

Kluwer Mediation Blog

What made Ukrainian Mediation Law Such a Struggle and Why It Finally Worked out?

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On the 16th of November 2021, Ukraine has finally enacted the Law on Mediation as Rafal Morek has already [written](#). Ukraine was perhaps the last country of the post-Soviet block to do so. It took more than 10 years and 14 official drafts registered at the Parliament, and enormous work of the mediation community to pass the law. Why was it so difficult? And what was in the law that triggered such a furious resistance of legislators? As an insider in the drafting process, I would like to share a few insights here.

One of the few post-authoritarian countries, Ukraine has a vibrant and professionalized civil society that tries to live up to their promises. Liberal, free, and transparent regulation of mediation, without preferences to any actor, was in the heart of the proposed mediation law drafts. The drafts were of the framework nature that legitimized mediation without unnecessary interference of the state, leaving the task of regulation mostly to professional community. The drafts had the widest possible mediability of cases (basically all cases are mediable except serious criminal offences). The drafts promoted very basic requirements for mediation qualification leaving the market open for competition among multiple providers without a centralized entity to control this process. And many other progressive and open-ended provisions. Certainly, this kind of regulation was too much for legislators, many of whom still had Soviet education and background. They could not allow for that much freedom. This clash of values was perhaps a clear illustration of the gap between the civil society and the government in modern Ukraine.

Instead, as I have written at Kluwer blog [earlier](#), mediation was seen by some state actors as opportunity to promote their private interests and gain profits on expense of training and certification of mediators. Ukrainian mediators had on several occasions to mobilize themselves in order to counter-act such capture attempts.

Surely, compromises were possible. It was always a temptation for mediators to give up and to adapt provisions of the draft law to the desires of legislators. To be sure, some acceptable compromises were of course made. But overall, Ukrainian mediators were firm and preferred not to have any law then to have a bad law. It took a long time, but the efforts finally bore fruit. What made it possible?

As a researcher I would be inclined to think that an overall awareness of Ukrainians changed recently towards European values, especially after two popular revolutions of 2004 and 2013. These are very complicated processes that await their research by social science. Here perhaps, I

can suggest a more pragmatic explanation. For a long time, Ukrainian mediators struggled to explain the rest of the society, and in particular the legislators, what mediation is about. They trained and taught mediation to thousands of judges, MPs, and civil servants. Yet, frequent rotations in the government made this work a Sisyphus labour. And knowingly or unknowingly, mediators finally crafted a creative solution. You can explain MPs what mediation is about, or you can make a mediator to be elected as an MP and as a head of the major Parliamentary Committee. That was the plan and it worked out. Ukrainian mediators are indebted to Mr. Kostin who became that mediator and an agent of mediation change inside the Parliament.

Was the high cost of a decade of waiting worth of it? I think yes. Ukraine has got one of the most progressive and liberal mediation laws. Furthermore, paradoxically more than 10 years of waiting and struggling for the law on mediation had its positive side effect. It allowed for mediation community to grow, to mobilize themselves and to mature as a truly professional community of practice. This time allowed to reflect on and to accept the reality of fierce competition among mediators, yet nurtured the ability to come together and co-create on the issues of common interest. This time allowed for an opportunity to establish several professional nation-wide associations and to form a consensus among mediators on the basic mediation training standards and ethics of mediator. It remains to be seen how Mediation Law influences the practice of mediation but it is clear that its prospects are much more hopeful now, with the strong mediation community, then ten years ago.

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