

Mediation Movements in Ukraine: Donor-Sponsored and Grass-Root Level

Mediation¹ proved to be a highly efficient mechanism for solving disputes in the US, Europe and throughout the world; it was embraced by governments and integrated into judiciaries. In many developing countries, for example in Asia and Africa, mediation is being introduced or supported by the international organizations and donor agencies (such as USAID, EBRD, World Bank, etc) through the programs of democracy and rule of law assistance. Therefore, international donors have a profound impact on the way how mediation programmes are structured and implemented. Yet, the role of international donors in mediation is rarely analysed in academic literature².

This article is aimed to uncover the role played by the international donor agencies and their agendas in mediation development in Ukraine. It does not aim to provide a comprehensive survey of all mediation-related initiatives in Ukraine but rather to outline some general trends. The article demonstrates that donors' agenda have profoundly influenced the way how mediation was being institutionalized and professionalized in Ukraine which in turn caused division of mediation movement into two streams – donor-led and grass-root movements.

To advance this conclusion, the first and second parts of the article will contrast donor-lead and grass-root mediation movements through historical analysis of their

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¹ Mediation is a core method of alternative dispute resolution; it refers to negotiations between the parties of the dispute assisted by a neutral, professional third-party – the mediator. Mediation empowers individuals and allows generating creative, interest-based, and mutually agreeable solutions to problems. The mediator assists the parties in establishing communication through offering a comfortable negotiation environment, guides them in the procedural aspects of negotiations, and helps to frame their settlement agreement. Thus, the main aim of mediation is to assist parties in finding better solutions to their problems through empowering them and improving their relationship. Additionally, if integrated into the justice system, mediation is capable of reducing court congestions and case processing time, thereby increasing savings for individual parties and for the justice system in general, and improving overall access to justice.

² But see Anthony Wanis-St John, *Implementing ADR in Transitioning States: Lessons Learned from Practice*, 5 HARV. NEGOT. L. REV., 339 (2000); Cynthia Alkon, *Lost in Translation: Can Exporting ADR Harm Rule of Law Development?*, 2011 JOURNAL OF DISPUTE RESOLUTION (2011).

actors, long-term and short-term goals, and main challenges. In conclusion, the paper will demonstrate the positive post-2014 dynamics of change in the policies of the main international donors towards bridging the gap between donor-lead and grass-root mediation movements that hopefully will allow mediation to fully realize its potential in Ukraine.

This article presents findings of the qualitative study which was conducted in May-August 2016 and January 2017 in Kyiv, Odesa, Lviv, Kramatorsk and Berlin and consisted of five focus-group discussions with 35 participants and 63 in-depths interviews³. The sample for the interviews was designed to focus on the mediation community but also to include the major stakeholders in mediation development. It was initially based on the information from the database of the National Association of Mediators of Ukraine, and later relied on the snowball sampling technique. The sampling procedure aimed at the highest possible degree of variability of the answers and therefore, proponents and opponents of mediation; the “patriarchs” of the mediation movement and the recent followers; representatives of the Government, local authorities and civil society activists; lawyers and psychologists; Ukrainian and foreign experts were interviewed in this study. Interviews and focus-group discussions have been transcribed and analyzed through NVivo software for qualitative analysis of data.

Empirical data from the fieldwork was supplemented by information from the Internet sources and policy documents of the Ukrainian mediation community and international donors. Finally, a lot of useful information and links for this research derive from the author’s professional experience of advising various actors on mediation development in Ukraine for more than ten years.

I. Donor-sponsored mediation movement

Compared to Russia, mediation in Ukraine unluckily, or perhaps luckily, has not enjoyed the wealth of financial support by international donor organizations. Neither had it become a focus of international aid in as much as the rule of law, justice and legal reforms programs.

In the 1990s it was organizations mostly from the United States and Canada that brought an idea of modern mediation to Ukraine and other former Soviet Union

³ The fieldwork in Ukraine, including interviews and focus-groups, was conducted as a part of the author’s postdoctoral research project “Exporting Mediation as a Part of Rule of Law: Mechanisms and Impediments in post-Soviet Ukraine” at University of Torino, Italy under Marie Curie/COFUND fellowship in 2015-2017. This project has received funding from the European Union’s Seventh Framework programme for research and innovation under the Marie Skłodowska-Curie grant agreement No 609402–2020 researchers: Train to Move (T2M).

countries. Throughout the 1990s and the early 2000s these organizations were the main partners of Ukrainian mediation NGOs in terms of financial support, expertise transfer, and mediation ideologies. Among most active foreign donors at that time were USAID and Eurasia Foundation. George Soros Foundation (Renaissance Foundation) has also supported a number of start-up mediation projects in Ukraine.

After 2008 the European Union emerged as a leading promoter of mediation and other ADR mechanisms among its member states, influencing neighboring countries such as Ukraine. Additionally, geographical proximity of the EU, links to European mediation communities and an appealing success story of mediation incorporation into the legal systems of EU member states inspired voluntary import of mediation into Ukraine. Therefore, by the first decade of the new millennium most of the donors which sponsored mediation projects were European, including the European Commission, Council of Europe, UK Embassy, Swedish International Development Agency, Swiss Agency for Development and Cooperation, Polish Aid and others.

Focus on courts and settled cases

With a few exceptions, mediation did not enjoy an independent status within the donors' agendas and was adjacent to the other larger programs in the areas of rule of law and justice reform. It is therefore not surprising that most donor-sponsored mediation projects centered around the courts. For example, out of eight projects that are were implemented by the Ukrainian Center for Common Ground in 2003-2011, six projects operated within broader programs on the rule of law and focused on cooperation with the courts, police and prosecutor's office⁴.

Usually a mediation project sponsored under the rule of law heading included a public relations component, foreign experts conducting trainings and research; mediation awareness training for representatives of the Ukrainian legal system: judges, lawyers, prosecutors, etc.; training and certification of mediators and trainers; study tours abroad for high-rank Ukrainian officials; and often a pilot court mediation scheme. The donors were keen to see mediation in action – the cases settled and the settlement rates reported – promptly by the end of the one- or two-year period of funding⁵.

Given the favourable legal framework in all procedural codes of Ukraine that allowed settlement at any stage of proceedings, it became possible to practice voluntary schemes of court mediation from as early as 1997 when the Donetsk Mediation Group secured a grant from the Eurasia Foundation to set up pilot mediation programs at courts

⁴ Interview on 2nd of June, 2016, Kiev, Ukraine.

⁵ For analysis of court-annexed mediation schemes, see Tatiana Kyselova, *Integration of Mediation into Ukrainian Court System: Policy Paper*, Council of Europe, 2017, available at <http://ssrn.com/abstract=3054519>.

in Donetsk and Odesa. In 1997 mediators from Odesa Regional Mediation Group mediated admittedly the first court-referred case in the former USSR region. The model developed within this project allowed judges to refer cases to mediation with the consent of the parties to a dispute. This scheme resulted in 9 court cases being mediated by external mediators⁶.

In 2009 the Ukrainian Mediation Center (UMC) piloted its referral system within the Dniprovskiy Kyiv Court of general instance. UMC's mediators were present at the court premises during the hearings and attempted to persuade parties to agree to mediate their case. Although mediators conducted more than 100 information sessions with litigants (always only one party) it was possible to conduct only a few mediations. These first experiences strongly suggested that until judges get interested in referring cases to mediation and actively direct litigants to mediation, mediators on their own will not be able to convince parties to take part in mediation.

Therefore, the subsequent court projects focused on judges. A large scale effort to introduce mediation into the Ukrainian court system was been launched by way of two grants from the European Commission and the Council of Europe - 'Judicial Selection and Appointment Procedure, Training, Disciplinary Liability, Case Management and Alternative Dispute Resolution' 2006-2007 and 'Transparency and Efficiency of the Judicial system of Ukraine' 2008-2011. The mediation component of these projects was aimed at promoting a model of judicial mediation suggested by Dutch and German experts⁷. The project trained judges from four Ukrainian courts – from Bila Tserkva, Vinnytsya, Donetsk and Ivano-Frankivsk⁸ who mediated cases in 2010-2011. These efforts resulted in a total of 50 mediations in administrative, family, labour and land disputes with a 72% settlement rate⁹. Apart from judges, the project trained lawyers, advocates, state officials and trainers in mediation; produced an educational film and conducted a number of awareness-raising public events including mediation weeks in pilot courts¹⁰.

In 2013-2016 another project 'Educating Judges for Economic Growth' was supported by the National Judicial Institute of Canada in cooperation with the High Qualification Commission of Judges of Ukraine. It opted for a different model – judicial settlement conferences – in two pilot administrative courts and one court of general

⁶ Narrative report of the project, on file with the author.

⁷ FRIEDRICH-JOACHIM MEHMELE & FRANS VAN AREM, COURT-BOUNDED AND COMMERCIAL MEDIATION – A PILOT PROJECT IN UKRAINE: A STORY OF SUCCESS (Council of Europe, 2011).

⁸ Bila Tserkva Miskrayonnyi Court, Vinnytsya Administrative Court, Donetsk Administrative Appeal Court, Ivano-Frankivsk City Court.

⁹ Iryna Zaretska, "The Way to Understanding or Negotiations without Giving in", available at http://jurliga.ligazakon.ua/yurtv_detail/211.

¹⁰ Educational video "The Way to Understanding or Negotiations without Giving In", available at <https://youtu.be/QZYBPgxN4m8>.

jurisdiction in Odesa and Ivano-Frankivsk¹¹. The project organized a few study visits of Ukrainian judges to Canada and trained a group of trainers who trained judges in other Ukrainian courts to settle disputes. The project did not collect case data, and the only information available from the interviews of this study suggests that in the six months of the project the number of settlement agreements in the Malinovsky court of Odesa increased from 50 to 150.

In 2001-2012 the Ukrainian Center for Common Ground implemented a number of projects on mediation in criminal matters that *inter alia* included referrals from courts. The projects connected the prosecutor office, police, courts, mediators, victims and offenders through a multilevel mechanism of interaction. This mechanism has been implemented in 8 regions of Ukraine and resulted in 541 mediated cases and 152 restorative circle conferences (2001-2012)¹².

The most recent (2014-2015) USAID “Fair Justice” project to support mediation in eight courts of the Volyn oblast relied on a model of mediation by external mediators and reported 47 information sessions and 38 mediated cases with a 37% settlement rate¹³.

All the court mediation projects offered mediation services to litigants on a *pro bono* basis. Similarly, all the pilot projects took an advantage of existing procedural legislation that permits settlements at any stage of the proceedings including the stage of the enforcement of judgements. Given the absence of a provision in law that directly allows mediation within the court system, all the projects relied heavily on the personal support of the presidents of the respective courts.

Put together, all the donor-sponsored projects summarized above resulted in approximately 40 mediated cases per year which is far below the minimum quantity identified, for example, for the EU countries in the 2014 Rebooting Mediation Study¹⁴. Thus, neither of the models of case referrals from courts to independent mediators or models of judicial mediation proved self-sustainable without financial assistance of the donors. The persistent approach of the donor-lead mediation projects with their focus on the judicial system does not seem to fulfill its promise in Ukraine. Moreover, it was seen as

¹¹ Odesa Administrative Court; Malinovsky Court of general jurisdiction, Odesa; Ivano-Frankivsk Administrative Court, Ivano-Frankivsk. See, Judges of Administrative Courts Take Part in Ukrainian-Canadian Project “Education of Judges for Economic Development”, 16 March 2015, available at <http://www.vasu.gov.ua/123378/>.

¹² Natallya Pylypiv, *Vidnovne Pravosudiva v Ukraini: Rezultaty ta Perspektyvy*, 17 VIDNOVNE PRAVOSUDDIA V UKRAINI (2011)

¹³ *Mediation in Courts: Myth or Reality*, Volyn Regional Civic Organization „Center for Legal Aid”, USAID, 2016, available at <http://legalaid.in.ua/upload/files/3a44250831253ade03a28cb816844196.pdf>.

¹⁴ 500 mediations per year. See “Rebooting” the Mediation Directive: Assessing the Limited Impact of its Implementation and Proposing Measures to Increase the Number of Mediations in the EU, 2014, available at [http://www.europarl.europa.eu/RegData/etudes/etudes/join/2014/493042/IPOL-JURI_ET\(2014\)493042_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/etudes/join/2014/493042/IPOL-JURI_ET(2014)493042_EN.pdf).

detrimental by some researchers. According to Yegor Vasylyev “The efforts to promote mediation in judicial system, making it a part of legal profession and prioritizing adoption of the law on mediation might be exactly the case of disregard to local specifics, which misguides the introduction of mediation”¹⁵.

Promoting judicial mediation

Given that most donor agencies that supported mediation in Ukraine were bound to support almost exclusively court mediation programs, they invested a lot of resources into mediation skills training of judges. These projects promoted two competing mechanisms with regards to the role of judges in mediation – court mediation by external mediators and court mediation by a judge. These deferring approaches of international doors and experts (unwillingly) resulted into divide of Ukrainian judges on the question whether a judge can/should mediate the court cases similar to *Güterichter* (*conciliation judges*) in Germany.

After years of competition between these approaches, the Parliament finally legitimized the right of judges to conduct settlement procedure in three procedural codes – Civil Procedural Code, Economic Procedural Code, and Code of Administrative Procedure¹⁶. The new procedural codes include a separate chapter that regulates settlement at the preparatory stage of court proceedings with the consent of both parties by the same judge, who is appointed to hear the case. The judge has a right to meet each party separately, without having to record these meetings. The procedural codes permit the judge to give advice as to the possible judgement in the case and to suggest solutions for the dispute during the settlement procedure. If the parties come to an agreement during the settlement conference, the judge confirms and stamps the settlement agreement. If they do not reach a settlement, another judge is appointed to make a final judgment in the case. This procedure, in the opinion of the mediators, has very little in common with mediation and rightly the new procedural codes do not call it mediation but rather “pre-trial settlement procedure by judge”.

At the same time, new procedural codes also seem to leave the doors open to mediation by external mediators by mentioning mediation in the article that grants a mediator the right not to be called to the court as a witness. Moreover, the Draft Law

¹⁵ Y. Yegor Vasylyev, *Alternative Dispute Resolution in a Global Perspective: Legal, Political and Cultural Factors in Introducing Mediation to Post-Soviet Ukraine*, June 5, 2013 SSRN eLIBRARY (2013). at p. 26.

¹⁶ Zakon Ukrainy pro vnesennya zmin do Gospodarskogo procesualnogo kodeksu Ukrainy, Tsivilnogo procesualnogo kodeksu Ukrainy, Kodeksu administratyvnogo sudochynstva Ukrainy ta inshyh zakonodavchykh aktiv [Law of Ukraine On Amendments to Economic Procedural Code of Ukraine, Civil Procedural Code of Ukraine, Code of Administrative Procedure of Ukraine and other legislative acts], No 2147, Oct. 3, 2017, *Golos Ukrainy* [Official Journal], Nov. 28, 2017 (Ukr.).

on Mediation, that was voted in the first reading by the Parliament in November 2016 and is currently being prepared for the second reading, regulates mediation of court-referred cases by external mediators. Whether and how procedures of court mediation by external mediators (the Draft Law on Mediation) and by judge (the new procedural codes) are implemented and co-exist remains to be seen.

Raising public awareness about mediation

Despite several dozen of cases mediated within each donor-sponsored court project is indeed a drop in the ocean, the positive achievements of these projects are undeniably in the sphere of public awareness about mediation. Taken together, at least several thousand of Ukrainians including judges, court administrators, lawyers, psychologists, social workers and others, were trained at various mediation skills trainings and ADR awareness building seminars. Internal and external assessments of the donor-sponsored mediation projects present a wealth of positive results in terms of client satisfaction with the process. Numerous mass media releases about public events held within the frameworks of the donor-sponsored projects were published in the main legal magazines and newspapers to provide the widest possible coverage. Several short movies revealing the values and major procedural characteristics of mediation were produced by the donor-sponsored projects and shown on TV and in the Internet¹⁷.

Most importantly, donor-sponsored projects were able to reach the top state officials, such as the heads of the ministries, prosecutors, presidents of the high courts, heads of the Qualification Commission of Judges and others, and persuade them in importance of mediation. Thus, donor-sponsored mediation projects did a great job of promoting mediation within the state apparatus where NGOs have a restricted access.

II. Grass-root mediation movement

Donor-lead mediation does not make the whole story of mediation development in Ukraine. It is actually, only its half; the other half is the grass-root movement that remains in the shadow. By the second decade of this century, only a small number of people, who have been trained in the frameworks of the donor-sponsored projects, remain determined to practice as mediators and to develop a market for mediation services in Ukraine. These rather few mediators got disillusioned with the top-down approach of the donor-lead mediation.

¹⁷ http://jurliga.ligazakon.ua/yurty_detail/211; <http://ukrmediation.com.ua/en/video/>.

The reasons for disillusionment were several. First, according to informants in this study, the structural location of mediation projects within judiciary reforms programs imposed the need to focus on courts and other state agencies in justice sector. However, local mediation NGOs saw business as a more powerful engine of mediation in Ukraine and felt the need to involve a much broader circle of stake-holders into mediation development.

Second, as suggested by the informants, it was important for donors to understand that before the cases can actually be mediated, Ukrainians have to raise the nationwide demand for mediation services. The problem of insufficient demand in mediation services is neither new nor specific for Ukraine. Even the countries where mediation has been practiced for decades suffer from mediation underuse¹⁸. Yet, from the very first years of mediation development in Ukraine the donors were looking for cases mediated and settlement rates reported. The donors were not willing to support massive PR-campaigns that were required to promote mediation to wider public. As one of the informants commented: “you cannot write a grant proposal for just persuading people to use mediation”¹⁹. And one cannot raise the local mediation market within a few years of the project’s duration. Mediators believe that the projects should be supported at least for five and ideally for 10 years.

Finally, mediators who worked within the frameworks of donor-sponsored projects would have been happier with a more flexible approach of the donors. Sometimes the donors changed their priorities and strategies in the midst of project implementation and local NGOs had to adjust their activities accordingly. More often, the local circumstances changed more rapidly. Up to one and a half years can pass from the moment when grant proposal is written to the moment when NGO receives the money for its implementation. As recent events in Ukraine demonstrate, societal and political changes occur in this society more rapidly than elsewhere.

Given the above difficulties in working with donors, many Ukrainian mediators saw the efforts to attract external donor funding for development of mediation as not worth the effort. Consequently, instead of spending their limited resources on bidding for highly competitive and scarce funding through the international donor organizations, some NGOs began developing business approach to mediation practice.

¹⁸ In 2014 the European Parliament has published a policy paper that called for more energetic efforts from the governments to ‘reboot’ mediation in the EU. ‘Rebooting’ the Mediation Directive: Assessing the Limited Impact of Its Implementation and Proposing Measures to Increase the Number of Mediations in the EU, 2014, available at [http://www.europarl.europa.eu/RegData/etudes/etudes/join/2014/493042/IPOL-JURI_ET\(2014\)493042_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/etudes/join/2014/493042/IPOL-JURI_ET(2014)493042_EN.pdf).

¹⁹ Interview on 12th of May, 216, Kiev, Ukraine.

The grass-root mediation initiatives that survived without outside support are of two types. The first group is represented by the NGOs attached to the higher educational institutions – for example, the Ukrainian Mediation Center at Kyiv-Mohyla Business School²⁰, the School of Mediation at the Academy of Advocacy, Kiev²¹, the Ukrainian Academy of Mediation supported by the Odessa Law Academy²², Mediation initiatives at the Lviv Polytechnic University²³. These centers offer practical training courses in mediation and negotiation and certify mediators in the framework of the post-graduate education and vocational training. Additionally, these centers have developed undergraduate and postgraduate courses in mediation and negotiation in law, psychology, social work, business administration, police service and others. Some courses have been formally approved by the Ministry of Education, officially incorporated into curriculum and are financed by the universities. The centers which are attached to the Universities also advertise and offer mediation services to population in all areas of practice but training remains their main source of profit.

The other, a less numerous but currently expanding group of grass-root mediation initiatives, includes various companies and self-employed persons who are focused on mediation services within legal practice, psychology and organizational management. For example, a number of Ukrainian law firms have trained and certified their counsels as mediators and are advertising their mediation services²⁴. Furthermore, a family mediation field is growing now without any support from the donors. For example, in 2017 a pilot project in family mediation has been launched at the Kyiv Departments of Services in the Matters of Children in six districts of Kyiv. The group of around 20 certified mediators offer mediation services to divorcing couples in disputes regarding parenting and visitation rights and other matters of family law. At the moment, the project has signed a cooperation agreement with the Ukrainian Mediation Center, piloted referral scheme connecting state agencies and volunteer mediators who conduct mediations and ensure quality of their services including group and individual supervision of mediators, various methodological trainings and meetings. The project relies at the Standards of Mediation as a Social Service which was developed jointly by the mediators and the Ministry of Social Policy. The important aspect of their activity is that mediation services are offered to people on *pro bono* basis and volunteer mediators do

²⁰ Ukrainian Mediation Center, <http://ukrmediation.com.ua/en/>.

²¹ School of Mediation, <http://aau.edu.ua/ua/mediation-school/>.

²² Ukrainian Academy of Mediation, <http://mediation.ua/en/>.

²³ Lviv Polytechnika University, <http://lp.edu.ua/node/3494/>.

²⁴ For the list of the law firms offering mediation services see <http://ukrmediation.com.ua/en/dispute-resolution/collaborative-lawyers>.

not get paid. So far, the project proved to be very successful and is getting some support from the local government without involvement of international donors.

Difficulties of grass-root mediation movement

This grass-root mediation movement is hardly noticeable to international observers. Facing everyday financial challenges grass-root mediators have got no resources to maintain their webpages in English, to account for the number of conducted mediations systematically and to report the settlement rates. It is only the Ukrainian Mediation Center that publishes the short accounts of the success stories – cases mediated or negotiated by the graduates of its educational programs²⁵ but this is far from representing the statistical data. Even the approximate assessment of the number of cases annually mediated by the grass-root mediators requires a separate research. So far there are indications that they may exceed the cases mediated within donor-sponsored projects. Yet, according to informants in this study, it is unlikely that even grass-root mediation movement has produced more than hundred mediated cases per year.

Furthermore, grass-root mediation community in Ukraine lacked any unified vision and strategy of mediation development, except for the strategy of survival. In order to survive without financial support of donors they needed to meet the demands of the local market which were initially in training rather than mediation services. In order to launch self-sustainable mediation training programs mediators required a distinct professional identity. Despite the above difficulties, from the early days of mediation development in Ukraine, local mediators were keen on establishing a professional identity based upon the paradigm of interest-based facilitative mediation. The main goal of the mediator in this model is to elicit genuine interests of the conflict parties that underlie their initial positions in negotiations. Through enhanced communication and other techniques the mediator then helps the parties to generate creative solutions that meet at least some of their interests. To achieve this, the mediator must be neutral and independent and the process must be confidential. Facilitative aspect of the model emphasizes the focus on parties' self-empowerment, full responsibility of the parties for crafting their own solutions, and careful guidance by the mediator regarding procedural aspects of mediation.

In contrast, evaluative mediation practices permit the mediator to render advice with regards to the merits of the dispute, prospects of possible litigation, settlement options, etc.²⁶ Although it is admitted now that facilitative and evaluative mediation styles

²⁵ Ukrainian Mediation Center, <http://ukrmediation.com.ua/en/vrehuliuvannia-sporiv/istorii-uspikhu>.

²⁶ For facilitative-evaluative debate see: Leonard Riskin, *Understanding Mediators' Orientations, Strategies, and Techniques: A Grid for the Perplexed*, 1 HARVARD NEGOTIATION LAW REVIEW (1997); Leonard L Riskin, *Decision-making in Mediation: The New Old Grid and the New New Grid System*, 79 NOTRE

are quite difficult to distinguish in practice and that they form a continuum of practices with various degrees of evaluation, the distinction is religiously maintained by Ukrainian mediators.

Establishment of a distinct professional identity allowed Ukrainian mediators to develop a number of high-quality training products in mediation and interest-based negotiation. Inspired by the experience of their foreign colleagues, Ukrainian mediators adapted simulation exercises written by the western educators to local Ukrainian circumstances and developed their own case-studies and innovative methodologies of training. Currently, the demand for mediation skills and training at Ukrainian market exceeds the demand for mediation as a dispute resolution service. Therefore, it is not surprising that the efforts to promote themselves as reputable training centers were taken seriously by the Ukrainian businesses and the outcomes of these efforts are the most visible. Currently, the most experienced Ukrainian mediators get more hired as trainers and have little time to actually mediate the cases and to develop the market for mediation services. Moreover, Ukrainian mediators have gained a sound image among their colleagues in the former Soviet Union and are often invited to train mediators in Russia, Georgia, Kazakhstan, Kyrgyzstan, Armenia, and other post-Soviet countries.

Finally, despite market orientation of the grass-root mediation movement in Ukraine, its key players managed to keep united²⁷. Rather uniquely, although competing at the mediation market, Ukrainian mediators preserve cooperative stance at least in the areas of common interest. The need to draft and lobby legislation in mediation was seen as an interest that required joint efforts of all. While several attempts by the donor-sponsored projects to unite Ukrainian mediators under a single national umbrella organization did not work, since 2009 Ukrainian mediators began their own fruitful albeit informal cooperation. They organized themselves into an informal Coalition for Promotion of Mediation in Ukraine and focused their efforts on promotion of legislation and common ethical standards in mediation. The members of the Coalition have drafted and lobbied the first draft of mediation law registered at the Parliament in 2011 and were able to influence all the alternative drafts. In 2014 the Coalition of mediators managed to expand itself into the National Association of Mediators of Ukraine (NAMU)²⁸, which represented most of mediators and mediation organizations in all regions of Ukraine.

DAME LAW REVIEW (2003); Kimberlee K Kovach & Lela P Love, *Mapping Mediation: The Risks of Riskin's Grid*, 3 HARVARD NEGOTIATION LAW REVIEW (1998); Joseph B Stulberg, *Facilitative versus Evaluative Mediator Orientations: Piercing the Grid Lock*, 24 FLA. ST. UL REV. (1996); Dorothy J. Della Noce, *Evaluative Mediation: In Search of Practice Competencies*, 27 CONFLICT RESOLUTION QUARTERLY (2009).

²⁷ For analysis of Ukrainian mediators as professional community see Tatiana Kyselova, *Professional Peacemakers in Ukraine: Mediators and Facilitators before and after 2014*, 3 *Kyiv-Mohyla Law and Politics Journal*, 2017, 117-136, available at <http://kmlpj.ukma.edu.ua/article/view/120119/115078>.

²⁸ National Association of Mediators, Ukraine; <http://namu.com.ua/>.

NAMU has individual membership and official partnerships with most mediation organizations in Ukraine. Its main goals are drafting and lobbying for legislation on mediation in coordination with all interested stakeholders in Ukraine and internationally; development of joint strategy of mediation development in Ukraine; coordination of efforts of mediators to set up and monitor professional standards of conduct; establishment of a national registry of mediators. NAMU is a co-organizer of the annual OSCE Mediation and Dialogue Forum in Kyiv, Ukraine and a leader in popularization campaign about mediation.

III. Conclusion

This article has outlined an overall development of mediation in Ukraine though highlighting co-existence and interaction of two mediation movements – the donor-lead and the grass-root movements. These two movements, despite seemingly competing, have jointly achieved noticeable progress in development of mediation as dispute resolution practice, as a social institution, and as a part of peaceful dispute settlement culture in Ukraine.

As analyzed in detail in the main part of this article, the donor-lead mediation movement originates in the rule of law foreign aid; focuses primarily at mediation within the court system; involves important state actors, such as the courts, police, Ministry of Justice and other state agencies; and relies upon the top-down approach. In contrast, grass-root mediation movement consists of local NGOs and private businesses who work towards satisfying demands of local market in mediation training and services, and use the bottom-up approach.

The donor-lead movement is well funded and able to present themselves through the central mass media and governmental agencies but so far has not managed to produce viable mediation models within justice system which are self-sustainable at the national level. The grass-root movement remains under-financed, builds upon sheer enthusiasm of individual mediators, lacks resources to systematically account for mediated cases and visualize themselves to wider audience. Nevertheless, grass-root mediation movement achieved positive results in creation of a distinct professional identity based on facilitative interest-based mediation model; developing a market for training in mediation. Taken together both mediation movements so far did not manage to generate a strong nation-wide demand in mediation services in Ukraine. Yet, both movements have jointly done a great job of promoting and popularizing mediation from two ends. Donor-lead movement was more successful in conveying the benefits of mediation to the top-rank officials of the justice system, while grass-root mediators were campaigning

for mediation within wider professional communities of lawyers, psychologists, social workers and others. Both movements contributed greatly to making mediation a recognizable phenomenon in today's Ukraine.

Under conditions of an on-going armed conflict in eastern Ukraine, mediation community mobilizes their scarce resources in order to help Ukraine to realize the promise of mediation²⁹. In a similar way, European and international donor agencies try to find the ways to render assistance to Ukraine in the area of dialogue and mediation³⁰. It seems that triggered by the Euromaidan Revolution and the armed conflict in Eastern Ukraine, the two movements have come closer together. For example, in 2017 such international organizations and donor agencies as OSCE (Project Coordinator Office in Ukraine) and USAID „New Justice” Program in Ukraine) have noticeably increased funding for capacity-building and organizational development of professional mediation community in Ukraine. They have supported various professional and public events of Ukrainian mediators, drafting of the law on mediation, development of the Code of Ethics of the National Association of Mediators of Ukraine and mechanisms of accreditation of mediation training programs. These policies signal of the better cooperation between donor-lead and grass-root mediation movements and give a hope that their joint efforts will raise mediation to its full capacity in Ukraine and empower Ukrainian mediators to deal with modern challenges of war and peace.

²⁹ For analysis of challenges of the 2014 armed conflict in Eastern Ukraine, see Tatiana Kyselova, *Mediation in Ukraine: Challenges of Peace and War* 26 *Tulane Journal of International and Comparative Law* (2017-18), 1-39.

³⁰ Tatiana Kyselova and Julia von Dobeneck, *Track III Dialogue in Ukraine: Major Patterns and Resulting Risks*, Center for Peace Mediation, 2017, available at http://www.peacemediation.de/uploads/7/3/9/1/73911539/track_iii_dialogue_ukraine_policy_paper_cpm_kma.pdf.

