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Report

"Improving the regulation of mediation training providers and recommendations on minimum standards for the initial training programme for mediators in Azerbaijan"

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I. Introduction

Mediation as an alternative dispute resolution method has developed and strengthened in Europe in recent years. It is largely recognised as a way to deal with a wide variety of cases by saving time and resources for both judicial systems and court users. Also, it ultimately aims at reducing the workload in courts, thus making the whole judicial system more efficient.

In 2007, the CEPEJ has set up a working group on mediation (CEPEJ-GT-MED) to develop tools and guidelines based on the Recommendations of the Committee of Ministers of the Council of Europe concerning mediation.¹ CEPEJ-GT-MED developed Guidelines for a better implementation of the existing Recommendation concerning mediation in penal matters, the Guidelines for a better implementation of the existing Recommendation concerning family and civil mediation and the Guidelines for a better implementation of the existing Recommendation on alternatives to litigation between administrative authorities and private parties.²

These Recommendations and Guidelines have been used through CEPEJ cooperation activities but also directly by member states. In 2016, CEPEJ decided to reactivate the CEPEJ-GT-MED with two main objectives:

- to assess the impact of the Guidelines and Recommendations in the member states,
- to complete and support the Guidelines and Recommendations, potentially with new tools.

From 2017 to 2019 CEPEJ-GT-MED drew up a wide array of concrete tools and documents that might help key actors in mediation in setting up and fostering mediation. CEPEJ continues its work in the field of mediation.

This report focuses mainly on how to set and maintain efficient and quality mediators' training schemes, harmonise minimum training standards for initial mediation training and ensure adequate number of well-trained mediators in Azerbaijan. Thus, limited in scope, it does not constitute a full and comprehensive overview of all matters pertaining to mediation in the country. The report includes references to relevant CEPEJ documents, especially Guidelines on Designing and Monitoring Mediation Training Schemes, adopted in 2019 (hereafter referred to as "Guidelines"), and Basic Mediator Training Curriculum, adopted in 2018, and recommendations contained in European Handbook for Mediation Lawmaking, adopted in 2019. References have also been included to good practices in member states, insofar as they may be used as guidance on key issues. While chapter II deals with possible solutions relating to the regulation of mediation training providers, Chapter III. concerns minimum standards for the initial training course for mediators in Azerbaijan.

The report has been prepared by international consultants Nina Betetto and Maria Oliveira.

¹ Recommendation Rec(98) 1 on family mediation, Recommendation Rec(99) 19 concerning mediation in penal matters, Recommendation Rec(2001) 9 on alternatives to litigation between administrative authorities and private parties, Recommendation Rec(2002) 10 on mediation in civil matters.

² Available at <<https://www.coe.int/en/web/cepej/cepej-work/mediation>>.

II. Regulation of Mediation Training Providers

1. Approaches to Regulating Mediation

From a global perspective, four primary approaches to regulating contemporary mediation can be identified, presented on a scale of increasing institutionalisation.

A market approach regulation is evident in much of the early life of mediation, before collectively organised and more formalised approaches to regulating mediation emerged. Despite the increased institutionalisation of mediation, a market-contract approach in relation to high-end commercial disputes continues to flourish in several jurisdictions (e. g. US). Here parties choose to opt out of certain co-existing regulatory systems such as default legislation in order to tailor the terms and conditions of the mediation to their individual needs.

Self-regulation refers to collective, community and industry led regulatory initiatives. In their purest form self-regulatory approaches refer to community-based initiatives embracing collaborative, consultative and reflective processes, as distinct from top-down policy regulation. It means that mediation actors in a collective or group can have the opportunity to identify issues, reflect upon them and negotiate their own solutions. Instruments of self-regulation in the mediation field include approval and practice standards, and model clauses. In many jurisdictions mediator approval and/or mediation practice standards have been developed on a sector-by-sector basis by court mediation programmes, employer bodies of mediators, and service providers. In the absence of a supra-national government and judiciary it is the preferred method for regulating transnational mediation.³ The perceived benefits of self-regulation are numerous.⁴ Participants in the regulatory process are experts with an intimate and sensitive knowledge of the needs and interests of the regulated group and its various constituents. Self-regulation promotes innovation and choice in terms of the determination of the self-regulatory mix and is generally more flexible, adaptable, and responsive than more formal regulatory forms. Legitimacy of the area subject to regulation and conformity with the regulation itself are also enhanced through the participatory nature of self-regulatory approaches. Self-regulation is also associated with reduced costs in relation to information collection, reduced monitoring and enforcement and less formality compared with legislative regulation. The primary risks associated with self-regulatory approaches relate to resource levels in terms of available expertise and funding. Effective processes require sustained input by key interest groups, communities, and governments. Where levels of industry and expert input weaken, self-regulatory structures lose their efficacy, and more government-directed input may be justified. In addition, self-regulatory schemes may be susceptible to dominance by individuals and groups which do not reflect the broader interests.

The Civil Mediation Council (CMC)⁵ is the most prominent illustration of national self-regulation on an industry basis in England and Wales. CMC is the recognised authority for all matters related to civil, commercial, workplace and other non-family mediation. It is the first point of contact for the Government, the judiciary, the legal profession, and the industry on mediation issues. The CMC is a not-for-profit company limited by guarantee and operates as a charity. It has more than 400 members

³ The private cross-border self-regulatory mediator accreditation initiative of the International Mediation Institute (IMI) is a case in point.

⁴ See N. Alexander, *Mediation and the Art of Regulation*, 8 QUT Law & Justice Journal (2008), p. 7.

⁵ See <https://civilmediation.org/>.

and provides major conferences and forums. CMC operates an accreditation scheme for organisations that provide mediation services. Registered membership is open to mediators and mediation providers.⁶ The main requirements for registration are: 1) successful completion of an assessed training course; 2) current mediator experience; 3) adherence to an acceptable ethical code (e.g. the EU Model Code of Conduct for Mediators); 4) professional indemnity insurance cover; continuing professional development; and 5) a published complaints procedure. The Ministry of Justice, even though it has been very engaged in promoting ADR and raising awareness of mediation in general public, does not administer a national roster of mediators neither it is mandatory to be registered to be a mediator. However, the Ministry has used the CMC accreditation scheme as a mark of quality assurance.

The Family Mediation Council (FMC) is CMC's counterpart in the field of family mediation. FMC, made up of five autonomous members (the College of Mediators, the Law Society, the Family Mediators' Association, National Family Mediation, and Resolution), regulates family mediators and represents the profession in talks with government and other professional bodies. It functions through the member organisations, and with lots of support from volunteers (many of whom are not practising mediators) and from paid staff. The FMC is dedicated to promoting best practice in family mediation by maintaining a register of mediators; setting standards for the training and professional practice of registered mediators; ensuring that the standards it sets are met; providing advice and information about mediation; and by representing the profession with government and other organisations. Only mediators registered with the FMC are permitted to sign the mediation page of family court forms.

In the *formal framework approach*, initially formal parameters or guidelines are established within which the mediation community can 'self-regulate' various aspects of mediation. As such the formal framework approach represents a meeting of top down and bottom-up regulatory approaches. The framework usually takes the form of legislative or executive instruments, such as international conventions, directives, legislation and model laws within which softer forms of regulation such as voluntary self-regulation can fill in the regulatory details. The EU Directive 2008/52/EC on Certain Aspects of Mediation in Civil and Commercial Matters⁷ illustrates this approach well. It defines mediation thereby establishing its scope and then goes on to identify the aspects of mediation that require regulation by EU member states.

Formal legislative approach regulation relies primarily on legislation supported by formal institutions, such as the judiciary, to regulate mediation. Formal legislative strategies on mediation represent a strong endorsement of mediation by the state and go a long way towards its formal recognition as a legitimate dispute resolution practice and as a profession. While delegation of discretion is possible in the legislative process, it typically falls to state-funded regulatory agencies operating in accordance with government-approved policies. Therefore, the benefits of expertise typical for self-regulatory schemes may be lost in legislative process. Finally, top-down processes of statutory regulation are contrary to the very values of mediation, namely party autonomy and participation in democratic decision-making processes.

⁶ While mediators are third neutrals which help parties to reach settlement, mediation providers are legal entities (of private or public law) which offer ADR services for the resolution of disputes (e. g. Singapore Mediation Centre).

⁷ Available at [EUR-Lex - 32008L0052 - EN - EUR-Lex \(europa.eu\)](https://eur-lex.europa.eu/lexuri/ui.do?uri=EUR-Lex:32008L0052-EN)

As a general rule, in common law countries, a legislative framework has not always been seen as necessary for mediation to operate since the principles of confidentiality, without prejudice, and the enforceability of settlement contracts are well established in general law. In common law jurisdictions, mediation is included when the courts themselves update their civil procedure rules. In countries that operate under civil law, the situation is different. Experience in many of these jurisdictions suggests that for a number of reasons, it may be necessary to pass a law setting out the principles under which the relevant mediation process can operate before mediation is seriously considered by all stakeholders.

These four approaches to mediation regulation are not exclusive of one another. Virtually all jurisdictions have aspects of at least two regulatory approaches; jurisdictions with extensive mediation experience are likely to show evidence of all four. In Council of Europe member States, several countries (e. g. France, Germany, and Italy) have permitted service-providers and courts, at least to a certain extent, to develop their own self-regulatory schemes.

2. Regulation of Mediation Training Schemes – Comparative Perspective

Within some jurisdictions there may be a type of formal regulation of mediation training courses in place. This can take the form of self-regulation through a professional body, or direct regulation by the relevant government entity/ministry of justice. Where such external regulation exists, it provides minimum standards of training that can be applied objectively to all courses in any jurisdiction. It not only serves as a point of reference for new entrants to satisfy but also may help to raise overall standards of training. Either public or private (profitable or non-profitable) bodies may provide and be entitled to accreditation for mediation training courses.

The forms of regulation of mediation training schemes correlate strongly with the approach to regulating contemporary mediation shown above. The example from England and Wales illustrating a self-regulatory approach and the Austrian model based on formal legislative regulation are outlined below. Finally, the Georgian model representing a meeting of top down and bottom-up regulatory approaches is also presented.

As mentioned, the FMC is the recognised self-regulatory authority for all matters related to family mediation in England and Wales. In 2012, the FMC Review Final Report⁸ recommended that “there should be an independently organised system for the approval of all mediation courses and that such courses should be fully assessed with qualifications approved through external accreditation. The existing arrangements for self-approval within Member Organisations should be ended and new arrangements for external monitoring and assessment introduced as soon as possible. There is a role for the FMC to take forward this last recommendation by appointing an independent panel for the approval of courses and monitoring of their external validation and assessment.” Currently, following this recommendation, a person needs to take the following steps to become an accredited family mediator: 1) attend an FMC approved foundation training course; 2) join an FMC Member

⁸ John McEldowney, FMC Review Final Report
https://www.familymediationcouncil.org.uk/wp-content/uploads/2014/02/fmc_review_mceldowney_report.pdf.

organisation; 3) find a professional practice consultant (PPC)⁹; and 4) register with the FMC as working towards accreditation.

Relying primarily on legislation supported by formal institutions, in Austria, to be listed on the roster of mediators administered by the Austrian Ministry of Justice, candidates must fulfil the following criteria: submission of a written application; minimum age of 28 years; qualification as mediator; extract from police records or disclosure; professional liability insurance (minimum coverage 400.000 EUR); and information as to where the mediator will provide his/her services. Candidates will be considered qualified if: they have completed relevant training; display knowledge and skills in mediation; and have completed basic legal and psycho-social training. Training is considered 'relevant' if completed with registered training institutions, including universities. The Austrian Ministry of Justice keeps a list of those training institutions. The content of the training is laid down in the Austrian Code of Mediation in Civil Matters and in the respective bylaws.

The Georgian Association of Mediators (MAG) is a membership-based legal entity of public law established under Law on Mediation that ensures the self-regulation of mediators in Georgia. Members of MAG are the mediators registered with the Unified Register of Mediators.¹⁰ The Law on Mediation (article 14(6)) confers to MAG, among others, the power to grant the right to organise and provide a mediation training to an institution/organisation which meets the conditions established by a certification programme for mediators. Currently, there are six accredited mediation training organisations in Georgia.

3. Improving the Regulation of Mediation Training Providers in Azerbaijan

a. Background

The Law of the Republic of Azerbaijan on Mediation (hereafter referred to as "Law") contains different types of mediation provisions: 1) triggering mechanisms (e.g. compulsory initial sessions and judicial referral to mediation); 2) procedural provisions (e. g. about commencement and termination of mediation, as well as selection and appointment of mediators); 3) provisions setting out rights and obligations of mediation participants and outside parties, thereby protecting the integrity of mediation process (e. g provisions relating to confidentiality and enforceability of mediated settlements); and 4) standard-setting provisions addressing issues such as qualifications, competency standards for and certification or registration of mediators. The regulatory framework of (initial and continuous) training of mediators is supplemented by the Regulation on initial training and professional development of mediators, adopted by Decision of the Cabinet of Ministers of the Republic of Azerbaijan as of 5 September 2019.

⁹ A PPC is an experienced mediator who has full accreditation and has fulfilled a number of requirements set by the Family Mediation Standards Board. They work with mediators working towards accreditation to guide them through the process of producing their portfolio. One cannot gain accreditation without PPC. Mediators with accreditation retain links with their PPC and meet for a minimum number of hours per year and this in part enables them to remain accredited.

¹⁰ A legally competent natural person with no criminal record, who has completed a mediation training/training for mediators in accordance with a certification programme for mediators and who holds a certificate issued by the MAG, may be registered with the Unified Register of Mediators.

The Mediation Law, through the conferment of powers to conduct the registration of mediators, mediation organisations, and mediation training organisations (Law, article 20, 20.1.4., and article 15, 15.1.), lays the foundation for the Mediation Council's pivotal role in setting standards. According to art. 5.9 of the Mediation Council's Charter (Ministry of Justice registration No. 1120-QX10-0069, of 21 February 2020), the monthly membership fee for the Council is determined as 1,000 (one thousand) manats¹¹ for mediation training institutions. This means that entities intending to provide mediation training are obliged to register with the Mediation Council and to pay the onerous monthly fee for membership to the Mediation Council, as this membership is one of the conditions to be qualified as a mediation training institution. It goes without saying that mediation training institutions must invest in developing training programmes, ensuring acceptable material conditions for conducting training sessions, and remunerate mediation trainers, all these expenses being projected on candidates to become mediators or acting mediators wishing to improve their qualifications. Therefore, the above-cited regulation may be a serious impediment to improving and diversifying the mediation training offer in the Republic of Azerbaijan and it is recommendable to consider its capital review.

Currently, there is only one mediation training organisation in the country, namely the Justice Academy of the Ministry of Justice of the Republic of Azerbaijan. Given other important functions and target groups, the Justice Academy has limited capacities to conduct training sessions for mediators, which results in a long waiting list for candidates for basic mediation training. There seems to be the prevailing opinion that more mediation training organisations are needed.

b. Should There be an Accreditation of Mediation Training Providers and Training Courses

High-quality, comprehensive training for mediators is of crucial importance to the quality of mediation. A vague provision in some national legislations stating that mediators must undergo training for mediators is not enough to achieve this aim. European Handbook for Mediation Lawmaking encourages national legislators to ensure the quality of the training, with training providers being the cornerstone of training schemes. The quality of training can first be achieved via: 1) licencing the training providers or keeping the official list of training providers to ensure a high-level training of mediators; and 2) authorising training programmes.¹²

In line with the aforementioned recommendations, the consultants endorse the establishment of an independent accreditation body for the approval of all mediation training courses, preferably covering both training courses and training providers. These courses and providers should undergo a thorough assessment, with qualifications approved by the accreditation body. Assumably, the Mediation Council is best suited for this responsibility. It may either perform this task on its own or set up a specialised panel for this purpose, which would function with a certain degree of autonomy in its day-to-day activities. When setting the standards for training institutions and programmes, the Mediation Council is encouraged to consider the Basic Mediator Training Curriculum.

The Law lays the foundation for such a system (article 14, 14.5.) by defining the conditions for mediation organisations to be admitted to the Mediation Council in the capacity of a training provider. Given the strong connection between training and practice, it is welcome and in line with the CEPEJ

¹¹ The equivalent of 538,56 Euro according to the exchange rate of the Central Bank of the Republic of Azerbaijan on 19.10.2023 (<https://www.cbar.az>)

¹² European Handbook for Lawmaking, p., 47-48.

recommendation¹³ that training providers, according to the Law, are not precluded to function as mediation providers, to facilitate and support the participants' practice as observers or co-mediators after completion of the training modules.

It should be noted, however, that, at present, a system of registration, not a system of accreditation, of training providers seems to be in place in Azerbaijan. There are several arguments for favouring accreditation by an independent body like the Mediation Council over mere registration:

- Accreditation typically involves a more thorough and rigorous evaluation process compared to registration. An independent body like the Mediation Council is likely to set high standards for accreditation, ensuring that only those providers meeting stringent criteria receive approval.
- Accreditation often implies ongoing monitoring and evaluation. An accredited provider is more likely to be subject to periodic reviews, ensuring that they maintain the quality of their training programmes over time. This level of continuous oversight may not be guaranteed with a simple registration process.
- Accreditation by a reputable and independent body adds credibility to the training provider. The Mediation Council's endorsement signals to aspiring mediators and society as a whole that the provider meets recognised standards, enhancing trust in the quality of the training.
- Accreditation may involve requirements for ongoing professional development for trainers, ensuring they stay current with the latest developments in mediation. This focus on continuous improvement is crucial for maintaining the relevance and effectiveness of mediation training.
- Accreditation by an independent body ensures a consistent and uniform set of standards across various training providers. This consistency is essential for creating a cohesive and reliable framework for mediation training, which may be lacking in a system solely based on registration.

c. Quality Management

Apart from the accreditation system for training providers, quality management and independent monitoring measures should be applied to ensure that training providers maintain the necessary standards and continue to develop when the regulations or other circumstances require so.

Quality management in the context of mediation training involves systematic processes and practices *undertaken within training organisations* that ensure the continuous improvement and maintenance of high standards in the training provided, including:

- A well-defined and up-to-date **training curriculum** that aligns with international standards and best practices (see in detail in Chapter III.).
- **Trainer qualifications.** Ensuring that trainers are experienced and qualified mediators is crucial. The mediation training provider should have a robust system for selecting, training, and regularly assessing the performance of trainers. CEPEJ stresses that anyone seeking to act as a trainer should have successfully participated in a mediation training course and, where mediator registration is required in a jurisdiction, trainers should be registered mediators. The

¹³ Guidelines, p. 2.

requirement for a sufficient train-the-trainer training as a pre-condition to undertake their role¹⁴ also implies that only experienced mediators should act as trainers. Finally, the quality management includes ongoing professional development to keep trainers updated on the latest trends and methodologies in mediation. Given the benefits of trainers staying current with evolving mediation practices, CEPEJ recalls that trainers should deliver at least one basic mediator skills training course or refresher course every two years.¹⁵ The Law largely reflects these standards (article 14, 14.5.).

- **Participant feedback.** Gathering feedback from participants is a key aspect of quality management. This can be done through a number of activities regularly conducted within the training organisation, such as post-training evaluations, surveys, feedback sessions, or monitoring training sessions. Analysing this feedback helps the provider identify areas for improvement and ensures that the training meets the needs of the participants.
- **Complaints handling.** As an integral part of quality management, the provider should have a structured process for handling complaints concerning the quality of training, conducting investigations if necessary, and implementing corrective measures. In addition, for those courses that have an assessment element, there should be a clearly set out appeal process within the training organisation for participants who are not satisfied with the outcome of their assessment.

d. Independent Monitoring Measures

Independent monitoring in the context of mediation training refers to the processes of assessing and evaluating the quality, effectiveness, and adherence to standards of mediation training providers by an external, unbiased entity. The purpose of independent monitoring is to ensure transparency, accountability, and the maintenance of high standards pertaining to mediation training. Moreover, it helps ensure consistency in the quality of mediation training across different providers.

The Mediation Council or a special autonomous panel established by the Mediation Council for this purpose may be entrusted with this mandate. Independent monitoring measures may include, but are not limited to:

- **Training session monitoring:** Direct observations of training sessions to assess the effectiveness of the delivery and ensure that the content aligns with established standards and with the content of the accredited training course.
- **Satisfaction surveys:** In addition to gathering feedback from participants within a training organisation, satisfaction surveys among trainees may be periodically conducted by an external, unbiased entity. The information obtained can be used to assess the quality of different training providers and identify areas for improvement.
- **Documented reports:** Requiring regular reports from training providers ensures transparency and accountability. These reports could include details on the number of participants, trainers, training methodologies employed, and any changes made to the curriculum.
- **Appeals processes:** The Mediation Council or a panel under the auspices of the Mediation Council could serve as a second instance for participants dissatisfied with a training course or

¹⁴Guidelines, p. 15.

¹⁵ Guidelines, p. 15.

outcome of their assessment, provided they have exhausted the complaint procedure within the training provider.

e. Removal of Accreditation

Finally, a removal of the accreditation of a training provider or of a training course may occur as a result of the failure to continuously meet the requirements concerning mediation training schemes. To that end, clear grounds for removal of a mediation training organisation or of a course from the list should be established (e. g. one of the requirements of accreditation has ceased to be met, the training goals have not in principle been met, issued certificates are repeatedly grossly incorrect, or a training institution, despite warning, violates its obligation to report or if the sustainability of its activity is not guaranteed)¹⁶.

The decisions on removal of the accreditation should be reasoned and subject to an appeal procedure, possibly in an administrative procedure.

4. Recommendations

To meet the demand for mediation training in Azerbaijan, the operation of more than one training organisation is recommended. The accreditation of training providers/organisations by an independent body, such as the Mediation Council, may provide a robust and reliable mechanism for ensuring the quality and effectiveness of mediation training providers. To this end, the following may be considered:

- to establish an independent system for the accreditation of all mediation training providers;
- to identify and encourage entities with vocation and capacities to become mediation training providers and review the onerous Mediation Council membership fee for mediation training institutions;
- within such an independent system, to authorise training programmes by taking into account the Basic Mediator Training Curriculum and other recommendations set forth in this report (see Chapter III.);
- to apply quality management measures in regard to training organisations;
- to apply independent monitoring measures in regard to training organisations, conducted by an external, unbiased entity, possibly by the Mediation Council or an autonomous panel established by the Mediation Council;
- to set clear grounds for removal of a training organisation or of a course from the accreditation list as a result of the failure to meet the requirements concerning mediation training.

¹⁶ See The Republic of Austria, Law on Mediation in Civil Law Matters. Bundesgesetzblatt I Nr. 29/2003, article 28 (1).

III. Minimum Standards for the Initial Training Programme for Mediators in Azerbaijan

1. Introduction

The second part of this report presents the findings on the current situation of mediation training programmes and recommendations on the design of minimum standards for basic mediation training programmes in Azerbaijan.

It has been acknowledged that there is a need to improve training programmes and materials, duly adjusted to Azerbaijani cultural and social features. In fact, mediation principles and process, as well as the role of the mediator, sustain the mediation universal grounds, meaning that any mediator, anywhere in the world, must follow in his/her practice the principles, ethical duties, and the skills shared by all mediators regardless of their jurisdiction. However, a mediation training programme to be effective and fruitful, it must be tailor-made to meet the needs and characteristics of a given state and society.

For this purpose, the findings obtained during the “first advanced ToT for mediation trainers”, conducted in Baku, in October 2023, by the authors of the present report, are taken into account.

Likewise it is taken into account the legal framework in force, that is the Law of Republic of Azerbaijan on Mediation (hereafter referred to as the Law), in particular its provisions on training on mediation and the “Decision of the Cabinet of Ministers of the Republic of Azerbaijan as of September 5, 2019 which adopted the “Regulation on initial training and professional development of mediators” (hereafter referred to as the Regulation) which supplements the Law in defining “the training procedure for the initial training of persons who wish to become mediators, as well as the improvement of mediator’s qualifications”.

Pursuant to article 10.1.4 of the Law, the title of mediator is awarded to natural persons that, beyond other requirements, has completed training on mediator’s initial training programme and obtained the certificate issued by the mediation training organisation. Similarly, this organisation also issues certificates for mediators who have completed a requalification course.

The Regulation contains provisions on the initial training of mediators, namely:

“2.4. Training programmes of mediators consist of theoretical part (lectures), practical exercises, workshops and role plays.

2.5. Taking into account the practical nature of the activities of the mediators, the theoretical part should not constitute more than 40 percent of the total training.

2.6. The duration of the initial training on mediation in the curriculum should not be less than 48 hours, and the duration of the professional development training should not be less than 32 hours.

(...)

2.15. The number of students in training groups should not exceed 15 people.

(...)

3.2. During the exam, the mediator's theoretical knowledge is tested through an interview, and his (her) practical skills are tested through a mediation simulation.
(...)

3.4. The exam is held by the commission formed by the head of the training institution. The examination commission is composed of 3 people, consisting of a representative of the Mediation Council, a mediation training institution and an independent expert, and the decision is made by a simple majority of commission members through voting."

It is also worth considering the training programmes developed by the Justice Academy, in accordance with the above mentioned Regulation, that is the "Preliminary basic training programme for mediators" (from 01/05/2023 to 07/07/2023) aiming at "allowing the development of knowledge and mediation skills required for a mediator (hereafter referred to as the May 2023 Programme) as well as the "Training programme of the professional development course for mediators" (from 12/06/2023 to 25/06/2023) (hereafter referred to as the June 2023 Programme) (Annexes 1 and 2).

Both "Programmes" indicate that the topics on mediation principles and stages follow the ADR Centre's "Manual for Mediators" which, as understood, is a component of a package of training materials, which also includes videos and PPTs, most of them translated into the Azerbaijani language. These materials, developed with the support of international experts as part of an EU Project, have been adapted by national trainers for their follow up activities.

The May 2023 Programme consists of the initial training course and has a duration of 48 hours, while the June 2023 Programme concerns a course of professional development conducted once in two years with a duration of 32 hours.

The Justice Academy has also developed two specialised programmes, respectively, on family mediation training (from 24/01/2023 to 30/01/2023) and on labour mediation training (from 21/01/2023 to 28/01/2023) (Annexes 3 and 4).

However, this report does not focus on these specialised training programmes on labour mediation and family mediation since it is understood that they should be rethought only after the basic mediation training is completed, in order to enable their full compatibility and harmonisation.

The same insight applies to the "requalification of mediators" or "professional development training provided for in article 14.1. of the Law and related to the above-mentioned June 2023 Programme.

The "Final Recommendation Package & Action Plan", drawn up by Mr Leonardo D'Urso and published in October 2023 under the World Bank-funded "Judicial Services and Smart Infrastructure Project", suggest as follows in respect of new training materials and modules:

- "Deliverable 2.3.: Assist local trainers and training entities in developing new and innovative training materials".
- "Deliverable 2.5. Assist local trainers and entities in designing and offering advanced and specialised mediation training modules for existing mediators, including ethics (Continuous Professional Development)".

The "Guidelines" included in the CEPEJ "Mediation Development Toolkit" will be used as a work of reference for the development of the following topics: **course content, competency framework,**

course duration, general teaching approach, participant materials, setting up role plays, providing feedback, and performance assessment & accreditation.

Furthermore, other sources will be integrated, namely, the Academy to Innovate HR (AIRH) publication on the ADDIE (Analyse, Design, Development, Implementation and Evaluation) model and the Singapore International Mediation Institute (SIMI) Competency Framework for Mediators.

2. Mediation Basic Training Course Content

Pursuant to the “Guidelines” some topics are fundamental in any mediation skills training programme and must be covered. This is the case of those specified in the annex “Basic Mediator Training Curriculum”, as follows:

1. Knowledge Development

- 1.1. Conflict theory
- 1.2. Traditional settlement of disputes and mediation
- 1.3. Basics of mediation
 - 1.3.1. Basic principles of mediation
 - 1.3.2. Aims of mediation
 - 1.3.3. Indications and counterindications of mediation in assessment for suitability of cases
- 1.4. The main attributes of a mediator
- 1.5. Roles of the parties, their counsel and other participants in mediation
- 1.6. Styles of mediation
- 1.7. Stages of mediation
- 1.8. Legal framework
- 1.9. Interaction between mediators, judges, lawyers, mediation users and other mediation stakeholders
- 1.10. Main characteristics and differences of mediation in civil, penal and administrative matters

2. Practical Skills Training

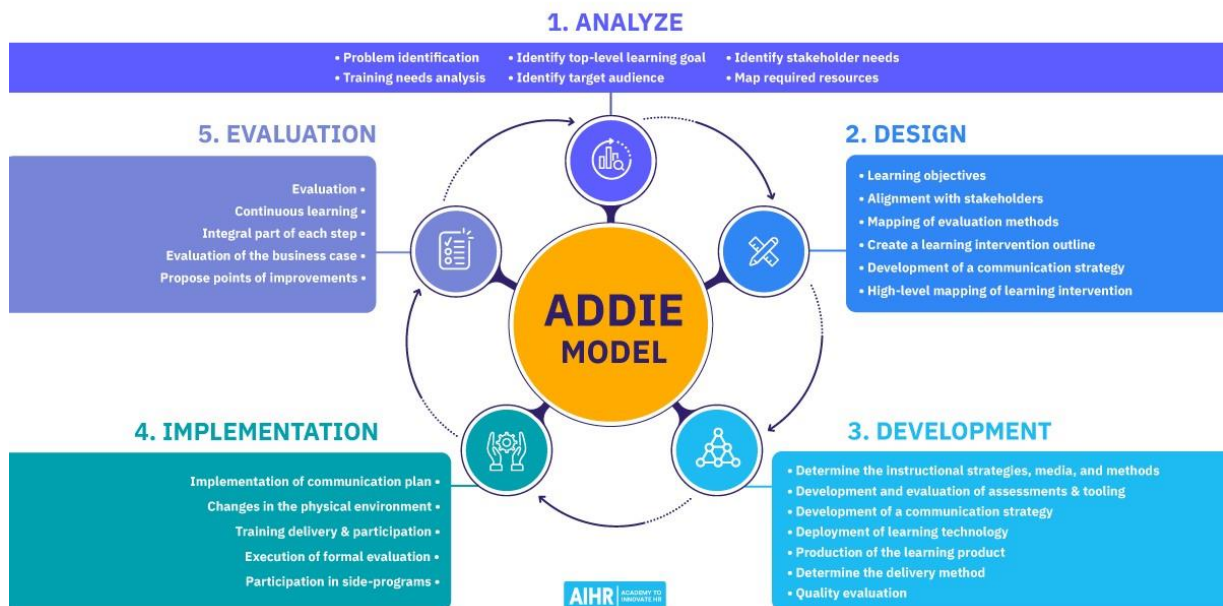
3. Peculiarities of Specialised Mediation Training - in Civil, Penal and Administrative Matters

In fact, as said, these topics sustain the mediation universal grounds and, as a consequence, mediation is rightly considered as an appropriated means of settling cross-border disputes even if co-mediation techniques are used and the mediators involved were trained in different states.

It is acknowledged, on one hand, that the content of the “Programme” in force tackles these topics supported by the “Manual” and which are fully in line with the CEPEJ and international curricula on basic mediation training. However, the above-mentioned Guidelines underline that training providers are allowed to be flexible “to include content in the course which meets the needs of their social, cultural and legal context as well as the ethos of their course.” However, apart from the chapter on Azerbaijani mediation legislation, it does not follow from the said Programme that those aspects have been included in the content, since they cannot be identified as such. Therefore, it is suggested that this aspect should be tackled in the course of the drafting process of a new Manual and training materials along with the national consultants.

In addition, it is highly recommended that an expert on curriculum development would be involved in the designing of the basic mediation training programme as well as in the drafting of a handbook.

Alternative and as a minimum, an instructional design tool, such as the ADDIE model shown below, could be used as a guide for this purpose.



Source: Academy to Innovate HR (AIHR) - Accessible at: <https://www.aihr.com/blog/addie-model/>

The ADDIE model consists of five phases: *Analyse*, *Design*, *Development*, *Implementation* and *Evaluation*. It will be briefly described, as follows:

In the *Analyse* phase, the process helps to identify the training needs, analyse and define learning goals, and ground the training on these findings. Questions such as “what do the participants need to know as a result of the training?”, “what are the desired learning outcomes in terms of knowledge levels, skills and behaviours of the participants?” and “what type of learning approach is preferred?” need to be discussed and answered.

In the *Design* phase, the information collated in the Analyse phase is translated into a learning design.

In the *Development* phase a prototype of the training course and materials are prepared and reviewed.

In the *Implementation* phase the training programme and materials are shared with the participants. The course curriculum, learning outcomes, method of delivery and testing procedures are covered. It may include training evaluation forms to facilitate the evaluation.

In the *Evaluation* phase the participants’ satisfaction with the training programme is researched and points of improvements are identified.

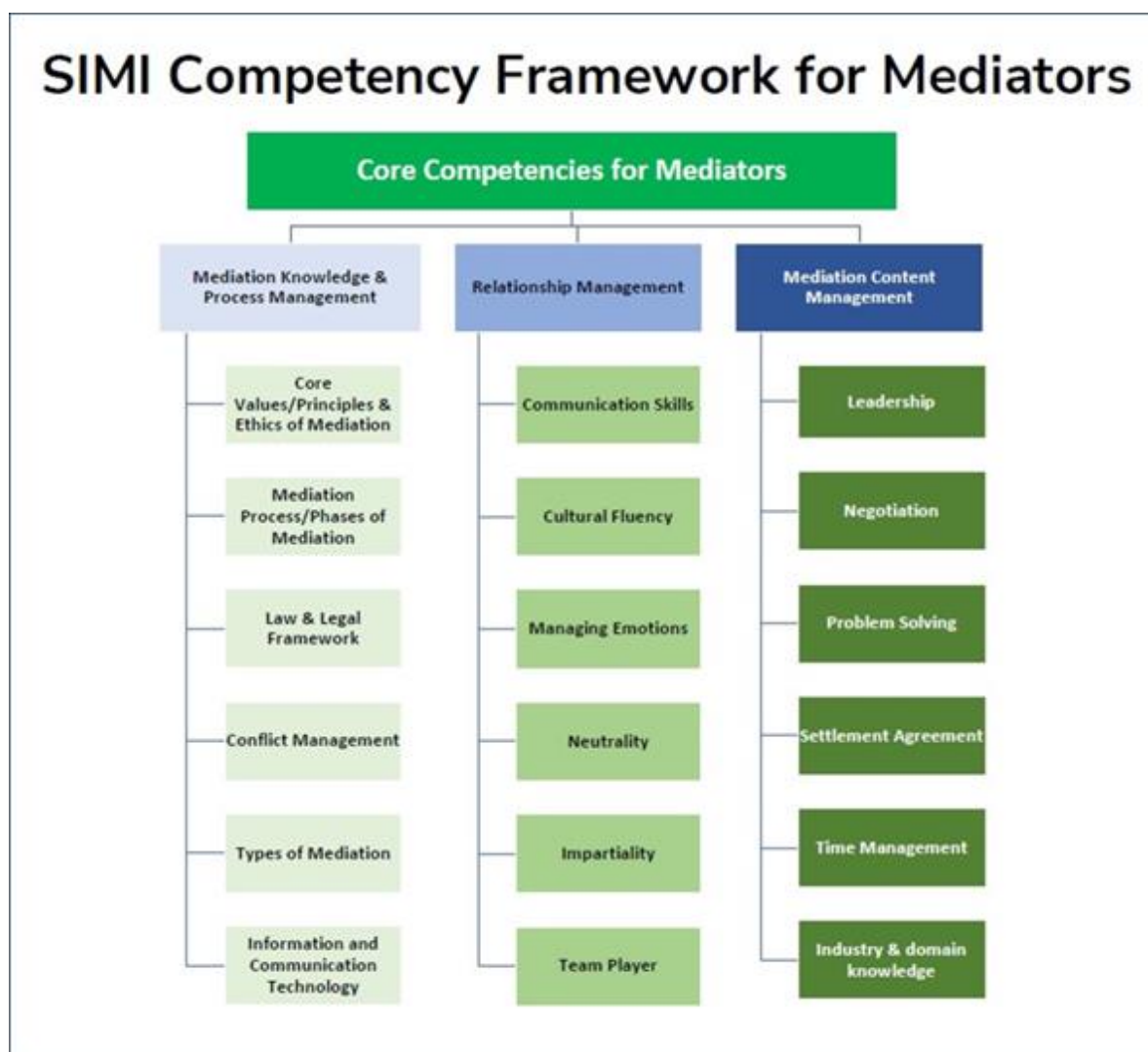
It should be emphasised that the development of the curriculum must be closely interconnected with the mediators’ competency framework, as described below.

3. Competency Framework

The “Guidelines” suggest that a competency framework shall be included into the training programme and used throughout the course to give clarity to participants as to what mediator competencies they should achieve (...) Accordingly, a training course must have a «competency framework» which clearly

and concisely sets out the core competencies that an effective mediator should possess. This framework should be consistent with the content and skills requirements of the course.”

The SIMI – Singapore International Mediation Institute, provides a sample of “competence framework for mediators” covering three main aspects: “Mediation Knowledge & Process Management”, “Relationship Management” and “Mediation Content Management”, as follows:



Source: SIMI – Singapore international Mediation Institute accessible at <<https://www.simi.org.sg/What-We-Offer/Mediators/The-SIMI-Competency-Framework-for-Mediators>>

The purpose of this comprehensive framework is to mount and communicate the three main aspects of the mediator’s activity: skills and behaviours, ethics, and processes to be followed as detailed above.

4. Training Course Content & Mediators’ Competency - Proposal

Having in mind the above issues on training content and mediators’ competency, the following structure for the training course, associated with each competency, is suggested:

Introduction	Topics	Competency
	Trainers’ Guide	

	Sources	
Content		
Module 1	Core Values/Principles & Ethics of Mediation Main attributes of the mediator	Ability to understand and to apply the core values and benefits of mediation. Ability to understand the differences between mediation and other forms of ADR. Ability to understand the ethics of mediation (self-determination, impartiality, confidentiality, etc) Ability to understand who the mediator is and the distinction between the mediator and other similar professions
Module 2	Traditional settlement of disputes and mediation	Ability to understand the differences between the traditional settlement of disputes such as arbitration and adjudication and mediation.
Module 3	Conflict theory and management	Ability to understand the conflict cycle and management techniques, the distinction between a conflict and a dispute and the differences between positions and interests.
Module 4	Basic principles and aims of mediation	Ability to understand the basic principles of mediation (v. g. voluntariness, confidentiality, impartiality of the mediator, parties' control over the process, equality)
Module 5	Styles/Types of mediation	Ability to understand different styles of mediation (evaluative, facilitative, transformative). Ability to understand court-annexed and opt-out (mandatory) mediation
Module 6	Assessment for suitability of mediation	Ability to understand and assess the suitability of mediation in a given case.
Module 7	Mediation Process/ Stages of mediation	Ability to understand and manage the 5 stages of mediation: preparation, opening, exploration, negotiation and closing.
Module 8	Relationship management/Practical skills	Ability to understand and demonstrate communication skills, such as active listening, reframe, rephrasing and empathy. Ability to facilitate communication. Ability to cultivate an environment of safety and trust. Ability to understand and demonstrate fair treatment and equal opportunities for the parties.
Module 9	Negotiation	Ability to understand Harvard negotiation principles and techniques. Ability to understand BATNA (Best Alternative To a Negotiated Agreement), WATNA (Worst Alternative To a Negotiated Agreement) and ZOPA (Zone Of Possible Agreement).

Module 9	Problem solving	Ability to identify issues, interest and formulate an agenda. Ability to assist the parties to problem solve and make decisions with the use of open-ended questions to generate options and reality test the options
Module 10	Law & legal framework	Ability to understand the mediation legal framework
Module 11	Remote mediation	Ability to understand the use of technologies in remote mediation sessions
Module 12	Roles of the parties, their counsel and other participants in mediation	Ability to understand the roles of the parties, their counsel and other participants in mediation
Module 13	Interaction between mediators, judges, lawyers, mediation users and other mediation stakeholders	Ability to understand the role of different stakeholders in mediation, namely court referral to mediation and lawyers' counselling and accompanying their clients in mediation
Module 14	Main characteristics and differences of mediation in civil, labour, family, penal and administrative matters.	Ability to understand the existing main differences of mediation in different types of conflicts and their consequences
Module 15	Peculiarities of specialised mediation training - in civil, labour, family, penal and administrative matters.	Ability to understand the need of specialised training on mediation in different types of disputes, such as civil, penal, family, administrative matters, etc.

Source: The SIMI Competency Framework for mediators <<https://www.simi.org.sg/What-We-Offer/Mediators/The-SIMI-Competency-Framework-for-Mediators>> adapted

Having in mind other factors, such as the decision about the training duration or other relevant aspects presented by national experts and grounded in their experience, some modules might not be included, such as modules 12 to 15. The consultants wish to point to the primacy of the practical component, namely, interactive activities, practical exercises, and role plays.

5. Course Duration

As suggested in the “Guidelines”, “for a course to cover adequately the necessary content using appropriate methodologies, courses should have a substantial number of training hours being no less than 40 hours (...) bearing in mind that these trainings are only intended to train people to a base level of mediator competence.” However, as mentioned in the “Guidelines”, a number of training hours higher than 40 is desirable.

It is understood that, currently, the duration of the basic training course in Azerbaijan is 48 hours. However, this issue should be discussed with the practicing trainers to better understand the needs and in order to make a realistic proposal that harmonises minimum duration requirements and the learning demands.

6. General Teaching Approach

As pointed out in the “Guidelines”, the purpose of the training courses is the preparation of the participants to practice mediation, therefore they “should be participatory, interactive and learner focused.” Therefore, it is suggested that “a variety of teaching methodologies should be used, including lecturing, videos, interactive exercises, individual work, group discussion, talking in pairs and role-playing”. Furthermore, the “Guidelines” recommend that only approximately 10 % of time should be allocated to i) lecturing/knowledge input and presentation, the remaining time being devoted to ii) exercises and discussion and iii) role-playing, coaching and feedback, in the proportion of 40 % and 50 %, respectively.

In fact, this understanding is commonly accepted among training providers, particularly in cases, such as in Azerbaijan, where the initial training certification awarded by the mediation training organisation is the only educational requirement related to mediation learning.

Conversely, in other states, besides the initial training, to become a mediator the candidates must fulfil other requirements, namely, demonstrate initial practice and passing an exam.

7. Participant Materials

The “Guidelines” suggest that comprehensive materials should be distributed in advance of a course which include:

- Course handbook/workbook
- Supplementary materials such as general instruction for role plays
- Mediation rules and procedures as well as relevant legislation
- Academic articles and textbooks

Furthermore, bibliography should be included to assist participants to develop their knowledge and encourage research.

It is understood that the developing of a manual for initial training on mediation and training materials are a component of the current project denominated “Fostering mediation in Azerbaijan”. This issue has been tackled throughout this report and acknowledged as the key activity in the following stage.

8. Setting Up Role Plays

The “Guidelines” state that “role plays are used for participants to practice the wide range of mediation skills in a simulated environment and also for participants to have the benefit of feedback and coaching from an experienced mediator, acting as a coach.” In fact, role plays are crucial in the learning process, enabling the participants to practice mediation skills across the multiple stages of the process.

The “Guidelines” provide very detailed instructions about designing role plays covering the following main aspects:

- Maximum number of six persons for a two-party mediation.
- Mediation time slots within role plays should be of a minimum of 45 minutes.

Furthermore, it is important to understand that the role plays must match the needs of the course.

In designing new role-plays, it is advisable to keep the scenario succinct and make the story credible. References to children's stories, scenarios and characters could be an option to raise participants' interest. Roles should be created with diverse backgrounds, emotional/physical/economic/cultural, etc. Details should be kept confidential to each player to encourage realism in the role-playing.

Source: adapted from <http://learningdesigns.uow.edu.au/guides/info/G1/Downloads/TipsDesRolePlay.pdf>

9. Providing Feedback

The "Guidelines" underline the educational importance of feedback in mediation training courses and, therefore, "training programmes should provide opportunities for feedback to participants". It is acknowledged that feedback should be delivered using a "competency framework" and trainers "should be trained in delivering effective feedback".

The "Guidelines" suggest that there are different methods to deliver feedback: "group coaching during a role play", "private one-to-one feedback following a role play" and "written feedback on a participants' performance".

Giving feedback must comply with certain guiding principles, such as:

- Starting with the positive aspects, mentioning what went well.
- Giving examples of the strong and weak aspects of the participants' performance.
- Focusing on the things that can be changed, inviting suggestions on improvement.

It is recommended that a model form is developed to facilitate feedback, both by the participants and trainers to facilitate this process and harmonise the criteria.

10. Performance Assessment and Accreditation

The "Guidelines" point out that "if the course is designed to assess, certify, or accredit a participant as having the necessary skills and knowledge to mediate a dispute competently, then it must contain an actual assessment of the participants' mediator competence, as compared to its own competency framework. It is also mentioned that there are two different aspects to be considered: competency assessment, founded in candidates' performance in practical exercises and role-plays and mediation knowledge that could be assessed through a written or verbal test or through pre or post course assignments.

Pursuant to the Law on mediation, the natural person who wants to get the title of mediator must complete training on mediators' initial preparation programme and obtain a certificate issued by the mediation training organisation. However, the Law omitted to provide details in regard to candidates' assessment, though this aspect is of crucial importance and must be duly discussed and evaluated.

In addition, if in the future other mediation training providers are accredited, beyond the Justice Academy, it is highly recommended to harmonise the training standards by means of the adoption of a model training course and accreditation system.

11. Modules Sample

A module sample to be used in handbook writing process is shown below:

<p>Module X</p> <p>Aim</p> <p>The aim of this module is to</p> <p>Learning outcomes: at the end of this module the participants will be able to:</p> <ol style="list-style-type: none"> 1. 2. <p>Teaching strategies: e. g. lectures, video, discussion, PPT, paper, cards, group work, discussion, group exercise, etc</p> <p>Materials: e. g. video, PPT, etc</p> <p>Duration : x hours</p> <p>Activities/Exercises</p> <p>Activity 1:</p> <p>Activity 2:</p> <p>Etc...</p>
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12.Recommendations

Topics	Recommendations
Course content & Competency framework	The drafting of a course content must be intertwined with the writing of competency framework, in line with CoE/CEPEJ instruments
Course duration	The course duration must be adjusted to training requirements, having in mind the current training needs. However, the time allocated to practical exercises must be of approximately 90%
General teaching approach	A variety of teaching methodologies should be used. The drafting of the handbook must include samples of videos, exercises, role plays, etc to assist trainers to draft new materials or use existing ones.
Participant materials	A new mediation course handbook must be drafted, including supplemented materials. CoE/CEPEJ mediation instruments must be a part of these materials.
Setting up role plays	A certain number of role plays must be drafted and included in the handbook as well as guidelines on drafting roleplays and assessment of participants.

Providing feedback	A model form must be developed to facilitate feedback from participants and trainers.
Performance assessment & Accreditation	A model of performance assessment & accreditation must be developed jointly with the Mediation Council to harmonise training and accreditation requirements.

13.Roadmap

