An Evaluation on Mandatory Mediation in Turkish Law

Associate professor **Ayşe KILINÇ**[1]
Research assistant **Zehra Nur ERİM**[2]

Abstract

Mandatory mediation is a practice that obliges the parties to apply for mediation before filing a lawsuit in order to resolve the dispute. Mandatory mediation can be applied in three different forms: court-related, semi-compulsory and as a cause of action. In Turkish law, applying to mediation is one of the causes of action in certain disputes such as labour disputes, commercial disputes, consumer disputes and lease disputes, disputes arising from neighbourhood law, and dissolution of partnership. In this type of mediation, the Parties can terminate the mediation process at any time after attending the first meeting. Mandatory mediation reduces the cost of disputes by reducing the workload of the courts. It also allows faster resolution of disputes and encourages the public to apply for voluntary mediation by increasing the recognition of mediation. However, in order to achieve these objectives, it is important that a culture of reconciliation is sufficiently developed in a society.

Keywords: *civil disputes, mediation, voluntary mediation, principle of voluntariness, mandatory mediation, cause of action.*

JEL Classification: *K41, K49*

DOI: 10.62768/TBJ/2025/15/2/08

Please cite this article as:	**Article History**
Kılınç, Ayşe and Zehra Nur Erim, 'An Evaluation on Mandatory Mediation in Turkish Law', *Juridical Tribune – Review of Comparative and International Law* 15, no. 2 (June 2025): 388-405.	Received: 15 January 2025 Revised: 17 April 2025 Accepted: 25 May 2025

1. Introduction

The basic regulation on mediation in Turkish law was adopted by the Law No. 6325 on Mediation in Civil Disputes[3]. The said Law was adopted on 7.6.2012 and entered into force after being published in the Official Gazette on 22.6.2012. Accordingly, mediation has been applied in our law since 2012. However, mediation has been included among alternative dispute resolution methods in the doctrine before 2012[4].

[1] Ayşe Kılınç - Department of Civil Procedure and Enforcement and Bankruptcy Law, Faculty of Law, Afyon Kocatepe University, Turkey, kilincayse1983@hotmail.com, ORCID: 0000-0003-4420-0082.
[2] Zehra Nur Erim - Department of Civil Procedure and Enforcement and Bankruptcy Law, Faculty of Law, Afyon Kocatepe University; PhD Student in Private Law Program at Süleyman Demirel University, zehranurerim@aku.edu.tr, ORCID: 0000-0002-3896-568X.
[3] It is abbreviated as 'Mediation Law' in this study.
[4] Betül Azaklı Arslan, *Medeni Usûl Hukuku Açısından Zorunlu Arabuluculuk [Mandatory Mediation in*

The Mediation Law generally contains provisions regarding the mediation method of resolution. These regulations apply to all mediation practices, without distinguishing between voluntary and mandatory mediation. Accordingly, the basic regulations in the Law consist of ten sections: definition of Mediator and mediation, basic principles of mediation, rights and obligations of Mediators, mediation activity, mediation as a cause of action, Mediators' registry, mediation training and training institutions, establishment and duties, penal provisions, final and temporary provisions. The section containing the provisions on mandatory mediation is the fifth section titled 'mandatory mediation as a cause of action', consisting of Article 18/A and Article 18/B. In addition to the aforementioned provisions of the Mediation Law, there are also provisions regarding mandatory mediation in some other special laws These are; Article 3 of the Labour Courts Law for labour disputes, Article 5/A of the Turkish Commercial Code for commercial disputes and Article 73/A of the Consumer Law for consumer disputes.

In this study, based on the provisions of the Mediation Law and other special laws, an evaluation is made regarding the mandatory mediation practices in Turkish law. Accordingly, the study first provides a general definition of what should be understood from the mandatory mediation system under Turkish law. The following sections provide information on the disputes within the scope of mandatory mediation and the functioning of the mandatory mediation system. Finally, the advantages and disadvantages of the mandatory mediation system are evaluated in line with the official data of the Ministry of Justice.

2. Content of Mandatory Mediation under Turkish Law

The voluntary nature of the mediation method is one of the essential elements of the mediation system, together with the principle of confidentiality and equality[5].

Terms of Civil Procedure Law] (Yetkin, 2018), 26; Melis Taşpolat Tuğsavul, *Türk Hukukunda Arabuluculuk [Mediation in Turkish Law]* (Yetkin 2012), 21; Sevda Yaşar Coşkun and Munise Seray Göncü Döner. "Davaların Yığılması ve Terditli Davalar Açısından Ticari Dava Şartı Arabuluculuk: Mahkeme Kararları Üzerinden Bir Analiz [Mediation of Commercial Litigation for the Defeat of Cases within the Scope, Alternative Pleading Case: An Analysis on Court Decisions]", *Erzincan Binali Yıldırım Üniversitesi Hukuk Fakültesi Dergisi* XXIV, no.1-4, (2020): 90; Nesibe Kurt Konca, "Ticari Uyuşmazlıklarda Dava Şartı (Zorunlu) Arabuluculuk [Case Condition in Commercial Disputes in Terms of Procedural Law]", *Seta Perspektif*, no.225, (2018): 1; Ayşe Kılınç, "Mevcut Düzenlemeler Çerçevesinde Zorunlu Arabuluculukta Yetki [Venue In Mandatory Medıatıon In The Context Of Current Regulatıons]", *Yıldırım Beyazıt Hukuk Dergisi* 8, no.2, (2023): 538; Mustafa Göksu, "İş Uyuşmazlıklarında Zorunlu Arabuluculuk [Mandotory Mediation in Labor Disputes]", *PressAcademia Procedia* 3, no.379, (2017): 379; Ramazan Arslan and Ejder Yılmaz and Sema Taşpınar Ayvaz and Emel Hanağası, *Medenî Usûl Hukuku [Civil Procedure Law]* (Yetkin 2024) 839; Murat Atalı, İbrahim Ermenek and Ersin Erdoğan, *Medenî Usûl Hukuku Ders Kitabı [Civil Procedure Law Textbook]* (Yetkin 2024) 803.

[5] Taşpolat Tuğsavul, *Türk Hukukunda Arabuluculuk*, 126; Azaklı Arslan, *Medeni Usûl Hukuku Açısından Zorunlu Arabuluculuk,*50; Süha Tanrıver, "Dava Şartı Arabuluculuk Üzerine Bazı Düşünceler [Some Thoughts on Case Condition Mediation] ", *Türkiye Barolar Birliği Dergisi,* no.147, (2020): 112; Kılınç, "Mevcut Düzenlemeler Çerçevesinde Zorunlu Arabuluculukta Yetki", 538; Süha Tanrıver, *Hukuk Uyuşmazlıkları Bağlamında Arabuluculuk*, (Yetkin 2022) 65; Sedat Kaya, "7036 Sayılı İş Mahkemeleri Kanunu Çerçevesinde Bireysel İş Uyuşmazlıklarında Zorunlu Arabuluculuk[Compulsory Mediation in

However, in some cases, in order for the court to proceed to the resolution of the dispute, the parties must have applied to mediation before the start of the proceedings[6]. This obligation may arise from the direction of judges or arbitrators or from a provision of law[7]. Accordingly, if an application to the court cannot be made without applying for mediation, there is mandatory mediation[8]. Mandatory mediation and compulsion within the mediation process are two different concepts[9]. The obligation is limited to the application stage, i.e. initiation of the mediation process and attendance at the first meeting[10]. In this context, it can be said that the parties are only obliged to try to settle the dispute[11]. The parties can terminate the mediation process at any time after the first meeting[12]. Therefore, the parties are not necessarily expected to reach an agreement at

Individual Business Disputes under the Labor Courts Law 7036]", *Erzincan Binali Yıldırım Üniversitesi Hukuk Fakültesi Dergisi* XXII, no. 1-2, (2018): 222; Göksu, "İş Uyuşmazlıklarında Zorunlu Arabuluculuk", 380; Arslan- Yılmaz- Taşpınar Ayvaz- Hanağası, *Medenî Usûl Hukuku*, 841; Atalı- Ermenek- Erdoğan, *Medenî Usûl Hukuku Ders Kitabı*, 805; Abdullah Berat Memiş, *Ticari Uyuşmazlıklarda Zorunlu Arabuluculuk[Mandotory Mediation in Commercial Disputes]* (Seçkin 2020), 21; Banu Ulusan, "Sermaye Şirketlerinde Zorunlu Arabuluculuk", (PhD diss., University of Galatasaray, 2024), 10; Elif Karaman, *Sınai Mülkiyet Hukukundan Doğan Uyuşmazlıklarda Alternatif Bir Uyuşmazlık Çözüm Yöntemi: MED-ARB (Arabuluculuk – Tahkim)[Mediation-Arbitration (Med-Arb) İn Disputes Arising From İndustrial Property Law]* (Yetkin, 2024), 76; Melissa Hanks, "Perspectives on Mandatory Mediation", *University of South Wales Law Journal* 35, no. 3, (2012): 930; Mehmet Saim Aşçı, "Zorunlu Arabuluculuk Uygulamasının Olumlu ve Olumsuz Yönleri [Positive and Negative Aspects of Compulsory Mediation]", *Uluslararası Hukuk ve Sosyal Bilim Araştırmaları Dergisi* 1, no.2, (2019): 88.

[6]Seda Özmumcu, "Karşılaştırmalı Hukuk ve Türk Hukuku Açısından Zorunlu Arabuluculuk Sistemine Genel Bir Bakış [A General Vıew On The Mandatory Medıatıon System Wıth Regards To The Turkısh And Comparatıve Law]", *İstanbul Üniversitesi Hukuk Fakültesi Mecmuası* LXXIV, no. 2, (2016): 808; Azaklı Arslan, *Medeni Usûl Hukuku Açısından Zorunlu Arabuluculuk,* 30; Yaşar Coşkun- Göncü Döner. "Davaların Yığılması ve Terditli Davalar Açısından Ticari Dava Şartı Arabuluculuk: Mahkeme Kararları Üzerinden Bir Analiz", 94.

[7]Andreas Nelle, "Making Mediation Mandatory: A Proposed Framework", *Ohio State Journal on Dispute Resolution 7*, no.2, (1992) :288; Azaklı Arslan, *Medeni Usûl Hukuku Açısından Zorunlu Arabuluculuk,* 29.

[8]Yaşar Coşkun- Göncü Döner. "Davaların Yığılması ve Terditli Davalar Açısından Ticari Dava Şartı Arabuluculuk: Mahkeme Kararları Üzerinden Bir Analiz", 95; Azaklı Arslan, *Medeni Usûl Hukuku Açısından Zorunlu Arabuluculuk*, 29; Kurt Konca, "Ticari Uyuşmazlıklarda Dava Şartı (Zorunlu) Arabuluculuk", 3; Elif Kılınç, "İş Hukukunda Zorunlu Arabuluculuğun Takip Hukukuna Etkileri [The Effects Of Mandatory Medıatıon In Labor Law On Executıon Law]", *İnönü Üniversitesi Hukuk Fakültesi Dergisi* 12, no.2, (2021): 467; Hakan Albayrak, "Eşitlik ve Tarafsızlık İlkelerinin Zorunlu Arabuluculuk Bağlamında Yeniden Değerlendirilmesi Zorunluluğu [The Necessity To Re-Evaluate The Principles of Equality and Impartiality in The Context of Compulsory Mediation]", Gaziantep University Journal of Social Sciences, 17, Ethical Special Issue (2017):18.

[9] Dorcas Quek, "Mandatory Mediation: An Oxymoron- Examining the Feasibility of Implementing a Court Mandated Mediation Program", *Cardozo Journal of Conflict Resolution* 11, no. 2, (2010): 485-486; Azaklı Arslan, *Medeni Usûl Hukuku Açısından Zorunlu Arabuluculuk*, 51; Stella Vettori, "Mandatory Mediation: An Obstacle to Access to Justice", *African Human Rights Law Journal* 15, no.2, (2015): 358; Hanks, "Perspectives on Mandatory Mediation", *University of South Wales Law Journal,* 930.

[10] Tanrıver, *Hukuk Uyuşmazlıkları Bağlamında Arabuluculuk,* 161; Kılınç, "İş Hukukunda Zorunlu Arabuluculuğun Takip Hukukuna Etkileri", 467; Atalı/ Ermenek/ Erdoğan, *Medenî Usûl Hukuku Ders Kitabı,* 806.

[11] Quek, "Mandatory Mediation: An Oxymoron- Examining the Feasibility of Implementing a Court Mandated Mediation Program", 486.

[12]Mustafa Yavuz, "Ticari Uyuşmazlıklarda Dava Şartı Olarak Arabuluculuk [Mediation as a Case Condition of Trial in Commercial Disputes] ", *Gümrük ve Ticaret Dergisi* 5, no.15, (2019): 54; Azaklı

the end of the mediation process[13].

There are three different versions of mandatory mediation[14]. These are court-related mediation, semi-compulsory mediation and mediation as a cause of action[15]. Court-related mediation is defined as the dispute is sent to a Mediator after a lawsuit has been filed, if the court deems it necessary or if the dispute is sent to a Mediator under a legal provision without the parties' consent[16]. Semi-compulsory mediation is a type of mediation in which one of the parties proposes to apply for mediation before the lawsuit is filed and if this proposal is rejected by the other party without a reasonable justification, the party who rejected the proposal at the end of the proceedings is sentenced to pay the costs of the proceedings even if the party who won the case[17]. In another model, conditional mediation, the parties' application to mediation before filing a lawsuit is accepted as a special cause[18] of action. In other words, the parties must apply to mediation before filing a lawsuit. A lawsuit cannot be filed without applying for mediation; otherwise the lawsuit will be dismissed procedurally[19]. In Turkish law, with the Labour Courts Law No. 7036 having come into force[20], the mandatory mediation method has found application as a cause of action for the first time[21]. Therefore, the mandatory mediation system applicable under Turkish law is mediation as a cause of action.

Whether the mandatory application to mediation can be accepted as a cause of action in terms of civil procedural law is controversial in our law. In this context, according to Ekmekçi/Özekes/Atalı/Seven, the application to the Mediator is a cause of action due to the legal regulation; however, the appropriateness of this legal regulation is controversial[22]. According to the authors, it can be said that the obligation to apply

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Arslan, *Medeni Usûl Hukuku Açısından Zorunlu Arabuluculuk,* 53; Zeliha Büşra Tanır, "Arabuluculuğa İlişkin Temel İlkeler [Basıc Prıncıples Relatıng To Medıatıon]", Euroasia Journal Of Social Sciences & Humanities7, no.1, (2020): 110; Kılınç, "İş Hukukunda Zorunlu Arabuluculuğun Takip Hukukuna Etkileri", 467; Albayrak, "Eşitlik ve Tarafsızlık İlkelerinin Zorunlu Arabuluculuk Bağlamında Yeniden Değerlendirilmesi Zorunluluğu", 20.

[13] Nelle, "Making Mediation Mandatory: A Proposed Framework", 287; Tanrıver, *Hukuk Uyuşmazlıkları Bağlamında Arabuluculuk,* 161; Tanrıver, "Dava Şartı Arabuluculuk Üzerine Bazı Düşünceler", 113; Yavuz, "Ticari Uyuşmazlıklarda Dava Şartı Olarak Arabuluculuk", 54; Süha Tanrıver, *Alternatif Uyuşmazlık Çözümleri*, [*Alternative Dispute Resolutions] (*Yetkin 2023), 88.

[14] For detailed information Azaklı Arslan, *Medeni Usûl Hukuku Açısından Zorunlu Arabuluculuk*, 31-33.

[15] Azaklı Arslan, *Medeni Usûl Hukuku Açısından Zorunlu Arabuluculuk,*32-33.

[16] Özmumcu, "Karşılaştırmalı Hukuk ve Türk Hukuku Açısından Zorunlu Arabuluculuk Sistemine Genel Bir Bakış", 809; Azaklı Arslan, *Medeni Usûl Hukuku Açısından Zorunlu Arabuluculuk*, 32.

[17] Özmumcu, "Karşılaştırmalı Hukuk ve Türk Hukuku Açısından Zorunlu Arabuluculuk Sistemine Genel Bir Bakış", 809; Azaklı Arslan, *Medeni Usûl Hukuku Açısından Zorunlu Arabuluculuk,* 33.

[18] "The causes of action are the conditions that the court automatically considers for the existence or non-existence at every stage of the proceedings, even if they are not put forward by the parties, before examining the merits of a dispute." see Hakan Pekcanıtez and Oğuz Atalay and Muhammet Özekes, *Medeni Usûl Hukuku Ders Kitabı,* (Vedat 2024), 213; Baki Kuru and Burak Aydın, *Medeni Usul Hukuku El Kitabı Cilt I*, *[Civil Procedure Law Handbook Volume I]* (Yetkin 2024) 377.

[19] Azaklı Arslan, *Medeni Usûl Hukuku Açısından Zorunlu Arabuluculuk,* 32.

[20] Official Gazette:25.10.2017/30221.

[21] Azaklı Arslan, *Medeni Usûl Hukuku Açısından Zorunlu Arabuluculuk*, 32.

[22] Ömer Ekmekçi et al., *Hukuk Uyuşmazlıklarında Arabuluculuk*, *[Mediation in Legal Disputes]* (On İki Levha 2019), 153.

for mediation is similar to the preliminary objections[23] rather than the cause of action in terms of its legal nature[24]. According to Tanrıver, in order for a matter to be accepted as a special cause of action for certain disputes, there must be a logical and legal connection between the dispute and the cause of action[25]. However, there is no such relationship between the application to mediation and the disputes that cannot be applied to the court without applying to mediation[26]. In our opinion, since the necessary link between the disputes within the scope of mandatory mediation and the requirement of mandatory application to mediation cannot be established, the application to mediation is not a cause of action in real terms. However, in practice, due to the explicit provision of the law, the application to mediation must be accepted as a cause of action for certain disputes.

In addition to the above criticisms, it has also been argued that the regulation of mandatory mediation is unconstitutional as it delays direct access to the court[27]. However, the Constitutional Court ruled that compulsory mediation is not unconstitutional. The Court acknowledged that mediation as a cause of action imposed a restriction on access to the court, but stated that this restriction was proportionate and did not harm the essence of the right[28]. In response to the decision, it is argued in the doctrine that the primary duty of the state is to provide access to justice and that the delegation of this authority due to workload undermines the essence of the right[29]. In our opinion, since the parties are not pressurised to continue the mediation process or to reach an agreement, there is no real obstacle in terms of access to the court. Because the parties are free to terminate the mediation proceedings and to initiate litigation.

In disputes where the application to mediation is regulated as a cause of action, the plaintiff is obliged to attach the original or a copy confirmed by the Mediator of the final minute indicating that an agreement was not reached in the mediation process to the lawsuit petition when filing a lawsuit (Article 18/A, II of the Mediation Law). If the lawsuit is filed before the minute is presented to the court, the court shall give the plaintiff a definite period of one week to submit the minute to the file. If the deficiency is not completed within the given period, the lawsuit is rejected procedurally. If it is determined that the lawsuit was filed without applying to the Mediator, the lawsuit shall

[23] "Preliminary objections are procedural objections which, if not asserted at the beginning of the lawsuit, are not taken into account ex officio and constitute an obstacle to entering the merits of the proceedings" see: Pekcanıtez-Oğuz Atalay-Muhammet Özekes, *Medeni Usûl Hukuku Ders Kitabı*, 267.

[24] Ekmekçi et al, *Hukuk Uyuşmazlıklarında Arabuluculuk,* 154.

[25] Tanrıver, *Hukuk Uyuşmazlıkları Bağlamında Arabuluculuk*, 160; Tanrıver, "Dava Şartı Arabuluculuk Üzerine Bazı Düşünceler", 119.

[26] Tanrıver, *Hukuk Uyuşmazlıkları Bağlamında Arabuluculuk*, 160; Tanrıver, "Dava Şartı Arabuluculuk Üzerine Bazı Düşünceler", 119.

[27] Baki Kuru and Burak Aydın, *Medeni Usul Hukuku El Kitabı Cilt II*, *[Civil Procedure Law Handbook Volume II]* (Yetkin 2024) 1161; Kürşat Karacabey, "Zorunlu Arabuluculuğu Hukukun Temel İlkelerine Aykırılığı ve Uygulanabilirliğine Dair Sorunlar [Problems Regarding the Discrimination and Applicability of Mandatory Mediation to Basic Principles of Law]", *Ankara Barosu Dergisi,* no.1, (2016): 472; Göksu, "İş Uyuşmazlıklarında Zorunlu Arabuluculuk", 382.

[28]For the Constitutional Court Decision dated 11.07.2018 and numbered 178/82, see https://normkararlar bilgibankasi.anayasa.gov.tr/Dosyalar/Kararlar/KararPDF.

[29] Ekmekçi et al, *Hukuk Uyuşmazlıklarında Arabuluculuk,* 148-149.

be dismissed procedurally without any action (Article 18A/2 of the Mediation Law, Article 3/2 of the Labour Courts Law). In this context, the lawsuit petition is not served to the other party and no examination is made regarding the other causes of action. Although this regulation is envisaged to prevent loss of time, the decision to dismiss the lawsuit before the petitions phase is completed is a infringement of the right to be heard on the part of the defendant[30]. In addition, the lack of an examination of other causes of action such as jurisdiction, competence or party capacity creates problems such as the court not having jurisdiction or ruling on a dispute that does not fall within its jurisdiction[31].

3. Disputes under the Scope of Mandatory Mediation

Lawsuits can be filed for the resolution of all types of disputes[32]. However, in order to apply for mediation, there must be a private law dispute that is not related to public order and that the Parties can freely dispose of[33]. In addition, due to the explicit regulation of the law, It is not possible for a dispute involving an allegation of domestic violence to be resolved through mediation (Article 1/2 of the Mediation Law). On the other hand, the fact that the dispute has a foreign element does not constitute an impediment to apply for mediation[34]. The dispute to be mediated must be related to private law. In other words, mediation cannot be applied for disputes related to public law[35]. However, not all private law disputes can be subject to mediation[36]. Disputes on which the parties can freely dispose of and which they can end through compromise are suitable for mediation[37].

The Mediation Law No. 6325 dated 2012, the main regulation on mediation, is based on voluntary mediation. However, with the Labour Court Law dated 2017 and numbered 7036, coming into force, mandatory mediation started to be applied as a cause of action for labour disputes for the first time in Turkish law. The short transition period from voluntary to mandatory mediation was criticised. Accordingly, while even the

[30]Ekmekçi et al., *Hukuk Uyuşmazlıklarında Arabuluculuk*, 156.
[31]Ekmekçi et al., *Hukuk Uyuşmazlıklarında Arabuluculuk*,157.
[32]Ekmekçi et al., *Hukuk Uyuşmazlıklarında Arabuluculuk*, 48.
[33] Azaklı Arslan, *Medeni Usûl Hukuku Açısından Zorunlu Arabuluculuk*, 104; Ekmekçi et al., *Hukuk Uyuşmazlıklarında Arabuluculuk,* 48; İbrahim Özbay, "Tüketici Uyuşmazlıklarında Arabuluculuğa Elverişlilik [Eligibility for Mediation in Consumer Disputes]", *Tokat Gaziosmanpaşa Üniversitesi Hukuk Fakültesi Dergisi* I, no.1, (2023):3; Ferhat Yıldırım, "Türk Hukuk Sisteminde Alternatif Bir Çözüm Yolu Olarak Arabuluculuk[Mediation as an Alternative Remedy in Turkish Legal System]", *International Journal Of Social Sciences And Education Research* 2, no.3, (2016): 751.
[34] Ekmekçi et al., *Hukuk Uyuşmazlıklarında Arabuluculuk*, 49; Özbay, "Tüketici Uyuşmazlıklarında Arabuluculuğa Elverişlilik", 3.
[35] Azaklı Arslan, *Medeni Usûl Hukuku Açısından Zorunlu Arabuluculuk,* 104; Ekmekçi et al*., Hukuk Uyuşmazlıklarında Arabuluculuk*, 50; Yıldırım, "Türk Hukuk Sisteminde Alternatif Bir Çözüm Yolu Olarak Arabuluculuk", 751.
[36] Ekmekçi et al., *Hukuk Uyuşmazlıklarında Arabuluculuk*, 50; Yıldırım, "Türk Hukuk Sisteminde Alternatif Bir Çözüm Yolu Olarak Arabuluculuk", 751.
[37] Ekmekçi et al., *Hukuk Uyuşmazlıklarında Arabuluculuk*, 50; Özbay, "Tüketici Uyuşmazlıklarında Arabuluculuğa Elverişlilik", 3.

consequences of voluntary mediation are not yet fully foreseeable and the problems related to mediation have not become evident in judicial decisions, it is stated that mandatory mediation will cause serious problems[38]. It was also stated that the regulation of the provisions on mandatory mediation by the Labour Courts Law No. 7036, instead of the Mediation Law, which contains the basic regulations on mediation, was erroneous in terms of law-making technique[39]. In this context, it is indicated that the provisions of the Labour Courts Law regarding mandatory mediation should be abolished and the provisions of the Mediation Law should be applied in all mandatory mediation areas[40].

Following labour disputes, commercial lawsuits for debt and compensation, the subject matter of which is a sum of money, are also included in the scope of mandatory mediation[41]. However, with the amendment made by the Law No. 7445, negative declaration actions, restitution actions and annulment of objection actions are also included in the scope of mandatory mediation. Thus, with this amendment, the discussions[42] in the doctrine on whether these lawsuits are included in the scope of

[38] Ekmekçi et al., *Hukuk Uyuşmazlıklarında Arabuluculuk*, 125.
[39] Ekmekçi et al., *Hukuk Uyuşmazlıklarında Arabuluculuk*, 126.
[40] Ekmekçi et al., *Hukuk Uyuşmazlıklarında Arabuluculuk*, 127.
[41] With Article 20 of the Law No. 7155, Article 5/A titled 'Mediation as a cause of action' was added to the Turkish Commercial Code No. 6102 (Official Gazette no. 27846 published on 14/02/2011) and mediation as a cause of action in commercial disputes started as of 01.01.2019. However, this time, the Turkish Commercial Code does not provide a detailed regulation on mandatory mediation. Instead, in accordance with the law-making technique, a general regulation on mandatory mediation was made with Article 18/A added to the Mediation Law by Law No. 7155. On this subject, see: Ekmekçi et al., *Hukuk Uyuşmazlıklarında Arabuluculuk,* 126.
[42] Before the adoption of this regulation, it was controversial in the doctrine whether these lawsuits were within the scope of mandatory mediation. According to one opinion, since there is no explicit provision in the rationale of the article stating that mandatory mediation will only apply to actions for performance, the subject matter of which is the payment of a monetary receivable, negative declaration actions are also subject to mandatory mediation. See: Cenk Akil, "Ticari Uyuşmazlıklarda Dava Şartı Olarak Arabuluculuk Hakkında Usûl Hukuku Bakımından Bazı Değerlendirmeler [Some Evaluations about Mediation as a Case Condition in Commercial Disputes in Terms of Procedural Law] ", *TAAD* 11, no. 41, (2020): 322; Barış Toraman, "Takip Hukukuna Özgü Bazı Davaların Dava Şartı Arabuluculuğa Tâbi Olup Olmadığı Sorunu[The Question of Whether Certain Actions Peculiar to Debt Enforcement Proceedings are Subject to Mandatory Mediation or not]", *Çankaya Üniversitesi Hukuk Fakültesi Dergisi* 5, no.1, (2020): 3163; Another opinion is that the lawsuits to which mandatory mediation will be applied are listed in the text of the article in a limited manner; therefore, if there is a will to include negative declaration cases within the scope of mandatory mediation, this should be brought by a legal regulation. See: Elif Irmak Büyük, "Karar İncelemesi: Ticari Dava Niteliğindeki İtirazın İptâlî Davasının Dava Şartı Arabuluculuğa Tabi Olup Olmadığına İlişkin Uyuşmazlığın Giderilmesine Yönelik Yargıtay 23. Hukuk Dairesi Kararının Değerlendirilmesi[Verdict Analysis: Evaluation of the 23rd Civil Department of the Supreme Court of Appeals Decision for the Resolution of Disputes Wheather the Action for Annulment of the Objection for Commercial Disputes is Subject to Mediation as a Cause of Action]", *Marmara Üniversitesi Hukuk Fakültesi Hukuk Araştırmaları Dergisi* 27, no. 1, (2021): 788, Orhan Gazi Sarıdağ, "Bireysel İş Hukukunda Arabuluculuktan Kaynaklanan Bazı Sorunlar [Some Problems Arısıng From Medıatıon In Indıvıdual Labour Law]", *Dokuz Eylül Üniversitesi Hukuk Fakültesi Dergisi* 24, no.2, (2022): 1100; See also for a detailed examination of this issue: Muhammet Özekes and Pınar Çiftçi, "Menfî Tespit Davalarını Zorunlu Arabuluculuğa Dahil Saymanın Gereksizliği Üzerine (İstanbul BAM Kararları Örneğinden Bir Bakış)[Non-Requırement Of Includıng The Negatıve Declaratory Actıons In The Compulsory Medıatıon (A View From Istanbul Circuit Courts Of Appeal Precedent)]", *Türkiye Barolar Birliği Dergisi,* no.148, (2020): 101-134; It is stated that the annulment of objection case, which is a lawsuit specific to the

mandatory mediation have also been concluded.

After commercial disputes, consumer disputes are also included in the scope of mandatory mediation[43]. This regulation is valid for disputes that can be directly applied to the consumer court[44]. Finally, some disputes within the jurisdiction of the civil court of peace[45] and disputes arising from agricultural production contracts[46] are included in the scope of mandatory mediation. This extension of the application area of mandatory mediation has been criticised in the doctrine by stating that the application to mediation, which is a special cause of action, has almost been transformed into a general cause of action[47].

4. Operation of the Mandatory Mediation System

Within the scope of mandatory mediation, the application is made to the mediation office of the courthouse in the place where the competent court[48] is located, whichever court would have jurisdiction if a lawsuit were filed for the main dispute. In places where there is no mediation office, it is made to the court registry office assigned with this task (Article 18/A, 4 of the Mediation Law). Upon application, the mediation office shall appoint a Mediator from the list notified to it by the mediation head of

enforcement law, is a way to continue the enforcement proceedings without judgement, and if mediation is made mandatory for this lawsuit, it will be meaningless to initiate enforcement proceedings without judgement, and it is indicated that the annulment of objection cases are not subject to mandatory mediation See: Ekmekçi et al., *Hukuk Uyuşmazlıklarında Arabuluculuk*, 197-198; On the other hand, another opinion states that it is mandatory to apply to mediation before the annulment of objection lawsuit is filed. See: Kurt Konca, "Ticari Uyuşmazlıklarda Dava Şartı (Zorunlu) Arabuluculuk", 5.

[43] Pursuant to Article 73/A added to the Consumer Law No. 6502 (Official Gazette dated 28.12.2013 and numbered 28835) on 22.07.2020, except for the exceptions specified in the same article; applying for mediation before filing a lawsuit for disputes within the jurisdiction of the consumer court has become a cause of action.

[44] Therefore, the provisions on mandatory mediation shall not apply to disputes within the jurisdiction of the Consumer Arbitration Committees. For detailed information on mediation in consumer disputes, see also: Özbay, "Tüketici Uyuşmazlıklarında Arabuluculuğa Elverişlilik", 11-18.

[45] Article 18/B was added to the Mediation Law No. 6325 with Article 37 of the Law No. 7445. According to this article; disputes arising from lease relations, disputes for the elimination of joint ownership, disputes arising from the Property Ownership Law No. 634 and disputes arising from neighbouring rights are included within the scope of mandatory mediation. In addition, with Article 17/B added to the Mediation Law No. 6325 with Article 34 of the Law No. 7445 dated 28.03.2023, it is accepted that disputes regarding the alienation of immovable property or the establishment of limited real rights on immovable property are also suitable of mediation.

[46] Law No. 5488 on Agriculture has been significantly amended and according to the subparagraph (e) of the second paragraph of the thirteenth article of this Law, it is stated that it is mandatory to apply to mediation before filing a lawsuit in disputes arising from agricultural production contracts.

[47] Tanrıver, "Dava Şartı Arabuluculuk Üzerine Bazı Düşünceler", 119; Kılınç, "Mevcut Düzenlemeler Çerçevesinde Zorunlu Arabuluculukta Yetki", 539.

[48] In terms of labour disputes, the application for mediation shall be made to the mediation office in the place of residence of the other party, or if the other party is more than one person, in the place of residence of one of them or in the place where the work is performed (Article 3/5 of Labour Courts Law). For a consumer dispute that falls within the scope of mandatory mediation, the mediation office in the consumer's place of residence may also be applied to, together with the general competence rules set out in the Code of Civil Procedure (Article 73/5 of Consumer Law).

department (Article 18/A, 5 of the Mediation Law). The parties may also request the appointment of a Mediator of their choice from the list (Article 18/A, 5 of the Mediation Law 5).

The competent mediation office is determined according to the applicant's declaration. Therefore, the Mediator does not automatically assess whether the mediation office applied to is competent or not (Article 18/A, 8 of the Mediation Law)[49]. In case of lack of competency, the opposing party must file an objection to the competency of the office it claims to be competent at the first meeting[50] at the latest by submitting documents on the competency of the office it claims to be competent (Article 18/A, 8 of the Mediation Law)[51]. If the application is made to an incompetent office, no distinction is made as to whether the competency rule is definitive or not[52]. In both situations, the other party must object to competency[53]. Following the objection of jurisdiction submitted in due time and in accordance with the procedure, the Mediator immediately sends the file to the court of peace (Article 18/A, 8 of the Mediation Law). The civil court of peace decides definitively on the objection of competency by examining the file within one week at the latest (Article 18/A, 8 of the Mediation Law). If the competency objection is rejected, the same Mediator continues his/her duty and the Mediator's term of office starts again (Article 18/A, 8 of the Mediation Law). If it is decided to accept the objection of competency, an application shall be made to the office within one week after the notification of the decision, and the date of application shall be accepted as the date of application to the incompetent office (Article 18/A, 8 of the Mediation Law).

Using all means of communication, the Mediator shall inform the parties on the process and shall invite them to the first meeting together with their lawyers, if any (Article 18/A, 7 of the Mediation Law). In the event that one of the parties fails to attend the first meeting without stating an excuse, even if he/she is partially or fully justified at the end of the lawsuit, he/she shall be liable for half of the trial expenses that the other party is obliged to pay and half of the counsel fee shall be ruled in his/her favour. If both parties do not attend the meeting, they shall be liable for the costs of the proceedings (Article 18/A, 11 of the Mediation Law). However, this sanction is not applicable in consumer dispute proceedings (Article 73/A, 2 of the Consumer Law).

The Mediator finalises the process within three weeks from the date of assignment. In case of necessity, the process can be extended for one more week (Article 18/A, 11 of the Mediation Law; Article 3, 10 of the Labour Courts Law; Article

[49] Kılınç, "Mevcut Düzenlemeler Çerçevesinde Zorunlu Arabuluculukta Yetki", 547.

[50] Objections not raised within the time limit shall not be evaluated and the office assigning the Mediator shall be accepted as competent to resolve the dispute even if it is not competent. See: Kılınç, "Mevcut Düzenlemeler Çerçevesinde Zorunlu Arabuluculukta Yetki", 549.

[51] In the doctrine, although it is stated that the fact that the lack of competence can only be asserted by the other party may prolong the mandatory mediation process, it is stated that the competence is not as important as the competence of the court within the scope of mediation, which is an alternative solution, and therefore the current regulation is appropriate. See: Kılınç, "Mevcut Düzenlemeler Çerçevesinde Zorunlu Arabuluculukta Yetki", 548.

[52] Kılınç, "Mevcut Düzenlemeler Çerçevesinde Zorunlu Arabuluculukta Yetki", 547.

[53] Kılınç, "Mevcut Düzenlemeler Çerçevesinde Zorunlu Arabuluculukta Yetki", 547.

24, 5 of the Regulation on Mediation Law). For commercial disputes, the Mediator must finalise the process within six weeks from the date of assignment. If necessary, this period may be extended by a further two weeks (Article of the 5/A, 2Turkish Commercial Law). The mandatory mediation process ends in the event that the Mediator cannot reach the parties, the parties do not attend the first meeting without stating an excuse, the parties reach an agreement or cannot reach an agreement (Article 18/A, 10 of the Mediation Law; Article 3, 11 of the Labour Courts Law). The Mediator draws up a final minute according to the reason for the termination of the process[54].

The periods of limitation do not run from the application to mediation until the final minute is drawn up (Article 16, Article 15 of the Mediation Law). The final minute shall be signed by the Mediator, the parties and their attorneys, if any (Article 17/2 of the Mediation Law; Article 20/2 of the Regulation on Mediation Law). If the mediation process has ended without reaching an agreement, a lawsuit may be filed by attaching the final minute to the lawsuit petition (Article 18/A, 2 of the Mediation Law). Even if the process is unsuccessful, the cause of action is deemed to be fulfilled[55].

If agreement is reached at the end of the process, a written document of agreement[56] can be drawn up together with the final minute[57]. The parties may request a certificate of enforceability of the agreement document from the civil court of peace where the Mediator is office (Article 18, 2 of the Mediation Law). The examination to be made by the civil court of peace is only related to whether the agreement is enforceable and whether the dispute subject to the agreement is suitable for mediation[58]. The agreement document containing this annotation has the quality of a judgement and with the agreement document containing this annotation, the parties can file an enforcement proceeding with judgement (Article 18, 2 of the Mediation Law). The

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[54] Ekmekçi et al., *Hukuk Uyuşmazlıklarında Arabuluculuk*, 177.

[55] Ekmekçi et al., *Hukuk Uyuşmazlıklarında Arabuluculuk*, 179.

[56] The legal nature of the agreement document is controversial in the doctrine. According to the first opinion, the agreement document is an out-of-court compromise. See: Azaklı Arslan, *Medeni Usûl Hukuku Açısından Zorunlu Arabuluculuk,* 237; Tanrıver, *Hukuk Uyuşmazlıkları Bağlamında Arabuluculuk,* 134; The other opinion is that the agreement document is a unique contract of the law of obligations. See: Mine Akkan, "Arabuluculuk Faaliyeti Sonucunda Anlaşılan Hususlarda Dava Açma Yasağı ve Sonuçları [Prohıbıtıon Of Lıtıgatıon On Agreed Matters In Medıatıon And Consequences Of Prohıbıtıon]", Dokuz Eylül Üniversitesi Hukuk Fakültesi Dergisi 20, no.2, (2018): 16-17; Emre Kıyak, "Arabuluculuk Sonucunda Ulaşılan Anlaşma Belgesinin Hukuki Niteliği [Legal Status of Settlement Agreement Reached as a Result of Mediation]", Türkiye Adalet Akademisi Dergisi 6, no. 21, (2015): 545.

[57] Nesibe Kurt Konca- Emel Badur, "Taşınmazın Aynına İlişkin Uyuşmazlıklarda Arabuluculuk Anlaşma Belgesi ve İcra Edilebilirlik Şerhi[Mediation Agreement Document and Enforceability Annotation in Disputes Regarding the Real Right on Real Estate]",Türkiye Adalet Akademisi Dergisi, no.56, (2023): 542; Büyükay, Arabuluculuk Anlaşma Belgesi ve İcra Edilebilirlik Şerhi, s.97; Melis Taşpolat Tuğsavul, "Arabuluculuk Faaliyeti Sonunda Varılan Anlaşmanın Hukuki Niteliği[The Legal Characteristic of The Agreement At The End Of The Mediation Activity]", *Galatasaray Üniversitesi Hukuk Fakültesi Dergisi* 18, no.1, (2019): 344.

[58] Kaya, "7036 Sayılı İş Mahkemeleri Kanunu Çerçevesinde Bireysel İş Uyuşmazlıklarında Zorunlu Arabuluculuk", 248. Büyükay, Arabuluculuk Anlaşma Belgesi ve İcra Edilebilirlik Şerhi, 97; Büşra Cömert- Ersin Erdoğan, "Arabuluculuk Sonunda Hazırlanan Anlaşma Belgesinin Hukuki Niteliği ve Anlaşma Belgesine Karşı Başvurulabilecek Hukuki Çareler [The Legal Nature of Mediation Settlement Agreements and Possible Chanlenges Against Settlement Agreements]" *Terazi Hukuk Dergisi* 13, no.138, (2018): 29.

minutes signed by the parties, their attorneys and the Mediator together have the quality of a judgement without requiring a certificate of enforceability (Article 18, 4 of the Mediation Law). If a partial or complete agreement has been reached between the parties, no subsequent lawsuit may be filed in relation to the agreed matters (Article 18, 5 of the Mediation Law)[59]. In this context, if a lawsuit is filed on a subject included in the agreement document, the lawsuit should be dismissed for lack of legal interest[60].

The mandatory expenses of the Mediation Office incurred in the course of the mandatory mediation shall be paid by the parties in accordance with the agreement, provided that an agreement is reached at the end of the mediation. If no agreement is reached, it will be financed by the budget of the Ministry of Justice, to be recovered from the party that will be unfair in future lawsuit. (Article 18/A, 14 of the Mediation Law; Article 3/16 of the Labour Courts Law) If the parties have agreed on the fee of the Mediator in the agreement, this decision shall be complied with; otherwise, the fee shall be paid equally by the parties (Article 18/A, 12 of the Mediation Law).

5. Advantages and Disadvantages of the Mandatory Mediation System

Parties may avoid mediation because they do not know enough about how it works or do not want to appear to be weak[61]. Mandatory mediation does not change the outcome in cases where neither party is willing to agree[62].This is because mediation is based on communication and dialogue[63].Therefore, in societies where the culture of reconciliation is not widespread, mandatory mediation is unlikely to work[64]. On the other hand, in cases where a party is willing to mediate but does not take the first step because it does not want to appear weak, mandatory mediation may encourage the parties to reach an agreement[65]. Demand for voluntary mediation increases as society

[59] This regulation on the prohibition of filing a lawsuit has been criticised in the doctrine on the grounds that it violates the right to legal remedy. See: Kaya, "7036 Sayılı İş Mahkemeleri Kanunu Çerçevesinde Bireysel İş Uyuşmazlıklarında Zorunlu Arabuluculuk", 245; On the other hand, another opinion on this issue is that the prohibition of filing a lawsuit will encourage the parties to agree. See: Akkan, "Arabuluculuk Faaliyeti Sonucunda Anlaşılan Hususlarda Dava Açma Yasağı ve Sonuçları", 8.

[60] Büyükay, "Arabuluculuk Anlaşma Belgesi ve İcra Edilebilirlik Şerhi", 118.

[61] Roselle L. Wissler, "The Effects of Mandatory Mediation: Empirical Research on the Experience of Small Claims and Common Pleas Courts", *Willamette Law Review* 33, no.3, (1997): 571; Quek, "Mandatory Mediation: An Oxymoron- Examining the Feasibility of Implementing a Court Mandated Mediation Program", 483; Campbell C. Hutchinson, "The Case for Mandatory Mediation", *Loyola Law Review* 42, no.1, (1996): 89-90; Azaklı Arslan, *Medeni Usûl Hukuku Açısından Zorunlu Arabuluculuk*, 47-48; Özmumcu, "Karşılaştırmalı Hukuk ve Türk Hukuku Açısından Zorunlu Arabuluculuk Sistemine Genel Bir Bakış", 825; Nelle, "Making Mediation Mandatory: A Proposed Framework", 296; Ulusan, "Sermaye Şirketlerinde Zorunlu Arabuluculuk", 22.

[62] Gary Smith, "Unwilling Actors: Why Voluntary Mediation Works, Why Mandatory Mediation Might Not.", *Osgoode Hall Law Journal* 36, no. 4, (1998): 873.

[63] Tanrıver, *Hukuk Uyuşmazlıkları Bağlamında Arabuluculuk,* 33.

[64] Aşçı, "Zorunlu Arabuluculuk Uygulamasının Olumlu ve Olumsuz Yönleri", 88; Tanrıver, *Hukuk Uyuşmazlıkları Bağlamında Arabuluculuk,* 33.

[65] Smith, "Unwilling Actors: Why Voluntary Mediation Works, Why Mandatory Mediation Might Not.",873; Ulusan, "Sermaye Şirketlerinde Zorunlu Arabuluculuk", 22.

becomes familiar with mediation through mandatory mediation[66]. However, by making mediation mandatory, the parties are in a sense forced to reach an agreement[67]. Although it could be argued at this point that the obligation only applies at the application stage, it is clear that the aim is to reach an agreement[68]. For this reason, it can be said that it would be more appropriate to accept mandatory mediation as a temporary regulation and to abolish it as the awareness of mediation activity increases[69]. Otherwise, the parties' right to self-determination will be interfered with[70]. This is incompatible with the basic principles of mediation[71].

If the parties come to an agreement at the end of the mediation process, the dispute is resolved in less time and at less cost than in court[72]. However, in disputes involving a large number of parties, such as the elimination of joint ownership, it is not possible for the Mediator to reach all the parties within a limited time[73]. In this case, since the meeting cannot take place, the termination of the process in the form of failure to reach an agreement leads to the extension of the procedure. Similarly, if the defendant uses the mandatory mediation only to extend the process and does not meet the prescribed deadlines, the process will be extended[74]. Again, forcing both parties to apply for mediation when they have no intention of going to mediation wastes time and unnecessary costs[75].

The fact that the first preferred way to resolve a dispute is to go to court creates an extraordinary workload for the courts[76]. In this context, it is argued that making mediation mandatory will reduce the workload of the courts and result in better decisions being taken within the required time limits[77]. On the other hand, ensuring

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[66] Ulusan, "Sermaye Şirketlerinde Zorunlu Arabuluculuk", 22.

[67] Vettori, "Mandatory Mediation: An Obstacle to Access to Justice", 358.

[68] Vettori, "Mandatory Mediation: An Obstacle to Access to Justice", 358.

[69] Quek, "Mandatory Mediation: An Oxymoron- Examining the Feasibility of Implementing a Court Mandated Mediation Program", 484; Ulusan, "Sermaye Şirketlerinde Zorunlu Arabuluculuk", 21.

[70] Quek, "Mandatory Mediation: An Oxymoron- Examining the Feasibility of Implementing a Court Mandated Mediation Program", 484; Ulusan, "Sermaye Şirketlerinde Zorunlu Arabuluculuk", 24.

[71] Quek, "Mandatory Mediation: An Oxymoron- Examining the Feasibility of Implementing a Court Mandated Mediation Program",484.

[72] Hutchinson, "The Case for Mandatory Mediation",87-88; Kılınç, "İş Hukukunda Zorunlu Arabuluculuğun Takip Hukukuna Etkileri",468; Vettori, "Mandatory Mediation: An Obstacle to Access to Justice", 362; Yasemin Durak, "Alternatif Uyuşmazlık Çözüm Yöntemi Olan Arabuluculuk ve Medeni Hukuktaki Görünümü [Alternatıve Dıspute Resolutıon Methods And Cıvıl Law Medıatıon Wıth Vıew In]" Akdeniz Üniversitesi Hukuk Fakültesi Dergisi 3, no. 2, (2013): 62.

[73] Özge Yenicey Ceylan, "Ortaklığın Giderilmesinde Dava Şartı Arabuluculuk [Medıatıon As A Condıtıon Of Lıtıgatıon In Elımınatıon Of Partnershıp]", *İnönü Üniversitesi Hukuk Fakültesi Dergisi 14*, no.2, (2023): 521.

[74] Karacabey, "Zorunlu Arabuluculuğu Hukukun Temel İlkelerine Aykırılığı ve Uygulanabilirliğine Dair Sorunlar", 476; Azaklı Arslan, *Medeni Usûl Hukuku Açısından Zorunlu Arabuluculuk,* 123.

[75] Vettori, "Mandatory Mediation: An Obstacle to Access to Justice", 364.

[76] Resul Kurt, "İş Yargısında Arabuluculuk [Medıatıon" In Labour Judgement]", *Türkiye Barolar Birliği Dergisi,* no.135, (2018): 422; Salim Yunus Lokmanoğlu, "İş Mahkemeleri Kanunu Işığında Arabuluculuk Kavramı [Mediation Concept In The Light of Labor Courts Law]", Türkiye Adalet Akademisi Dergisi 9, no.33, (2018): 874.

[77] Aşçı, "Zorunlu Arabuluculuk Uygulamasının Olumlu ve Olumsuz Yönleri", 85; Azaklı Arslan, *Medeni Usûl Hukuku Açısından Zorunlu Arabuluculuk,* 45; Albayrak, "Eşitlik ve Tarafsızlık İlkelerinin Zorunlu

access to justice and the proper functioning of judicial mechanisms is argued to be the primary duty of the state. Accordingly, it is stated that the sole purpose of reducing workload may seem positive in the short term, but will cause problems in the long term[78]. However, it has also been argued that making mediation mandatory hinders the right of access to justice[79]. Against this opinion, it has been argued that mandatory mediation does not prevent access to justice, but only delays it for a while[80].

Some studies of mandatory mediation have shown that even parties who said they would not agree to mediate or would refuse to mediate if given the choice are satisfied that they have tried mediation[81]. On the other hand, there are also studies which indicate that a smaller percentage of disputes are resolved through mandatory mediation than through voluntary mediation[82]. The researchers stated that different dispute issues or the nature of the mediation process led to these mixed results[83].

Total number of mediation files	2018	2019	2020	2021	2022	2023
Number of files opened	416 747	708 692	641 648	902 014	1 081 997	1 290 953
Number of files with completed negotiations	416 747	691 462	627 260	865 696	1 046 689	1 271 841
Agreement reached	296 306	460 349	405 357	589 472	716 000	857 289
Agreement not reached	108 383	206 275	204 419	248 742	302 814	387 691
Other judgements	12 058	24 838	17 484	27 482	27 875	26 861
Pending negotiation	-	17 230	14 388	36 318	35 308	19 112

Graph 1

In Turkish law, an examination of the 2023 data published by the General Directorate for Criminal Records and Statistics shows different results depending on the type of dispute[84]. Firstly, **Graph 1** includes the total number of mediation

Arabuluculuk Bağlamında Yeniden Değerlendirilmesi Zorunluluğu", 18; Özmumcu, "Karşılaştırmalı Hukuk ve Türk Hukuku Açısından Zorunlu Arabuluculuk Sistemine Genel Bir Bakış", 827; Tanır, "Arabuluculuğa İlişkin Temel İlkeler", s.107.

[78] Ekmekçi et al., *Hukuk Uyuşmazlıklarında Arabuluculuk*, 138-139.

[79] Vettori, "Mandatory Mediation: An Obstacle to Access to Justice", 358; See also footnotes 27 and 29 above for discussions in Turkish law.

[80] Richard C. Reuben, "Tort Reform Renews Debate over Mandatory Mediation", *Dispute Resolution Magazine* 13, no.2, (2007): 13; Quek, "Mandatory Mediation: An Oxymoron- Examining the Feasibility of Implementing a Court Mandated Mediation Program", 486.

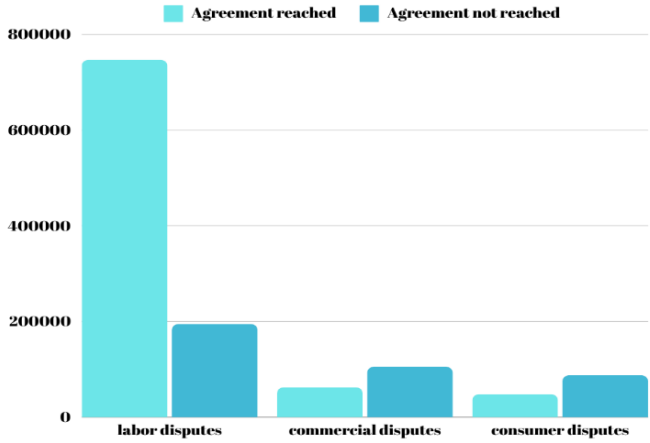
[81] Wissler, "The Effects of Mandatory Mediation: Empirical Research on the Experience of Small Claims and Common Pleas Courts", 577; Quek, "Mandatory Mediation: An Oxymoron- Examining the Feasibility of Implementing a Court Mandated Mediation Program", 483.

[82] Wissler, "The Effects of Mandatory Mediation: Empirical Research on the Experience of Small Claims and Common Pleas Courts", 577.

[83] Wissler, "The Effects of Mandatory Mediation: Empirical Research on the Experience of Small Claims and Common Pleas Courts", 577.

[84] See Graph 1 and Graph 2 and Graph3: https://adlisicil.adalet.gov.tr/Resimler/SayfaDokuman/22042024115644ADalet_ist-2023CALISMALARI59.pdf.

applications and their results between 2018 and 2023. The total number of files shown in the graphs includes data on both voluntary and mandatory mediation. Labour disputes, the first type of dispute to be brought within the scope of mandatory mediation, account for the largest proportion of applications for mediation. It is also the dispute with the highest rate of agreement. One of the reasons for this is that the number of labour disputes is higher than the number of other disputes. Doctrine indicates that there is a power imbalance in labour disputes[85]. If the balance of power between the parties cannot be maintained in the mediation process, the mediation may worsen the situation of the weaker party[86]. Therefore, the mediator should prevent the more powerful party's oppressive behaviour[87].



Graph 2

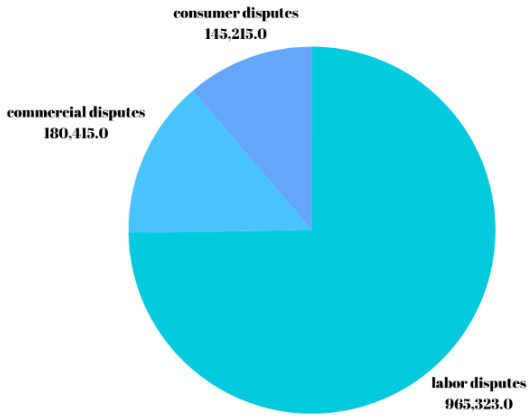
In our opinion, the high rate of agreement in labour disputes cannot be explained solely by the power imbalance between the parties. This is because power imbalances can also be an issue in consumer disputes. However, the rate of agreement in consumer disputes is low. Therefore, if the mediation process is run properly, these concerns will disappear. In addition, since there is an obligation to initiate the mediation process, the parties can terminate the process if they wish. The continuation of the process and the conclusion of an agreement will be the responsibility of the parties on their own

[85] Ulusan, "Sermaye Şirketlerinde Zorunlu Arabuluculuk", 25-26; Kaya, "7036 Sayılı İş Mahkemeleri Kanunu Çerçevesinde Bireysel İş Uyuşmazlıklarında Zorunlu Arabuluculuk", 232; Sarıdağ, "Bireysel İş Hukukunda Arabuluculuktan Kaynaklanan Bazı Sorunlar", 1106; Albayrak, "Eşitlik ve Tarafsızlık İlkelerinin Zorunlu Arabuluculuk Bağlamında Yeniden Değerlendirilmesi Zorunluluğu", 23.

[86] Reuben, "Tort Reform Renews Debate over Mandatory Mediation", 14; Aşçı, "Zorunlu Arabuluculuk Uygulamasının Olumlu ve Olumsuz Yönleri", 84; Albayrak, "Eşitlik ve Tarafsızlık İlkelerinin Zorunlu Arabuluculuk Bağlamında Yeniden Değerlendirilmesi Zorunluluğu", 23; Azaklı Arslan, *Medeni Usûl Hukuku Açısından Zorunlu Arabuluculuk*, 133; Vettori, "Mandatory Mediation: An Obstacle To Access To Justice", 363.

[87] İbrahim Ermenek, *Arabuluculuk Sürecinde Zayıf Tarafın Korunması [Protection of the Weak Side in the Mediation Process]* (Yetkin 2021) 152.

initiative. In this context, the high rate of agreement in labour disputes is encouraging. The fact that this type of dispute is more complex or involves a higher amount may explain the lower agreement rate in commercial disputes. In addition, parties may prefer arbitration or a lawsuit in commercial disputes. It can therefore be said that the rate of agreement is gradually increasing when all disputes are taken into account.



Graph 3

6. Conclusion

Under Turkish law, it is mandatory to apply to a Mediator before filing a lawsuit for certain disputes. The application for mediation in these disputes is regulated by law as a cause of action. Mandatory mediation, has been criticised for excluding the will of the parties. But the obligation recognised in Turkish law is limited to initiating the process and attending the first meeting. The parties may terminate the process and apply to the court at any time after the first meeting. It can therefore be criticised that mediation delays access to the courts. On the other hand, it cannot be claimed that mediation completely blocks access to the court. The aim of mandatory mediation is to reduce the workload of the courts and to resolve disputes in the fastest and least costly way. Sometimes, however, these goals are not achieved. Because the parties may not intend to reach an agreement or one of the parties may act maliciously to prolong the process. There may also be some procedural issues. In addition, all these situations can also occur in the lawsuit. Accordingly, successful mandatory mediation processes can also increase the incentive for voluntary mediation. It is important that the mediation process is known in the community. Because resolving a dispute through mediation is more peaceful. Considering the current data in our law, it can be said that the agreement rate in the mandatory mediation process is high, especially in labour disputes.

Bibliography

1. Akil, Cenk, "Ticari Uyuşmazlıklarda Dava Şartı Olarak Arabuluculuk Hakkında Usûl Hukuku Bakımından Bazı Değerlendirmeler [Some Evaluations about Mediation as a Case Condition in Commercial Disputes in Terms of Procedural Law]", *TAAD* 11, no. 41, (2020): 307-324.
2. Akkan, Mine, Arabuluculuk Faaliyeti Sonucunda Anlaşılan Hususlarda Dava Açma Yasağı ve Sonuçları [Prohıbıtıon Of Lıtıgatıon On Agreed Matters In Medıatıon And Consequences Of Prohıbıtıon]", *Dokuz Eylül Üniversitesi Hukuk Fakültesi Dergisi* 20, no.2, (2018):1-31.
3. Albayrak, Hakan, "Eşitlik ve Tarafsızlık İlkelerinin Zorunlu Arabuluculuk Bağlamında Yeniden Değerlendirilmesi Zorunluluğu [The Necessity To Re-Evaluate The Principles of Equality and Impartiality in The Context of Compulsory Mediation]", *Gaziantep University Journal of Social Sciences,* 17, Ethical Special Issue (2017):12-24.
4. Arslan, Betül Azaklı. *Medeni Usûl Hukuku Açısından Zorunlu Arabuluculuk [Mandatory Mediation in Terms of Civil Procedure Law]* Yetkin, 2018.
5. Arslan, Ramazan, Yılmaz, Ejder, Taşpınar Ayvaz, Sema and Hanağası, Emel. *Medenî Usûl Hukuku [Civil Procedure Law]* Yetkin, 2024.
6. Aşçı, Mehmet Saim, "Zorunlu Arabuluculuk Uygulamasının Olumlu ve Olumsuz Yönleri [Positive and Negative Aspects of Compulsory Mediation]", *Uluslararası Hukuk ve Sosyal Bilim Araştırmaları Dergisi* 1, no.2, (2019): 80-91.
7. Atalı, Murat and Ermenek, İbrahim and Erdoğan, Ersin, *Medenî Usûl Hukuku Ders Kitabı [Civil Procedure Law Textbook]* Yetkin, 2024.
8. Büyük, Elif Irmak, Karar İncelemesi: Ticari Dava Niteliğindeki İtirazın İptali Davasının Dava Şartı Arabuluculuğa Tabi Olup Olmadığına İlişkin Uyuşmazlığın Giderilmesine Yönelik Yargıtay 23. Hukuk Dairesi Kararının Değerlendirilmesi[Verdict Analysis: Evaluation of the 23rd Civil Department of the Supreme Court of Appeals Decision for the Resolution of Disputes Wheather the Action for Annulment of the Objection for Commercial Disputes is Subject to Mediation as a Cause of Action]", *Marmara Üniversitesi Hukuk Fakültesi Hukuk Araştırmaları Dergisi* 27, no. 1, (2021):777-797.
9. Durak, Yasemin, "Alternatif Uyuşmazlık Çözüm Yöntemi Olan Arabuluculuk ve Medeni Hukuktaki Görünümü [Alternatıve Dıspute Resolutıon Methods And Cıvıl Law Medıatıon Wıth Vıew In]" *Akdeniz Üniversitesi Hukuk Fakültesi Dergisi* 3, no. 2, (2013): 55-76.
10. Ekmekçi, Ömer, Özekes, Muhammet, Atalı, Murat and Seven, Vural, Hukuk Uyuşmazlıklarında Zorunlu Arabuluculuk, İstanbul 2019, On İki Levha Yayıncılık.
11. Erdoğan, Ersin and Cömert, Büşra, "Arabuluculuk Sonunda Hazırlanan Anlaşma Belgesinin Hukuki Niteliği ve Anlaşma Belgesine Karşı Başvurulabilecek Hukuki Çareler [The Legal Nature of Mediation Settlement Agreements and Possible Chanlenges Against Settlement Agreements]" *Terazi Hukuk Dergisi* 13, no.138, (2018):.27-47
12. Ermenek, İbrahim, *Arabuluculuk Sürecinde Zayıf Tarafın Korunması [Protection of the Weak Side in the Mediation Process]* Yetkin, 2021.
13. Göksu, Mustafa, İş Uyuşmazlıklarında Zorunlu Arabuluculuk [Mandotory Mediation in Labor Disputes]", *PressAcademia Procedia* 3, no.379, (2017): 378-384.
14. Hanks, Melissa, "Perspectives on Mandatory Mediation", University of South Wales Law Journal, Vol. 35 No. 3, 2012, s. 929-952.
15. Hutchinson, Campbell C., "The Case for Mandatory Mediation", *Loyola Law Review* 42, no.1, (1996): 85-96.
16. Karacabey, Kürşat, "Zorunlu Arabuluculuğu Hukukun Temel İlkelerine Aykırılığı ve Uygulanabilirliğine Dair Sorunlar [Problems Regarding the Discrimination and Applicability of Mandatory Mediation to Basic Principles of Law]", *Ankara Barosu Dergisi,* no.1, (2016): 457-489
17. Karaman, Elif, *Sınai Mülkiyet Hukukundan Doğan Uyuşmazlıklarda Alternatif Bir*

Uyuşmazlık Çözüm Yöntemi: MED-ARB (Arabuluculuk – Tahkim) [Mediation-Arbitration (Med-Arb) İn Disputes Arising From İndustrial Property Law] Yetkin, 2024.

18. Kaya, Sedat, "7036 Sayılı İş Mahkemeleri Kanunu Çerçevesinde Bireysel İş Uyuşmazlıklarında Zorunlu Arabuluculuk [Compulsory Mediation in Individual Business Disputes under the Labor Courts Law 7036]", *Erzincan Binali Yıldırım Üniversitesi Hukuk Fakültesi Dergisi* XXII, no. 1-2, (2018): 209-261.
19. Kılınç, Ayşe, "Mevcut Düzenlemeler Çerçevesinde Zorunlu Arabuluculukta Yetki [Venue In Mandatory Medıatıon In The Context Of Current Regulatıons]", *Yıldırım Beyazıt Hukuk Dergisi* 8, no.2, (2023): 535-564.
20. Kılınç, Elif, "İş Hukukunda Zorunlu Arabuluculuğun Takip Hukukuna Etkileri [The Effects Of Mandatory Medıatıon In Labor Law On Executıon Law]", *İnönü Üniversitesi Hukuk Fakültesi Dergisi* 12, no.2, (2021):466-480.
21. Kıyak, Emre, "Arabuluculuk Sonucunda Ulaşılan Anlaşma Belgesinin Hukuki Niteliği [Legal Status of Settlement Agreement Reached as a Result of Mediation]", *Türkiye Adalet Akademisi Dergisi* 6, no. 21, (2015): 523-548
22. Kurt Konca, Nesibe, Ticari Uyuşmazlıklarda Dava Şartı (Zorunlu) Arabuluculuk, *Seta Perspektif, Sayı* 225, 2018, s. 1-6.
23. Kurt, Konca and Badur, Emel, "Taşınmazın Aynına İlişkin Uyuşmazlıklarda Arabuluculuk Anlaşma Belgesi ve İcra Edilebilirlik Şerhi [Mediation Agreement Document and Enforceability Annotation in Disputes Regarding the Real Right on Real Estate]", *Türkiye Adalet Akademisi Dergisi,* no.56, (2023): 539-568.
24. Kurt, Resul "İş Yargısında Arabuluculuk [Medıatıon" In Labour Judgement]", *Türkiye Barolar Birliği Dergisi,* no.135, (2018): 405-444.
25. Kuru, Baki and Aydın, Burak, *Medeni Usul Hukuku El Kitabı Cilt I*, *[Civil Procedure Law Handbook Volume I]* Yetkin, 2024.
26. Kuru, Baki and Aydın, Burak, *Medeni Usul Hukuku El Kitabı Cilt II*, *[Civil Procedure Law Handbook Volume II]* Yetkin, 2024.
27. Lokmanoğlu, Salim Yunus, "İş Mahkemeleri Kanunu Işığında Arabuluculuk Kavramı [Mediation Concept In The Light of Labor Courts Law]", *Türkiye Adalet Akademisi Dergisi* 9, no.33, (2018): 863-885.
28. Memiş, Abdullah Berat. *Ticari Uyuşmazlıklarda Zorunlu Arabuluculuk [Mandotory Mediation in Commercial Disputes]* Seçkin,2020.
29. Nelle, Andreas, "Making Mediation Mandatory: A Proposed Framework", *Ohio State Journal on Dispute Resolution* 7, no.2, (1992) :287-314.
30. Özbay, İbrahim, "Tüketici Uyuşmazlıklarında Arabuluculuğa Elverişlilik [Eligibility for Mediation in Consumer Disputes]", *Tokat Gaziosmanpaşa Üniversitesi Hukuk Fakültesi Dergisi* I, no.1, (2023): 1-22.
31. Özekes, Muhammet and Çiftçi, Pınar, "Menfi Tespit Davalarını Zorunlu Arabuluculuğa Dahil Saymanın Gereksizliği Üzerine (İstanbul BAM Kararları Örneğinden Bir Bakış) [Non-Requırement Of Includıng The Negatıve Declaratory Actıons In The Compulsory Medıatıon (A View From Istanbul Circuit Courts Of Appeal Precedent)]", *Türkiye Barolar Birliği Dergisi,* no.148, (2020): 101-134.
32. Özmumcu, Seda, "Karşılaştırmalı Hukuk ve Türk Hukuku Açısından Zorunlu Arabuluculuk Sistemine Genel Bir Bakış [A General Vıew On The Mandatory Medıatıon System Wıth Regards To The Turkısh And Comparatıve Law]", *İstanbul Üniversitesi Hukuk Fakültesi Mecmuası LXXIV*, no. 2, (2016): 807-842.
33. Pekcanıtez, Hakan and Atalay Oğuz and Özekes, Muhammet. *Medeni Usûl Hukuku Ders Kitabı,* Vedat, 2024.
34. Quek, Dorcas, "Mandatory Mediation: An Oxymoron- Examining the Feasibility of Implementing a Court Mandated Mediation Program", *Cardozo Journal of Conflict Resolution* 11, no. 2, (2010): 479-510.

35. Reuben, Richard C., "Tort Reform Renews Debate over Mandatory Mediation", *Dispute Resolution Magazine* 13, no.2, (2007): 13-15.
36. Sarıdağ, Orhan Gazi "Bireysel İş Hukukunda Arabuluculuktan Kaynaklanan Bazı Sorunlar [Some Problems Arısıng From Medıatıon In Indıvıdual Labour Law]", *Dokuz Eylül Üniversitesi Hukuk Fakültesi Dergisi* 24, no.2, (2022): 1093-1119.
37. Smith, Gary, "Unwilling Actors: Why Voluntary Mediation Works, Why Mandatory Mediation Might Not.", *Osgoode Hall Law Journal* 36, no. 4, (1998): 847-886.
38. Tanır, Zeliha Büşra, "Arabuluculuğa İlişkin Temel İlkeler [Basıc Prıncıples Relatıng To Medıatıon]", *Euroasia Journal Of Social Sciences & Humanities* 7, no.1, (2020): 104-118.
39. Tanrıver, Süha, "Dava Şartı Arabuluculuk Üzerine Bazı Düşünceler [Some Thoughts on Case Condition Mediation]", *Türkiye Barolar Birliği Dergisi,* no.147, (2020): 112-142.
40. Tanrıver, Süha, *Alternatif Uyuşmazlık Çözümleri*, [*Alternative Dispute Resolutions]* Yetkin, 2023.
41. Tanrıver, Süha, *Hukuk Uyuşmazlıkları Bağlamında Arabuluculuk [Mediation in the Context of Legal Disputes]* Yetkin, 2022.
42. Taşpolat Tuğsavul, Melis, "Arabuluculuk Faaliyeti Sonunda Varılan Anlaşmanın Hukuki Niteliği [The Legal Characteristic of The Agreement At The End Of The Mediation Activity]" *Galatasaray Üniversitesi Hukuk Fakültesi Dergisi* 18, no.1, (2019): 333-380.
43. Taşpolat Tuğsavul, Melis, *Türk Hukukunda Arabuluculuk [Mediation in Turkish Law]* Yetkin, 2012.
44. Ulusan, Banu, "Sermaye Şirketlerinde Zorunlu Arabuluculuk". PhD diss., University of Galatasaray, 2024.
45. Vettori, Stella, "Mandatory Mediation: An Obstacle to Access to Justice", *African Human Rights Law Journal* 15, no.2, (2015): 355-377.
46. Wissler, Roselle L., "The Effects of Mandatory Mediation: Empirical Research on the Experience of Small Claims and Common Pleas Courts", *Willamette Law Review* 33, no.3, (1997): 565-604.
47. Yaşar Coşkun, Sevda and Göncü Döner, Munise Seray. "Davaların Yığılması ve Terditli Davalar Açısından Ticari Dava Şartı Arabuluculuk: Mahkeme Kararları Üzerinden Bir Analiz [Mediation of Commercial Litigation for the Defeat of Cases within the Scope, Alternative Pleading Case: An Analysis on Court Decisions]", *Erzincan Binali Yıldırım Üniversitesi Hukuk Fakültesi Dergisi* XXIV, no.1-4, (2020): 1-4.
48. Yavuz, Mustafa, "Ticari Uyuşmazlıklarda Dava Şartı Olarak Arabuluculuk [Mediation as a Case Condition of Trial in Commercial Disputes]", *Gümrük ve Ticaret Dergisi* 5, no.15, (2019):52-61.
49. Yenicey Ceylan, Özge, "Ortaklığın Giderilmesinde Dava Şartı Arabuluculuk Medıatıon As A Condıtıon Of Lıtıgatıon In Elımınatıon Of Partnershıp]", *İnönü Üniversitesi Hukuk Fakültesi Dergisi 14*, no.2, (2023): 510-525.
50. Yıldırım, Ferhat, "Türk Hukuk Sisteminde Alternatif Bir Çözüm Yolu Olarak Arabuluculuk [Mediation as an Alternative Remedy in Turkish Legal System]", *International Journal Of Social Sciences And Education Research* 2, no.3, (2016): 748-762.