

Kluwer Mediation Blog

Will Ukraine Have A Law on Mediation in 2017?

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On the 3rd of November 2016 *Verkhovna Rada* – the Parliament of Ukraine – voted for the draft law “On mediation” on the first reading. This is indeed an important event for Ukrainian mediators as they have been working hard towards it during the last eight years. All previous attempts to pass the law through the Parliament and to legalize mediation in Ukraine have remained fruitless. All together there were ten drafts registered with the Parliament in 2011-2015.

In 2011, the draft received the support of the Parliamentary Committee and was voted on. However, due to political disagreement among MPs it did not receive the required number of votes. The next year, the Parliament was re-elected and therefore the mediation draft law had to be submitted *de novo*.

At the end of 2013, *Verkhovna Rada* registered again two drafts of mediation law submitted by two different groups of mediators. The drafts differed on some approaches to mediation: definition of mediation, the status of mediator and self-government of mediators. However, this time the legislative process was abruptly interrupted by political turmoil. Due to the Euromaidan protests in 2013 and subsequent changes of the government and the Parliament, the draft of mediation law had to be submitted *de novo*.

At the end of 2015, two drafts were again submitted to the Parliament and one of them (draft No 3665 registered by MP Olena Shkrum) was finally voted on on the 3rd of November on the first reading. Now Ukrainian mediators are mobilizing their resources to provide MPs with advice and the texts of possible amendments to improve the draft for the second reading. Adoption of the law by the end of 2016 will allow Ukraine to gain a few points in the ADR rating of the Doing Business World Bank index, which played a role of a good motivator for MPs this time.

Overall the legislative process with regards to the law on mediation was a very difficult one. It was greatly impeded by political turmoil and instability in the country. However, it also required the coordinated and unified effort of the community of Ukrainian mediators. This task was entrusted to the [National Association of Mediators of Ukraine](#) which was established in 2014. By 2016 remarkable progress has been achieved. Mediators have developed a Concept Paper on legal regulation of mediation in Ukraine and a single consolidated text of the draft mediation law.

The drafters of the single draft declared their aspiration to implement the best international practices including UNCITRAL's Model Law on international commercial conciliation, the EU Directive on certain aspects of mediation in civil and commercial matters and the Council of Europe's guidelines for a better implementation of the existing recommendation concerning family mediation and mediation in civil matters. Legal regulation of mediation is seen as gradually developing from the general mediation law to specialized legal acts in certain narrow areas. General mediation law, at least at the initial stage, should be applicable to the widest possible circle of disputes including civil, commercial, family, administrative, tax, criminal, penal, and other areas.

Ukrainian mediators confirmed that they are aware of the danger of overregulating mediation at the outset. According to the [research of the Centre for Common Ground](#), the biggest threat to restorative justice and mediation in Ukraine "may be posed if it is ordered from above through some state institution that will cause its bureaucratization, loss of trust, formal implementation by order of the superior, and false reporting". Therefore, to avoid this trap the draft law on mediation attempts to remain within a general framework structure by introducing only minimal legislative standards and incorporates mediation into the existing legal framework through available procedural devices (such as amicable settlement agreements (*myrova uroda*), conciliation agreements (*uroda pro prymyrennya*), pre-trial dispute resolution (*dosudove vregulyvannya sporu*), etc). The drafters of the single draft also rejected the temptation to introduce mandatory court mediation from the outset. Instead, the current draft includes voluntary models of court mediation along with the motivational mechanisms.

With regards to professional regulation of mediators, the eventual consolidated draft incorporated an open-ended market regulation of mediation that offers maximum freedom to professional mediation organizations to self-regulate and monitor mediation practice in all possible areas. The idea of having a centralized regulatory body was rejected, at least at this initial stage.

Thus, so far Ukrainian mediators have opted for careful and gradual legal regulation of mediation that requires experimentation through pilot schemes and further reconsideration and amendments in several years.

Given the increased pressure of the international community that now expressly requires introducing mediation in Ukraine as a part of court reforms, there is a hope that the law on mediation will be adopted next year. This will improve Ukraine's position in the World Bank Doing Business rating and will open up the door for further development of mediation in Ukraine.

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