

Mediation as an Alternative Dispute Resolution Method and Mediation Process in Turkish Law System: an Overview

*Alternatif Uyuşmazlık Çözüm Yöntemi Olarak Arabuluculuk ve Türk
Hukukunda Arabuluculuk Süreci: Genel Bir Bakış*

Res. Assist. Serpil Işık*

Abstract

The parties seeking resolution of disputes arisen between them can either apply to the courts of justice or prefer using alternative dispute resolution (ADR) methods to settle the dispute before third parties. Recently, alternative dispute resolution methods have become more popular than judicial procedures in modern procedural law. This caused an increase in the number of Alternative Dispute Resolution (ADR) methods and put the mediation process forward among those methods for various reasons. In this respect, some regulations were put into effect to outline the framework of mediation in the Turkish law system. In this study, first a general description of alternative dispute resolution (ADR) methods and mediation will be made and then Law on Mediation in Civil Disputes (the “*Mediation Law*”), the basic regulation in the Turkish law system and mediation practices in Turkey will be introduced.

Key Words: Alternative Dispute Resolution, Types of Alternative Dispute Resolutions, Mediation, Mediation in Turkish Law System, Me-

* Research Assistant at Istanbul University Faculty of Law, Department of Civil Procedural Law and Execution and Bankruptcy Law [serpil.isik@istanbul.edu.tr; isikserpil1988@hotmail.com].

diation Process, Law on Mediation in Civil Disputes, Regulation of Law on Mediation in Civil Disputes.

Özet

Taraflar aralarında meydana gelen uyuşmazlıkların çözümü bakımından devlet yargısına başvurabilecekleri gibi, üçüncü kişilerin huzurunda uyuşmazlıkların çözümlenmesi amacıyla, alternatif uyuşmazlık çözüm yöntemlerini de tercih edebileceklerdir. Günümüzün değişen koşullarında, modern yargılama hukuklarında, uyuşmazlıkların mahkemeler aracılığıyla çözümlenmesine alternatif teşkil eden yöntemlere olan ilginin giderek arttığını görmekteyiz. Bu durum ise, alternatif uyuşmazlık çözüm yöntemlerinin sayıca artmasına ve bu yöntemlerin içinden de arabuluculuğun çeşitli nedenlerle ön plana çıkmasına sebep olmuştur. Bu sebeptir ki, Türk hukukunda arabuluculuk kurumunun yerleşmesi amacıyla kanuni düzenlemeler yapılması yoluna gidilmiştir. Çalışmamızda, öncelikle alternatif uyuşmazlık çözüm yolları ile arabuluculuğa ilişkin genel bilgiler ifade edilecek, sonrasında ise, bu kuruma ilişkin Türk hukukundaki temel düzenleme olan Hukuk Uyuşmazlıklarında Arabuluculuk Kanunu ve Türk arabuluculuk uygulamasının ifade edilmesi yoluna gidilecektir.

Anahtar Kelimeler: Alternatif uyuşmazlık çözümü, alternatif uyuşmazlık çözüm yollarının çeşitleri, Türk hukuk sisteminde arabuluculuk, arabuluculuk prosedürü, Hukuk Uyuşmazlıklarında Arabuluculuk Kanunu, Hukuk Uyuşmazlıklarında Arabuluculuk Kanunu Yönetmeliği.

§ I. Introduction

Recently, using the alternative ways of resolving disputes with a neutral third party has become more popular among the parties seeking resolution of a dispute arisen between them¹. In fact, various types of al-

¹ Roth, M./Stegner, M.: Mediation in Austria Yearbook on International Arbitration, Vol. 3, (pp. 367-3783), p. 367; Lisnek, P. M.: Mediation: Untangling Business Disputes

ternative dispute resolution (ADR) methods to be used to settle disputes have been developed in the United States of America², in the civil law systems of Continental Europe and the Middle East^{3,4}.

Through ADR, *Commercial Law Bulletin*, (July/August 1993), (pp. 12-19), p. 16; *Swinson*, S. K.: *Alternative Dispute Resolution in Bankruptcy*, *Tulsa Law Journal*, Vol. 36, Issue 4 (Summer 2001), (pp. 813-818), p. 813; *Lerman*, L. G.: *The Teaching of Alternative Dispute Resolution*, *Journal of Legal Education*, Vol. 37, Issue 1 (1987), (pp. 37-40), p. 38; *Goss*, J.: *An Introduction to Alternative Dispute Resolution*, *Alberta Law Review*, Vol. 34, Issue 1 (1995), (pp.1-33), p. 2; *Petillon*, L. R.: *Recent Developments in Alternative Dispute Resolution*, *Pepperdine Law Review*, Vol. 14, Issue 4 (1987), (pp. 929-942), p. 929; *Scalise*, D. G./*Engels*, J. E.: *Alternative Dispute Resolutions: a Commercial Guide for Dispute Management*, *Advocates' Quarterly*, Vol. 9, Issue 1 (February 1988), (pp. 53-76), p. 59; *Green*, E. D.: *Corporate Alternative Dispute Resolution*, *Ohio State Journal on Dispute Resolution*, Vol. 1, Issue 2 (1986), pp. 203-298, p. 205; *Glasner Q. C.*, K.: *Contract Disputes and Alternative Disputes Resolution: Some Observations*, *Advocate (Vancouver Bar Association)*, Vol. 59, Issue 5 (September 2001), (pp. 725-732), p. 725; *Macdonnell*, J. L.: *Natural Resources Dispute Resolution: An Overview*, *Natural Resources Journal*, Vol. 28, Issue 1 (Winter 1988), (pp. 5-20), p. 5; *Gonzales*, A.: *Alternative Dispute Resolution*, *Brief*, Vol. 32, Issue 2 (Winter 2003), (pp. 4-56), p. 4.

² *Eiholzer*, H.: *Die Streitbeilegungsabrede*, (Ein Beitrag zu alternativen Formen der Streitbeilegung, namentlich zur Mediation), *Universitätsverlag Freiburg Schweiz*, 1998, 1. Kapitel, Nr. 37 et seq; *Riskin*, L. L.: *The Special Place of Mediation in Alternative Dispute Processing*, *University of Florida Law Review*, Vol. 37, Issue 1 (Winter 1985), (pp. 19-28), p. 19. In the 1960s, interest in alternative dispute resolution (ADR) started in the United States. The three principle goals of the ADR were: (1) to make the regular court system more effective and less costly; (2) to offer alternative dispute resolution (ADR) to the court system; (3) to ensure community education about the available alternatives. During the 1960s and 1970s these goals were met as the judiciary ect., the public also appears to be more aware of alternatives to the litigation process and the advantages of the some of these alternative dispute resolution (ADR) methods (See *Goss*, p. 2. For the opinion on the same direction see *Scalise/Engels*, pp. 54, 55; *Riskin*, p. 19).

³ In some societies mediation is normal method of dispute resolution. As an example, in Japan and China mediation is used for resolving all types of civil disputes (*Scalise/Engels*, p. 66). Furthermore, many years ago, the most popular Chinese viewed mediation as superior to litigation (See *Goss*, p. 5).

⁴ See *Lisnek*, p. 16 et seq; *Goss*, p. 2; *Scalise/Engels*, p. 60. Alternative Dispute Resolution (ADR) has a comprehensive history, with credentials to its use appearing in Greek mythology, in early Jewish and Roman Law. Some more exclusive forms of dispute resolution can be traced back to China, 12th Century England and old America (See *Lominack*, R. W.: *Examining Alternative Dispute Resolution in the International Business Domain*, *South Carolina Journal of International Law and Business*, Vol. 1, (pp. 17-26), p. 18 et seq).

Mediation, an alternative dispute resolution (ADR) method, is highly preferable and frequently used by the parties in dispute and seeking a resolution⁵. In this respect, some technical and legislative regulations have been put into effect in the Anglo-American law system and the Continental European civil law system⁶ to institutionalize alternative dispute resolution (ADR) methods⁷. Following these developments, various regulations have been put into effect in the Turkish law system to establish methods to constitute alternatives to the concept of classical adjudication. In this respect, the adoption of Law on Mediation in Civil Disputes is the greatest step taken forward⁸. Then, the Regulation of Law on Mediation in Civil Disputes was put into effect⁹. Finally, revised regulations on “*mandatory mediation*” were proposed in the Draft Law on Labor Courts¹⁰. The legislative body, aims at establishing mediation, an alternative dispute resolution (ADR) method in the Turkish law system.

In this study, we aim at defining the mediation practices gradually increasing in number in the Turkish law system. In this respect, we will first discuss alternative dispute resolution (ADR) methods in general and the role of mediation therein. Therefore, we will define the fundamental principles of mediation in the settlement of disputes. Then, in the light of the basic regulations on mediation in the Turkish law system, we will have an overall aspect of the mediation practices in Turkey. In this

⁵ Scalise/Engels, p. 65; Roth/Stegner, p. 367; Goss, p. 5; Breen, J. D.: Mediation and the Magistrate Judge, University of Memphis Law Review, Vol. 26, Issue 3 (Spring 1996), (pp. 1007-1030), p. 1014.

⁶ Recent Alternative Dispute Resolution (ADR) legislation in the United States see Scalise/Engels, p. 74 et seq and fn. 58. For more information about “*mediation laws*” see Berger, K. P.: Private Dispute Resolution in International Business: Negotiation, Mediation, Arbitration, Third, Revised Edition, Volume II: Handbook, Kluwer Law International, Netherlands, [2015], Nr. 6-78, pp. 136-137.

⁷ See Swinson, p. 813; Scalise/Engels, p. 74; Dunlop, J. T.: The Negotiations Alternative in Dispute Resolution, Villanova Law Review, Vol. 29, Issue 6 (1983-1984), p. 1424.

⁸ Published in the Official Gazette dated 22 June 2012 and numbered 28331.

⁹ Published in the Official Gazette dated 26 January 2013 and numbered 28540.

¹⁰ In Turkish law, the Draft Law on Labor Conventions was sent to the relevant institutions and organizations for their opinions on 23.03.2016. The “*mandatory mediation*” was intended to be regulated by the legislator in the practice of Turkish law in Article 3 of the Draft Law on Labor Courts.

context, we will explain the legal basis of the concept of mediation in the Turkish law system, the requirements of becoming a mediator, mediation practices and the scope of mediation practices in the Turkish law system and agreements signed at the end of such practices and the commentary of enforceability added to the text of such agreements by the court.

§ II. An Overview of Alternative Dispute Resolution (ADR) Methods

A. The concept of Alternative Dispute Resolution Method

The parties in dispute used to prefer filing lawsuits, the traditional procedure¹¹ of judgment to settle disputes¹². Alternative dispute resolution (ADR) methods became popular^{13,14} because of slowly progressing

¹¹ In the Western countries, the traditional dispute settlement method is the judicial way, while the traditional and actual solution method in the Far East countries is the settlement based on the disputes (Goss, p. 5; Özbek, M.: "Avrupa Konseyi Arabuluculuk Yönergesi Önerisi", [Proposal of the European Council for a Mediation Directive], in AÜHFD, [2007], Vol. 56, Issue 1, (pp. 183-232), p. 198).

¹² *McGovern, F. E./Hare, F. H.*: "Lessons from U.S. Alternative Dispute Resolution", in: *La médiation: un mode alternatif de résolution des conflits?* Lausanne, 14 et 15 novembre 1991= "Mediation" als alternative Konfliktlösungsmöglichkeit? Lausanne, den 14. und 15. November 1991= *Mediation: an alternative method of dispute resolution?* Lausanne, the 14th and 15th November 1991, Schulthess Polygraphischer Verlag Zürich, 1992, (pp. 165-175), p. 167; *Scalise/Engels*, p. 54. But the people see that it is becoming more and more fruitless often times to litigate. For this reason, the idea is to bring people together possible to solve their problems (*Feliciano Jr., S.*: *Alternative Dispute Resolution*, Catholic Lawyer, Vol. 33, Issue (1990), (pp. 61-62), p. 61).

¹³ *McAdoo, B.*: *The Future of ADR: Have They Come for the Right Reason*, *Journal of Alternative Dispute Resolution in Employment*, Vol. 3, Issue 2 (Summer 2001), (pp. 8-11), pp. 9-10; *Lisnek*, pp. 13, 16; *McGovern/Hare*, pp. 165, 167; *Berger*, Nr. 2-66, p. 44; *Goss*, p. 2; *Petillon*, pp. 929, 930; *Scalise/Engels*, pp. 53, 54; *Green*, pp. 205-206.

¹⁴ Alternative Dispute Resolution (ADR) have some advantages to litigation. This advantages are: (1) Speed, (2) Privacy, (3) Flexibility, (4) Economy, (5) Finality... etc. In other saying, Alternative Dispute Resolution (ADR) forms are all designed to streamline the process of conflict resolution by reducing costs, saving time, eliminating risk, uncertainty and publicity, minimizing disruption to relationships that must continue

proceedings due to the judicial issues such as heavy workload of courts, increased litigation expenses, animosity of courts and the complexity of and the ambiguity in the rules of civil procedure ... etc¹⁵. Thus, alternative dispute resolution (ADR) methods have become more popular and more preferable and used effectively in many countries around the world¹⁶.

Alternative dispute resolution (ADR) methods can be defined as methods of settlement of disputes between the parties involved without filing lawsuits¹⁷. In other words, alternative dispute resolution methods are the procedures alternative to lawsuits implemented with help from a neutral third party¹⁸. “*Alternative*”, the word used to mention alternative dispute resolution methods does not refer to the methods which replace the judicial procedures implemented by courts. On the contrary, “*alternative*”, the word present in the concept of alternative dispute resolution (ADR) procedures refers to a resolution method that accompanies to, complements and defines classical dispute resolution methods¹⁹.

and offering non-intimidating, flexible justice for the common person (See *Scalise/Engels*, p. 56, 60. For the similar mention see *Green*, pp. 218-219; *Dunlop*, p. 1424; *Birkle*, J.: *Mediation: An Effective Arm of Alternative Dispute Resolution*, Res IPSA Loquitur, Vol. 3, (pp. 78-80), p. 76; *McAdoo*, p. 9; *Lisnek*, pp. 12-13).

¹⁵ *Eiholzer*, 1. Kapitel, Nr. 25-31, pp. 8-10; *Petillon*, p. 929, 930; *Scalise/Engels*, p. 53; *Guidry*, A. M.: *Alternative Dispute Resolution: Broadening The Use Through Louisiana Courts*, Southern University Law Review, Vol. 19, Issue 2 (1992), (pp. 403-420), p. 406.

¹⁶ *Swinson*, p. 813; *Dunlop*, p. 1424. Because, in the United States a great majority of disputes between the parties are resolved by alternative dispute resolution (ADR) methods before the trial (*Eiholzer*, 1. Kapitel, Nr. 37, p. 12).

¹⁷ *Eiholzer*, 1. Kapitel, Nr. 6, p. 3; *Swinson*, p. 813; *Petillon*, p. 929; *Woodman*, G. R.: *The Alternative Law of Alternative Dispute Resolution*, Cahiers de Droit, Vol. 32, Issue 1 (Mars 1991), (pp. 3-32), p. 10; *Dana* J., H. H. H.: *Court-Connected Alternative Dispute Resolution in Maine*, Maine Law Review, Vol. 57, Issue 2 (2005), (pp. 349-448), p. 350; *Guidry*, p. 406.

¹⁸ *Notter*, P.: *Mediation im Verwaltungsverfahren*, Dike Verlag AG, Zürich/St. Gallen 2013, § 4, p. 36; *Eiholzer*, 1. Kapitel, Nr. 6, p. 3; *Swinson*, p. 813; *Woodman*, p. 10; *Schütz*, § 1, N. 48, p. 17.

¹⁹ *Eiholzer*, 1. Kapitel, Nr. 6, p. 3, fn. 2; *Lerman*, p. 37; *Scalise/Engels*, p. 56; *Woodman*, p. 9; Alternative methods to abolish the state judgment are not allowed. On the contrary, there may be additional procedures without harming the absolute sovereignty of state jurisdiction. It is stated that alternative dispute resolution (ADR) methods are not escape judicial, in particular disputes that do not concern small public order (*Woodman*, p.

Alternative dispute resolution (ADR) methods aim at settling the disputes between the parties involved satisfactorily²⁰. In other words, alternative dispute resolution methods, do not aim to offer a resolution to justify or count a party righteous but to settle the dispute in a way somewhat agreeable by the parties involved²¹. Therefore, a fair decision should not be expected from the use of alternative dispute resolution methods²². Alternative dispute resolution methods do not provide the assurance, a judicial court can provide²³.

B. Types of Alternative Dispute Resolution Methods

1. General

The number of applicable methods increased as the use alternative dispute resolution (ADR) methods became popular around the world²⁴. So, there are various types of alternative dispute resolution methods

10), provide for settlement without becoming interested in the judicial judiciary. Thus, by reducing the number of incidents in front of the courts, it will be possible for the courts to make decisions in a shorter period of time and the costs incurred by reducing the share of the judiciary will also decrease (Pekcanitez, H.: "Alternatif Uyuşmazlık Çözümleri" [Alternative Dispute Resolutions], in HPD, December [2005], Issue 5, (pp. 12-16), p. 15).

²⁰ Langer, R.: The Juridication and Technicisation of Alternative Dispute Resolution Practise, Canadian Journal of Law and Society, Vol. 13, Issue 1 (Spring 1998), (pp. 169-186), p. 171. Mediation allows the parties to develop "win/win solutions" with the guidance of the mediator (Berger, Nr. 11-47, p. 242). And see about "Harward-Konzept" (Notter, § 4, p. 40; Eiholzer, 1. Kapitel, Nr. 65, p. 18.

²¹ Goss, p. 6; Petillon, p. 929. The special focus of the mediation is on the acknowledgment of concerns and the activation of bargaining power, allowing the parties to work towards bring to an issue a deal that settles the dispute and leaves the parties better than they were before, better than if the was litigate (with attendant costs and uncertainties) and also better than if the disputes had been decided before a judicial third-party (Berger, Nr. 6-28, p. 123).

²² Glasner Q. C., p. 730.

²³ See Lisnek, p. 16 et seq; Green, p. 281 et seq; Pekcanitez, HPD, December (2005), p. 15.

²⁴ Roth/Stegner, p. 367; Lisnek, p. 13; Petillon, p. 929; Abernathy, J. M.: Alternative Dispute Resolution in Commercial Cases, Annual Survey of American Law Supplement, Vol. 1985, (pp. 29-50), p. 29.

used to settle disputes between parties²⁵. Alternative dispute resolution (ADR) methods are developed according to the requirements and the law system of the country of application and they are not restricted easily²⁶. Alternative dispute resolutions are customized to a country's requirements and sociological facts²⁷. Using alternative dispute resolution (ADR) methods can somehow be compulsory or optional²⁸. Some of these methods can be implemented by²⁹ or without judicial courts³⁰.

Alternative dispute resolution (ADR) methods are effective methods to be used altogether without any exclusion³¹. The mostly preferred alternative dispute resolution methods³², alternative to lawsuits are "arbitration", "mediation", "early neutral evaluation (ENE)", "fact finding", "private judgment (PJ) or private tribunals (PT)", "summary jury trial (SJT)", "adjudication", "ombudsman", "negotiation", "conciliation", "court-annexed arbitration (COA)"...etc³³. Definitions of alternative

²⁵ *Lisnek*, p. 16; *Berger*, Nr. 2-75, p. 51; *Goss*, p. 5; *Scalise/Engels*, p. 60; *Green*, p. 205; *Woodman*, p. 3; *Dana J.*, p. 351; *Glasner Q. C.*, p. 725; *Guidry*, p. 406.

²⁶ *Lisnek*, p. 16.

²⁷ *Pekcanitez*, HPD, December (2005), p. 15; For example see, *Sekaquaptewa*, P.: Tribal Courts and Alternative Dispute Resolution, *Bussiness Law Today*, Vol. 18, Issue 2 (November-December 2008), (pp. 23-28), p. 24.

²⁸ *Shaw*, L. M.: ADR And The Courts: Some Emerging Issues, *Journal of Contemporary Legal Issues*, Vol. 3, (pp. 151-156), p. 153.

²⁹ *Dana J.*, p. 351 et seq. As an example, In the United States of America, in the *Rutigliano v. Rutigliano* case [No. A-2797-11T1, 2012 WL4855864 (NJ Sup. Ct. App. Div., Oct. 15, 2012)], after litigants reached agreement in mediation. For more information about the *Rutigliano v. Rutigliano* case see *Dozier*, D. P./*Batson*, D. C.: Alternative Dispute Resolution, *Environment, Energy and Resources Law: The Year in Review*, Vol. 2012, (pp. 307-312), p. 308.

³⁰ *Pekcanitez*, HPD, December (2005), p. 15. For more information about "dispute resolution contract clause" see *Green*, pp. 272-276; *Glasner Q. C.*, p. 729.

³¹ *Goss*, p. 5.

³² According to literature, Alternative Dispute Resolution (ADR), may be generally classified into three major areas: "(1) Mediation, (2) Arbitration, (3) Negotiation" (See *Berger*, Nr. 2-75, p. 51; *Eiholzer*, 1. Kapitel, Nr. 53, p. 16; *Glasner Q. C.*, p. 729).

³³ For more information about "the various forms of Alternative Dispute Resolution (ADR)" see *Scalise/Engels*, p. 60 et seq; *Green*, p. 238 et seq; *Riskin*, pp. 21-24; *Dana J.*, p. 351; *Glasner Q. C.*, p. 726; *Breen*, p. 1014 et seq.; *Eiholzer*, 1. Kapitel, pp. 15-29.

dispute resolution methods are not limited to those mentioned above³⁴. Mixed methods can be designed by combining two or more of them³⁵. Some examples of them are “mediation-arbitration (Med-Arb)”, “arbitration-mediation (Arb-Med)” and “mini trials or structured settlement negotiations”... etc³⁶. Mediation has a special place among other alternative dispute resolution (ADR) methods. A brief description of mediation is given below. We will define the mediation process separately from the other methods of dispute resolution and prevention.

§ III. Mediation

One of the widely recognized, accepted and used alternative dispute resolution (ADR) methods is “mediation”³⁷. The word mediation is derived from the Latin word, “*mediare*” (intervene) and “*medius*” (middle)³⁸. Mediation is an alternative dispute resolution resolution (ADR) method used under the guidance of a third neutral party called “*mediator*” to help the parties involved to settle disputes between them³⁹.

³⁴ Lisnek, p. 16; Scalise/Engels, p. 60.

³⁵ Berger, Nr. 2-75, p. 51.

³⁶ According to Riskin, mixed Alternative Dispute Resolution (ADR) processes are; Mediation-Arbitration “Med-Arb”, Mini Trials, Unstructured Settlement Negotiations, Other techniques, Litigation Management and Planning, Prevention... etc. (See Riskin, pp. 23-24).

³⁷ Roth/Stegner, p. 367; Goss, p. 5; Scalise/Engels, p. 65; Green, p. 264; Birkle, p. 75; Breen, p. 1014; Marie-Noëlle, D.: Mediation in the Belgian Health Care Sector: Analysis of a Particular Issue- The Material Scope of Application of Mediation, Medicine and Law, Vol. 30, Issue 2 (June 2011), (pp. 225-238), p. 226.

³⁸ Ildır, G.: Alternatif Uyuşmazlık Çözümü (Medeni Yargıya Alternatif Yöntemler) [Alternative Dispute Resolution (Alternative Methods of Civil Procedure)], Ankara, Seçkin, June 2003, p. 78, fn. 2. The mediator, which performs activities similar to the activities performed by the mediator, is often confused with mediation and the terms “mediation” and “conciliation” appear to replace each other (Woodman, p. 12; Riskin, p. 22). However, in our view, these two concepts are theoretically different (at the same direction, see Woodman, p. 12).

³⁹ There is no accepted universal definition of mediation. Mediation, which is an alternative to solving the dispute between parties, is defined in various ways in its doctrine. Various definitions of mediation see Lisnek, pp. 13, 16; Eiholzer, 1. Kapitel, Nr. 64, pp. 17-18; Notter, § 4, p. 35; Goss, p. 5; Woodman, p. 12; Birkle, p. 75; Riskin, p. 24; Breen, p. 1014;

In mediation procedures, the parties in dispute state their requirements to come to an agreement with each other under the assistance of an independent and natural third party to settle the dispute⁴⁰. Mediators are required to persuade the parties involved to prefer an amicable settlement and help them to come to a mutual agreement⁴¹. Mediators, unlike judges or arbitrators, may not enter binding decisions to conclude the mediation process⁴². The aim of mediation is to help the parties to settle the dispute between them on their own⁴³. Therefore, as long as the mediation procedures are effective, a mediator is required to bring the parties involved together and make it easier for them to come to a mutual agreement and settle the dispute between them⁴⁴.

Principally, parties decide to seek mediation when they fail to negotiate or simply negotiating do not take them anywhere⁴⁵. A mediator

Schütz, § 4, p. 106; *Hyde*, L. M. Jr.: *Mediation*, *Juvenile & Family Court Journal*, Vol. 35, Issue 1 (Spring 1984), (pp. 57-72), p. 57. There are various definitions of the mediation in positive regulations. For example, we see that in Turkish law, there is a definition of mediation in Article 2 of Law on Mediation in Civil Disputes. There, mediation express as “A method of voluntary dispute resolution system carried out with the inclusion of an independent third party; who is specially trained to convene the relevant parties by way of systemic techniques and with a view to help such parties mutually understand and reach a resolution through a process of communication”.

⁴⁰ *Lisnek*, p. 13; *Birkle*, p. 75; *Riskin*, p. 24; *Berger*, Nr. 6-16, p. 118.

⁴¹ *McAdoo*, p. 10; *Lisnek*, p. 13; *Eiholzer*, 1. Kapitel, Nr. 64, p. 17; *Goss*, pp. 5-6; *Scalise/Engels*, p. 65; *Dunlop*, p. 1444; *Birkle*, p. 75; *Riskin*, p. 24; *Özbek*, C. 56 S. 1, (2007), p. 194; *Ildır*, p. 100; *Pekcantez*, HPD, December (2005), p. 16; *Berger*, Nr. 6-55, p. 136.

⁴² *Lisnek*, p. 13; *Scalise/Engels*, p. 65; *Goss*, p. 5; *Woodman*, p. 11; *Birkle*, p. 75; *Riskin*, p. 22; *Glasner Q. C.*, p. 726; *Breen*, p. 1014; *Feinberg*, K. R.: *Mediation- Preferred Method of Dispute Resolution*, *Pepperdine Law Review*, Vol. 16, Issue 5 (1989), (pp. 5-42), p. 5, 7-8; *Hyde*, p. 57.

⁴³ *Lisnek*, p. 13; *Scalise/Engels*, p. 65; *Goss*, p. 5; *Woodman*, p. 12; *Birkle*, p. 75; *Riskin*, p. 22; *Glasner Q. C.*, p. 726; *Berger*, Nr. 6-16, p. 118; *Ildır*, p. 100; *Pekcantez*, HPD, December (2005), p. 16; *Hyde*, p. 57.

⁴⁴ *Goss*, p. 6; *Scalise/Engels*, p. 65; *Riskin*, pp. 22, 26.

⁴⁵ *Birkle*, p. 77; *Riskin*, p. 22. But, “mandatory mediation” exist see *Riskin*, p. 22. There is development in the Turkish law about compulsory mediation. According to article 3 of Draft Law on Labor Courts, it is envisaged that compulsory mediation will be introduced in order to resolve the disputes that have taken place.

is appointed upon the agreement of the parties involved⁴⁶. Then, mediation process begins. During the negotiation phase of mediation, parties are encouraged to communicate with each other efficiently and are assisted to see their common grounds, their weaknesses and advantages in judicial procedures and the possible consequences of failure to come to a mutual agreement, so that they can better consider their situation⁴⁷.

§ IV. Mediation in the Turkish Law System

A. Legal Basis

In order to simplify and speed up trial procedures and make them efficient at lower costs within the framework of the judicial reform program⁴⁸, the regulations of the European Union and Comparative Law were studied and mediation as an alternative dispute resolution (ADR) was regulated for the first time with the Draft Law on Mediation in Civil Disputes in the Turkish law system⁴⁹. Principally, the model law on international trade designed for members states by the United Nations Commission on International Trade Law – UNCITRAL, European Media-

⁴⁶ *Birkle*, p. 75; *Riskin*, p. 22.

⁴⁷ *Lisnek*, p. 13 et seq; *Goss*, p. 6; *Birkle*, pp. 77-78; *Riskin*, p. 26; *Tanrıver*, S.: “Hukuk Uyuşmazlıkları Bağlamında Alternatif Uyuşmazlık Çözüm Yolları ve Özellikle Arabuluculuk” [Alternative Dispute Resolution Methods in the Context of Civil Disputes and Especially Mediation], in *TBBB*, May-June, [2006], (pp. 151-177), p. 166.

⁴⁸ *Nolan*, K. P.: *Litigation*, Vol. 39, Issue 1 (Winter 2013), (pp. 59-60), p. 59; *Ciuca*, L. B.: *Mediation vs. Mediation*, *AGORA International Journal of Juridical Sciences*, Vol. 2013, Issue 4 (2013), (pp. 15-20), p. 15; *Lane*, P.: *Mediation: What’s New?*, *Advocate* (Vancouver Bar Association), Vol. 54, Issue 2 (March 1996), (pp. 197-208), p. 197.

⁴⁹ *Yazıcı-Tıktık*, Ç.: *Arabuluculukta Gizliliğin Korunması* [Protection of Privacy in Mediation], *Istanbul*, XII *Levha*, [2013], p. 9; *Özmumcu*, S.: *Uzak Doğu’da Arabuluculuk Anlayışı ile Türk Hukuk Sisteminde Arabuluculuk Kurumuna Genel Bir Bakış*, [Understanding of Mediation in Far East and A General Overview of the Mediation Institution in the Turkish Law System], 3th Edition, *Istanbul*, [2013], p. 284; *Yıldırım*, M. K.: *Hukuk Uyuşmazlıklarında Arabuluculuk Kanunu’nun Değerlendirilmesi*, [Evaluation of the Law on Mediation in Civil Disputes], in *Mediation Sempodium*, *Istanbul*, *Istanbul Bar Association Publications*, [2008], (pp. 35-80), p. 37.

tion Directive 2008/52⁵⁰, the Green Book about Alternative Procedures Concerning Resolution of Disputes in Private Law and Austrian Federal Law Concerning Mediation in Legal Disputes, Germany's Bavaria's Law on Compulsory Alternative Dispute Resolution in Private Law, as well as laws of mediation of Hungary, Bulgaria and Slovakia were considered in the preparation of the Draft⁵¹. Besides these documentary sources, convening with specialists from the United States of America, the United Kingdom, Italy, Spain, and Canada and practitioners from Germany, Netherlands and Austria the developments in Comparative Law were monitored⁵².

Law number 6325 on Mediation in Civil Disputes (the "*Mediation Law*") regulates the rules and procedures of mediation applicable to civil disputes was published in the Official Gazette and entered into force on 22/6/2012. Regulation of Law on Mediation in Civil Disputes is another ground for mediation in the Turkish law system. This regulation to set out the rules and procedures of the Mediation Law was published in the Official Gazette and entered into effect on 26 January 2013. Law on Mediation in Civil Disputes and Regulation of Law on Mediation in Civil Disputes are the fundamental principles of mediation in the Turkish law system. Article 137 para I, Article 140 para II, III, and Article 320 para II of Code of Civil Procedure⁵³ includes regulations on judges to direct

⁵⁰ Directive 2013/11/EU of the European Parliament and of the Council on Alternative Dispute Resolution (ADR) for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC goal to provide a high level consumer protection (See *Ionescu, M. I.*: Alternative Dispute Resolution, *Lex ET Scientia International Journal*, Vol. 22, Issue 2 (2015), (pp. 89-92), p. 89).

⁵¹ Özmumcu, s. 284; *Yılmaz*, p. 1282; *Yıldırım*, p. 38. For more information about the Draft Law on the Mediation in Civil Disputes see *Pekcanitez, H.*: Hukuk Uyuşmazlıklarında Arabuluculuk Kanun Tasarısının Tanıtımı, Medeni Usul ve İcra İflas Hukukçuları Toplantısı-VI [Presentation of the Draft Law on Mediation in Civil Disputes], in *Law of Civil Procedure and Execution and Bankruptcy Lawyers Meeting-IV*, Ankara, [2008], (pp. 245-300).

⁵² Özmumcu, p. 284; *Akcan, R.*: "Hukuk Uyuşmazlıklarında Arabuluculuk Kanunu Tasarısı ile İlgili Bazı Düşünceler", [Some Thoughts on The Drafting of the Law on Mediation in Civil Disputes], in Prof. Dr. Bilge Öztan'a Armağan, Ankara, [2008], (p. 39 et seq), p. 40.

⁵³ Published in the Official Gazette dated 12 January 2011 and numbered 27836.

to and encourage the parties to come to a peaceful agreement through mediation. Article 35/A of Attorney's Code⁵⁴, is another regulation that gives the power of settling disputes⁵⁵. Article 22 of Consumer Protection Law⁵⁶ includes the regulations on setting up arbitration committees to resolve consumers' issues through settlement and mediation⁵⁷. The regulation on "mandatory mediation" set out in Article 3 of Draft Law on Labor Courts is a recent development in the Turkish law system.

In terms of mediation in the Turkish law system, regulations entered by the legislative body are legislative regulations complementing basic laws and provides a legal ground for the institution.

B. Mediation Process in the Turkish Law System

1. General

According to the definition given in Article 2 para I (b) of Law on Mediation in Civil Disputes, mediation is "a method of voluntary dispute resolution system carried out with the inclusion of an independent third party; who is specially trained to convene the relevant parties by way of systemic techniques and with a view to help such parties mutually understand and reach

⁵⁴ Published in the Official Gazette dated 19 March 1969 and numbered 1136.

⁵⁵ *Ildır*, p. 139 et seq; *Tanrıver*, S.: "Alternatif Uyuşmazlık Çözüm Yolları: Arabuluculuk Kurumuna Hukuki ve Sosyolojik Bir Bakış" [Alternative Dispute Resolutions: Legal and Sociological View of the Institution of Mediation], in Prof. Dr. Fikret Eren'e Armağan, Ankara, [2006], (pp. 821-842), p. 825; *Yıldırım*, p. 53. The "mediation" and the "conciliation" are also included in the Law on Mediation in Civil Disputes, as well as mediation between affairs that are compatible with lawyers. On this count, the more effective use of this important competent attorney-known in Article 35/A of Attorney's Code may be the case (See also Law 4667 on mediation for Attorneys' see Özbek, M.: "Avukatlık Kanunu'nun 35/A maddesine Göre Arabuluculuk", ["Mediation" According to Article 35/A of the Attorney's Code], in ABD, [2001/3], p. 113 et seq).

⁵⁶ Published in the Official Gazette dated 06 March 2003 and numbered 4822.

⁵⁷ *Ildır*, p.128; *Tanrıver*, (2006), p. 825. In addition to these statutory regulations, there are also some statutory regulations in Turkish law. It is possible to express them as follows: Mediation arranged in Articles 22-23 of Collective Labor Contract Strike and Lockout Law; Mediation arranged in Article 49 para V of Notarial Act ... etc.

a resolution through a process of communication.”⁵⁸. During mediation, the mediator will bring the parties together to provide the appropriate environment for resolving the dispute between them⁵⁹. In this context, the mediator will be able to offer some suggestions⁶⁰. However, unlike *the judge* or *the arbitrator*, the mediator will not be able to make a decision on the settlement of the dispute and will not be able to impose it on the proposed parties⁶¹. Indeed, the parties who will decide on the dispute in the mediation process⁶².

The parties may join the mediation negotiations personally or via their attorney specially authorities on subject of mediation⁶³ (Article 15 para VI, Mediation Law). The mediator should ensure that all parties, from the outset, duly understand the rules, process and outcomes of mediation⁶⁴. The parties are free to resort to a mediator, to sustain, finalize or renounce such a process and shall agree to finalize such a dispute primarily by means of mediation. The parties won't be included, by no means, into such process and may renounce, in every stage, such solution of dispute via mediation⁶⁵. Unless otherwise decided by parties, the

⁵⁸ See Article 4, para I, b of Regulation of the Law on Mediation in Civil Disputes.

⁵⁹ Lisnek, p. 16; Goss, p. 6; Scalise/Engels, p. 65, 68; Birkle, p. 75; Riskin, p. 26; Breen, p. 1014; Berger, Nr. 6-16, p. 118; Hyde, p. 57; Lane, p. 199.

⁶⁰ Scalise/Engels, p. 65; Dunlop, p. 1445; Riskin, p. 26.

⁶¹ Scalise/Engels, p. 65; Goss, p. 5; Woodman, p. 11; Birkle, p. 75; Riskin, p. 22; Breen, p. 1014; Feinberg, p. 5, 7-8; Hyde, p. 57; Ciuca, p. 19.

⁶² Scalise/Engels, p. 66; Riskin, p. 26; Lisnek, p. 15; Glasner Q. C., p. 726; Breen, p. 1014; Berger, Nr. 6-16, p. 118; Hyde, p. 57.

⁶³ For more information about function of lawyers in mediation process see Berger, Nr. 6-47, pp. 133-134.

⁶⁴ Regulation of Law on Mediation in Civil Disputes Article 14 reads in full as follows: (1) “A mediator is obliged to personally and directly enlighten the parties about the fundamentals, process and judicial outcomes of mediation, in early beginning of the mediation activity. However, while carrying out such obligation, he abstains from any attitudes and behaviours letting to any doubt about his impartiality. (2) A mediator informs the parties especially about the quality and judicial outcomes of the document of understanding obtaining a nature of document in quality of court decree, which shall be issued in case the parties have agreed as result of legal disputes solved via mediation and as result of mediation activity and after the relevant court has annotated”.

⁶⁵ Regulation of Law on Mediation in Civil Disputes Article 5 para I reads in full as follows: “The parties are free to resort to a mediator, to sustain, finalize or renounce such a

mediator is obliged to keep secret any information and documents and other secret records submitted to him in framework of mediation activity or the ones has obtained in different ways⁶⁶. The mediator may talk to and communicate with the parties involved separately or altogether.

2. Qualifications and Appointment of a Mediator

A mediator aims to persuade the parties involved to resolve the issue amicably and help them to reach an agreement⁶⁷. The qualification of an mediator plays an important role⁶⁸. Therefore, it is very important that a mediator should have a good communicative skill⁶⁹ and a background in social studies, sociology, and psychology⁷⁰.

process and shall agree to finalize such a dispute primarily by means of mediation. The parties won't be included, by no means, into such process and may renounce, in every stage, such solution of dispute via mediation”.

⁶⁶ Mediation process is confidential. For more information about “*confidentiality in mediation*” see *Petillon*, p. 937; *Dozier/Batson*, pp. 307-308; *Pryor*, W.: *Alternative Dispute Resolution*, SMU Law Review, Vol. 61, Issue 3 (Summer 2008), (pp. 519-530), p. 520; *Abernathy*, p. 30; *Goss*, p. 6; *Dunlop*, p. 1445; *Roth/Stegner*, p. 371; *Lisnek*, p. 15. And for more information about “*confidentiality agreement*” see *Feinberg*, pp. 31-33; *Eiholzer*, 1. Kapitel, Nr. 83, p. 21.

⁶⁷ *McAdoo*, p. 10; *Goss*, pp. 5-6; *Scalise/Engels*, pp. 65-66; *Dunlop*, p. 1444; *Birkle*, pp. 75, 77; *Riskin*, p. 22; *Lisnek*, p. 13; *Glasner Q. C.*, p. 726; *Breen*, p. 1014; *Berger*, Nr. 6-55, p. 136; *Yıldırım*, p. 59. Mediator functions as a moderator or facilitator of the parties (See *Berger*, Nr. 6-30, p. 123). And Law on Mediation for Civil Disputes provided that Article 2 para I (a): “*Mediator: A real person enrolled within the register of mediators, regulated by the Ministry, which carries out function of mediator*”.

⁶⁸ *Dunlop*, p. 1445; *Birkle*, p. 77; *Berger*, Nr. 6-55, p. 136; *Noll*, D. E.: *Mediation, Then Mediation*, *Dispute Resolution Magazine*, Vol. 14, Issue 1 (Fall 2007), p. 37. Mediators receive training in listening and reframing skills, effective techniques for process management and settlement achievement (*Lane*, p. 200).

⁶⁹ For example, the mediator's ability to reframe and rephrase is essential (See *Waxman*, G. L./*Press*, S.: *Mediation: Part II: Mediation in Florida*, *Nova Law Review*, Vol. 15, Issue 3 (Spring 1991), (pp. 1211-1226), p. 1215.

⁷⁰ *Noll*, p. 37; *Lisnek*, p. 15; *Birkle*, p. 77. In addition, a mediator must have analytical business skills and the ability to comment the misguide signals of troubled cross-cultural transmission between the parties (*Berger*, Nr. 6-57, p. 137; On the same opinion see *McGovern*, E. F.: *Strategic Mediation (The Nuances of ADR in Complex Cases)*, *Dispute Resolution Magazine*, Vol. 5, Issue 4 (Summer 1999), pp. 4-12).

In the Turkish law system, the legislative body set out some regulations on the appointment of mediators⁷¹. Unless any other procedure has been decided, a mediator or mediators shall be elected by the parties⁷². The Turkish law system requires that in order to exercise the relevant power a mediator has to have certain qualifications such as; being a Turkish citizen, graduated from law faculty; professional experience of minimum five years, being fully competent, not already sentenced to prisons due to any intentionally committed offense, having completed the mediation education and passing successfully any written and applied examination done by the Ministry (Article 20, Mediation Law). According to Law on Mediation in Civil Disputes, a mediator is an independent real person enrolled in the register of mediation with the Ministry of Justice⁷³.

3. The Fundamental Principles of Mediation

Mediators are required to follow certain principles while conducting the mediation process. These principles are “*voluntariness*”⁷⁴, “*equality*”⁷⁵ and “*confidentiality*”⁷⁶. Therefore, mediators should fulfill the duties of mediation meticulously and act impartially and respect the confidential-

⁷¹ See Article 20 of Law on Mediation in Civil Disputes and Article 24 of Regulation of Law on Mediation in Civil Disputes.

⁷² Otherwise stated by the parties involved, a mediator is appointed by the parties in dispute (See *Birkle*, p. 76; *Riskin*, p. 22).

⁷³ Article 2 para I (a) of Law on Mediation in Civil Disputes and Article 4 para I (a) of Regulation of Law on Mediation in Civil Disputes.

⁷⁴ Regulation of Law on Mediation in Civil Disputes Article 5 para I reads in full as follows: “The parties are free to resort to a mediator, to sustain, finalize or renounce such a process and shall agree to finalize such a dispute primarily by means of mediation. The parties won’t be included, by no means, into such process and may renounce, in every stage, such solution of dispute via mediation”.

⁷⁵ Regulation of Law on Mediation in Civil Disputes Article 5 para II reads in full as follows: “The parties have equal rights both during recourse and during process. Either party cannot be excluded from mediation process or his right to speak cannot be restricted compared to other party”.

⁷⁶ *Notter*, § 4, p. 39. Regulation of Law on Mediation in Civil Disputes Article 6 para I reads in full as follows: “Unless otherwise decided by parties, the mediator is obliged to keep secret any information and documents and other secret records submitted to him in framework of mediation activity or the ones has obtained in different ways.

ity of the parties whilst conducting the mediation process (Article 9, Mediation Law). According to the principles of the voluntariness involved and equality, the parties apply to a mediator, continue the process and have it finalized or withdraw therefrom of their own free will. The parties may sign an agreement on resolving the dispute through mediation⁷⁷ (Article 3 para I, Mediation Law). Furthermore, a mediation process is conducted confidentially⁷⁸ (Article 4, Mediation Law); unless otherwise agreed by the parties in dispute⁷⁹. According to Mediation Law, in a civil dispute individuals who fail to fulfill the obligation of confidentiality and cause the impairment of the legal interests of another individual might be sentenced to imprisonment up to six months⁸⁰ (Article 33 para I, Mediation Law).

⁷⁷ Yeşilürmak, A.: Türkiye’de Ticari Hayatın ve Yatırım Ortamının İyileştirilmesi İçin Uyuşmazlıkların Etkin Çözümünde Doğrudan Görüşme, Arabuluculuk, Hakem-Bilirkişilik ve Tahkim: Sorunlar ve Çözüm Önerileri [Negotiation, Mediation, Expert Determination and Arbitration As Effective Means of Dispute Resolution for The Development of The Commercial Life and Investment Environment In Turkey: Problems and Suggestions for Solutions], XII Levha, April 2001, Istanbul, p. 10.

⁷⁸ For more information about this see *Petillon*, p. 937; *Dozier/Batson*, pp. 307-308; *Pryor*, p. 520; *Abernathy*, p. 30; *Goss*, p. 6; *Dunlop*, p. 1445; *Roth/Stegner*, p. 371; *Lisnek*, p. 15; *Berger*, Nr. 6-66, p. 141; *Feinberg*, p. 28 et seq.; *Notter*, § 4, p. 39; *Shaw*, p. 154. About confidentiality in mediation see these cases: *Paranzino v. Barnett Bank* [690 So. 2d 725 (Fla. Dist. Ct. App. 1997)] and *Bernard v. Galen Group*, [(901 F. Supp. 778 (S.D.N.Y. 1995)]. In both cases, parties in judicially required mediations were seriously sanctioned for breaking confidentiality in violation of mediation rules.

⁷⁹ The obligation for abiding by the privacy principle includes also the persons working with the mediator and the ones performing their internal education in framework of regulations related to inspection and supervision (Article 6 para IV of Regulation of Law on Mediation in Civil Disputes).

⁸⁰ About confidentiality in mediation see these cases: *Paranzino v. Barnett Bank* [690 So. 2d 725 (Fla. Dist. Ct. App. 1997)] and *Bernard v. Galen Group*, [(901 F. Supp. 778 (S.D.N.Y. 1995)]. In both cases, parties in judicially required mediations were also seriously sanctioned for breaking confidentiality in violation of mediation rules (See *Lee, J. A./Giesler, C.*: Confidentiality in Mediation, *Harvard Negotiation Law Review*, Vol. 3, pp. 285-298).

4. Scope of Application of Mediation

Although the parties involved may apply to courts to settle disputes of any type between them, their freedom to seek mediation as an alternative dispute resolution (ADR) method is somehow limited. The scope of mediation set out in Law on Mediation in Civil Disputes by the legislative body is clear. Article 1 para II of Law on Mediation in Civil Disputes regulates the scope of mediation. According to the article, “*the law is applicable to the resolution of private law disputes, including those containing element of alienage, arising from matters and transactions of the parties performed of their own free will. The disputes bearing allegations of domestic violence shall in so far be inconvenient*”⁸¹. As you can see, the legislative body did not list the disputes eligible for mediation in Article 1 para II of Law on Mediation in Civil Disputes⁸².

A basic criterion of “*matters and transactions of the parties performed of their own free will*” was mentioned to define the disputes eligible for mediation in the Turkish law system. It is accepted in *the Turkish doctrine and in the Supreme Court application* that the disputes that the parties can

⁸¹ Yıldırım, p. 55. Article 1 para II of Law on Mediation in Civil Disputes provision has been harmonized with Article 48 of the Council of Europe Convention on the Prevention and Combat against Violence Against Women and Domestic Violence.

⁸² According to Article 1 para II of Law on Mediation in Civil Disputes, it did not choose the method of counting on which disputes the mediation could be applied (Özmumcu, p. 283). One issue that can be discussed in this point is related to the question of whether the legislator is in favor of this choice. It is an on-the-spot arrangement that, in the view of the doctrine, it is to be generally expressed in this way, instead of being counted separately for the mediator, that is convenient for mediation, to maintain its openness to evolve and change (On the same opinion see Kekeç, E. K.: Arabuluculuk Kanunu Yoluyla Uyuşmazlık Çözümünde Temel Aşamalar ve Taktikler, [Basic Steps and Tactics in the Settlement of Disputes Through the Mediation Law], Ankara, [2011], p. 92, fn. 369; Özmumcu, p. 283). On the other hand, it would be more appropriate for the legislator to choose the method of counting what is conducive to mediation in the direction of the opposite view in his doctrine. As a matter of fact, the scope of the application of the law of mediation will become clear in this way and the parties will not hesitate to apply for mediation in terms of disputes between them and save labor and time for the reason that future discussions will end (Akcan, p. 43). *In our opinion*, the opinion of the doctrine that the lawmaker does not count individually the ones that are suitable for mediation in Turkish law and that a general criterion is correct is more accurate in terms of predicting a dynamic and immutable law.

not freely save are disputes which are considered as “*public order*” and that they are not suitable for mediation in this context⁸³. Similarly, as stated in the preamble to Law on Mediation in Civil Disputes the types of civil disputes that can be settled amicably by the parties can be considered eligible for mediation, pursuant to the criterion of “... *performed of their own free will*”⁸⁴.

The mediation process specified in the law is only applicable to the disputes related to private law. Therefore, pursuant to Law on Mediation in Civil Disputes the disputes related to administrative law or criminal procedure law⁸⁵ are not eligible for mediation⁸⁶. However, this does not include disputes subject to penal mediation. Article 1 para II of Law on Mediation in Civil Disputes, also reads that “*those containing element of alienage*” so, such disputes are also eligible for mediation. This means that not only the disputes related to domestic law but also the disputes containing an element of alienage are eligible for mediation, pursuant to Law on Mediation in Civil Disputes⁸⁷. The parties involved can only ap-

⁸³ Bilge, M. T.: “Hukuk Uyuşmazlıklarında Arabuluculuk Kanunu Açısından Kamu Düzeni Kavramı”, [Concept of Public Order in Terms of Law on Mediation in Civil Disputes], in *Mediation for Legal Disputes Symposium- I*, Sümer, İstanbul, [2014], (pp. 93-114), p. 93.

⁸⁴ At this point, one controversial aspect of his doctrine is related to the question of whether mediation can be pursued in terms of disputes that can be concluded by acceptance. It is important to note that the admissibility, which can be expressed in the form of a unilateral declaration of will orally or in writing to the court that the defendant has partially or completely satisfied the claim, is possible in disputes with which the parties can freely save, such as the same peace settlement. As a matter of fact, according to Article 308 para II of Law on Civil Procedure; “Acceptance will only result in a judgment on which parties can freely save.” This is because, in our view, we can speak of the possibility of mediation by acting on the grounds that only parties can be freed on disputes through acceptance (On the same opinion, see *Taşpolat-Tuğsavul*, M.: *Türk Hukuku’nda Arabuluculuk (6325 Sayılı Hukuk Uyuşmazlıklarında Arabuluculuk Kanunu Çerçevesinde)* [Within the Framework of the Law on Mediation in Civil Disputes No. 6325], 1th Edition, Ankara, Yetkin, [2012], p. 109).

⁸⁵ As an example, see the explanation for mediation in criminal law at Swiss Law: *Schütz*, Nr. 262-264, pp. 102-103; *Bilge*, p. 104.

⁸⁶ *Bilge*, p. 104.

⁸⁷ Let’s just say that the regulation of the lawmaker in this direction is based on the UN-CITRAL Model Law, the ICC Arbitration Code, etc. As well as the possibility of re-

ply to mediation for the disputes arising from matters and transactions performed of their own free will. The matters of disputes related to public order do not comply with the criterion of “... performed of their own free will” and therefore are not eligible for mediation.

Mainly “*minor disputes*” related to private law are eligible for mediation in the Turkish law system⁸⁸. The disputes eligible for mediation include (1) “Landlord-tenant relationship”, (2) “Intellectual property (IP) disputes”⁸⁹, (3) “Commercial disputes”⁹⁰, (4) “Industrial-labor relationship”⁹¹, (5) “Consumer disputes” and (6) “Employment disputes”⁹² ...etc⁹³.

sorting to institutional arbitration rules, which are part of the institutional arbitration bodies and which are foreign in nature. It is in our view that the lawmaker may be able to pursue mediation under the Law on Mediation in Civil Disputes in the case of disputes involving foreign elements.

⁸⁸ Woodman, p. 10; Ildr, pp. 126-127; Deren-Yıldırım, N.: Arabuluculuk Kurumuna İlişkin Bazı Düşünceler, Arabuluculuk Sempozyumu, [Some Thoughts About the Mediation Institution], in Mediation Sempodium, Istanbul, Istanbul Bar Association Publications, [2008], (pp. 81-97), p. 81.

⁸⁹ For example, surveys make it clear that the mediation and the use of another Alternative Dispute Resolution (ADR) techniques are highly regarded by intellectual property (IP) practitioners see Beem, R./Atkins, W. P.: Alternative Dispute Resolution, American Bar Association, Section of Intellectual Property Law, Annual Report, Vol. 2004-2005, (pp. 1-4), p. 1; Blackman, S. H./McNeill, R. M.: Alternative Dispute Resolution in Commercial Intellectual Property Disputes, American University Law Review, Vol. 47, Issue 6 (August 1998), pp. 1709-1734.

⁹⁰ Lisnek, p. 12 et seq; Abernathy, p. 29 et seq; Green, p. 281 et seq.

⁹¹ See Pretorius, P.: Alternative Dispute Resolution, South African Human Rights and Labour Law Yearbook, Vol. 2, Issue (1991), pp. 264-270; Deren-Yıldırım, p. 81.

⁹² See Hawkins, M. W.: Alternative Dispute Resolution: An Alternative For Resolving Employment Litigation and Disputes, Northern Kentucky Law Review, Vol. 20, Issue 2 (Winter 1993), pp. 493-504.

⁹³ See the explanation about mediation in private law at Swiss Law: Schütz, J. G.: Mediation und Schiedsgerichtsbarkeit in der Schweizerischen Zivilprozessordnung, Eine Untersuchung zur Streitbehandlungslehre: Verfahrensvergleich und- auswahl anhand gesetzlich geregelter Alternativen zum staatlichen Zivilprozess-Mediation, Schiedsgerichtsbarkeit und deren Hybridisierung, Stämpfli Verlag AG Bern, 2009, Nr. 254 et seq.

5. Mediation Procedure

The parties involved may agree to resort to mediation, prior to⁹⁴ or during the litigation process^{95,96}. The court may also enlighten and encourage the parties to do so⁹⁷ (Article 13, Mediation Law). The mediator shall invite the parties involved, upon his/her appointment, to the first meeting as soon as possible⁹⁸ (Article 15 para I, Mediation Law).

In the case of recourse to mediation prior to a lawsuit, the mediation process shall become effective from the date of invitation to the parties involved for the first meeting and the documentation of the agreement between the mediator and the parties on the continuation of the process through a protocol⁹⁹ (Article 16 para I (1), Mediation Law). In the case of recourse to mediation following a lawsuit, the process shall become effective from the date of the acceptance of court's invitation to mediation by the parties involved or written declaration by the parties to the court on their agreement to enter into mediation or the writing of such declaration within the minutes during the lawsuit (Article 16 para I (2), Mediation Law). In the event that mediation is resorted pursuant to the

⁹⁴ Before the dispute arise, contracting parties, can draw up dispute resolution clause (*Glasner Q. C.*, p. 729; *Green*, p. 273; *Berger*, Nr. 6-39, p. 128). For example, in the United States, many joint venture agreements contain dispute resolution clause (*Green*, p. 273).

⁹⁵ *Dana J.*, p. 351 et seq; As an example, In the United States of America, in the *Rutigliano v. Rutigliano* case [No. A-2797-11T1, 2012 WL4855864 (NJ Sup. Ct. App. Div., Oct. 15, 2012)], after litigants reached agreement in mediation. For more information about the *Rutigliano v. Rutigliano* case see *Dozier/Batson*, p. 308.

⁹⁶ In the Belgian legal system, the parties can also agree to apply for mediation during voluntary mediation (*médiation volontaire*), before or during the trial (*Namlı, M.*: Belçika Hukuk Sisteminde Arabuluculuk Kurumunun Temel Esasları, Arabuluculuk Sempozyumu, [Basic Principles of the Mediation Institution in the Belgian Legal System], in *Mediation Semposium, Istanbul, Istanbul Bar Association Publications*, [2008], (pp. 99-123), p. 102).

⁹⁷ *Dana J.*, p. 351 et seq.

⁹⁸ *Scalise/Engels*, p. 67; *Birkle*, p. 76.

⁹⁹ The agreement to mediate is a contract that obliges the parties to settle their dispute through mediation and not before the courts or arbitration. The agreement to mediate can be accomplished before the disputes e.g. as a mediation clause in a contract or as in our case, after the dispute has arisen (*Berger*, Nr. 6-39, p. 128). And see *Glasner Q. C.*, p. 729; *Green*, p. 273 *Berger*.

filing of the lawsuit, the adjudication shall be postponed for at most three months. Pursuant to Law on Mediation in Civil Disputes the period to ensue from the commencement of the mediation period to the completion thereof shall not be taken into account in the calculation of the period of limitation and lapse of time (Article 16 para II, Mediation Law). This period of time can be extended for a further three months upon the joint request of the parties involved (Article 15 para V, Mediation Law).

6. Termination of Mediation

A. General

Mediation shall come to an end, if the parties involved reach an agreement¹⁰⁰ or the mediator decides that it is not worth the effort to continue the mediation upon consulting the parties or one of the parties declares either to the other party or to the mediator that it will withdraw from the mediation or the parties jointly agree on the termination of the mediation or it is found that the dispute is not eligible for mediation or is related to a crime which does not fall within the scope of mediation pursuant to Law on Criminal Procedure¹⁰¹.

B. Agreement of the Parties at the End of Mediation

The parties involved may sign a settlement agreement, if they reach an agreement at the end of the mediation^{102,103}. The scope of the settle-

¹⁰⁰ *Birkle*, p. 77. In most cases, mediation results in settlement (see *Scalise/Engels*, p. 68).

¹⁰¹ Published in the Official Gazette dated 17 December 2004 and numbered 25673.

¹⁰² *Shawn, J.*: The Mediation Alternative, *Family Advocate*, Vol. 13, Issue 1 (Summer 1990), (pp. 16-17), p. 17; *Namlı*, p. 109; *Birkle*, p. 77; *Lisnek*, p. 19. For more information about finality and enforceability of mediation agreements see, *Dozier/Batson*, pp. 308-309.

¹⁰³ *Shawn*, p. 17; *Birkle*, p. 77; *Lisnek*, p. 19; *Namlı*, p. 109. However, the parties may prefer not to provide a written statement on this issue concerning the resolution of the mediation event if they agree. As a matter of fact, the parties are totally free about the value of the solution and the agreement that arise from the mediation activity. It would be better suited to organizing texts as a result of the mediation activity, in case there is a further disagreement between them over the dispute.

ment agreement is specified by the parties at the end of the mediation¹⁰⁴. The parties and the mediator shall sign the agreement in case such a document is drafted¹⁰⁵ (Article 18 para I, Mediation Law).

If the parties involved reach an agreement and want make an agreement in written, the format of the agreement can be plain text or an official writing¹⁰⁶. If the text is to be certified by an official like a notary public, it will be prepared in the official format. The form and the legal qualification of the settlement prepared by the parties reached an agreement can be an important issue in the future as it will have evidential value, if the same dispute arises again. The document shall have evidential value or be enforceable¹⁰⁷, if it is duly prepared in the form of plain text by the parties involved and meets the requirements set out in Code of Civil Procedure. If the agreement is prepared in the form of a notarial deed, it shall be regarded as a legal instrument and shall have the force of a verdict¹⁰⁸, if meets the requirements.

C. Enforceability of Agreement

The parties involved may request from the relevant court to enforce the agreement, if they reach a settlement and enter into an agreement at the end of mediation¹⁰⁹. Such enforcement may be asked from the court, to be identified as per the rules on duties and mandate of courts in regard to the original dispute, if mediation is sought prior to the lawsuit¹¹⁰. In the case of recourse to mediation during the lawsuit, enforcement shall be sought from the court where the matter is pending. The agreement

¹⁰⁴ Birkle, p. 77.

¹⁰⁵ Birkle, p. 77, 79; Namlı, p. 109.

¹⁰⁶ Pekcanitez, H./Atalay, O./Özekes, M.: Medeni Usul Hukuku, [Civil Procedure Law], 14th Edition, Ankara, Yetkin, [2013], s. 1104.

¹⁰⁷ For example, if there are conditions, Article 68 of Bankruptcy and Enforcement Law document in the sense.

¹⁰⁸ See Article 38 of Bankruptcy and Enforcement Law.

¹⁰⁹ Dozier/Batson, pp. 308-309.

¹¹⁰ Deren-Yıldırım, p. 91. In Swiss law, the parties may also request the court to annotate the agreement on the viability of the agreement document (Yıldırım, p. 40).

containing an annotation shall be considered a document with the force of a verdict¹¹¹ (Article 18 para II, Mediation Law).

Issuance of enforcement is an undisputed judgment affair and in this regard, an examination on the file is required¹¹². In family law disputes eligible for mediation such examination is made in hearing. The scope of such examination is limited to whether the content of the agreement complies with the mediation process and meets the requirements of a compulsory enforcement.

A fixed fee shall be charged for the application to the court to enforce the agreement, as well as in the case of an appeal by the relevant party against the court's decision. A fixed stamp duty shall also be charged, if the parties involved are willing to use the agreement with no enforcement annotation for other official acts (Article 18 para III, Mediation Law).

7. Fees and Expenses

Mediators have the right to receive a certain fee for the mediation conducted¹¹³ (Article 7, Mediation Law). Therefore, mediators are entitled to ask for a mediation fee and compensation of relevant costs in return for their services¹¹⁴. Mediators may also ask for an advance payment for the fees and expenses. The mediation fee is specified, unless

¹¹¹ Muran, H.: "Arabuluculuk Mahkemelerin İş Yükünü mü Yoksa Yargıya Olan Güveni mi Azaltacaktır ?" [Will Mediation Reduce the Workload of the Courts or the Confidence in the Judiciary ?], in İBD, [2011], Vol. 85, Issue 3, (pp. 43-74), p. 69.

¹¹² Muran, p. 70.

¹¹³ Sarısözen, M. S.: "Hukuk Uyuşmazlıklarında Arabuluculuk Kanun Tasarısının Getirdikleri, İcra Edilebilirlik Belgesi ve Arabuluculuğun Avukatın Tekel Hakkına Aykırılık Oluşturup Oluşturmadığı Sorunu" [The Design of the Law on Mediation in Civil Disputes, Executable Certificate and Whether the Mediator Creates a Breach of the Monopoly of the Lawyer], in EÜHFD, Vol. XV, Issue 1-2, [2011], (pp. 255-271), p. 262; Işık, O.: "Hukuk Uyuşmazlıklarında Arabuluculuk Kanunu Tasarısı Çerçevesinde Arabuluculuk Yönteminin Diğer Alternatif Uyuşmazlık Çözüm Yolları ile Karşılaştırılması" [Comparison of the Mediation Method with other Alternative Dispute Resolution Methods within the Framework of the Law on Mediation in Civil Disputes], in Terazi HD, December [2011], Year: 6, Issue 64, (pp. 14-24), p. 22; Özmumcu, p. 334.

¹¹⁴ For more information about the cost of the mediation services see Lisnek, p. 15.

otherwise agreed, according to the Mediators' Minimum Wage Tariff, effective on the date of the termination of mediation. The fee and expenses are paid in equal shares by the parties involved¹¹⁵ (Article 7 para II, Mediation Law). The mediator shall not be paid for the intermediation for certain individuals or for recommending certain individuals as a part of the mediation process conducted. Any act in violation thereof shall be null and void (Article 7 para III, Mediation Law).

§ IV. Conclusion

Recently, alternative dispute resolution (ADR) methods have become more popular than judicial procedures in modern procedural law. This caused an increase in the number of Alternative Dispute Resolution (ADR) methods and put the mediation process forward among those methods for various reasons. Mediation, an alternative dispute resolution method, is highly preferable and frequently used by the parties in dispute and seeking a resolution. In this respect, some technical and legislative regulations have been put into effect in the Anglo-American law system and the Continental European civil law system to institutionalize alternative dispute settlement methods. Following these developments, various regulations have been put into effect in the Turkish law system to establish methods to constitute alternatives to the concept of classical adjudication. In this respect, the adoption of Law on Mediation in Civil Disputes is the greatest step taken forward. In order to simplify and speed up trial procedures and make them efficient at lower costs within the framework of the judicial reform program, the regulations of the European Union and comparative law were studied and mediation as an alternative dispute resolution (ADR) was regulated for the first time with the Law on Mediation in Civil Disputes in the Turkish law system. Thus, In Turkish law, "features required for being a mediator, mediation

¹¹⁵ In the Belgian legal system, as long as the parties do not agree, the mediation fee and costs will be equal to each other. In Belgian law, mediation is not a cheap way. However, those who do not have sufficient financial strength in the Belgian legal system will be able to benefit from the "legal aid" agency for the mediation activity. Here, legal aid is of two kinds as "full" and "partial". In the Turkish legal system, there is no clarity in this matter yet (Namlı, p. 110).

activity, application area of the mediation activity in Turkish law, the end of the mediation process ... etc.” issues are organized under the Law on Mediation in Civil Disputes. Then, the Regulation of Law on Mediation in Civil Disputes was put into effect. Finally, revised regulations on mandatory mediation were proposed in the Draft Law on Labor Courts. The legislative body, aims at establishing mediation, an alternative dispute resolution (ADR) method in the Turkish law system. Eventually, today we see that the implementation of the mediation institution, which has gained a legal basis, is increasing in Turkish law system. As the implementation of the mediation institution increases, the legislature may be expected to introduce a number of new regulations.

Bibliography

- Abernathy, J. M.:** Alternative Dispute Resolution in Commercial Cases, Annual Survey of American Law Supplement, Vol. 1985, pp. 29-50.
- Akcan, R.:** “Hukuk Uyuşmazlıklarında Arabuluculuk Kanunu Tasarısı ile İlgili Bazı Düşünceler”, [Some Thoughts on The Drafting of the Law on Mediation in Civil Disputes], in Prof. Dr. Bilge Öztan’a Armağan, Ankara, [2008], p. 39 et seq.
- Beem, R./Atkins, W. P.:** Alternative Dispute Resolution, American Bar Association, Section of Intellectual Property Law, Annual Report, Vol. 2004-2005, pp. 1-4.
- Berger, K. P.:** Private Dispute Resolution in International Business: Negotiation, Mediation, Arbitration, Third, Revised Edition, Volume II: Handbook, Kluwer Law International, Netherlands, [2015].
- Bilge, M. T.:** “Hukuk Uyuşmazlıklarında Arabuluculuk Kanunu Açısından Kamu Düzeni Kavramı”, [Concept of Public Order in Terms of Law on Mediation in Civil Disputes], in Mediation for Legal Disputes Symposium- I, Sümer, İstanbul, [2014], pp. 93-114.

- Birkle, J.:** Mediation: An Effective Arm of Alternative Dispute Resolution, *Res IPSA Loquitur*, Vol. 3, pp. 78-80.
- Blackman, S. H./McNeill, R. M.:** Alternative Dispute Resolution in Commercial Intellectual Property Disputes, *American University Law Review*, Vol. 47, Issue 6 (August 1998), pp. 1709-1734.
- Breen, J. D.:** Mediation and the Magistrate Judge, *University of Memphis Law Review*, Vol. 26, Issue 3 (Spring 1996), pp. 1007-1030.
- Ciuca, L. B.:** Mediation vs. Mediation, *AGORA International Journal of Juridical Sciences*, Vol. 2013, Issue 4 (2013), pp. 15-20.
- Deren-Yıldırım, N.:** Arabuluculuk Kurumuna İlişkin Bazı Düşünceler, *Arabuluculuk Sempozyumu*, [Some Thoughts About the Mediation Institution], *in Mediation Symposium*, Istanbul, Istanbul Bar Association Publications, [2008], pp. 81-97.
- Dana J., H. H.:** Court-Connected Alternative Dispute Resolution in Maine, *Maine Law Review*, Vol. 57, Issue 2 [2005], pp. 349-448.
- Dozier, D. P./Batson, D. C.:** Alternative Dispute Resolution, *Environment, Energy, and Resources Law: The Year in Review*, Vol. 2012, pp. 307-312.
- Dunlop, J. T.:** The Negotiations Alternative in Dispute Resolution *Villanova Law Review*, Vol. 29, Issue 6 (1983-1984).
- Eiholzer, H.:** Die Streitbelegungsabrede, (Ein Beitrag zu alternativen Formen der Streitbeilegung, namentlich zur Mediation), *Universitätsverlag Freiburg Schweiz*, 1998.
- Feinberg, K. R.:** Mediation- Preferred Method of Dispute Resolution, *Pepperdine Law Review*, Vol. 16, Issue 5 (1989), pp. 5-42.
- Feliciano Jr., S.:** Alternative Dispute Resolution, *Catholic Lawyer*, Vol. 33, Issue (1990), pp. 61-62.
- Glasner Q. C., K.:** Contract Disputes and Alternative Disputes Resolution: Some Observations, *Advocate (Vancouver Bar Association)*, Vol. 59, Issue 5 (September 2001), pp. 725-732.

- Green, E. D.:** Corporate Alternative Dispute Resolution, Ohio State Journal on Dispute Resolution, Vol. 1, Issue 2 (1986), pp. 203-298.
- Gonzales, A.:** Alternative Dispute Resolution, Brief, Vol. 32, Issue 2 (Winter 2003), pp. 4-56.
- Goss, J.:** An Introduction to Alternative Dispute Resolution, Alberta Law Review, Vol. 34, Issue 1 (1995), pp.1-33.
- Guidry, A. M.:** Alternative Dispute Resolution: Broadening The Use Through Louisiana Courts, Southern University Law Review, Vol. 19, Issue 2 (1992), pp. 403-420.
- Hawkins, M. W.:** Alternative Dispute Resolution: An Alternative For Resolving Employment Litigation and Disputes, Northern Kentucky Law Review, Vol. 20, Issue 2 (Winter 1993), pp. 493-504.
- Hyde, L. M. Jr.:** Mediation, Juvenile & Family Court Journal, Vol. 35, Issue 1 (Spring 1984), pp. 57-72.
- Ildır, G.:** Alternatif Uyuşmazlık Çözümü (Medeni Yargıya Alternatif Yöntemler) [Alternative Dispute Resolution (Alternative Methods of Civil Procedure)], Ankara, Seçkin, June [2003].
- Işık, O.:** “Hukuk Uyuşmazlıklarında Arbuluculuk Kanunu Tasarısı Çerçevesinde Arbuluculuk Yönteminin Diğer Alternatif Uyuşmazlık Çözüm Yolları ile Karşılaştırılması” [Comparison of the Mediation Method with other Alternative Dispute Resolution Methods within the Framework of the Law on Mediation in Civil Disputes], in Terazi HD, December [2011], Year: 6, Issue 64, pp. 14-24.
- Ionescu, M. I.:** Alternative Dispute Resolution, Lex ET Scientia International Journal, Vol. 22, Issue 2 (2015), pp. 89-92.
- Kekeç, E. K.:** Arbuluculuk Kanunu Yoluyla Uyuşmazlık Çözümünde Temel Aşamalar ve Taktikler, [Basic Steps and Tactics in the Settlement of Disputes Through the Mediation Law], Ankara, [2011].
- Lane, P.:** Mediation: What’s New?, Advocate (Vancouver Bar Association), Vol. 54, Issue 2 (March 1996), pp. 197-208.

- Langer, R.:** The Juridication and Technicisation of Alternative Dispute Resolution Practise, *Canadian Journal of Law and Society*, Vol. 13, Issue 1 (Spring 1998), pp. 169-186.
- Lee, J. A./Giesler, C.:** Confidentiality in Mediation, *Harvard Negotiation Law Review*, Vol. 3, pp. 285-298.
- Lerman, L. G.:** The Teaching of Alternative Dispute Resolution, *Journal of Legal Education*, Vol. 37, Issue 1 (1987), pp. 37-40.
- Lisnek, P. M.:** Mediation: Untangling Business Disputes Through ADR, *Commercial Law Bulletin*, (July/August 1993), pp. 12-19.
- Lominack, R. W.:** Examining Alternative Dispute Resolution in the International Business Domain, *South Carolina Journal of International Law and Business*, Vol. 1, pp. 17-26.
- Macdonnell, J. L.:** Natural Resources Dispute Resolution: An Overview, *Natural Resources Journal*, Vol. 28, Issue 1 (Winter 1988), pp. 5-20.
- Marie-Noëlle, D.:** Mediation in the Belgian Health Care Sector: Analysis of a Particular Issue- The Material Scope of Application of Mediation, *Medicine and Law*, Vol. 30, Issue 2 (June 2011), pp. 225-238.
- McAdoo, B.:** The Future of ADR: Have They Come for the Right Reason, *Journal of Alternative Dispute Resolution in Employment*, Vol. 3, Issue 2 (Summer 2001), pp. 8-11.
- McGovern, E. F.:** Strategic Mediation (The Nuances of ADR in Complex Cases), *Dispute Resolution Magazine*, Vol. 5, Issue 4 (Summer 1999), pp. 4-12.
- McGovern, F. E./Hare, F. H.:** "Lessons from U.S. Alternative Dispute Resolution", in: *La médiation: un mode alternatif de résolution des conflits?: Lausanne, 14 et 15 novembre 1991= "Mediation" als alternative Konfliktlösungsmöglichkeit? Lausanne, den 14. Und 15. November 1991= Mediation: an alternative method of dispute resolution? Lausanne, the 14th and 15th November 1991*, Schulthess Polygraphischer Verlag Zürich, 1992, pp. 165-175.

- Muran, H.:** “Arabuluculuk Mahkemelerin İş Yükünü mü Yoksa Yargıya Olan Güveni mi Azaltacaktır ?” [Will Mediation Reduce the Workload of the Courts or the Confidence in the Judiciary ?], in İBD, [2011], Vol. 85, Issue 3, pp. 43-74.
- Namlı, M.:** Belçika Hukuk Sisteminde Arabuluculuk Kurumunun Temel Esasları, Arabuluculuk Sempozyumu, [Basic Principles of the Mediation Institution in the Belgian Legal System], in Mediation Sempodium, Istanbul, Istanbul Bar Association Publications, [2008], pp. 99-123.
- Nolan, K. P.:** Litigation, Vol. 39, Issue 1 (Winter 2013), pp. 59-60.
- Noll, D. E.:** Mediation, Then Mediation, Dispute Resolution Magazine, Vol. 14, Issue 1 (Fall 2007), pp. 37-37.
- Notter, P.:** Mediation im Verwaltungsverfahren, Dike Verlag AG, Zürich/St. Gallen 2013.
- Özbek, M.:** “Avukatlık Kanununun 35/A Maddesine Göre Arabuluculuk”, [“Mediation” According to Article 35/A of Attorney’s Code], in ABD, [2001/3], p. 113 et seq. (“Özbek,(2001/3”).
- Özbek, M.:** “Avrupa Konseyi Arabuluculuk Yönergesi Önerisi”, [Proposal of the European Council for a Mediation Directive], in AÜHFD, [2007], Vol. 56, Issue 1, pp. 183-232 (“Özbek, C. 56 S. 1, (2007”).
- Özmumcu, S.:** Uzak Doğu’da Arabuluculuk Anlayışı ile Türk Hukuk Sisteminde Arabuluculuk Kurumuna Genel Bir Bakış, [Understanding of Mediation in Far East and A General Overview of the Mediation Institution in the Turkish Law System], 3th Edition, Istanbul, [2013].
- Pekcanitez, H.:** “Alternatif Uyuşmazlık Çözümleri” [Alternative Dispute Resolutions], in HPD, December [2005], Issue 5, pp. 12-16.

- Pekcanıtez, H.:** Hukuk Uyuşmazlıklarında Arabuluculuk Kanun Tasarısının Tanıtımı, Medeni Usul ve İcra-İflas Hukukçuları Toplantısı-VI [Presentation of the Draft Law on Mediation in Civil Disputes], *in* Law of Civil Procedure and Execution and Bankruptcy Lawyers Meeting-IV, Ankara, [2008], pp. 245-300.
- Pekcanıtez, H./Atalay, O./Özekes, M.:** Medeni Usul Hukuku, [Civil Procedure Law], 14th Edition, Ankara, Yetkin, [2013].
- Petillon, L. R.:** Recent Developments in Alternative Dispute Resolution, *Pepperdine Law Review*, Vol. 14, Issue 4 (1987), pp. 929-942.
- Pretorius, P.:** Alternative Dispute Resolution, *South African Human Rights and Labour Law Yearbook*, Vol. 2, Issue (1991), pp. 264-270.
- Pryor, W.:** Alternative Dispute Resolution, *SMU Law Review*, Vol. 61, Issue 3 (Summer 2008), pp. 519-530.
- Riskin, L. L.:** The Special Place of Mediation in Alternative Dispute Processing, *University of Florida Law Review*, Vol. 37, Issue 1 (Winter 1985), pp. 19-28.
- Roth, M./Stegner, M.:** Mediation in Austria, *Yearbook on International Arbitration*, Vol. 3, pp. 367-3783.
- Sarısözen, M. S.:** “Hukuk Uyuşmazlıklarında Arabuluculuk Kanun Tasarısının Getirdikleri, İcra Edilebilirlik Belgesi ve Arabuluculuğun Avukatın Tekel Hakkına Aykırılık Oluşturup Oluşturmadığı Sorunu” [The Design of the Law on Mediation in Civil Disputes, Executable Certificate and Whether the Mediator Creates a Breach of the Monopoly of the Lawyer], *in* EÜHFD, Vol. XV, Issue 1-2, [2011], pp. 255-271.
- Scalise, D. G./Engels, J. E.:** Alternative Dispute Resolutions: a Commercial Guide for Dispute Management, *Advocates’ Quarterly*, Vol. 9, Issue 1 (February 1988), pp. 53-76.

- Schütz, J. G.:** Mediation und Schiedsgerichtsbarkeit in der Schweizerischen Zivilprozessordnung, Eine Untersuchung zur Streitbehandlungslehre: Verfahrensvergleich und-auswahl anhand gesetzlich geregelter Alternativen zum staatlichen Zivilprozess-Mediation, Schiedsgerichtsbarkeit und deren Hybridisierung, Stämpfli Verlag AG Bern, 2009.
- Sekaquaptewa, P.:** Tribal Courts and Alternative Dispute Resolution, *Bussiness Law Today*, Vol. 18, Issue 2 (November-December 2008), pp. 23-28.
- Shaw, L. M.:** ADR And The Courts: Some Emerging Issues, *Journal of Contemporary Legal Issues*, Vol. 3, pp. 151-156.
- Shawn, J.:** The Mediation Alternative, *Family Advocate*, Vol. 13, Issue 1 (Summer 1990), pp. 16-17.
- Swinson, S. K.:** Alternative Dispute Resolution in Bankruptcy, *Tulsa Law Journal*, Vol. 36, Issue 4 (Summer 2001), pp. 813-818.
- Tanrıver, S.:** "Hukuk Uyuşmazlıkları Bağlamında Alternatif Uyuşmazlık Çözüm Yolları ve Özellikle Arabuluculuk" [Alternative Dispute Resolution Methods in the Context of Legal Disputes and Especially Mediation], in *TBBD*, May-June, [2006], pp. 151-177 ("Tanrıver, May-June (2006)").
- Tanrıver, S.:** "Alternatif Uyuşmazlık Çözüm Yolları: Arabuluculuk Kurumuna Hukuki ve Sosyolojik Bir Bakış" [Alternative Dispute Resolutions: Legal and Sociological View of the Institution of Mediation], in Prof. Dr. Fikret Eren'e Armağan, Ankara, [2006], pp. 821-842 ("Tanrıver, (2006)").
- Taşpolat-Tuğsavul, M.:** Türk Hukuku'nda Arabuluculuk (6325 Sayılı Hukuk Uyuşmazlıklarında Arabuluculuk Kanunu Çerçevesinde), [Within the Framework of the Law on Mediation in Civil Disputes No. 6325], 1th Edition, Ankara, Yetkin, [2012].
- Waxman, G. L./Press, S.:** Mediation: Part II: Mediation in Florida, *Nova Law Review*, Vol. 15, Issue 3 (Spring 1991), pp. 1211-1226.

- Woodman, G. R.:** The Alternative Law of Alternative Dispute Resolution, Cahiers de Droit, Vol. 32, Issue 1 (Mars 1991), pp. 3-32.
- Yazıcı-Tıktık, Ç.:** Arabuluculukta Gizliliğin Korunması [Protection of Privacy in Mediation], Istanbul, XII Levha, [2013].
- Yeşilırmak, A.:** Türkiye’de Ticari Hayatın ve Yatırım Ortamının İyileştirilmesi İçin Uyuşmazlıkların Etkin Çözümünde Doğrudan Görüşme, Arabuluculuk, Hakem-Bilirkişilik ve Tahkim: Sorunlar ve Çözüm Önerileri [Negotiation, Mediation, Expert Determination and Arbitration As Effective Means of Dispute Resolution for The Development of The Commercial Life and Investment Environment In Turkey: Problems and Suggestions for Solutions], XII Levha, April [2001], Istanbul.
- Yıldırım, M. K.:** Hukuk Uyuşmazlıklarında Arabuluculuk Kanunu’nun Değerlendirilmesi, [Evaluation of the Law on Mediation in Civil Disputes], *in* Mediation Sempodium, Istanbul, Istanbul Bar Association Publications, [2008], pp. 35-80.

ONLINE SOURCES

<http://home.heinonline.org/>
www.resmigazete.gov.tr/