

Azerbaijan is preparing to implement the Law on Mediation

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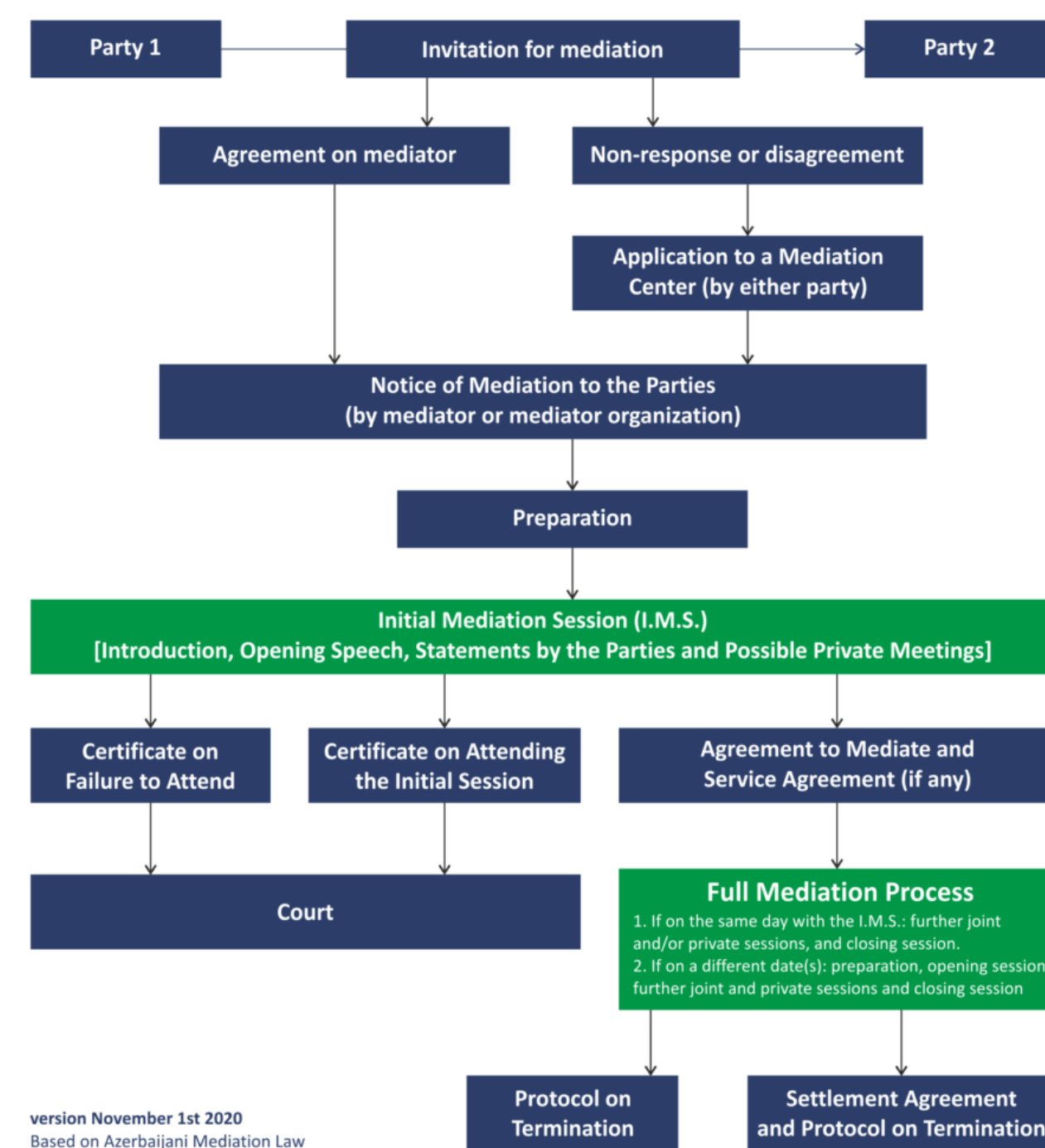
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Starting from January 1, 2021 the law requiring the attendance of the initial first mediation session comes into force in Azerbaijan. Below we describe the steps taken in the previous months and to be taken in the coming months in preparation for this very important milestone for mediation in Azerbaijan.

Background

Azerbaijan adopted the Law on Mediation on March 29, 2019, which requires attendance of initial first mediation session before bringing an action concerning family, labor and business disputes.

The Law promotes the use of mediation in civil, commercial, family, labor and administrative disputes. With a view to ensuring a useful and comfortable experience for users, the system is based on centralized quality assurance mechanisms; hence only members of (and accredited by) the Mediation Council are authorized to act as mediators, mediation organizations and mediation training organizations. In case of a family, employment or business case, starting from January 1, 2021, the claimant will be required to invite the respondent to agree on a mediator and attend the initial mediation session. If the parties fail to agree on a mediator or on the process, either party may apply to a mediation organization operating in the respective city (or district). In case there is no mediation organization in the respective city (district), the party may apply to a mediation organization in a neighboring city (district) or to a court, to appoint a mediator. After the mediator is appointed, he or she, after consultations with the parties, will schedule an initial mediation session and invite the parties to the session. In case one of the parties does not show up, the mediator provides the present party with a certificate, which allows her or him to bring the case to the court. A similar certificate is provided to both parties if they attend the initial mediation session, but later disagree to proceed to the full mediation session. In case the parties proceed to the full mediation session and do not settle their dispute, they may still apply to the court. Below we provide a chart as a brief visual description of the process:



It is expected that between 40 000 and 50 000 cases will be subject to the requirement of the initial mediation session annually. This will create significant demand for mediation, which may be challenging to meet in a country where the mediation does not exist in practice. In order to meet this demand and to supply high-quality mediation services, the following actions have been and are being financed by the Delegation of the European Union to Azerbaijan and with the technical support provided by International Consulting Expertise (ICE), Expertise Advisors and ADR Center, a leading provider of mediation services in continental Europe.

Training of mediation trainers

While ideally the mediation trainers should be selected from experienced mediators, due to the lack of mediation practice and mediators in Azerbaijan, the initial stage of building the mediation system focused on building local capacity for mediation training. Potential candidates were selected from 2 different pools: public applications and stakeholder nominations. The selection criteria included any experience with mediation (it was rarely met), dispute resolution and training/adult learning. In total, 34 candidates attended the trainings and 29 of them were certified as mediation trainers. They were further exposed to opportunities to top-up their mediation and mediation training knowledge, skills and experience.

After the training on mediation training (ToT), these trainees initially attend actual mediation training in full by experienced trainers, later they act as a junior trainer under supervision of the experienced trainers and only thereafter independently train mediators.

Formation of the Mediation Council

The Mediation Council was formed after lengthy consultations with all the stakeholders. As a result of consultations, the stakeholders agreed the charter and structure of the Council. As a matter of formality, the Council was formed by the Bar Association and Confederation of Business Associations. However, the Mediation Council is currently temporarily managed by its Supervisory Board, consisting of representatives of judiciary, attorneys, businesses and the European Union, and an independent mediation expert. After the Council admits 100 members, it will form its Management Board composed exclusively of the members of the Council (mediators, mediation organizations and training institutions).

Training of mediators

As already noted, it is expected that there will be around 40 000-50 000 mediation cases per year starting from 2021. That would mean there will be around 200-250 initial mediation sessions per day. Assuming that in half of these cases parties will choose to proceed with the full mediation process and that a mediator can conduct 2 initial mediation sessions or 1 full mediation session per day, we estimate that to meet this demand for mediation services, there ought to be at least 200-250 full-time mediators in Azerbaijan. Having said that, taking into account that not all trained and certified mediators will become full-time mediators, the target number of mediators is between 300 and 350 at the current stage.

Given all challenges related to the global pandemic, the training of mediators is currently carried out online with very good quantitative and qualitative results. The theoretical part of the training is organized in daily sessions of 2 hours or 2 hours and a half for a total of around 20 hours. The practical component of the trainings with role-plays and other exercises and practical activities are structured in 4-hour training sessions per day for a total of around 30 hours.

It is planned to complete the training of at least 200 mediators by the end of 2020. The local trainers receive ongoing coaching and mentoring support from ADR Center's experts and have access to ADR Center Academy, an innovative online Learning Management System.

Ensuring that the mediation services are available in all the regions of Azerbaijan

Another issue is how to ensure that users in different regions of Azerbaijan have access to mediation services. In Azerbaijan, most professional services are concentrated in Baku, the country's capital.

In this regard the issue has two components, ensuring that (i) mediators operate in the regions and (ii) there is proper infrastructure in those regions. Taking into account that case numbers in many regions are very low, it may be financially not viable for mediators to invest in mediation infrastructure (leasing offices, hiring case managers, developing case management software etc.).

While selecting candidates for the mediation training, one of the most important criteria was the location of the mediator. Therefore, the Academy of Justice, a mediation training institution, focused on training at least one or two mediators from each region of Azerbaijan. On the other hand, in order to deal with the infrastructure of mediation, the engagement of the stakeholders is seen as crucial. Stakeholders, including the Ministry of Justice, Bar Association, Agency for SME Development, courts and other institutions are expected to provide some infrastructure to make mediation accessible in the regions of Azerbaijan.

Raising awareness about mediation in Azerbaijan

In order to raise awareness about mediation in Azerbaijan, an extensive campaign is being implemented with social video advertisement, targeted awareness raising events, posters and leaflets. Social promotion videos are going to be broadcasted on television and social networks. In order to meet the same need for increased public awareness with respect to the use and benefits of mediation in the context of the new policy, the awareness raising events are also recorded and shared or live-streamed on social media. Posters and leaflets are distributed to attorneys, courts, centers for servicing population and other public institutions.

Conclusion

Despite all these preparation activities, the success of mediation in Azerbaijan depends on other factors as well. Having the stakeholders properly motivated and engaged is going to be critical during the implementation stage to learn from the data that will be monitored and to fine-tune the system for its increased sustainability. Hopefully, in our next blog post we will have an opportunity to update the audience on the initial results of the mediation system being implemented and the feedback received.