

“Mediation” in Turkish Labour Law Judgments as a Litigation Condition

The Labour Courts Law No. 7036, which was adopted on 12.10.2017 in the Turkish Grand National Assembly, entered into force in the Official Gazette numbered 30221 and dated 25.10.2017, thus abolishing the old Labor Courts Law numbered 5521 and bringing its application to an end.

The Labor Courts Law which entered into force; in addition to the issues related to Establishment, Organisation and Working Conditions, it has also brought a number of new innovations as regards applications to the Labor Court. At the forefront of these innovations is a referral mechanism called **mediation**, which is to be used before going to Labour tribunals. In this regard, the most important change is the application of the mediation system as a **litigation condition**, when it was previously considered an **alternative dispute settlement method**.

Mediation was implemented into the Turkish Legal System with the enactment of the Law on Mediation in Legal Disputes No. 6325 on the 22 June 2012 and the publication of the Regulations on Mediation in Legal Disputes on the 26 January 2013, in addition to the primary legislation. However, **the first regulation envisaging mediation as a mandatory solution management is the Labor Courts Law No. 7036**.

According to the first month of evaluation which was published by the Department of Mediation, interviews were completed for 6,423 files and the parties reached an agreement in 4,637 files. Thus, it emerged that 70% arrived at an agreement. In this process, the interview stages were over within maximum 4 days.

Who is the Mediator?

A Turkish citizen who has had legal training and at least 5 years of seniority in their profession; an impartial, independent person who is registered in the Ministry of Justice Department of Mediation registry, who has completed Mediation training and successfully passed the Ministry’s written and practical exams.

What is the Mediation System?

Mediation System: Within the framework of the structure established under the Mediation Law; *“This is an arbitrary dispute resolution method where the participation of an impartial and independent third person who has received specialized training, helps bring parties together, using systematic techniques so*

as they discuss and negotiate in order to establish a communication process between the parties, help them understand each other and produce their own solutions regarding legal disputes arising from work or transactions, including those with foreign elements.’’

Mediation is an **alternative dispute resolution method** meaning **to mediate** in Latin, and has been implemented in 160 countries around the world using the participation of a specialist neutral and independent third party to bring parties together, establish a communication process between them and help them understand each other in order to negotiate.

The task of the mediator is to establish a good communication ground between the parties so as the parties may resolve disputes among themselves. **The mediator is not the decision maker for the matter of dispute.** It is for this reason that mediators are not allowed to direct the parties. The mediator helps the parties to better understand each other but may only govern the proceedings using questions that are not leading.

Under this system, for the types of cases mentioned, it is compulsory to go through mediation, yet it is not compulsory to arrive at an agreement. If no agreement is reached between the parties through mediation, there are no obstacles to going to court. However, **if the parties reach agreement at the end of the mediation negotiations, it is not possible for the parties to have the agreed matters reassessed again and the parties may not be sued over the agreed matters.** If a case is again filed for a dispute that was resolved during Mediation, the court shall apply the provisions of Articles 114/1-i and 114/2 of Law No. 6100, according to which, this constitutes a **Final Judgement** thus, the Court shall decide **to Dismiss the case.**

Scope of No. 7036 Labour Court Law

Article 3 of the Labor Courts Law No. 7036 sets out the scope and elements of Mediation and refers to sanctions that may be implemented if the relevant regulation is not followed. Accordingly; *“There is a litigation condition for the employee or the employer, in cases where there is a re-employment request with receivables or compensation, based on an individual or collective labor contract, to have first applied for Mediation.”* Together with this provision, by implementing labor law, direct application to the civil courts was closed and it is obligatory to exhaust the mediation route first. In this sense;

- **In cases of receivables or compensation of the employee or employer** (severance pay, notice indemnity, overtime pay, etc.)
- **In cases where there is a re-employment claim,** there must first be an application for mediation.

However, as regards the 3rd paragraph, *the pecuniary and non-pecuniary damages arising from work accidents or occupational illnesses and their related results, objections and recourse cases* have been excluded. As a result;

Cases where It Is Obligatory To Apply For Mediation are as follows:

- Re-employment claims
- Compensation For Time Period Lapsed,
- Compensation For Failure to Re-employ
- Recievables For Severence Pay,
- Trade Union Compensation,
- Fees Recievable
- Overtime Pay Recievable
- Annual Leave Payment
- Food And Transport Recievables
- Payment In Lieu Of Notice,
- Compensation For Bad Faith Damages,
- Recievables For Balance Period Payment,
- Compensation For Inequal Treatment,
- National Holiday and General Holiday (UBGT) Pay
- Premiums and Bonus Pay

Cases Where Applications May Be Made To The Labour Courts are as follows:

- Workplace Accident Claims
- Non-pecuniary Damages Arising From A Work Accident
- Determination Of Work Injury Disability and Incapacity Rate
- Objection To The Rate of Disability Resulting From A Work Accident
- Recourse Claims Against The Employer and Other Liable Persons Due to The Work Accident
- Non-pecuniary damages Arising From Occupational Illness
- Determination of Rate of Disability and Incapacity To Work due to Occupational Illness
- Objection To The Rate Of Disability Resulting From The Occupational Illness
- Occupational Illness Claims Against The Employer and Other Liable Persons Due to The Work Accident

- Recourse Claims Against The Employer and Other Liable Persons Due to The Occupational Illness

The litigation conditions are obligatory conditions that must be satisfied in order for the case to go ahead. In such circumstances, if it is necessary for the parties to first apply for mediation, otherwise the case will be **procedurally dismissed** as a result of not satisfying such condition. If the case is filed without fulfilling this obligation, the case will be procedurally dismissed without going into the particulars or providing notice to the other party.