



USAID | **UKRAINE**
FROM THE AMERICAN PEOPLE

POST-WAR MEDIATION IN UKRAINE

NEEDS ASSESSMENT REPORT WITH RECOMMENDATIONS

Contract No. 72012121C00002, **Requisition/Purchase Request/Project No.** REQ-121-21-000006

Justice for All Activity

USAID Activity Office: Office of Democracy and Governance

Authors: **Ales Zalar**, Team Leader and Dispute System Design Expert, President of the European Centre for Dispute Resolution
Nadja Alexander, International Mediation and Process Design Expert, Professor, and Director, Singapore International Dispute Resolution Academy
Luiza Romanadze, Associate Professor, Attorney, Mediator, and President of the Ukrainian Academy of Mediation
Nataliia Mazaraki, Dr., Prof., Head of International, Civil, and Commercial Law Department, State University of Trade and Economics

Submitted by:

Chemonics International Inc.
1275 New Jersey Ave SE, Suite 200
Washington, DC 20003
Phone: +1-202-955-3300

April 28, 2023

DISCLAIMER

The author's views expressed in this publication do not necessarily reflect the views of the United States Agency for International Development (USAID) or the United States Government.

CONTENTS

EXECUTIVE SUMMARY	2
CHAPTER 1: INTRODUCTION AND APPROACH.....	4
CHAPTER 2: BACKGROUND: ACCESS TO JUSTICE IN WAR-TIMES AND LATEST DEVELOPMENTS OF THE UKRAINE MEDIATION COMMUNITY	6
1. Status Quo	6
1.1 Judicial System In War Time.....	6
1.2 Professional Community of Mediators	8
2. Response to War Times	10
CHAPTER 3: MEDIATION NEEDS ASSESSMENT SURVEY IN UKRAINE: SUMMARY OF RESULTS	12
Section 1. Introduction	12
Section 2. Needs of Mediators and Mediation in Ukraine	14
Section 3. Mediators of Ukraine. The View of Representatives of Other Professions.....	21
Section 4. Conflicts (Disputes).....	23
Section 5. Mediation in Ukraine. Status Quo and Prospects for Development.....	25
CHAPTER 4: RECOMMENDATIONS	30
Addressing Mediators' Needs Professional Development.....	30
Mediation Awareness	32
Increasing Demand for Mediation	34
Access to Mediation	37
Online Mediation.....	39
Further Development of Quality Assurance of Mediation	40
Further Development of Regulatory Framework for Mediation.....	41

EXECUTIVE SUMMARY

The USAID Justice for All Activity is advancing Ukraine's self-reliance by building the commitment and capacity of the government and other justice system stakeholders to lead judicial reform and deliver people-centered justice. In this regard, the Activity looks to support the justice system to refocus its approach to deliver meaningful progress towards justice for all by improving justice journeys from problem to resolution, empowering people and communities so they can act when legal problems and justice needs arise, expanding access to responsive justice services, offering alternative pathways to justice, and ensuring fair outcomes that are appropriate and meet human rights standards.

Pursuant to Objective 2 of the USAID Justice for All Activity, namely to enhance the accessibility and quality of people-centered justice services and multiple pathways to justice, (Expected Result 2.4: Accessibility and Quality of Alternative Dispute Resolution Mechanisms, Including Commercial Arbitration, Improved), J4A set up a project to support the Ukrainian mediators' community by conducting a mediation needs assessment and preparation of recommendations to strengthen mediators' capability to provide high-quality services in post-war times.

In terms of background, the Russian invasion of Ukraine disrupted the judicial system immensely, and to a greater extent in occupied and attacked territories. Ukraine experienced destroyed court premises, a lack of personnel, a cyber-attacked court IT system, and a judgments registry. The consequences included limited access to justice, paused court proceedings, and the inability of parties to reach courts due to safety reasons. Further, at the time of writing, some occupied territories have been liberated, and some people, who fled their homes, are coming back. Rebuilding activities after the war, the return migration of refugees, and post-conflict rural and urban migration all required an integrated, needs-based, strategic, and comprehensive approach that engages the government, parliament, judiciary, and civil society.

Ukrainian mediators face several challenges arising out of Russia's war against Ukraine, including the lack of a comprehensive plan of peacebuilding in a post-conflict country. The professional mediators' community of Ukraine, which was growing before the war, seems to have dispersed, with many fleeing from war while trying to maintain the ties and abilities to provide mediation services. At the same time, the ongoing problems of mediation in Ukraine – lack of demand due to low awareness of the Ukrainian society – have remained, constraining the potential of mediation in providing access to justice as a viable alternative or supplement to judicial dispute resolution. Moreover, the war-related problems of the national judicial system have emphasized the long-standing ones – limited capabilities of online court proceedings, lack of resources within the courts, and the undeveloped system of cooperation between courts and professionals in alternative dispute resolution, namely, mediation practitioners.

This project adopts a mixed-mode approach which involved the expert group undertaking activities including identifying and collating existing resources in both English and Ukrainian languages from completed or current projects related to mediation, access to justice, and dispute resolution; identifying common themes emerging from these resources; and designing, distributing and collating responses for a needs assessment questionnaire to significant mediation stakeholders, including representatives of the Ministry of Justice of Ukraine (MoJ), free legal aid providers, lawyers, judges, mediators, civil society representatives, and others; and developing recommendations to support the MoJ and mediators in developing a Roadmap to address post-war recovery challenges.

The project developed 18 recommendations regarding mediators' professional development, including designing and implementing specialized training to address specific consequences of wartime that affect disputants and mediators such as: how to deal with psychologically and emotionally traumatized disputants, violent disputants, mediator's stress management skills and techniques, conflict-coaching skills, co-mediation, management of conflict escalation, techniques of transformative mediation, various communication styles; mediation awareness; increasing demand for mediation; access to mediation; online mediation; further development of quality assurance of mediation, and further development of a regulatory framework for mediation, including reviewing Ukrainian mediation law to achieve harmonization with international instruments such as the Singapore Convention on Mediation and develop a direct enforcement (and recognition) mechanism for mediated settlement agreements. Central and local governments, lawyers, and disputants should also be incentivized to encourage the use of mediation. This includes regulatory incentives, by integrating mediation into the justice system, requiring mediation clauses in certain types of contracts, and the availability of mediation funding and pro bono mediation. More resources should also be made readily available, including a digital review digest of mediators, and standard pre-mediation protocols. Mediators' competencies in certain specialized areas including tax, divorce, and family-related issues and commercial matters should also be enhanced.

CHAPTER I: INTRODUCTION AND APPROACH

To achieve the overarching goal, J4A is building upon previous USAID New Justice Program achievements setting up the project to support the Ukrainian mediators' community and stakeholders to strengthen institutional capacity to deal with post-conflict peace and consensus-building processes.

The scope of work involved the engagement of international and national experts in designing and conducting a comprehensive needs assessment and making recommendations for the relevant stakeholders on how to improve their capacity in the post-war peacebuilding process. The appointed experts for this assignment are Ales Zalar (lead of the experts' group), Nadja Alexander, Luiza Romanadze, and Nataliia Mazaraki. Together they designed the methodology for the needs assessment, collected and analyzed feedback from respondents, and developed recommendations based on assessment results.

For this project, a mixed-mode approach was adopted, which allowed for the collection of data and feedback in a short period of time. It was considered that such an approach would generate the most accurate and optimal results (i.e., recommendations) considering the very real constraints of time and also access to mediators and other stakeholders during wartime conditions.

Accordingly, the expert group resolved the following approach:

- Identify and collate existing resources in both English and Ukrainian languages from completed or current projects related to mediation, access to justice and dispute resolution. These resources included the *MoJ Monitoring Report* and other resources listed below;
- Identify common themes emerging from these resources;
- Informed by the above, design (with rigorous review) a needs assessment questionnaire (available in English and Ukrainian languages);
- Identify an extensive list of potential respondents for the needs assessment;
- Distribute the needs assessment questionnaire to mediation stakeholders, including representatives of the MoJ, free legal aid providers, lawyers, judges, mediators, civil society representatives, and others. Stakeholders both in and outside Ukraine were surveyed;
- Collect and collate responses and analyze respondent feedback;
- Develop recommendations to support the MoJ and mediators in developing a Roadmap to address post-war recovery challenges;
- Prepare and submit a report including a summary of the needs assessment and the recommendations.

The results of the needs assessment will be presented to the MoJ, mediators, donors' organizations, and other stakeholders.

List of Main Documents Consulted

MoJ, 'Monitoring Report, Analysis of the Free Legal Aid System Operations in the Context of Implementing the Law of Ukraine on Mediation' (2020).

Bert Maan, Remco van Rhee, Luiza Romanadze, Aliana Serhieieva, Svitlana Sergeyeva, Volodymyr Rodchenko, 'Mediation Gap Analysis Report' (EU-funded Project PRAVO-Justice, 2020).

Info Sapiens Int LLC, Right to Protection, Relationship Practices, Conflicts, and Trigger Themes among Ukrainian IDPs and Host Communities as well as Returnees and Home Communities (2022).

Right to Protection "Key Research Findings and Recommendations Regarding Implementation of Social Cohesion Activities in Ukraine" (2022).

Ales Zalar, Tetiana Tsvina, Alina Serhieieva. "Comprehensive Analyses of Current Context, Barriers and Opportunities for Developing Mediation with Recommendations How to Promote and Implement Mediation in Ukraine" (USAID New Justice Program) (2019).

CHAPTER 2: BACKGROUND: ACCESS TO JUSTICE IN WAR-TIMES AND LATEST DEVELOPMENTS OF THE UKRAINE MEDIATION COMMUNITY

The Russian invasion of Ukraine disrupted the judicial system immensely with destroyed court premises, lack of personnel, and the court IT system and judgements registry experiencing cyber-attacks.

As a result, access to justice has suffered in various ways including paused court proceedings and inability of parties to reach courts safely. Access to justice has been further affected by the impoverishment of Ukrainian people because of losing jobs and businesses, massive migration, and limited access to personal documents etc. Since the war began on February 24, 2022, Russia's troops caused widespread physical, moral, and social destruction of urban and rural environments throughout the regions of Ukraine.

As some Ukrainians return to their communities, an integrated and holistic approach is needed for rebuilding activities, the return migration of refugees, and post-conflict rural and urban migration.

In terms of mediation, the professional community of mediators in Ukraine faces unique challenges arising out of Russia's war against Ukraine, including the lack of a comprehensive plan of peacebuilding based on a detailed needs assessment to identify the gaps and how to address them.

Moreover, the war-related problems of the national judicial system have emphasized the long-standing ones – limited capabilities of online court proceedings, lack of resources within the courts, and the undeveloped system of cooperation between courts and alternative dispute resolution, namely, mediation.

The professional mediators' community of Ukraine, which was growing before the war, seems to have dispersed, with many fleeing from war while trying to maintain the ties and abilities to provide mediation services. At the same time, the ongoing problems of mediation in Ukraine – lack of demand due to low awareness of the Ukrainian society – have remained, constraining the potential of mediation in providing access to justice as a viable alternative or supplement to judicial dispute resolution¹.

The rest of this chapter provides greater details about the status quo of 1) the judicial system in war time and 2) the professional community of mediators.

I. STATUS QUO

I.1 JUDICIAL SYSTEM IN WAR TIME

The full-scale invasion in Ukraine in February 2022 put the court system in a great turmoil causing limited abilities to deliver justice and to address the needs of socioeconomically challenged parties due to:

- court system disruption. As of March 2023, 119 courts are not functioning due to the aggression of Russia, 47 courts are located on the uncontrolled territory, 32 court

¹ L Romanadze, 'Mediation in Post-War Restoration in Ukraine' 2022 4-2 (17) Special Issue Access to Justice in Eastern Europe 202-217. <https://doi.org/10.33327/AJEE-18-5.4-n000432>

- buildings are destroyed. The other part is in the area of active hostilities, and it is also impossible to safely conduct legal proceedings there.;²
- safety reasons due to regular air attacks by Russian armed forces;³
 - lack of human resources. For example, some part of court staff has enrolled to the Ukrainian Armed Forces or took part in volunteering, some – has to change the place of living due to the security reasons;⁴
 - significant underfunding of the judicial system, related to the critically low level of court fee revenues, which amounted to 15% of last year's figures;⁵
 - new load of cases related to war and military crimes, as well as crimes against the foundations of Ukraine's national security. There was also a need for judges to undergo special trainings on international humanitarian law and recent amendments to criminal material and procedural law;
 - delays of court proceedings due to changes in the court's jurisdiction. As of April 2023, the territorial jurisdiction of 119 courts has been changed according to part 7 Art. 147 Law of Ukraine "On the Judiciary and the Status of Judges".⁶ The massive changes in the court's jurisdictions led to significant delays in court proceedings;
 - migration of judges to other regions (mostly Western Ukraine) or abroad for safety reasons of their families, which led to an accumulation of non-resolved cases.
 - during the first months of the war the State judicial administration of Ukraine had to restrict access to its core online services⁷ to protect them from cyber-attacks⁸ and that led to further accumulation of non-resolved disputes and delayed proceedings.

Moreover, the access to justice for Ukrainian people was hampered due to the massive migration, impoverishment due to losing homes, jobs and businesses and related difficulties to adequately represent themselves in court. Also, the great part of Ukrainian society has appeared to be unable to participate in court proceedings because of mobilization or taking part in the functioning of Ukraine's critical infrastructure⁹.

² How the judicial system works during the war. An interview with the Chief Justice of the Supreme Court, 23 March 2023 < <https://susplne.media/220869-ak-pracue-sudova-sistema-pid-cas-vijni-intervu-iz-golovou-verhovnogo-sudu/> >

³ "Господарський Суд Миколаївської Облaсті, який був по одній адресі з Миколаївською ОДА, зазнав удару" (*Судово-юридична газета*, March 29, 2022) <<https://sud.ua/ru/news/ukraine/233450-gospodarskiy-sud-mikolayivskoyi-oblasti-yakiy-buv-po-odniy-adresi-z-mikolayivskoyu-oda-zaznav-udaru>>;

DeJure recommendations on administering justice in martial law (The DEJURE Foundation, 2022) <<https://drive.google.com/file/d/1DBt1VcD27a5S2higc0vHNPunkoY9SBL0/view>>

⁴ "Голова Верховного Суду обговорив із суддями нагальні проблеми системи правосуддя, що виникли під час війни" (State court administration, 7 June 2022) < <https://dsa.court.gov.ua/dsa/pres-centr/news/1281822/> >

⁵ "Найболючіші питання для судової системи – це доля суддів на окупованих територіях і судів, приміщення яких зруйновані" (Ukrainian judiciary, 2022) <<https://supreme.court.gov.ua/supreme/pres-centr/news/1286273/>> accessed 22 August 2022

⁶ Law of Ukraine "On the Judiciary and the Status of Judges" [2016] Vidomosti of the Verkhovna Rada 31/545 < <https://zakon.rada.gov.ua/laws/show/1402-19?lang=uk#n1452>>;
ibid, An interview with the Chief Justice of the Supreme Court (n 2)

⁷ Operative monitoring of justice (the Ministry of Justice of Ukraine, 2022) < https://minjust.gov.ua/files/general/2022/07/15/20220715134043-37.pdf?fbclid=IwAR2Yez6Iu6nCX5dn89LRCq2wZLj7HPbw_0lubwqzF4ihqB2xqwI5mBy4Lio >

⁸ «ДСА України повідомила про відновлення роботи сервісу "Список справ, призначених до розгляду» (State court administration, 7 June 2022) < <https://dsa.court.gov.ua/dsa/pres-centr/news/1264802/> >

⁹ ibid, Operative monitoring of justice

The war-related problems of the national judicial system have emphasized the long-lasting ones – limited capabilities of online court proceedings and e-justice,¹⁰ lack of resources within the judicial system, the undeveloped system of cooperation among court system and mediators, and low awareness of the Ukrainian society about the mediation as an alternative dispute resolution method.

The Covid-19 pandemic and overall digitalization of Ukraine have greatly added to the development of e-justice -- online participation in court proceedings for parties and developing functionality of online services. Though the Ukrainian procedural legislation does not allow judges to hold court proceedings (including in videoconferencing mode) outside the court premises (courtrooms), the secretaries of court meetings are obliged to be present on the site as well. Part 8 of Art. 11 of the Law of Ukraine "On the Judiciary and the Status of Judges"¹¹ contains the imperative requirement that court hearings are held exclusively in a courtroom equipped for this purpose -- a meeting hall, which is suitable for accommodating the parties and other participants in the judicial process and enables them to exercise their procedural rights and perform procedural duties. Also, Ukrainian legislation precludes judges from distant proceedings by way of a written procedure and using e-signatures for court judgments.

In these circumstances, mediation could have addressed some concerns related to the shortcomings of the judicial system, especially if there had been more effective cooperation between mediators and courts, and more initiatives to increase awareness in Ukrainian society of mediation to give momentum to the emerging culture of settling disputes by mediation.

Moreover, it was expected (and the survey results in Chapter 4 confirm) that the workload of inheritance and family cases would drastically increase among Ukrainians as the inevitable consequence of human losses and migration. These kinds of disputes – among heirs, divorcing spouses over their children and property, disputes regarding children taken abroad under a simplified procedure in order to ensure their safety, disputes over debts, labor disputes, business relocation, and corporate issues disputes – are most suitable for mediation and this underlines the necessity to establish the cooperation of courts and mediators in order to direct the flows of disputing parties to a venue, where they may find a viable option for effective dispute resolution.

1.2 PROFESSIONAL COMMUNITY OF MEDIATORS

Just before the Russian invasion the Ukrainian mediators' community was on the rise, gaining momentum from:

- nearly 30 years history of development, that resulted in **structured and developed mediation centers and mediation trainings centers** all over Ukraine. In 2018 N. Mazaraki argued the mediation in Ukraine has already constituted a social and legal institute,¹² with its own organizational structure, ethics rules, continuous growth of mediators' numbers and mediation spheres. Definitely, the consistent mediators' community has made its effective contribution in national law-making processes and developing its own self-regulation;
- the long-awaited **Law of Ukraine on Mediation**,¹³ that was adopted in November 2021. The concept and text of the law has been praised by the Ukrainian mediators'

¹⁰ See Maika M 'The Implementation of E-justice within the Framework of the Right to a Fair Trial in Ukraine: Problems and Prospects' 2022 3(15) Access to Justice in Eastern Europe. DOI: <https://doi.org/10.33327/AJEE-18-5.2-n000320>

¹¹ *ibid*, Law of Ukraine "On the Judiciary and the Status of Judges" (n 6)

¹² N Mazaraki, 'Mediation in Ukraine as a Social and Legal Institute' (2018) Law Rev Kyiv UL 169

¹³ Law of Ukraine "On Mediation" [2021] Vidomosti of the Verkhovna Rada 7/51 <<https://zakon.rada.gov.ua/laws/show/1875-20#Text>> 2

community and foreign experts for providing minimum regulation and needed flexibility; and by academics, for adherence to international mediation standards and a well-balanced approach to meet the interest of all stakeholders.¹⁴ The absence of a legal framework for mediation in Ukraine used to be mentioned as the obstacle for development of mediation and building trust in this dispute resolution method among Ukrainian society;

- **the Code of Professional Ethics of the Mediator**,¹⁵ created by the broad Ukrainian mediators' community representing different mediators' organizations. The document had been long and thoroughly discussed and developed with the aim to set the reference points of ethics and quality standards both for mediators and mediation parties;
- **The General Principles of Training Basic Mediator Skills**,¹⁶ developed by the broader mediators' community (representing the greater part of mediation trainings centers) in order to set high standards of mediator's training. The Ukrainian mediation centers engaged in training family mediators and developed **the Principles of Training Basic Family Mediator Skills**,¹⁷ based on the national and foreign experience of family mediation;
- Extensive experience **in school mediation programs**¹⁸ conducted in different regions, however pilot programs and experiments have not gained a national-scale effect of creating a peaceful school environment, partially because of war.
- **A draft complaint handling procedure for breaches of mediator's ethics and draft mediation rules** are on its way to finalization by the expert group within the project "MATRA. Strengthening the voice of mediators for quality services on dispute resolutions for communities in Ukraine" implemented by the National Association of Mediators of Ukraine;
- a set of recommendations and guidelines "Domestic Violence. How to Act as a Family Mediator" has been developed by the Association of Family Mediators of Ukraine¹⁹;
- **Commentary to the Law of Ukraine "On Mediation"** is being prepared within the EU-funded Pravo-Justice project;
- the European Bank for Reconstruction and Development (EBRD) has launched a **pilot project to assist Ukraine in the development of online courts for small claims**;
- in November 2021 the National Association of Mediators of Ukraine has adopted **the Recommendations for mediators regarding the preparation and conduct of online**

¹⁴ T Tsvina, T Vakhonieva 'Law of Ukraine 'On Mediation': Main Achievements and Further Steps of Developing Mediation in Ukraine' 2022 1(13) Access to Justice in Eastern Europe 142-153. DOI: <https://doi.org/10.33327/AJEE-18-5.1-n000104>

¹⁵ The Code of Professional ethics of mediator (non-governmental organization "National Association of Mediators of Ukraine", 19 February 2022) <<http://namu.com.ua/ua/info/mediators/nseyenf-yekhyny-pyeeakhsua/>> 2

¹⁶ The General principles of training basic mediator skills (non-governmental organization "National Association of Mediators of Ukraine", 02 September 2019) <<http://namu.com.ua/ua/info/mediators/sfrsvrk-iafaey-ravarrya-baisvyp-ravynap-pyeeakhsua/>> 2

¹⁷ The Principles of training basic family mediator skills (non-governmental organization the Association of Family mediators, 03 June 2020) <<http://afmu.org.ua/for-mediators/zasady-navchannya-osnovam-simeynoyi-mediatcii/>>

¹⁸ All-Ukrainian experiment "Formation of humanistic relations between participants of the educational process through the implementation of the Peaceful School model for 2019-2022" approved by the Order of the Ministry of Education and Science of Ukraine #1368, dated 01.11.2019;

"Peaceful school" project implemented by the Institute for Peace and Common Ground <https://safeschools.com.ua>;

The project "Establishing and Supporting Educational Systems for Preventing and Responding to Violence and Implementing Peer Mediation in the Conflict-Affected Eastern Regions of Ukraine" implemented by La Strada Ukraine and the United Nations Children's Fund (UNICEF) with the financial support of the European Union and the Government of Japan <https://www.unicef.org/ukraine/media/5206/file/mediation%20skills.pdf>

¹⁹ Domestic Violence. How to Act as a Family Mediator. The Association of the Family Mediators of Ukraine <http://afmu.org.ua/for-mediators/dom-nasylstvo/>

- mediation** as the mediation community response to the COVID-19 pandemic (revised by the Working Group “ODR in Ukraine” within the National Association of Mediators of Ukraine);
- under USAID New Justice program, **the online platform “Solution Finder”** (<https://poshuk-rishen.it-artel.ua:88/wab/>) has been launched to assist parties in submitting court documents and to inform parties about mediation;
 - **free legal aid system**: since October 2022 the government-supported program of mediation in criminal cases involving minors has been launched by Coordination Center for Legal Aid Provision and State Institution "Probation Center"²⁰; an active volunteer mediators’ project of promoting mediation for family and inheritance disputes. In January 2023 based on the results of the competitive selection, 38 mediators were included in the Register of mediators engaged by free secondary legal aid centers²¹;
 - the EU funded Pravo-Justice has published **the Draft report "Mediation in civil and commercial cases"** aimed to possible variants of implementation of mandatory mediation information-assessment meetings;
 - **mediation as a basic social service** has achieved certain popularity, in accordance with the Law of Ukraine “On Mediation” a draft of relevant governmental regulation is to be approved by the Ministry of Social Policy of Ukraine.

2. RESPONSE TO WAR TIMES

After the Russian invasion the mediators’ community of Ukraine has been dispersed, along with millions of Ukrainians, fleeing from war. Both the mediators and their perspective clients left their permanent places of life and work, thus respectively losing jobs and opportunities to solve the disputes.

During the first months of the full-scale russia’s aggression, the specialized platform was created. The dedicated platform seemed a viable solution and the website <www.mediation-help.com>²² has been developed to provide information support to the Ukrainians, who, while being abroad, fall into various conflict situations, as well as to support Ukrainian mediators, whose experience and skills may be useful in a constructive settlement of conflicts and disputes, and to promote greater interaction between mediators and expand the network of mediators.

This platform jointly with the platform <www.mediators.com.ua> contains an inter-organizational registry of mediators as an instrument used by courts and governmental agencies to inform about mediation and provide a route to find a mediator.

A number of **initiatives for internally displaced persons** have been launched on territories where people fleeing from war temporarily reside. There are mobile groups that include mediators to help people settle their disputes and conflicts²³.

²⁰ On the implementation of the pilot project "Recovery Program for Minors Suspected of Committing a Criminal Offense". The Order of the Ministry of Justice of Ukraine and the Prosecutor-General Office №172/5/10 dated 21.01.2019 <https://zakon.rada.gov.ua/laws/show/z0087-19#Text> ;

How the free legal aid system implements the "Recovery Program for Minors Suspected of Committing a Criminal Offense" under martial law <https://minjust.gov.ua/news/ministry/yak-sistema-bpd-realizue-programu-vidnovlennya-dlya-nepovnitnih-yaki-e-pidozryuvanimi-u-vchinenni-kriminalnogo-pravoporushennya-v-umovah-voennogo-stanu>

²¹ 38 mediators passed the first competitive selection for cooperation with the free legal aid system <https://minjust.gov.ua/news/ministry/38-mediatoriv-proyshli-pershiy-konkursniy-vidbir-dlya-spivpratsi-z-sistemoyu-bpd>

²² This website was created and maintained with the financial support of the European Union within the Project “CONSENT” implemented by the PU “Ukrainian Academy of Mediation”.

²³ Project "Initiative to Support Interaction and Conflict Management in Places of Assistance to IDPs" <http://mg.national-platform.org>

A **number of educational initiatives for mediators** oriented on trauma-sensitive skills and self-psychological help²⁴. There are also several supportive groups among the mediators and for the mediators.

Response to massive migration of children. The EU-funded project “Consent” in partnership with The Ministry of Justice has devised and is spreading leaflets on **mediation in child-abduction cases**. The trainings for Ukrainian family mediators are planned with the support of the MIKK for these kinds of disputes.

This is not a full list of mediation initiatives that have been implemented as responses of war times, however, indicates the main initiatives.

It is also worth mentioning that the Russian invasion has hampered a number of important initiatives for further development of mediation in Ukraine:

- **Implementation of the Law of Ukraine “On mediation”** (approving the State standard for the provision of social service of mediation, amending the Tax Code of Ukraine to enable the taxation of mediators as self-employed persons, the inclusion of the mediator’s profession in the National Classification of Professions to set up a qualification framework for the mediator’s profession, etc.; amendments to the Criminal procedural code concerning the impossibility of the mediators’ interrogation);
- further development of mediation community (for example, establishing the Ethics council, etc.);
- ratification of the United Nations Convention on International Settlement Agreements Resulting from Mediation, signed by Ukraine in August 2019.

It should be mentioned that the Ukrainian mediators’ community has certain experience in cooperating with courts in enhancing access to mediation through numerous pilot projects (predominantly financed by foreign donor organizations), judges and judicial staff trainings etc.²⁵ Again, Ukrainian mediators have had extensive experience in cooperation with Centers for free legal aid and state social services providing mediation for socio-economically challenged parties.

It may be concluded that the Ukrainian mediators’ community has all the preconditions and capacity to effectively collaborate with courts, providing online and offline mediation services, taking off some part of courts’ workload, and helping Ukrainians to resolve their disputes and maintain relationships.

²⁴ In 2022, Mediation without Borders conducted training on Trauma Informed Peacebuilding in partnership with the National Association of Mediators of Ukraine <https://mediatorsbeyondborders.org/mbbi-partnership-with-namu-press-release/>

²⁵ Mediation Gap Analysis Report (The EU-funded Project parvo-Justice), 2020 <https://www.pravojustice.eu/storage/app/uploads/public/5f7/435/116/5f743511604ec221015187.pdf>

CHAPTER 3: MEDIATION NEEDS ASSESSMENT SURVEY IN UKRAINE: SUMMARY OF RESULTS

SECTION I. INTRODUCTION

Within the framework of the United States Agency for International Development (USAID) Justice for All Program, a Mediation Needs Assessment survey had been carried out in the period from February 1, 2023, to February 15, 2023.

The survey was designed to identify the needs in the field of mediation in Ukraine during the wartime and post-war periods to ensure an appropriate response to challenges facing society with the help of mediation and facilitate the improvement of the public's access to justice.

In this document, the numbering of the questionnaire is preserved.

The survey reached out to the representatives of:

- government authorities (the Ministry of Justice of Ukraine, Ministry of Social Policy of Ukraine);
- judicial bodies (members and staff of the High Council of Justice, members of the Council of Judges of Ukraine, judges and court officials of trial courts and courts of appeals, representatives of the State Judicial Administration of Ukraine and National School of Judges of Ukraine);
- free legal aid systems;
- mediators and Ukrainian associations of mediators;
- attorneys and self-governance bodies thereof;
- notaries and the Notary Chamber of Ukraine;
- the Ukrainian Chamber of Commerce and Industry;
- the International Commercial Arbitration Court;
- academic institutions;
- human rights organizations, etc.

To collect data, the CAWI (Computer Assisted WebInterviewing) method when a respondent fills out an online questionnaire was used. We relied on the Google Forms web platform for online surveys.

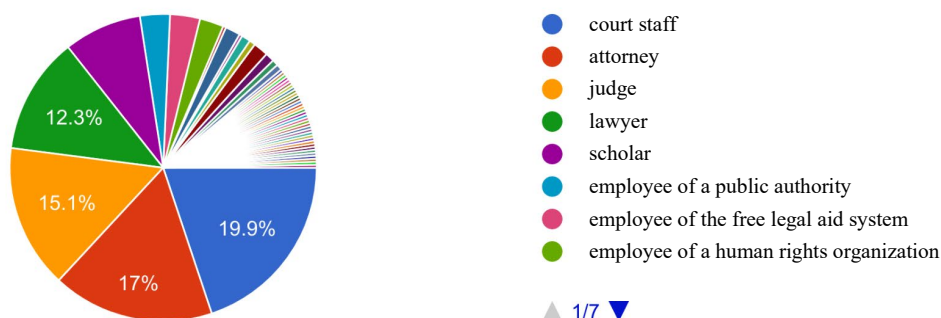
In general, in view of the expeditiousness of the survey, analysis of respondents' answers allows deeming the collected data reliable enough to achieve the goals of the survey.

317 respondents – representatives of various professions – participated in the survey. Among them were:

- 63 court staff (19.9% of respondents);
- 48 judges (15.1%);
- 54 attorneys (17%),
- 39 lawyers (12.3%),
- 26 scholars (8.2%),
- 10 employees of public authorities (3.2%),
- 10 employees of the free legal aid system (3.2%),
- 8 employees of a human rights organization (2.5%),
- 5 notaries (1.6%), and
- 150 mediators (47.3%).

1. Please indicate your main profession.

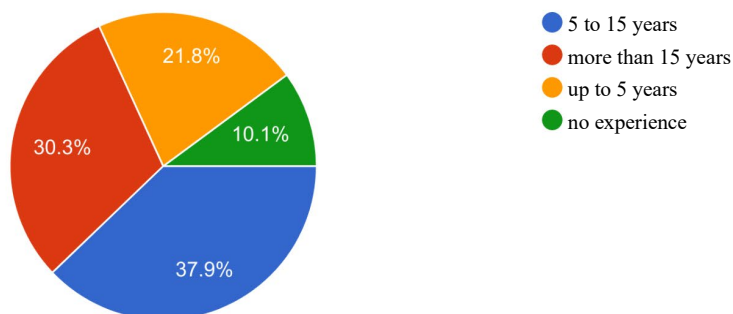
317 responses



The professional experience of most respondents (**68.2%**) was **over 5 years**.

2. Evaluate your professional experience.

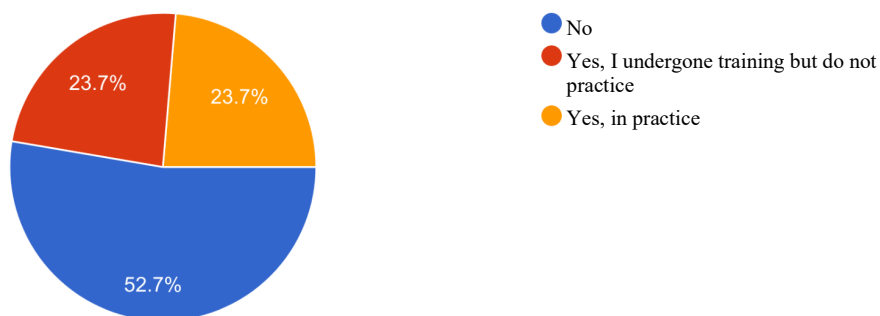
317 responses



The questionnaire placed a special focus on interviewing mediators. Among them, **23.7%** were practicing mediators who had undergone relevant training, while another **23.7%** did not practice mediation. This allowed assessing the whole range of needs for training mediators, developing mediation, carrying out mediation, etc.

3. Are you a mediator?

317 responses



ANALYSIS OF NEEDS ASSESSMENT RESULTS:

The logic behind the design of the questionnaire is determined by the objectives of the survey. The answers to the questions allowed getting an idea of the vision of mediators and representatives of other professions regarding:

- the possibility of carrying out mediation in wartime and post-war times;
- war-inflicted challenges facing mediators in their professional activity;
- the change of approaches to mediation after the outbreak of the full-scale war;
- channels of raising public awareness of mediation;
- the perception of lawyers and representatives of public authorities of the procedure for mediation and mediators as professionals;
- the role of the judiciary and other public authorities in increasing the demand for mediation;
- possible incentives offered by the state to encourage resorting to mediation;
- the status of the development of the mediators' community in Ukraine;
- factors limiting the development of mediation;
- types of conflicts and disputes that have become widespread in wartime and will predictably increase in post-war times;
- mediators' needs for additional knowledge and skills in view of wartime and post-war times;
- psychological and emotional condition of mediators; and
- essential improvements in the field of mediation.

The questionnaire consists of two blocks of questions:

The first block is intended for mediators and contains questions to assess the current status and needs of the mediators' community in Ukraine in wartime and post-war times; the second block is designed for the representatives of other professions to learn their attitude towards mediation and mediators.

SECTION 2. NEEDS OF MEDIATORS AND MEDIATION IN UKRAINE

2.1. DIFFICULTIES MEDIATORS FACED IN THEIR PROFESSIONAL ACTIVITIES AFTER THE OUTBREAK OF A FULL-SCALE WAR

According to mediators, with the outbreak of a full-scale war old problems have become more acute (lack of demand for services, and difficulties with the acquisition of practical experience after training) while the new ones, inflicted by the war, have arisen (change of the priorities of society: the top priority is to ensure security; deterioration of financial status and psychological and emotional condition, unstable power supply, increase in the level of conflict, etc.).

Respondents' answers to this question can be disaggregated by the following groups:

- **Difficulties related to the change of people's priorities and a decrease in demand for mediation.** Respondents reported a decrease in requests for mediation and a number of clients and a change of priorities of public authorities and international organizations that used to support mediation development projects more actively before the war.

Respondents give the following reasons for a decrease in demand for mediation:

- postponement of dispute resolution to post-war times, since "it's not the time for mediation";
- "Clients are mostly focused on addressing urgent issues of survival, and some issues that could be a subject of mediation are not relevant for them at the moment",
- the shift of "priority of potential clients to expeditious actions and results as

- compared to lengthy practices (mediation and dialogue)”,
 - deterioration of the financial status of parties also limits the number of resorts to a mediator, and
 - the low level of public awareness of mediation as a factor that significantly limits the demand for mediation.
- **Difficulties related to the psychological and emotional condition of parties to a conflict:** emotional arousal, depressed psychological and emotional conditions caused by long-term exposure to a stressful situation.

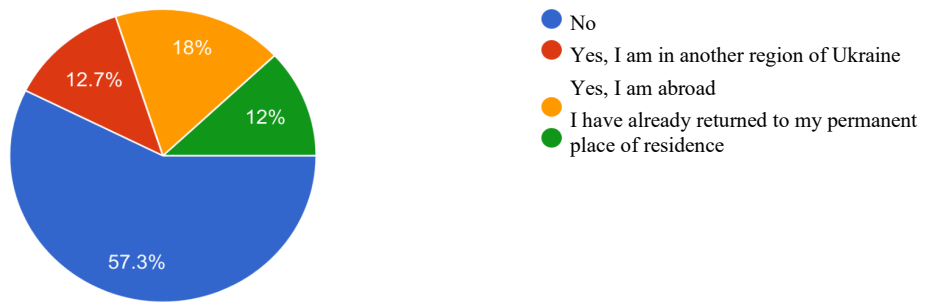
Respondents identified the following difficulties:

- “participants are more tensed emotionally”;
 - “unstable emotional condition”;
 - “reduced activity of participants due to the condition of uncertainty”;
 - “increased sensitivity to triggers”;
 - “suspiciousness or apathy – more efforts are required to keep the balance of efforts and build communication”;
 - “parties either do not compromise, or accept different proposals of another party too easily, which requires a mediator to take more care to observe the principles of free will, self-determination, and feasibility of meeting agreements”.
- **Difficulties related to the organization and carrying out mediation due to the issues of safety:**
 - unstable power supply;
 - relocation of a mediator and/or parties to mediation; and
 - insufficient skills in online mediation.
- **Difficulties related to the decrease in the working capacity of mediators due to a stressful situation, psychological and emotional exhaustion, and difficulty to maintain neutrality.** Thus, respondents report that:
 - “I, as a mediator, get tired faster, need more time to recreate after holding mediation meetings or preparing for them”;
 - “There have been more cases where it is difficult to maintain neutrality due to personal engagement in general emotions of the nation related to the war”; and
 - they feel they are “not ready to work with the parties who are traumatized by the war, and that they have a low level of stress resistance”.
- **Difficulties related to the change of mediator’s place of residence, namely:**
 - loss of clients; and
 - language and logistics barriers at a new place of residence.

2.2. CHANGE OF MEDIATORS’ PLACE OF RESIDENCE SINCE THE BEGINNING OF THE FULL-SCALE WAR

Has your place of residence changed since the beginning of the full-scale war?

317 responses



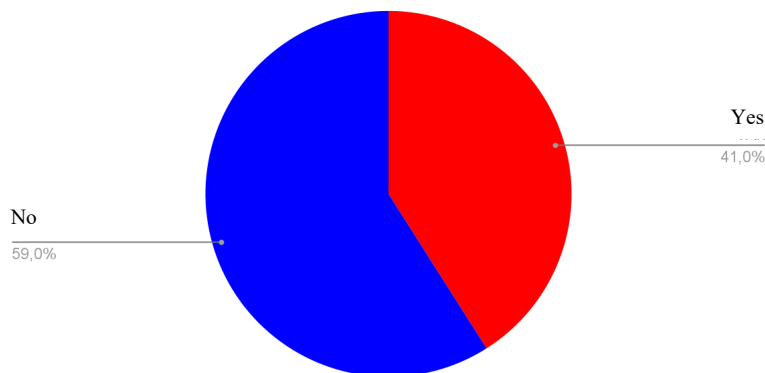
Survey results demonstrate that one-third of mediators are staying outside of their permanent place of residence (12.7% are in another region of Ukraine, and 18% are abroad), while 69.3% of respondents-mediators are currently in Ukraine. The stay of the vast majority of mediators in Ukraine demonstrates that there is still a potential for the community of mediators to further development of mediation in Ukraine.

2.3. MEDIATION PRACTICES AFTER THE OUTBREAK OF THE FULL-SCALE WAR

Survey results have demonstrated that despite the abovementioned difficulties and challenges, 41% of mediators continue to practice mediation. At the same time, the community of mediators has the potential for a broader application of mediation.

Besides, it should be noted that mediators who are staying abroad carry out mediations to regulate the disputes among Ukrainian refugees and disputes between Ukrainian refugees and local residents, and respond to challenges facing citizens who were forced to leave Ukraine fleeing from the war in a timely manner.

Do you conduct mediations after the outbreak of the full-scale war?



2.4. CHANGES OF APPROACHES TO MEDIATION

Survey results demonstrate that the war has brought about changes of approaches to mediation as manifested by:

- the need to focus on the psychological and emotional condition of parties, which has affected the dynamics of the mediation procedure. Thus, respondents underscore that “individual meetings with parties and pre-mediation are more time-consuming due to high emotionality of the parties”, “It takes more time to describe and articulate feelings of participants”, “it takes more time to work with emotions and use bodily practices”;
- the focus on the psychological and emotional trauma of parties, which requires a mediator to “take into account the vulnerability of parties”, “apply trauma-informed

- approaches”, and “use additional psychological skills and skills of working with a trauma”. Respondents report that they “take more care working with both their own and their clients’ emotions”, “there has been a need to pay more attention to resourcefulness and rehabilitation of people before starting to work with them”, and “it is necessary to take into account the specifics of psychological condition and traumatic experience”;
- increased time needs of mediators to recover after a mediation procedure, since the mediator is a participant in traumatic events and is influenced by them;
 - selective approach to cases, in particular, respondents report the “increased sensitivity to cases related to the disputes involving violence by one of the parties and I feel that I will not be able to work on a case where one of the parties is a person residing on the territory of the Russian Federation”, and “Realization of the impossibility to take on family cases (internal issues). Possibly, due to excessive emotionality of these cases”;
 - the application of approaches to work with clients who require support in resolving conflicts other than classic mediation by mediators. Respondents report that “something more like conflict-couching, information and assessment meetings with one or both parties take place more often, while a full-fledged mediation is becoming not that common”, “crisis intervention with elements of mediation”, and “it is more like consulting parties in turns based on mediator’s skills and following the principles and stages of mediation”;
 - online mediation; and
 - pro bono mediation due to the financial difficulties of mediation parties.

In their answers, respondents also note the **achievements** of mediators during wartime due to practical experience and additional training – “a better understanding of the psychological condition of a person”, “work with emotions has become more careful; there has been less fear to make a mistake and more creativeness”, and “a more clear understanding of cross-cultural specifics”.

2.5. THE FEELING OF INVOLVEMENT IN THE COMMUNITY OF MEDIATORS OF UKRAINE

Survey results demonstrate that the community of mediators of Ukraine has been able to maintain their cohesion in wartime. Thus, about **84%** of mediators feel that they are involved in the community.

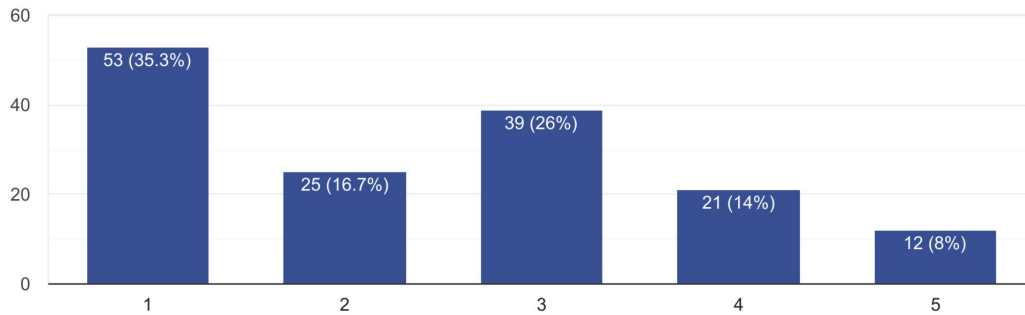
2.6. FORMS OF MEDIATORS’ INVOLVEMENT IN THE COMMUNITY

- **81.3%** of respondents participate in the events of the community of mediators,
- **58%** participate in discussions of mediation issues,
- **30%** participate in working groups,
- **12%** participate in developing policies/self-regulation mechanisms, and
- **45,3%** of respondents reported that they are members of associations of mediators.

Having analyzed these figures together with the answers regarding the involvement in the community of mediators of Ukraine (**84%**) it can be stated that the feeling of involvement in the community of mediators is developed not only on account of membership in associations of mediators but also due to participation in various events accessible for a wide group of mediators (debates, discussions, developing policies, etc.).

2.7. INVOLVEMENT IN THE ACTIVITIES OF THE MEDIATION COMMUNITY IN WARTIME

2.7. What is your involvement in the activities of the mediation community in wartime?
150 responses



For the most part, respondents assess the level of their involvement in the community of mediators of Ukraine as follows:

- 52% - less than average;
- a medium level of involvement as reported by 26% of mediators;
- above average – 22%.

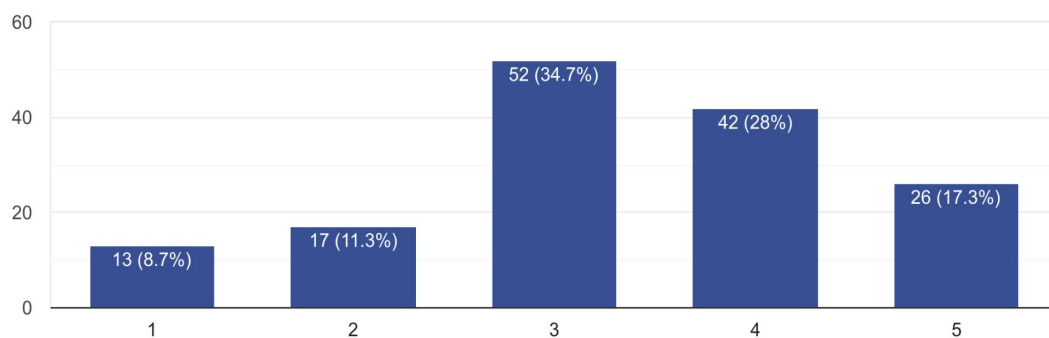
It can be assumed that such indicator of involvement at the stage of development of a mediator’s profession and mediation is quite natural, since for most mediators today, mediation is not their major occupation.

Another important factor that impacts the level of involvement in the community of mediators is that during wartime mediators have shifted their focus from the community of mediators to volunteer/humanitarian activities, some of them were forced to limit their activity due to relocation, the others – due to staying on the temporarily occupied territories.

2.8. SELF-ASSESSMENT OF THE LEVEL OF PROFESSIONAL TRAINING

2.8 How do you assess your professional training as a mediator?

150 responses



For the most part, respondents assessed the level of their professional training as follows:

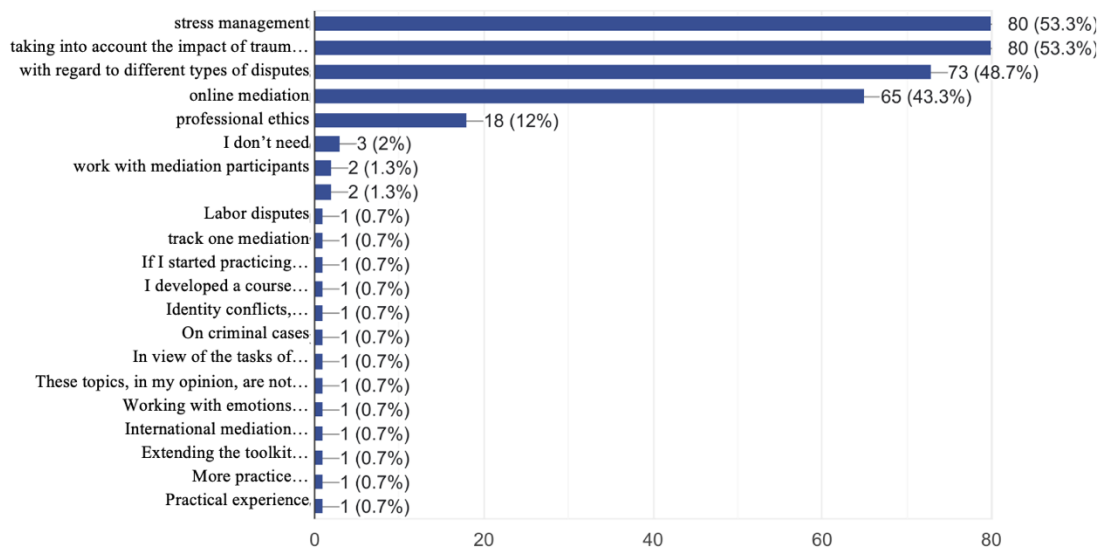
- average (34.7%); and
- above average (45.3%), which obviously demonstrates the quality of the mediator’s training.

At the same time, the realization of the need for improving their professional level by mediators is worth attention.

2.9. NEEDS FOR PROFESSIONAL DEVELOPMENT

2.9 What kind of professional development do you need? (Multiple options are available)

150 responses



Respondents indicated the following areas of professional development:

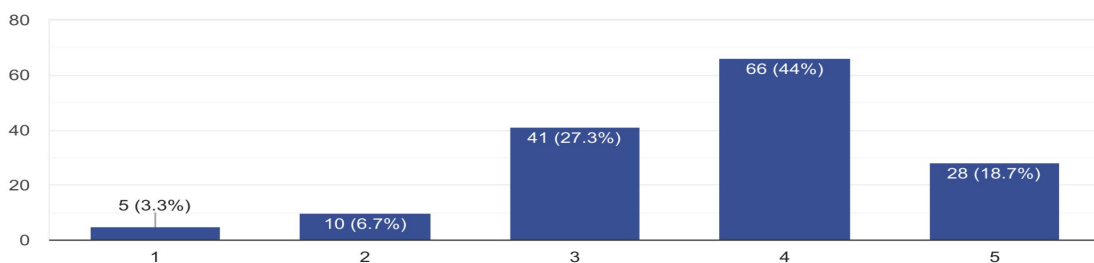
- stress management skills (53.3%),
- taking into account the impact of traumatic events and long-lasting stress in the mediator's work (53.3%),
- mediation in some types of disputes 48.7% (in particular, in criminal cases, labor disputes, and high-level political mediation),
- skills in online mediation (43.3%), and
- professional ethics (12%).

The given answers correlate with a preliminary assessment of changes in the professional activity of mediators and reflect the movement towards a purpose-driven improvement of the professional level taking into account new reality.

2.10. PSYCHOLOGICAL AND EMOTIONAL CONDITION OF MEDIATORS

2.10 How would you assess your psychological and emotional condition?

150 responses



Only **18.7%** of respondents are in an optimal psychological and emotional condition, which correlates with the abovementioned difficulties in the work of a mediator and forced changes of approaches to mediation.

Taking into account the specifics of the professional activity of mediators, such figures demonstrate the need to carry out events to provide psychological and emotional support to mediators to ensure restoring their resources.

The results reflect a psychological and emotional condition typical of all Ukrainian society.

2.11. THE NEED FOR ADDITIONAL SKILLS IN VIEW OF THE LIKELY CHANGE IN THE NATURE OF CONFLICTS (DISPUTES) IN THE POST-WAR PERIOD

Analysis of answers to this question demonstrates the correlation with the answers regarding the need to improve the professional level. Thus, respondents indicated the needs for:

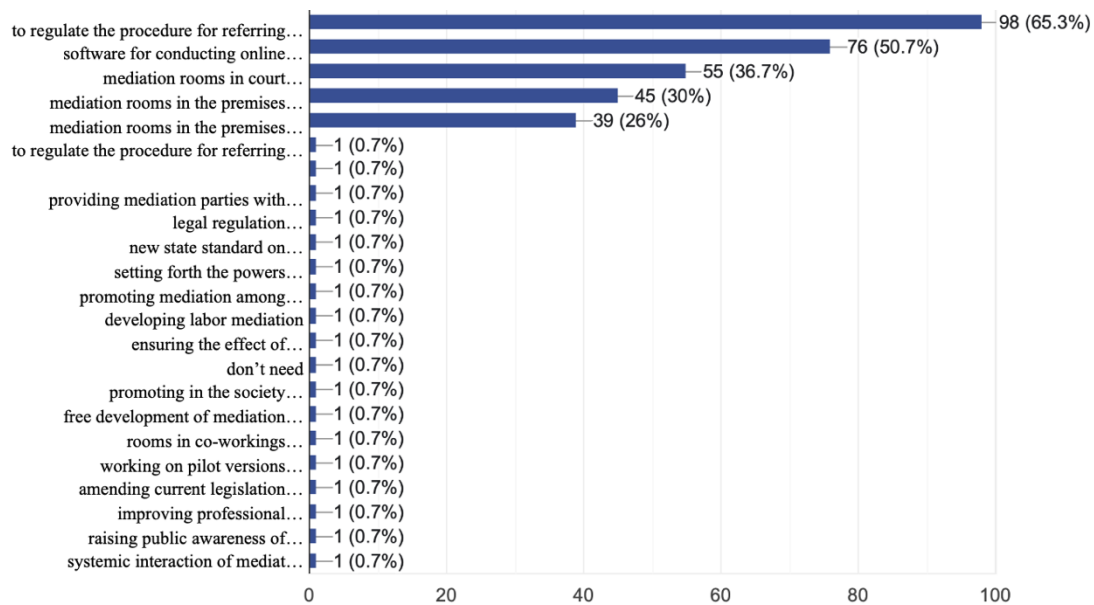
- psychological training, in particular working with trauma and stress: “skills of working with people traumatized by war”, “skills of working with post-stress conditions (aggression, insecurity, distrust, depression, etc.) of mediation participants”, and “work with acute reaction to traumatic events”;
- additional skills of working with emotions, both your own and mediation parties’ emotions. In particular, respondents reported “skills of managing negative emotions”, “anger management”, “emotion management”, and “skills of regulating emotionally intense conflicts”;
- skills of working with sensitive issues and new specific types of conflicts (disputes), including in cross-cultural conflicts (disputes), and conflicts involving servicemen (veterans). In particular, “the specifics of work on de-occupied territories”, “language conflicts”, “identity conflicts”, “peacebuilding”, “work with families where one of the participants is a combatant”, and “work with clients who are in danger”;
- supervision and intervision, including skills of holding them, namely “intervision meetings”, “possibility of obtaining supervision from a more experienced mediator”, and “skills of holding supervision and intervision”;
- mediator’s capability to take care of their own condition. A large number of respondents reported the need for ensuring stress resistance and the prevention of burning out – “mediator’s stress management”, “stress-resistance skills while working during air raid alerts and missile attacks”, “how not to lose your health and burn out at work”, and “working with exhaustion”;
- skills of holding mediation in some fields – family law, corporate, medical disputes, political mediation, skills of holding mediation involving children; and
- skills of holding online mediation.

Mediators also paid attention to the existing problem of obtaining practical experience (including working online) – “practice is needed”, “more online courses related to real-life cases”, “practice with colleagues”, and “practice with a more experienced mediator”.

2.12. ESSENTIAL IMPROVEMENTS IN THE FIELD OF MEDIATION

2.12 What improvements do you need in the field of mediation? (Multiple options are possible)

150 responses



Among the proposed options of essential improvements in the field of mediation, respondents indicated the following:

- to regulate the procedure for referring parties to a dispute to mediation (65.3%),
- software for conducting online mediation (50.7%),
- mediation rooms in court buildings (30%), and
- mediation rooms on the premises of local governments (26%).

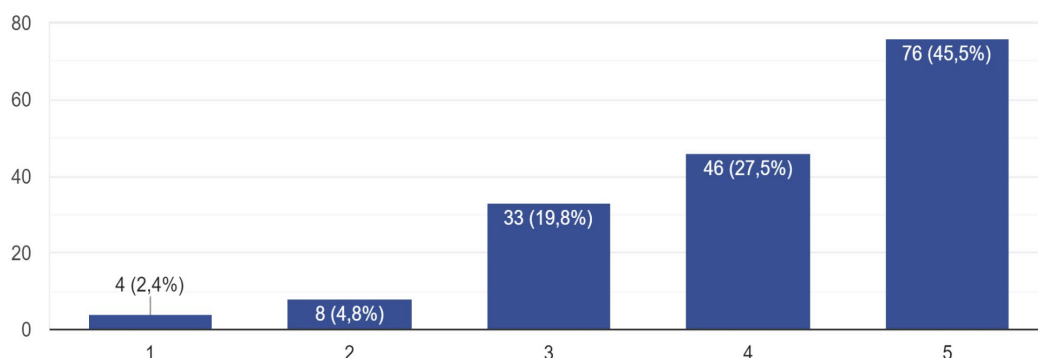
It can be concluded that respondents link the development of mediation with the coordination of efforts of mediators, judicial bodies, and local governments.

SECTION 3. MEDIATORS OF UKRAINE. THE VIEW OF REPRESENTATIVES OF OTHER PROFESSIONS

3.1. ATTITUDE OF REPRESENTATIVES OF LEGAL PROFESSIONS TO MEDIATION

3.1 What is your attitude to mediation?

167 responses



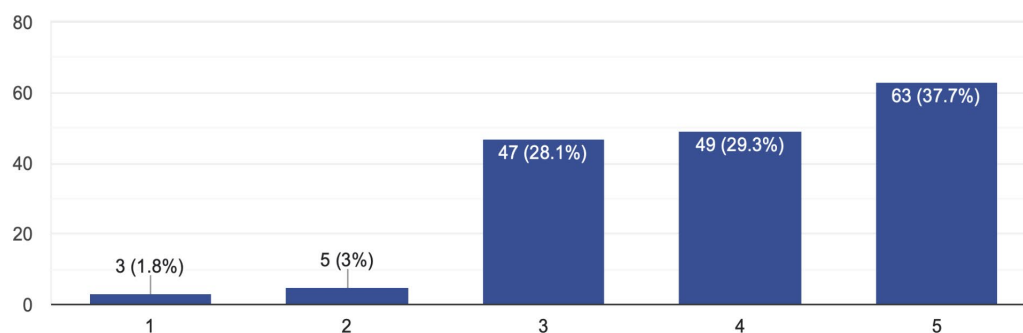
The survey results demonstrate that mediation is perceived as an efficient means of solving disputes by a vast majority of respondents (73%).

It can be assumed that such a high figure is a logical result of the active work of the community of mediators, international organizations, and other institutions in raising the awareness of the legal community of mediation. Besides, while assessing the survey results it should be taken into account that an obvious factor in building trust in mediation has become the adoption of the Law of Ukraine “On the Mediation” in 2021.

3.2. ATTITUDE OF REPRESENTATIVES OF LEGAL PROFESSIONS TOWARD MEDIATORS

3.2. What is your attitude to mediation?

167 responses



— **67%** of respondents expressed a high level of trust in mediators.

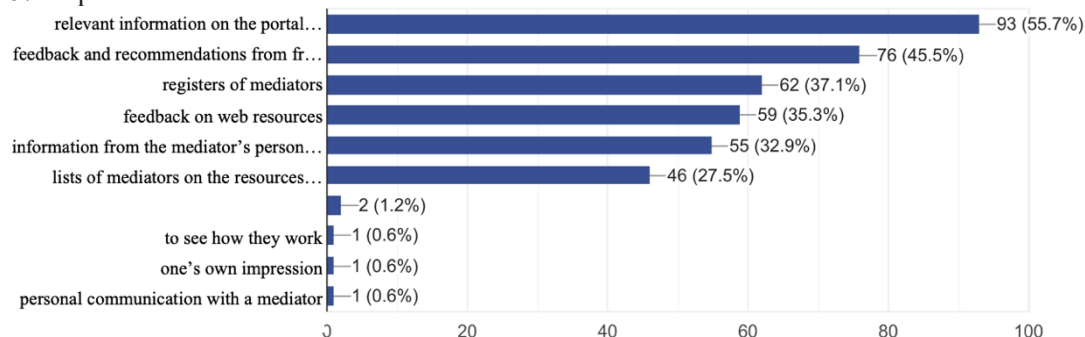
Apparently, this is a positive signal for a developing profession.

It should be taken into account that the profession of mediator in Ukraine requires some regulation (in particular, enforcement of Final and Transitional Provisions of the Law of Ukraine “On the Mediation”) and increasing the level of public trust (including by introducing the mechanisms of ensuring the quality of mediation services by the community of mediators).

3.3. THE ASSESSMENT OF THE RELIABILITY OF INFORMATION SOURCES TO DETERMINE THE PROFESSIONAL LEVEL OF A MEDIATOR

3.3 Which sources of information do you consider reliable for determining the professional level of a mediator (Multiple options are possible)

167 responses



According to respondents' answers, the following sources of information are reliable:

- relevant information on the portal of the judiciary of Ukraine to dissemination information about mediation, look for and chose a mediator (**55.7%**),
- feedback and recommendations from friends/acquaintances (**45.5%**),
- feedback on web resources (**35.3%**),
- registers of mediators (**37.1%**),

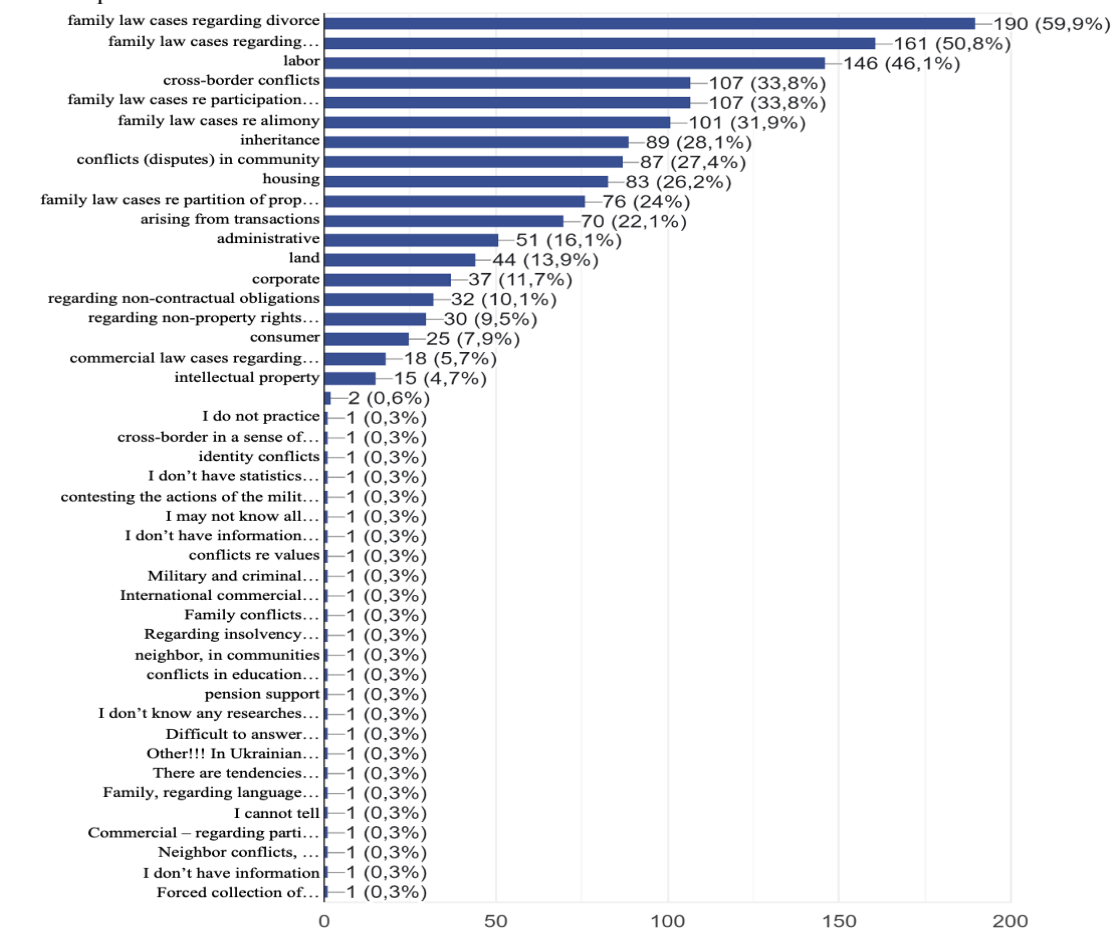
- information from the mediator's personal profile on the Internet and social media (32.9%), and
- lists of mediators on the resources of government and local authorities (27.5%).

SECTION 4. CONFLICTS (DISPUTES)

4.1 WHICH CONFLICTS (DISPUTES) BECAME MORE WIDESPREAD IN UKRAINIAN SOCIETY IN WARTIME? (MULTIPLE OPTIONS ARE AVAILABLE)

4.1 Which conflicts (disputes) became more widespread in Ukrainian society in wartime? (Multiple options are available)

317 responses



According to the answers:

- the following **family** conflicts (disputes) became more widespread in wartime:
 - family law cases regarding divorce (59.9%),
 - family law cases in relation to the child's place of residence (50.8%),
 - family law cases regarding participation in the upbringing and communication with the child (33.8%),
 - family law cases regarding alimony (31.9%), and
 - family law cases regarding the partition of property (24.1%).
- **labor** disputes are considered to be widespread by 46.1% of respondents, which is quite logical in the context of mass forced migration, closure or relocation of businesses, deterioration of the financial and economic situation, occupation of some territories, etc.
- 33.8% reported that **cross-border** conflicts (disputes) involving Ukrainian citizens became widespread. Respondents also indicated international commercial disputes, which are understandably caused by the mass migration of Ukrainians. Under the given

conditions, the need for ratification and implementation of the Singapore Convention is relevant.

- **Other** types of disputes pointed out by respondents:
 - inheritance (28.1%),
 - conflicts in communities (27.4%),
 - housing (26.2%),
 - arising from transactions (contracts) (22.1%),
 - administrative (16.1%),
 - land (13.9%), and
 - corporate (11.7%).

4.2. SPECIFIC TYPES OF CONFLICTS (DISPUTES) CAUSED BY THE EVENTS OF THE FULL-SCALE WAR

Answering to this question, respondents indicated:

- conflicts (disputes) between internally displaced persons and involving internally displaced persons (in particular, involving the communities of temporary residence). Thus, respondents think that such conflicts (disputes) can concern the distribution of resources, including humanitarian aid, the procedure for the provision or lease of temporary housing, and other issues. Besides, household habits, cultural specifics, and language of communication (Russian/Ukrainian) are also the factors causing conflicts (disputes);
- conflicts (disputes) in the field of military activities, in particular, during mobilization, regarding military service, during combat missions, involving commanders and their subordinates;
- social and economic conflicts (disputes) related to protecting the rights of servicemen and their family members (heirs) with regard to guaranteeing allowances, alimony, compensations, etc.;
- family conflicts (disputes), conditioned by a child's stay abroad (with regard to returning children to Ukraine, including after their forced deportation to the Russian Federation), participation of family members in upbringing and communication with a child, separation of families (when they live in different locations: in Ukraine/abroad/temporarily occupied territories);
- conflicts (disputes) involving Ukrainian children in a new environment;
- public law disputes regarding mobilization measures, decisions of the Border Service of Ukraine on granting permission to cross the state border of Ukraine, payment of allowance/compensation due to a wound/death/missing; granting a status of a combatant and war-disabled person related to the defense of the Homeland;
- conflicts (disputes) involving citizens of Ukraine abroad, in particular with hosting families/communities, and government authorities of foreign states regarding granting asylum;
- conflicts in communities that were/are under occupation (including involving alleged and actual collaborators, the language of communication, and assessment of military events) and of a social, economic, and religious character (in particular, the trend of the parish of the Moscow Patriarchate converting to the Ukrainian Orthodox Church);
- conflicts (disputes) regarding property damaged or destroyed as a result of hostilities (e.g., regarding mortgage, leased property, property bought on credit);
- labor conflicts (disputes) involving employees who are abroad or internally displaced employees who worked/work at relocated enterprises, labor disputes regarding the remuneration of mobilized citizens;
- disputes arising from contract obligations (in particular, regarding a failure to comply with obligations due to force majeure and social and economic circumstances);
- political conflicts (disputes);
- conflicts (disputes) regarding compensations and allowances for damaged/destroyed property; and
- corporate conflicts (disputes) regarding business relocation.

The given range of conflicts (disputes) inflicted by the developments of the full-scale war demonstrates the demand for mediation and the need for the judiciary, government authorities, and local governments to respond in advance and take action to prevent the escalation of such conflicts (disputes) and overloading courts.

The abovementioned makes it reasonable to refer to such conflicts (disputes) for mediation, when a mediator is focused on working with the emotions of parties, in contrast to a trial.

At the same time, it is necessary to introduce pre-trial information and assessment meetings with a mediator in some types of disputes.

4.3. SPECIFIC TYPES OF DISPUTES THAT WILL BE TYPICAL OF THE POST-WAR PERIOD

Answering this question, respondents indicated that wartime conflicts (disputes) are likely to be still relevant and noted:

- conflicts (disputes) caused by a different perception of events and war experience, evaluations of a contribution to the victory in the war, and transfer to a peaceful life;
- conflicts (disputes) caused by the order of priority of reconstructing damaged/destroyed housing, and receiving compensations;
- family conflicts (disputes) regarding joint household and upbringing children, caused by possible changes of values (e.g., after a lengthy stay abroad, under occupation, places of residence for internally displaced persons), evaluation of lawfulness of taking a child abroad as decided by one parent and returning the child to Ukraine;
- conflicts (disputes) regarding the protection of social and economic rights of servicemen and their family members;
- inheritance and housing conflicts (disputes); and
- conflicts (disputes) related to the adaptation to the peaceful life of servicemen and civilians who survived the occupation.

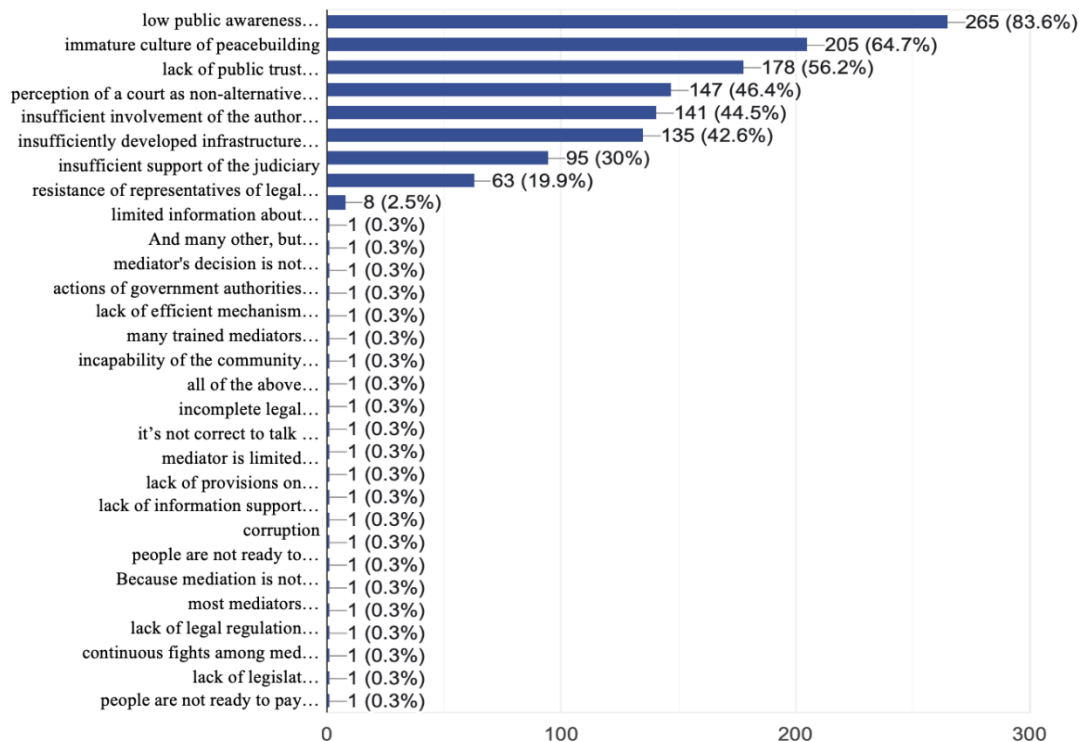
Respondents also noted the increased emotional and value-based coloring of post-war conflicts (disputes).

SECTION 5. MEDIATION IN UKRAINE. STATUS QUO AND PROSPECTS FOR DEVELOPMENT

4.4. FACTORS LIMITING THE DEVELOPMENT OF MEDIATION IN UKRAINE

4.4. What, in your opinion, limits the development of mediation in Ukraine? (Multiple options are available)

317 responses



Describing the factors limiting the development of mediation in Ukraine, **83.6%** of respondents noted **low public awareness of mediation**. This calls for intensifying public awareness and outreach efforts regarding mediation, engaging the resources of judicial bodies, local governments, academic institutions, etc.

Most respondents (**64.7%**) think that an **immature culture of peacebuilding** in Ukrainian society limits the development of mediation.

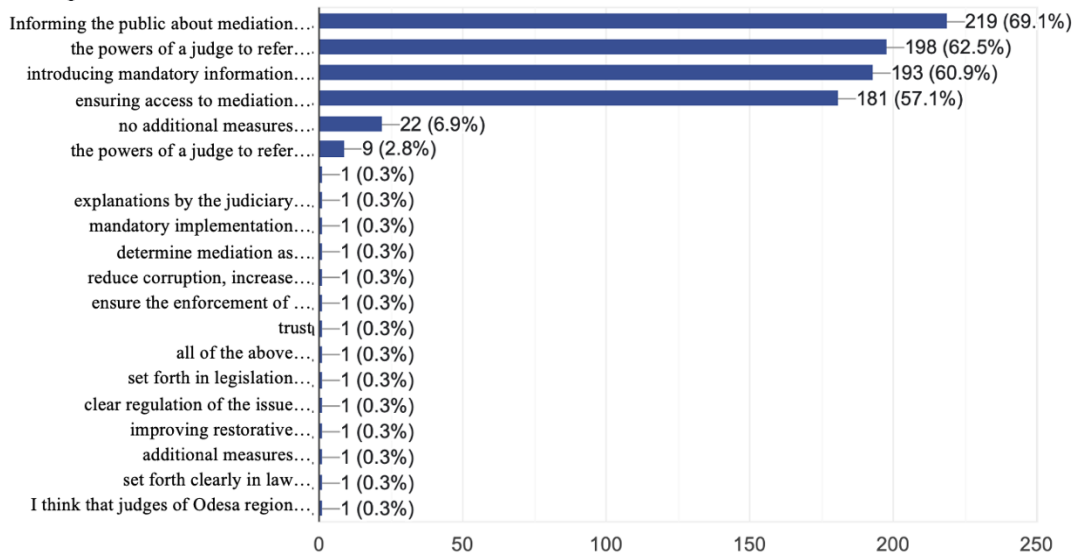
A low level of public trust in mediation and mediators is a negative factor for the development of mediation, according to **56.2%** of respondents. At the same time, analysis of answers of respondents to previous questions about the level of their trust in mediation and mediators demonstrates that for the most part, respondents have trusted both in mediation procedure and mediators, while they think that the public has trust in none of the above. Thus, it can be assumed that there is a direct dependence between the level of awareness of mediation and trust in this way of dispute resolution.

- **46.4%** of respondents indicated such factors limiting the development of mediation as the **perception of the court as a non-alternative way to resolve disputes**,
- **44.5%** noted **insufficient involvement of the authorities in informing the public about mediation**
- **42.6%** reported **insufficiently developed infrastructure for access to mediation** (e.g., lack of mediation rooms in courts, and local governments),
- **30%** indicated **insufficient support of the judiciary**, and
- **19.9%** reported **resistance of representatives of legal professions**.
- Some respondents additionally specified such factors as:
 - “the lack of the mechanism of enforcement of mediation agreements”,
 - “incapability of the community of mediators to solve internal conflicts, thus raising distrust of the representatives of the community who are ready to help in resolving conflicts, but cannot resolve their own internal conflicts”,
 - “conflict of interests inside the community of mediators”,
 - “the lack of legal regulation of the procedure for resolving public law disputes through mediation”, and
 - “limited information on success stories of resolving disputes through mediation”.

4.5. THE ROLE OF THE JUDICIAL SYSTEM IN INCREASING THE DEMAND FOR MEDIATION

4.5. What should be the role of the judicial system in increasing the demand for mediation?
(Multiple options are available)

317 responses

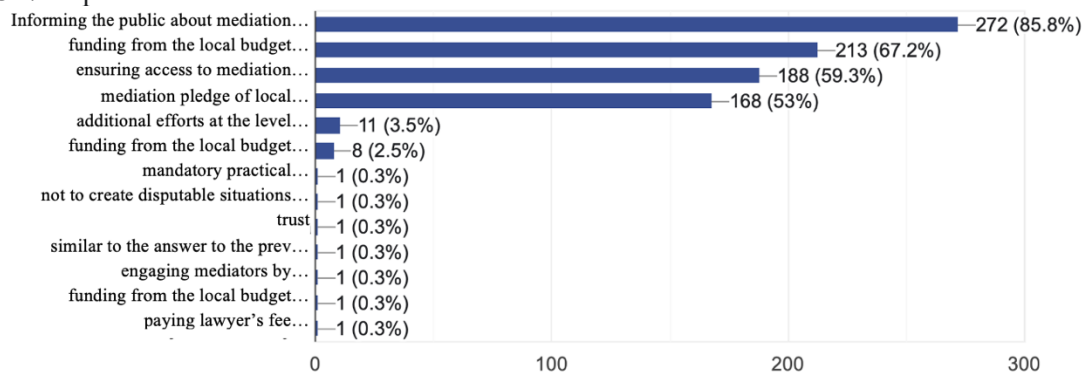


- 69.1% of respondents think that the role of the judiciary should be to inform the public about mediation and mediators;
- 62.5% support granting a judge powers to refer parties to a mediator in some categories of disputes;
- 60.9% support introducing mandatory information and assessment meetings with a mediator in some categories of disputes;
- 57.1% think that the role of the judiciary in increasing the demand for mediation should be ensuring access to mediation in court premises; and
- 6.9% think that no additional measures are required from the judicial system.

4.6. ROLE OF LOCAL GOVERNMENTS IN INCREASING THE DEMAND FOR MEDIATION

4.6. What should be the role of local governments in increasing the demand for mediation?
(Several options can be selected)

317 responses



- 85.8% of respondents think that the role of local governments should be informing the community about mediation and mediators;
- 65.5% think it would be reasonable for them to fund mediation services for vulnerable groups from the local budget;

- 59.3% support ensuring access to mediation in the premises of local government bodies;
- 53% think it necessary to introduce a policy of mediation pledge of local government; and
- 3.5% think that no additional actions are required at the community level.

4.7. ADDITIONAL INCENTIVES FROM THE STATE THAT WILL ENCOURAGE THE PARTIES TO THE DISPUTE TO USE MEDIATION

Answering this question respondents noted the following incentives:

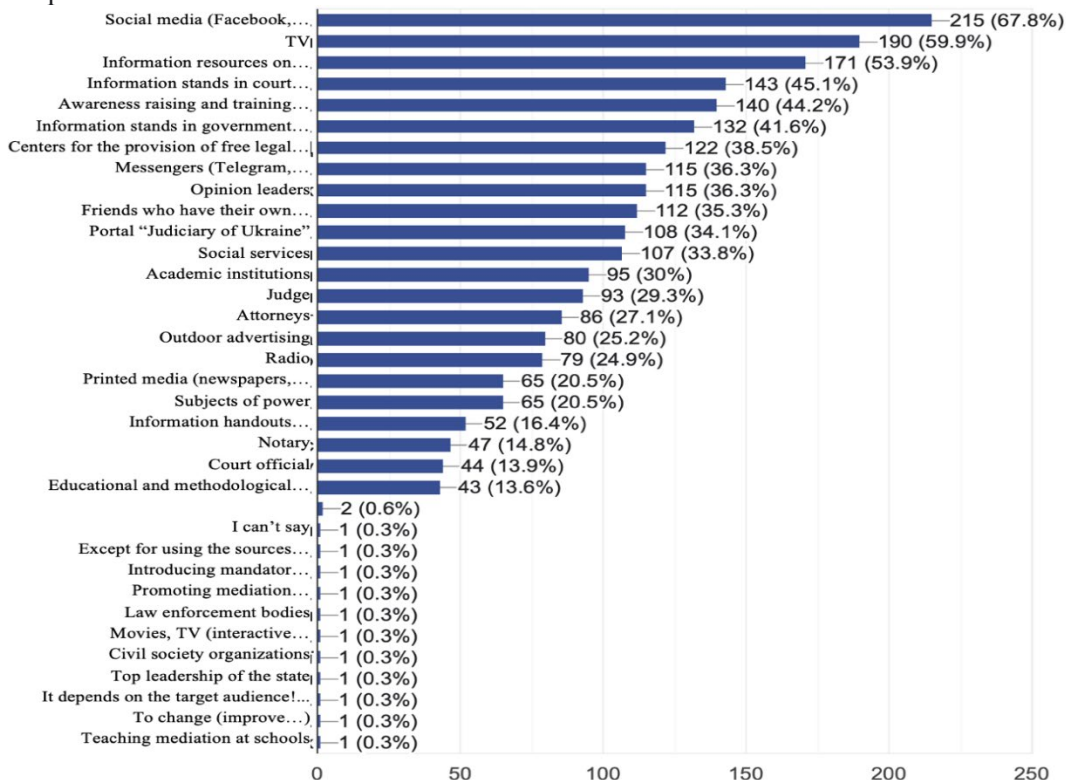
- ensure access to mediation for vulnerable groups of the population by financing the services of mediation from the state or local budgets;
- introduce the mechanisms of enforcing mediation agreements;
- introduce mandatory information and assessment meetings with a mediator; and
- carry out outreach and awareness-raising campaigns regarding mediation.

An important incentive to promote and develop mediation would be introducing a policy of mediation pledge in disputes involving government authorities and local governments, “the government has to lead the way”, and “the government has to set an example”.

4.8. SOURCES OF INFORMATION THAT ARE MOST EFFECTIVE FOR RAISING MEDIATION AWARENESS AND PROMOTING MEDIATION

4.8. In your opinion, what sources of information are **most** effective for raising mediation awareness and promoting mediation? (Up to 7 options can be selected)

317 responses



Participants of the survey indicated that the following channels are effective to form an understanding of and promote mediation:

- 67.8% - social media (Facebook, Instagram),
- 59.9% - television,
- 53.9% - information resources on mediation on the Internet,
- 45.1% - information stands in court buildings,
- 44.2% - awareness raising and training activities,
- 41.6% - information stands in government buildings, and
- 38.5% - free legal aid centers.

Some respondents indicated the **need to develop a complex communication strategy regarding mediation**, that would take into account different target audiences and engage relevant government and local authorities, media, academic institutions, schools and business entities into its implementation.

CHAPTER 4: RECOMMENDATIONS

ADDRESSING MEDIATORS' NEEDS PROFESSIONAL DEVELOPMENT

Recommendation 1

Training needs of Ukrainian mediators should be addressed by both, Ukrainian and cross-border mediation training providers regardless of mediators' current place of residence.

Explanatory note:

There is a strong need of Ukrainian mediators to attend special training courses and ToT courses with adjusted curriculums. Since 30.7% of surveyed mediators is staying out of their permanent place of residence and many of them continue to mediate in disputes with Ukrainian displaced parties, mediator's and mediation trainers' training needs should be addressed regardless of their temporary place of residence.

The international community should, via donors and other mechanisms, ensure appropriate funding, design, and implementation of such trainings in Ukraine and in countries with Ukrainian refugees.

Recommendation 2

Enable access of Ukrainian mediators to a range of face-to-face and online trainings focused on psychological aspects of conducting mediations in wartime and post-war time.

Engage local experts and international experts with the expertise of conflict resolution in war and post-war times to:

- design curricula for such trainings;
- provide "train the trainers" sessions;
- prepare deliverables for Ukrainian mediators on the specifics of war times and post-war times dispute resolution

Explanatory note

The survey results demonstrated that Ukrainian mediators must be equipped with specific knowledge and skills to effectively maintain their mental working capacity and mediate disputes between psychologically traumatized parties. As mentioned in the previous part of this Report, Ukrainian mediators have already launched episodic training, however, it is obvious that such training should be accessible to the wider mediators' community and have a systematic character.

The content and methodology of relevant training should incorporate both international and local experience and expertise in order to provide training of high quality that addresses specific issues of war-related psychological trauma and stress. A characteristic feature is that Ukrainian mediators have a unique experience of working with conflicts in wartime and are victims of war themselves. Therefore, developing any programs and materials should involve their active participation as mediation experts and direct carriers of the Ukrainian context. Ukrainian mediators and psychological experts should be supported and assisted by international experts with corresponding knowledge, experience, and skills.

The sustainability, long-lasting effect, and wider reach of training may be reached through the:

- (a) designing model curricula,
- (b) providing a number of “Train the Trainer” sessions, involving international and local experts;
- (c) preparing deliverables etc.

The training should cover at least such topics as:

- dealing with psychologically and emotionally traumatized disputants, violent disputants
- trauma-informed approaches
- mediator’s stress management skills and techniques²⁶
- conflict-coaching skills
- management of conflict escalation
- techniques of transformative mediation
- methods of integrating mental health and psychosocial support into peacebuilding.²⁷

Training should include innovative mediation techniques suitable for high-conflict and emotional and traumatized parties. For example, techniques may include arts-based approaches with art and drama components.

Recommendation 3

Enable access of Ukrainian mediators to a range of face-to-face and online trainings to address the needs of mediators for professional development in mediating disputes, that became widespread in war-time and in post-war-time.

Engage international and local experts with relevant expertise to design curricula for such trainings, to provide “train the trainers” sessions.

Explanatory note

The survey results demonstrated the evolving nature of the conflict (disputes) landscape in wartime, so family, labor, and cross-border disputes are becoming widespread. Moreover, respondents stated their willingness and need for professional development to effectively mediate in wartime. Providing relevant training would benefit not only the community of mediators in Ukraine but also the national system of justice, when disputes, mostly suitable for mediation, would rarely reach the courts.

The objectives of the mentioned training are equipping Ukrainian mediators with needed knowledge, upgrading their skills in mediating family, labor, and cross-border disputes, and revitalizing the community of mediators of Ukraine. The engagement of international experts in designing the curricula and in contributing to the “Train the trainer” sessions is highly recommended, due to the importance of the versatility of mediators’ approaches and multicultural skills.

The specific kind of conflicts caused by the war as possible topics for trainings:

²⁶ See, for example, Lydia Nussbaum, "Mediator Burnout" (2019). Scholarly Works. 1223. <https://scholars.law.unlv.edu/facpub/1223>

²⁷ See more in UNDP Guidance Note on Integrating MHPSS into Peacebuilding, available at <https://www.undp.org/sites/g/files/zskgke326/files/2022-05/UNDP-Integrating-Mental-Health-and-Psychosocial-Support-into-Peacebuilding-Summary-Report-V2.pdf>

- conflicts between internally displaced persons and involving internally displaced persons (in particular, involving the communities of temporary residence);
- conflicts in the field of military activities, in particular, during mobilization, regarding military service, during combat missions, involving commanders and their subordinates;
- social and economic conflicts related to protecting the rights of servicemen and their family members (heirs) with regard to guaranteeing allowances, alimony, compensations, etc.;
- family conflicts, conditioned by a child's stay abroad, participation of family members in upbringing and communication with a child, separation of families (when they live in different locations: in Ukraine/abroad/temporarily occupied territories);
- conflicts involving Ukrainian children in a new environment;
- conflicts involving citizens of Ukraine abroad, in particular with hosting families/communities, and government authorities of foreign states regarding granting asylum;
- conflicts in communities that were under occupation
- conflicts based on religious character;
- conflicts regarding property damaged or destroyed as a result of hostilities (e.g., regarding mortgage, leased property, property bought on credit);
- labor conflicts involving employees who are abroad or internally displaced employees who worked/work at relocated enterprises, labor disputes regarding the remuneration of mobilized citizens;
- disputes arising from contract obligations (in particular, regarding a failure to comply with obligations due to force majeure and social and economic circumstances);
- conflicts (disputes) regarding compensations and allowances for damaged/destroyed property;
- corporate conflicts (disputes) regarding business relocation;
- intellectual property disputes (IP).

MEDIATION AWARENESS

Recommendation 4

In order to raise mediation awareness among the wider society it is essential to design a comprehensive communication strategy focused on different areas of mediation, various channels of information dissemination, and a range of stakeholders, simultaneously delivering the unified message and image of mediation.

The communication strategy should use the offline and online resources of the court system, state and local executive bodies, and the free legal aid system effectively and budget-consciously.

Self-regulatory organizations of various legal professions are expected to intensify information and training activities on mediation and develop and conduct training for lawyers according to CEPEJ guidelines.

Explanatory note

The respondents of the survey emphasize that the low awareness of mediation within Ukrainian society hampers the advancement of mediation. The earlier efforts of raising mediation awareness in Ukraine seem to be fragmented and uncoordinated, however producing valuable experience and deliverables. It is essential to update, structure, and ensure inclusiveness of information on mediation and mediability of disputes, securing a wide range of formats (printed, electronic, audio-visual). The premises and official websites of courts, state, and local bodies, and free legal aid centers should be used as platforms for disseminating information

about mediation and mediators, samples of mediation documents (mediation agreements, mediation clauses, and mediation agreements, etc.).

The active participation of the Ukrainian community of mediators is vital for the design and development of information materials, organization of disseminating events, running YouTube channels, and dedicated social media accounts. The existing resources for finding a mediator (<https://www.mediation-help.com/>, <https://mediators.com.ua/>) should be widely promoted as well.

The community of mediators of Ukraine and international experts should contribute to mediation awareness events for representatives of legal professions, implementing CEPEJ guidelines on mediation. Mediation advocacy is of extreme importance for ensuring public trust and confidence in the mediation process and contributing to mediation demands. Training programs for lawyers to assist clients in mediation as part of the CEPEJ Mediation Development Toolkit should be taken into consideration.²⁸

Recommendation 5

To assess the effectiveness of running and terminating school and peer mediation programs in Ukraine in order to use the potential of this instrument to its full extent.

To design updated school and peer mediation programs that would cover specifics of war-time and post-war time based on obtained results and consultations with foreign experts.

To involve international donor organizations to support the sustainable implementation of school and peer mediation programs in all the regions of Ukraine

Explanatory note

In war and post-war times, it is necessary to encourage and support young generations in Ukraine from different national, ethnic, or religious groups to restore and reaffirm trust, dialogue, and tolerance, including but not limited to, how to address conflicts among children and minors. The aim of designing, integrating, and implementing school and peer mediation programs is to ensure conflict prevention and peaceful resolution and to renew the dispute resolution culture of future generations in Ukraine.

A similar dispute resolution policy approach was for example successfully taken in post-war time in Bosnia and Herzegovina where expert organizations from Slovenia (ITF Enhancing Human Security and European Centre for Dispute Resolution) assisted local communities and primary schools in the development and implementation of school and peer mediation programs in ethnically mixed populations. The inclusion of innovative methodology and/ or linking to existing children-focused programs that have been demonstrated to be effective in relation to children traumatized by war should be considered. Illustrative there are programs such as UNICEF's Poems for Peace²⁹ and Musiqati Music Therapy,³⁰ the Child-Friendly Cities Program,³¹ Save the Children's various support programs for children impacted by the war,

²⁸ CEPEJ Training programme for lawyers to assist clients in mediation is available at: <https://rm.coe.int/cepej-2019-21-en-training-programme-for-lawyers-to-assist-clients-in-m/1680993304>

²⁹ See <https://www.unicef.org/children-under-attack/poems-for-peace>

³⁰ See <https://www.unicefusa.org/stories/new-music-therapy-program-helping-syrian-refugee-children-heal>

³¹ See <https://childfriendlycities.org/initiatives/>

including programs in Ukraine,³² “Our Rights” project for empowering children,³³ and other programs using the evidence-based methods of art therapy movement and play.³⁴

In Ukraine school mediation has gained certain advancement due to wide support of international organizations and governments (see Chapter 1), it also means that mediators and school teachers involved in school mediation programs could contribute their expertise to updating or designing new school and peer mediation programs, that would address the needs of younger people in war and post-war times. Moreover, school mediation should also address the issues of preventing bullying among the pupils involving internally displaced children. So, it may be presumed that the collaboration of local and foreign experts could result in school mediation programs of high quality and relevance.

The wide implementation of school mediation programs could be hampered due to the shortage of financial and human resources in the educational sphere of Ukraine, that’s why the support of international donor organizations and foreign governments would be crucial.

INCREASING DEMAND FOR MEDIATION

Recommendation 6

To ratify the United Nations Convention on International Settlements Resulting from Mediation (Singapore Convention on Mediation or SCM)³⁵

Explanatory note:

In August 2019, Ukraine was one of 46 States to sign the SCM at the opening ceremony for the Convention in Singapore. Ratification (or accession) of the SCM is the next step. Essentially, the SCM offers a direct enforcement mechanism for international commercial mediated settlement agreements that fall within its scope, while not interfering with domestic procedural rules. It promises international mediated outcomes that the New York Convention has generated for foreign arbitral awards. — namely, direct enforcement across borders. Given the increase in cross-border disputes, including those of commercial nature, as well as the fact that Ukraine has already signed the SCM, ratifying the Convention should be a priority.

It is noted that the increase in cross-border disputes also extends to family, inheritance, and workplace matters. Further consideration should be given to extending the direct enforcement mechanism or an alternative direct enforcement mechanism to these areas. However, insofar as non-commercial matters are settled through a court-approved mediation program and can be recorded and enforced as a court order, they would fall outside the scope of the SCM and be covered by arrangements applicable to recognition and enforcement of foreign court orders e.g. Hague Convention.

Recommendation 7

To introduce a direct enforcement (and recognition) mechanism for mediated settlement agreements (hereinafter MSAs) in Ukraine. Ideally the direct enforcement mechanism would

³² See <https://www.savethechildren.org/us/where-we-work/ukraine>

³³ http://mzz.arhiv-spletisc.gov.si/en/foreign_policy_and_international_law/slovenian_foreign_policy_and_human_rights/the_our_rights_project_human_rights_education/index.html

³⁴ See <https://www.warchildholland.org/care-system-overview/>

³⁵ For the text of the Convention, see <https://www.singaporeconvention.org/convention/text> For a detailed commentary on the Convention see Nadja Alexander, Shou Yu Chong and Vakho Giorgadze, *The Singapore Convention on Mediation: A Commentary*, 2nd edition, Kluwer Law International, 2022.

mirror that of the SCM and thereby also fulfilling the previous recommendation of harmonizing the law applicable to domestic and cross-border mediated settlement agreements and mediation.

Explanatory note:

Survey respondents indicated enforcement as an issue holding back the development of mediation in Ukraine. The introduction of a direct enforcement mechanism for mediated settlement agreements would address this issue. Aligning the domestic direct enforcement mechanism with that of the Singapore Convention will make uniform the law applicable to domestic and cross-border mediated settlement agreements and mediation, thereby reducing potential satellite litigation where there are domestic and cross-border elements to mediation and increasing the transparency of the applicable law overall.

Recommendation 8

To design and implement court-related mediation programs.

Courts should seek to integrate mediation into the justice system by establishing opt-out referral systems to mediation that feature referral to private mediators external to the court (court-connected or non-connected to the court) or referral to mediators within the court structure (court-annexed process).³⁶

To develop criteria for judicial referral to mediation;

To train judges in application and exercise of discretion in referral guidelines.

Explanatory note

Introducing court-related mediation programs in Ukraine should be the next consecutive step to develop further the range of alternative dispute resolution methods available to society, to promote the reform of the justice system and improve access to justice, to ensure a proper level of awareness, availability, and accessibility of mediation for the public, to reduce the workload of the judicial system, to contribute in building a culture of peaceful dispute resolution in society.

Moreover, Ukraine possesses all prerequisites to effectively launch court-related mediation, to name a few, a well-developed and motivated community of mediators; some experience in court-related pilot mediation programs; favorable to mediation material and procedural legislation, certain numbers of judges and court staff trained in mediation; online inter-organizational platforms with information about mediation and the possibility to search for mediators (mediation-help.com, mediators.com.ua).

However, to launch court-related mediation in Ukraine some shortcomings are to be overcome:

- Lack of resources within the court system.
- Lack of budget funds to cover mediation costs for socioeconomically vulnerable parties.
- No developed quality assurance framework for mediators.
- Non-finalized complaint handling procedure for breaches of professional ethics by mediators.
- Absence of structured information on the availability of mediators.
- Suitability of cases for mediation.

³⁶ See more in ELI/ENCJ Report on the Relationship between Formal and Informal Justice: the Courts and Alternative Dispute Resolution, par. 14 and 15, available at:

https://www.europeanlawinstitute.eu/fileadmin/user_upload/p_eli/Publications/ADR_Statement.pdf

- Lack of broad awareness about mediation among judges.

Nevertheless, court-related mediation in Ukraine is highly likely to become an achievable goal, provided a well-designed implementation program would be developed incorporating Ukrainian specifics and best foreign practices.

Here an opt-out referral system is recommended. As parties will have the option to opt out, a strong sense of party autonomy is preserved. Further, referrals to external mediators will help to build private sector mediation practice. Where parties cannot afford to pay mediators, funding may need to be sought. Comprehensive recommendations on how to establish a court mediation pilot, including a management and monitoring checklist and a guide to judicial referral to mediation are explained in CEPEJ Mediation Development Toolkit.³⁷

Regulation is made up of more than provisions written into a law, a code, or a contract. The regulation comes to life through its application by parties, lawyers, and the courts. How courts apply discretions they may have to refer matters to mediation is critical to how mediation is perceived by lawyers and the public. Developing a set of criteria based on the latest empirical research and an accompanying training program for judges would be an ideal way to approach this recommendation.

Recommendation 9

That central and local governments make a public mediation pledge.

Explanatory note:

This recommendation comes directly from the Survey responses (4.6). A significant number of respondents see a more prominent role for local government in the development of mediation. It was suggested that government priorities had shifted since the beginning of the war, and mediation was seen as less critical. A public mediation pledge is a statement of intent to use mediation as a means of early dispute resolution where appropriate and where the other party to the dispute agrees. When governments make public mediation pledges, it sends a positive signal to the public about mediation and increases its visibility, credibility, and legitimacy³⁸.

Recommendation 10

Encourage the practice of including mediation clauses in contracts (including but not limited to labor and commercial contracts).

Draft amendments to the procedural legislation for recognition and enforcement of appropriately drafted mediation and mixed-mode dispute resolution (MDR) clauses.

Explanatory note:

A major trigger for mediation processes that do not involve court referral is mediation or multi-tiered dispute resolution (MDR) clauses. These are forms of dispute resolution clauses that parties agree to pre-dispute, for example, as part of a commercial or workplace contract. They

³⁷ Mediation Development Toolkit is available at: [CEPEJ\(2018\)7_Toolkit_en_rev.docx.pdf](#)

³⁸ Both, national and supranational state institutions as well as business associations, chambers of commerce, bar associations and similar players worldwide are promoting mediation through mediation pledges by which they express their commitment to take mediation seriously. See for example EUIPO ADR Pledge for IP Disputes for Business Associations and for Companies available at: https://euipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/contentPdfs/law_and_practice/adr/EUIPO_ADR_pledge_for_ip_Disputes_for_business_associations_de.docx

are increasingly standard in commercial and workplace contracts in many jurisdictions, such as Singapore, Australia, etc.

However, they are only helpful if courts are prepared to recognize and enforce them. This requires the development of clear, consistent jurisprudence supporting the enforceability of mediation and MDR clauses over time. Standard European mediation forms, including MDR clauses, are presented in the CEPEJ Mediation Development Toolkit³⁹, US and international examples are found in the extensive appendices to the treatise, *Mediation Law Practice and Policy*⁴⁰. Further illustrations from other jurisdictions can be made available upon request.

Furthermore, legislative provisions may be introduced to the procedural codes that specifically support the enforceability of mediation and MDR clauses, as is the norm in arbitration clauses. These legislative provisions can be illustrated in Singapore (Mediation Act 2017) and Hong Kong (Mediation Ordinance 2013).

The recognition and enforcement mechanism may draw inspiration from the arbitration clauses as provided by the Civil Procedural Code of Ukraine and the Economic commercial code of Ukraine.

ACCESS TO MEDIATION

Recommendation 11

Further development of mediation as a social service (with all informational and financial support from local authorities)

Further development of mediation on the basis of free legal aid both for minors in criminal proceedings and in other spheres for unprotected groups of the population.

Mediation shall be integrated into the free legal aid system so that free secondary legal aid is made available for mediation for appropriate disputants and disputes e.g., financially disadvantaged.

Community pro bono mediation programs should be designed for those with financial resources slightly above the requirements for free legal aid.

Explanatory note:

The survey findings (4.6) specifically identified local government as the appropriate body to fund mediation for vulnerable groups such as the elderly, the financially disadvantaged, and so on. Mediation is a social service (and not just a legal one) – especially so in the current wartime context of Ukraine.

Moreover, there are solid international precedents for funding mediation services by various government departments, including social services and justice. For example, Relationships Australia is an organization funded by the federal, state, and local governments across

³⁹ CEPEJ Mediation Development Toolkit <https://rm.coe.int/mediation-development-toolkit-ensuring-implementation-of-the-cepej-gui/16808c3f52>

⁴⁰ Sarah R. Cole, Craig A. McEwen, Nancy H. Rogers, James R. Coben, Peter N. Thompson and Nadja M. Alexander, *Mediation: Law, Policy & Practice*, 2020-2021 Edition, Thomson Reuters, New York (2022) <https://ssrn.com/abstract=3765141>.

For international illustrations of mediation clauses see also <https://www.lawinsider.com/clause/dispute-resolution-mediation>

Australia. It provides mediation services for a wide range of disputes, including family relationship disputes, neighborhood disputes, and workplace disputes. One illustration is the Family Relationship Centre, which provides support, information, referrals, and family dispute resolution (mediation) to separated families. In an example from Singapore, community disputes can be resolved at the Community Mediation Centre (CMC), an initiative implemented by the Ministry of Law. This initiative aims to develop a more harmonious, civil, and gracious community where social conflicts can be resolved amicably. The CMC provides cost-effective and cheap mediation, with payment of a one-time only \$5 administrative fee regardless of the number of mediation sessions. A re-mediation can be requested free-of-charge three months from the last mediation session. A recent development in the United Kingdom is the Family Mediation Voucher Scheme, a time-limited scheme designed to support parties who may be able to resolve their family law disputes outside of court. The government has set up the scheme in response to Covid-19 to help recovery in the family court and to encourage more people to consider mediation to resolve their disputes, where appropriate. To support this, a financial contribution of up to £500 towards mediation costs will be provided if a party is eligible⁴¹.

Regarding legal aid, The MoJ Monitoring Report 2022⁴² favors integrating mediation as free secondary legal aid.

Following international best practice examples (e.g. Slovenia and Australia), granting of legal aid to applicants could be conditional and approved for litigation upon mandatory participation of the applicant in mediation if the opposite party provides her/his consent to mediation.

Mediation could serve an expanded population of low-income pro-se disputants who do not meet the eligibility criteria for free legal aid in certain types of disputes such as divorce, housing, landlord-tenant, employment, community, consumer, etc.⁴³. Volunteers are the heart of such pro bono community mediation programs.

Recommendation 12

To arrange “mediation rooms” at court premises, free legal aid centers, and local authorities both for face-to-face and online participation

Explanatory note:

Specifically allocated and equipped mediation rooms should become an additional incentive to use mediation and inform about the availability of mediation for visitors of court premises, state and local bodies, and free legal aid centers. This recommendation would demand reasonable contributions from the state/local budget and create better mediation opportunities for mediators and parties. Moreover, judges may use mediation rooms at court premises to conduct judicial dispute settlement procedures envisaged by Ukrainian procedural codes. Ukraine has a certain positive experience of mediation rooms functioning at several courts in Odesa, where visitors could obtain information about mediation, receive mediation counselling on their disputes, and participate in the mediation procedure⁴⁴.

⁴¹ On the scheme, see <https://www.gov.uk/guidance/family-mediation-voucher-scheme#what-is-the-family-mediation-voucher-scheme>.

⁴² On the current state of legal aid, see: MoJ, Analysis of the Free Legal Aid System Operations in the Context of Implementing the Law of Ukraine on Mediation, Monitoring Report 2022.

⁴³ See more in ABA Manual for Legal Services and Pro Bono Mediation Programs, available at: https://s3.amazonaws.com/aboutrsi/59316376f8851827014cb4de/pro_bono_manual_final.authcheckdam.pdf

⁴⁴ Ukrainian Academy of Mediation <https://mediation.ua/en/projekty/inshi-projekty>

A mediation room should provide infrastructure to participate in online mediation to address possible lack of access to the Internet and a secure, confidential environment for mediation procedures.

ONLINE MEDIATION

Recommendation 13

To promote existing recommendations on online mediation and useful digital tools wider among mediators, and to provide practice-oriented webinars on online mediation.

In line with International Mediation Institute (IMI) and other relevant international standards such as ICODR (International Council for Online Dispute Resolution),⁴⁵ a model online mediation training framework program/curriculum should be developed and implemented by key Ukrainian mediation training providers to ensure the digital readiness of Ukrainian mediators.

To introduce digital solutions for wider access to online dispute resolution within existing instruments and platforms.

To develop a digital review digest of mediators, both local and international.

To build capacity and further develop physical and digital mediation infrastructure (including digital readiness).

Explanatory note:

Online services largely assist mediators and parties to conduct mediations remotely, and these opportunities became vital within the wartimes because of massive migration, safety issues, and disruption of transport services. Covid-19 restrictions and overall digitalization resulted in huge advancements in settling disputes online in Ukraine (see Chapter 1 for detail), however, these achievements clearly lack awareness among Ukrainian mediators.

Since survey results show that 43.3% of respondents expressed their need to improve their skills in online mediation, there's an obvious need to conduct a series of webinars for mediators for enhancing their digital skills. This may be effectively accomplished by Ukrainian mediators, especially those who actively have been mediating and teaching online during the Covid-19 and wartime, thus have sharpened their digital skills.

It is highly recommended to follow the National Association of Mediators of Ukraine (NAMU), Recommendations for mediators on preparing and conducting online mediation, ICODR standards, IMI Competency criteria for ODR. The following mediation “touchstones” should be targeted by a model online mediation training program framework: usability (impartiality of forum, transparency, efficiency), reliability (procedural flexibility, security and confidentiality, regulatory robustness and accountability, maintenance and responsiveness) and accessibility (competency, costs, user-friendly interface, digital literacy and accessibility, linguistic accessibility and user capacity building)⁴⁶

⁴⁵ On ICODR standards, see: <https://icodr.org/Standards/>. See also the discussion on digital readiness in the context of this Recommendation (note 27 below) and also Recommendation 22.

⁴⁶ These touchstones are set out and discussed in Nadja M. Alexander, “Doing It Online: Is Mediation ready for the AI age?” in M Findlay, J Ford, D Thamapillai and J Seah (eds) *Regulatory Insights on Artificial Intelligence*, Edward Elgar, Cheltenham UK (2022), 187 – 213. <https://ssrn.com/abstract=3742588>

Furthermore, existing Ukrainian mediator training standards and programs (see Chapter 1) should be updated with the aim to include a dedicated component on digital readiness.

It is important to introduce digital solutions for online dispute resolution, the sustainable solution seems to be expanding the functionality of the online platform “Poshuk rishen” (‘Finding a solution’ created with the support of USAID), including but not limited to secured and confidential synchronic/a synchronic mediation procedure.

Channels for users to offer feedback are central to a professional system for mediation. In order to develop a cadre of professional mediators and offer transparent and informed choices to users of mediation, some organizations have developed formal or informal review digests of mediators. For example, IMI requires mediators to collect feedback on their performance from clients in the form of a feedback digest.⁴⁷ Potential mediation parties and lawyers search the digest to help them select the mediator they feel is most suitable for them. The digest does not rank mediators, nor does it share any confidential information. However, it does provide information about mediators’ styles that can be helpful for parties and lawyers in choosing a mediator. Given the increase in cross-border disputes, it seems logical to include appropriate experienced or qualified foreign mediators. This increases the parties’ choice.

Quality mediation services need to be accessed physically, financially, and digitally. (Access to mediation is enhanced with technology-assisted options). Relevant factors here include:

- the ease of access to mediation venues;
- the offering of mediation services with supporting infrastructure both independently and also as part of existing dispute resolution structures such as courts and arbitration centers. For example, litigation and mediation can be linked by virtue of referral mechanisms from court to mediation (see Recommendation 12). In addition, the ability of parties to move seamlessly from arbitration and mediation and vice versa is also important. This can be achieved by the development of protocols among mediation and arbitration institutions and the development of mediation windows in arbitration clauses and other mixed-mode process clauses;
- Digital infrastructure and capacity building to support online mediation. It is essential that institutional and individual mediation service providers are digitally ready to offer mediation online and in hybrid form. Here the three touchstones for digital readiness in mediation are Usability, Reliability, and Accessibility. Capacity building in digital readiness is needed and templates can be developed to support digital readiness development.
- Infrastructure to support hybrid (a combination of online and physical) mediation processes is needed now and will be needed well into the future as hybrid dispute resolution processing is fast becoming a norm in many jurisdictions. It makes sense to begin to build this up now;
- a regulatory regime supporting the (online and physical) mediation process, mediators and the rights and obligations of all participants in mediation; and
- the existence of feedback and complaints systems for mediation services (see also recommendation 15).

FURTHER DEVELOPMENT OF QUALITY ASSURANCE OF MEDIATION

Recommendation 14

To develop standards of practice/recommendations for mediation (general and for particular types of disputes).

⁴⁷ See <https://imimediation.org/practitioners/collecting-feedback/>

Standard pre-mediation protocols be established as part of increasing mediators' competencies and also resources.

Explanatory note:

The issue of introducing some degree of regulation has always been highly disputable within the community of mediators. However, light-touch regulation in the form of base-level standards of practice would contribute to raising awareness and building trust in mediation among the wider society, simultaneously setting quality reference points and entrenching the principles of mediation.

The Ukrainian community of mediators is well-developed enough to boast expertise in mediating within the Ukrainian context, enriched by robust international cooperation to produce mediation standards of practice of high quality and relevance.

Especially with the complex and sensitive nature of many current disputes, pre-mediation meetings and protocols are strongly recommended. Pre-mediation is frequently left out of initial mediation training. However, it can make an enormous difference to the quality of mediation especially when dealing with layers of emotional and legal complexity, and trauma. Pre-mediation sessions can be included as an element in mediation training and continuing professional education. Protocols could also be established by professional associations such as bar associations and dispute resolution (e.g. mediation) institutions to support mediators in developing pre-mediation as a core and key element of their mediation services.

Recommendation 15

To introduce the model complaint handling procedure for breaches of mediator's ethics.

Explanatory note:

The Law of Ukraine "On mediation" requires mediators' organizations to have complaints handling procedures in place as one of the components of the quality assurance mechanism. Moreover, introducing a complaint handling procedure for breaches of the mediator's ethics would be necessary for the further development of mediation in Ukraine, especially for mediation schemes collaborating with public bodies (courts, free legal aid centers, mediation as a social service, etc.).

Furthermore, the mediators' organizations of Ukraine should consider introducing a digital review digest of mediators as Channels for users to offer feedback. For example, IMI requires mediators to collect feedback on their performance from clients in the form of a feedback digest⁴⁸. Potential mediation parties and lawyers search the digest to help them select the mediator they feel is most suitable for them. The digest does not rank mediators nor does it share any confidential information. However, it does provide information about mediators' styles that can be helpful for parties and lawyers in choosing a mediator.

FURTHER DEVELOPMENT OF REGULATORY FRAMEWORK FOR MEDIATION

Recommendation 16

To collate all Ukraine mediation laws.

⁴⁸ See <https://imimediation.org/practitioners/collecting-feedback/>

A list (index or table of contents) of all mediation laws with hyperlinks where applicable can be posted on the court, government, law society, and institute websites to increase the transparency of mediation laws and also public awareness.

To review all mediation laws (hard and soft law) in Ukraine with the aim of achieving harmonization or, if possible, uniformity of laws applicable to cross-border and domestic mediation processes, outcomes, and mediators.

Explanatory note:

Mediation law here refers to all laws, institutional rules, court directions, codes, standard clauses, or mediation agreements. The concept of mediation law recognizes the contexts in which (cross-border) mediation is operationalized.⁴⁹

In terms of mediation law (as previously defined), the following categorization is applied:

- Triggering laws: how mediation is triggered e.g. mediation referral;⁵⁰
- Laws relating to the internal process of mediation;
- Laws relating to the standards and qualifications for mediators; and
- Laws on rights and obligations of participants in mediation.

Forms of regulation include legislation and legislative-type instruments, jurisprudence, general law principles, court rules and practice directions, institutional codes, rules, standard clauses, and forms.

Given a large number of Ukrainians outside Ukraine and the increase in cross-border disputes, and disputes with cross-border elements, it is desirable for the laws applicable to domestic and cross-border mediation to be aligned. Generally speaking, it is desirable to have congruency between local and cross-border mediation laws and rules. The ease with which foreign and local lawyers and parties can identify and assess the mediation law of another jurisdiction can be a critical factor in evaluating the attractiveness of a jurisdiction for mediation, particularly in terms of choice of law that applies to the mediation, mediated outcome, and the mediator.

Recommendation 17

To introduce regulatory incentives for lawyers to advise and encourage parties to use mediation.

To introduce regulatory incentives for parties to use mediation.

Explanatory note:

Despite the positive attitude amongst those surveyed, regulatory incentives are recommended for the wider community of legal practitioners. Legal advisers play a key gatekeeper role in the development of mediation practice and law. The more experience lawyers have with mediation, the more likely they can competently draft mediation clauses, mediation agreements, and (i)MSAs, to advise clients in relation to (international) mediation law, and to direct appropriate cases into mediation in the first place. To this end, a mediation-friendly legal regime offers a range of transparent and highly effective incentives for legal advisers to inform clients about,

⁴⁹ This approach is explained in detail in Nadja M. Alexander, “Through the Looking Glass: Exploring the Regulatory-Ethical Eco-system for Mediation” in Maria Moscati, Michael Palmer & Marian Roberts (eds.), *Comparative Dispute Resolution*, Edward Elgar Publishing, Cheltenham UK (2020), 172 – 189. SSRN link <https://ssrn.com/abstract=3742586>. It is applied with practical examples in Nadja Alexander and Felix Steffek, *Making Mediation Law*, World Bank Group 2016: <https://openknowledge.worldbank.org/entities/publication/50ad9239-ed80-56b5-9eda-4ff33142b95e>.

⁵⁰ See also Recommendations on regulatory incentives for lawyers and parties respectively, which are specific examples of triggering laws.

and engage with, the mediation process. Regulatory incentives for lawyers to engage in mediation are examples of mediation-triggering laws, referred to in Recommendation 16.⁵¹ Incentives comprise both soft and hard regulatory forms. Some incentives include sanctions for breaches. In relation to cross-border mediation, an additional incentive to use mediation in a particular jurisdiction is the right of foreign lawyers (as opposed to only local lawyers) to participate in mediation in that jurisdiction.

Regulatory incentives for parties have mostly taken the form of recognition and enforcement of mediation clauses (see Recommendation 10) and duties on parties to mediate in circumstances where it is reasonable to do so – these may take the form of civil procedure rules, court practice direction, or legislation. Where parties have a duty to mediate where it is reasonable to do so, or a duty to mediate subject to opting out, then lawyers will have a corresponding duty to advise their clients.⁵²

Regulatory incentives for lawyers could take various forms, including:

- A. Duty to advise clients about mediation as a process option (legislation, court practice directions, or civil procedure rules);
- B. Duty to advise clients that they have a duty to mediate where it is reasonable to do so before the close of pleadings with cost sanction for non-compliance. (Illustrations of this approach can be found in the UK, Singapore, and Hong Kong);
- C. Duty to advise clients that they have a duty to mediate before closing of pleadings subject to opting out;⁵³
- D. Duty to consider dispute resolution clauses (including mediation) when drafting commercial and even labour contracts.

Recommendation 18

To ensure the legal basis for designing and implementing a pilot mediation program for tax disputes as part of a broader consideration of mediation for administrative disputes.

Explanatory note:

Tax disputes involve monetary claims and are generally eligible for mediation. Improve communication and cooperation between tax officials and taxpayers.⁵⁴ Best tax policy and practice examples of mediating tax disputes can be found in the USA, UK, Netherlands, Belgium, Kenya, New Zealand, Australia, and other countries.⁵⁵ Accordingly, it would be beneficial for further mediation development in administrative disputes, to introduce such a

⁵¹ Two resources to guide drafters at the development of mediation regulatory incentives are provided by CEPEJ and the World Bank Group respectively. See European Handbook for Mediation Lawmaking available at: <https://rm.coe.int/cepej-2019-9-en-handbook/1680951928>

Nadja Alexander and Felix Steffek, *Making Mediation Law*, World Bank Group 2016, available at: <https://openknowledge.worldbank.org/entities/publication/50ad9239-ed80-56b5-9eda-4ff33142b95e>

⁵² See more in ELI/ENCJ Report, Annex 2: Draft checklist 2 and in European Handbook for Mediation Lawmaking, page 31-32 and 71-73.

⁵³ See more information on incentives also in ELI/ENCJ Report on the Relationship between Formal and Informal Justice: the Courts and Alternative Dispute Resolution, Annex 2: Draft checklist 1, point 2 and Draft checklist 2 point 2 (hereinafter ELI/ENCJ Report), available at: https://www.europeanlawinstitute.eu/fileadmin/user_upload/p_eli/Publications/ADR_Statement.pdf

⁵⁴ Mediation of tax disputes is also recommended by the MoJ's Monitoring Report. See MoJ, Analysis of the Free Legal Aid System Operations in the Context of Implementing the Law of Ukraine on Mediation, Monitoring Report 2022.

⁵⁵ For an international analysis of tax mediation see the report by Cheng Lok Yu, Douglas Palm, Lee Hui Min and Tor Ming En? Working paper on file with authors of these Recommendations.

pilot program. Generally, tax mediation programs can bring tax officials and taxpayers together before they make a major economic and emotional investment in a case and improve communication and cooperation between tax officials and taxpayers.

From the perspective of the tax authority, such a mediation program may achieve one or more of the following goals:

- to increase the ability to resolve cases within given resources;
- to assist in decreasing backlogs or prevent delay by early settlements;
- to ensure greater voluntary compliance of taxpayers and increase collected revenues;
- to encourage earlier and better case analysis and preparation by taxpayers; and
- to provide dispute resolution processes that are most appropriate for resolving certain types of disputes and therefore improve the quality of provided services to taxpayers (better remedies);

From the taxpayers' point of view, such a program could:

- provide taxpayers with a low-cost, semi-formal, quasi-adjudicative alternative to full-blown litigation;
- reduce party alienation from the traditional dispute resolution process; and
- improve case analysis, reduce discovery costs, and produce better discovery and forms.