

Kluwer Mediation Blog

Mediation: to Survive

Sophie Tkemaladze (Resolve / New Vision University) · Tuesday, November 3rd, 2020

Last week I was interviewed by the communications specialist whose role is to develop a communications strategy for Mediators Association of Georgia. By interviewing mediators, he wanted to get a feel and inspiration which would help him work out an efficient strategy of communication on mediation. One of the first questions he asked was something along these lines – can you summarize in one sentence what is the core reason for the society to use mediation? He took the pressure off saying I'd have a chance to share other things later, but now he suggested I share the one thing that comes to my mind – what is the main reason why mediation is needed in the society. I instinctively said: to survive.

That question and my answer to it prompted me to share with him something I want to share in this post as well: how did mediation find its way into Georgian legal culture.

As many other countries of the world, Georgia has a history of mediation, going back much earlier than modern day regulations. Legal sources dating back to XIII-XIV centuries^[i] note reconciliation with the engagement of a neutral, not appointed by the state, rather selected by the parties to help them settle the dispute. It is believed, though, that mediation as a form of dispute resolution existed much earlier than that.

Historical sources suggest that there were two primary reasons which triggered development of mediation:

- Mediation emerged as means to avoid extinction of the feuding families. This was particularly the case in Abkhazia, Svaneti and Khevsureti, three beautiful, mountainous parts of Georgia, where revenge and redemption through blood was a deep-rooted custom. Many families became extinct as a result of this custom. To survive, members of the society, those with authority and trust, started facilitating the possibility of reconciliation of the hostile families. As one historian notes: “mediation proceedings [...] prove that certain forces are born within belligerently minded, independent social groups which aim to eliminate and restrict the indefinite, never-ending, rampant revenge and somehow limit the destructive custom of redemption through blood.”^[ii]
- The second reason which contributed to maintaining and promoting mediation was the distrust towards state institutions. Given that over centuries Georgia was occupied by outsiders, state institutions and judges appointed by them had no credibility with the local society. Again, this was particularly the case in the mountains, where people rigorously opposed rules and procedures forced on them and have therefore developed and preserved their own traditions of dispute

resolution.

In sum, mediation was a means to survive physically, as well as morally (or essentially).

I recalled all of this from the study I conducted in 2016 on the history of mediation in Georgia. As part of the study I traveled to Svaneti where even presently locals resort to mediators to resolve some of their differences. Many things struck me during that visit: the pride they had in their tradition of reconciliation, respect and significance they attached to the process, and multiple phases of the process itself: starting from intermediaries trying to get the families agree to mediation in the first place, then the mediation itself, ending with the various ways that enforcement of settlement agreements could be ensured. Often the need for reconciliation (hence, for survival) was so vital that if the intermediaries would not manage to get the hostile families agree to mediation, the community's council would intervene and urge the families to agree to mediation, otherwise both families would be subject to council's wrath and unwelcome to join community gatherings.

I was also impressed to discover many similarities in the skills and tools that mediators used at that time to the ones we use today. For example, historical sources note that if in the course of the process one of the parties threatened or used insulting words towards the other, the mediators would soften such harsh statements and facilitate building trust between the parties. Another interesting tool they used was – sending to the family of the victim (who was hesitating to mediate) an intermediary from the family which, in its turn, had forgiven the victim's family in the past (i.e. the intermediary who had agreed to mediate with the present victim's family in the past).

I note that mediation in those days was more of a hybrid between what arbitration is today, on one hand, and mediation on the other. The mediator would issue a decision – something that modern-day arbitrators do; at the same time, the process necessarily entailed an element of reconciliation – that was essential for peace and survival.

At the museum in Mestia I discovered mediators' insignia: wooden staffs where they would make incisions after each completed case.



History is fascinating in many ways. One of them is the unchanged relevance of factors and needs over the centuries. Hundreds of years ago mediation emerged as a means for families to survive extinction. Today the threat of extinction (of species in nature, tribes, nations, humanity) is ever more actual. It is heart-wrenching that in the face of the multitude of external threats (COVID19 and global warming being just two examples), we are in parallel taking active measures to fight and destruct each-other. Polarization of people in the communities and multitude of the ongoing armed conflicts in the world are a testimony to this. I wonder what will it take to acknowledge, and

then to act upon this acknowledgement, that “The only thing that will redeem mankind is cooperation”, Bertrand Russell. And what new interventions, approaches, processes could be developed and tried to give the societies and the world a better chance to survive.

[i] Beka and Aghbuga Law, Monument of Old Georgian Legislation. Compiled in the XIII—XIV centuries.

[ii] Alexander Vacheishvili, Findings from Georgian Law History, Volume I, 1946, pp. 8-9.

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