from procedural and principled considerations. A substantive boundary means that the parties should focus exclusively on matters pertaining to their dispute, and discussions should be confined to resolving that dispute. However, this boundary should not prevent the mediator or the parties from exploring deeper interests or introducing additional topics relevant to the resolution. The intent is to guard against discussions that are irrelevant or stray from the primary objective.

The mediator must inform the parties about boundaries derived from the principles of mediation during the preparation and initial session. One such boundary concerns the limits of the mediator's authority. Parties must understand that the mediator will not make decisions on their behalf and, except in exceptional circumstances, may only offer suggestions or procedural recommendations. This is also a boundary required by the principle of neutrality. Another boundary pertains to confidentiality. According to this principle, what occurs in the mediation room remains there; neither the mediator nor the parties may disclose information about the mediation, including statements made during the process, concessions, proposals, or solutions, nor may they use such information in court to build a defence. National legislation provides for administrative liability for the disclosure of such information¹⁰⁴. However, for liability to arise, the parties must be informed of the relevant provision, and in international practice, parties have for years signed confidentiality agreements (in the form of notices, declarations, or other documents) at the initial session.

Finally, another boundary relates to voluntariness. Parties must understand that, except for the enforcement of the agreement, there is no element of compulsion in this process. Any party may leave mediation at any time.

The rules in mediation are as follows:

- Regarding speaking: The parties and the mediator must determine when each person will speak to ensure everyone has the opportunity to express their views. It is also essential to declare an agreement that unpleasant or insulting language will not be used.
- Cooperation and good faith efforts: Parties are expected to approach mediation in good faith, to be sincere and open-minded, so that some form of settlement may be achieved. Parties cannot resolve the dispute by simply maintaining opposing positions. The rule of cooperation requires approaching the dispute from a common perspective and establishing empathy, which is the only way to achieve a positive outcome.
- Timeframe: This is important for time management for both the mediator and the parties. Additionally, when there is a time limit, parties subconsciously feel as if they are in a race to reach a settlement, which motivates them to remain focused during negotiations.

d. Restating

Although sometimes used by the parties themselves, restating is particularly one of the mediator's active listening techniques. It is a highly effective technique for creating an environment of mutual understanding and respect. While similar to paraphrasing, it differs in that restating usually involves repeating the previously expressed words verbatim, whereas paraphrasing involves restating the same idea in different words. The main purpose is to show

¹⁰⁴ Code of Administrative Offenses of the Republic of Azerbaijan, Article 602-2.3.

the speaker that attention is being paid to their words and that their statements are being accurately understood, but it is also used for the following purposes:

- a. Validation - By confirming what the party has said, it creates the impression that their feelings and emotions are understood. This can help calm emotions and allow the parties to feel heard and respected.
- b. Preventing loss of meaning or misunderstanding - It can be used to clarify a point that was not fully heard due to distraction, or to ensure that the statement has been correctly understood.
- c. Focusing - It helps both the speaker and the other party focus on the most significant part of a broadly expressed statement and encourages deeper reflection on that particular aspect.

e. Confronting

All of us initially respond emotionally; rational thought emerges only after some time. As a result, we are often prone to misjudgements, leading us to react defensively. If emotions are not managed, irrational thinking will persistently dominate. The key to engaging with a confrontational person is to ensure they do not perceive you as a threat. If you realize that you are the one in confrontation, it is advisable to pause and reflect on what is threatening you and why. While some threats are serious and require an immediate response, in most cases, there is sufficient time to consider how you want your response and message to be received. Taking just a few seconds to assess the situation and adjust your behaviour at the outset can prevent many future problems¹⁰⁵. That said, in mediation, confrontation is often unavoidable. Parties frequently enter mediation having lost trust and respect for each other, as well as faith in resolving the problem through dialogue. Each party tends to interpret every idea from the other as an attempt to deceive, dominate, or extract concessions, which automatically triggers emotions that are difficult to control. In this respect, confrontation can actually be a tool for the mediator. Such emotional outbursts encourage parties to be honest and open about their true feelings, intentions, and concerns, an honesty that is crucial for finding genuine and lasting solutions. Sometimes, parties may avoid discussing difficult or uncomfortable issues; confrontation brings these problems to the forefront for constructive resolution.

In challenging situations, the mediator can employ confrontation as a balancing instrument, especially when a party (or parties) ignores or avoids resolving important issues, or when there is a significant discrepancy between words and actions, resulting in stagnation. So, how can the mediator use this tool? The mediator can facilitate renewed discussion of significant matters by asking targeted questions. For example: **a)** Earlier, you mentioned this issue is very important to you, but your proposal suggests you are still angry. Can we discuss what is troubling you?, **b)** Previously, you reached partial consensus on this issue, but your current behaviour suggests something is amiss. What has changed?, **c)** Do you think your current behaviour is helping or hindering the resolution of the dispute?, **d)** You previously emphasized the importance of discussions in resolving this issue, yet I see some elements have fallen out of the discussion. Can you explain why? These questions are conditional; the mediator must determine which, if any, to use based on the circumstances of the case, always maintaining maximum neutrality in their formulation.

¹⁰⁵ Price, O., & Baker, J. (2012). Key components of de-escalation techniques: A thematic synthesis.

f. Breaking the impasse

At times, the mediator may encounter significant stagnation in the process. This typically occurs when parties become fatigued by negotiations and need a different format (procedural aspect), display intense emotions and remain entrenched in their positions (emotional aspect), or when conflicting interests are revealed that are difficult to balance¹⁰⁶ (substantive deadlock).

To overcome such situations, the mediator may employ the following mediation tools:

a. Mediator's proposal or evaluation - Experience shows that parties do not always receive proposals or evaluations unambiguously. Such interventions often shift the situation in favour of one party, leading the other to doubt the mediator's impartiality or, objectively, to withdraw from negotiations if they find themselves at a disadvantage. Therefore, the mediator should use this tool only when the following bases are present:

- It is evident that other tools have proven ineffective;
- Both parties agree to and even request the mediator's proposal or evaluation;
- Both parties are informed that they are not bound by the mediator's proposal or evaluation, and that the process can continue in another format or be terminated;
- The mediator possesses sufficient knowledge and expertise regarding the subject matter on which he/she will provide opinions and recommendations.

b. Reference to objective criteria - Sometimes, a party is so convinced of their position that relinquishing it becomes difficult. For instance, a party may believe an asset acquired during marriage is worth far more than its market value, or that a husband is obliged to pay alimony for childcare at a level clearly inconsistent with legal standards or practice, and so on. In such cases, the mediator should use questions to encourage the party to consider objective evaluation criteria, such as consulting an appraiser or using online sales platforms to demonstrate that their position does not align with reality. This tool is not only valuable in overcoming deadlocks but also helps ensure that the details of any agreement reached are realistic and less likely to be challenged in the future.

c. Reframing - Reframing serves to redirect attention from positions to underlying interests in the problem or dispute. By shifting perspectives, parties can view the issue from a new angle and become more open to compromise. For example, the mediator might say, "Instead of determining who is right or wrong, let us look to the future and reframe the discussion." If a party asks the mediator, "What would you do in my situation?" it is advisable for the mediator to return the same question to both parties: "What would you do in this situation?"

Reframing can be used to ease emotions and maintain a positive focus. It involves restating what one party has said so that the other party can hear it expressed in more objective terms. The mediator may reframe statements for the following purposes: a) to remove accusatory, blaming, or demeaning content; b) to identify core interests; c) to emphasize positive aspects and reduce negative ones; d) to create a foundation for reaching common ground. Reframing can be achieved by changing the syntax (for example, turning a declarative sentence into a question), altering the vocabulary to use less provocative language, using names instead of impersonal constructions, or excluding offensive expressions. Examples include:

- "I cannot understand how he can claim that I am at fault in this dispute; what I mean is that the company's policy is clearly gender discriminatory."
Reframing: "So, according to what you are saying, do you believe the company could have changed its policy regarding women?"

¹⁰⁶ Laurence J., et al., *Mediation Skills and Techniques* (2008)

- “We will never be able to resolve this - every time he opens his mouth, I get discouraged. He does not take this issue seriously.”
Reframing: “Do you feel that you have not observed any positive attitude from the other party towards the process?”
- “This company’s customer service is an absolute joke - they do not treat their customers reasonably at all.”
Reframing: “In your opinion, what does reasonable treatment of customers look like?”

d. Doing something differently – This may involve meeting with the parties without their lawyers or vice versa, stepping out onto the balcony from the mediation room, leaving the parties alone, or other actions that shift the focus. Lawyers generally provide legal support in the process, advising on the legal merits of their client’s or the opposing party’s position, the prospects of the case if not resolved in mediation, and so on. Sometimes, a state of deadlock arises, and the lawyers themselves may recognize that the parties need to make certain decisions privately. The mediator should assess the situation correctly and, if it is clear that such a situation has arisen, may, with the lawyers’ consent, invite the parties to meet without legal representatives.

e. Appointing a leader and assigning tasks – This is effective when several individuals or lawyers are present on each side, but it can also be used when parties are represented by counsel. One person from each side, for example, a lawyer, may be appointed as a leader, tasked with consulting with their side in separate rooms and returning with a proposal.

f. In a separate meeting, informing a party that the other party intends to leave mediation – Sometimes, a party who refuses to change their position does so to extract more concessions from the other party, even though they know their demands are not well-founded. When we inform such a party of this, they may immediately wish to soften their position to keep the negotiations going. Such a softening may also prompt the other party to act.

g. Role reversal – “Put yourself in the other person’s position.” The mediator asks each party to imagine themselves in the other party’s role and to consider how they would feel and how they might view the position from another perspective. Finally, the mediator asks them to reflect on how the other party might wish to resolve the dispute.

h. BATNA and WATNA – The mediator asks each party, in a joint session or meeting, to prepare their BATNA (Best Alternative to a Negotiated Agreement) and WATNA (Worst Alternative to a Negotiated Agreement) - that is, the best and worst alternatives if negotiations fail. This initiative enables them to more accurately determine what is at risk in the dispute.

i. Setting a deadline – When discussions are going in circles, the mediator may inform the parties that something must be accomplished within, for example, the next hour (this time is indicative), otherwise the mediation will be suspended.

j. Emphasizing the benefits of a settlement agreement – The mediator reiterates the parties’ interests and needs and looks for points where compromise may be possible. The benefits of the settlement agreement in terms of future relationships should be highlighted, or if this is not appropriate, indicate the benefits in terms of financial savings, avoidance of emotional distress, saving time, or other relevant factors.

g. Time to quit?

Mediation is a voluntary process and must not overburden the parties or coerce them into settlement. If the mediator perceives that further negotiations will not lead to resolution and will instead result in additional loss of time and resources, or if the parties themselves decide to pursue their dispute in another legal forum, or if the continuation of mediation causes distress, stress, or the risk of violence, the process should be terminated. This should not be viewed as a failed mediation, but rather as the natural conclusion of the process. Nevertheless, any decision to end mediation must be made after carefully examining the context and prospects of the discussions. National legislation also grants the mediator this right. According to Article 13.3 of the Law “On Mediation,” if the mediator concludes that continuing the mediation will not resolve the dispute, he/she may refuse to proceed or, with the parties’ written consent, terminate the mediation process.

How can the mediator determine it is time to end the process? It is sufficient to identify the following circumstances:

- a. Despite the use of all available tools, the process is stagnant and only a battle of positions persists;
- b. Both parties are unmotivated to resolve the dispute through mediation;
- c. If one party has bad intentions, consistently behaves manipulatively or insincerely, and persistently avoids the possibility of settlement;
- d. Negotiations not only fail to reduce tension but actually escalate it;
- e. Serious external factors prevent settlement, and the parties do not exclude these factors from the process (for example, the will of a parent of one of the parties).
- f. The parties remain fixated on achieving outcomes beyond what mediation can offer and do not relinquish these expectations (e.g. if a father, who considers the agreement to be sufficient to take his child out of the country, declares in advance that he will not go to the notary authority and submit the corresponding application for consent).

Depending on the grounds for termination, especially when stagnation is the cause, the mediator is advised to inform the parties about other dispute resolution options, such as the possibility of voluntarily transferring the dispute to another mediator, the option to return to the same mediator after some time if both parties agree, or, if stagnation is due to lack of legal or other knowledge, the opportunity to consult a relevant expert. At the same time, reminding parties of the time and resources already invested in mediation may sometimes help resolve stagnation.

h. When things get out of control

Although mediation is a voluntary process and much of its design is in the hands of the parties, the mediator must retain control over the negotiations. However, negotiations can sometimes spiral out of control and become destructive rather than productive. In such situations, the mediator must take charge, which can be accomplished through several methods:

1. Announcing a break - a short pause can help calm the parties;
2. Inviting the parties to separate sessions;
3. Restating the ground rules or establishing them if they were not previously set;
4. Refocusing the discussion on the dispute;
5. If the mediator’s expression has contributed to escalation, replacing it with a more neutral statement;
6. If there has been an agreement in any part of the conflict, highlighting it as a success of the parties and building on from there;
7. Involving a co-mediator;

8. Proposing to terminate the mediation.

If these measures are ineffective and the conflict deepens, for example, if physical threats arise, the parties repeatedly violate the rules, or communication breaks down completely, the mediator must immediately halt the process and terminate the proceedings.

6. Solving the problem

This section addresses the tools mediators can employ to conduct the mediation process more effectively and the issues they should investigate.

a. Taking notes

Taking notes serves as both an indicator of active listening (crucial for establishing effective communication between the mediator and the parties) and as a practical tool for the mediator to regulate his/her own tactical moves and questions while listening. This practice helps the mediator uncover the parties' positions and interests and construct a logical chain among complex or tangled facts. Taking notes is useful both after the opening statement when the parties present their positions, when they respond to the questions, and during separate meetings. There is no need to record simple "maybe" answers, but if, for instance, a party indicates in a separate meeting the specific amount they are willing to pay in a given month, the mediator must record such an offer.

The mediator should note not only proposals but also facts, as well as the answers given to questions posed to understand the dispute, and should also document the chronology of the dispute (how it has progressed over time). These notes are especially beneficial to the mediator between sessions: they prevent forgetting issues and allow for reflection on new solutions.

At the conclusion of mediation, for example at the final session, shredding these notes in front of the parties can alleviate their concerns about confidentiality and dispel any suspicion that confidential information might be disclosed.

b. Asking the right questions

Formulating the right questions is essential in any investigative or learning process. The quality of the questions reflects the investigator's understanding of the subject matter.

However, questions in mediation should not be posed in the same way as in scientific research; the methodology differs.

In mediation, asking the right questions involves considering the sequence, content, and potential direct or indirect outcomes of the questions. Sometimes, it is more effective for the mediator to begin with an unrelated question and gradually approach the matter of interest, rather than asking directly.

The mediator has various techniques to help the parties discuss the reasons for the dispute from every perspective. For example, the following questions can be asked:

Questions about the relationship from the beginning to the present:

- How long have you known each other?
- When and how did the difficulties start?

Questions about the history of the problems:

- I suggest you review the events that led to this problem.
- Can you briefly summarize what you hope to achieve?

Questions may be conditional or unconditional, closed or open, leading or non-leading, manipulative or non-manipulative. The mediator should always avoid leading and manipulative questions, selecting other types according to need. For more comprehensive information, favour open-ended questions; for specificity, use closed questions. For example, to uncover interests, one might ask: “What is our intention in this discussion? Reaching an agreement in mediation requires serious effort. What interest might make such effort worthwhile for you?” To prompt a party to reconsider their position, ask: “Are you willing to consider that your stated position might be entirely mistaken?”¹⁰⁷

Concrete targeted questions are leading, require short answers, and in fact, the mediator can often anticipate the response and wants the party to confront a particular situation. For dominant or overly talkative individuals, ask questions that focus attention on specific topics or require brief, concrete answers. Use targeted questions to clarify specific information or to curtail lengthy discourse, such as: “How many times have you been late to work in the last three months?” or “After you received a written warning, did you, as alleged, have an accident with the company car? Who was fined in that accident?” By asking these questions, we prompt the party to confront any wrongful conduct.

The aim of such questions is not to uncover the truth and blame the party, but to help the party recognize the need to reconsider their position. Parties construct their positions based on certain assumptions; when these assumptions are questioned, they must reassess their stance. The mediator’s objective here is to move the dispute forward towards progress, as in bringing dynamism to the process by prompting parties to reconsider their positions. There is a chance that doing so may lead to progress in the discussions, and create an opportunity for the mediator to reach a resolution.

If Party A demonstrates a lack of understanding or empathy toward Party B, a clarifying question such as, “Can you tell me more about your reaction to this event?” can be asked. This gives the respondent a chance to explain themselves again and determine whether the other party is interested in the matter discussed.¹⁰⁸

Open-ended questions do not elicit “yes” or “no” answers but rather invite broader responses and can encompass substantial information. Such questions may begin with “Who... What... Where... When... How... Why...?” For example: “How long do you think it will take you to repay the money?” or “What other issues do you think should be considered?” These questions encourage the parties to speak and help open up new areas for discussion.

There is also a difference between asking questions in a joint session and in a separate meeting. In a joint session, when a party answers a question, they are also sending a message to the other party, and it is important to understand what that message is. The other party also has the opportunity to respond to what they hear, providing more information about the dispute. In a separate meeting, the party may give a more candid answer, but also a modified or inaccurate one, since the other

¹⁰⁷ For other questions mediators may ask, see: Kenneth Cloke, Questions Mediators Ask, Neighborhood Mediation Center, <https://www.mediatenmc.org/mediation-tools/mediator-questions>

¹⁰⁸ Cloke, *ibid.*

party is not present to object. If one party has been subjected to threats by the other, questions intended for joint sessions should be carefully filtered before being asked.

Questions can be asked for a variety of purposes, and it is important to recognize that questions are among the mediator's principal tools. Questions should be posed to clarify facts, to understand what the party thinks about the facts and the dispute in general, to explore the party's emotions, and to ascertain the party's perspective on the prospects of the dispute. All of these are positions that the mediator must investigate in order to facilitate the possibility of reaching a settlement.

There is a distinction between the mediator's questioning about facts and the fact-finding conducted by a judge in court. In judicial proceedings, the investigation of the factual circumstances (with distinctions between civil and public disputes) is a necessary procedural stage; indeed, failure to properly investigate and assess the facts can constitute grounds for the annulment of a first-instance court decision. Judicial decisions are rendered by applying the law to the established facts. In mediation, however, it is not a requirement for the mediator to investigate the factual circumstances of the case, and the mediator may choose not to do so at all. If the mediator asks about facts, it is solely for the purpose of better understanding the dispute and the parties. Since the agreement (settlement) reached as a result of mediation does not need to be based on legal assessment, there is no requirement to reflect facts in the settlement, nor is it necessary for the parties' rights and obligations under the agreement to correspond to the facts.

You may ask questions regarding issues raised in the parties' opening statements, or you may wish to open another topic, by posing a question as such: "I listened to you carefully, thank you, but one thing caught my attention - you said that he does not care for the home or the children. Has this always been the case, or did he begin neglecting the family later? In your opinion, what might have caused this?"

To find solutions, questions can also be posed through "brainstorming" or during separate meetings, for example: "If you were in Ahmad's position, what kind of solution would you agree to?" If a party does not accept a proposal from the other side, you might ask: "What aspects of this proposal are unacceptable to you, and for what reasons? I would like to hear your thoughts. Would you like to modify this proposal before presenting it to the other party?"¹⁰⁹

The importance of asking questions correctly is not limited to the possibility that the party may conceal the correct answer. An inappropriate or ill-timed question can also cause emotional harm; the answer may embarrass the party, or the party may perceive the mediator as biased because of the question. In any case, if the mediator determines that the issue is sensitive, questions should be chosen and posed with caution. Sometimes, your first question may be very general, such as "Tell me, what happened?" In such cases, it is advisable to listen without interruption for a while. However, if you think the party is giving answers unrelated to the topic, you can clarify your question: "It seems I did not explain what I was asking - could you tell me, when you spoke with him about those matters, what did he say?" Or, before addressing questions about property division, you might begin with: "Before moving to your current home, in which part of the city and in what kind of dwelling did you live, and why did you decide to move?" With such questions, you can try to learn about the party's housing conditions, the degree of need for accommodation, and whether the party is interested in the property itself or in compensation.

¹⁰⁹ Pon Staff, *The Mediation Process and Dispute Resolution, Understand the 6 steps necessary in the mediation process*, 2024, see: <https://www.pon.harvard.edu/daily/mediation/dispute-resolution-how-meditation-unfolds/>

What is the potential pitfall when asking questions? The questions we pose may reinforce our own assumptions about the dispute. Many of us, when faced with a dispute, form preliminary ideas about its likely causes, and we may not be wrong. However, if our questions are shaped as leading questions to test whether our assumptions are correct, this can result in erroneous conclusions.

c. Being able to separate interests and positions

A position is the party's outward demand, while an interest is the underlying reason compelling the party to make that demand.

It should also be noted that a position derives from an interest, and an interest, in turn, stems from a need. Chronologically, first comes the need, then the interest generated by that need, and only then does the party's position in the dispute become apparent. Changing or influencing a person's needs is beyond the mediator's capacity; however, the mediator can analyse whether the party has accurately understood their own interest in relation to that need and, accordingly, can encourage the party to reconsider their position.

When analysing interests and positions, this tandem may not always be observed in such a straightforward manner. The main reasons for this include:

- The party is acting under someone else's direction or pressure;
- The party is concealing an issue;
- The party is unable to precisely identify or consider their own interest.

The mediator uncovers the party's interests and needs by asking questions, whether in joint sessions or separate meetings. When such questions are posed in a joint session, it can also serve the purpose of having the party hear and understand the other party's interest.

For example, in post-divorce mediation regarding "property division" (which, in many cases, is actually a claim for recognition of a share in the property and/or a claim for compensation in lieu of that share), the party's interest is economic and generally arises from the legal desire for "enrichment" - that is, the person seeks to obtain property to which they are entitled and do not wish to be deprived of. While position and interest may overlap to some extent, the details of the case may reveal a different underlying interest. A simple example is when, instead of recognizing a half share in each of two homes after divorce, the former spouses divide the homes between themselves (compensating for value differences).

In the aforementioned cases involving "hidden interests," the mediator must be able to identify them and, once uncovered, encourage the party to reflect on their position in light of their true interest.

The mediator should not attempt to impose their own subjective perception of the "interest" on the party. For example, asking, "If you divorce, you have nowhere to go - have you considered reconciling with your spouse in this situation?" is a manipulative and subjective question and may lead to mediator bias. Interests must always meet objective criteria and should be free from ideological, political, religious, or philosophical connotations. Interests are considered objective when they are social, personal, economic, or legal in nature. For instance, the need not to be alone is a social interest, the share in property is an economic interest, and the desire not to lose the right to claim is a legal interest. Nevertheless, if after discussion with the mediator, the party insists on

a subjective interest - such as one based on religion, morals, or values - the mediator must respect and take this choice into account.

d. Mediatable issues

At the very outset, the mediator, upon becoming acquainted with the case, must determine whether the dispute is a matter suitable for mediation. Here, we are not referring to the exclusive jurisdiction of courts; by “mediatable,” we mean issues that are amenable to resolution through negotiation and agreement.

The classical approach to mediation holds that any type of dispute can be resolved through mediation. However, this view is contested. It is argued that even in civil disputes, if the matter has aspects of public interest, it should not be resolved through mediation.¹¹⁰ Disputes arising from criminal acts and administrative offences are generally not considered mediatable; nevertheless, in cases of “minor” offences that do not pose significant public danger, if reconciliation between the victim and the offender is possible, mediation may be considered at that stage. The most suitable disputes for mediation are civil matters where both parties possess equal bargaining power. Key questions include: Does the party have the capacity to identify and protect their rights and interests?¹¹¹ Is the party prepared to enter into an agreement that fairly addresses the interests of both sides?¹¹² In Western literature, there is an approach that civil disputes arising from matters such as consumer rights, competition law, or constitutional rights, if they carry public significance - meaning their resolution within a legal process under public scrutiny would contribute to the development of law and legal protection - should not be considered mediatable. Cases involving domestic violence are also typically cited as non-mediatable. Another example is when an industrial enterprise causes harm to individuals by releasing chemical waste into the environment; it is argued that claims for damages in such cases should be brought before a court, as environmental harm or the risk thereof constitutes a public issue and should be addressed in open court. Settling such matters privately through high compensation does not reduce the risk of similar harm to others in the future.¹¹³

Turning to administrative law, one of its core principles is “legality,” which requires that the scope and extent of administrative authority be clearly defined by law, commonly referred to as “closed competence.” In such cases, the law prescribes precisely how an administrative body must act in certain situations. There are also provisions granting administrative bodies discretion in decision-making - known as “discretionary authority.” Activities carried out under discretionary authority (such as urban improvement works) can often be addressed through mediation. In contrast, mediation opportunities are very limited in the exercise of closed competence, as administrative bodies are obliged to perform duties strictly as prescribed by law. Nevertheless, even in the execution or procedure of closed competence, mediation may be used - for example, if a building constructed in violation of safety standards must be demolished, mediation can address how, over what period, and in what manner the demolition will occur. Although Article 80-1 of the Law on

¹¹⁰ Judith L. Maute, *Mediator Accountability: Responding to Fairness Concerns*, 1990 J. Disp. Resol. (1990) see: <https://scholarship.law.missouri.edu/jdr/vol1990/iss2/4>

¹¹¹ *Ibid.*

¹¹² N. RoGERS & R. SALEM, *A Student's Guide to Mediation and the Law* 146 (1987) (citing Stulberg, *The Theory and Practice of Mediation: A Reply to Professor Susskind*, 6 UTAH L REV. (1981)), p. 55, 51-52.

¹¹³ American Association of Law Schools Mini workshop on ADR in the Curriculum (Jan. 6, 1986).

Administrative Proceedings does not distinguish between closed and discretionary authority, administrative bodies must always consider the protection of public interests and the principle of legality.

Despite the aforementioned discussion, each dispute with administrative elements or involving domestic violence must be assessed individually. For example, in family disputes accompanied by domestic violence, mediation regarding the division of property can certainly be conducted. Similarly, in administrative disputes concerning environmental matters where administrative bodies have discretionary authority, mediation is naturally possible. Most disputes concerning the protection of consumer rights are also well-suited to successful mediation. It should be noted that these types of disputes are recognized as mediatable in Council of Europe member states.

As an author, I must note that it is not certain that the concerns outlined above can always be resolved fairly through judicial proceedings either, as stronger parties may be able to represent themselves more effectively through counsel and win the case; moreover, other risks associated with court proceedings - such as loss of time and legal costs - remain. Earlier chapters of this book have provided analysis and recommendations regarding “imbalance of power.”

Finally, it should be emphasized that when parties agree to pursue mediation, the question of whether the dispute should be resolved through mediation or litigation raises another contentious issue: What is the role of the mediator? Should the mediator ensure a fair resolution, or simply facilitate any solution voluntarily chosen by the parties (provided it is not contrary to law)? Since this debate continues in mediation theory and remains unresolved, we see no need for the further discussion of it in this book

e. Reframing

Reframing can be applied to various mediation techniques. Before discussing reframing, we need to discuss the previous, initial framing of a party's position.

In the field of communication, framing refers to setting the boundaries and conditions of the issue you wish to discuss. When you frame a topic, you clarify why you want to address it, your intention, and your expectations regarding the outcome of the dispute. You may also express why you do not wish to discuss a particular matter or why your perspective on it is negative.¹¹⁴

“I do not accept the claim because she had no role in earning that money.”, “He says the reason for seeking mediation is that the personal relationship has become unbearable.” - these statements can be examples of framing. Framing keeps the discussion focused on a particular perspective and directs efforts toward resolving a specific problem.

Lakin d If the initial frame or position does not create positive momentum for resolving the dispute, reframing becomes a valuable tool. Through reframing, negative emotions can be reduced, a more positive atmosphere established, and parties encouraged to view the issue from a different angle, thus reducing the degree of conflict and helping them reconsider their interests. Reframing is not

¹¹⁴ Framing and Reframing, Boise State University, <https://boisestate.pressbooks.pub/makingconflictsuckless/chapter/framing-and-reframing/#:~:text=Reframing%20Examples&text=%E2%80%9CI%20am%20fed%20up%20with,talking%20about%20this%20one%20detail%3F%E2%80%9D>

simply restating a previous idea in less provocative terms. Rather, it involves encouraging the party to consider additional or new aspects or to look at the situation from another perspective. For example, if a party complains about a high price, the mediator might highlight the high quality and long-term value of the product, justifying its cost. Reframing can be initiated by any participant - the party who first stated a position, the mediator, or the respondent. For instance, the person to whom the request is directed to could reframe it by presenting such a counterargument, "We delivered the product late, but the extra time was necessary to ensure higher quality," or "We delivered late, but I would like to remind you that you provided the technical specifications later than agreed."

Depending on the expected outcome or situation in mediation, reframing techniques may aim to change the content, context, basis, or purpose of a demand or position. Changing the content must not alter its accuracy or reliability. For example, transforming a complaint into a request or expressing criticism instead of insult. Changing the context may involve shifting attention to another relevant issue.

To be able to employ the reframing technique as a mediator, you must listen carefully to the party, understand their emotions, ask them open-ended questions, and be able to get their responses in a different form (by changing it). Depending on the objective, reframing can address the context, content, or meaning of the statements.

Key considerations in framing and reframing:

- Know your purpose. Be clear about what you want to achieve and the message you wish to convey.
- Understand the other party, their values, needs, and potential strengths or weaknesses.
- Choose words carefully, as language has impact. Use positive, strong expressions that convey the beneficial aspects of your message. For example, instead of saying, "That will never happen," say, "What you need now is to leave the past behind and focus on possible solutions for the future."
- Try to anticipate how the other party might feel or react by showing empathy.
- Be precise and concise. Avoid ambiguous or multi-meaning expressions that could undermine the seriousness of your proposal.¹¹⁵

f. Brainstorming and exploring alternatives

When mediation reaches a standstill, brainstorming and exploring alternatives are among the mediator's key tools. While not identical, these two methods complement each other.

During brainstorming, parties are invited to suggest or write down any ideas that come to mind regarding possible solutions. No idea is questioned or criticized. An environment is created for the parties to think freely. Evidently, before initiating brainstorming, the mediator should actively listen and strive to understand the dispute as thoroughly as possible.

The options generated by the parties for resolving the dispute are then selected as the most acceptable one or ones. By acceptable, we mean solutions that satisfy the mutual interests of the

¹¹⁵ Marc Saris, The Power of Framing or Reframing in negotiations, Publications of Impact Negotiation Group. <https://www.impactnegotiationgroup.com/insights>

parties. However, the advantages and disadvantages of each proposal should also be considered. The suitability of the selected proposals should be discussed with the parties.

The mediator once again plays a central role in exploring alternatives. They may investigate any proposal put forward by a party or introduce their own alternative, for example, by asking, “What would you think if we tried this solution?” In some disputes, the range of alternatives is broader and solutions are easier to find. For instance, in matters of contact with a child, options might include school pick-up/drop-off, extracurricular activities, video calls, outings, and other forms of communication. In property division cases, options may be more limited or the parties less willing to accept proposed solutions. In such cases, the mediator might also consider conducting a reality agent test.

g. Testing the agreement

Before entering mediation, parties may already have reached an agreement, or they may arrive at a settlement through the exchange of ideas and proposals during the mediation process. For the mediator, it is essential that any agreement reached is both durable and enforceable. If, based on professional experience, the mediator perceives deficiencies in the agreement or foresees future issues with its implementation, the mediator should ask the parties targeted questions regarding the agreed matters. The mediator should exchange ideas with them on how to solve the problem that the parent did not take into account, but may arise in the future.¹¹⁶ It would be better if the mediator has a solution proposal regarding the foreseen deficiencies.

For example, in an agreement stating that the father will pick up the child after school on Friday and return the child to the mother’s home by 7 p.m. on Sunday, there are several aspects that may not have been considered. How will the child prepare for the following week’s schoolwork during this period? Will the child have enough time to get ready for school the next day and rest after returning at 7 p.m.? Is the child’s nutrition adequately addressed during the two days with the father? If the mother is also employed and wishes to travel with the child on a certain weekend, the procedures for its agreement should be indicated in the agreement as well. It is also beneficial to include in the agreement where the will father pick up and drop off the child, and how travel times will be calculated. Including such details in the agreement can help prevent future conflicts.

The agreement made between the parents may not align with their future emotions. If the parties have come to an agreement during mediation under strong emotional influence or psychological distress, they may become dissatisfied with the agreement and attempt to avoid or amend its implementation. This is particularly relevant for agreements that restrict parental rights or involve waivers (even if they are voluntary). When necessary, the mediator should, in separate sessions, carefully ask the party about potential real-life challenges,¹¹⁷ determine their preparedness to address these challenges or whether the party might wish to withdraw from the agreement in the future.

When testing the final draft of the agreement, the mediator should avoid presenting overly abstract or complex scenarios to the parties, as this may confuse them and deter them from signing a

¹¹⁶ Clare A.Piro, Reality Testing Your Agreement, *baxin*: <https://www.clarepiromediation.com/blog/reality-testing-your-agreement/57/>

¹¹⁷ Kayla Curtis, “What is Reality Testing in Mediation?” *baxin*: <https://movementlegal.com.au/what-is-reality-testing-in-mediation/>

potentially viable agreement. A professional mediator should be able to present effective solutions and proposals to complex issues (solutions that are interest-based, detail-oriented, widely accepted, and legally compliant).

7. Main characteristics and differences of mediation in civil, family, labour, commercial, administrative and penal matters

Mediation – A process defined by law, whereby a dispute (arising, potential, or ongoing) between parties is resolved through mutual agreement with the assistance of a mediator (or mediators).

Mandatory Mediation - Required by law as a precondition to filing a court claim.

Conditional Mediation - Conducted in accordance with a condition (mediation clause) in a contract or other document requiring mediation before other proceedings.

Voluntary Mediation - Initiated by the joint application of the parties.

According to current legislation (“Law on Mediation” of the Republic of Azerbaijan), mediation applies to disputes arising from *civil, commercial* (including those with foreign elements), *family, labour*, and *administrative* legal relations.

a. Mediation in civil cases and its characteristics

Civil matters refer to a type of proceedings conducted in court arising from civil legal relations.

Civil legal relations are defined as relationships existing between parties whose object is of property or non-property value, concerning tangible or intangible benefits not excluded from civil circulation by law, and whose subject is any natural person, whether engaged in entrepreneurial activity or not (Articles 4 and 5.1 of the Civil Code).

Mediation in civil matters is applied at two stages: pre-litigation and during litigation. The pre-litigation stage is further divided into voluntary and conditional mediation.

In the pre-litigation phase, the parties to the dispute may voluntarily resort to mediation to resolve the dispute, even if the existing contract between the parties does not stipulate the availability of mediation as a means of dispute resolution.

In the case of conditional pre-litigation mediation, in accordance with the requirement of Article 4.5 of the Code of Civil Procedure, if there is a condition (mediation condition) in a contract, contractual clause, or any other document that requires the parties to participate in the mediation process before filing a court claim regarding any dispute, that condition must be adhered to and the parties must apply to mediation accordingly.

If this requirement is not met, Article 259.0.13 of the Civil Procedure Code and Article 21.9 of the Law on Mediation provide that the application may be left unconsidered. Specifically, if there is a “mediation process agreement” or a mediation clause between the parties, and the protocol specified in Article 32.2 of the Law is not attached to the court application, the court will leave the application unconsidered.

The elimination of the grounds for leaving an application unconsidered (such as initiating mediation and obtaining the relevant certificate) does not preclude an individual from submitting a new statement of claim to the court.

At the judicial stage, at any point in the proceedings, the court may, taking into account the circumstances of the case, on its own initiative or at the request of either party, propose that the dispute be resolved through mediation (Article 14.3-1 of the Civil Procedure Code).

In preparing the case for trial and adhering to the adversarial principle, the judge may propose to the parties that the dispute be resolved through mediation (Article 167.1.5-1 of the Civil Procedure Code). Furthermore, at any stage of the proceedings, the court is entitled to provide the parties with information on the legal resolution of the dispute, propose a settlement agreement, or suggest resolution through mediation (Article 52.4 of the Civil Procedure Code).

If, in accordance with the parties' agreement or the court's suggestion, the parties determine that the dispute can be resolved through mediation, they must conclude an agreement to initiate the mediation process as prescribed by law and submit a copy of this agreement to the court. In such cases, pursuant to Article 254.1.7 of the Civil Procedure Code, and for the purposes of Article 256.0.6, the court suspends proceedings until a settlement agreement or a protocol on the results of the mediation process is submitted.

The parties' consent to resolve the dispute through mediation is recorded in the minutes of the court hearing and is duly signed by the claimant, the respondent, or both parties. The parties' consent to resolve the dispute through mediation, as well as the outcome of such actions, may also be expressed in written applications submitted to the court, provided that the results are clearly stated.

If the dispute is resolved through mediation, the settlement agreement is submitted to the court; if not, a protocol on the results of the mediation process is provided. Upon confirmation of the settlement agreement, the court issues a ruling and simultaneously terminates the proceedings. The terms of the settlement agreement approved by the court must be specified in the ruling (Article 191.2-1 of the Civil Procedure Code).

The characteristics of mediation in civil matters are set out in Article 25.1 of the Law, which provides that any civil case that can be resolved by mutual agreement of the parties may be settled through mediation.

As can be seen, the legislation establishes the possibility of mediation for any civil case, provided that the dispute can be resolved by mutual agreement of the parties. However, this does not mean that it is always possible for the parties to resolve every civil dispute solely on the basis of their agreement. The mediator must consider whether the settlement agreement affects the interests of third parties or whether the law requires the dispute to be resolved exclusively by the court.

Nevertheless, in civil mediation, the mediator must bear in mind that the essential element is the existence of some form of agreement between the parties regarding the dispute. In practice, even if such an agreement does not fully resolve the dispute, in certain cases it may still have useful aspects for addressing the civil dispute between the parties. These are agreements on factual issues, and regardless of whether the parties reach agreement on the legal aspects of the dispute, the mediator should strive to facilitate agreements on factual matters (for example, acknowledgment of the existence of a debt in debt relations). Such agreements are of significant importance for resolving the dispute either outside of court or during judicial proceedings, as, in most civil disputes, the burden of proving the existence of the legal relationship falls heavily on the parties.

In practice, mediation in civil matters is relatively rare. For example, according to the report prepared by the Mediation Council for the first half of 2024, of the 23,295 cases submitted to mediation organizations, only 178 were civil matters.

b. Mediation of disputes arising from family law relations and its characteristics

Family relations are legal relationships that arise between family members (spouses, parents, and children).

Disputes arising from family relations can be addressed through mediation at two main stages: pre-litigation and during litigation.

The pre-litigation stage can be further split into 3 stages:

1. Mediation is required by law as a prerequisite for going to court;

According to Article 3.2 of the Law, for disputes arising from family and labour relations, before filing a claim in court, it is mandatory to participate in an initial mediation session pursuant to Articles 28 and 29 of the Law.

2. If mediation is stipulated in the pre-nuptial agreement as a condition prior to going to court;

In accordance with the requirements of Article 4.5 of the Code of Civil Procedure, if there is a condition (mediation clause) in a contract, contractual clause, or any other document that requires the parties to participate in a mediation process before resorting to court in relation to any dispute, that rule must be complied with and the parties must apply to mediation accordingly.

3. When mediation is a voluntary choice of the parties.

In regard to the judicial part, pursuant to Article 52.3 of the Code of Civil Procedure, the parties may apply to mediation in order to resolve a court case by concluding a settlement agreement through mediation.

In practice, disputes arising from family relations are sometimes confused with those arising from civil law relations. As a result, some civil law disputes are mistakenly treated as family disputes, and mediation is resorted to as a condition stipulated by law before going to court on these disputes. It is necessary to note that, in order to avoid such situations as well as to be able to distinguish between family law and civil law disputes, one important information that mediators must possess is related to the substantive law norms that should be applied in the resolution of the existing dispute. Thus, if the substantive law norms applied by the court in the resolution of the dispute are related to civil law, it is a civil law dispute. If the substantive law is family law, it is considered a family law dispute.

Moreover, the Plenum of the Supreme Court's Decision No. 1/2024 dated 12.03.2024 "On the practice of applying legislation in disputes related to the division of common property of spouses" provides quite interesting points regarding the application of mediation in property division cases arising from family law disputes. For example, the decision outlines situations that can be beneficial for mediators – such as disputes that do not fall within the scope of mandatory mediation, as summarized below:

No.	Type of dispute	Reason Not Subject to Mandatory Mediation
1	Enforcement of obligations arising from an agreement between spouses on the division of joint property, or from a settlement agreement reached in mediation	Based on contract law, not family law relations
2	Annulment or invalidation of settlement agreements on division of joint property reached in mediation	Based on contract law, not family law relations
3	Similar disputes between persons who are not spouses	Not considered a dispute arising from family law relations

The range of disputes arising from family relations is quite broad, and not all such disputes require the application of mediation. According to Article 26.1 of the law, the following disputes arising from family relations may be resolved through mediation in accordance with this law:

1. Conditions for continuation of marriage

These are agreements between the parties regarding the continuation of the marriage, provided the agreement is established without legal doubt as to its feasibility and confirmation.

2. Procedure for exercising parental rights and duties

This refers to the conditions agreed upon by the parties concerning parental rights and freedoms (such as the time and circumstances of contact between the child and the parent, etc.).

3. Determination of the child's place of residence

Disputes about the child's place of residence include with whom the child will live and the terms and conditions of such residence (in these cases, the mediator may, if necessary, request the opinion of the guardianship and trusteeship authority).

4. Maintenance of the child and other incapacitated family members

This covers the conditions, methods, and other necessary arrangements for the maintenance of the child or other incapacitated family members as agreed by the parties.

5. Other disputes arising from family relations

Although other disputes arising from family relationships do not specifically refer to any dispute, they generally refer to disputes for which the substantive legal norms intended for the legal resolution of these disputes are regulated by family law.

Given that mediation before applying to court is not a statutory precondition for other types of family law disputes not explicitly mentioned above, in such cases, mediation may be conducted either voluntarily or based on a clause stipulated in a contract.

It is necessary to note that family mediation differs from other types - mediation on civil, labour, commercial, administrative, and criminal matters - in several respects. This distinction manifests itself in several ways. Firstly, this distinction is reflected in the exceptions established in the law. Thus, unlike other types of mediation cases, family mediation involves the assignment of certain responsibilities on the mediator. For example, in disputes arising from family relations that may affect the interests of a child, the mediator must obtain the opinion of the local guardianship and trusteeship authority. Furthermore, if, during mediation, the mediator discovers or suspects circumstances that threaten the child's normal development or interests, or if such a risk is identified, the mediator is obliged to inform the guardianship and trusteeship authority. Failure to fulfil these duties (obtaining the opinion of the guardianship and trusteeship body of the local executive authority and reporting information) results in administrative liability for the mediator. According to Article 602-2.5 of the Code of Administrative Offences, a fine of 500 manats is imposed for the failure to acquire the opinion of the body (organization) designated by the relevant executive authority on disputes arising from family relations which may affect the interests of the child, as well as for the failure to submit information on circumstances that pose a threat to the normal growth and development of the child or may harm the child's interests (or the possibility of such circumstances arising in the future) during disputes arising from family relations, and for the failure to submit a settlement agreement which may affect the growth, development, and other interests of the child to the body (organization) designated by the relevant executive authority.

Additionally, during mediation on family disputes, there may be persons whose rights and interests are affected, as is sometimes the case in other types of mediation. In other types of mediation, if a person's rights or interests are impacted by the outcome of the case, that person must be involved in the process. The individual has the right to express their position regarding the dispute between the parties. At the same time, the individual, like other parties involved, is entitled to all legal rights and bears all responsibilities as defined by law. In family mediation, children are considered to be individuals whose rights and interests are affected by the dispute. However, since it is not possible for them to directly participate in the mediation process or express their will regarding the issue that affects their rights and interests, the guardianship and trusteeship authority instead serves as the child's legal representative. One of the key points that a mediator in family matters should take into special consideration is that a mediator should not forget to focus on his/her duty of protecting the rights and interests of a child.

Concurrently, the necessity of considering customs and moral norms in family mediation must not be overlooked by the mediator, even if some moral norms are not codified but have developed over time in public memory through tradition. Unlike other types of mediation, during family mediation, the mediator, by keeping in mind the customs and moral norms of the parties in order to resolve the dispute amicably, and at the same time respecting them, in a way, makes the essence of mediation appealing to those persons. Practice shows that people with national and moral values hold a special need for such attention, and it is easy to gain the trust of that person through these needs.

It should be specifically noted that, unlike mediation processes arising from other types of relationships, the mediation process for disputes arising from family relations is governed by particular rules for both initial and subsequent mediation sessions, some of which are stipulated by legislation. For example, Articles 28 ("Participation in the initial mediation session for disputes arising from family and labour relations") and 29 ("Initial and subsequent mediation sessions for disputes arising from family and labour relations") of the Law "On Mediation" are of this nature. According to the requirements of Article 28, before applying to court for disputes arising from family relations, the parties must participate in an initial mediation session. In this case, the initial mediation session is conducted by a mediator or mediation organization mutually agreed upon by the parties. If the parties cannot agree on a mediator or mediation organization, the initial mediation session is conducted by the mediation organization located in the same city or district as the court with jurisdiction over the dispute, or, if there is no such organization in that city or district, by the mediation organization designated by the Mediation Council in the nearest city or district to the relevant administrative territorial unit where the court is located. If the parties cannot agree on a mediator, the mediation organization appoints the mediator. According to Article 29, the mediator explains to the parties applying for participation in the initial mediation session the essence, advantages, and procedures of the mediation process, and holds joint and separate meetings with the parties. On the same day, or on another day set by the mediator at the request of the parties, the parties must decide whether they wish to participate in subsequent mediation sessions. After the mediator (or mediation organization) or the other party provides the parties with the legally required information and notice regarding the date, time, and place of the initial mediation session, if one or both parties do not participate in the initial mediation session or refuse participation in writing, the mediator issues a certificate of "Non-participation in the initial mediation session," indicating the parties who did and did not participate, and presents this certificate to the parties who did participate. Unless otherwise agreed between the parties, the notice referred to in the first sentence of this paragraph must be provided to the parties at least five days before the date of the initial mediation session. If one or both parties do not consent to continue the mediation process, or if the mediator refuses to conduct the mediation process in cases provided by law, the mediator terminates the mediation process and issues a certificate of "Inability to continue the process after the initial mediation

session” to the parties. If the parties decide to continue the mediation process, an “agreement on the application of the mediation process” is concluded between the parties, and the mediation process is conducted in accordance with the law.

During the mediation process arising from family relations, it is recommended that the mediator take into account the heightened sensitivity of the parties compared to other mediation cases. This sensitivity often requires the mediator to show special attention and approach to the parties, as a result of which the disputing parties feel secure. At the same time, when the parties feel comfortable and unimpeded in expressing themselves, they will take sensitive steps toward resolving the dispute amicably. In family mediation, the subject matter of the dispute often touches more deeply on the personal and private lives of the parties, and as a result, the parties may sometimes keep the details of the dispute secret, which can hinder the achievement of an amicable resolution. To prevent or eliminate such obstacles, the mediator handling the mediation process arising from family relations must make full use of the special skills acquired in this field.

c. Mediation of disputes arising from labour law relations and its characteristics

Labour relations - relations based on the principles of the Labour Code (Article 3.4.1), established between an employer and an employee at a workplace determined by mutual agreement, in accordance with obligations set out in labour legislation, collective agreements, and contracts. These relations involve the personal performance by the employee of their employment function in the profession or position to which they have been hired (appointed), elected, or reinstated, with remuneration, compliance with internal disciplinary rules, and the employer’s obligation to ensure the employee’s working conditions, guarantees, and protection of labour. Any dispute affecting the violation of these relations is considered a dispute arising from labour law relations.

The resolution of labour disputes, particularly individual labour disputes, through mediation (according to Article 27 of the Law, individual labour disputes may be resolved through mediation), as well as the requirement to apply to mediation prior to initiating court proceedings related to such disputes (pursuant to Article 294, paragraph 5 of the Labour Code, participation in an initial mediation session in accordance with the law is required before applying to court in connection with individual labour disputes) is directly provided for in legislation.

In light of the statutory requirement for recourse to mediation before applying to court in labour (and family) disputes, reference to the statutory limitation period for such disputes is essential. Unlike family disputes, the effect of mediation on the running of the limitation period for filing a claim in labour disputes is addressed in the legislation. For example, under Article 296, paragraph 7 of the Labour Code, the suspension of the limitation period in connection with the application of the mediation process is regulated by law. Here, the suspension of the period begins from the time the proposal to initiate mediation is sent to the other party (the act confirming the sending) and ends upon receipt of the document prepared by the mediator on the conclusion of the mediation process.

Mediation in disputes arising from labour law relations, like mediation in disputes arising from family relations, is divided into two stages: pre-litigation mediation and mediation during litigation.

The pre-litigation stage is divided into three phases:

1. Mediation as a mandatory precondition for litigation;

According to Article 3.2 of the Law, for disputes arising from family and labour relations, participation in an initial mediation session is required before applying to court, in accordance with Articles 28 and 29 of the Law.

2. Mediation as a precondition for litigation, as stipulated in the employment agreement;

In line with Article 4.5 of the Civil Procedure Code, if there is a condition (mediation clause) in a contract, contractual clause, or any other document which requires participation in mediation before applying to court regarding any dispute, this requirement must be fulfilled and mediation must be initiated accordingly.

3. Mediation as a voluntary choice of the parties;

Regarding the judicial stage, parties may apply for mediation to resolve the court case by concluding a settlement agreement through mediation (Civil Procedure Code, Article 52.3).

Current legislation emphasizes that both **individual** and **collective** labour disputes arising from labour relations may be resolved through mediation in accordance with the Law. In general, individual and collective labour disputes encompass nearly all labour disputes.

Individual labour dispute - A disagreement between an employer and an employee arising individually over the terms of an employment contract, collective agreement, or settlement, the fulfilment of obligations, or the application of the Labour Code and other normative legal acts (Labour Code, Article 3.16).

Collective employment dispute - A disagreement arising from collective demands (Labour Code, Article 3.15).

Unlike individual labour disputes, in collective labour disputes, if each member of the collective independently files a claim against the other party to the labour dispute, each must be considered an independent party in mediation.

It is important to note that legislation pays special attention to mediation in labour disputes and emphasizes the need for special training to be conducted in order to improve the preparedness and qualifications of mediators handling such cases, and for the mediator to possess a certificate verifying the completion of such training.

Before the mediation process, the mediator may clarify whether the dispute has been previously examined by a "conciliator" or "intermediary" in accordance with the requirements of the Labour Code. According to Article 27.1 of the Labour Code, "conciliators" and "intermediaries" are participants in collective negotiations. Article 265.1 provides that an intermediary may be used as a conciliation method in resolving collective labour disputes. The mediator's awareness of the actions taken by the "conciliator" or "intermediary" in relation to the dispute and the proposals made by the parties for reconciliation can be of particular importance for achieving agreement during mediation.

As with family law disputes, Articles 28 (Participation in the initial mediation session for disputes arising from family and labour relations) and 29 (Initial and subsequent mediation sessions for disputes arising from family and labour relations) of the Law set out the relevant procedures for labour law disputes.

In regard to the statistical data on the number of disputes arising from labour law relations, according to the report of the Mediation Council for the first 6 months of 2024, out of 23,295 mediation applications submitted to mediation organizations, 1,056 were related to labour disputes.

d. Mediation of disputes arising from commercial (including disputes with foreign elements) legal relations and its characteristics

Commercial legal relations, while encompassing civil legal relations, are distinguished in terms of court jurisdiction: civil cases are heard in general courts, whereas commercial cases are assigned to commercial courts.

Commercial disputes are understood to mean disputes arising in connection with the conduct of entrepreneurial activity.

It should be noted that, although mediation for disputes arising from commercial legal relations (including those with a foreign element) was initially mandatory (mediation was required by law as a precondition for applying to court) subsequent amendments to the law have made mediation in such disputes voluntary or conditional (based on a mediation clause in a contract) at the pre-litigation stage. Nevertheless, the necessity of applying mediation to disputes arising from commercial legal relations (including those with a foreign element) remains a current issue. For example, according to the report prepared by the Mediation Council for the second quarter of 2024, 33 cases were submitted to mediation organizations, the majority of which were concluded with a settlement agreement.

Currently, mediation for disputes arising from commercial legal relations (including those with a foreign element) and its characteristics are identical to those for mediation in civil cases and their respective features.

The characteristics of mediation in commercial disputes are reflected in Article 25 of the Law. According to this provision, any commercial dispute (including those with a foreign element) that can be resolved by mutual agreement of the parties may be settled through mediation. However, as previously mentioned, this does not mean that every dispute arising from commercial relations can always be resolved solely by the parties' agreement. The mediator must consider cases where a settlement agreement affects the interests of other (third or interested) parties, as well as situations where, under the law, the resolution of the dispute is exclusively within the competence of the court.

Legislation has paid special attention to the protection of consumer rights in this category of cases and has established rules for the training and qualification of mediators in this field.

e. Mediation of disputes arising from administrative law relations and its characteristics

Disputes arising from administrative law relations are understood as claims brought by a person whose rights and freedoms have been violated as a result of the actions or inaction of an administrative authority or its official, against the administrative authority.

Although the Administrative Procedure Code determines the court jurisdiction, procedural principles, and rules for the consideration and resolution of disputes related to administrative legal relations, legislation does not concretely define the scope of such disputes. Nevertheless, regarding which of these disputes fall within the scope of mediation, the Law, by specifying the characteristics of mediation in administrative legal relations, states in Article 30 that, in accordance with the Law of the Republic of Azerbaijan "On Administrative Proceedings,"

disputes arising from the adoption, execution, or annulment of administrative acts by administrative authorities, or from other actions or inaction of the administrative authority (with the exception of disputes specified in Article 4.3 of that Law, including disputes concerning territorial issues between administrative territorial units under the Law “On Territorial Structure and Administrative Territorial Division”) may be resolved through mediation in accordance with the law.

The fact that recourse to mediation is not prescribed by law as a precondition for applying to court in such cases means that disputes arising from administrative law relations may be brought to mediation only voluntarily, based on the will of the parties. Naturally, the role of the administrative authority as a party to the dispute is significantly greater here, meaning that, unlike individuals, it is relatively less straightforward for an administrative authority to engage in mediation.

Referring to practice, it is necessary to note that, according to the report prepared by the Mediation Council for the first 6 months of 2024, out of 23,295 mediation applications submitted to mediation organizations, not a single case pertained to disputes arising from administrative law relations.

It is considered that, given the absence of a specific time limit for the consideration of disputes arising from administrative law relations in courts, as well as the complexity of such cases, there should be consideration of the possibility of resolving such disputes quickly and effectively through mediation, and a certain obligation should be placed on administrative authorities to make use of mediation services in this area.

f. Mediation in criminal cases and its characteristics

Although legislation does not formally provide for mediation in criminal cases, this absence does not prevent the application of mediation processes in such matters. Today, both the accused and the victim in a criminal case may voluntarily resort to mediation to reach an agreement regarding the damage caused. However, a settlement agreement reached through mediation can only be approved by the court in relation to a civil claim within the criminal case. Outside of civil claims, the court should consider the terms of the settlement agreement as evidence of reconciliation between the accused and the victim.

Mediation in criminal cases consists of three stages:

1. Pre-litigation mediation

During the investigation and inquiry phases of a criminal incident, the parties (the accused and the victim) are free to voluntarily apply for mediation, whether regarding the damage caused by the criminal act or as confirmation of the victim’s willingness to reconcile.

In the pre-trial phase, that is, during investigation and inquiry, recourse to mediation is considered particularly necessary and is well-founded. For example, when determining the necessity and type of preventive measures to be applied to a suspect or accused, the investigator, prosecutor, or court takes into account whether the suspect or accused has reconciled with the victim or their legal successor who is a close relative, whether the damage caused by the crime has been compensated, and other significant circumstances.

Furthermore, under Articles 178.1, 179.1, 185.1, 186.1, 187.1, 187.2, 189-1.1, and 189-1.2 of the Criminal Code, a person who has committed the act(s) specified in these articles is released from criminal liability if they reconcile with the victim and fully compensate for the damage caused.

In the aforementioned cases, reconciliation between the suspect (or accused) and the victim, as well as compensation for damages, may be documented in a Settlement Agreement as the result of the mediation process.

It should be noted that the range of offences for which release from criminal liability is possible through reconciliation, as provided in Articles 73, 73-1, and 73-2 of the Criminal Code, generally covers crimes that do not pose significant public danger or are of lesser gravity. However, according to Article 73-1.3, for serious and especially serious crimes under Articles 178.3, 178.4, 179.3, and 179.4, a person who has reconciled with the victim and fully compensated for the damage may be released from criminal liability if they pay 50% of the damage amount to the state budget. Thus, mediation can be applied to all types of crimes (minor, less serious, serious, and particularly serious).

2. Mediation during litigation

During the trial, the parties (the accused and the victim) may apply for mediation either voluntarily or through the court, whether regarding the damage caused or as confirmation of the victim's willingness to reconcile.

Through the court, the parties may exercise this right by submitting a written request for the court to facilitate mediation. For example, in cases of private prosecution, criminal prosecution is conducted only upon the complaint of the victim for crimes specified in Articles 147, 148, 165.1, and 166.1 of the Criminal Code, and if the victim reconciles with the accused before the court retires to the deliberation room, the proceedings are terminated. Likewise, if criminal prosecution is conducted solely by private prosecution, reconciliation between the victim and the accused precludes the initiation of criminal prosecution, and any ongoing prosecution must be terminated. Thus, reconciliation between the accused and the victim is grounds for termination in the crimes specified in Articles 147, 148, 165.1, and 166.1, and such reconciliation must be confirmed by an appropriate document (evidence) (e.g., a notarized statement of reconciliation by the victim). The Settlement Agreement concluded as a result of the mediation process can serve as such a document (evidence), and, unlike other evidence (such as a notarized statement of reconciliation by the victim), it reflects the participation and will of both the victim and the accused. A settlement agreement reached voluntarily with the participation of both parties (the victim and the accused) is distinguished by its reliability and credibility, which should not be overlooked by the court.

Additionally, in the course of criminal proceedings, adherence to the adversarial principle allows the civil claimant to withdraw their claim or conclude a settlement agreement with the civil defendant, and the civil defendant may accept the claim or conclude a settlement agreement with the civil claimant. In this context, the parties may formalize their settlement not only through other means (such as a written contract) but also through a Settlement Agreement concluded as a result of the mediation process.

3. Post-litigation mediation

After the completion of court proceedings, the parties (the convicted person and the victim) may still voluntarily apply for mediation, whether regarding compensation for damage caused or for the confirmation of the victim's willingness to reconcile.

If the convicted person is in a penitentiary institution and faces difficulties participating in mediation, it is possible for this request to be carried out by a representative authorized by a power of attorney issued by the convicted person. For example, the possibility for a convicted person to

be released from serving a sentence by reconciling with the victim and fully compensating for the damage or unlawful gain resulting from the crime is provided in Article 511-1 of the Criminal Procedure Code. According to this provision, if the convicted person, in accordance with Article 80-1 of the Criminal Code, reconciles with the victim and fully compensates for the damage or unlawful gain, they may apply to the first instance court at the place of detention for release from serving the sentence. The application must be accompanied by evidence expressing the victim's willingness to reconcile and confirming full compensation for the damage or unlawful gain. As such evidence, a Settlement Agreement concluded as a result of the mediation process may be submitted.

In general, the Criminal Procedure Code does not specifically provide for recourse to the institution of mediation as a procedural norm. Only one article (Article 95.2.5) of the normative legal act stipulates that, except in cases provided by law, participants in mediation and other persons involved in mediation may not be summoned or questioned as witnesses regarding information obtained during mediation.

Furthermore, research conducted in practice has determined that, in 2023, the parties in criminal cases did not apply for mediation regarding reconciliation or compensation for damage.

Nevertheless, both theoretically and practically, there have been relevant studies, meetings, and trainings on the possibility of mediation in criminal cases. For example, at a conference jointly organized by the General Prosecutor's Office of the Republic of Azerbaijan and the Mediation Council on 26 July 2023, as well as at a training held at the General Prosecutor's Office on 17 January 2024 on "The Role of Prosecutor's Offices in Protecting Fundamental Human Rights and Freedoms," one of the topics discussed was the issue of improving mediation legislation regarding the necessity of mediation in criminal cases.

From a theoretical perspective, it can be stated that, recently, various theoretical and practical studies have been conducted on the necessity of mediation in criminal cases. For instance, in her dissertation "Mediation in the Criminal Process: Theoretical Aspects," A. Kishiyeva addressed the necessity of mediation in criminal cases and explained that the institution of mediation in the criminal process is understood as the set of legal norms regulating relations arising from the mediator's activities aimed at eliminating the consequences of the crime between the accused (or suspect) and the victim.¹¹⁸

In conclusion, we consider that the necessity of mediation in criminal cases should be recognized, and in the near future, an amendment should be made to the Law to include disputes arising from criminal legal relations in Article 3.1, which determines the scope of mediation.

As with disputes arising from administrative law relations, the report of the Mediation Council for the first 6 months of 2024 does not indicate any applications regarding criminal cases.

g. The main differences between mediation in civil, family, labour, commercial, administrative and criminal cases

Voluntary mediation (by mutual agreement of the parties) is admissible in civil, family, labour, commercial, administrative, and criminal cases. **Conditional** mediation (when stipulated in a contract) is applicable only in civil, family, labour, and commercial cases. **Mandatory** mediation

¹¹⁸ Kishiyeva A. Mediation in the Criminal Process: Theoretical Aspects: / PhD dissertation on law / – Baku, 2023, p. 151

(where mediation is prescribed by law as a precondition for applying to court) is possible only in family and labour cases.

Scope of Application of Mediation	Voluntary Mediation (mediation chosen by parties' consent)	Conditional Mediation (mediation stipulated in contract)	Mandatory Mediation (mediation required by law as precondition for court application)
Civil cases	+	+	—
Disputes arising from family law relations	+	+	+
Disputes arising from labour law relations	+	+	+
Disputes arising from commercial law relations (including disputes with foreign elements)	+	+	—
Disputes arising from administrative law relations	+	—	—
Criminal cases	+	—	—

The scope of disputes arising from family and labour relations that are subject to mandatory mediation (where mediation is prescribed by law as a precondition for applying to court) is broad; however, the specific range of disputes for which recourse to mediation is strictly required has not been precisely defined. This ambiguity has, at times, led to differences of opinion in practice, which have ultimately been resolved through the development of judicial practice.

For disputes arising from labour law relations, mediation is generally a precondition for nearly all such cases. However, if the jurisdiction for hearing the employment dispute falls under the competence of an administrative court (for example, labour disputes against a municipality), the requirement for mandatory mediation is no longer applicable. Although there are both theoretical and practical differences of opinion on this matter, it can be confidently stated based on existing and legally binding court decisions.

Regarding disputes arising from family law relations, according to the position of the courts, mandatory mediation (where mediation is prescribed by law as a precondition for applying to court) apply only to those family disputes regulated by the Family Code. This is detailed in the section “**Mediation of disputes arising from family law relations and its characteristics**” of the current book. It should also be noted that, when mediating disputes arising from family law relations, certain statutory requirements (such as consideration of the best interests of the child) make this area particularly distinct from other fields within the scope of mediation.

A review of the law shows that legislation provides for specific differences only in family and labour law disputes where mandatory mediation (where mediation is prescribed by law as a precondition for applying to court) applies. Article 28 of the Law sets out participation in the initial mediation session for disputes arising from family and labour relations, while Article 29 provides detailed information on initial and subsequent mediation sessions for such disputes.

Additionally, the Law defines the existence of specialized mediators for areas within the scope of mediation and sets out the actions that mediators must take in certain cases (such as obtaining an opinion from the relevant executive authority).

Thus, in light of the mandatory circumstances stipulated by Law, the main differences in mediation for civil, family, labour, commercial, administrative, and criminal cases are presented in the following chart:

Scope of Application of Mediation	Increasing the Mediator's Training and Specialization	Obtaining the Mediator's Opinion	Providing Information by the Mediator to the Relevant Executive Authority (Organization)	Submission by the Mediator of the Settlement Agreement to the Relevant Executive Authority (Organization)
Civil cases	+ (in the field of consumer rights protection) —	—	—	—
Disputes arising from family law relations	+	+ (for disputes arising from family law relations affecting the interests of the child) —	+ (if there are circumstances that pose a threat to the normal growth and development of the child or may harm the child's interests, or if there is a possibility of such circumstances arising) —	+ (if the agreement affects the upbringing, development, or other interests of the child) —
Disputes arising from labour law relations	+	—	—	—
Disputes arising from commercial law relations (including those with a foreign element)	+ (in the field of consumer rights protection) —	—	—	—
Disputes arising from administrative law relations	—	—	—	—
Criminal cases	—	—	—	—

It should also be noted that one of the differences in mediation in civil, family, labour, commercial, administrative, and criminal cases is the number of applications in each category. From this

perspective, it is considered necessary to present the chart prepared on the basis of the Mediation Council's report for the first and second quarters of 2024:

Scope of Application of Mediation	Number of Applications (Q1 2024: January, February, March)	Number of Applications (Q2 2024: April, May, June)	Total
Civil cases	83	95	178
Disputes arising from family law relations	10627	10879	21506
Disputes arising from labour law relations	477	579	1056
Disputes arising from commercial law relations (including those with a foreign element)	522	33	555
Disputes arising from administrative law relations	0	0	0
Criminal cases	0	0	0
Total	11709	11586	23295

8. Responding to the ethical dilemmas of a mediator. Sample situations

a. Mediator's ethical code of conduct and ethical dilemma

In mediation, as in every professional field, ethical conduct rules hold particular importance. The primary feature of these rules is that they are officially approved by the executive authority, namely the Cabinet of Ministers. Naturally, the Mediation Council has the function of preparing proposals regarding these rules and actively exercises this function by regularly conducting surveys among mediators about potential amendments and additions to the rules.

According to Article 24.1 of the Law, the mediation process is conducted in accordance with the Law, the rules for conducting the mediation process, the internal rules of the mediation organization (if applicable), and the professional code of ethical conduct for mediators.

The “Code of Professional Ethical Conduct for Mediators,” approved by Decision No. 384 of the Cabinet of Ministers dated 5 September 2019, was prepared in accordance with Article 20.1.5 of the Law. This Code establishes the ethical rules, principles, and obligations for persons engaged in mediation on a professional basis.

It is essential to note that mediation is a profession in which mediators, acting as intermediaries, must possess and consistently demonstrate high ethical conduct throughout all mediation processes in which they participate. Experience shows that even a single instance of undesirable behaviour by a mediator is not well received by the parties and can make a successful outcome unattainable. Conversely, a mediator’s high ethical standards are positively received by the parties, fostering a desire for comfortable and constructive communication with the mediator. This, in turn, contributes significantly to a thorough examination of the dispute and, ultimately, to the successful conclusion of a settlement agreement.

The following measures are implemented to ensure adherence to ethical conduct rules:

1. The mediators’ behaviour must be monitored and analysed for compliance with the ethical norms and principles set out in the “Code of Professional Ethical Conduct for Mediators.”
2. Preventive and protective measures must be taken to avoid violations of ethical conduct rules.
3. Ethical conduct rules must be explained to mediators and, upon request, they must be provided with recommendations on compliance.
4. Appropriate measures must be taken to hold mediators accountable for disciplinary violations of ethical conduct rules.
5. Measures must be taken to inform individuals and legal entities about the rules of ethical conduct and their rights to demand compliance with those rules by mediators;
6. Interested parties must be informed about actions taken in response to violations of ethical conduct rules.
7. Measures must be taken to eliminate the consequences of ethical violations as well as to enhance public trust in mediators.
8. Other measures must be taken related to compliance with ethical conduct rules (as set out in Article 4.2 of the “Code of Professional Ethical Conduct for Mediators”).

It should not be forgotten that every mediator must comply with the requirements of the “Code of Professional Ethical Conduct for Mediators,” and violation of ethical conduct rules constitutes grounds for disciplinary liability. However, compliance with ethical conduct rules by a mediator should not be based solely on the “fear of disciplinary liability.” Every mediator must remember that, before being a mediator, they are first a human being, and should possess certain positive qualities that serve humanity, acting within the established rules based on these qualities. Experience shows that the promotion of mediation, especially the confidence of parties in settlement agreements, is particularly influenced by the mediator’s adherence to ethical conduct rules. The more ethically the mediator behaves, the more the parties’ attitude towards mediation will be shaped within ethical boundaries, which is a fundamental element serving the spirit of mediation.

Where there is a code of ethical conduct, the existence of ethical dilemmas is inevitable¹¹⁹. This undesirable situation can arise in almost every profession, but it is crucial that the professional is able to use the opportunities provided by legislation in such circumstances.

In the mediation profession, the mediator is someone who must find a solution to an ethical dilemma without violating legal requirements. If we look at the Law and the “Code of Professional Ethical Conduct for Mediators,” it is clear that finding a way out of such situations is not easy. Both the principles of mediation and those of ethical conduct establish a framework within which behaviour must be extremely cautious and exemplary. Caution may sometimes be breached due to the mediator’s carelessness, but such carelessness is not final, and the mediator should not accept this outcome, because according to Article 3.6.2 of the “Code of Professional Ethical Conduct for Mediators,” the mediator must eliminate the consequences of their violation of ethical conduct rules and take measures to restore public trust.

The emergence of ethical dilemmas during mediation can arise in any area covered by mediation, whether the process is voluntary, mandatory, or conditional. Such dilemmas confront the mediator with the principles of mediation and ethical conduct, compelling them to maintain an impartial status. However, is it truly possible for a mediator to remain impartial in all circumstances, especially when faced with situations that create dilemmas? Or could such impartiality be perceived as turning a blind eye to a significant violation? Furthermore, does the mediator’s neutrality in the face of such situations serve the purpose of conducting a quality mediation process? In fact, the questions mediators face in relation to dilemmas are numerous, but the search for answers inevitably passes through a single critical point: Should the mediator prioritize the interests of the parties, or the requirements of the law? Or should the mediator, disregarding legal requirements, create conditions for a quality mediation outcome? This is a difficult choice, but it is possible to resolve! This possibility primarily lies in adhering to legal requirements. Failure to comply with the requirements of the law, which conditionally determine the spirit of mediation, is tantamount to disrespecting the very spirit of mediation. Naturally, the interests of the parties, especially the achievement of a successful mediation outcome, are extremely important, and behind every successful mediation result stands the often-invisible work of the mediator. Therefore, without stepping outside the framework of legislative requirements, the mediator’s primary task is to organize a mediation process that leads to a positive outcome. So, what is the result? Achieving a positive mediation outcome within the framework of legal requirements! For this positive result, the mediator must act within the limits permitted by law; even if ethical rules are not fully observed in some cases, the mediator should not exploit this opportunity in pursuit of a positive outcome. Here, the existence and integrity of the mediation institution must be upheld in light of the parties’ interests. Therefore, when faced

¹¹⁹ **Dilemma** — A situation that forces a person to choose one of two options, even though neither decision is right, and the person does not want to make either choice.

with dilemmas, it is best for the mediator to act within the limits permitted by law and ethical conduct, making choices that lead to the correct outcome. If the mediator is unable to do this, or cannot do so in any given situation, it would be more appropriate for them to withdraw from the mediation process.

The ethical principles that a mediator facing ethical dilemmas during the mediation process must observe and strictly adhere to when making decisions are as follows:

1. Principle of respect for human and civil rights and freedoms, lawful interests, honour and dignity, as well as the business reputation of natural and legal persons:

The mediator must treat human and civil rights and freedoms, lawful interests, honour, dignity, and business reputation (including the business reputation of legal entities) with respect, and must not allow any actions (or inaction) that could violate these rights and interests or tarnish their honour, dignity, or business reputation (including the business reputation of legal entities).

2. Principle of legality:

The mediator must be guided by the requirements of normative legal acts, international treaties, and regulatory acts in the performance of their duties.

3. Principle of conscientious conduct:

The mediator must efficiently fulfil their duties in the interests of the individual, society, and the state, and serve as an example of integrity for everyone involved in their professional activities.

4. Principle of professionalism and enhanced personal responsibility:

The mediator must perform their activities within the powers defined by law and at a high level of professionalism, strengthen and increase the trust of legal and natural persons in mediation through their conduct and professional practice, and continuously develop the necessary theoretical and practical knowledge required for mediation activities.

5. Principle of loyalty:

The mediator must always protect their own honour and dignity, must not engage in actions that could diminish the reputation of mediation while performing their professional duties, and must comply with the restrictions and obligations set forth in the law regarding mediation activities.

6. Principle of public trust:

The mediator must enhance and strengthen the reputation of mediation activities, eliminate the consequences of any breaches of ethical conduct, and take measures to restore public trust.

7. Principle of civil conduct:

The mediator must observe standards of speech culture, be polite, attentive, and patient towards all individuals, and base their interactions with other mediators during professional activities on the principle of trust and respect, grounded in lawful actions or practices.

8. Principle of impartiality:

During mediation, the mediator must be independent and impartial, treat both parties equally, ensure equal participation of the parties in the mediation process, and provide both parties with equal opportunities to present their claims during the process. The mediator must not allow any preference or create conditions for such preference based on race, ethnicity, language, gender, origin, property status, official position, religion, beliefs, political parties, trade unions, or other public associations, and must maintain political neutrality.

The mediator must also prevent any interference in mediation activities by any person, including relatives, friends, or acquaintances, and must not fall under the influence of state or local self-government bodies, legal or natural persons. Public opinion or criticism must not affect the legality or validity of their activities.

9. Principle of prohibition of obtaining material and non-material benefits, privileges, or concessions:

It is prohibited for the mediator to engage in any actions (or inaction) aimed at unlawfully obtaining material or non-material benefits, privileges, or concessions in connection with their professional activities.

10. Principle of confidentiality:

The mediator must ensure the confidentiality of all information obtained during their professional activities, as well as after the termination of the right to carry out relevant activities of the mediation organization or after being removed from the mediator register. The mediator must not disclose or refer to information known to them during mediation in court or arbitration (jury) proceedings, other mediations, or in any other circumstances (except where the party providing the information has given written consent), and must refrain from participating as a witness regarding such information.

The essence of these principles and the actions by which the mediator complies with them are reflected in the “Code of Professional Ethical Conduct for Mediators”.

b. Sample situations and recommended choice for ethical dilemma

Example 1. The mediator believes that hearing the parties together would hinder a positive outcome in the mediation process and therefore attempts to meet with them separately. The mediator communicates this to the parties, but they disagree and avoid separate meetings. Although the mediator explains the benefits of separate meetings, they fully understand that the final decision belongs to the parties.

What should the mediator do?

The mediator should attempt to persuade the parties. If persuasion fails, the mediator must act in accordance with the principle of respect for the rights and freedoms of the parties by holding a joint meeting, or, alternatively, should consider withdrawing from the process as mediator.

Example 2. During a mediation arising from family law relations, a female mediator observes that the husband is aggressive and frequently insults his wife. There is no evidence of the wife retaliating or showing aggression. On the contrary, the wife is willing to reconcile under certain simple conditions and tries to change her husband's attitude to reach agreement. The mediator, based on personal experience, is well aware that she strongly disapproves of aggressive behaviour by men towards women, and has even expressed various opinions on the matter. At the same time, the mediator fears that the wife's behaviour may provoke further aggression from the husband, making a successful outcome unlikely.

What should the mediator do?

The mediator must adhere to the principle of impartiality. If confident in her ability to remain impartial, the mediator should continue the process; otherwise, she should exercise her right to withdraw from the mediation.

Example 3. The mediator knows that a settlement agreement reached by the parties may encounter difficulties being approved by the court in the future. In response, the mediator questions the parties to explore their willingness to slightly modify the existing terms or introduce new terms that will not cause difficulties in being approved by the court. However, it is determined that the parties are confident in their ability to voluntarily fulfil the settlement agreement and do not consider court approval necessary. Based on experience and the complexity of the terms, the mediator has doubts about the parties' ability to voluntarily comply with the settlement agreement in the future.

What should the mediator do?

Knowing that providing legal assistance is not possible, the mediator should inform the parties about the option of seeking legal counsel or advise them to consult a lawyer regarding the future of the agreed terms. The mediator may also suggest giving the parties time to consider this. If these options are not feasible, the mediator may choose to withdraw.

Example 4. While mediating a dispute concerning the interests of a child, the mediator learns, in a confidential one-on-one meeting, information from one party that could significantly impact a positive outcome. However, the party insists during the separate meeting that the information not be shared with the other side, and even when asked if disclosure would help reach an agreement with the other party, the party did not want the other party to know this information.

During the mediation process, the party shares a slightly altered version of the information disclosed to the mediator with the other side, but as it was not properly explained to the other party, it was not taken notice of, to the contrary, it contributed to the further deepening of the dispute. The mediator recognizes that there is a high probability that accurately conveying the information could lead to a positive result. At the same time, the mediator is aware that disclosing the information he/she has accepted as a secret may be necessary to prevent further deterioration of the parties' relationship.

What should the mediator do?

The mediator must not forget the requirements of the principle of confidentiality. The mediator should explain to the party the necessity of sharing the confidential information with the other side, and should even inquire about the party's attitude regarding whether he/she can convey it on behalf of the party. If consent is not obtained, the mediator should proceed with the mediation process.

Mediation is a structured, voluntary process for resolving disputes, led by a neutral third party - the mediator. It is a nuanced and demanding practice that calls for specialised communication and negotiation skills to guide parties constructively toward mutually beneficial solutions. Cultural awareness and understanding of the local context are essential, as effective mediation relies on sensitivity to the values, backgrounds, and communication styles of those involved.

This Handbook is specifically tailored for mediators in Azerbaijan. It introduces the core principles of mediation and outlines the practical skills needed to understand conflicts, support parties in finding common ground, facilitate dialogue, and assist in decision-making. Grounded in Azerbaijan's legal framework and enriched with real-life examples, it offers concrete guidance, model documents, and practical tools for mediating civil, family, labour, commercial, and administrative disputes.

Designed as both a daily reference and a professional development resource, this Handbook serves not only mediators but also lawyers, advocates, students, and others interested in alternative dispute resolution. It may also serve as a tool for the training of mediators and related professionals.

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