Mediation and social work

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Abstract
This report focuses on the possibilities of mediation in social work and the place of the social worker in the mediation process. Social work has long recognized mediation as own function that falls within the scope of generalist social work practice. The report analyses the similarities and differences between the two professions: mediator and social worker, as well as areas of social work in which mediation is appropriate.
The usual work of social workers involves dealing with different types of conflict between clients and their social environment. An important part of the social worker's professional responsibility is to manage conflicts in a productive way.
Social conflicts can arise between individuals, families, groups, communities, and organizations in terms of values, needs, goals, positions, interests, and rights. Many situations in social work require the use of conflict management methods such as negotiation, mediation, advocacy, group facilitation, family group conferences.
Mediation and social work have a similar purpose: to help resolving human problems. The theories and practice skills of social work are significant for the mediation. Mediation, as well as social work, is a process that focuses on human dignity and respect for the rights of the individual. The relationship between social work and mediation is also revealed in many common theories and methods that underpin both practices. However, each of these two professional fields has specific features that will be discussed.

Keywords: *social work; mediation; conflict resolution; neutral side in a conflict.*

1. Introduction

Mediation as a dispute settlement activity has existed for centuries. Evidence of this has been discovered in the Phoenician trade. The practice is further developed in Ancient Greece, and then in Ancient Rome. The Romans called the mediators with different names as intern, advocate, interpolator, conciliator, interlocutor, interpret. In many cultures, the mediator is regarded as a sacred figure worthy of special treatment. In this role were entered wise men, tribal chieftains and local leaders.

In ancient Greece, mediators help resolve conflicts between city-states; in ancient China and Japan, they were actively engaged in compromising in the event of a conflict between different classes and social groups. In the Middle Ages, in Western Europe, the church is the most authoritative organization for solving family disputes, crimes and diplomatic conflicts (Lugovtsova and Egorova 2017).

The term "mediation" has long been used by diplomacy as well as in relation to conflict between social groups. In the 1960s and 1970s, the concept of mediation began to be actively used in the US as part of another concept - "alternative dispute resolution". In Europe, mediation has been introduced since the late 1980s.

Social Workers` everyday work involves dealing with different types of conflicts between clients and their social environment. Social work has long recognized mediation as own function. Mediation in social work became more widely used during the 1970s and 1980s firstly in family social work field. Since the 1980s mediation has been recognized in social work curricula as a distinct practice method. The use of mediation for resolving a variety of interpersonal disputes has expanded rapidly in the last several years.

2. Essence of mediation

In order to talk about mediation and its place in social work, it is necessary to specify the term "conflict". Conflict is a state of human relationships, manifested in psychological tension and in counter-action. Conflict is a struggle between opposing principles or goals, a clash of sentiments or interests. Conflicting behavior consists of opposing directed actions of opponents. These actions carry out the processes in the psychological, emotional and volitional spheres of the parties in the conflict. The party's reactions to the realization of their interests and the limitation of the enemy's interests represent the obvious social reality of the conflict. Conflicts differ in content, i.e. on the subject of the collision. The subject of the conflict is material (resources), social (power) or spiritual (ideas, norms, principles) value to whose possession or use both sides of the conflict strive.

The process of conflict is a process of conflict development in stages and phases. The stages of conflict development are the periods of conflict development, reflecting the main moments characterizing its development from the very beginning to its decision. Knowledge of content at each stage of the conflict is important for predicting, assessing, and choosing technologies for its management.

In any area of interpersonal relationships, conflicts may arise that obstruct the communication process, making it less effective. Interpersonal conflicts are usually resolved through one of the three processes: negotiation, arbitration, mediation. *Negotiations* are a process in which the parties themselves try to resolve the conflict through direct discussion among themselves. In the event of *arbitration*, a third side (court, supervisors or other authorities) controls not only the process but also the outcome of the process. The arbitrator(s) determine the outcome of the process. *Mediation* is a form of conflict resolution with the help of a third neutral, impartial mediation side whose purpose is to assist the first two sides in resolving a conflict situation. Mediation is a tool for "peaceful" dispute resolution. It is an alternative that complements the existing judiciary and the practice of arbitration. One feature of mediation is that each party can decide unilaterally to stop mediation at any time if it

believes that the process is not fruitful, as opposed to arbitration proceedings, requiring general endorsement. During the negotiation process, the mediator helps the conflicting sides to understand their own interests and the interests of the other. The mediator motivates the sides to seek a constructive solution to the dispute acceptable to both sides (Havkina 2013: pp. 101-102; Sgubini, Prieditis and Marighetto: 2004).

The essence of mediation is to create socio-psychological conditions that reduce emotional tension, adopt constructive decisions, and generally resolve conflicts. Mediation differs significantly from other methods of conflict resolution. The mediator, whose activity is characterized by a number of social and psychological characteristics and requirements, plays the most important role in the mediation process.

Mediation is a process designed to deal with problems caused by unresolved conflicts. The third neutral party, a mediator, helps to resolve the conflict. Each mediation process has two **aspects:** (1) management of the dynamics of the process and (2) understanding the essence of the conflict.

In order to have a positive effect on the procedure, it is necessary participants to believe:

• that the conflict is resolved;

• in the mediation process and

• by working with them mediator.

Depending on the need to implement the decision, three main **forms of mediation** can be distinguished (Gulevich, O.A, Sarieva, I.R., 2018):

1. Mediation - the softest form of mediation in which participants voluntarily turn to an intermediary, but after the end of the process, they can complete or reject the decision;

2. Voluntary arbitration - the parties voluntary refer to an intermediary, but they have the obligation to complete the decision after the end of the process;

3. Mandatory arbitration - the parties are obliged to contact an intermediary as well as to execute the arbitration decision.

Directive 2008/52/EU of the European Parliament and of the Council of 21 May 2008 defines mediation as a structured process in which two or more parties to the dispute are themselves seeking to reach a voluntary agreement to settle their dispute with the assistance of a mediator. This process can be initiated by the parties or suggested or ordered by or provided for by law. The focus is on the figure of the mediator, which is "any third party required to conduct mediation in an effective, impartial and competent manner, irrespective of the third party's profession or the manner in which it was appointed or requested to conduct mediation " (Official Journal of the European Union 25.4.2008 L136/3).

The priority of the mediator is to facilitate the discussion and presentation of each party's own interests and to direct them to an appropriate common solution that is fair, lasting and working. The parties play an active role in mediation, identifying their own interests, offering possible alternative solutions and making decisions on the proposals made by the other party (Sgubini, Prieditis and Marighetto 2004). The purpose of mediation is to enable the parties to find a solution to their conflict in a sustainable way.

Mediation includes: Voluntary participation; Face-to-face discussions between the parties to the conflict; An impartial mediator without decision-making powers to

help these participants understand the other's point of view and reach an agreement; Equal opportunities for all participants to speak and explain their point of view; All the necessary information is shared; Shared agreement between the parties.

In essence mediation is negotiation because it includes the involvement of a "third party" that is well-oriented to effective negotiation procedures and can help people in the conflict process to coordinate actions so they are more effective in the negotiation process. The process of mediation is the development of a model of the negotiation process, which involves the mediator, creating new variables and dynamics in the relationships of the opponents. Without negotiations there can be no mediation.

3. Benefits and advantages of mediation (Steffek 2012, Woodward-Smith 2017, Clarke and Davies 1991)

- Mediation procedure is constructive and includes a chance for personal development and social growth of both sides in the conflict.
- The principle of volunteering and the achievement of a consensus on the decision bring to expectation of fairness. Because there is no winner or loser, no admission of guilt, parties are typically satisfied with mediation.
- The agreed results are beneficial to both parties.
- Mediation is more cost-efficient than other methods of dispute resolution. Employing a mediator costs significantly less than employing a lawyer. The conflict sides will paying less money over a shorter period of time. In addition, many non-profits offer mediation services for free.
- Mediation is quicker and cheaper than court proceedings. Mediation typically takes some days or weeks, whereas lawsuits take months or years.
- Additional advantage may be confidentiality. Unlike court cases, which are public, mediation is typically confidential and any evidence used during mediation cannot be revealed.
- Possibility to preserve a good relationship with the other party in cases of long-term relationships or in family disputes. Because mediation is not a win/lose process, important relationships can be saved.
- Mediation lighten the judiciary and reduce the expenses.
- Mediation is flexible which allows the parties and the mediator to adapt the mediation procedure to the needs of the individual conflict.
- In mediation, unlike in a lawsuit, the parties control the process.

4. Mediator's role in the mediation process

There are two main points of view on the mediator's role in the mediation process. On the one hand, we find a clear mediation, where the mediator clarifies and improves communication between the parties to help them make a decision. On the other hand, it is the assessment mediation where the mediator, based on training, experience and objectivity, provides some guidance for settling the dispute (Bernal 2011).

The mediator promotes reconciliation, compromise, understanding, and constructive communications between the parties. Sorokina, E.G., Vdovina, M.V. (2013) describe different roles and functions in the process of assisting in solving the conflict. These include:

- "Finder" of communication channels that helps improve communication;
- "Voice of the law", which helps recognize the right of all parties to participate in the negotiation process;
- "Organizer of the Negotiating Process";
- "Coach," which trains;
- 'Resource Extender', which provides procedural assistance to the parties and links them to external experts, such as lawyers providing the missing information;
- "Problem researcher" that enables the conflict parties to address the issue from different perspectives, helps to formulate the main issues and interests of the parties and to find conflict-resolution opportunities that are mutually beneficial to the parties;
- "Realist", which helps to make a reasonable decision in accordance with the requirements of reality;
- "Leader", taking the initiative to negotiate through the organization of the procedure;
- "Mediator" - a more neutral role.

5. Mediation in social work

Mediation is most commonly used by social workers in several conflict areas.

The first conflict area is the family. In *family mediation*, the mediator acts as an independent third party and provides support to parties that cannot find a common language. The emphasis is on resolving problems in the future, not on identifying the rightness and guilty or on digging in the past. Family mediation is not appropriate in case of domestic violence when one of the parties has been the victim of emotional, sexual or physical violence and the other is in a dominant position. Family mediation implies equality of participants, who are seeking with the help of a mediator answers to their questions. It should always be voluntary and also guarantee the rights of both parties (Lugovtsova and Egorova 2017).

Divorce mediation has different goals, one of the most important being to improve communication between spouses. Mediation facilitates a more friendly relationship between spouses as the process is non-blaming, focusing on cooperation and problem solving. Another goal is the compromise that allows the parties to understand the interests of the other party and to try to find the best solution for both. There is another goal typical of any mediation - to reduce costs and resolve the dispute more quickly. Mediation helps build and maintain dignity and respect. It is important that each side has respect for the other (Abraham 2008; Emery 2010).

Mediation is a chance for parents to discuss how they will care for their children after divorce or separation. During the mediation, parents can work to reach an agreement that is in the best interest of their children and to learn to communicate and cooperate with their children. Mediation helps ex-partners to reach agreement on issues such as: settling children after separation; child support payments; finance (common home, savings, pensions, debts); child health, education, religious; where and when the children will stay, children's transportation, activities, discipline and other everyday worries.

School mediation is applied in the event of disconnection between the school and parents, pupils and teachers or pupils and their classmates. Consultation are held

with each of the parties in the dispute, the potential for resolving the conflict is assessed, and mediation is organized in order to improve the communication. Areas of dispute can be: special educational needs and disabilities, access, social exclusion, harassment, violence, discrimination. School mediation has three goals: 1) creation of a safe environment conducive to the development of a person who can make decisions and take responsibility for their actions; 2) promotion of a culture of constructive behavior in a conflict based on the recognition of the value of human life, the uniqueness of each individual, the acceptance and respect for the right of each person to satisfy their own needs and to defend their interests without harming others; 3) improvement of the quality of life of all participants in the educational process (family, educators, teachers, administrators, psychologists, social workers, social educators, children, adolescents) using mediation based on positive communication, respect, mutual acceptance both within the group of adults or children, as well as between these groups (Zernova 2017).

Mediation helps biological parents and *adopters/foster parents* to determine how to maintain communication after the adoption/foster care is finalized, discuss opportunities and aspects of meetings with the child, exchange of information with each other. Meditation is also useful in conflicts between foster parents/adopters and childcare agencies, as well as conflicts between careers and children. Mediation between the foster family and the biological family contributes for resolving conflicts and disputes between them and reducing the possible traumatic consequences for the child. Foster parents often are not ready for the problematic behavior of the child, especially in adolescence. This raises the risk apart from conflicts and tensions between them, but also for returning the foster children to the institutions. In such situations, the mediator is invaluable.

Another role of the social worker as mediator is *health mediation*. The Health Mediator is a professional who facilitates access to disadvantaged persons and groups (mainly ethnic minorities or refugees) to health care and social services. I. Tournev describes the role of the health mediator: to provide health information, to conduct health awareness discussions; to provide information related to solving social problems; to collect and provide information related to the needs of the community and of health and social workers; to assist the activities of doctors and nurses on the spot; to accompany people with disabilities to health and social institutions; to provide assistance in completing documentation; to provide psychological support; to participate in preventive programs - immunizations, prophylactic examinations; to help families with chronically ill or disabled family members. J. Pulova describes the health mediator as a coordinating figure that links the minority communities to the health and social services; helps overcome cultural barriers to communication and maintains dialogue with the institutions; participates in the optimization of preventive programs and health information campaigns among Roma communities; accompany illiterate Roma to health and social care facilities; protects patients' rights, etc. (Pulova-Ganeva 2011).

Two approaches are used in the negotiation process - distributive and integrative negotiation. Distributive negotiation attempts to distribute a "fixed pie" of benefits. In social work, the second approach is usually used - integrative. Integrated negotiation is referred to as interest-based negotiations based on principles. This is a set of techniques that try to improve the quality and probability of agreed consent, taking advantage of

the fact that different countries often evaluate different results differently. Integration negotiations rethink the conflict issues in such a way that both sides are profitable. Involving negotiations include a high degree of trust and a more satisfying relationship. Productive negotiations focus on the parties' main interests, not on their initial positions in the negotiation process.

I win - You win strategy allows the two sides in the discussion to feel that the deal is satisfactory for both parties and that none of them is the "loser". This is especially useful when it comes to ongoing relations between the parties. All this overlaps with one of the basic principles of social work - social justice. The technique consists of five principles: 1. separating people from the problem; 2. focusing on interests rather than on positions; 3. creating opportunities for mutual profits; 4. use of objective criteria; 5. know and use the best alternative to a negotiated agreement (Fisher, Ury and Patton 1992).

Mediation in relation to child protection is successful from different points of view. It solves most of the cases cited by the court, and those who cannot decide are returned to court with better litigation opportunities. Decisions reached in mediation are better suited to the needs of the family and children than decisions after a lawsuit. Participants believe the mediation process is productive and useful. Parents are more satisfied because the process allows them to express their dissatisfaction and worries. Finally, mediation leads to better results for children (Edwards 2004).

Todorova describes the process of mediation between the juvenile offender and the victim. The mediator is a third party in the process when the young offender and the victim meet each other. Mediation increases the young offender's awareness of the emotional, physical, and material damage from the offense and at the same time prevents the young person from committing a new offender (Todorova 2005: p. 34).

6. Similarities between mediation and social work

- Mediation and social work share many techniques, values, and approaches.
- The mediation and social work share a common purpose, have similar objectives and apply many of the same skills and interventions. In addition the goal of every intervention in both social work and mediation is to further the self-sufficiency of the clients (Parsons 1991, Barsky 2001, Howard 1987).
- Mediation and social work have a common goal - empowering people based on the principles of equality, justice and social well-being, as well as seeking consensus and understanding among people, groups and communities.
- Both mediation and social work intervene in situation of conflict, but with an important difference.
- In both mediation and social work, the confidentiality of information is fundamental.
- An obligatory condition in mediation is the observance of a certain code of ethics. Like the social worker where professionalism corresponds to morality, the mediator is obliged to comply with confidentiality (Stoyanova 2014).

7. Differences between mediation and social work

But there are also significant differences in the roles of the mediator and the social worker (National Family Mediation 2012; Blanco 2016; Direnfeld 2016):

• The mediator aims for a clear agreement between the participants about how they will deal with specific issues. The social worker is more concerned that the parties will gain a better self-understanding of their individual and social behaviour.

• The Mediator recognizes the feelings of the individual, but does not examine them in depth. The social worker is concerned about how customers feel about their experiences.

• The mediator relies on both sides to be available so that they can negotiate, usually face-to-face. It is not necessary for the social worker to see both sides at the same time.

• The mediator is required to be neutral. The social worker can play a supporting role. Mediators are impartial and neutral professionals who, with the relevant skills, can facilitate communication and negotiations between the parties through a procedure designed for this purpose. For social workers, their function involves establishing a close link of support to accompany individual consumers in the processes of social integration and raising their levels of well-being. This means that social workers' interventions must not necessarily be neutral and impartial; they may go beyond these limits.

• Mediation requires both sides to be ready to negotiate. Social work can only work with one party, even if the other is not ready or unwilling to change.

• Mediation is a structured process that is usually limited to one or more sessions. Social work tends to be longer - depending on the needs and progress of the client.

• The role of the mediator is focused on how people would like to see things in the future rather than on a comprehensive analysis of recent events. A social worker may need to examine the client's past in detail to bring out the origins and patterns of human beliefs and behaviours out of the open, but that is not his main focus;

• The focus on mediation is the narrowest. Mediation is usually aimed at resolving a particular dispute. Counseling is usually more widespread than mediation. Therapy provides the widest range and depth to deal with relationship issues. Usually the focus is less on what needs to be decided specifically, but rather why this pair is in current conflicts and how they can do things differently to avoid a constant conflict]

• The mediator controls the process but does not attempt to openly influence the participants or the result. A social worker often deliberately takes this role in the process by striving to influence the client to move in a certain direction or to focus on certain issues.

• The main difference is in the methodology used. When a social worker intervenes to resolve a conflict, he uses mediation as another intervention activity. Mediation does not use the methodology of social work, but adopts its own specific approach to achieving its only goal of resolving the conflict.

8. Conclusion

The mediator role involves resolving conflicts micro, mezzo, or macro systems. It mediates between the client and the microsystems, between the client and the macro system, between two microsystems or between two macro systems. At the macro level, the mediator helps various subsystems within a community, or a community and some other system, work out their differences. At the micro and mezzo levels, mediation is helps in such areas as resolving divorce and child custody cases. (Zastrow and Kirst-

Ashman 2007, Kirst-Ashman and Hull 2016). All three levels of mediation have a function to advocate on behalf of and intervene to help people. Micro social workers interpros between individuals. Mezzo social workers mediate between individuals in group settings, or with families. Macro social workers negotiate with communities.

The need to include social work professionals in mediation activities can be explained by the nature of the profession. Social workers are often at the epicenter of conflicts between spouses, between parents and children, adoptive parents, guardians, foster parents, between neighbors, ethnic or religious groups, at work or at school (Osmuk 2014).

If we analyze the functions of social workers, we can assert that the scope of their work is greater than that of the mediator. The mediator role is inherent in social work. Social workers, besides mediating, can also diagnose, advice, direct, direct, protect and assist in conflict management. However, mediation expands the field, the horizon of social work. Training of social workers in mediation techniques to resolve conflicts can improve the efficiency of social work.

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