Kluwer Mediation Blog

Courts Should Be The Alternative! – Georgia Soon To Adopt The Law On Mediation

Sophie Tkemaladze (Resolve / New Vision University) · Sunday, May 12th, 2019

"Courts should be the alternative!" – is the slogan coined by the Minister of Justice of Georgia voicing the Government of Georgia's will to promote the use of out-of-court mechanisms of dispute resolution. And this is not only for domestic disputes. The Government has declared its will to promote Georgia as a regional center for dispute resolution. The growth of the caseload of the Georgian International Arbitration Center (GIAC), the success of the annual GIAC Arbitration Days and the conclusion of the MoU between the Government of Georgia and the ICC International Court of Arbitration in December 2018 are some examples of the progress made. A more recent development is the Government's drive to promote mediation; and the Draft Law of Georgia on Mediation is the novelty in this respect.

The Draft has been prepared by the Working Group of experts with coordination and support from the EU/UNDP Access to Justice Program. It was then passed on to the Ministry of Justice which revised the draft and approved it as a matter of the Government's policy. The draft, which has now been submitted to Parliament, is divided into two parts: the substantive regulation of mediation, and its institutional set-up. On the substantive side, the Draft defines what mediation is, sets the standards of confidentiality, disclosure, independence and impartiality, regulates the issue of limitation period, and makes the mediated settlement agreements enforceable in court. All this is equally applicable to court-annexed, as well as out-of-court mediations.

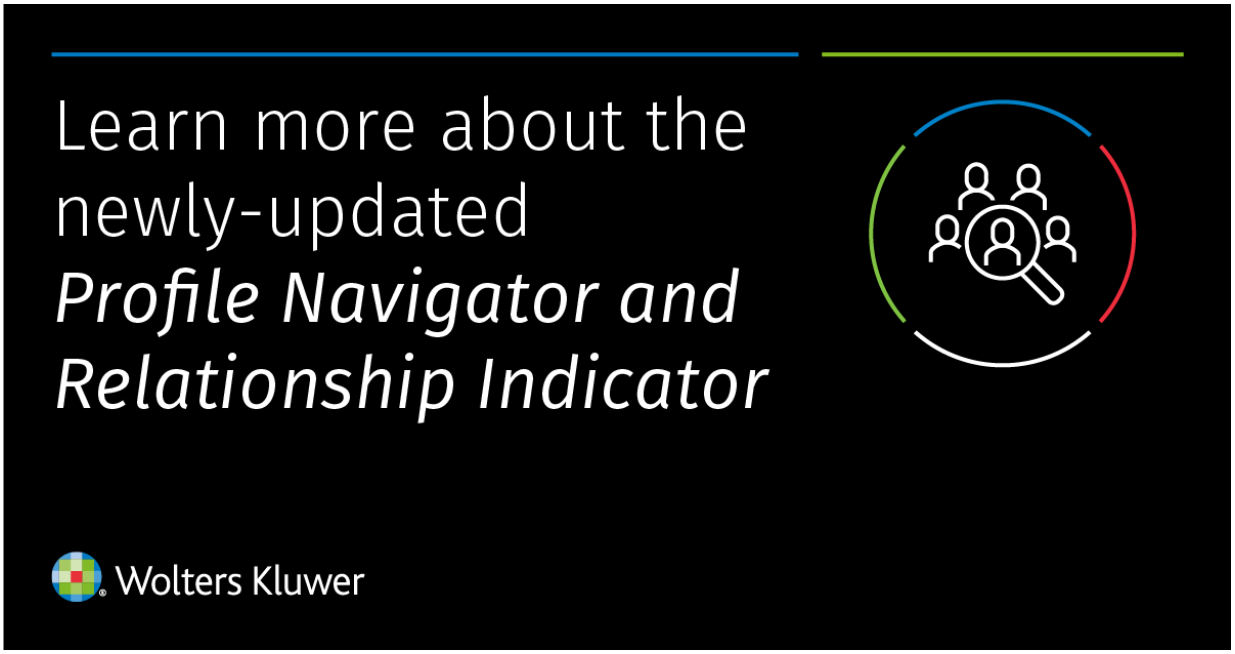
The question – who can be a mediator – is tied with mediation's institutional set up. Pursuant to the Draft, a membership based Legal Entity of Public Law – Georgian Mediators' Association will be formed which will set the standards for accreditation of mediators and will maintain a list of accredited mediators. This was one of the main points of difference within the drafting group: one proposition was not to set up any state-controlled institution and leave it for self-regulation of the profession; another proposition was to provide for accredited and non-accredited mediators, leaving it to the parties (in private, i.e. out-of-court mediations) to choose whom they wished to appoint. The Government, however, opted for a stricter approach, requiring both: a set-up of the Legal Entity of Public Law as a regulatory body, as well as a mandatory accreditation of the mediators (under the Draft, a person would only be considered a "mediator" if she/he is on the list of mediators of the Association). The rationale in adopting this approach was said to be the interest to ensure (to the extent possible) a high standard of professionalism and credibility of service, the example of similar regulations in some European countries advised by foreign experts, as well as the desire to unify the profession under uniform standards set by one common professional association. Whether or not the proposed form of regulation will respond to these concerns and

interests, and at what cost, time will show. A lot will depend on us, mediators, as well.

While deliberations continue as to how some provisions should be formulated, what the scope of confidentiality should be, etc., the process in the Parliament seems to be unusually (for politicians) collaborative, where different opinions are being heard and where most stakeholders are driven by a common purpose: how to ensure the most efficient regulatory framework which would foster the usage and trust in mediation. For us, mediators, the process of drafting and deliberations was and continues to be an opportunity to inform and show policymakers, in substance and by example, what mediation is, how it works and what its added value could be. It was therefore pleasant and encouraging to observe this process and hear, at one point, the chair of the Legal Issues Committee of the Parliament noting, "there could be a good use of mediation within the Parliament as well". This is so true. One might say that there are other considerations and dimensions in politics, which would make the exploration of interests futile (challenging the legitimacy of the interests themselves…). Even if so, the usage of facilitation and listening skills could be a good check/test upon the interests, an opportunity to uncover them, could promote a more civilized, content-focused and efficient inter-party dialogue, and could make the policy making much better informed.

Back to the Draft Law. It is expected to be adopted by the end of June this year. In principle, it enjoys the support of the Government, the donors, and the judiciary. It is hoped that the Georgian Bar Association, the leadership of which is composed of the first generation of trained court-annexed mediators, will manage to adopt and spread the spirit of collaboration rather than competition and be supportive of the new profession. All of this, if complemented by due publicity, a harmonious and efficient institutional set up and the growing practice of mediators, could be a good ground for optimism.

Courts will always be the primary guarantee of people's access to justice. The way in which they ***could and should*** become an alternative is that courts are no longer the initial point of recourse for aggrieved people; rather, processes fostering efficient communication, a focus on interests, self-determination and taking responsibility are utilized first.



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