

Mediation on the rise in Turkey

Eda Cerrahoğlu Balssen (pictured, left) and Sezin DüNDAR (pictured, right) of Cerrahoğlu discuss the legal requirement for mandatory mediation in commercial disputes

Turkey was introduced to mediation in 2012 with the adoption of Law No. 6325 on Mediation in Legal Disputes (Mediation Law), which regulates the mechanism of voluntary mediation.



After implementing voluntary mediation for almost six years, in 2018, Turkey extended its mediation practice to include mandatory mediation on commercial disputes. The Law on Legal Procedures to Initiate Proceedings for Monetary Receivables arising out of Subscription Agreements (Law No. 7155) amended the Turkish Commercial Code and the Mediation Law incorporating new articles regarding mandatory mediation in these two codes¹. Consequently, as of 2018, mediation is a prerequisite for initiating a commercial lawsuit in Turkey, including in disputes with a foreign element.

In accordance with the new Article 5/A of the Commercial Code, parties shall apply to a mediator before initiating legal action for the commercial lawsuits stated in Article 4 of the Code or the commercial lawsuits referred to in other codes in which there is a request for compensation or payment of a certain monetary amount. The mediator will complete the mediation procedure within six weeks as of the date of their appointment. This term can be extended up to two weeks under certain necessary circumstances.

An exception to the rule is, according to Paragraph 18 of Article 18/A of the Mediation Law, mandatory mediation will not apply if it is regulated in special laws that arbitration or other alternative dispute mechanisms will apply to a dispute or there exists an arbitration agreement between the parties. Therefore, the parties who wish to eliminate the application of mandatory mediation provisions may conclude arbitration agreements. At this point it should be mentioned that the Istanbul Arbitration Centre has issued Mediation-Arbitration Rules and gives the parties the opportunity to benefit from these two alternative dispute mechanisms in one contract if the parties accept the implementation of the Med-Arb Rules.

Turkey signed the United Nations Convention on International Settlement Agreements Resulting from Mediation (the Singapore Convention) on 7 August 2019. Turkey is among 51 states that signed the Singapore Convention, including the US, China and India². None of the signatories have ratified the Singapore Convention yet. At least three signatories should ratify the Singapore Convention in order for the convention to come into force.

Turkey ratified the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention) in 1991 and has established a very strong jurisprudence on international arbitration since then. However, it is not easy to foresee whether the Singapore Convention would be as successful as the New York Convention for Turkey or whether it would be an important tool for Turkish international trade. Nevertheless, it is certain that the entering into force and application of the Singapore Convention would facilitate mediation as an important alternative dispute mechanism in Turkey.

1. Mandatory mediation has been applied since 2017 for certain labour law disputes in accordance with Article 3 of the Law on Labour Courts.

2. The UK, Switzerland and EU countries have not signed the Singapore Convention on Mediation.