

Mediation Capture

Kluwer Mediation Blog
January 30, 2020

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Please refer to this post as: Tatiana Kyselova, 'Mediation Capture', Kluwer Mediation Blog, January 30 2020, <http://mediationblog.kluwerarbitration.com/2020/01/30/mediation-capture/>

Transplanting mediation to contexts which are institutionally and culturally different from the West may bring some unexpected surprises. While international donors all over the globe have universally allied with the courts or the governments to promote mediation in the developing world, this may be where the threat may come from. Below is the account, nearly resembling a detective story, of the attempted capture of mediation in Ukraine which demonstrates how democratic institutions can be abused for private gains in developing democracies.

In summer 2019, Ukrainian mediators, who are a well-organized [professional community](#), were working with the Ministry of Justice to prepare the documents for the signing of the Singapore Convention. As a bolt from the blue, they learnt that the new draft law on mediation had been submitted to the Parliament. It turned out that the group of MPs (who knew that their job at the parliament was over due to announced parliamentary elections in July 2019) had secretly drafted "their" law on mediation without letting mediators know about it. MPs passed the draft within three days through the Parliamentary Committee (the speed of the procedure unseen before) and registered it with the Parliament just two weeks before the end of the term that precluded any possibility to submit alternative drafts from whomever. The [text of this draft law](#) was seen as a "complete nightmare" by mediators because it suggested a highly centralized regulation of mediation through a single agency that monopolized training, certification, accreditation and other issues. In essence, the draft law introduced a licensing system very similar to what Ukrainian advocates have. In fact, the parts of the text were obviously copy-pasted from the Law on the Bar and Legal Practice - a highly controversial law in itself, criticized for promoting corruption. Later, it became known that one of the MPs has providently registered a business company specializing in mediation and bearing his name.

After the draft law on mediation became public at the Parliamentary website, MPs convened the *post-factum* "public consultation" with mediators and organized a conference. Four hours "battle" between MPs and mediators led by the National Association of Mediators of Ukraine is publicly available on [YouTube](#). Due to the effective coordination and mobilization effort, mediators were able to assure the "drafters" that the professional mediation community would not accept or support such regulation. As a result, MPs gave up and the draft law was pulled back in August 2019.

This was one, albeit a most dramatic, episode of the 10-year struggle of Ukrainian mediators for the law on mediation that would not create any preferential treatment for anyone but will provide clear, transparent, decentralized and fair rules for a newly emerging mediation practice and profession based on self-regulation of the professional community.