

Court of Cassation Clarifies That Pre-Mediation Does Not Affect Arbitration Clauses

Inside Arbitration | Vardar Şanlı

The Third Civil Chamber of the Court of Cassation has revised its approach to multi-tier dispute resolution mechanisms requiring recourse to mediation prior to arbitration, holding that seeking mediation within the scope of an arbitration clause does not negate the parties' intention to arbitrate.



What Is a Mediation–Arbitration Clause (Med-Arb)?

A mediation–arbitration clause is a dispute resolution mechanism under which the parties agree to a multi-tiered process. Pursuant to such clauses, disputes are first addressed through mediation with a view to reaching an amicable settlement and if unsuccessful, are subsequently referred to arbitration.

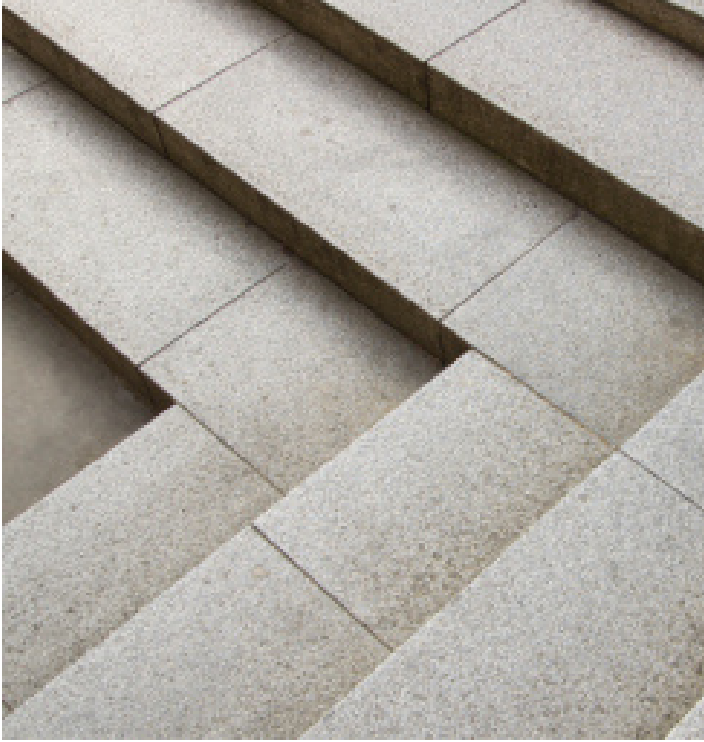
In practice, this model is commonly referred to as “Med-Arb” or “Med-Then-Arb” and offers parties both the opportunity to resolve disputes amicably and access to a binding adjudicative process.

What Is Mandatory Mediation as a Precondition to Litigation?

Mandatory mediation is a dispute resolution mechanism under the Law on Mediation in Civil Disputes (Law No. 6325), which requires parties to apply for mediation before initiating court proceedings in disputes specified under the relevant legislation. In such cases, parties must complete the mediation process prior to filing a lawsuit; otherwise, the court will dismiss the case on procedural grounds for failure to satisfy this requirement.

A. Background

In its judgment of January 15, 2026 numbered 2025/5452 E. 2026/129 K., the Third Civil Chamber of the Court of Cassation, addressed a multi-tier dispute resolution clause requiring recourse to mediation prior to arbitration, with arbitration to be conducted before the Bar Arbitration Board of the Union of Turkish Bar Associations. Following the initiation of arbitration and the rendering of an arbitral award, an action for the setting aside of the award was filed, ultimately bringing the matter before the Court of Cassation. The action for setting aside was based on the argument, in line with the Third Civil Chamber's prior approach, that the existence of a mediation requirement undermined the parties' intention to arbitrate.



The Chamber assessed the contractual provision requiring recourse to mediation prior to arbitration within the framework of mandatory mediation as a precondition to litigation, which is required before filing a lawsuit in certain cases. On this basis, it held that the arbitration clause in the agreement had not been drafted in a sufficiently clear and unequivocal manner so as to avoid ambiguity or uncertainty, and therefore concluded that the arbitration clause was invalid.

B. The Court of Cassation's First Reversal

By its decision dated November 7, 2024, the Fourth Civil Chamber of the Ankara Regional Court of Appeal, acting as a court of first instance, dismissed the action for the annulment of the arbitral award. The court found that a valid arbitration clause existed, the dispute was arbitrable, the parties were afforded equal opportunity to present their claims and defenses, no violation of public policy was present, and that the arbitrator's application of the law could not be reviewed in annulment proceedings. However, by its decision dated April 15, 2025, the Third Civil Chamber of the Court of Cassation set aside this judgment.



C. The Resistance of the Regional Court of Appeal and the Court of Cassation's Shift in Approach

Following the Court of Cassation's initial reversal, the case was remitted to the Regional Court of Appeal. However, the Regional Court of Appeal adhered to its prior assessment, maintaining that the arbitration clause was valid and that there were no grounds warranting the annulment of the arbitral award. Upon the resistance decision, the case was once again brought before the Court of Cassation. Revisiting its earlier approach adopted in its decision dated April 15, 2025 (Judgment No. 2025/225 E., 2025/2164 K.), the Third Civil Chamber of the Court of Cassation reached a different conclusion.

The Chamber held, upon its review, that the contractual provision stipulating that disputes would first be attempted to be resolved through mediation and, failing settlement, referred to arbitration did not undermine the parties' intention to arbitrate. In this context, it emphasized that such a multi-tier dispute resolution clause constitutes an example of the "Med-Arb" model (mediation followed by arbitration) in practice, and that providing for mediation prior to arbitration does not undermine the validity of the arbitration clause. On this basis, by its decision dated January 15, 2026 (Judgment No. 2025/5452 E., 2026/129 K.), the Court of Cassation upheld the resistance decision of the Regional Court of Appeal and confirmed that the dismissal of the action for the annulment of the arbitral award was lawful.



The Bottom Line

- The current judgment constitutes an important precedent regarding the validity of multi-tier dispute resolution clauses (providing for mediation followed by arbitration). The Court of Cassation held that stipulating mediation prior to arbitration does not eliminate the parties' intention to arbitrate and that such arrangements may be considered valid as an example of the "Med-Arb" model.
- The Court of Cassation's revised approach paves the way for a broader interpretation, indicating that not only mediation, but also other pre-arbitration mechanisms such as negotiation, amicable settlement, or similar dispute resolution efforts should not, in themselves, be construed as undermining the validity of an arbitration clause. In any event, parties should ensure their intention to arbitrate is clear and unequivocal when drafting or negotiating an arbitration clause, and avoid provisions that may undermine it.