

Strategic Approach To Mediation: Lessons From Ukraine

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During the last twenty years, mediation has spread around the world with an amazing speed, resulting in what was called a 'global ADR revolution'. Furthermore, mediation has become a conventional part of the court reform projects supported by international donor organizations within democracy aid programmes in developing and transitional countries all over the world. However, twenty years of efforts to transplant mediation as a new social and legal institution into post-Soviet soil suggest the lack of a clear vision about how it can be integrated within existing societal and legal structures. In the absence of such a strategic vision, many uncoordinated and short-term interventions to institutionalize mediation so far have not resulted in desired cultural and institutional change.

As a researcher and a consultant, I have been working with local mediators and international donors in Ukraine for two decades in order to bridge the gap between perceptions coming from the Western context and the post-authoritarian reality of Ukrainian society. Having drafted ten drafts of mediation law; tried numerous schemes in business, courts, and state structures; trained more than 3000 Ukrainians in mediation skills; international donors as well as mediators have finally realized the value of a strategic approach to mediation. In this regard, on my own behalf and on behalf of the Ukrainian mediation community, I would like to express our deep thanks to Bill Marsh who served as an advisor to a number of Ukrainian projects and could have written a much better strategy but instead inspired Ukrainian mediators to develop the strategy on their own.

I am happy to present today results of joint work with the [National Association of Mediators of Ukraine](#) and other stakeholders through many strategic planning sessions, consultations and public discussions. With the financial assistance of the Council of Europe in Ukraine, I did the research and have put together a single strategy of integration of mediation within the Ukrainian court system. In this blogpost, I want to share some lessons learnt in the process of developing such a strategy.

The first lesson concerns the importance of local ownership of the process and the outcome. I have seen a number of strategies for mediation development in Ukraine drafted by international experts, unsurprisingly all of them were left unimplemented. It is my deep conviction that unless the strategy comes out from the very same people who have to put it into practice, it won't work. This, however, does not mean that local mediators should be left to face this challenge on their own. Quite the opposite, instead of being told what to do, Ukrainian mediators needed financial support and assistance in organizational capacity building to be able to develop a strategic vision of mediation in Ukraine on their own. In a similar vein, external expertise and advice was greatly needed but only if it retained the leading role for the local mediators. Therefore, my role in this process was to help mediators. As a native Ukrainian, an international researcher and a mediator, I was trained to listen to people and to help them to understand what they want. And when I put the hat of advisor on, I gave myself a right to speak only when I was specifically asked to by the locals.

This brings us to the second lesson – the importance of evidence-based or empirical research for the development of strategy. Luckily, the request for help from mediators and support from the Council of Europe coincided with the final stage of my academic research project on the impediments to mediation in the post-Soviet context as a Marie Curie postdoctoral fellow at the University of Torino, Italy. The [research](#) consisted of five focus-group discussions and 63 in-depth interviews with Ukrainian mediators, judges, lawyers, business people, state officials as well as international experts and donors. Findings of the empirical research made the fruitful ground for the strategy which was later crystallized through consultations. Thus, a lucky coincidence of many events allowed my research to make a full circle – from people on the ground through empirical research to academic analysis and back to the people on the ground through policy paper as an instrument of research impact and knowledge transfer.

Finally, even with findings of empirical research at hand, it remains a challenge to face some deeply grounded assumptions such as the belief that courts universally suffer from congestion and therefore should use mediation as an efficiency raising mechanism. Interestingly, this assumption was not only inherent in the approaches of international experts but also penetrated the professional community of Ukrainian mediators. Increasingly more research[fn]Tatiana Kyselova, [Dualism of Ukrainian Commercial Courts: Exploratory Study](#), 6 Hague J. on the Rule of L. 178 (2014); Kathryn Hendley, *Too Much of a Good Thing? Assessing Access to Civil Justice in Russia*, 72 SLAVIC REVIEW (2013) DOI 10.5612/slavicreview.72.4.0802.[/fn] demonstrates that Ukrainian courts, along with the courts in other post-Soviet countries, are profoundly different from their counterparts elsewhere because they are relatively efficient in terms of cost- and time-saving but susceptible to corruption. This entails low systemic interest from the Ukrainian judiciary in decreasing their caseloads through mediation, as well as a profoundly different nature of the relationship between mediation and the courts. This means that both international donors and mediators should not fully rely on the blueprints offered by the Western experience but rather think more openly and creatively to invent new ways to connect mediation to wider societal structures, beyond courts.

To conclude, the strategy of integration of mediation within the Ukrainian court system that resulted from the joint efforts of many people is only the first step towards a more comprehensive and holistic approach to mediation development in Ukraine. It is still a very broad document that covers only fundamental values and outlines a wide approach to mediation institutionalization but it presents an absolutely necessary step for all future developments.

The full text of the strategy is available [here](#).