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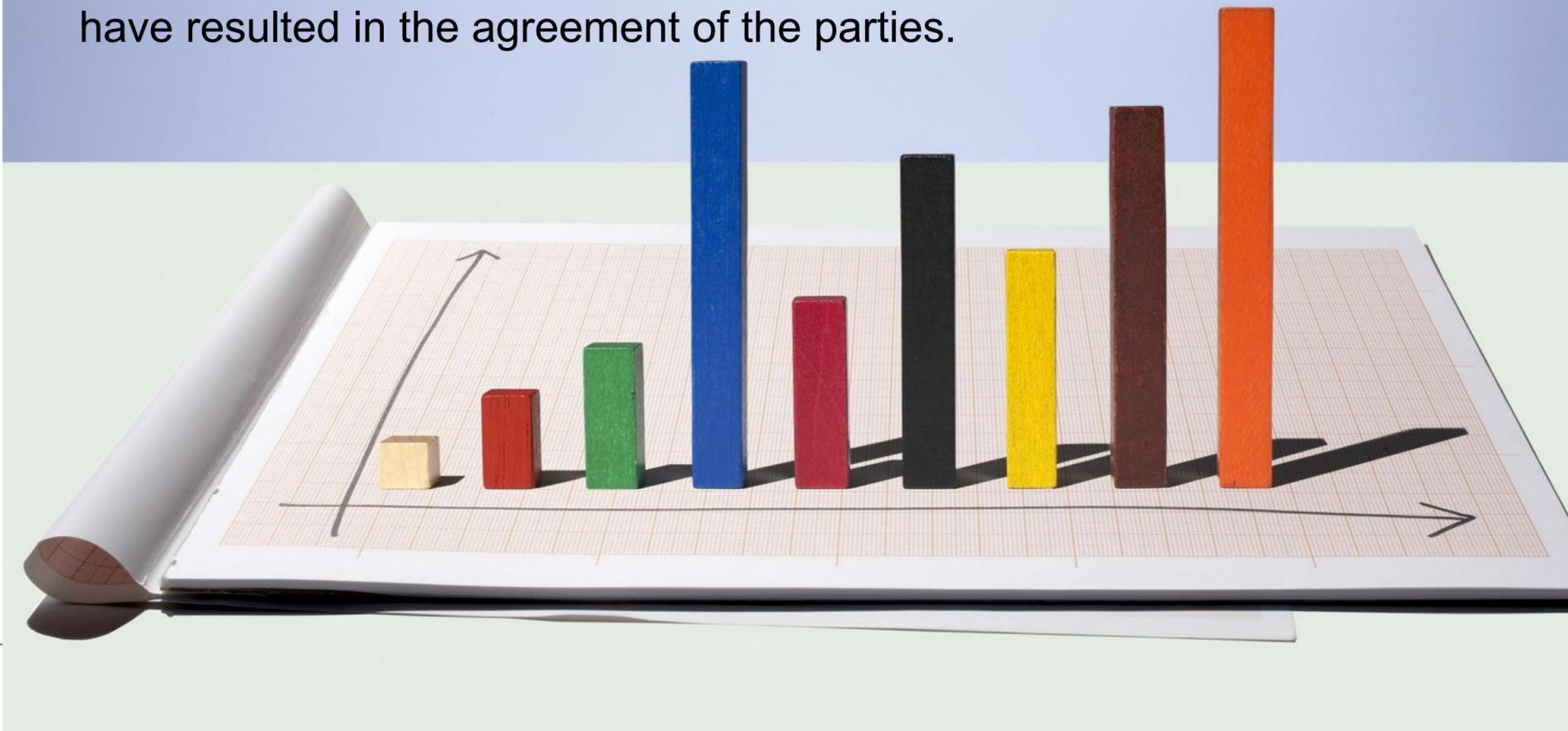
Mediation Q&A: Turkey



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Mediation Statistics in Turkey.

Since 2013(twenty thirteen), approximately 4.300.000 (four million three hundred thousand) disputes have been subject to mediation since 2018(twenty eighteen). More than 70(seventy) % of these applications have resulted in the agreement of the parties.

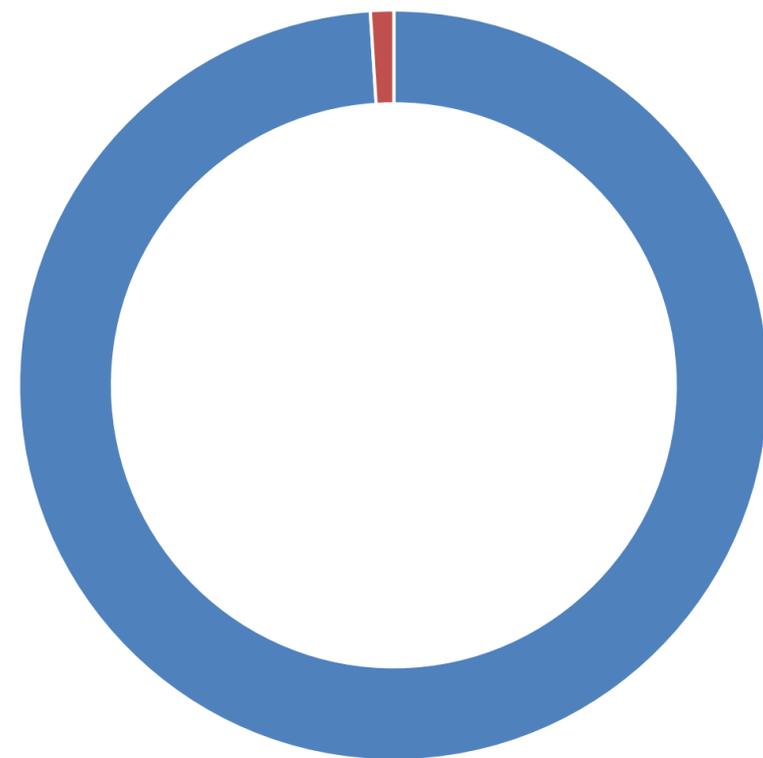




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Mediation Statistics in Optional Disputes (14.11.2013 - 04.05.2022)

In the chart; It is seen that 99(ninety nine) % of the files that have been decided from the minutes regarding the Optional Mediation practice throughout Turkey since 2013 (twenty thirteen) are concluded with Agreement and 1(one) % as No Agreement.



■ 1. With Agreement : 860.072

■ 2. No Agreement : 11.503

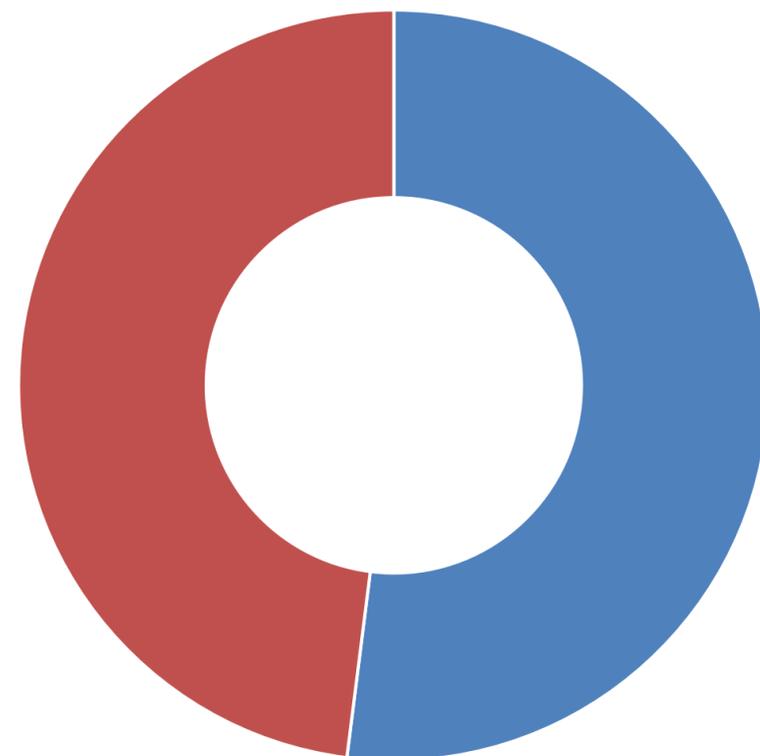
Number of Files
Assigned to
Mediator
963.990



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Conditional Mediation Statistics in Commercial Disputes (01.01.2019 - 04.05.2022)

In the chart; Turkey-wide Litigation Condition in Commercial Disputes as of January 2019 (twenty nineteen) In 52 (fifty-two) % of the files that were decided from the minutes of the mediation application, It is seen that it ends with an Agreement and 48(forty-eight) % of it ends as a No Agreement.



■ 1. With Agreement : 227.196

■ 2. No Agreement : 205.836

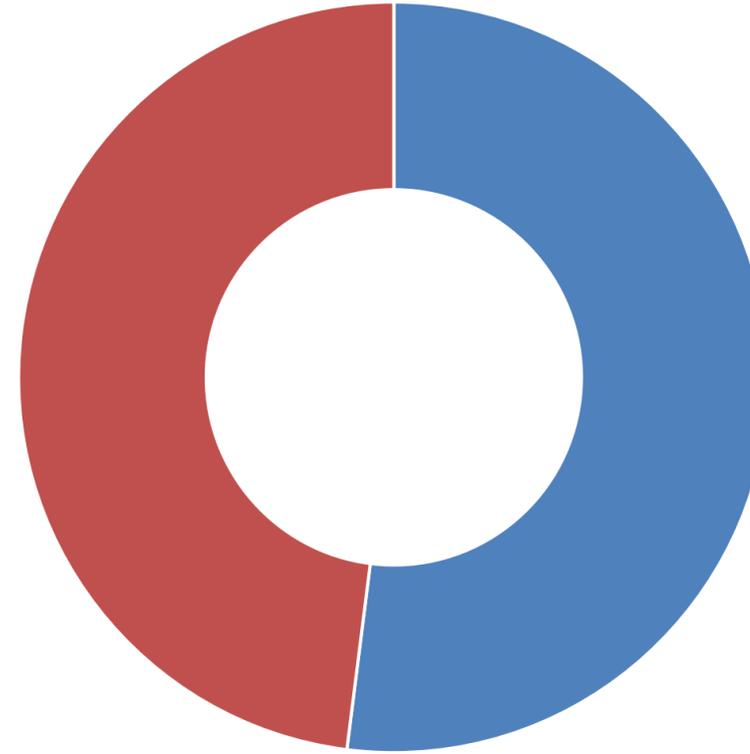
Number of Files
Assigned to
Mediator
483.702



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Conditional Mediation Statistics in Consumer Disputes (28.07.2021 - 04.05.2022)

In the chart; In Turkey, as of July 2020 (twenty twenty), 52 (fifty-two) % of the cases that were resolved from the minutes regarding the Conditions of Litigation Mediation in Consumer Disputes It is seen that it ends with an Agreement and 48 (forty-eight) % of it ends as a No Agreement.



■ 1. With Agreement : 69.820

■ 2. No Agreement : 63.339

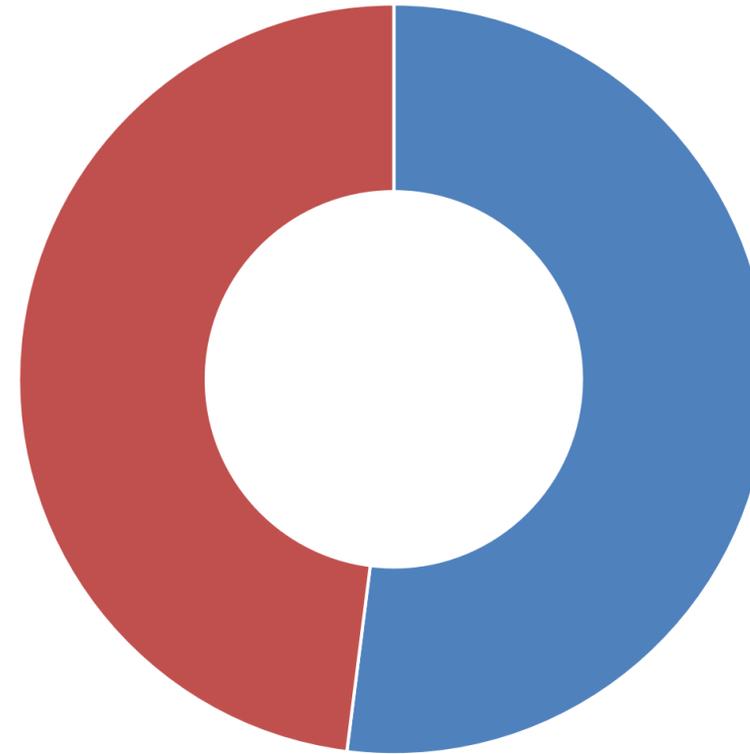
Number of Files
Assigned to
Mediator
150.297



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Conditional Mediation Statistics in Labor Disputes (01.01.2018 - 04.05.2022)

In the chart; Turkey-wide Litigation Condition in Labor Disputes as of January 2018 (twenty eighteen) In 58 (fifty eight) % of the files that were decided from the minutes of the mediation application, It is seen that it ends with an Agreement and 42 (forty-eight) % as a No Agreement.



■ 1. With Agreement : 822.735

■ 2. No Agreement : 592.522

Number of Files
Assigned to
Mediator
1.481.761

HOW THE MEDIATION SYSTEM WORKS IN TURKEY ?

1) Optional Mediation 2) The Condition of Litigation Mediation.

There are two types of Mediation in Turkey. One of these is **Optional** mediation. The other is the **Condition of Litigation** Mediation.

Are All Cases Covered by Mediation? No. Mediation is only possible in matters that the parties can decide with their free will. To put it more clearly; Parties may go to mediation in matters that do not concern public order and are suitable for enforcement. Mediation is not possible in matters that the parties cannot contract, for example, in criminal cases, in civil registration cases or in cases related to the custody of children.



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Optional Mediation

At the end of the voluntary mediation negotiations, if the parties come to an agreement and a document of agreement is drawn up, pursuant to the fifth paragraph of Article 18 (eighteen) of our Mediation Law regarding the dispute, which is the subject of the optional mediation meeting, a lawsuit cannot be filed, neither can an application for mediation be filed, and if this dispute is subject to the mediation application, the litigation condition. It is considered by our mediators that the file should be closed inadvertently, on the grounds of the existence of a previous agreement.



The Condition of Litigation Mediation

Türkiye has made significant progress in the employment of mediation in recent years. The Law on Mediation in Legal Disputes entered into force in 2013 (twenty thirteen). At the beginning, mediation was applied voluntarily. Then it was made a prerequisite to be able to file a lawsuit for labor disputes in 2018 (twenty eighteen), for commercial disputes in 2019 (twenty nineteen), and finally for consumer disputes in 2020 (twenty twenty).



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Commercial attitude towards mediation

How do commercial parties commonly view mediation? Do parties typically opt for institutional mediations or do they prefer the flexibility of independent/ad-hoc mediations?

Türkiye takes heed of the efforts aiming at making international commerce thrive. In order to sustain long-term commercial relationships; it is of utmost importance to solve commercial disputes in a speedy, flexible and cost-effective way.



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Commercial attitude towards mediation

Turkish law regulates both ad-hoc and institutional mediation. The Hacettepe University Arbitration Practice and Research Centre and the Istanbul Arbitration Centre provide institutional mediation services. There are also other organisations set up by groups of individual mediators, which serve as institutional mediation centres. The centres providing institutional mediation services, although similar, usually have their own rules for the mediation process. They also provide secretarial services during the mediation process.



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Costs consequences of refusing to mediate

Can local courts force parties to mediate, especially in commercial or employment disputes?

Do local courts impose costs for?

Delay in consenting to mediation?

Failure to mediate?

Refusal to participate in mediation, particularly if that party is also a losing party in subsequent court proceedings?



Costs consequences of refusing to mediate

Local courts can only force parties to mediate in employment disputes and certain types of commercial disputes.

In other cases, the courts only have an obligation to encourage the parties towards settlement or mediation at the preliminary hearing of the lawsuit (Article 320, Civil Procedure Code). However, this is not mandatory and the parties are free to decide whether to mediate or not, and are able to end mediation at any time.



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Costs consequences of refusing to mediate

If the parties apply for mediation while a lawsuit is underway or pending and a delay occurs during the mediation, and the parties subsequently fail to resolve their dispute, the courts may rule that the entire litigation costs (such as counsel's fees, postage costs and judgment and writ fees) will be borne by the party that caused the delay (Civil Procedure Code).

In employment disputes and commercial disputes subject to mandatory mediation, if the parties do not apply for mediation before starting court proceedings, the lawsuit will be dismissed on procedural grounds during the first stage.

Furthermore, in mandatory mediations, if one of the parties does not participate in the first mediation meeting, it will be liable for litigation expenses even though it may be found partially or completely justified at the end of the litigation. In addition, the court will not grant counsel's fees in favour of this party.



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Limitation period

What is the limitation period for filing a civil and commercial claim? Is the limitation period for initiating judicial or arbitral proceedings extended/suspended in cases where parties attempt to settle their disputes through mediation? What are the formalities required to trigger such extension/ suspension?



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According to the Turkish Code of Obligations, the Turkish Civil Code and the Turkish Commercial Code, different limitation periods apply in different circumstances. The limitation period for civil or commercial claims is generally ten years, although in certain commercial matters it is five years.

The time elapsed between the start of mediation proceedings and their end is not taken into consideration when calculating the applicable limitation period (Article 16, Mediation Code). Where the parties apply for mediation in advance of initiating a lawsuit before a court, the mediation process starts from the date the parties are invited to the first meeting and the mediation agreement is signed between the mediator and the parties.



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Limitation period

Where the parties apply for mediation at any stage following the beginning of a lawsuit before a first instance court, the initiation date of the mediation would be the date of either:

- Acceptance of the court's mediation invitation to the parties.
- Submission of a written agreement of the parties executed out of court.
- Record of statements of the parties in the hearing minutes in any of the hearings held in the first instance court.



Mediation Agreement

Is it customary in your jurisdiction to execute a written mediation agreement before the start of the mediation proceedings to record the rights and obligations of the parties and the mediator?



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There is no legal requirement to execute a written mediation agreement before the start of mediation proceedings. However, in practice, it is customary to do so.

Before the mediation process starts, an agreement is usually signed by the parties and the mediator or mediation institution specifying the rights and obligations of the parties and the mediator or the mediation institution, and determining the procedural rules to be applied. The dates and duration of the mediation process, the place, representation, legal frame, document and confidentiality issues should be determined to ensure a sound and smooth mediation process.



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In mandatory mediations, the mediator will be appointed by the mediation bureau. The appointed mediator has access to information about the parties on an online mediation portal. The mediator will send invitation letters to the parties containing brief information regarding the mediation process, the rights and obligations of the parties and the meeting place and time.



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ENFORCING SETTLEMENTS

Are there any special procedures for enforcing a settlement agreement reached at mediation? Does this differ from a settlement agreement reached outside mediation? Is it easier to enforce a settlement agreement reached at mediation?



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ENFORCING SETTLEMENTS

Under Turkish law, executing a settlement agreement is not sufficient to make it enforceable. To enforce a settlement agreement, the parties should obtain an annotation on the enforceability of the agreement from the competent court. Drafting a settlement agreement in an accurate manner which will be approved by a court is crucial in order not to waste time or give rise to any further costs.

An annotation on the enforceability of the agreement is similar to a verdict given by a court. A settlement agreement concluded by mediation does not differ from a settlement agreement concluded outside mediation. Both proceedings are implemented in the same way before a court, and the settlement agreement drawn up at the end of both proceedings resembles a court verdict.

During ongoing lawsuit proceedings, if the parties bring a settlement agreement reached through mediation or through any other alternative dispute resolution method before the court, the court will decide according to the agreement between the parties.



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**Thank you very much for
listening to me.**



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Attorney, CEO of Law Firms
Gedikbař Law Company

Mehmet Gedikbař

