

A New Era in Lease Disputes: Mandatory Mediation

Authors: Dr. Gönenç Gürkaynak, Tolga Uluay, Doruk Altın and Simge Zeliha Yıldırım of ELIG Gürkaynak Attorneys-at-Law

1. Introduction

Economic crises and inflation occurring in recent years have led to the emergence of numerous new disputes arising from lease relationships and to an increase in existing disputes.

Therefore, in order to ensure the right to access justice and to reduce the caseload on the courts, the scope of mandatory mediation as a dispute resolution method has been expanded for certain disputes under Turkish law. According to the most recent amendments, disputes arising from lease relationships have also been included within the scope of mandatory mediation.

2. The concept of mediation

Mediation is defined in the Law on Mediation in Civil Disputes No. 6325 ("**Law**") as "*A dispute resolution method conducted on a voluntary basis with the participation of an unbiased and independent third party with specialized training, who can bring the parties together to discuss and negotiate by applying systematic techniques, to establish a communication process between the two parties in order to ensure that both parties can understand each other and create their own solutions, and to propose a solution in case the parties cannot find a solution.*". In this respect, mediation aims to settle the disputes of the parties in a voluntary manner and with the assistance of a third party without going to court. The important factor therein is that the dispute subject to mediation must be concerning an act or situation over which the parties can have a discretion on. For instance, disputes concerning allegations of domestic violence do not fall within the scope of mediation.

As explicitly stated in the Law, there are three main principles of mediation: (i) *volunteerism*, (ii) *equality*, and (iii) *confidentiality*. In other words, the parties to the mediation are free to resort to the mediation process, to continue the mediation process, or to stop the mediation process at any time. In doing so, both parties have equal rights and a say. In respect of confidentiality, a mediator is obliged to keep confidential the information obtained within the scope of mediation proceedings unless otherwise is mutually agreed by the parties. This obligation also applies to the parties of the mediation and third parties, unless otherwise is agreed.

Under Turkish law, the mediation was officially introduced as a dispute resolution method through the Law entered into force in 2012 as an arbitrary concept. However, through the amendments made to the Labor Courts Law in 2018, mediation was introduced as a mandatory step for filing a lawsuit, which is known as mandatory mediation. Subsequently, it became mandatory to resort to mediation for commercial disputes with monetary claims, and ultimately for disputes concerning lease relations.

Accordingly, after the recent amendment in the Turkish law, mediation process can be separated as voluntary mediation and mandatory mediation; and considering the nature of the mediation motion, mandatory mediation constitutes an exception to the principle of volunteerism.

2.1. An overview of mandatory mediation

Mandatory mediation, which is a cause of action, means that the parties must resort to the mediation process before filing a lawsuit for the disputes specified in the Law. So, if a lawsuit is filed without resorting to the mediation process, it will be dismissed on procedural grounds.

Under Turkish Law, for the first time in 2018, application to a mediator before filing a lawsuit for the resolution of individual labor disputes became mandatory, thus the concept of mandatory mediation emerged. The reason behind the requirement of mandatory mediation in

labor lawsuits is the increasing caseload within the scope of labor law and labor courts, and the lengthy period taken to finalize the lawsuits.

3. Mediation process became mandatory for disputes arising from lease relationships

In addition to the previous types of disputes, which are subject to the mandatory mediation proceedings, recently, disputes stemming from lease relationship, except for cases pertaining to eviction of leased immovable properties through enforcement without judgment, became subject to the mandatory proceeding as well.

Accordingly, the disputes subject to mandatory mediation listed in the Law include (i) disputes arising out of the lease relationship, except for cases pertaining to eviction of leased immovable properties through enforcement without judgment, (ii) disputes regarding the division of movable and immovable properties and the dissolution of partnership, (iii) disputes arising out of the Condominium Law dated 23/6/1965 and No. 634, and (iv) disputes arising out of neighbor rights.

In particular, disputes arising from lease relations include, but are not limited to, actions for determination of rent, eviction proceedings, rent adaptation proceedings, and termination of the contract.

This amendment is applicable for all disputes described above as of September 1, 2023.

4. Conclusion

Mediation has become a frequently preferred dispute resolution method in Türkiye's judicial system over time. In addition, it can be said that mediation, rendered mandatory under various laws and regulations for certain disputes, is at an important point in order to mitigate the workload of the courts, even though it eliminates the principle of voluntariness of the parties. Accordingly, it is expected that disputes arising from lease relations, which have been included within the scope of mandatory mediation as of September 2023, will be resolved in a

ELİG
GÜRKAYNAK

Attorneys at Law

shorter period of time in case of active participation of the parties and that the parties will not lose the interests they will derive from the dispute.

At this point, in order to obtain the expected efficiency from mediation, the parties to the dispute should be fully involved in the process and participate in the meetings with an effective negotiation by being aware of the benefits they can get from the amicable dispute resolution method.

Article Contact: Dr. Gönenç Gürkaynak

E-mail: gonenc.gurkaynak@elig.com

(First published by Mondaq on December 6, 2023)