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ASSESSMENT REPORT

on data collection and digitalisation of the Mediation System in Azerbaijan

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The assessment report on data collection and digitalisation of the mediation system in Azerbaijan was prepared following a mission titled "Digitalisation of the mediation system in Azerbaijan" that was conducted in Azerbaijan (Baku and Sumgait), on 19-21 June 2023, and attended by CEPEJ international experts and staff members. The mission included meetings with the stakeholders to gather information and presentations by the consultants to inform the national partners on the relevant CEPEJ tools.

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Abbreviations

ADR	Alternative Dispute Resolution
AoJ	Academy of Justice
ASAN	Azerbaijan Service and Assessment Network
BI	Business Intelligence
CoE	Council of Europe
CEPEJ	European Commission for the Efficiency of Justice
CPD	Continuous Professional Development
CMS	Case Management System
DR	Dispute Resolution
EU	European Union
KPIs	Key Performance Indicators
MC	Mediation Council
MoJ	Ministry of Justice
SWOT	Strengths, Weaknesses, Opportunities and Threats
ToT	Training of Trainers

1. INTRODUCTION

1.1. Background

The project “*Fostering mediation in Azerbaijan*” is funded by the European Union and the Council of Europe and implemented by the Council of Europe in their Partnership for Good Governance III (2023-2027). It seeks to improve the recourse to mediation in Azerbaijan by increasing the availability and the quality of mediation services, further strengthening the capacities of mediators, in particular through training, and raising awareness on mediation amongst justice sector professionals and citizens. The project relies on the Council of Europe instruments and standards, the CEPEJ tools on mediation, and the related European good practices. The action supports the implementation of key judicial reforms concerning alternative dispute settlement included in the “State Program for the Development of Azerbaijani Justice for 2019-2023” and the Decree of the President of the Republic of Azerbaijan of 3 April 2019 on “Deepening of reforms in the judicial-legal system.”

1.2. Scope

The report reflects findings and recommendations for further development of the digitalisation of the mediation system in Azerbaijan. It includes information on the case management system (CMS), monitoring and evaluation of the results of the mediation system, mediation centers, and individual mediators through data gathering and analysis (statistical, BI modules), and development of online mediation.

1.3. Methodology

The contents of the report are based on the authors' research and on findings collected during the mission titled “*Digitalisation of the mediation system in Azerbaijan*”, conducted in Azerbaijan (Baku and Sumgait), on 19-21 June 2023, and attended by CEPEJ international experts and CEPEJ staff members (see Appendix I).

2. OVERVIEW OF THE MEDIATION SYSTEM IN AZERBAIJAN

Mediation is an alternative dispute resolution process where parties seek to resolve their disputes with the help of a neutral third party. It offers numerous benefits for both private parties and governments. Mediation was not widely practiced in Azerbaijan before 2019, although legal provisions allowing for it existed since 1999.

Recognising the importance of mediation for businesses, the President of Azerbaijan set an aim to develop mediation in the country in the Decree of 6 December 2016 on “Strategic Roadmap on National Economy and Major Industries of the Economy”. The following expected outcomes were provided under Priority 1.8. of the Roadmap: drafting a Law on Mediation, establishing a Mediation Council, and improving pre-court dispute settlement indicators for small and medium businesses.

The first objective was achieved in March 2019 when the Parliament approved a new mediation law. The law introduced innovative provisions such as mandatory first mediation sessions for certain categories of disputes, mediation providers nationwide, and training requirements for mediators. It also established the Mediation Council responsible for implementing mediation policies and maintaining the Register of Mediation. The goal of adopting the law was to transform the dispute resolution culture and improve access to justice in Azerbaijan.

In the context described above, the effectiveness of the young mediation system is being evaluated by local stakeholders. The input received by the CEPEJ experts in course of the meetings held during the field mission in 19-20 June 2023 shows that there are areas that require improvement, particularly regarding the data collection methods and the statistical evidence that can reflect the effectiveness of the implemented mediation policies. To this end, digitalisation of the mediation system should be prioritised. A comprehensive IT system with centralised abilities to monitor reliable data and consolidate statistical evidence automatically is a key component for effectively assessing the effectiveness of the implementation of legal and institutional mediation frameworks.

2.1. Legal framework for mediation

The Azerbaijani Mediation Law, adopted in 2019, aims to reshape the dispute resolution culture in the country and improve access to justice. The law introduces several innovative provisions, such as the opt-out model based on the first mediation session, and establishes a framework for the effective implementation of mediation.

As mentioned above, one key provision is the introduction of mandatory first mediation sessions for certain disputes, such as family, commercial, and labor. Plaintiffs must participate in a mediation session before filing a judicial proceeding, following a successful model used in Italy. This requirement promotes mediation as a primary method of resolving disputes and encourages parties to explore amicable solutions. However, in Azerbaijan, the model is less directive concerning the responding parties’ incentives to attend such a session, hence a risk to creating a formal mechanism lacking effectiveness and the critical need for relevant data.

The law also institutes mediation providers throughout Azerbaijan, ensuring accessibility to mediation services nationwide. It establishes criteria for mediators’ initial training and qualifications, promoting professionalism and competence in the field.

The provision for the Mediation Council is another significant aspect of the law. The Mediation Council is responsible for implementing mediation policies, maintaining the Register of Mediation, preparing sample documents and forms, collecting and reporting statistics, and

providing guidance on mediation practices. About the scope of this report, one of the functions¹ of the Mediation Council is to publish informational and statistical news on the mediation activity every quarter.

To incentivise mediation, the law incorporates measures such as regulating contractual agreements to mediate. It also addresses the enforcement of mediation settlement agreements, providing a clear procedure for their implementation based on the courts' or notaries' post-mediation involvement.

Overall, the Mediation Law in Azerbaijan represents a comprehensive effort to foster a fair, trustworthy, and collaborative dispute resolution process. While the effectiveness of the law and of the specific opt-out model is still being evaluated, establishing the Mediation Council, introducing mandatory mediation sessions, and promoting professional mediators should contribute to developing a robust mediation system in the country.

2.2. Main stakeholders and responsibilities

The objective of mapping stakeholders and their responsibilities is to understand the mediation ecosystem comprehensively. This understanding is valuable for achieving the goal of improved system digitalisation. Additionally, conducting a stakeholder mapping exercise helps identify the dynamics and relationships between various actors, highlights existing digitalisation and coordination efforts, uncovers opportunities to improve the quantitative and qualitative data collection methods, and finally improves the monitoring abilities of the relevant institutions, such as the Ministry of Justice, the Mediation Council and mediation organisations.

A map of stakeholders and their roles is included below, emphasising (red lines) the dynamics around which more data is needed, hence digitalisation requirements. Examples include participation in the first mandatory session, users' and lawyers' attitudes and quantitative/qualitative dimensions of the mediation practice.

¹ See the Art. 20.1.15 of the Law of Republic of Azerbaijan on Mediation 1555-VQ that was adopted by the Azerbaijani Parliament on 29 March 2019, “20.1.15. publishes informational and statistical news on mediation activity and introduces it to the public once in a quarter”, available in Azerbaijani at <https://e-qanun.az/framework/41828>, accessed on 5 July 2023

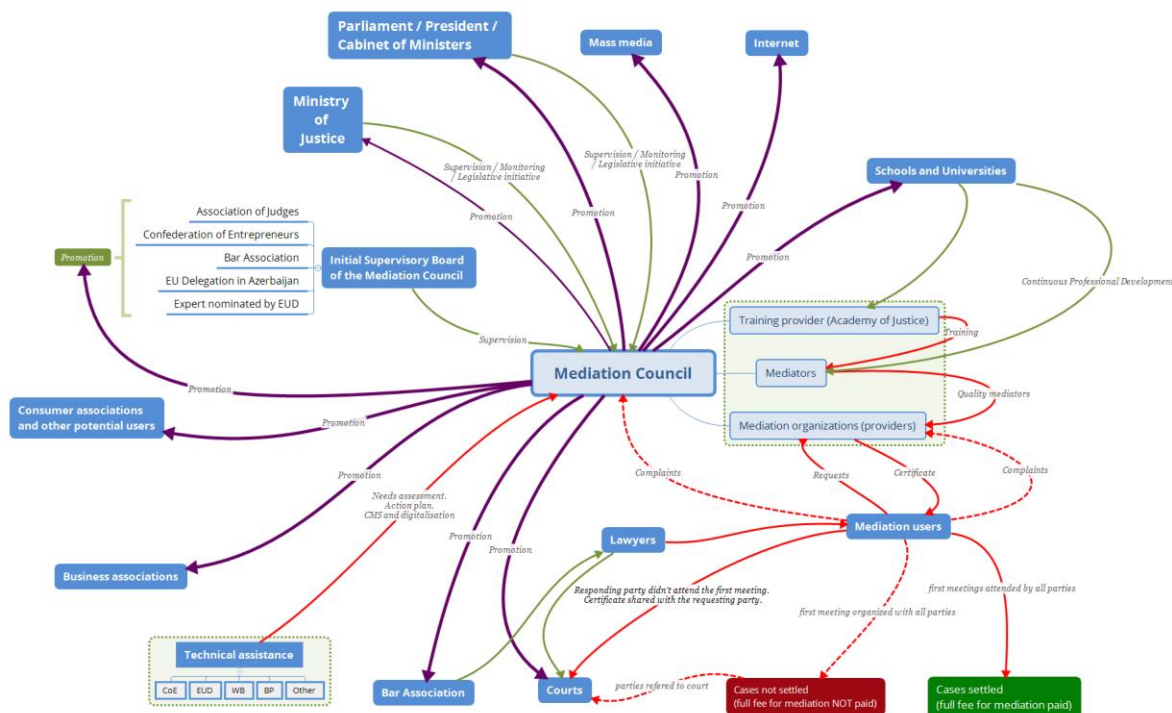


Figure 1 Map of stakeholders and roles (emphasis on the need for data – reflected with red lines)

2.3. Digital infrastructure and IT capabilities

The digital infrastructure of the Azerbaijani mediation system refers to the underlying framework that enables the functioning of digital services and technologies. It includes networks, servers, databases, and communication systems. Ideally, the Azerbaijani mediation system should rely on a secure and robust digital infrastructure to facilitate storing, managing, and transmitting mediation-related data and documents.

The IT (Information Technology) capabilities of the mediation system in Azerbaijan encompass the tools, systems, and software applications that support various aspects of the mediation process. This may include effective filing and case management, mediation organisations’ dockets and mediator calendars, client management software for mediation providers, automatic real-time reporting, online mediation platforms, and data security and privacy measures.

The IT tools exploited by the Mediation Council currently are limited. It maintains the webpage and the mediators’ register digital data base. In the past there was a data reporting IT system, but it had to be switched off due to technical malfunctioning and disagreements with the developer of this IT system. Currently data collection activity is performed using Google spreadsheet application. The Ministry of Justice benefits from an Information Technology and Innovation Department, which focuses on digitalisation of courts, notaries, and some other legal professions.

Although the Mediation Council is developing a Case Management System, the experts have not received the terms of reference for this system or any written specifications. Only a demonstration of the access to the platform and the mediation e-kabinet that is under development was offered during the meeting with the Mediation Council representatives. Therefore, the recommendations included in this report are based on the limited information collected during the mission of 19-21 June 2023 and on the information made available to the

experts by the CoE team (such as, for example, the updated English translation of the Azerbaijani Mediation Law).

The experts are concerned that the mediation organisations, their case managers, other staff members, and the mediators themselves may lack the IT capacity to understand and effectively use the Case Management System under development. Similarly, the experts may only hope that the system is being developed to match the level of IT proficiency of parties, lawyers, mediators, and other mediation stakeholders that are expected to use the system. Otherwise, comprehensive awareness raising and training programmes should precede the launching of its implementation.

The experts noted a certain reluctance on the part of mediators, users, and lawyers towards using technology, specifically for using the current means of the electronic signature. Although the representatives of the Ministry of Justice confirmed that mediation documents can be signed electronically, the practice is essentially paper based.

Finally, the experts noted a risk that the current paper-based practices may be reflected in the new Case Management System that should, on the contrary, be focusing on digital documentation turnover and storage, should have streamlined workflow automation, efficient case monitoring, task assignment and tracking, comprehensive reporting and analytics, customisable templates and forms and should be integrated with other systems, such as the e-Court platform in Azerbaijan.

To tackle the risk of low level of technological literacy of certain actors, the new system should certainly be user-friendly, intuitive, and easy to use or learn.

2.4. Strengths, Weaknesses, Opportunities and Threats for Digitalisation

An analysis of the Strengths, Weaknesses, Opportunities and Threats (SWOT Analysis) of the digitalisation of the Azerbaijani mediation system is important for the following reasons:

- *Strategic planning:* Conducting a SWOT analysis on the digitalisation of the Azerbaijani mediation system paves the way toward a comprehensive evaluation of its strengths, weaknesses, opportunities, and threats. This analysis serves as a strategic planning tool, enabling the Mediation Council and other stakeholders to identify the current state of digitalisation, understand the internal and external factors influencing it, and develop a roadmap for future initiatives. It helps set clear objectives, prioritise actions, and allocate resources effectively.
- *Risk assessment and mitigation:* The SWOT analysis helps identify potential risks and challenges associated with the digitalisation process, such as user rejection or ending up with collecting wrong data. By examining weaknesses and threats, the Ministry of Justice, the Mediation Council, and other mediation stakeholders can proactively assess the risks and develop mitigation strategies to address them. It allows for anticipating obstacles, such as technical infrastructure limitations, data security risks, or resistance to change, and devising appropriate measures to minimise their impact. This risk assessment ensures a smoother transition to digitalisation and enhances the initiative's overall success.
- *Focusing on opportunities:* The SWOT analysis helps identify opportunities that can be leveraged to enhance the digitalisation of the Azerbaijani mediation system. By recognising strengths and external opportunities, the Mediation Council and other mediation stakeholders can explore innovative approaches, capitalise on emerging

technologies, and harness favourable conditions to maximise the benefits of digitalisation (e.g., electronic signature). This analysis enables them to identify areas for improvement, prioritise investments, and seize opportunities to enhance efficiency, accessibility, and effectiveness within the mediation legal framework in place, specifically the opt-out model for which proper monitoring and assessment are needed.

Although the experts had limited information related to the current digital infrastructure and IT capabilities, the below analysis is proposed to the attention of the national partners and an eventual revision/updating.

Strengths of the digitalisation of the Azerbaijani mediation system:

- **ENHANCED EFFICIENCY:** Digitalisation can streamline the administrative processes of the Mediation Council, mediation organisations, mediators, and most importantly, lawyers and users; this includes the case-related electronic management of mediation process documents and case tracking, leading to increased efficiency in the mediation ecosystem.
- **IMPROVED ACCESS:** A national Case Management System, provider-specific similar systems to manage cases internally but connected to the national CMS, and other digital platforms can facilitate access to mediation services in Baku and the regions, making it more accessible to parties in different locations and reducing barriers to understanding and use of mediation.
- **SECURE DATA MANAGEMENT:** The digitalisation of the Azerbaijani mediation ecosystem can employ robust data security measures to protect sensitive mediation-related information, ensuring confidentiality and integrity. Examples included here are the parties' personal details that should not be accessible outside the provider of services, not even to the Mediation Council.
- **CENTRALISED INFORMATION:** Digitalisation enables the automatic consolidation of statistical information and centralisation of mediation-related data, making it easier to access, retrieve, and analyse information for policy assessment, monitoring implementation, reporting and decision-making purposes.
- **AUTOMATION AND WORKFLOW:** Digitalisation can automate certain tasks, such as scheduling mediation sessions, notifications sent to parties, and document generation based on the standard mediation forms approved by the Mediation Council, streamlining the mediation process and reducing manual effort. Most importantly, the statistics would not need to be "manually reported" by the providers because the system would already have all the data, and the reporting process would be fully automated.

Weaknesses of the digitalisation of the Azerbaijani mediation system:

- **DIGITAL DIVIDE/EXCLUSION:** Limited access to technology or inadequate digital literacy among users may prevent their access to mediation services. Similarly, the mediators' limited capacity to understand and work with technology may hinder their ability to use digital systems.
- **LACK OF TECHNICAL INFRASTRUCTURE:** Inadequate or unreliable internet connectivity and infrastructure in some regions outside Baku could impede the smooth operation of the Case Management System.
- **DATA SECURITY RISKS:** The reliance on digital systems introduces potential risks of data breaches or cyber-attacks, requiring robust security measures to protect sensitive

information. Such risks go beyond sharing personal details outside the mediation "safe space." They may lead to significant case-related damages caused by a breach of confidentiality among the parties.

- **CHALLENGES WITH TRAINING AND ADOPTION:** Ensuring that mediators, users, lawyers and other mediation stakeholders are trained and comfortable using digital tools and platforms may require investment in training and sustainable support programmes.

Opportunities related to the digitalisation of the Azerbaijani mediation system:

- **EXPANDED REACH:** Digitalisation can extend the reach of mediation services to remote areas outside the capital, increasing accessibility and offering online mediation opportunities where physical presence may be difficult.
- **COST EFFICIENCY:** Digital case management platforms for mediation or online mediation mechanisms can reduce costs associated with in-person applications, travel, venue rental, and paperwork, making mediation and access to mediation more cost-effective for the parties involved.
- **DATA ANALYTICS:** A comprehensive case management system can collect and analyse data on mediation cases, providing valuable insights for improving the Azerbaijani legal framework for mediation, identifying trends, and measuring key performance indicators.
- **INTEGRATION WITH THE E-COURT SYSTEM:** Digitalising the Azerbaijani mediation system can lead to opportunities to integrate it with the e-Court system, facilitating seamless information exchange and coordination between mediation and court proceedings. This integration could increase the understanding of the effectiveness of the opt-out model and the reasons for the non-participation of requesting parties, responding parties, the advice from lawyers and possible follow-up incentives or sanctions.
- **COLLABORATION AND KNOWLEDGE SHARING:** The digitalisation of the Azerbaijani mediation system enables collaboration between mediators, mediation organisations, the Mediation Council, the Bar Association, and the Ministry of Justice. International cooperation is also an opportunity for sharing good practices, accessing resources, fostering professional development and continuous learning.

Threats related to the digitalisation of the Azerbaijani mediation system:

- **CULTURAL RESISTANCE TO CHANGE:** The mediation stakeholders may resist adopting digital platforms, whether case management systems or online mediation tools. This can be due to concerns about reliability, security, or unfamiliarity with new technologies, potentially hindering widespread adoption.
- **TECHNOLOGICAL OBSOLESCENCE:** Rapid technological advancements may result in the need for regular updates and maintenance of digital systems to avoid obsolescence and ensure compatibility with evolving standards. Such updates and maintenance efforts carry costs that will require sustainable solutions for the Mediation Council, mediation organisations and other stakeholders.
- **LEGAL AND REGULATORY CHALLENGES:** Digitalisation of the Azerbaijani mediation system may raise legal and regulatory questions regarding data protection, privacy, electronic signatures, and the admissibility of electronically generated mediation documents.

- **LOSS OF HUMAN CONNECTION:** The digitalisation of mediation may also result in reduced face-to-face interaction, potentially affecting the mediation process' connection and confidence-building.
- **UNEQUAL ACCESS:** Inequitable access to digital resources and technology among different segments of the society, including within the mediator community, may exacerbate existing disparities and limit the inclusivity of digital mediation initiatives.
- **SUFFICIENCY OF FUNDS AND RESOURCES.** Lack of sufficient funds and resources for development and maintenance of the centralised mediation IT system/CMS might raise serious obstacles in the process of digitalisation.

It is important to remind that these strengths, weaknesses, opportunities, and threats are general considerations for the digitalisation of the Azerbaijani mediation ecosystem and are based on the information made available to the experts at the time of the report drafting.

While this SWOT is a starting point, additional context-specific circumstances within Azerbaijan may introduce other factors that should be considered for a comprehensive analysis.

3. MONITORING AND EVALUATION OF THE MEDIATION SYSTEM

This chapter is dedicated to monitoring and evaluation of the mediation system performance.

Collection and analysis of data related to mediation is done by multiple players. On microlevel it is done by mediators and mediation organisations. On the national macrolevel the Mediation Council, the Ministry of Justice, and other institutions may take part in this activity. Aiming to achieve appropriate level of consistency, reliability, and transparency data reporting and assessment should follow some basic rules and should be targeted at work with comparable and coherent data sets and concepts.

Section 4.1 presents the overall significance of monitoring and evaluation of the mediation system.

The following sections 4.2-4.4 give an overview of relevant CEPEJ tools, good international practices, list key performance indicators that should be monitored and assessed, and provide analysis of local practices of data collection, analysis, and reporting.

3.1. Importance of monitoring and evaluation

Reliable and informative data on performance of the mediation system helps to reveal its efficacy, efficiency, strengths, weaknesses, risks, and opportunities. The analysis of actual data on main aspects of the mediation system lays the foundation for a better quality of decision making related to organising and finetuning of mediation activities at all levels.

In the explanatory note for the European Handbook for Mediation Lawmaking², the CEPEJ has identified the following positive effects of gathering precise statistical data and publication of systemised reports on mediation:

1. it allows evaluating the effectiveness of the legislation in place and indicates if certain parts require amendments. Developing quantitative criteria also enables the comparison of mediation schemes,
2. monitoring the statistics of mediation can ensure higher quality of mediations as low success rates might signal poor training. Hence, problems can be tackled in a relatively early phase,
3. it helps promote mediation as the general public can assure themselves of its effectiveness,
4. it opens the doors for high quality research, which can help to further improve the legislation on mediation.

The collection of statistical data begins with the setting of the main performance indicators (KPIs) to be monitored and calculated.

Data are collected and provided starting from the lowest level - mediators or mediator organisations. Provision of respective data is normally ensured by setting legal reporting obligations on mediators and/or mediation organisations. Later, the data are summed up and systematised at the regional or national levels by the Mediation Council and/or Ministry of Justice. Stipulation of publication obligations could ensure continuity and quality of this activity.

² Available on internet at <https://rm.coe.int/cepej-2019-9-en-handbook/1680951928>, page 78.

Certain timeframes and periodicity shall be established to determine data collection, analysis and publication cycle. Normally, it is once a year, semi-annually, quarterly and/or monthly.

Making mediation performance data publicly available ensures transparency of the system. This allows to understand it better for users, mediators, lawyers, courts, mediation providers and other stakeholders. Easy access to proper data on the mediation system performance fosters its development and building of trust.

Confidentiality of mediation and personal data must be ensured when collecting, aggregating, analysing and publishing the operation data of the mediation system.

The use of digital technologies in the collection, systematisation and publication of data makes it possible to speed up and reduce the cost of data collection, submission, analysis, and publication processes.

3.2. CEPEJ tools and other good international practices

In its various studies and instruments dedicated to mediation, CEPEJ underlined multiple times the significance of the development of quantitative and qualitative measurement criteria and of monitoring the efficiency of the mediation system, the availability, accessibility, and awareness of it. In the development of its tools, CEPEJ analyses and takes into account the existing good practices and standards, as well as the experience from mediation development cooperation projects conducted in various Member States of the Council of Europe.

In the 2007 Guidelines for a better implementation of the existing Council of Europe recommendations concerning family mediation, mediation in civil, penal and administrative matters³ the CEPEJ underlined that it is important that Member States continually monitor their mediation schemes and on-going pilot projects and arrange for their external and independent evaluation. Certain common criteria, including both qualitative and quantitative evaluation aspects, should be developed to enable the quality of mediation schemes to be compared.

As was already explained above, CEPEJ elaborated on the need for collection and assessment of mediation statistics in the 2019 European Handbook for Mediation Lawmaking⁴. More specifically, it is recommended by the Handbook (Sec. 8.2):

- a) to collect and aggregate statistical data from individual mediators or mediation providers, court-related, and other mediation schemes on a national level respecting the principle of confidentiality,
- b) to integrate Baseline Grid for Mediation Key Performance Indicators (Baseline Mediation Statistics) adopted by CEPEJ into statistics system to allow the collection and comparison of such data between the Council of Europe members states. As a minimum standard, require providing the information stated therein,
- c) to make statistical data publicly available, including on the Internet.

The Baseline Grid for Mediation Key Performance Indicators (Baseline Mediation Statistics) is a specific tool designed by CEPEJ and included in its 2018 Mediation Development Toolkit⁵ to help improve the measurement of the performance of mediation systems and enable

³ Available on internet at <https://rm.coe.int/16807475b6>, <https://rm.coe.int/1680747759> and <https://rm.coe.int/1680747683>.

⁴ Available on internet at <https://rm.coe.int/cepej-2019-9-en-handbook/1680951928>.

⁵ Available on internet at <https://rm.coe.int/mediation-development-toolkit-ensuring-implementation-of-the-cepej-gui/16808c3f52>, pages 40-49.

comparative analysis of the efficiency of such systems among different Member States. It is described in the following section of this report.

3.3. Key Performance Indicators for the mediation system

A mediation survey that was conducted in 2017 by the CEPEJ revealed that there are substantial differences between the Member States in keeping records and measuring the performance of mediation systems. In many Member States such statistics are not collected at all at the national level. Absence of reliable and comparable data makes it impossible to monitor and evaluate the performance of mediation systems and blinds any decision maker and stakeholder.

On this note and convinced of the significance of keeping and disseminating precise data on the performance of mediation systems, CEPEJ adopted the Baseline Grid for Mediation Key Performance Indicators - KPIs (Baseline Mediation Statistics) in 2018. The target audience of the tool is composed of mediation providers, associations, institutes and/or federations, individual mediators, and the Council of Europe Member States.

This Baseline Grid aims to help improve the measurement of the performance of mediation systems and enable comparative analysis of the efficiency of such systems among different Member States.

It should be noted that the tool provides only for the basic performance parameters that should be measured in the process of monitoring of mediation systems. The categories of cases and specific indicators should be adapted, considering the peculiarities of the national legislation and practice. However, in order to enable comparative analysis among different Council of Europe Member States, it is advisable to keep statistics in a way that allows the extraction of main indicators in accordance with the grid provided below.

The Baseline Grid represents only baseline statistics. Mediation providers, associations, institutes and/or federations, individual mediators and Member States may collect and assess data reflecting other indicators of performance, that are reasonable and useful for their specific purposes.

It is also noted that collection and evaluation of statistical data shall be performed, if possible, more frequently than once per year. The use of information and electronic communication technologies and of specialised software is encouraged to expedite and increase efficiency in keeping statistical records on mediation and their analysis. In any case, collection of statistical data and its analytics shall not interfere with the confidentiality principle, which is fundamental in mediation.

The Baseline Grid⁶ sets standards on measuring such parameters of mediation systems:

1. Number of mediation processes.

It is recommended to quantify the total number of: (a) mediation applications based on requests for mediations and mediation referrals; (b) introductory mediation sessions; (c) full mediations with presence of all parties; and (d) mediations totally or partially settled. A comparison of these figures gives useful indications of mediation awareness in the society, efficiency of provision of information to parties, engagement into full mediation processes, and efficiency of settlement when parties come to full mediation. E.g., comparing figures (a) and (b) and/or (a) and (c), and/or (b) and (c), it is possible to get rates of (non)engagement in processes initiated by mediation applications, mediation (non)participation rates by the parties, and then try to explore reasons and

⁶ See the text of the Baseline Grid for specification of precise KPIs: <https://rm.coe.int/mediation-development-toolkit-ensuring-implementation-of-the-cepej-gui/16808c3f52>, pages 40-49.

possibilities to improve such rates. Comparing figures (c) and (d) gives the mediation settlement rate⁷, which can be additionally differentiated for mandatory mediations and voluntary mediations (generally, mandatory mediations settlement rates are lower than voluntary mediation settlement rates). A deeper analysis of this data may reveal deficiencies or obstacles in the functioning of the mediation system and/or its various actors. Achievement of specific goals may be set as targets with quantitative expression of these aspects in a form of various internationally recognised ratios – rates/indicators. These baseline indicators may be supplemented, considering specific needs of the country. For example, in Azerbaijan it would be reasonable to monitor and analyse exact data on the end results (outcomes) of processes started on the basis of mediation applications, which could be a solid base to start calculating more precisely and monitoring various mediation system performance ratios – indicators⁸.

2. Type of recourse to mediations and settlements by dispute matters, including settlement rates.

It is recommended to split the total numbers of mediations and numbers of mediations that end in total or partial settlements by: (i) types of disputes (civil and commercial, family, administrative, labour, consumer, adult penal, juveniles penal) and (ii) types of recourse (required by law as pre-condition to access the court, court referred, voluntary by agreement after origination of the dispute, voluntary by a contractual clause signed

⁷ NB! The experts understand that currently the mediation settlement rate is calculated as a ratio not of figures (c) – full mediations and (d) – fully or partially settled, but as a ratio of figures (a)-mediation applications to (d) – fully or partially settled full mediation, an approach which distorts mediation statistics and does not match international practices and standards of calculation of settlement rates in mediation. It is advisable to align practices of calculation of this and the other KPIs related to mediation to international concepts and standards.

⁸ Six possible end results that is advisable to monitor in Azerbaijan (comparing these numbers and extracting various ratios among them could give precise and clear picture on different mediation system performance indicators (e.g. mediation settlement rate, mediation participation rate, mediation engagement rate etc.); having all of them would be very informative to determine characteristics of the system, causes of malfunctioning of its various elements and/or indications of proper/successful performance):

- i. One party submits an application for mediation to a mediation organisation. A notice is sent to invite the other party(ies) to an initial mediation session.
 - a. *No response from any party (including the requesting party that become silent in the meantime)*
 1. **Certificate on failure to complete the notification process.** A document certifying that the initial mediation session couldn't be organised. (*Case closed*)
- ii. Initial mediation session not attended by all parties
 2. **Certificate on failure to attend.** Document certifying that the initial mediation session not attended by all parties. (*Case closed*)
- iii. Initial mediation session attended by all parties
 - a. *If not all parties decide to go ahead and engage in the full mediation process*
 3. **Certificate on Attending the Initial Session.** Document certifying who attended and the conclusion that the parties didn't agree to engage in the full mediation process. (*Case closed*)
 - b. *If the parties decide to sign the Agreement to mediate and engage in the full mediation process:*
 4. **Parties sign a full settlement mediation and a document - Protocol on Termination.** Full settlement (*Case closed*)
 5. **Parties sign a partial settlement mediation and a document - Protocol on Termination.** Partial settlement (*Case closed*)
 6. **Parties sign a document - Protocol on Termination.** No settlement (*Case closed*)

before the origination of the dispute). The settlement rate shall be calculated as a ratio of the number of total or partial settlements and the number of full mediations with the participation of all parties. In voluntary civil and family cases the settlement rate normally goes above 50 percent, while in mandatory or court-referred cases the settlement rate revolves around 50 percent or less, depending on various circumstances.

3. Balance/relationship between mediations and incoming judicial proceedings in first instance court.

This parameter is meant for comparison of incoming full mediation cases and incoming judicial proceedings. It is calculated as a ratio of the number of full mediations and the number of judicial proceedings. It is reasonable to split these numbers by different types of disputes (civil and commercial, family, administrative, labour, consumer, adult penal, juveniles penal) to capture differences between separate dispute categories.

4. Number and qualifications of mediators.

Mediation can be practiced by different professionals. It may be meaningful to understand what professions are represented in mediators' pool, and what is their regional coverage. Professions normally practicing mediation are included in the Baseline Grid: (a) attorneys and other lawyers, (b) notaries, (c) enforcement officers, (d) judges, (e) psychologists, (f) other. Splitting the total numbers per country, into different cities and regions, could help to understand the type of mediation network and its geographic coverage.

5. Specialisation of mediators.

This part of mediation statistics gives indication on numbers of mediators practicing in different types of disputes: (a) civil and commercial, (b) family, (c) administrative, (d) labour, (e) consumer, (f(1)) adult penal, (f(2)) juveniles penal. It is also recommended to split national figures by cities and regions to better understand the characteristics of the mediation network.

6. Number, ownership, and specialisation of mediation providers.

In countries where mediation is operated through mediation providers, it is important to assess not only their total number, but their (i) type of ownership (private, court-related, chambers of commerce, bar associations, state or municipalities, other), (ii) specialisation in different types of disputes (civil and commercial, family, administrative, labour, consumer, adult penal, juveniles penal) and (iii) regional coverage.

It is noteworthy that the Baseline Grid does not provide a full list of possible indicators that could be monitored in an advanced mediation system. In addition, there may be indicators reflecting the duration of mediation processes, cost/savings of mediations in comparison to adjudicative dispute resolution processes, user satisfaction rates, etc.

The experts strongly recommend to the Mediation Council and the Ministry of Justice of Azerbaijan to have a constructive discussion on the need to monitor additional indicators in mediation statistics and agree on the formulas of their calculation, corresponding to internationally recognised standards.

3.4. Local practices for data collection, analysis and reporting

The Law of Republic of Azerbaijan on Mediation (hereinafter – Mediation Law) sets some general rules as to collection of statistical data on mediation.

Article 20.1 stipulates that the Mediation Council is the central institution in collection, analysis of mediation performance data, and monitoring of the system. The Mediation Council is given the following functions:

- collecting and analysing the statistical information from mediators, mediation organisations and mediation training authorities (Art. 20.1.7 of Mediation Law),
- publishing information and statistical news on mediation activity and introduction of it to the public once in a quarter (Art. 20.1.15 of Mediation Law),
- analysing the effectiveness of mediation system once in 3 years, giving relevant suggestions and taking other measures (Art. 20.1.8 of Mediation Law).

On the other end, mediators are obliged by the law to inform the public about his/her activity, complying with the confidentiality principle at the same time (Art. 12.1.4 of Mediation Law) and to execute the decisions adopted by the Mediation Council pursuant to this law. Mediation organisations must have a set of rules on the evaluation of mediation services provided by mediators (Art. 11.3.2 of Mediation Law). However, it is not clear who and to what extent is responsible for the provision of accurate mediation related statistical data to the Mediation Council.

Unfortunately, the Mediation Law does not list any functions of the Ministry of Justice and coordination of its activities with the Mediation Council with a view to accumulation, aggregation, and analysis of mediation-related statistics.

After the field visit, the Instruction for collection of statistical data, approved by the Mediation Council on 8 April 2020, was shared with the experts. The analysis of a machine translation into English of the submitted document allows us to conclude that, in principle, it follows the pattern of the CEPEJ Baseline Grid for Mediation Key Performance Indicators - KPIs (Baseline Mediation Statistics). However, it is not clear to what extent this instruction is adjusted to Azerbaijani reality and applied in practice. Some doubts regarding this are caused by the analysis of the statistical report that was shared with the experts.

The experts were provided with the Mediation Council's statistical report for December 2022 and January 2023. This report does not give indications of all KPIs listed in the CEPEJ Baseline Grid. Aggregation of national statistics is rather vague. It includes only 1 slide (out of 34 slides of the document) on the total number of mediation applications and the results of their processing:

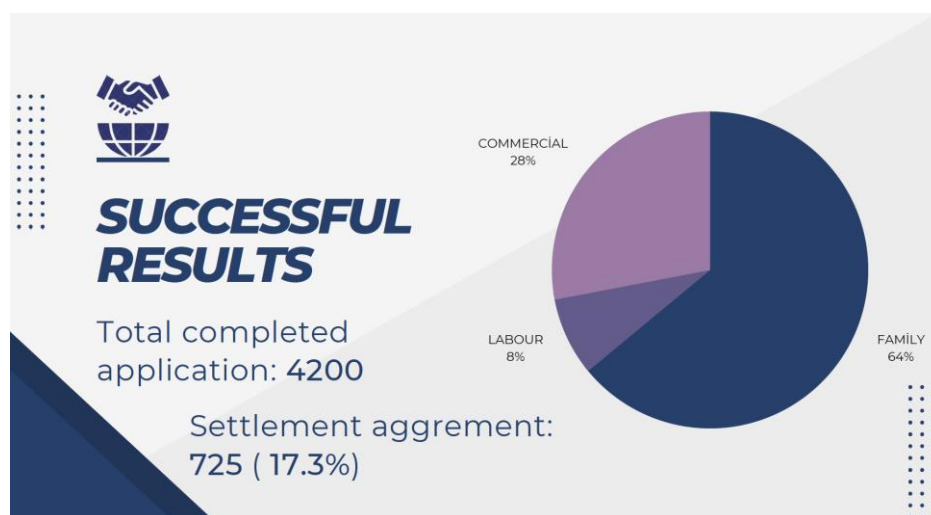


Figure 2 Slide with the total number of cases recorded in Azerbaijan included in the December 2022 and January 2023 statistical report shared by the Mediation Council.

This does not allow a clear picture of the exact quantitative parameters of the operation of the mediation system, let alone its qualitative dimensions.

The main body of the report (27 slides out of 34) is dedicated to information on performance of separate mediation organisations. Unfortunately, these sections provide rather general figures, such as shown below:

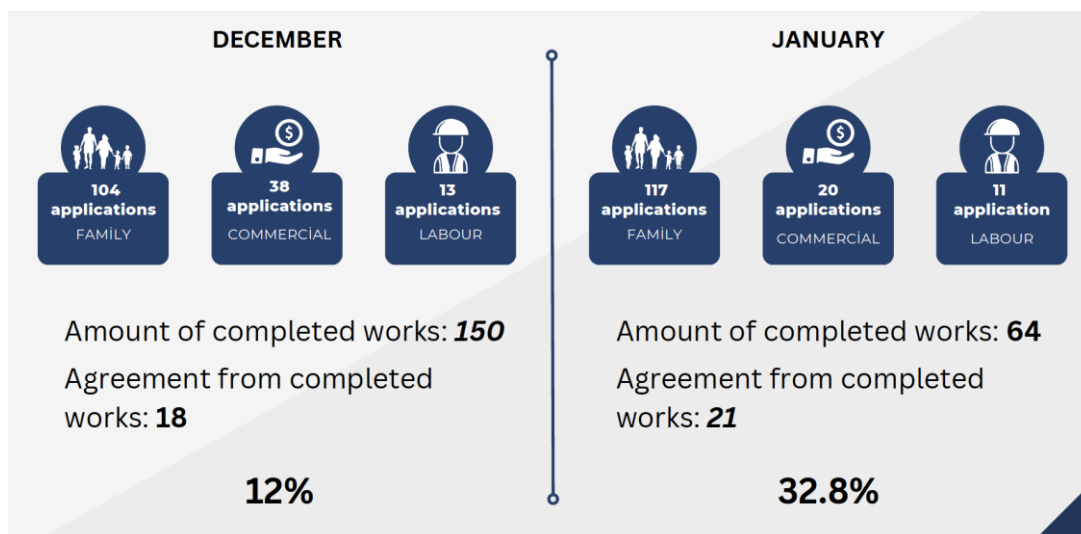


Figure 3 Template slide with statistics specific to individual mediation organisations included in the December 2022 and January 2023 statistical report shared by the Mediation Council.

It was not explained why the statistical report of the Mediation Council is generated only for two months with five months delay, why it does not follow the rule of Art. 20.1.15 of Mediation Law on quarterly reporting, how it was disseminated publicly, as stipulated by the Mediation Law, and if the Mediation Council composed and made public any report with more recent data.

The Ministry of Justice manages the national courts' IT system. It is able to extract data from the courts' IT system which is related to mediation or might be used for calculation of such mediation KPI as balance relationship rate between full mediations and incoming judicial proceedings in the same field. However, mediation related data that is being collected by the Mediation Council and the Ministry of Justice are not aggregated. Some discrepancies between data sourcing from the Mediation Council and the Ministry of Justice could be determined and there is no established procedure to solve them.

The experts could not conclude on a full consensus and coordination between the Ministry of Justice and the Mediation Council regarding reliability of data, KPIs, frequency of its publication and other aspects of nation-level mediation related statistics generation and making it public. Better level of coordination and mutual understanding between these two mediation stakeholders in relation to these aspects would be advisable.

The Mediation Council currently uses a Google Spreadsheet technology to get necessary data form the mediation organisations as described in section 3.4.2 of this report. Each mediation organisation has delegated responsible persons for inputting and editing of data in the respective spreadsheet. Mediators do not input the data on their performance themselves.

Data that is being collected was reflected in section 3.4.2 of this report. The authors of the present report concluded that this data does not provide a comprehensive breakdown on the end results of all mediation applications, especially in situations when applications do not reach the stage of full mediation.

On the basis of the received information, the international experts conclude that the end results cannot be determined from the data collected and published by the Mediation Council.

Furthermore, the 17.3% settlement rate reflected in the statistical report for January-December 2022, shared by the Mediation Council, is referenced to the number of applications and not to the cases where parties agree to mediate (full mediations), Hence, it is surprisingly low. During the fact-finding mission, the mediation organisations reported to the experts higher settlement rates of full mediations. In addition to concluding that the Mediation Council, the Ministry of Justice, the general public, and other stakeholders do not have comprehensive information on the end results of the mediation processes, the most obvious conclusion is an urgent need to digitalise the Azerbaijani mediation system.

Finally, the experts were not provided information on how the statistical data is collected, aggregated, and visualised in quarterly statistical reports. It is not clear to what extent baseline KPIs of mediation statistics set in the CEPEJ Baseline Grid for Mediation Key Performance Indicators – KPIs (Baseline Mediation Statistics) could be established.

4. MEDIATION CASE MANAGEMENT SYSTEM

This chapter aims to provide an understanding of the significance and to guide on the implementation of a case management system (CMS) in mediation, emphasising the Azerbaijani context.

The first section emphasises the importance of a case management system for mediation. It explores the benefits of utilising a CMS, including streamlined case tracking, improved organisation, and enhanced efficiency in the mediation process. Good practices and examples are provided to illustrate the positive impact of a CMS on mediation outcomes.

The second section focuses on the features and functionalities of a case management system tailored specifically for mediation. It outlines key elements such as case documentation, scheduling, communication tools, and reporting capabilities that contribute to effectively managing mediation cases.

Section 4.3 delves into the implementation process of a CMS for mediation. It references international standards and local practices, guiding, adopting and integrating a CMS into existing mediation frameworks. Then, the section explores the benefits and limitations of using a case management system for mediation. It discusses advantages such as increased transparency, data analysis for process improvement, and reduced administrative burdens. It also addresses potential limitations, such as the need for proper training and potential technological barriers.

Finally, the current system for case management in Azerbaijan is described. It sheds light on how statistics used to be and are currently managed by mediation organisations and highlights the role and activities of the Mediation Council in monitoring these practices.

4.1. Importance of a case management system

For Azerbaijan, having a national case management system to manage the entire mediation ecosystem and all mediation organisations is essential for several reasons.

First, a national case management system enables the application of a unified standard for mediation practices and data collection. It ensures consistency, reliability, and comparability of information across all mediation organisations, facilitating effective monitoring and evaluation of the mediation process at a national level.

Second, an effective CMS allows for automatically generating data statistics, providing valuable insights into the performance, trends, and outcomes of mediation cases. This data can inform evidence-based decision-making, policy development, and resource allocation to improve mediation services.

Then, a national case management system provides mediation organisations, especially those with limited resources, access to support software for efficient case handling. It includes case tracking, scheduling, document management, and reporting, enhancing operational efficiency and effectiveness.

The system can incorporate robust security features to safeguard sensitive mediation data, ensuring confidentiality, integrity, and privacy. This instils trust among mediation organisations, parties and lawyers, creating a secure environment for resolving disputes through mediation.

Another reason is that such a system promotes collaboration and information sharing among mediation organisations. It facilitates the exchange of knowledge, experiences, and resources, fostering a learning culture and continuous improvement within the mediation ecosystem.

By implementing a national case management system, mediation services become more accessible to the public. The system can provide user-friendly interfaces, information, and resources, increasing public awareness about the benefits of mediation and encouraging its utilisation as a dispute resolution method.

A comprehensive CMS can establish accountability mechanisms for the Mediation Council and mediation organisations by creating transparent, accessible, and efficient grievance mechanisms. It allows for effective monitoring, oversight, and performance evaluation, supporting the compliance with standards, regulations, and ethical guidelines.

Finally, a national case management system can be integrated with the e-Court system, enabling the tracking and analysis of cases filtered through mediation before reaching litigation. This integration provides valuable insights into the effectiveness of mediation in reducing the burden on the court system. The experts' team noted that the IT department of the Ministry of Justice is in permanent contact with the Mediation Council to strengthen the digital integration of mediation with the e-Court system.

4.2. Features and functionalities of a case management system

A case management system should have several goals and capabilities/modules supporting their implementation:

- Creation of an Electronic State Register of Mediators
 - o Goal: administer online the entire accreditation process of mediators, mediation organisations, training entities and trainers and publish online the four rosters for easy consultation of the public;
 - o Structure:
 - The back-end for the Mediation Council;
 - The back-end for mediators, mediation organisations/providers, training entities and trainers;
 - The front-end for users;
 - o Note: This module can be similar to the ones developed by the Italian Minister of Justice <https://mediazione.giustizia.it/>, or the Romanian Mediation Council <https://www.cmediere.ro/mediatori/>.
- Creation of a national case management system (CMS) (can be released in different phases)
 - o Goal: facilitate the submission of mediation requests by users, develop a nationwide standard case management system starting with a unique number for each case, gather statistics in real-time and create the possibility for further integration with the e-Court system;
 - o Structure
 - The back-end for the Mediators and Mediation Organisations
 - The back-end for the Mediation Council (limited access to consolidated data)
 - Front-end of registered users.
 - o Note: This module can be similar to the one developed by the Italian Minister of Justice <https://mediazione.giustizia.it/>. The goal for Azerbaijan is to automate the process and provide the information in a simplified manner about each case for which there is already a unique entry, based on the unique number. It will

be important for the CMS to be interoperable and to ensure future integration with other modern services/platforms (such as electronic payment systems, document management applications, etc.). Mediation organisations may develop, at their initiative and expense, different and, eventually, more advanced case management platforms. Such provider-specific platforms shall be designed so as to be able to "communicate" with the national CMS and exchange with it the data needed for monitoring and statistics.

- Redesign or improving the website of the Mediation Council.

4.3. The implementation of a case management system for mediation

We include below a possible phased Process of Implementation for a Case Management System in Azerbaijan:

Phase 1: Registry Module Development

Duration: 4-6 months

- Develop a registry module for mediators, mediation organisations, trainers, and training organisations.
- Create a back-end system for the Mediation Council to manage the registry information.
- Establish a back-end system for mediators, mediation organisations, trainers, and training organisations to update their information.
- Design a user-friendly front-end interface for users to access and search the registry.

Phase 2: National Case Management System Development

Duration: 8-12 months

- Create the case management system to include at least a basic-level CMS. Advanced functionalities like case tracking, scheduling, document management, reporting, automatic generation and visualisation of current and periodic statistical data could be implemented considering available resources or their implementation could be postponed partly or in full to the next stage of the development of such system.
- Develop a back-end system with administrator's rights and functionalities for the Mediation Council with its capacities (without assistance of the developer/programmers) to manage the entire case management system/platform.
- Create a back-end system for mediators and mediation centers to handle electronic filing and case management.
- Design a user-friendly front-end interface for registered users to access the case management system and interact with their cases.

Phase 3: Website Redesign and Improvement

Duration: 3-4 months

- Redesign or improve the existing website of the Mediation Council to align with the new case management system.
- Enhance the website's usability, accessibility, and information architecture.
- Update the website's content to provide comprehensive and up-to-date information on mediation services, regulations, and resources.

- Incorporate user feedback and usability testing to optimise the website's performance and user experience.

Throughout the implementation process, it is important to:

- Conduct thorough testing and quality assurance at each phase to ensure system functionality, security, and reliability.
- Provide comprehensive training and support to mediators, mediation organisations, and users on effectively utilising the case management system.
- Collaborate with stakeholders, including the Ministry of Justice, mediators, mediation organisations, trainers, and users, to gather feedback and make iterative improvements to the system.
- Ensure compliance with data protection and privacy regulations throughout the development and implementation phases.

By following this phased approach, implementing a case management system in Azerbaijan can be completed within an estimated 15-22 months, resulting in an efficient and effective system for managing mediation processes, facilitating transparency, and enhancing accessibility for all stakeholders involved.

4.4. The current system for case management in Azerbaijan

4.4.1. The first solution. Website and online module for the first mandatory session.

Within the previous efforts⁹ to support the implementation of the newly adopted legal framework for mediation based on the first mandatory session, a website and an initial platform were created for the Mediation Council. The activity resulted in creating of a website for the Mediation Council to keep the online Mediators Register. The website also includes information about mediation, mediation organisations and mediation training organisations, to be visited by the public.

The mediation legislation required keeping the register of the mediators. It is the Mediation Council's role to manage the register of mediators and to make it publicly available on the Council's website. Given the proximity of entering into force of the new legal provisions related to the first mandatory session, the goal was to develop a solution that would immediately make information about mediators and mediation organisations publicly available to the public on the Council's website.

Additionally, a module was developed to allow users to apply easily for the first mandatory session and to facilitate public access to real-time statistics on mediation. Hence, this module allows mediation providers to receive cases online, which was particularly useful in the Covid period. The intention was for the Mediation Council to be able to track the status of cases, monitor the platform, and understand the consequences of the establishment of the new opt-out mediation model in Azerbaijan.

The module was developed to be based on a unique number for every mediation request, in order to provide real-time access to reliable data that accurately reflects the qualitative and the quantitative impacts of the first mediation session in Azerbaijan, including the impacts

⁹ See the Final report of the EU funded project “Strengthening the institutional capacity of the Ministry of Justice of the Republic of Azerbaijan in introducing Alternative Dispute Resolution mechanisms and provision of legal aid services to the population”, Framework Contract SIEA 2018 – Lot 3

concerning the court system. The module was supposed to have an inclusive architecture to allow further adaptations and developments, for example, a case management system for mediators and mediation organisations that could be further connected to the e-Court platform.

The feedback received from the Mediation Council about this first system used was negative, as per the summary below:

- The system was implemented for four months but created several issues. For example, the cases would frequently disappear from the system, causing difficulties in tracking them. Mediators could only access the case number from the system, leading to incomplete information.
- The responsibility for the portal was transferred from an IT company after six months, which required payment for its delivery. The closure of this platform was necessary due to mediators abusing it to sell certificates, and there were technical difficulties to track and immediately stop such illegal activity without modification of the system.
- The system lacked proper registration, reporting, and historical case tracking during the initial 4-month period. Obtaining necessary information from the mediators was challenging.
- The system was integrated into gov.az after obtaining it from the company that developed it initially, but its functionality as a service lacked efficiency.
- Disputes arose with lawyers who could not locate their filed cases within the system. Multiple cases were assigned the same case number, causing confusion.
- The access of mediators to the system was eventually closed in January 2022. It is still used only for the registry of mediators.

4.4.2. The second solution. Cancelling the online module for the first mandatory session and switching to data monitoring through Google Spreadsheets.

Given the difficulties in using the first online module for generating the certificates for the first mandatory session, the Mediation Council cancelled the system and created a cloud-based platform to collect statistics. Hence, a Google spreadsheet was developed to collect information from other spreadsheets shared with every mediation organisation. The data collected was consolidated in a master Google spreadsheet accessible only by the Mediation Council, for it to consolidate statistical information about mediation.

The following information is collected, as shown by the representatives of the Mediation Council in the meeting with the Council of Europe team organised on 19 June 2023:

- A: Date of registration
- B: Case number
- C: Name of the plaintiff
- D: Name of the second party
- E: Territory / Location
- F: Type of dispute (family, labor, commercial)
- G: Legal ground for dispute (requirement of the law, court referred, voluntary, contractual)
- H: Reasons for the dispute (object, e.g., family/division of property, not classified – the mediators can type in the reasons)
- I: Name of the mediator (typed manually)
- J: If the mediator was chosen by the organisation or by the parties
- K: Result (upon the completion of the work), as follows:

- a. **Certificate on non-participation at the preliminary mediation session** (no show at the first session; no information about which party did not attend and why).
 - b. **Certificate on discontinuation of the process after the preliminary mediation session** (both parties attend the first mediation session and are not in agreement to initiate a mediation; no other information is collected, for example on the participation of lawyers, or the reason behind parties’ decision to not go ahead with the full mediation process).
 - c. **Protocol on the termination/suspension of the process** (someone applied, but no payments and no parties attend the first session) an estimated 6-8% of the cases. The same document is issued in full cases that do not settle.
 - d. **Denial/refusal to use mediation** (no termination certificate issued – case closed) – no data gathered in terms of the reason, e.g., cannot communicate with the requesting party anymore; lawyers often get temporary SIM cards and do not use them anymore, and one cannot contact them through the registered contact details – an estimated 10% of the cases.
 - e. **Settlement agreement** (one or both parties apply for mediation, notifications, participation in the first session, go ahead, tri-lateral agreement to mediate signed, settlement agreement prepared, signed.)
- L: End date of the mediation

The experts noted that this system is not the most appropriate, nor sustainable because many mediators do not have sufficient computer skills (some even deleted the information pre-filled in the Google spreadsheets shared with the Mediation Council). In addition, this reporting system is not automatised and still require time-consuming manipulations.

4.4.3. The Mediation Council is developing a new CMS

The representatives of the Mediation Council informed the CoE experts that a new Case Management System is being developed with the financial support in the form of sponsorship from an economic entity. Although the terms of reference or detailed technical specifications have not been shared with the authors of this report, the current version of the platform was presented in the meeting organised on 19 June 2023 by the Mediation Council representatives.

The platform will include an electronic mediator office (e-kabinet) that can be accessed by users with and without registration:

- Without registration
 - Phone, FIN code, and birthdate (it is possible to match the phone with the FIN code). The birthdate is an additional requirement for security reasons.
- With registration (ASAN login – integrated)
 - The Ministry of Digital Development and Transport has provided an information space. A migration process occurs between the ASAN and the Mediation Council platforms. After finalising it, the Mediation Council will be able to connect to the Governmental system. The goal is to give mediators access to people's data. The experts have expressed a concern about this specific feature of the platform.

Based on the FIN code or Tax ID, there may be different types of users:

- Individual citizen;
- Mediator;

- Mediation organisation;
- Staff member of the Mediation Council;
- Lawyers – can log in and file cases for their clients.

The mediation organisation (the Mediation Council!) will know if a person applies for him/herself, a lawyer applies for a client, or a third party (employer applying for employees – labor mediation).

Scanned copy of the invitation to be submitted – the experts and the Mediation Council representatives discussed the automatic generation of the invitation and the need to print and scan, which is counterintuitive for a digital, paperless system. According to the Mediation Council representatives, the current legislation does not allow the mediation invitation to be sent electronically via regular email.

After the in-country mission, the Mediation Council shared a document with more information about the platform with the CoE team. The document includes more of a list of tasks and screenshots than technical specifications of the platform.

Additional comments from the experts:

- The fact that the Mediation Council’s system will be connected to the governmental system and that mediators will supposedly have access to citizens' personal information and companies' data creates a concern regarding the protection of personal or other confidential data. There may exist hidden reasons behind some of the requesting parties' applications for mediation. What if the requesting party's goal is to find out the address of the responding party? The main concern here is sharing the personal detail of one party with the other party without specific permission to do so. (One example is a case mediated by one of the experts where the responding party did not want their home address shared with the requesting party because of previous record of violence. In that case, the agreement to mediate did not include that party's home address but the office address of their attorneys).
- A serious source of concern will be for the personal information related to any case to be known by anyone beyond the parties, their lawyers, the mediator and the case manager designated. A case file may include personal details, important documents, commercial secrets, and sensitive information that, if accessible to non-authorized persons, can create embarrassment or damage. Not even other mediators within the mediation organisation, nor the Mediation Council should have access to such information. This can become a significant security breach.
- Finally, it is noted that, to be effective, the mediation statistics registered by the new system should offer, at minimum, the following information:
 - **Case Information:**
 - Case identification number or reference (unique per country);
 - Date and location of mediation session (online, in person, hybrid);
 - Nature or type of dispute (e.g., commercial, family, labor);
 - Parties involved (natural or legal persons, representation status) – no personal data;
 - Mediator(s) assigned to the case (names, credentials);
 - Duration of the mediation process.
 - **Mediation sessions:**
 - Requesting party attended (yes/no); assisted by a lawyer (yes/no);
 - If not attended, the reason for not attending (if known);
 - The responding party attended (yes/no); assisted by a lawyer (yes/no);

- If not attended, the reason for not attending (if known);
 - Number and duration of mediation sessions;
 - Outcomes of mediation sessions.
 - **Case Outcomes:**
 - Agreement reached (yes/no);
 - Type of resolution (e.g., settlement, partial agreement, withdrawal);
 - Disposition of unresolved issues (e.g., referred to arbitration, court).
 - **Mediator Information:**
 - Mediator qualifications and credentials
 - Number of cases mediated;
 - Success rate (percentage of cases resulting in agreement);
 - Areas of specialisation or expertise;
 - Feedback or reviews from parties involved.
 - **Parties' Feedback:**
 - Satisfaction levels of the parties with the mediation process;
 - Feedback on the mediator's performance;
 - Suggestions for improvement.
 - **Demographic Data:**
 - Gender, age, and other relevant demographic information of the parties;
 - Diversity statistics related to mediators (e.g., gender, ethnicity, language).
 - **Trends and Analysis:**
 - Total number of cases handled by the mediators or mediation organisations;
 - Success rates across different types of disputes;
 - The average duration of mediation;
 - Comparison of mediation outcomes with other dispute resolution methods (e.g., litigation, arbitration);
 - Cost-effectiveness analysis (when possible).
 - **Quality Assurance Data:**
 - Results of quality control checks or audits;
 - Compliance with professional standards and ethical guidelines.
- It is important to note that the specific data collected may vary depending on Azerbaijan's legal framework, cultural context, and the goals of the Mediation Council. Regularly collecting and analysing this data will provide insights into the effectiveness of mediation, identify areas for possible improvement, and support evidence-based decision-making in regulating and supervising the mediator profession.

5. RECOMMENDATIONS FOR FURTHER IMPROVEMENT OF DATA COLLECTION AND DIGITALISATION OF THE MEDIATION SYSTEM

The focus of the current report is digitalisation and statistical reporting of the mediation system. Therefore, the following recommendations are limited to these two topics and are aimed mainly at the advancement of the mediation system of Azerbaijan in these two fields.

5.1. Improving the legal framework for mediation

Recommendations related to the legal framework on the statistical reporting, monitoring, and evaluation practices:

- 5.1.1. It is advisable to review the adaptation and integration of the CEPEJ Baseline Grid for Mediation Key Performance Indicators (Baseline Mediation Statistics) into the Mediation Law, bylaws and/or operation rules or normative decisions of the Mediation Council on the statistics and monitoring system, to establish clear rules by which this Baseline Grid would be followed in practice. The experts strongly advise to ensure that the application of the Baseline Grid is aligned with international conceptions on various mediation performance indicators, enabling proper data comparison and conformity to internationally recognised ways of defining and calculating of mediation KPIs. The Mediation Council and the Ministry of Justice are encouraged to have a constructive discussion on the need to monitor additional indicators (on top of those listed in the Baseline Grid) in mediation statistics and agree on clear formulas of their calculation, corresponding to internationally recognised practices;
- 5.1.2. The functions and obligations of mediation organisations and individual mediators in the field of statistical reporting and ensuring correctness and timely provision of relevant data, respecting the principle of confidentiality, could be described more precisely in the Mediation Law, bylaws, or normative decisions of the Mediation Council;
- 5.1.3. The functions of the Ministry of Justice in field of aggregation of statistical data and monitoring of the mediation system, as well as the coordination of activities of the Ministry of Justice and the Mediation Council could be regulated in more detail by the Mediation Law;
- 5.1.4. Stipulations as to increasing the transparency of the mediation system by publication of up-to-date statistical data, including on the Internet, that would reflect baseline mediation KPIs, could be improved. Current provisions of the Mediation Law (Art. 20.1.7., 20.1.8., and 20.1.15) do not specify ways of making data public and its accessibility to the general public. There is also no clear indication what particular data on mediation performance indicators should be made public. In order to increase the transparency and the quality of reporting, these aspects might be clarified, ensuring easy and free of charge access to the public via Internet to up-to-date and historical data on main mediation KPIs;
- 5.1.5. The Mediation Council, in coordination to the other policy makers (including the Ministry of Justice) and stakeholders, should design and promote clear procedures and rules on statistical reporting to ensure uniformity and synchronisation of collection of statistical data and its reliability. It is recommended to prepare instruction by the Mediation Council to be followed in data reporting stipulating what particular data should be calculated, when exactly information should be submitted, who should do it, how specific data should be associated with identified periods of

reporting. The experts recommend to describe/explain in the same document the concepts of particular mediation performance indicators that are monitored and fix formulas of their calculation corresponding to international practices of defining and calculating mediation KPIs.

Recommendations related to the legal framework on the digitalisation of the mediation system:

- 5.1.6. The concept of “digital by default” could be integrated into the Mediation Law, expressly legalising digital form of mediation related documents (applications to start mediation, agreements to mediate, mediated settlement agreements, certificates regarding the outcomes of mandatory mediation, etc.), and exchange of data/information between mediators, parties, their representatives, mediation organisations, the Mediation Council, and other mediation stakeholders;
- 5.1.7. The online mediation services, including mediation sessions by videoconferencing could be also promoted by the Mediation Law through establishing their main preconditions and particularities.

5.2. Enhancing monitoring, evaluation and reporting practices

It is advisable to:

- 5.2.1. Enhance the coordination between the Mediation Council, Ministry of Justice, and other main mediation stakeholders aimed at: (i) determining of the main KPIs for Azerbaijani mediation system and proper adaptation of the CEPEJ Baseline Grid for Mediation Key Performance Indicators (Baseline Mediation Statistics); (ii) reaching an agreement on reliable statistical data reporting, accumulation, and aggregation procedures and practices (at least in fields where the cooperation of Mediation Council and Ministry of Justice is necessary to aggregate mediation related data arriving from mediation system and from courts); (iii) establishing the formats, frequency, and sources of publication and dissemination of mediation statistics;
- 5.2.2. Mediation related data collection and public statistical reporting should be sufficient to understand the end result of processing of mediation applications and reveal causes of unsuccessful mediation processes;
- 5.2.3. Technology should be used as much as possible for collection, aggregation of statistical data, and generation of statistical reports. Manual work should be reduced to minimum.

5.3. Strengthening the Case Management System

It is rather difficult to provide precise recommendations on the development of the new CMS that is being produced under aegis of the Mediation Council having only very limited information on it. The experts were not provided with its technical specifications, technical design. Demonstration of functionalities of the system was done only in very limited scope due to incomplete status on the system under production at the time of the field mission. Therefore, the experts could offer the following recommendations of more general nature, that could help accomplish the development of CMS with success:

- 5.3.1. In 2021 CEPEJ adopted the Guidelines on electronic court filing (e-filing) and digitalisation of courts¹⁰. These guidelines could be used *mutatis mutandis* to designing, production, and maintenance of other systems in dispute resolution

¹⁰ Available on internet at <https://rm.coe.int/cepej-2021-15-en-e-filing-guidelines-digitalisation-courts/1680a4cf87>.

field, such as mediation CMSs. We suggest that the Mediation Council and the developer of the new mediation CMS familiarise themselves with these Guidelines and try to follow their tips and advises;

- 5.3.2. If technical specification with description of main functionalities of the new CMS was not yet prepared and confirmed by the Mediation Council, we suggest to do it in close cooperation with the developer and mediation organisations, before finishing the designing and programming of the system;
- 5.3.3. Due to limited financial resources allocated to the creation of the mediation CMS, we advise to set priorities for the implementation of some CMS modules first, and continue with further expansion of the system after successful deployment of the first priority modules. Such modules that we would advise to set as a priority would be: (i) register of mediators and mediation organisations; (ii) statistical data collection and public reporting; (iii) digital mediation applications, electronic mediation filing (e-filing), and digital communication between parties and mediator; (iv) automated generation of main electronic standardised documents related to mediation; (v) digital authentication and digital signing of e-documents. Other functionalities could be developed and launched at later stage;
- 5.3.4. The use of electronic signatures for authentication and e-documents signing purposes should be integrated into the new CMS and promoted. If necessary, legislative amendments should be proposed by the Ministry of Justice to legalise such a use of digital signatures and equal value of digital documents signed by qualified digital signatures;
- 5.3.5. We recommend that representatives of mediation organisations, mediators, and lawyers as counsel of users of mediation should be included in the development and testing of the new mediation CMS;
- 5.3.6. Data protection, “digital by default”, non-discrimination, fairness, equality of arms and other fundamental guiding principles applicable to the digital dispute resolution platforms¹¹ should be respected in further designing and implementation of the new mediation CMS.

5.4. Improving digital infrastructure and support for the Mediation Council and mediation organisations

- 5.4.1. It shall be welcomed that the Mediation Council makes efforts to design a new mediation CMS and start the digitalisation of the system. Unfortunately, at this rather early stage of mediation system development, the Mediation Council’s financial resources and administrative capabilities are still limited. The same goes to the mediation organisations that are also a new phenomenon in Azerbaijan. To ensure sustainability of the mediation digitalisation efforts and proper results, it is recommended that the central government commits to the provision of assistance, financial, and administrative support in the process of designing and for the maintenance of the mediation CMS and of other digital mediation infrastructure (both hardware and software).

5.5. Continuous Professional Development for individual mediators and staff of mediation organisations

- 5.5.1. It became apparent during the on-site meetings that the general level of digital and technological literacy of potential users of the new mediation CMS is not very high. The experts identified that there is strong reliance on paper-based documents and communication. On the other hand, the new CMS is being built as a tailor-made platform, therefore it may have specific instructions and *modus operandi*. In order

¹¹ See pages 4-6 of the Guidelines on electronic court filing (e-filing) and digitalisation of courts.

to achieve better results in the course of deployment of the new mediation CMS, it is recommended to organise trainings for the users of the new CMS, on the general use of various applications and technologies (incl. AI) in mediation practices, digitalisation, e-signatures, and e-documents,

- 5.5.2. For the achievement of better results related to mediation statistical data reporting, aggregation, and better understanding of mediation performance KPIs, it is also advisable to conduct trainings in this field for persons involved in data collection, management, analysis, compilation of reports, and mediators,
- 5.5.3. Such topics should be integrated into the continuous professional development programs for mediators and mediation organisations, that should be conducted periodically for refreshment of knowledge and updates on new developments.

5.6. Promoting and expanding online mediation services

- 5.6.1. It is recommended to promote use not only of the new mediation CMS, but also of other available technologies that might help to manage mediation processes more efficiently. Namely, the use of videoconferencing via widely-spread platforms could be fostered. Communication via emails, WhatsApp, Viber and other popular chat channels could also be integrated for reduction of time and costs.
- 5.6.2. The Mediation Council could take a lead to harmonise relevant practices and issue a recommendation or guide on the use of such tools in mediation¹² in compliance with principles of confidentiality of mediation, data protection and other.

¹² In 2021 the Council of Europe issued the Guidelines of the Committee of Ministers of the Council of Europe on online dispute resolution mechanisms in civil and administrative court proceedings (available on internet at https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=0900001680a2cf96), and in the same year the CEPEJ adopted the Guidelines on videoconferencing in judicial proceedings (available on internet at <https://rm.coe.int/cepej-2021-4-guidelines-videoconference-en/1680a2c2f4>). Both these guidelines can be applied *mutatis mutandis* to the use of online technologies in mediation as well. We suggest to take them into account when developing any new rules or recommendations in the Azerbaijani context. New guidelines are being developed by the CEPEJ on online ADR with an aim to adopt them in December of 2023. We advise to familiarise with them, after their adoption, and to consider their implementation in Azerbaijan in the future.

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APPENDIX I: Participants and agenda of the mission “Digitalisation of the mediation system in Azerbaijan”, conducted on 19-21 June 2023

Council of Europe Experts:

1. **Rimantas Simaitis** (International mediation expert, Lithuania)
2. **Constantin Adi Gavrilă** (International mediation expert, Romania)

Council of Europe staff members

3. **Leonid Antohi** (Project Coordinator, European Commission for the Efficiency of Justice (CEPEJ), Council of Europe)
4. **Vafa Rovshanova** (Senior Project Officer, CEPEJ, Council of Europe Office in Baku)

Summary of the meetings:

1. Monday, 19 June 2023

a. Meeting with the Mediation Council

Venue: Mediation Council (Sport Plaza)

Participants:

Mr. Nadir Adilov, Chairman of the Mediation Council

Ms. Fidan Alasgarova, Head of department of public relations

Mr. Kamil Latifov, Head of department of work with mediators and mediation organisations

Mr. Ziyad Mammadov, Head of department of innovations

Mr. Agamir Aslanli, Senior developer

b. Meeting with Baku mediation organisation # 14

Venue: Green Plaza, 4th floor, office 404

Participants:

Mr. Geray Mammadtaghiyev, Head of Baku mediation organisation No 14

2. Tuesday, 20 June 2023

a. Meeting with the Mediation Organisation #9

Venue: Mediation organisation # 9, Bayil Settlement

Participants:

Ms. Leyla Nasibova, Head of Baku mediation organisation # 9

Mr. Yunis Nasibov, mediator

Mr. Farhad Mehdiyev, mediator

Ms. Sabira Shikhaliyeva, mediator

Mr. Ilham Farzaliyev, mediator

Mr. Arzu Jabbar, assistant

b. Meeting with the Ministry of Justice

Venue: Ministry of Justice

Participants:

Mr. Ilgar Mammadov, Head of the General Department of Services in Justice

Mr. Agakarim Samadzade, Head of Information Technology and Innovation Department

Ms. Leyla Barkhudarzada, Group leader at the General Department of Services in Justice

Mr. Aslan Hajiyev, Head of Unit of work with non-governmental organisations

c. Meeting with Sumgait mediation organisation # 1

Venue: Mərkəz Plaza, Sumgait city

Participants:

Mr. Etibar Hasanov, Head of Sumgait mediation organisation # 1

Ms. Narmin Isayeva, clerk

d. Working dinner / Coordinating meeting

Participants:

Mr. Leonardo D'Urso, World Bank International Mediation Expert