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GENERAL GROUNDS

In recent years, the legislators of many countries are occupied with the resolution of disputes with alternative dispute resolution methods. Instead of the resolution of the disputes by means of law suits, resolution of the disputes with reconciliation of the parties with their own wills is preferred with respect to the preservation of social peace. The comprehensive and efficient functioning of such methods will contribute to the attenuation of the workloads of the courts.

The alternative dispute resolution methods are not in competition with the judicial system, nor the aim is to abolish the means to have recourse to judicial methods. The aim is the simpler and easier resolution of the disputes, without impairing the absolute sovereignty of the state's judiciary power.

There are many methods concerning the resolution of disputes by means of reaching an agreement. Mediation is one of these methods. In 2002, the Model Law on International Commercial Conciliation was prepared by United Nations Commission on International Trade Law (UNCITRAL). This regulation aims the laws concerning mediation to be prepared by United Nations' member countries be as uniform as possible. As of 1998, efforts were also initiated within the European Union for the resolution of disputes by means of reaching an agreement. At the European Union Summit organized on October 15-16, 1999 in Tampere, the member states were invited to create extrajudicial alternative methods with respect to better access to justice in Europe. The Green Book prepared in 2002 as the result of these efforts aims at determining the principles concerning mediation, which is one of the alternative dispute resolution methods. Thus, the aim was to raise awareness about the alternative dispute resolution methods that will provide better access to justice, to carry out the legislative activities on this course and to give political priority to alternative dispute resolution methods. Access to justice is a fundamental right secured under article 36 of our Constitution and under article 6 of European Convention on Human Rights. By means of the alternative dispute resolution methods, the parties are included in the reconciliation process, and reach a conclusion depending on their own wills. From this aspect, the alternative dispute resolution is a means provided by the state to the individuals for the resolution of the disputes apart from judicial power. Although it may be considered that the parties may at any time resolve disputes by reaching an agreement and by benefiting from the mediation of the third parties, the State is required to make regulations on this matter as well.

The Proposal in 2004 for a Directive of the European Parliament and of the Council on Certain Aspects of Mediation in Civil and Commercial Matters contains provisions concerning mediation

in civil and commercial matters. This Proposal for a Directive aimed at the simpler and easier resolution of disputes by reaching an agreement instead of the difficult and complex legal and administrative systems in the member states, with respect to the protection and provision of the right within the European Union. In this process, laws concerning alternative dispute resolution were adopted and executed in European Union member states.

The alternative dispute resolutions are being adopted also in the fields of criminal jurisdiction and administrative jurisdiction. However, since the nature of and the mediation methods for the disputes concerning private law are different, it was considered that it would be convenient to regulate these separate from the criminal and administrative disputes. On the other hand, although the inclusion of such a regulation in the Code of Civil Procedure could be considered, it was concluded that regulating these principles in a separate law instead of including them in a general law would be a more convenient approach. In fact, mediation in countries such as Austria, Germany, Bulgaria, Hungary and Slovakia is regulated with special law.

The alternative dispute resolution methods are not limited. There are alternative dispute resolutions suitable for every country and their sociological facts. However, mediation is the most common and most successful method among the alternative dispute resolution methods. Therefore, the Draft Law prepared is related with mediation. The mediator is a third person that the parties select with agreement. The mediator does not make a decision at the end of the mediation process, but aims at resolving the dispute with scientific methods, establishing communication between the parties.

The judge may direct the parties to a mediator, or the parties may resort to this method by themselves before filing a law suit. Regarding the resort to a mediator, different methods have been adopted in various countries. In some countries, resort to a mediator is completely left to the will of the parties. The regulations in France, Belgium, Austria, Bulgaria and Hungary are on this course. Another system is encouraging the resort to mediation. This is the case in Spain, Italy and United Kingdom. A third system is obliging the parties to resort to a mediator before filing a law suit. For some disputes, this method is adopted in Germany and Greece. Since mediation is a voluntary process, it was adopted in the Draft Law that the parties shall resort to this method with their own wills and without any persuasion.

Among the aims of the Commission for the Draft Law on Civil Procedure, which was formed upon the Minister’s approval dated January 27, 2004, carrying out studies on this matter was included. Although various studies were carried out during the preparation of the Draft Law on Civil Procedure, a separate Commission was formed by the Ministry of Justice upon the Minister’s approval dated February 01, 2007 due to the importance of the matter and in order to

discuss and consider the matter for a longer period. Chaired by Prof. Dr. Hakan PEKCANITEZ (Galatasaray University, Academic at Faculty of Law), the Commission consisted of Hakkı DİNÇ (Head of Second Legal Circuit of Supreme Court of Appeals), Mehmet KILIÇ (Member of Eleventh Legal Circuit of Supreme Court of Appeals), Harun KARA (Member of Thirteenth Legal Circuit of Supreme Court of Appeals), Hasan Yeni (Head of Union of Turkish Public Notaries), Niyazi GÜNEY (Ministry of Justice, General Director of Laws), Prof. Dr. Süha TANRIVER (Ankara University, Academic at Faculty of Law), Prof. Dr. Erdal TERCAN (Ankara University, Academic at Faculty of Law), Attorney Cengiz TUĞRAL (Member of Board of Directors of Union of Bars of Turkey), Assoc. Prof. Dr. Halûk KONURALP (Bilkent University, Academic at Faculty of Law), Assoc. Prof. Dr. Ali Cem BUDAK (Yeditepe University, Academic at Faculty of Law), Assoc. Prof. Dr. Muhammet ÖZEKES (Dokuz Eylül University, Academic at Faculty of Law), Yüksel Hız (Ministry of Justice, Department Chairman at General Directorate of Laws), Yusuf Solmaz BALO (Ministry of Justice, Department Chairman at General Directorate of Laws), Zekeriya YILMAZ (Ministry of Justice, Department Chairman at General Directorate of Laws), Dursun GENEL (Judge of Ankara 4th Family Court), Assis. Prof. Dr. Murat ATALI (Gazi University, Academic at Faculty of Law), Dr. Ali YEŞİLIRMAK (Koç University, Lecturer at Faculty of Law), Osman ÇALIŞKAN (Ministry of Justice, Investigating Judge at General Directorate of Laws), Bahadır YAKUT (Ministry of Justice, Investigating Judge at General Directorate for European Union), Hatice KARA (Ministry of Justice, Investigating Judge at General Directorate of Legal Affairs), N. Şükran ÖZKAN (Ministry of Environment and Forestry, Legal Counsel), Ömer ELMAS (Turkish Union of Banks, Member of Board of Legal Counsels), Mustafa DÖNMEZ (Union of Chambers and Commodity Exchanges of Turkey, Member of Disciplinary Board), Umut KOLCUOĞLU (representative of Turkish Industrialists' Businessmen's Association), and Eray Akdağ (representative of Turkish Industrialists' Businessmen's Association).

The Green Book about Alternative Procedures Concerning Resolution of Disputes in Private Law and Austrian Federal Law Concerning Mediation in Legal Disputes, Germany's Baden Würtenberg Reconciliation Law effected in 1999 and Bavaria's Law on Compulsory Alternative Dispute Resolution in Private Law adopted in 2000, Hungary's Law of Mediation, and Bulgaria's and Slovakia's Laws of Mediation adopted in recent years were considered in the preparation of the Draft, as well as UNCITRAL's Model Law and European Union's Proposal for Directive. Besides these documentary sources, meetings were held at various occasions with specialists from countries such as the United States of America, the United Kingdom, Italy, Spain and Canada; and convening with specialists and practitioners from countries such as Germany, the Netherlands and Austria, the developments in comparative law were monitored.

In order to support the mediation process, a regulation needs to be made regarding the periods in material law. For this purpose, it was accepted that mediation process should not be considered in the calculation of lapses of time or foreclosures.

In order for the mediation activity be concluded successively and to trust in this resolution method, the mediator primarily has to be independent and impartial.

Mediators have to get a good training. It was accepted that the institutions, which will deliver training on this matter, may train mediators provided that they possess the required conditions and obtain permission from the Ministry of Justice.

The information accessed by the parties and the mediator throughout the mediation process has to be kept confidential. The documents and information submitted by the parties during the mediation process can not be used as grounds before other judicial authorities, for example at courts and in arbitration. The reason for this is to build confidence in the mediation activity and to prevent unfavorable use of the compromises made. The courts may not demand such documents and information, either.

Due to the importance of the role of mediator in the resolution of the dispute and in order to render the mediation method reliable, it was accepted in the Draft that only trained mediators recorded in the register may act as mediators.

Considering the special importance and burden of the duty that the mediator undertakes within the process, special provisions are introduced in relation with the selection, qualifications, rights and liabilities of the mediator. For the same purpose, recording the mediators in a register, supervising the mediators and, when necessary, deleting mediators from the register, were also included.

In case an agreement is reached at the end of the mediation activity, the parties may issue an agreement document. If so desired, the parties may apply to a enforcement court and obtain a commentary of enforceability for such document. For the enforcement court be able to issue such a commentary, it has to determine that the dispute resolved by means of agreement arose from an affair on which the parties may freely have a disposal and that it is suitable for compulsory execution with respect to its contents. The agreement document, to which a commentary of enforceability is thus issued, shall be considered as a document with the force of a verdict.

The resolution of disputes by means of mediation will become a generally accepted alternative

dispute resolution method in time. Therefore, it is primarily necessary to introduce the community the resolution of disputes by means of mediation, and to explain its positive aspects. This will be carried out by the Department to be established within the structure of the Ministry of Justice. With this regards, it is very important for the Department to hold meetings at international level, to monitor the implementation, to suggest the necessary legal amendments and to carry out surveys and statistical studies.

In order to promote mediation, it was accepted that the agreement document signed by the parties be subject to fixed stamp duty and fees.

In order to carry out the mediation activity harmoniously, a separate organization is planned, and such organization is included in the structure of the Ministry of Justice. In this frame, the main duties related with mediation are left to the General Directorate of Legal Affairs of the Ministry, and the establishment of a separate Department is foreseen for the mediation activities. Besides this, a separate Mediation Board will be formed with the representatives from various institutions and agencies, in order to provide participation in the activity to be carried out and objectivity.

LAW ON MEDIATION IN CIVIL DISPUTES

CHAPTER ONE

Purpose, Scope and Definitions

Purpose and scope

ARTICLE 1- (1) The purpose of this Law is to regulate the principles and procedures applicable in resolving civil disputes by mediation.

(2) This Law shall be applied in private law disputes, arising solely from the affairs or actions on which the parties may freely have a disposal, including those possessing the element of alienage. However, disputes containing domestic violence are not suitable of mediation.

Ø Recommendation No. R (2002) 10 of the Committee of Ministers to Member States on mediation in civil matters a. II. 2; Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters a. 1-2; UNCITRAL Model Law on International Commercial Conciliation a. 1; Uniform Mediation Act (USA) a. 3; Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence a. 48.

Ø Directive on Law on Mediation in Civil Disputes a. 1-3; Turkey Board of Mediation Model Code of Conduct and Practice Rules for Mediation System and Mediators, Preamble.

GOVERNMENT GROUND- With the regulation in this article, the kind of disputes for which and the conditions under which the concept of mediation will be implemented are resolved. First of all, the domain - in which the concept of mediation will become functional - is the private law

disputes, including those possessing the element of alienage. On the other hand, the said concept can be implemented not in all kinds of legal disputes, but only in the context of the disputes on which the parties may freely have a disposal, that is “the disputes which the parties can end by reaching an agreement”. Under these circumstances, it will not be possible to have recourse to mediation in resolving the disputes arising from the legal relations that concern public order and therefore do not allow the parties to have free disposal.

Definitions

ARTICLE 2- (1) In the implementation of this Law:

a) Mediator: shall mean the real person carrying out the mediation activity, who is entered in the register of mediators maintained by the Ministry;

b) Mediation: shall mean the method used for the resolution of disputes, employing systematic techniques, carried out voluntarily and with the participation of an impartial and independent third person with specialty training, bringing the parties together to discuss and negotiate, and establishing a communication process between the parties in order to help them to understand each other and thus enabling them to work out their own solutions;

c) Ministry: shall mean the Ministry of Justice;

ç) Department: shall mean the Department of Mediation to be established under the structure of General Directorate of Legal Affairs;

d) General Directorate: shall mean the General Directorate of Legal Affairs;

e) Board: shall mean the Board of Mediation;

f) Register: shall mean the Register of Mediators.

Ø Recommendation No. R (2002) 10 of the Committee of Ministers to Member States on mediation in civil matters a. I. 1; Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters a. 3; UNCITRAL Model Law on International Commercial Conciliation a. 2.

Ø Turkey Board of Mediation Model Code of Conduct and Practice Rules for Mediation System and Mediators, Definitions; Directive on Application of Conciliation Procedure According to the Code of Criminal Procedure a. 4.

GOVERNMENT GROUND- This article explains the meaning and context attributed to the concepts and institutions that are decisive with respect to the implementation of this Law. The meaning and context attributed to the concept of “mediation”, which holds a central position with respect to the implementation of the Law, are established by pointing out its basic differences from the concept of “reconciliation”. In the frame of this definition, mediation is a method for resolving disputes, which brings together the parties in dispute to discuss and negotiate, which facilitates the communication between the parties in order to help them to understand each other and thus allow them to “find their own solutions by themselves”, which is carried out with the contribution or participation of a third person who received specialist training and holds an independent, impartial and objective position, and which becomes functional with the voluntariness of the parties. In other words, the mediator can not make any decision about the dispute, nor he can suggest any resolutions to the parties. The mediator only facilitates the establishment of a communication between the parties by employing communication techniques in a systematic manner and contributes to the functioning and continuity of the dialogue process; and by creating a comfortable and free negotiation environment for the parties, s/he helps the parties to find their own resolutions at their own responsibility. In other words, the mediator does not aim at resolving the dispute by making a decision, s/he tries to create an

environment allowing the parties to renegotiate and reach an agreement by convincing and inspiring the parties. The mediator does not try to find who is right or who is wrong, s/he makes efforts to find a basis of agreement balancing the interests of both parties in the most suitable way, and thus to reach a resolution for the dispute.

The mediator determines the common points and grounds on which the parties can agree and makes efforts for the parties to reach an agreement on such grounds; s/he can not produce resolutions and impose them to the parties, or persuade the parties to agree any resolution proposal formulated. During the mediation negotiations, efforts are made to establish better communication between the parties, to help them understand the interests of each other and their common points by strengthening the communication, and to help them to produce and evaluate various resolution options that may become functional according to the concrete circumstance. The functioning of the mediation process and achievement of a result are completely dominated by the parties.

Another point that needs to be emphasized within the frame of definition of mediation is that the transmission – by the mediator to the other party – of a concrete proposal made by one of the parties for the resolution of the dispute can not be interpreted as the formulation and imposition of a resolution proposal by the mediator. A final point that has to be indicated in this frame is that the mediation process is a dispute resolution method which becomes functional completely on a discretionary basis from the beginning to the end, and which is implemented voluntarily.

CHAPTER TWO

Basic Principles Concerning Mediation

Voluntariness and equality

ARTICLE 3- (1) The parties shall be free to resort to a mediator, to continue or finalize the process, or to cease such process.

(2) The parties shall have equal rights, both in resort to the mediator and throughout the whole process.

Ø Recommendation No. R (2002) 10 of the Committee of Ministers to Member States on mediation in civil matters a. III. 5, IV. 12; Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters a. 5; Zivilrechts-Mediations-Gesetz (ZivMediatG) (Österreich) a. 2; UNCITRAL Model Law on International Commercial Conciliation a. 1; Uniform Mediation Act (USA) a. 2; European Code of Conduct for Mediators a. 3.2; 3.3.

Ø Directive on Law on Mediation in Civil Disputes a. 5; Turkey Board of Mediation Model Code of Conduct and Practice Rules for Mediation System and Mediators, a. 1; Directive on Application of Conciliation Procedure According to the Code of Criminal Procedure a. 5; Directive on Attorneyship Law a. 16.

GOVERNMENT GROUND- The most fundamental principles of dispute resolution by means of mediation are the principles of voluntariness and equality. These principles stem from the nature of the method of resolution of disputes by mediation. Voluntariness with respect to resorting to mediation and continuing and concluding the process outside the State’s jurisdiction makes this method successful. In addition, the process can be successful to the extent that the parties are equal and feel that they are equal when resorting to and continuing this process.

In the first paragraph, being voluntary for mediation is discussed. First of all, the parties have to

agree to resolve the dispute by means of mediation. It is not possible to include one or both of the parties in this process against their will. In order to resolve the dispute without applying to State's jurisdiction, the parties may be encouraged with legal regulations and in practice, and measures can be taken to make such resolutions attractive. Thus, some provisions on this course are included in this regulation. However, forcing the parties peremptorily to mediation is completely contrary to the nature of this method. The border between encouraging and forcing on this course has to be drawn well. Undoubtedly, the public – besides parties – benefits from preventing a party from persistently striving to continue a dispute and to complicate the resolution. Similarly, for the proceedings before the courts, some sanctions are envisaged against the parties which file mala fide law suits or behave contrary to the rule of honesty. However, imposition of such sanctions can not lead to the persuasion of the parties to a resolution other than the court; otherwise, the Constitutional provision concerning every individual's freedom to seek justice by legitimate means and ways will be violated. Such a process initiated involuntarily and unwillingly, and only due to obligation, can not yield successive results. It may be possible to forcibly bring the parties to the table, but it is not possible to forcibly keep them at the table and find a ground for negotiation. In addition, an agreement made involuntarily will not be lasting, at least there will be many problems at the stage of implementation. In the frame of the voluntariness of the process, the parties may - at the beginning of the mediation activity - determine in which scope and how the process will be carried out. As the requisite of the voluntariness of the mediation activity, the parties are free to continue or discontinue the process they initiated. The parties may withdraw from the process at any time they wish, their unwillingness to resolve the dispute with this method should also be acknowledged. How this process will be concluded also depends on the parties. An agreement resolving the dispute completely or a partial resolution may be reached, or the mediation activity may be concluded with a different resolution. That is, the process need not be concluded with a reconciliation and agreement all the time. This is a requisite of the flexible structure of mediation.

In the second paragraph of the article, the equality of the parties in the mediation process is emphasized. The parties have equal rights when resorting to this dispute resolution method and throughout the process. Equality is a Constitutional principle that has to be taken into account with priority in nearly all matters, especially in the resolution of the dispute. Equality is a common principle in both the resolution methods requiring adjudication and in the resolution methods not requiring adjudication. However, both resolution methods have certain differences with respect to implementation and domain. These differences stem from the nature of the dispute resolution method, and the position of parties in such method. A party which does not feel completely equal to the other party or which is not treated equally legally will not be reconciling, but will be compulsorily bearing a conclusion. The principles of equality before law and having equal rights in dispute resolution process have to be observed regardless of the dispute resolution method. This principle is a requisite of the right to a fair trial and due process also when disputes are being resolved before judicial bodies. Likewise, the possession of equal rights and facilities in trial, which is also expressed as the 'principle of equality of arms', must always be taken into account. A similar circumstance exists also in the resolution of dispute by means of mediation. In a conclusion reached by excluding one of the parties or granting less

right to speak to one of the parties, it will not be possible to speak of a real reconciliation or agreement. It is unthinkable that parties, which are equal before State's jurisdiction, will not be equal in the mediation process that they voluntarily initiate and continue. In the paragraph, this fact is emphasized very clearly and in a way to cover the whole process.

Confidentiality

ARTICLE 4- (1) Unless agreed otherwise by the parties, the mediator shall be liable to keep confidential the information and documents submitted to him/herself in the frame of the mediation activity or obtained otherwise, and the records kept by him/herself.

(2) Unless agreed otherwise, the parties shall also abide by this principle of confidentiality.

Ø Recommendation No. R (2002) 10 of the Committee of Ministers to Member States on mediation in civil matters a. IV. 13; Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters a. 7; Zivilrechts-Mediations-Gesetz (ZivMediatG) (Österreich) a. 18; UNCITRAL Model Law on International Commercial Conciliation a. 8-9; Uniform Mediation Act (USA) a. 7-8; European Code of Conduct for Mediators a. 4.

Ø Directive on Law on Mediation in Civil Disputes a. 6; Turkey Board of Mediation Model Code of Conduct and Practice Rules for Mediation System and Mediators, a. 3; Code of Criminal Procedure a. 253, 13; Directive on Application of Conciliation Procedure According to the Code of Criminal Procedure a. 19; Directive on Attorneyship Law a. 16, 6.

GOVERNMENT GROUND- One of the principles to be observed in the matter of mediation is confidentiality. One of the most important reasons for the parties to prefer the resolution of a dispute by means of mediation outside the State's jurisdiction is their unwillingness to disclose their dispute to third parties. In the trials at courts, especially the publicity of the hearings is Constitutional rule; confidentiality is exceptional. Sometimes, confidentiality may be the most important factor in the resort of the parties to a dispute resolution method other than courts. Access of third parties to information about a dispute concerning huge sums between two parties with important commercial relations may effect the reputation and business relations of the parties in the market, or the parties may not desire to publicly disclose some matters with confidential nature between themselves. It is not possible for the parties to continue their previous relations after a trial carried out with reciprocal accusations. Nevertheless, in a dispute resolution process which is confidential and is solely between the parties, the parties will act more carefully and will focus on resolving the dispute instead of damaging each other. This will not only help to reach a resolution more easily, but it will also make it possible for the parties to seek logical resolutions instead of giving emotional responses, and it will contribute to the further continuation of their relations thereafter. The principle of confidentiality must also be observed by the mediator, as it is the case between the parties themselves. However, from both aspects, confidentiality depends on the wills of the parties. The sanction for breaching the confidentiality is regulated separately.

In the first paragraph of the article, the aspect of confidentiality concerning the mediator is emphasized. As a rule, the mediator is liable to keep confidential all the information and documents submitted to him/herself or obtained otherwise. However, the parties may decide on the contrary, decision made on the contrary must be explicit; in case of absence of an explicit will, the mediator must not reach this conclusion by means of interpretation. In a sense, mediator is the confidant of the parties regarding the dispute conveyed to him/herself. S/he has to keep these secrets shared by him/her by the parties. From this aspect, the mediator will be considered as one of the persons under the liability of keeping secrets, and s/he will be under the liability of abstaining from attestation in a trial in the frame stipulated by laws, or keeping secrets as long as a legal obligation does not exist. In the case that the mediator does not comply with this liability, s/he may be deleted from the register or may face the penal sanctions mentioned in this Law, and the parties may also seek penal liabilities for the mediator.

In the second paragraph of the article, the aspect of confidentiality concerning the parties is emphasized. Unless they have resolved otherwise concerning the confidentiality of the mediation activity, the parties themselves also have to comply with this notion of confidentiality. Nevertheless, due to some compulsory reasons, one of the parties may be obliged to disclose matters which are more or less the reflection of the dispute with the other party, to the extent such matters are related with itself. Under such circumstances, it has to be determined very well whether such disclosure is an explicit violation causing damages for the other party.

Disuse of statements or documents

ARTICLE 5- (1) In case that a law suit is filed or the course of arbitration is applied, the parties, the mediator or a third person – including those involved in mediation – shall not be able to produce the following statements or documents as evidence, or to testify about them:

a) Invitation for meditation by the parties, or the demand of a party to participate in the mediation activity.

b) The opinions or proposals put forward by the parties for the resolution of the dispute by means of mediation.

c) During the course of the mediation activity, acceptance of the proposals put forward by the parties or of any fact or claim.

ç) The documents prepared solely for the purpose of the mediation activity.

(2) The provision of the first paragraph shall be applied regardless of the form of the statement or document.

(3) No court, arbitrator or administrative authority can demand the disclosure of the information mentioned in the first paragraph. Such statements or documents shall not constitute the basis for a judgment, even though they are produced as evidence despite the provision of the first paragraph. However, the mentioned information may be disclosed to the extent stipulated by the provisions of a law, or to the extent required for the implementation and execution of the agreement reached at the end of the mediation process.

(4) The above paragraphs of this article shall be applied in law suits and arbitration, without regard to their relevance with the matter of arbitration.

(5) Reserving the constrains stated in the first paragraph, the licit evidence brought forward in the law suit or arbitration shall not become inacceptable evidence solely due to being presented in mediation.

Ø Recommendation No. R (2002) 10 of the Committee of Ministers to Member States on mediation in civil matters a. IV. 13; Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters a. 7; Zivilrechts-Mediations-Gesetz (ZivMediatG) (Österreich) a. 18; UNCITRAL Model Law on International Commercial Conciliation a. 10; Uniform Mediation Act (USA) a. 4, 5, 6; European Code of Conduct for Mediators a. 4.

Ø Directive on Law on Mediation in Civil Disputes a. 7; Code of Civil Procedure a. 188, 3; Turkey Board of Mediation Model Code of Conduct and Practice Rules for Mediation System and Mediators, a. 10; Code of Criminal Procedure a. 253, 20; Directive on Application of Conciliation Procedure According to the Code of Criminal Procedure a. 19; Directive on Attorneyship Law a. 16, 6.

GOVERNMENT GROUND- This provision is the continuation of the article related with confidentiality, and it clarifies a more special circumstance which may often be encountered. Regarding a dispute for the resolution of which mediation is applied, a direct or indirect trial may be held later. This may arise from the failure of the parties to reach an agreement at the end of the mediation activity, whereas it may also stem from a partial agreement, or the parties may reach agreement regarding the dispute, but other disputes related with the previous dispute may arise.

The confidentiality, which is the fundamental principle in mediation, requires also the confidentiality of the dispute itself between the parties, its contents, and the information and documents used in the scope of the dispute. The confidence regarding the protection of such confidentiality will encourage the parties to resort to a mediator. Therefore, in relation with the principle of confidentiality, the circumstances - in which the statements, information and documents used during the mediation process can not be used - are specified in this article drawing the scope in respect thereof, and thus aiming to prevent any hesitation to arise in practice. This article contains a regulation more specific than the general provision related with confidentiality, and it prevents dependence on the statements and documents specified in the article as evidence and consideration of these as evidence, even in the case that the parties did not specially decide on the matter of confidentiality. Undoubtedly, these statements and documents may be used as evidence with the mutual explicit consent of the parties.

The first paragraph of the article specifies the statements and documents that are not allowed to be used and the scope in which these can not be used, as well as those who are not allowed to use them. The mentioned prohibition covers the parties of the mediation activity, the mediator, and the third persons regardless of their involvement in the mediation activity. This prohibition applies on the course of direct or indirect trial related with the dispute. In addition, the prohibition covers the statements and documents listed under four sub-clauses; these statements and documents can not be used evidence in trial, nor any attestation can be given on this matter. Trial by court or arbitration is of no importance on this matter. The statements and documents covered in the scope of the article are given below:

The invitation of the parties in relation to meditation, or the demand of a party to participate in the mediation activity are covered in the scope of confidentiality, because the parties may not desire the dispute between them to become public later, or any other party to find out that they seek resolution by means of this method.

The opinions or proposals put forward by the parties for the resolution of the dispute by means of mediation are also in the scope of confidentiality, because the parties will negotiate and try to resolve the dispute in a free and sincere environment, with the comfort of knowing that they will not be bound by such opinions or proposals later.

Another prohibition in this matter is the acceptance of the proposals put forward by the parties or of any fact or claim, during the course of the mediation activity. Besides the reason explained above, another reason is the parties' desire to not to be bound by the facts and claims that they

accepted during the mediation negotiations. The parties, concerned about being bound by the facts and claims accepted in a free negotiation environment outside a trial, will act very cautiously and it will not be possible to achieve the desired sincerity in the discussions and negotiations. The probability that anything that the parties say can later be used against them will cause the parties not to be open. This prevents reaching a sound conclusion in mediation.

The documents prepared solely for the purpose of the mediation activity are also covered in the scope of confidentiality. Due to its nature, this sub-clause has a special importance. With this sub-clause, not all the documents that the parties have due to the dispute and that may be used as evidence, but only the documents that the parties prepared solely for the purpose of mediation are covered in the scope of the prohibition. Otherwise, when the mediation activity can not be concluded and judicial remedies are sought, it will not be possible to use any evidence and to reach a conclusion. Should the parties have some documents and information before resorting to mediator and be in a position to use such documents and information even when there is no mediation activity, their resort to mediator and use of such documents and information for mediation do not constitute an obstacle for dependence on such documents and information during a trial. However, should some documents be not available before and be prepared solely for the purpose of mediation (for example, such as some acknowledgements by the parties at the beginning of mediation, acknowledgement of the debt in the document or minute prepared as intermediate conclusion during negotiations, or acceptance of ratio of responsibility), these documents shall not be used at later trial stages.

In the second paragraph, with a view to eliminating any hesitation, it is specified that the form of the statement or document does not have any importance with respect to the prohibition, and that the prohibition will be applied regardless of the form of the statement or document.

In the third paragraph of the article, apart from the parties, the scope of the prohibition with respect to the courts, arbitrators and administrative authorities is specified, and it is emphasized that the disclosure of the information mentioned in the first paragraph can not be demanded by these authorities. Should the mentioned statements and documents be produced as evidence in any way by the parties or outside the parties' knowledge despite this prohibition, they will not constitute the basis for a judgment. There are two basic exceptions to this strictly regulated prohibition. These exceptions are the provision of a law stipulating the use the mentioned information, or their necessity for the implementation and execution of the agreement reached at the end of the mediation process. However, this exception will be applicable to the extent required by the stipulation of the provision of a law, or to the extent required for the execution of the agreement reached at the end of the mediation; it can not be expanded unnecessarily.

In the fourth paragraph, it is emphasized that confidentiality applies for any dispute, direct or indirect, in compliance with its purpose. For the prohibition to be applicable, it is not necessary for the dispute discussed in mediation and the disputes in the law suits or arbitrations to arise thereafter be the same or overlapping. Thus, it is intended to prevent the mala fide actions aiming at violating the prohibition indirectly.

In the fifth paragraph, especially the point mentioned in sub-clause (ç) of the first paragraph is explained more explicitly. Reserving the constrains stated in the first paragraph, the licit evidence brought forward in a law suit or arbitration will not become useless solely due to being used in mediation. As mentioned above, if a party possesses or can find an evidence, and at the same time, can use it at the trial in court or arbitration as a licit evidence for the dispute, even when there is no mediation activity, the previous use of such evidence in a mediation activity will not effect the validity of such evidence. This paragraph has to be assessed in accordance with the other paragraphs, and an interpretation surpassing the other paragraphs must not be made.

CHAPTER THREE

The Rights and Obligations of the Mediators

Using the title

ARTICLE 6 - (1) The mediators entered in the mediators' register are entitled to use the title 'mediator', and to enjoy the authorities granted by this title.

(2) The mediator is obliged to indicate this title during the mediation activity.

Ø Recommendation No. R (2002) 10 of the Committee of Ministers to Member States on mediation in civil matters a. V. 15; Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters a. 4; Zivilrechts-Mediations-Gesetz (ZivMediatG) (Österreich) a. 15; UNCITRAL Model Law on International Commercial Conciliation a. 5.

Ø Directive on Law on Mediation in Civil Disputes a. 9; Turkey Board of Mediation Model Code of Conduct and Practice Rules for Mediation System and Mediators, a. 6.

GOVERNMENT GROUND- In this article, the circumstances under which the official ‘mediator’ title can be used are specified. In order to solve a dispute, the parties may appoint a third person, on whom they agree, as the mediator. However, if such persons carry out the mediation activity occasionally, they can not use this title officially. The parties may also agree to appoint as mediator a person who is not recorded in the register and do not have training on this matter, if they have confidence in such person and believe that s/he will be helpful in the resolution of the dispute. However, this activity, which is carried out occasionally and in compliance with the demand of the parties, does not entitle such person to the ‘mediator’ title, and grant him/her the authorities specified in this Law. He/she can be engaged in mediation exclusively for the dispute in question. Such mediation activity does not yield the other results specified in the Law, either. For a person to use the ‘mediator’ title and to exercise the rights and authorities granted by this title, s/he has to be recorded in the register. Furthermore, the mediator has to indicate this title clearly during the mediation activity in order to be recognized as a mediator recorded in the register. Then, it will be possible to monitor and control the activities of the mediator. With this regulation, it will be possible to carry out the mediation activity in confidence and order, and the qualifications of the mediators – who do not make decisions but have an important role in reaching a resolution, who assist the parties that can not reach a resolution by themselves, and who are very important with respect to the development and good functioning of the concept of mediation – will be improved.

Demanding the wages and expenses

ARTICLE 7- (1) The mediator has the right to demand for wages and expenses in return of the activity she/he carried out. The mediator may also demand an advance for the wages and expenses.

(2) Unless agreed otherwise, the wage of the mediator shall be determined according to the Mediation Minimum Wage Tariff in effect on the date of completion of the activity; and again unless agreed otherwise, the wages and expenses shall be covered equally by the parties.

(3) The mediator can not charge a wage for mediating for certain persons or for recommending certain persons in relation to the mediation process. The actions contrary to this provision are null and void.

Ø Recommendation No. R (2002) 10 of the Committee of Ministers to Member States on mediation in civil matters a. III. 9; Zivilrechts-Mediations-Gesetz (ZivMediatG) (Österreich) a. 15, 2; European Code of Conduct for Mediators a. 3. 4.

Ø Directive on Law on Mediation in Civil Disputes a. 10; Attorneyship Minimum Wage Tariff a. 1-10; Mediation Minimum Wage Tariff a. 1-3; Turkey Board of Mediation Model Code of Conduct and Practice Rules for Mediation System and Mediators, a. 7; Code of Criminal Procedure a. 253, 22; Directive on Application of Conciliation Procedure According to the Code

of Criminal Procedure a. 31.

GOVERNMENT GROUND- The mediator is entitled to demand the expenses incurred and his/her wage in return of his/her activities. The mediator may also demand an advance payment for the expenses and wage. In the first paragraph of the article, this right of the mediator is explicitly expressed.

In the second paragraph, it is clarified that the wage of the mediator will be determined according to the Minimum Wage Tariff to be prepared, but that a decision on the opposite may also be made. The purpose of this is to avoid uncertainty regarding the wage, and to prevent the occurrence of problems on this matter. The parties may themselves decide on the extent of their liability in the wage and advance payment. However, if such decision is not made, the wage and expenses will be covered equally by the parties. Unless resolved otherwise by the parties, covering the wages and expenses equally is in compliance with the aim of mediation. The purpose of this dispute resolution method is not specifying a winning party and a losing party, but providing a win-win resolution for both parties and protecting their common interests.

In order to provide for the good functioning of the mediation activity and the involvement of the mediators only in the dispute that they are appointed, the mediators are prohibited from recommending certain persons in relation with this process or from charging wages for mediating in this matter. The actions contrary to this prohibition will be considered null and void.

Negotiating and communicating with the parties

ARTICLE 8- (1) The mediator may negotiate or communicate with each party separately or with both parties at the same time. The parties can participate these meetings through their attorneys.

Ø UNCITRAL Model Law on International Commercial Conciliation a. 7; Uniform Mediation Act (USA) a. 2, 2; European Code of Conduct for Mediators a. 3. 1.

Ø Directive on Law on Mediation in Civil Disputes a. 11; Code of Civil Procedure a. 74; Law on Mediation in Civil Disputes a. 15, 6; Turkey Board of Mediation Model Code of Conduct and Practice Rules for Mediation System and Mediators, a. 8; Code of Criminal Procedure a. 253, 14; Directive on Application of Conciliation Procedure According to the Code of Criminal Procedure a. 18.

GOVERNMENT GROUND- This article regulates the general framework of mediator's communication with parties, which has a special importance in mediation activity. The mediator may negotiate or communicate separately with each party or jointly with both parties. Whether such negotiation and communication will be carried out jointly or separately will depend on the nature of the activity carried out and the status of the parties. In the article, not only the term 'negotiation' but also the more comprehensive term 'communication' is specially used. Because, a healthy communication is the understanding that lies under the mediation method.

Carrying out the duty in a careful and impartial manner

ARTICLE 9- (1) The mediator shall personally carry out his/her duty in a careful and impartial manner.

(2) In case of presence of significant circumstances and conditions arising suspicion about the impartiality of the mediator, then the person assigned as the mediator shall be obliged to inform the parties in this respect. Should the parties jointly make a demand to the mediator despite such statement, the mediator may assume the duty or may continue a duty assumed before.

(3) The mediator shall be liable to maintain equality between the parties.

(4) The mediator can not assume later the duty of an attorney-at-law of any of the parties in a law suit filed in relation with the dispute for which s/he acted as a mediator.

Ø Recommendation No. R (2002) 10 of the Committee of Ministers to Member States on mediation in civil matters a. IV. 12; Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters a. 3/b; Zivilrechts-Mediations-Gesetz (ZivMediatG) (Österreich) a. 16; UNCITRAL Model Law on International Commercial Conciliation a. 5, 5; 6, 3; Uniform Mediation Act (USA) a. 9; European Code of Conduct for Mediators a. 2.

Ø Directive on Law on Mediation in Civil Disputes a. 8; 12; Turkey Board of Mediation Model Code of Conduct and Practice Rules for Mediation System and Mediators, a. 2; 4; 8-9; Directive on Application of Conciliation Procedure According to the Code of Criminal Procedure a. 5; 28; Law on Labor Unions and Collective Bargaining a. 50, 2.

GOVERNMENT GROUND- An important liability of the mediator is carrying out his/her job carefully and impartially. In the first paragraph, this situation is clearly stated. The mediation activity requires the preservation of the confidence of both parties. This is only possible when the mediator is impartial and treats both parties equally; otherwise, the process can not function properly. In addition, the mediator is required to carry out his/her duty carefully in the resolution of disputes. Maintaining communication between the parties and creating the environment

necessary for resolving the dispute depend on the mediator. Therefore, the mediator must abstain from the attitudes and behaviors that cause damage to this liability of care and complicate the process. Since mediation is a duty in which personal characteristics and trust are in the foreground, it has to be carried out personally; execution of this duty can not be left to another person partially or completely.

In the second paragraph, a special emphasis is made for the preservation of the medium of trust and the impartiality of the mediator. Should a circumstance arising suspicion about impartiality arise, it is again the mediator's duty to eliminate such suspicion and to inform the parties. So, discontinuation of the process due to any misunderstanding will be avoided, and the communication will be maintained. This is also a requirement of the understanding of transparency in mediation. However, if the parties maintain their trust in the mediator and both of the parties demand, the mediator can continue his/her duty.

In the third paragraph, as a continuation of the first two paragraphs, the mediator's liability to treat the parties equally is stipulated. Undoubtedly, this is a natural consequence of the mediation activity, and a requisite of impartiality and the principle governing mediation. Treating equally is not the equality with its sense in trial. Here, equality in communicating with the parties and in the sense required by the dispute resolution process is meant.

The fourth paragraph prohibits the persons – who previously assumed a duty in a dispute as mediator – from assuming a duty later as an attorney in a law suit filed and in the trial process in relation with the same dispute, with a view to providing the impartial execution of the mediation and preventing the inconveniences to arise.

Prohibition of advertise

ARTICLE 10– (1) The mediators are prohibited from any attempt or action that might be considered as advertisement, especially from using any title other than the title 'mediator', 'attorney-at-law' and their academic titles on their signboards and printed papers, for the purpose of attracting business.

Ø European Code of Conduct for Mediators a. 1. 3.

Ø Directive on Law on Mediation in Civil Disputes a. 13; Turkey Board of Mediation Model Code of Conduct and Practice Rules for Mediation System and Mediators, a. 6.

GOVERNMENT GROUND- This article regulates a prohibition of advertise for the mediators. These regulations intends to prevent the mediators – who assume duties to assist in the resolution of a dispute – from advertising in a manner not appropriate for the attributes of the mediators and to avoid the practicing of mediation in a manner not compliant with its purpose. In this frame, any attempt or effort of the mediators in the sense of advertisement to attract business – and especially the use of titles and expressions, which cause misunderstandings and which misdirect the parties, on their signboards and printed papers – are prohibited. On their signboards and printed papers, the mediators can use their academic titles and the title 'mediator'. This regulation is parallel to the prohibition to advertise for the profession of advocacy.

Informing the parties

ARTICLE 11- (1) The mediator shall be liable to duly inform the parties on the principles, process and outcomes of mediation at the beginning of the mediation activity.

Ø Recommendation No. R (2002) 10 of the Committee of Ministers to Member States on mediation in civil matters a. VII; Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters a. 5; Zivilrechts-Mediations-Gesetz (ZivMediatG) (Österreich) a. 16, 3; European Code of Conduct for Mediators a. 3. 1.

Ø Directive on Law on Mediation in Civil Disputes a. 14; Turkey Board of Mediation Model Code of Conduct and Practice Rules for Mediation System and Mediators, a. 1; 11; Code of Criminal Procedure a. 253, 5; Directive on Application of Conciliation Procedure According to the Code of Criminal Procedure a. 5; 28; Directive on Attorneyship Law a. 16, 2.

GOVERNMENT GROUND- The mediator, who carries out the mediation activity with a record in the register and uses this title, has significant amount of information and experience regarding the activity s/he carries out. Therefore, the mediator is liable of informing the parties at the beginning of the activity. This liability covers the principles of mediation, and the functioning and consequences of the process. The parties with sufficient information about the process will better appreciate the process, thus leading to the healthier execution of this process. The liability of the mediator to inform the parties is absolute at the beginning; in addition, the mediator has to inform and enlighten the parties within the process when necessary. This is especially important at times and in cases that the process begins to go wrong; because, the most important duty of the mediator is to maintain the basis of agreement and to keep the parties at the table.

Payment of contributions

ARTICLE 12– (1) An admission fee at the time of registry in the register and an yearly contribution for each year shall be collected from the mediators.

(2) The admission fees and the yearly contributions shall be accumulated as income at the general budged.

Ø Directive on Law on Mediation in Civil Disputes a. 16.

GOVERNMENT GROUND- As it is the case in many activities and lines of business, the mediator is also liable of paying an admission fee for the entry in the register and contributions for continuing his/her activity. This has a meaning of belonging, and will also provide a source for meeting the necessary expenses to arise in this field. Therefore, the first paragraph regulates the liability regarding the admission fee and the yearly contributions.

The second paragraph of the article regulates the place of collection of the contributions. Since the board, supervision, monitoring and regulation affairs related with mediation will be carried out at the Ministry of Justice, it is accepted to accumulate and accrete the contributions in the account of Penitentiaries and Detention Houses' Workshops Agency.

In the third paragraph, it is stated that the contributions and their accretion will be transferred to the account of the General Directorate on the last day of each month to be spent for the matters in the field of duty of the Department, in order to provide for the use of the contributions and their accretion only for expenses related with mediation.

CHAPTER FOUR

Mediation Activity

Resort to a mediator

ARTICLE 13- (1) The parties may agree on resorting to a mediator, before filing a law suit or during the course of a law suit. The court may also inform and encourage the parties to resort to a mediator.

(2) Unless agreed otherwise, should the proposal of one of the parties to resort to a mediator be not answered within thirty days, then such proposal shall be considered to be declined.

Ø Recommendation No. R (2002) 10 of the Committee of Ministers to Member States on mediation in civil matters a. III. 4; Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters a. 5; UNCITRAL Model Law on International Commercial Conciliation a. 4; Uniform Mediation Act (USA) a. 3.

Ø Directive on Law on Mediation in Civil Disputes a. 17; Code of Civil Procedure a. 137, 1; 140, 2; 320, 2; Code of Criminal Procedure a. 253, 1, 4, 5; 254; Directive on Application of Conciliation Procedure According to the Code of Criminal Procedure a. 10; Attorneyship Law a. 35/A; Directive on Attorneyship Law a. 16, 1.

GOVERNMENT GROUND- This article regulates how the mediation activity will commence. The parties themselves may directly resort to this method by agreeing before or after filing a law suit. For this purpose, the agreement of both parties is necessary and sufficient. In addition, after a law suit is filed, the court may also inform and encourage the parties to resort to a mediator. At the beginning of a law suit or after the matters of dispute between the parties are solidly determined at further stages of trial, should it be especially determined that the parties are in dispute in very few matters or that a certain basis for agreement is present, encouragement of the parties by the court to resort to this method will be useful. It is advisable to give this chance and encourage the parties, in the case that the judges will reach the conviction - at various stages of trial - that the parties may agree.

The second paragraph contains a provision concerning the possibility that the process will not be initiated jointly by both parties. It is possible that the process is not initiated jointly by both parties; if the case is the proposal of only one of the parties, then the response of the other party to such proposal shall be awaited. Should the opposite party not give a positive response within thirty days as of the notification of the proposal, then the proposal will be considered to be declined. However, upon agreement, the parties may shorten or prolong this duration.

Selecting the mediator

ARTICLE 14- (1)

Unless agreed on another procedure, the mediator or mediators shall be selected by the parties.

Ø UNCITRAL Model Law on International Commercial Conciliation a. 5.

Ø Directive on Law on Mediation in Civil Disputes a. 18; Code of Criminal Procedure a. 253, 9; Directive on Application of Conciliation Procedure According to the Code of Criminal Procedure a. 13; Law on Labor Unions and Collective Bargaining a. 50, 1.

GOVERNMENT GROUND- This article regulates the method of selection of the mediator. Unless the parties specify another process such as the selection of the mediator by a third person or institution, then they will select the mediator(s) jointly.

Performing the mediation activity

ARTICLE 15- (1) After being selected, the mediator shall invite the parties to the first meeting at the soonest possible date.

(2) The parties may freely decide on the mediation procedure on the condition that not contrary to mandatory law rules.

(3) Should it be not decided by the parties, the mediator shall perform the mediation activity considering the nature of the dispute, the demands of the parties and the procedures and principles necessary for the quick resolution of the dispute.

(4) The transactions which, due to their nature, can only be carried out by a judge as the exercise of a judiciary power, can not be carried out by the mediator.

(5) Should the parties express their desire to resort to a mediator after a law suit is filed, then the proceedings shall be postponed by the court for a period of three months. This period may be prolonged for another three months upon the joint application of the parties.

(6) Unless decided otherwise, each of the parties shall participate in the mediation negotiations personally or through their attorneys.

Ø Recommendation No. R (2002) 10 of the Committee of Ministers to Member States on mediation in civil matters a. III. 6, IV. 14; Zivilrechts-Mediations-Gesetz (ZivMediatG) (Österreich) a. 16, 2; UNCITRAL Model Law on International Commercial Conciliation a. 6; Uniform Mediation Act (USA) a. 10; European Code of Conduct for Mediators a. 3. 1.

Ø Directive on Law on Mediation in Civil Disputes a. 19; Code of Civil Procedure a. 74; 137, 1; 140, 2; 320, 2; Law on Mediation in Civil Disputes a. 8; Turkey Board of Mediation Model Code of Conduct and Practice Rules for Mediation System and Mediators, a. 8; Code of Criminal Procedure a. 253, 13-14; Directive on Application of Conciliation Procedure According to the Code of Criminal Procedure a. 18; Attorneyship Law a. 35/A; Directive on Attorneyship Law a. 16, 5.

GOVERNMENT GROUND- This article specifies how and under which procedure the mediation activity will be carried out. In this frame, after being selected, the mediator will invite the parties to the first meeting at the soonest possible date.

Due to its nature, mediation has a flexible structure. Therefore, it is not bound by strict and solid rules. As a result of this, the parties may freely decide on how the mediation activity will be carried out, and on the procedure to be followed.

It may be possible that the parties did not decide beforehand or at the beginning of this activity on how the activity will be carried out. In this case, the mediator will first consider the nature of the dispute and the demands of the parties relevant to this matter, and in addition, s/he will follow a method that will allow for the quick and easy resolution of the dispute.

In the fourth paragraph, it is clearly regulated that the mediator is not allowed to carry out the duties that pertain to judges. Mediation is not a judicial activity, it is an alternative dispute resolution method. The authorities employed when the dispute is resolved by a judge under a judicial activity and the authorities employed by the mediator in mediation are not the same. Mediator is the person who assists the parties in the resolution of the dispute and prepares the environment for resolution, but s/he does not make decisions. This clear regulation is included with respect to the determination of the borders of mediator's authorities. In this frame, the actions taken by a judge in relation with the trial activity, especially the investigative actions and the actions such as viewing, resort to expert witness, etc. can not be carried out by the mediator. Dependently, use of judiciary power and certain compulsive actions are out of question in the mediation activity.

In the fifth paragraph, the effect – of resorting to a mediator after filing a law suit – on trial is regulated. In such a case, the court will postpone the proceedings for a period of three months, and if it will not be possible to obtain any results within this period, then it will be prolonged for another three months again upon the application of the parties. This means that resorting to a mediator will have an effect of postponing the proceedings with specified periods.

In paragraph six, participation of the parties in mediation negotiations personally is regulated as a rule. In mediation, mutual action of the parties for the resolution of the dispute and ability of the mediator to communicate with the parties are important issues. If the parties will participate in the resolution process to resolve their disputes, the resolution will be easier and long lasting. However, the parties are allowed to decide on the contrary. Especially if there are psychological obstructions regarding the meeting of the parties despite their desire to resolve the dispute by means of a mediator, or if one or both of the parties have to be at different places, then their attorneys may participate in the mediation process in place of the parties.

Commencement of the mediation process and its effect on the time periods

ARTICLE 16- (1) In case of resort to a mediator before a law suit is filed, then the mediation process shall commence as of the date on which the parties are invited for the first meeting and an agreement is reached between the mediator and the parties for continuing the process and such circumstance is documented with a minute. In case of resort to a mediator after a law suit is filed, then this process shall commence as of the date on which the court's invitation to the parties for mediation is accepted by the parties, or the parties declare the court in writing outside the course of the hearings about their agreement on resort to the mediator, or such declaration of the parties is entered in the court records during the course of the hearings.

(2) The period elapsed between the commencement and completion of the mediation process shall not be considered in the calculation of lapses of time or foreclosures.

Ø Recommendation No. R (2002) 10 of the Committee of Ministers to Member States on mediation in civil matters a. III. 5-6; Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters a. 8; Zivilrechts-Mediations-Gesetz (ZivMediatG) (Österreich) a. 22.

Ø Directive on Law on Mediation in Civil Disputes a. 20; Code of Civil Procedure a. 137, 1; 140, 2; 320, 2; Code of Criminal Procedure a. 253, 21; 254; Directive on Application of Conciliation Procedure According to the Code of Criminal Procedure a. 24.

GOVERNMENT GROUND- The effect of the method - judicial or extrajudicial - selected for the resolution of a dispute on the time periods is important with respect to avoid any loss of rights. In order to prevent hesitations and mistakes in this matter, the effect of the commencement of the mediation activity on the time periods is regulated separately. In this frame, a distinction is made with respect to resorting to a mediator before or after filing a law suit.

In the first paragraph, the moments at which the mediation process will commence before a law suit is filed and after a law suit is filed are clearly regulated. By this way, it is intended to eliminate the hesitations about the time periods concerning the commencement of the mediation activity and lapse of time, and the assertion of rights and claims which are subjects of the mediation.

In the second paragraph, it is stated that the period elapsed between the commencement and completion of the mediation process will not be considered in the calculation of lapses of time or foreclosures related with the right in dispute. Thus, it is intended to prevent the time periods elapsed due to mediation activity from causing any loss of rights for the parties.

Completion of mediation

ARTICLE 17- (1) In following circumstances, the mediation activity shall be considered to be completed:

a) An agreement reached by the parties.

b) Determination by the mediator, upon consulting the parties, that further efforts for mediation are unnecessary.

c) Notification of withdrawal from mediation activity, by one of the parties to the other party or to the mediator.

ç) An agreement reached by the parties to terminate the mediation activity.

d) Determination that dispute is not suitable for mediation or related a crime does not under the scope of reconciliation according to Code of Criminal Procedure No. 5271 and dated 4/12/2004.

(2) The agreement or disagreement of the parties or the outcomes of the mediation activity shall be documented with a minute at the end of the mediation activity. Such document to be prepared by the mediator shall be signed by the mediator, the parties or their attorneys. If document does not be signed by the parties or their attorneys it will signed by the mediator only, indicating the reason of this.

(3) The parties shall decide on which matters to include, apart from the conclusion of the activity, in the minute to be prepared at the end of the mediation activity. The mediator shall make the necessary explanations to the parties in relation with this minute and its outcomes.

(4) In case of completion of the mediation activity, the mediator shall keep the notification made to him/herself in relation with this activity, the documents submitted and retained, and the minute prepared according to the second paragraph for a period of five years. The mediator shall send a copy of the documents prepared as the result of the mediation services to the General Directorate within one month as of the completion of the mediation activity.

Ø Recommendation No. R (2002) 10 of the Committee of Ministers to Member States on mediation in civil matters a. VI; Zivilrechts-Mediations-Gesetz (ZivMediatG) (Österreich) a. 17; UNCITRAL Model Law on International Commercial Conciliation a. 11; Uniform Mediation Act (USA) a. 10; European Code of Conduct for Mediators a. 3. 3.

Ø Directive on Law on Mediation in Civil Disputes a. 15; 21; Turkey Board of Mediation Model Code of Conduct and Practice Rules for Mediation System and Mediators, a. 13; Code of Criminal Procedure a. 253, 15, 17; Directive on Application of Conciliation Procedure According to the Code of Criminal Procedure a. 19; 21; Attorneyship Law a. 35/A; Directive on Attorneyship Law a. 17.

GOVERNMENT GROUND- In this article, the circumstances in which the mediation activity will be considered to be concluded, and its form and consequences are specified. Accordingly, the mediation activity will be concluded if an agreement is reached by the parties, if the mediator determines, upon consulting the parties, that further efforts for mediation are unnecessary, if one of the parties notifies the other party or the mediator about its withdrawal from mediation activity, and if the parties terminate this process without reaching an agreement.

When the mediation activity is concluded, the mediator will document this with a minute. Thus, hesitations concerning whether the mediation activity is concluded or when it is concluded will be avoided. The agreement or disagreement of the parties or the outcomes of the mediation activity will be documented in this minute, and the minute will be signed by the mediator, the parties or their attorneys. The main function of this minute is to document that the process is concluded.

The parties may freely decide on the other issues to be included in the minute; because the parties may desire to keep the activity confidential and may not wish to include too many details. However, if they desire so, the parties may prepare a more detailed minute, the contents of which will be determined by themselves. The mediator will inform the parties about the minute to be prepared, its contents and outcomes. By this way, the parties will be able to make a healthier decision about how the minute will be prepared.

In the fourth paragraph, the mediator is imposed with the liability of keeping documents, especially in order to eliminate the hesitations to arise later and to document the mediation activity. The documents to be kept are the notification of resort to mediator, the originals or copies of the documents submitted to the mediator, and the minute prepared at the end of the activity. The mediator has to keep these documents as a file for a period of five years. This period will begin as of the date that the minute is prepared at the end of the activity.

Agreement of the parties

ARTICLE 18- (1) The scope of the agreement reached as the result of the mediation activity shall be determined by the parties; in case of preparation of an agreement document, this document shall be signed by the parties and the mediator.

(2) Should the parties reach an agreement at the end of the mediation process, they may submit such agreement to an enforcement court - whose authority is to be determined according to the rules of authority concerning the actual dispute - and may demand for the issuance of a commentary regarding its enforceability. The agreement containing such commentary shall be considered as a document with the force of a verdict.

(3) The issuance of the commentary of enforceability is an undisputed judgment affair, and the examination concerning this is carried out on the file. However the examination concerning family law disputes suitable for mediation shall hold by oral hearing. The scope of such examination is limited to whether the content of the agreement is suitable for mediation and compulsory enforcement. In case that an application is made to the court for the issuance of commentary of enforceability for the agreement document, and in case that the concerned party appeals decisions given upon such application, the fixed fees shall be collected. Should the parties wish to use the agreement document in another official transaction without obtaining a commentary of enforceability, then fixed stamp duty shall also be collected.

Ø Recommendation No. R (2002) 10 of the Committee of Ministers to Member States on mediation in civil matters a. VI; Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters a. 6; UNCITRAL Model Law on International Commercial Conciliation a. 14; European Code of Conduct for Mediators a. 3. 3.

Ø Directive on Law on Mediation in Civil Disputes a. 22; Code of Civil Procedure 137, 1; 140, 2; 320, 2; Turkey Board of Mediation Model Code of Conduct and Practice Rules for Mediation System and Mediators, a. 13; Code of Criminal Procedure a. 253, 15, 17; Directive on Application of Conciliation Procedure According to the Code of Criminal Procedure a. 21; Attorneyship Law a. 35/A; Directive on Attorneyship Law a. 17.

GOVERNMENT GROUND- This article regulates the scope, form and outcomes of the agreement, if an agreement is reached at the end of the mediation activity.

Due to the nature of the mediation activity, no strict rules are imposed for any agreement reached. The parties may freely decide on the scope and form of the agreement.

In the case that the mediation will be concluded with an agreement, the minute prepared at the end of the activity will have the nature of an agreement document. This document will be signed by the mediator and the parties or their attorneys, in compliance with the previous article.

The second paragraph regulates the effect of the agreement document. If the parties will desire to implement the agreement reached with its present form, then the document prepared at the end of the mediation activity will be subject to general provisions. However, if it is desired for this document to have the force of a verdict, then it will be necessary to obtain a commentary of enforceability. The competent authority for the commentary of enforceability is the enforcement court specialized on this matter. With respect to the authority of the enforcement court, the rules of authority in the actual dispute are taken as the basis.

In the third paragraph, the nature and characteristics of the work to be done by the enforcement court in relation to the issuance of the commentary of enforceability are specified. The issuance of the commentary of enforceability is an undisputed judgment affair, and the examination concerning this is carried out on the file. In the inspection to be carried out regarding this matter, the court will investigate whether the content of the agreement is an action on which the parties have a disposal, and whether it is suitable for enforcement according to general provisions. Thus, it is intended to prevent the parties from preparing an agreement document on issues for which resort to mediator is not possible, and to prevent the a document – the enforcement of which is not possible – from being granted the force of a verdict. The execution of the mediation activity in an easy an inexpensive manner is a fundamental principle. Therefore, it is accepted that both the fee - to be charged for the legal remedy to be resorted against the decision to be made by the enforcement court on the commentary of enforceability - and the stamp duty - to be collected in the case of use of the agreement document in official transactions - will be fixed.

CHAPTER FIVE

Register of Mediators

Maintaining the register of mediators

ARTICLE 19- (1) The Department shall keep the register of the persons who attained the authority to mediate in private law disputes. The information pertaining to the persons included in this register shall also be announced in electronic media by the Department.

(2) The procedure and principles concerning the maintenance of the register of mediators shall be regulated in the regulations to be prepared by the Ministry.

Ø Zivilrechts-Mediations-Gesetz (ZivMediatG) (Österreich) a. 8. Directive on Law on Mediation in Civil Disputes a. 23; Directive on Application of Conciliation Procedure According to the Code of Criminal Procedure a. 14-15.

GOVERNMENT GROUND- The aim of introducing the register of mediators is to establish a certain order for the use of the title ‘mediator’ and the authorities granted by this title, and to make the supervision of mediators possible.

The duty of keeping and updating the register of mediators is given to the Ministry of Justice. Thus, the records concerning all the mediators will be compiled together with a single register to be kept Turkey-wide. In addition, by providing public access to this register and the information – covered in the frame of the principles to be specified in the regulations to be issued in accordance with this article - via Internet, the people willing to access mediator information will easily access such information.

Conditions for registry in the register of mediators

ARTICLE 20- (1) The registry in the register is made upon the written application of the concerned to the Department.

(2) The following conditions are sought for registry in the register of mediators:

a) Being a Turkish citizen,

b) Having at least five years experience and undergraduate law degree,

c) Being fully competent,

ç) Having no criminal record except intentional offences,

d) Completing the mediator training and passing the written and practical examination carried out by the Ministry.

(3) The mediator may commence his/her activities as of the date of registry in the register of mediators.

Ø Zivilrechts-Mediations-Gesetz (ZivMediatG) (Österreich) a. 9-13.

Ø Directive on Law on Mediation in Civil Disputes a. 24; Code of Criminal Procedure a. 253, 9; Directive on Application of Conciliation Procedure According to the Code of Criminal Procedure a. 15.

GOVERNMENT GROUND- This article specifies the conditions for carrying out mediation activities. In sub-clause (d) of the second paragraph, completing the mediator training and passing the examination carried out by the Ministry are stipulated as the conditions for entry in the registry. Apart from these, being a Turkish citizen, having a four years undergraduate degree, and having no criminal record except negligent offences – since mediation is a profession requiring confidence – are accepted as the other conditions for entry in the registry.

Deletion from the register of mediators

ARTICLE 21- (1) The Department shall delete the record pertaining to the mediators who are entered in the register although they do not possess the conditions sought for mediation, or who lose such qualifications later.

(2) The Department shall warn in writing the mediators who do not fulfill the liabilities stipulated in this Law; in case of failure to comply with such warning, the Department may, if necessary, demand from the Board the deletion of the mediator's name from the register after getting the mediator's argument.

(3) The mediator may ask for the deletion of his/her record from the register of mediators at any time.

Ø Zivilrechts-Mediations-Gesetz (ZivMediatG) (Österreich) a. 14.

Ø Directive on Law on Mediation in Civil Disputes a. 25.

GOVERNMENT GROUND- The first paragraph of the article regulates the deletion of the records pertaining to the mediators who are entered in the register although they do not possess the conditions sought for mediation, or who lose such qualifications later. Accordingly, the record pertaining to a person, who is entered in the register of mediators although s/he does not meet the conditions listed in article 20, will be deleted from the register when such circumstance is found out. In addition, a mediator who is expatriated from Turkish citizenship, whose capacity to act is lost or restricted, or who is convicted of an offence in the scope of sub-clause (ç) and whose conviction became final, will be deleted from the register.

The second paragraph of the article regulates that the mediators who do not fulfill the liabilities stipulated in the law and who are warned in writing but failed to comply with such warning, may be deleted from the register. The provision of this paragraph becomes important in case of failure to fulfill the liabilities especially in articles in 4, 9, 10 and 11, and in case of failure to fulfill the liability of paying contributions. Accordingly, if the mediator has failed to keep confidential

the information and documents submitted in the frame of the mediation activity or obtained otherwise, failed to continue his/her duty in a careful and impartial manner, acted in violation of the prohibition to advertise, failed to duly inform the parties about the principles, process and outcomes of mediation, or failed to pay the yearly contributions, and continued to ignore such liabilities despite the written warning given, and especially if such conduct is detected for more than one mediation activity, then the record of the mediator may be deleted from the register after his/her argument is heard and the said conducts are found to be definite.

The third paragraph of the article regulates the deletion of the record of the mediator from the register upon his/her own will, which means permanently quitting the mediation activity. According to this rule, a person recorded in the register of mediators may discontinue such activity at any time.

However, the person who quits the profession of mediation has to keep the minutes and documents, which s/he is liable to keep as required by article 17, until the end of the prescribed period.

CHAPTER SIX

Mediation Training and Training Institutions

Mediation training

ARTICLE 22- (1) The term ‘mediation training’ refers to a training, which is received after the completion of law faculty, and which covers the basic knowledge, communication techniques, negotiation and dispute resolution methods and behavioral psychology related with the

execution of mediation activity, and the other theoretical and practical knowledge to be specified in the directive.

Ø Recommendation No. R (2002) 10 of the Committee of Ministers to Member States on mediation in civil matters a. V; Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters a. 4; Zivilrechts-Mediations-Gesetz (ZivMediatG) (Österreich) a. 29; European Code of Conduct for Mediators a. 1. 1.

Ø Directive on Law on Mediation in Civil Disputes a. 26; Turkey Board of Mediation Model Code of Conduct and Practice Rules for Mediation System and Mediators, a. 5; Directive on Application of Conciliation Procedure According to the Code of Criminal Procedure a. 30.

GOVERNMENT GROUND- At least four years of undergraduate degree is required to carry out mediation activity. On the other hand, the examples in comparative law show that the training required in this field covers, besides basic knowledge of law, the fields of communication techniques, negotiation and dispute resolution methods and general psychology. Therefore, a theoretical and practical training on the subjects listed in this article is necessary after the undergraduate education of four years. However, for the persons who have an undergraduate degree in law, it is not necessary to repeat the basic knowledge of law during the mediation training.

Granting of permission to training institutions

ARTICLE 23- (1) Mediation training shall be granted by the law faculties of universities which have law faculties, Turkey Bar Association and Turkey Justice Academy. These institutions may provide training by obtaining permission from the Ministry. The list of the training institutions shall be promulgated in electronic media.

(2) The application for permission shall be made in writing. In such application, reasoned information shall be provided about the training program, the number and specialties of the trainers and the financial resources of the training institution or the training program.

(3) Should it be determined, depending on the documents submitted at the application, that the training will achieve its goal and the continuity of training will be ensured at the training institutions, then a permission valid for maximum three years shall be granted to the related training institution.

Ø Zivilrechts-Mediations-Gesetz (ZivMediatG) (Österreich) a. 23-26.

Ø Directive on Law on Mediation in Civil Disputes a. 28.

GOVERNMENT GROUND- In order to provide for the institutions, which will deliver mediation training, to possess the training infrastructure and the desired quality, these institutions have to be subject to the permission of the Department. It is envisaged to grant such permission for maximum three years, and to prolong the permission after the inspection of the application to be made to the Department at the end of the period. Each prolongation can be maximum three years.

Prolongation of the permission period

ARTICLE 24- (1) A training institution recorded in the register may demand in writing the prolongation of the validity period of its record in the register, one year at the earliest and three months at the latest before the end of the registry period. Where it is determined – from the documents submitted by the training institution in accordance with article 26 – that the mediation training continues successfully and that the reasons specified in article 27 are not present, the validity period of the granted permission may be prolonged for three years at each time. The training institution is kept registered in the list until a decision is made about its timely made application.

Ø Zivilrechts-Mediations-Gesetz (ZivMediatG) (Österreich) a. 25.

Ø Directive on Law on Mediation in Civil Disputes a. 29.

GOVERNMENT GROUND- This article regulates the period - in which the demand for the prolongation of the permission obtained by the institutions delivering mediation training must be made -, the method for applying for prolongation and the duration of prolongation.

Mediation authorization certificate

ARTICLE 25- (1) The training institutions shall issue a certificate about the completion of the mediation training.

Ø Zivilrechts-Mediations-Gesetz (ZivMediatG) (Österreich) a. 26.

Ø Directive on Law on Mediation in Civil Disputes a. 27.

GOVERNMENT GROUND- The authority to carry out mediation activity will be granted with the “mediation authorization certificate” to be issued by the institutions delivering mediation training; only the persons possessing this certificate will be recorded in the register of mediators regulated in article 19 and following articles. In order for the mediation to be considered ‘mediation’ in the sense in this Law and to produce the results specified in the Law, it is obligatory to be registered in the list and to get a certificate. However, this obligation does not prevent persons not registered in the list to participate in the mediation process, provided that they are selected by the parties.

Obligation to inform the Department

ARTICLE 26- (1) In January, the training institutions shall submit the Department a report about the scope, contents and success of the training activities carried out within the previous year.

Ø Zivilrechts-Mediations-Gesetz (ZivMediatG) (Österreich) a. 27.

Ø Directive on Law on Mediation in Civil Disputes a. 30.

GOVERNMENT GROUND- This article stipulates the submission of the training activities as a report to the Department in January every year. This aims at supervising and monitoring the training institutions.

Cancellation of the permission granted to the training institution

ARTICLE 27- (1) In following cases, the permission granted to the training institution is cancelled by the Board upon the demand of the Ministry:

a) Determination of losing or absence of one of the conditions sought for granting the permission.

b) Insufficient delivery of training.

c) Forgery or significant errors in the issuance of mediation authorization certificates.

ç) Failure to fulfill the obligation to submit reports as specified in article 26, despite the warning given.

d) Determination of the discontinuity of the training activity.

Ø Zivilrechts-Mediations-Gesetz (ZivMediatG) (Österreich) a. 28.

Ø Directive on Law on Mediation in Civil Disputes a. 31.

GOVERNMENT GROUND- In parallel with the rules concerning the requirement of Department's permission for delivering mediation training and the permission being limited with a certain period, the training institutions are required to inform the Department regularly and the permission granted may be cancelled in the case it will be determined that the training institution lost its proficiency. This regulations aims at protecting the training quality of the institutions delivering mediation training.

CHAPTER SEVEN

Establishment and Duties

Establishment and organization

ARTICLE 28- (1) In order to fulfill the duties specified in this Law, a Department shall be established within the structure of the General Directorate.

(2) In order to fulfill the duties specified in this Law in relation with the mediation services, a Mediation Board shall be formed within the structure of the Ministry.

Ø Directive on Law on Mediation in Civil Disputes a. 51-54.

GOVERNMENT GROUND- This article states that Department of Mediation, which will not be independent, will be established within the structure of the General Directorate of Legal Affairs of Ministry of Justice in order to carry out the duties stipulated in the Law, and that the mediation services will be carried out by this Department. Although the Department in question is not independent, it has been appointed with the duties stated in the Law in order to directly determine the addressee of the matter in front of the public and the other institutions and agencies, to avoid the fulfillment of these duties also by the other departments within the structure of the same General Directorate, and to provide efficiency in management. In addition, a Board of Mediation will be formed to make the basic decisions concerning the mediation services.

The Department

ARTICLE 29- (1) The Department shall consist of a department chairman, sufficient number of investigating judges, and other specialist personnel.

Ø Directive on Law on Mediation in Civil Disputes a. 51.

GOVERNMENT GROUND- This article regulates the Department to be established within the structure of the General Directorate of Legal Affairs of Ministry of Justice. One of the important points in the execution of the mediation services is the supervision of the mediators and especially of the institutions delivering mediator training. In order to carry out this service, employment of supervision officers, who will work under the General Directorate of Legal Affairs, is envisaged, and the basic principles concerning this matter are determined. It has to be emphasized that supervision is important especially for the part of mediation carried out in the court and for the enforcement of the agreement document prepared as the result of reconciliation. In this sense, the supervision officers do not have authorities with respect to the affairs carried out in the frame of exercising of judiciary power.

Duties of the Department

ARTICLE 30- (1) The duties of the Department are as follows:

a) To provide for the orderly and efficient execution of mediation services.

b) To make publications related with mediation, to encourage and support the scientific studies on this matter.

c) To carry out all kinds of decisions and transactions related with the functioning of the Board, and to cooperate with the ministries, other public institutions and agencies, universities, professional organizations having the nature of public institutions, non-profit foundations and associations and the appropriate real and corporate persons in relation with its duties.

ç) To publicize the mediation concept, to inform the public on this matter, to organize or support the scientific organizations such as national and international congresses, symposiums and seminars.

d) To monitor the country-wide mediation practices, to keep and publish the related statistics.

e) To resolve on the applications made by the institutions aiming to provide mediation training and on demands for prolongation of the validity period in the register, to list the training institutions aiming to provide meditation training, and to publish this list in electronic media.

f) To maintain the register of mediators, to resolve on the demands for inclusion in the register, to resolve on the deletion of the mediator from the register in the scope of the first and third paragraphs of article 21 and to promulgate in electronic media the information related with the persons included in the said register.

g) To maintain the records and keep one copy of the documents prepared by the mediators as the result of the mediation services.

ğ) To carry out inspections and researches and make suggestions to the General Directorate concerning the laws and regulative actions covered in its field of duty.

h) To prepare the annual activity report and the activity plan of the following year and submit these for the Board's information.

ı) To prepare the Annual Mediation Minimum Wage Tariff.

Ø Directive on Law on Mediation in Civil Disputes a. 52.

GOVERNMENT GROUND- This article regulates the duties of the Department in detail.

The Board

ARTICLE 31- (1) The Board shall consist of the following members:

a) General Director for Legal Affairs.

b) Department Chairman.

c) Tow judges, to be selected by the Supreme Board of Judges and Public Prosecutors, from

among the judges at first degree appointed at courts of law.

ç) Two representatives from Union of Bars of Turkey.

d) One representative from Union of Turkish Public Notaries.

e) Two academics in the field of private law, to be selected by Higher Education Board.

f) Three mediators to be selected by the Minister of Justice.

g) One representative from Union of Chambers and Commodity Exchanges of Turkey.

ğ) One representative from Union of Chambers of Turkish Tradesmen and Craftsmen.

h) Director of Turkey Justice Academy Training Center.

(2) If required, the chairman may invite specialists to the meetings of the Board.

(3) The chairman of the board is the General Director. The Department Chairman shall assume the duty of Chairman of Board at the meetings held in the absence of the General Director.

(4) The Board shall meet at least twice a year, in March and September. In addition, the Board may be convoked at any time upon the demand of the Chairman or of at least five members.

(5) The Board shall make decisions with the absolute majority of the total number of members. The membership of a member failing to participate in two consecutive meetings without excuse shall be terminated.

(6) The term of office of the members of the Board assigned from outside the Ministry is three years. The members, whose terms of office are complete, may be reassigned.

(7) The transportation, accommodation and other compulsory expenses of the Board members shall be met by the Ministry.

(8) The working procedure and principles of the Board are regulated with direction.

Ø Zivilrechts-Mediations-Gesetz (ZivMediatG) (Österreich) a. 4.

Ø Directive on Law on Mediation in Civil Disputes a. 53.

GOVERNMENT GROUND- In this article, the principles and procedures concerning the formation and meetings of the Board of Mediation are regulated. By providing for the appointment of representatives from the professional organizations and public bodies - which are directly or indirectly involved in different fields of justice - to the Board of Mediation, it is aimed to provide objectivity by establishing a balance in the fulfillment of the duties specified in the Law.

Duties of the Board

ARTICLE 32- (1) The duties of the Board are as follows:

a) To determine the basic principles concerning the mediation services and the codes of practice of mediation.

b) To determine the basic principles and standards concerning the mediation training, and the examination to be made at the end of such training.

c) To determine the rules concerning the supervision of the mediators.

ç) To finalize the drafts of the regulations, which have to be issued in accordance with this Law and which are prepared by the General Directorate, by making amendments if necessary.

d) To cancel the training permissions of the training institutions.

e) To resolve on the deletion of a mediator from the register in the scope of the second paragraph of article 21.

f) To determine the admission fees and yearly contributions to be paid by mediators.

g) To approve the Mediation Minimum Wage Tariff, making amendments if necessary.

ğ) To make recommendations in order to increase the efficiency of the activities to be carried out by the Department.

h) To deliver opinions about the annual activity report and plan of the Department.

ı) To the determine the contributions that the institutions and agencies – related with the matters covered in the activity plan of the Department – may provide for implementation.

Ø Zivilrechts-Mediations-Gesetz (ZivMediatG) (Österreich) a. 5.

Ø Directive on Law on Mediation in Civil Disputes a. 54.

GOVERNMENT GROUND- This article regulates the duties of the Board of Mediation.

CHAPTER EIGHT

Penal Provisions

Breach of confidentiality

ARTICLE 33- (1) Any person, who acts contrary to the liability in article 4 and who infringes the legally protected rights of an individual, shall be sentenced to an imprisonment up to six months.

(2) The investigation and prosecution of such offences depend on complaints.

Ø Zivilrechts-Mediations-Gesetz (ZivMediatG) (Österreich) a. 31.

Ø Turkey Board of Mediation Model Code of Conduct and Practice Rules for Mediation System and Mediators, a. 3.

GOVERNMENT GROUND- In this article, violation of the rule of confidentiality regulated in article 4 of the Law is defined as an offence, and this offence is identified as a damage offence. In addition, unlike the general provisions, the investigation and prosecution of the offence depend on complaints.

CHAPTER NINE

Final and Transitional Provisions

Cadres

ARTICLE 34- (1) The cadres covered in the attached lists (1) and (2) have been formed, and are added to the sections pertaining to the Ministry of Justice in the tables (I) and (II) annexed to the Decree Law No. 190 concerning the General Cadre and Its Procedure.

GOVERNMENT GROUND- This article regulates the cadres formed for the personnel within the structure of the Ministry, who will be appointed in the functioning of the system for the resolution of legal disputes by means of mediation, in a way to meet the requirements of the system.

Changed Provisions

ARTICLE 35-….

Directives

ARTICLE 36- (1) The qualifications and supervision of the training institutions to deliver mediation training and the contents and standards of the training, the determination of the principles and conditions of the written and practical examination to be carried out, the regulation of the mediation register and the conditions sought in the mediators, the supervision and monitoring of the mediators, the procedures and principles concerning the validity of the mediation certificates obtained without implementing the provisions of this Law, and the other matters concerning the execution of this Law, shall be regulated with the regulations to be issued by the Ministry.

GOVERNMENT GROUND- The Law contains provisions as general as possible; in order to achieve a functioning in compliance with the essence of the system, the qualifications and supervision of the training institutions to deliver mediation training, the contents and standards of the training, the regulation of the mediation register and the conditions sought in the mediators, the supervision and monitoring of the mediators, the procedures and principles concerning the assessment of the mediation authorization certificates issued without implementing the provisions of the Law, and the other matters concerning the execution of the Law will be regulated with the regulations to be issued.

PROVISIONAL ARTICLE 1- (1) The establishment and organization shall be completed within two months beginning from the date that this Law is published in the Official Gazette.

(2) The institutions and agencies specified in article 31 of the Law shall inform the General Directorate about their representatives to be appointed to the Board within two months beginning from the date that the Law is published in the Official Gazette. The institutions in sub-clauses (ç), (g) and (ğ) shall each appoint one extra representative in substitution for the three mediators to be selected by the Minister of Justice for the first three years.

(3) The term of office in the Board of the representatives appointed by the related institutions in

substitution for the mediators shall be one year. The Ministry of Justice shall notify the Board the names of three mediators to be selected at the end of this period. The mediators thus selected shall complete the terms of office of the Board members that they are appointed to replace.

(4) The Board shall meet within three months beginning from the completion of the establishment and organization specified in paragraph one. The date of the first meeting of the Board shall be considered as the beginning of the term of office of three years of the Board members.

GOVERNMENT GROUND- The establishment and organization of the Department will be completed within two months beginning from the date that the Law is published in the Official Gazette.

To enable the formation of the Board as soon as possible, the institutions - which have to appoint representatives for the formation of the Board of Mediators specified in article 31 of the Law - will notify their representatives to the General Directorate of Legal Affairs of Ministry of Justice at their own accord, within two months beginning from the date of publication of the Law in the Official Gazette. Since there will not be any mediators legally recorded in the register at the time of the initial formation, selection of mediators by the Minister of Justice for the Board of Mediation will not be possible; therefore, the institutions which will appoint extra representatives in substitution for the mediators to be selected by the Minister of Justice are specified separately. In order to provide democratic participation and considering the time required for the training of the mediators, transitional articles related with the formation of the Board are included.

In order to prevent delays in the formation of the Board of Mediation to be formed according to the provisions of the Law and to enable the planned functioning of the system, the Board will hold its first meeting within three months beginning from the completion of the establishment and organization.

PROVISIONAL ARTICLE 2- (1) The directives specified in this Law shall be issued within three months beginning from the first meeting of the Board.

GOVERNMENT GROUND- Since it is not possible for the Law to become functional at once and as a whole, it is envisaged to issue the regulations specified in this Law within three months beginning from the first meeting of the Board.

Effect

ARTICLE 36- (1) In this Law,

a) Articles 28 to 32 and the transitional articles shall become effective as of the date of publication in the Official Gazette,

b) The other articles shall become effective one year after the date of publication.

GOVERNMENT GROUND- In order to allow for the structuring of the Law in compliance with its purpose, articles 28 to 32 and the Transitional Articles will become effective as of the date of publication in the Official Gazette, and the other articles will become effective one year after the date of publication.

Execution

ARTICLE 37- (1) The provisions of the Law shall be executed by the Council of Ministers.

21/6/2012

GOVERNMENT GROUND- This article is related with the execution of the Law.

[1] Turkish Official Gazette Nr. 28331, dated June 22, 2012. Law on Mediation in Civil Disputes No 6325 came into effect on June 22, 2013. For the Turkish text of the Code see also Mustafa Serdar Özbek, Alternatif Uyuşmazlik Çözümü [Alternative Dispute Resolution] (Yetkin: Ankara, 2013).

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