

The Terminology of Mandatory Mediation on Commercial Disputes in Türkiye and the Differences from England and Wales's Approaches

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Abstract : Since December 6, 2018, mediation has become mandatory for commercial disputes under the Turkish Commercial Code. Mandatory mediation became one of the "causes of action", and being compulsory means starting the mediation process before going to court. As it contemplates looking at "the causes of the action", the terminology may lead to misinterpretation of the core of the phrases. However, the terms pertain to a prerequisite for starting the lawsuit. The court will examine failure to comply with such requirements, and the case will be dismissed without further action. Türkiye's use of obligatory mediation is highly unusual. It is neither judge-led nor judge-assisted mediation but rather a mediation conducted outside of court with the participation of a third party (mediators). What distinguishes it is the incorporation of obligatory mediation into the causes of actions listed in the Code of Civil Procedure. Being one of the causes of action in a legal case implies that the absence of any of them may result in the procedural dismissal of the case without any further action. The case must be presented to the mediator first, and if the parties are unable to reach an agreement, they must deliver the results of the mediation session. Other than submitting the minutes, parties are ineligible to file a lawsuit. However, despite a lengthy history of use in England and Wales, there are considerable reservations about making mediation mandatory. The Civil Procedure Code does not explicitly mention making mediation mandatory. For the time being, there is no Mediation Code, and case law limits the growth of obligatory mediation. Some renowned judges voiced their desire to re-evaluate the notion of required mediation, prompting the Civil Justice Council to release a study in 2021 on the significance of amending case law and the high value of mandatory mediation. By contrasting the approaches to mandatory mediation in England and Wales, the study will investigate the method of controlled mandatory mediation and its effects on the success of mediation in Türkiye.

Keywords : alternative dispute resolution, case law, cause of action, litigation process, mandatory mediation

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