

Alternative Dispute Resolution in Southeast Europe

IFC has supported the introduction of mediation in Southeast Europe since 2003, first through the Southeast Europe Enterprise Development (SEED) program and, from May 2005, through the Private Enterprise Partnership in Southeast Europe (PEP-SE) program. Six pilot projects have been launched: two in Bosnia and Herzegovina in May 2004 and May 2005, three in Serbia in July 2006, and, one in Macedonia, where implementation of mediation was scheduled to start in late 2006. This issue of the Monitor summarizes both the successes and lessons learned through an external evaluation of these mediation projects. Overall, not only were all project objectives achieved or expected to be achieved, the projects exhibited particular strengths in training design, mediator choice, and results measurement, among others.

Overburdened courts in the entire Balkan region have suffered from a lack of confidence. Courts are viewed as slow, inefficient, incompetent, and expensive, and they fall short on transparency. The goal of all the Balkan mediation projects has been to install all the preconditions needed to introduce mediation as an effective alternative to the distrusted formal court procedures. Not only can mediation solve the case backlog problem, it can free funds currently blocked by legal disputes. Mediation can also supplement and support court reform by providing effective alternative procedures that enable quicker, cheaper, and better access to justice for groups and individuals. The most appropriate cases for the mediation pilots were commercial cases, although other types may be considered for these pilots in the future.

The specific objectives of the alternative dispute resolution (ADR) pilot projects have been to support the establishment of an efficient mediation system to reinforce commercial contracts, encourage private

sector performance and investments, and reduce risks associated with highly inefficient and expensive court procedures. These projects provided integrated advisory services to (a) define a legal framework, (b) educate the broader public to the benefits of mediation, (c) establish a network of sustainable mediation centers, and (d) create a pool of expert mediators. In addition to financial support, IFC provided project management, hired local staff and consultants, and produced an annual report on results.

IFC commissioned an independent consultant Lia Combrink-Kuiters to undertake an evaluation of the Balkan mediation projects, which was completed in November 2006. The objective of the review was to develop best practices for future projects, as well as improve the existing projects. The evaluation considered the projects' effectiveness, efficiency, and sustainability, organizing its conclusions as points of strength and vulnerability. The evaluator utilized data collected by the monitoring consultants in Banja Luka and Belgrade, which are the two long-



est operating mediation centers, through customer satisfaction surveys administered to all ADR training and pilot training participants and clients using mediation, (b) surveys of all mediators including any associated judges, all ADR training and pilot training participants, and all mediation clients three to six months post-mediation, and (c) a survey of a “control group” of clients not using mediation, 6 to 12 months later.

RESULTS AND OUTCOMES

The evaluation found that most project objectives had been achieved and several important components were expected in the near future. The Serbian mediation project proved the most successful in that nearly 90 percent of cases referred were successfully mediated (table 1)

Survey results demonstrated that mediation was a quicker solution than court procedures. Results in Banja Luka were particularly impressive: 93 percent of clients finished mediation within two weeks. The impact on court backlogs, however, was modest overall. Mediation cannot resolve, but only make a dent in, backlogs in court cases, although satisfaction and willingness to use mediation again was high among mediation users. Mediation proved very suitable to solving multiple cases of a similar nature, for example, labor cases in one company. The ability to release funds quickly was generally recognized as one of the most important positive aspects of mediation.

Trust in the legal system increased among those clients who used mediation, which they viewed as faster and cheaper and a more confidential, accessible, and amicable means to solving disputes. These parties believe that mediation can improve the efficiency of the court system. Compared with the control group, mediation users considered the mediation centers more accessible than court-houses. Survey results on whether mediation improved business relations was mixed. In Banja Luka, more than 80 percent of survey respondents were ready to continue business relations with the opposing party in a dispute; whereas, the majority in the Belgrade survey would not, but the reason may be that the majority of surveyed cases in Serbia were labor cases. Only future mediation efforts will show to what extent clients will use mediation again, but survey results were encouraging; almost all respondents in one overall survey of mediation users indicated they would use mediation again.

POINTS OF STRENGTH AND VULNERABILITY

The evaluation concluded that the three evaluated mediation projects exhibited a range of strengths:

- Instituting easily approachable mediation centers in contrast to the more formal and imposing courts
- Allowing mentoring and coaching by senior mediators for each newly trained mediator for five mediations

Table 1. Total Quantifiable Effects of Improvements in Latvian Business Investment Climate

MEDIATION CASES	BOSNIA AND HERZOGOVINA		SERBIA		TOTAL
Number referred	2,992		n/a		n/a
Number mediated (percent referred)	536 (18)		1,741		2,277
Number reaching agreement (percent mediated)	300 (56)		1,551 (89)		1,851 (81)
Assets released (euros)	7,995,000		5,100,000		13,095,000
Construct enforcement (days)*	2003 895	2006 595	2003 1,028	2006 635	
End users satisfaction (average evaluation)	4.2		4.78		4.49

* Data are from an official Doing Business Report on contract enforcement.

- Establishing the Association of Mediators in Bosnia and Herzegovina and the Chamber of Mediators in Macedonia as the only state-level institutes assisting in development of state-level activities and implementation of mediation law
- Introducing court-annexed mediation as a means of making the potential of mediation better known and integrating the concept of mediation into society, before implementing free-market mediation
- Using (former) judges as mediators, which creates trust among legal professionals and potential clients (however, see below)
- Using monitoring and evaluation tools from the start of the project to collect data, particularly asking clients later if the agreement was fulfilled (often the case), because opponents of mediation often argue that agreements will not be met
- Encouraging strong and enthusiastic local IFC and staff teams to support implementation of mediation within the legal system
- Using (a) best practices from neighboring countries, especially those with comparable legal systems, to avoid errors and (b) input from key foreign experts, such as Canada, the United States, and Netherlands.
- Restricting time spent on unsuccessful mediation efforts by imposing a time limit of 30 days for reaching agreement, thereby avoiding abuse of mediation procedure by defendants.
- Although using judges as mediators may increase the credibility of mediation, they are trained to decide disputes, not serve as facilitators. Some judges may find it hard to switch from one role to the other, in which case mediation may only substitute or bypass court procedure, instead of serving as an effective alternative; in the end, this could weaken the legal system.
- In the beginning of a pilot, the clearest cases are often the first mediated, which may lead to high trust in mediation among clients. Because these cases are usually dealt with quickly, however, people come to expect short mediations; this will not necessarily remain the case, especially in free market mediations of all kinds, such as family law, which usually takes far more time.
- The financial dependency of local partners and their urge to be self-supporting could cause tension with IFC. Communication and understanding between IFC and local partners is very delicate; it is important to be cooperative and open. Division of tasks between IFC and both the Association and Chamber of Mediators, for example, should be transparent to all participants.
- When free-market mediations are allowed, the current mediation centers may not have sufficient capacity to schedule the additional mediations.

Nonetheless, the evaluation raised concerns on the vulnerability of the three projects to certain risks or hazards as they continue to be implemented:

- Initial success in Bosnia and Herzegovina derived from huge backlogs and a need for money in the economy to float freely. An improved economic climate with more currency flowing and decreased case back-logs could change the incentives for the parties to accept mediation offers.
- Requiring mediators to have a university degree helps create trust in mediation among clients and lawyers. In the long term, however, a university degree does not guarantee a successful mediator; less educated people with special communication skills could also succeed as mediators.
- Strong support by the government, for example, the Ministry of Justice, for mediation
- Strong support for mediation by the courts, which are prepared to refer cases to mediation
- Passage of legislation on mediation
- Strong and solid association of mediators or local partners
- Strong and independent mediation centers
- Continuous extensive public awareness campaigns
- High-quality mediators
- High-quality training with obligatory updates
- Systematic and high-quality monitoring and evaluation that collects and uses information on results.

LESSONS LEARNED

The main conclusion of this review is that the effectiveness and efficiency of mediation projects depends on the presence of the combination of all of the following key conditions:

When all the above conditions are fulfilled, the state, potential clients, and the courts will benefit from mediation efforts. Organizations or donors that provide financial and technical support should, therefore, continuously monitor efforts to ensure the high quality of all these conditions.

Other key lessons from the evaluation include the following:

- The success of project implementation is strongly related to the way the IFC staff function. They must have the capacity to involve local institutions in the project and work together with early pioneers; thus, an enthusiastic management team of highly qualified people working closely together with local stakeholders is important.
- Given the ratio between the number of court cases and number of mediations, the impact of mediation in reducing case back-logs will only be small. Small percent-ages of reductions, that is, less than 10 percent, are more realistic.
- Certain criminal cases may be appropriately and successfully mediated, for example, those concerning damage compensation, minor traffic offenses, or ones that will not impose imprisonment as a penalty. Public relations activities addressed to judges and potential clients should also consider referring such cases to mediation.
- In Macedonia, the Academia for Training Judges and Prosecutors, which will replace the Judges' Association Center of Education, could play a role in educating on referral and selection of cases.

FUTURE SUSTAINABILITY

Mediation within Balkan countries is still considered a novelty. Mediation schemes should be given time to prove themselves and become well known to potential users. For pilot projects to be sustainable, IFC and/or other sponsors must continue to finance the projects for the next few years. Associations of mediators and other local key players, including the mediation centers, need time to become financially independent until 2008, when IFC finally steps out as a financier. Continued government support is crucial for financial and legislative reasons. Local donors, such as, in Serbia, the National Bank, the Belgrade Bar association, and the Child's Rights Center, which are the founders of the mediation centers, are also important.