

Tbilisi Mediation Days - A Glance Into The History, The Present, The Future

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This article has been inspired by Greg Bond's recent article "[Mediation Moves – A Conference, a Workshop, a Movement](#)", and by the thought it has triggered: where have we moved in terms of mediation in Georgia? This thought coincided in timing with Tbilisi Mediation Days - a two-day international conference which took place on November 21-22, 2018 in Tbilisi, Georgia. Before I turn to the conference, I would like to give a little bit of background to Mediation in Georgia - the background that served as the basis for the conference itself.

History

The first attempt to introduce mediation in the justice system of independent Georgia was in 2011, when USAID-funded Judicial Independence and Legal Empowerment Project (JILEP), in cooperation with GIZ Legal Reform Program, responded to the request of the Georgian judiciary to support the development of mediation in the hope that it would relieve the backlog of cases at the courts. In parallel with launching the first court-annexed mediation pilot at Tbilisi City Court, the same donors provided significant support to developing ADR-curriculums at Georgian universities. Fast forward, 2018: a court-annexed pilot has been operating for almost five years; with the support of the EU-UNDP access to justice project new pilot projects are about to be launched in two courts outside of Tbilisi; mediation is being practiced in the context of land/neighborhood disputes (arising out of land registration overlaps) by notaries for over three years; most expansively and successfully it has been implemented in the context of restorative justice (juvenile victim-offender) mediation; mediation at the Ministry of Labour is being referred to in collective bargaining disputes as well.

Of course this is only a background of "modern-day" mediation. Georgia, as some other countries of the world, has a rich history of dispute settlement by village elders. That has been and still is particularly practiced in the mountainous regions, where people have been less receptive of rules and procedures forced on them by outsiders and have therefore developed and preserved their own traditions (both, substantive rules and procedural framework) of dispute resolution. As an evidence of this culture, the museums in Mestia and Ushguli (in Svaneti, Georgia) keep Mediator's staffs - an insignia of mediators on which they would make an incision after each completed (settled) case.

Present

This history was the foundation for launching Tbilisi Mediation Days - a bi-annual conference first held in November 2016. This year the organizers (UNDP, ILO, UN Women supported by the EU and UK AID) tried to bring together different "areas" where mediation has been or is planned to be introduced, as well as to reflect on issues like Ethics and Education, Gender Biases and Lawyers' perspective on mediation. However, unlike the "very personal" stories, "deep listening" and "mediators practicing what they preach" in Viadrina, Tbilisi in 2018, looked formal. A large conference room, elevated scene, classroom setting, microphones, serious or preoccupied attendees in suits, few smiles - this was the observation of one of the guest speakers. That probably is not surprising given the traditionally formal take on conferences and given the high-ranking officials who gave opening speeches, including the Acting Chief Justice and the Deputy Minister of Justice. With that beginning, the ending into which the conference transpired was unexpected for many. The final event of the Mediation Days was a 2-hour session led by Aled Davies (founder of Mediator Academy). Those who know Aled would not doubt his ability to make up for all the earnestness of the conference in a 2-hour session! Yes, it was fun - and it was insightful. In the context of the Tbilisi-Zoo role-play participants had to deal with and talk about emotions and how a mediator can stay As Calm as Buddha and as Sharp as Sherlock Holmes. Then, with the magic "show-time" exercise the participants also experienced how transforming our physiology can help increase our confidence and productivity, i.e. our ability to be at our best in mediation, and in life. What was interesting to observe, was how much more brave, lively and insightful were participants' engagements in the same workshop held at New Vision University (a day prior to the conference the same workshop was held for students at New Vision University). Apart from the difference in settings, there was a generational difference, which played a role, and which is so hopeful for the future of mediation in Georgia. But before I turn to the future, I would like to touch upon two other issues addressed at the conference.

At the panel called "Why lawyers fear mediation?" an interesting exchange took place between the lawyers and mediators. It once again obviated the rooted rights-based approach of our legal culture and how competitive have lawyers been trained. Mediators spoke about the need of a shift from lawyers' natural tendency to solve the problem, to them putting the clients in charge of the conversation and empowering them to make decisions which are right for them from a commercial perspective. However, this shift in lawyering, "from being right to being useful", apart from the change in the mindset (or rather for such change to take place) requires upgrading the skills that we are taught. And the earlier this happens the more smooth the upgrade and the more inherent those skills will be. It is essential, therefore, that along with the skills of advocacy, argumentation and persuasion, the skills of listening, summarizing, reflecting and inquiring become part of the compulsory curriculum at law schools. Acquisition and practice of these skills will lead to understanding and appreciation of the value of mediation which then will trigger the shift in paradigm.

Another issue which was tackled towards the end of the conference, was an elephant in the room, not the one in the Tbilisi Zoo role play. That has to do with us - the mediators and our inability (so far) to exercise leadership and mediate among ourselves. Georgia is probably not the only case where different groups try to "own", "take credit for" and compete for mediation. As my colleague has put it, the dynamic between these groups is similar to the parents fighting over a child who has not yet been born - which puts at risk the health and livelihood of the baby. It is essential therefore that the mediators themselves are able to talk, listen, understand and try to cooperate legitimately at least on those matters that are related to the development of the profession. If we, the mediators, fail in this, how do we give assurance to the parties? How do we obtain or maintain credibility of the service and of the profession? It would be too costly a mistake to underestimate how our own behavior can undermine or reinforce the legitimacy of the new process that we strive to promote.

Future

A couple of aspects related to the future were addressed at the conference:

The new Draft Law of Georgia on Mediation is currently at the Ministry of Justice and is expected to be initiated with the Parliament sometime in 2019. The substantive aspects of the draft law are to be subject to separate consideration. In general, the challenge, as everywhere, will be to keep the balance between providing sufficient framework for fostering and promotion of mediation, and not overregulating it.

Another development on the horizon could be the re-design of the workplace dispute management system within the civil service. The Civil Service Bureau is currently considering how labor/workplace disputes within the public institutions are being managed and resolved. An assessment of the existing dispute management system and a report, including recommendations on how disputes can be prevented and managed more efficiently in the future, have been developed by local (New Vision University) and international (CEDR) experts. As the keynote speaker of the Conference noted, the future will now depend on the Government's political will and "the courage to go for the best interest of their society".

Finally, I go back to the most essential aspect of the future - the students. The key to triggering change in the culture is rising next generation of professionals with the mindset and skills for efficient dispute resolution. We, at New Vision, believe that offering interest-based negotiation and mediation courses, as well as supporting participation of students in international dispute resolution moot competitions, will in the long-run make a difference in how people approach problems, listen and interact with those having differing views.

Overall, Tbilisi Mediation Days was a good opportunity to see how and where mediation has moved within the last 2 years, and where it might move next. The next conference will hopefully trigger the moves at a different, more personal level, similar to the one at which Viadrina has moved its participants.