



## COMPARATIVE ANALYSIS OF THE LAW "ON MEDIATION" OF THE REPUBLIC OF UZBEKISTAN WITH THE LAW "ON MEDIATION" OF THE REPUBLIC OF KAZAKHSTAN AND TURKEY.

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<https://doi.org/10.5281/zenodo.8050392>

**Annotatsiya:** Maqolada O'zbekiston Respublikasidagi "Mediatsiya to'g'risida"gi Qonun Qozog'iston Respublikasi va Turkiyadagi ushbu qonunlar bilan taqqoslandi. Shuningdek, mediatsiyaning har uchala mamlakatlardagi o'xshash va farqli jihatlarini yoritildi.

**Kalit so'zlari:** professional mediator, noprofessional mediator, mediatorlar tashkiloti, mediatsiya doirasi.

**Аннотация:** В статье проведено сравнение Закона «О медиации» в Республике Узбекистан с данными законами в Республике Казахстан и Турции. Также были отмечены сходные и различные аспекты медиации во всех трех странах.

**Ключевые слова:** профессиональный медиатор, непрофессиональный медиатор, организация медиаторов, сфера медиации.

**Annotation:** The article compared the Law "On Mediation" in the Republic of Uzbekistan with these laws in the Republic of Kazakhstan and Turkey. Similar and different aspects of mediation in all three countries were also highlighted.

**Key words:** professional mediator, non-professional mediator, organization of mediators, scope of mediation.

The parties participating in the mediation process independently rely on the experience, knowledge and skills of the mediator and come to a mutually beneficial decision. In the CIS countries, efforts are being made to introduce the institution of mediation into society. In particular, the law "On Mediation" was adopted in the Russian Federation.

The Law "On Mediation" was adopted by the State Duma on July 7, 2010<sup>1</sup>, in the Republic of Belarus on July 12, 2013<sup>2</sup>, and in Moldova on June 14, 2007<sup>3</sup>. In Armenia, the institution of "conciliator" has been introduced in the financial system, and therefore the Law of the Republic of Armenia "On the Conciliator of the Financial System" is in force.

Mediation should be distinguished from a settlement agreement, an alternative dispute resolution method. The difference between a settlement agreement is that it is entered into by the parties as part of a civil trial. The parties have the right to enter into a settlement agreement.

<sup>1</sup> Закон Российской Федерации от 27 июля 2010 г. «Об альтернативной процедуре урегулирования споров с участием посредника (процедуре медиации)» [Электронный ресурс]. – Режим доступа:

<http://martit.ru/informacziya-podrazdelenij>

<sup>2</sup> Закон Российской Федерации от 27 июля 2010 г. «Об альтернативной процедуре урегулирования споров с участием посредника (процедуре медиации)» [Электронный ресурс]. – Режим доступа:

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<sup>3</sup> Закон Республики Молдова от 14.06.2007 «О медиации» [Электронный ресурс]. – Режим доступа:

<http://mnip.pro/zakon>

An agreement to resolve a dispute by mediation can be made at any stage of the process: in the first instance courts, including pre-trial preparation, appeals, and cassation instances. In the course of criminal proceedings in the Republic of Kazakhstan, disputes arising from civil, labor, family and other legal relations involving individuals and legal entities, as well as cases of minor and medium crimes disputes (disputes) to be considered is the field of mediation.

In Russia, the mediation procedure can be used in the event of a dispute both before going to court or arbitration, and after the start of the trial. In accordance with the law in Belarus, mediation can be carried out both before and after the parties apply to court in civil or commercial proceedings.

A distinctive feature is that the mediator does not make decisions arbitrarily, and the agreement made by the parties voluntarily cannot be directed to the detriment of any party.

On January 28, 2011, the Law No. 401-IV "On Mediation" was adopted in the **Republic of Kazakhstan**. The law consists of 4 chapters and 28 articles with amendments and additions dated 01.05.2023. According to this law, the mediation procedure is not applied to disputes in which one of the parties is a state body<sup>4</sup>. From this we can see that mediation applies its influence only to private legal relations.

The principles of mediation in the CIS countries are similar - that is, the principles of voluntariness, confidentiality, equal rights of the parties, independence and impartiality of the mediator, as well as the principles of non-interference in the mediation procedure.

Organizations of mediators are non-governmental organizations, which is enshrined in the laws "On Mediation", Article 13 of the Law of the Republic of Kazakhstan, Article 15 of the Russian Federation. Organizations of mediators are formed in the form of self-regulating associations or non-profit partnerships.

Organizations of mediators have the right to professional training and qualification of mediators, given a document (certificate) on the qualification of mediators. Access to the organization of mediators is voluntary.

**According to the legislation of Kazakhstan**, a mediator can be an independent, impartial, individual who is not interested in the results of the case, is selected based on the mutual agreement of the mediation parties, is included in the mediator register and agrees to work as a mediator. Persons who have reached the age of 40 and are included in the register of non-professional mediators can carry out mediator activities on a non-professional basis, and persons with higher education on a professional basis. 25 persons who have a document (certificate) confirming that they have completed the mediator training program and are included in the register of professional mediators can participate in becoming a professional mediator.

If we consider the requirements for mediators in Belarus, "The mediator is trained in the field of mediation in accordance with the procedure established by the Ministry of Justice of the Republic of Belarus or has work experience as a mediator in accordance with procedural legislation, has a higher legal or other higher education, has received a mediator's certificate issued by the Ministry of Justice of the Republic of Belarus is a person<sup>5</sup>", it can be seen that

<sup>4</sup> Закон Республики Казахстан от 28 января 2011 года «О медиации» [Электронный ресурс]. – Режим доступа: [http://online.zakon.kz/Document/?doc\\_id=30927376](http://online.zakon.kz/Document/?doc_id=30927376)

<sup>5</sup> Закон Республики Беларусь от 12 июля 2013 г «О медиации» [Электронный ресурс]. – Режим доступа: <http://www.mediacia.by/zakon-respublikibelarus-o-mediacii>

there is no age limit. In Russia, mediator activities can be carried out on a non-professional basis by persons who have reached the age of 18, have full legal capacity and have no criminal record, and on a professional basis, persons who have reached the age of 25, have a higher education and have completed a training course for mediators<sup>6</sup>.

Over the past decade, mediation has grown rapidly as a civil society institution. All branches of government and Kazakhstan's judiciary, in particular, have made significant efforts to promote mediation in conflict resolution.

According to Kazakhstan's Law on Mediation, not every case requires mandatory mediation. However, courts strongly encourage parties to try mediation in family law, employment law, civil law claims, and small criminal cases.

In Kazakhstan in 2019 (latest statistics available as of January 28, 2021), the following number of civil court cases were resolved using mediation:

- Family matters - 19,252 out of 60,642
- Inheritance issues - 217 out of 4640
- Property claims - 481 out of 9916
- Housing issues - 1580 out of 14635
- Land issues - 155 out of 3493
- Contract issues - 14873 out of 208877
- Issues of public procurement - 126 out of 25463
- Claims of infringement - 540 out of 1905
- Losses and damages - 2210 out of 8010
- Consumer issues - 271 out of 550
- Defamation and business reputation issues - 106 out of 385
- IP rights issues - 158 out of 467

TOTAL – 41,512 of 368,079 cases were settled by mediation.

In the speech of the President of the Republic of Kazakhstan, N.A. Nazarboyev "Kazakhstan - 2050 strategy: a new political direction of a prosperous state", the main priority directions of development, including the development of institutions for out-of-court dispute resolution, were defined. Identifying problems in the application of mediation and developing solutions for their elimination serves the effectiveness of this procedure<sup>7</sup>.


**The conditions for conducting mediation in the Republic of Kazakhstan include the following:**

- ✚ mediation is carried out according to the mutual agreement of the parties and after the conclusion of the mediation agreement between them;
- ✚ mediation can be used both before going to court and after the trial;
- ✚ judges, officials of criminal prosecution bodies do not have the right to force the parties to mediate in any way;
- ✚ mediation from the day the mediation parties concluded the mediation agreement; if one of the parties has sent a written offer to use mediation and has not received the consent of the other party to use mediation within ten calendar days from the date of

<sup>6</sup> Закон Российской Федерации от 27 июля 2010 г. «Об альтернативной процедуре урегулирования споров с участием посредника (процедуре медиации)» [Электронный ресурс]. – Режим доступа: <http://martit.ru/informacziya-podrazdelenij>

<sup>7</sup> Молодой ученый Международный научный журнал № 19 (309) / 2020. Ст.314

sending the offer, or within another reasonable period specified in the offer, such offer is rejected;

 the parties choose one or more mediators based on mutual agreement. If the mediation is conducted outside the framework of civil or criminal proceedings, the mediator and the parties must take all measures to ensure the fulfillment of the specified conditions.

The procedure will be completed within 60 calendar days. In individual cases, due to the complexity of the dispute (dispute) being resolved, due to the need to obtain additional information or documents, the duration of the mediation may be extended with the agreement of the mediation parties and the mediator's consent. But it should not exceed 30 calendar days<sup>8</sup>.

To become a mediator in Kazakhstan, you need to undergo special training, the program of which is approved by the government. There are three stages of training - general training course, specialized training courses and trainer course.

After that, if the holder of the certificate wants to engage in mediation activities on a professional basis, he must become a member of the organization of mediators.

If mediation is not their main activity and they are engaged in it from time to time, they must be registered in the local government register. Depending on whether a person is a professional mediator or a non-professional mediator, the scope or limitations of rights differ.

There are no specific requirements other than such registration to maintain mediator status.

There are no special rules of ethics for lawyers that apply specifically to mediation procedures. Attorneys (lawyers who are specially licensed and admitted to practice criminal defense) generally adhere to the Code of Professional Ethics for Attorneys adopted by the National Bar Association. Legal advisers (general lawyers) can be members of several chambers, each of which usually adheres to similar universal principles (honesty, loyalty to the rule of law, diligence, loyalty, duties of confidentiality, avoidance of conflicts of interest and others) should have a grounded code of ethics.

The creation of mediator organizations is specifically specified in Article 13 of the Law "On Mediation". The same article stipulates that one of the tasks of mediators' organizations should be the professional training of mediators and their further professional development. Currently, more than 120 organizations of mediators are operating.

The mediator must be registered with either a professional organization or local authority. Otherwise, they cannot mediate. Also, persons who have a mediator's certificate issued by a non-accredited organization in Kazakhstan cannot become a mediator. However, there are no legal requirements for mediators to continue training in Kazakhstan.

There are a number of similarities and differences between the Mediation Laws of **Turkey and Uzbekistan**. Although both countries recognize mediation as an important means of dispute resolution, there are differences in terms of their institutional frameworks, procedures and requirements. The mediation process in Turkey is highly formalized, with regulated training programs, certification and accreditation requirements for mediators, and clear guidelines on confidentiality and impartiality.

<sup>8</sup> Закон Республики Казахстан от 28 января 2011 года «О медиации» [Электронный ресурс]. – Режим доступа: [http://online.zakon.kz/Document/?doc\\_id=30927376](http://online.zakon.kz/Document/?doc_id=30927376)





**In Uzbekistan**, the mediation process is less formalized and relies more on the willingness of the parties to voluntarily enter into this process. Despite these differences, both countries share the view that mediation is a useful tool for resolving disputes and are committed to promoting it as an alternative to litigation.

In addition, the implementation of mediation laws in Turkey and Uzbekistan reflects some differences in the mediation process. In Turkey, the mediation process begins with an official proposal of the mediator, after an application made by one of the participating parties or directly by the court. On the other hand, the mediation process in Uzbekistan begins with the voluntary participation of the parties, who are free to choose a mediator. In addition, mediation in Turkey is confidential. For example, official records are kept under seal and are only available to authorized personnel. In Uzbekistan, the law does not clearly address the issue of confidentiality. These differences in the mediation process indicate different approaches to dispute resolution in Turkey and Uzbekistan.

**In Turkey**, the Law on Mediation was adopted on June 7, 2012<sup>9</sup>, and this law consists of 38 articles. The law aims to promote the use of mediation as an alternative method of dispute resolution in various disputes, including commercial, labor, family and administrative disputes.

The law defines mediation as a voluntary and confidential process in which a neutral and impartial third party called a mediator helps the parties reach a mutually acceptable solution to their dispute. The law defines the qualifications and obligations of mediators, as well as the principles and procedures of mediation.

By law, parties may enter into a mediation agreement before or after a dispute arises, and they may also agree to mediate during the litigation process. The law also provides for the suspension of court proceedings for a certain period of time to allow mediation.

The law requires mediators to be trained and certified by the Ministry of Justice and provides for the establishment of a national registry of mediators. The law also sets out ethical rules and professional standards that mediators must follow.

The law provides for the confidentiality of the mediation process and its results, except when disclosure is required by law or agreed upon by the parties. The law also provides for the enforcement of mediation agreements that can be enforced as a court order if certain conditions are met.

In general, the Mediation Law in Turkey aims to promote the use of mediation as a cost-effective, efficient, and flexible alternative to traditional litigation, and to promote a culture of peaceful dispute resolution in Turkey.

**Below is a comparative analysis of the mediation legislation of Uzbekistan, Kazakhstan and Turkey:**

**Scope of mediation:** Uzbek law covers the widest range of disputes, including civil, family, labor and commercial disputes. Kazakh legislation is limited to civil disputes only. Turkish law mainly focuses on civil and commercial disputes. So, Uzbekistan has the widest range of mediation.

**Confidentiality:** All three laws emphasize the confidentiality of the mediation process. However, only Turkish law prohibits the use of any information obtained during mediation in

<sup>9</sup> [8049 \(turkiyearabuluculukmerkezi.com\)](http://8049.turkiyearabuluculukmerkezi.com)

other legal proceedings. There is no such clear prohibition in the laws of Kazakhstan and Uzbekistan. Thus, Turkey provides the strongest privacy guarantees.

**Status and Enforcement of Agreements:** Mediation agreements that meet certain requirements may become enforceable in Turkey. In Kazakhstan, mediation agreements can be implemented in a simplified manner. In Uzbekistan, contracts can be executed only voluntarily by the parties or with a separate lawsuit. Thus, Turkey gives the biggest incentive to reach an agreement.

**Mediator qualifications:** Turkey and Kazakhstan have more advanced requirements for mediators, including higher education and professional training. Uzbekistan requires only higher education and special training. Thus, Turkey and Kazakhstan aim to improve their mediator skills.

**Voluntary:** All three countries support the voluntary nature of mediation. However, the courts of Uzbekistan and Kazakhstan are allowed to send some cases to mediation with the consent of the parties. Mediation in Turkey is carried out only at the initiative of the parties. Therefore, Turkey strictly adheres to the principle of discretion.

**In summary,** although the mediation laws of Uzbekistan, Kazakhstan, and Turkey have commonalities, there are significant differences in the scope of mediation, confidentiality rules, enforcement of agreements, and requirements for mediators. According to most parameters, Turkish legislation is the most advanced and focused on high-quality mediation. Also, there are relatively important guarantees and privileges in the legislation of Kazakhstan and Uzbekistan. In general, harmonization of mediation laws in the region based on international standards can develop it as an effective mechanism for resolving disputes.

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