

PERSPECTIVE ON THE ROLE OF ALTERNATIVE DISPUTE RESOLUTION IN SOCIAL WORK RESEARCH AND PRACTICE

Corneliu I. LOGHIN *

Abstract

The use of Restorative concepts and of basic and hybrid Alternative Dispute Resolution methods and models in administrating and solving all kinds of conflicts appeared in all types of social environments becomes a usual response worldwide. The present article emphasizes some of the characteristics that highly recommend competency development and use of Restorative and Alternative Dispute Resolution concepts, methods and models in Social Work scientific research and practice as means for enhancing its results' quality and efficiency.

Keywords: social work, conflict, conflict management, restorative justice, alternative dispute resolution

Resumé

L'utilisation des concepts Restauratrices et des méthodes et modèles de base et hybrides qui appartiennent au domaine des méthodes alternatives de solutionner les conflits dans l'administration et la résolution des conflits qui surgit dans n'importe quel environnement social est maintenant quelque chose d'habituel partout dans le monde. Cette article veut mettre en valeur quelques des caractéristiques qui recommande le développement des compétences et l'utilisation des concepts, méthodes et modèles de justice restauratrice et des méthodes alternatives de l'administration et de solutionner les conflits a fin d'augmenter la qualité et l'efficacité des travaux de recherche scientifique et pratique dans le domaine de l'assistance sociale.

Mots-clés: assistance sociale, management du conflit, justice restauratrice, méthodes alternatives de solutionner les conflits.

Rezumat

Utilizarea conceptelor aparținând domeniului Restaurativ și a metodelor alternative de management al disputelor în administrarea și soluționarea oricăror tipuri de conflicte apărute în orice tip de mediu social devine un mod curent de răspuns la nivel internațional. Prezentul articol reliefează câteva dintre caracteristicile care recomandă dezvoltarea de competențe și utilizarea conceptelor, metodelor și modelelor de justiție restaurativă și metodelor alternative de management al conflictelor în scopul creșterii calității și eficienței activităților de cercetare științifică și de practică în domeniul asistenței sociale.

Cuvinte cheie: asistență socială, management de conflict, justiție restaurativă, metode alternative de management a conflictelor

* PhD; Association for Dispute Dialogue and Solving, Iași, Romania;
email: asocdsd@gmail.com

1. Introduction

Modern states assume series of responsibilities toward individuals who happen to be in temporary or permanent difficult situations and allocate benefits and services to them. All those efforts have as purposes to respond as appropriately as possible to social and special needs, to develop individual, group and collective capacities of securing a minimal acceptable level of life quality, to offer individual, family and group general support, to grant and promote fundamental rights and liberties, to prevent and fight social exclusion risks and to promote social inclusion. Those approaches are put in practice by the social work systems that can be defined, organized and managed in various ways according to different conceptual systems and social system characteristics in which those are created and operated. Accordingly, the same category of social work system might be understood as “the whole of institutions, measures and actions by which the State, through the central and local public authorities, and the communities intervene in order to prevent, limit or solve the temporary or permanent situations that might generate social marginalization or exclusion of individuals, families, groups or communities” (Romanian Parliament 2011, art. 2, 1), as a “profession which promotes social change, is involved in solving interpersonal relations problems and in enhancing the level of self-determination and freedom of individuals on their quest of reaching the well-being” (International Federation of Social Workers, International Association of Schools of Social Work 2000), or as a “a practice-based profession and an academic discipline that promotes social change and development, social cohesion, and the empowerment and liberation of people. Principles of social justice, human rights, collective responsibility and respect for diversities are central to social work. Underpinned by theories of social work, social sciences, humanities and indigenous knowledge, social work engages people and structures to address life challenges and enhance wellbeing. The above definition may be amplified at national and/or regional levels.” (International Federation of Social Workers, International Association of Schools of Social Work 2014).

2. Content

The goals of social work generally aim the enhancement of the beneficiaries’ solving problems capacity and of their social adaptation, to connecting them to systems that are able to provide necessary resources, services and opportunities, to enhance the effective and adapted use of those systems and

to contribute to social policies' development and enhancement (Pincus and Minahan 1973, 9).

In order to reach social work's goals, the attributions of social support providers include a large spectrum of activities among which those of individual, family, group risks and needs evaluation and management, evaluation of their special circumstances, planning, monitoring and evaluation of needed and possible support approaches, supporting beneficiaries in their effort to understand own needs, perspectives and circumstances. In accomplishing their attributions, social workers collaborate with other professionals in order to reach their specific goals (which are spread over different fields of activity, penal justice being included), fulfill legal obligations towards individuals they are working with, they are managing the case load, implement social support approaches offered to beneficiaries, design and put in practice beneficiaries' counseling, social competencies development and supervision programs. Frequently social workers are also involved in research and design, community development, advocacy (Hussein 2011, 15), lobby and not at least, they are involved in administrating and solving conflictual problems and situations directly linked to their usual activities.

Social work is not only a system which puts in practice the support measures offered by the State and an inventory of applicative activities, but also an academic field which "builds its identity on the study of social problems. Its aim is to generate knowledge on causes, consequences and potential solutions which can be applied to social problems" (Michailakis and Schirmer 2014, 2), while the social problem concept can be understood as "an objective and/or subjective undesirable social condition which must be diagnosed and solved by competent individuals" (Mauss and Jenness 2001, 2764).

Even while considering just the few information presented above it is possible to identify a significant characteristic of the social work academic and practice field which involves series of concepts, institutions, systems, groups, individuals and relations being in continuous and consistent exposure to conflict, by this generating differences and contradictions, intra and interpersonal tensions and conflictual situations that appear on specific processes developed among social partners, involving their relations and being affected by their significant background. The very existence of this characteristic can be evidenced in the cases in which, in or linked to social work processes, appear perceptions and/or evaluations considered to be of negative, undesired impact while involving existing, desired, foreseen *vs.* actual and possible means, ways and levels of response to specific needs of survival, personal safety, social recognition and belonging, self

accomplishment and development (Maslow 2013, 167-179); the same characteristic appears also in the presence of real or just perceived incompatibilities between needs, interests, positions, perspectives, understandings, goals, objectives, expectancies, aspirations, attitudes, behaviors, in competition situations linked to resources considered as being limited, in deprivation, mixed and negative conditioning, in the presence of a high levels of subjectivity, of incertitude and many others. This characteristic – which is present in every and all human relations – may appear with higher frequency and intensity in those relations established between individuals involved, affected and interested in social work activities as a result of real or just perceived differences between communication patterns of those involved in specific activities, as an effect of the level of their communication quality processes, of differences between personal and/or group values (differences between the type and way of perception and/or understanding of essential values), as a consequence of informational differences (differences between type, quality, level of information, of used methodologies (differences between chosen norms and modalities and the quality of different processes and instruments they use), between their interpretation and priorities); the same characteristic appears in the cases in which structural differences are present (generated by unbalances of real, perceived, allocated or relative power level, of social statute and recognition, of social, professional and material status, prestige, of access, control and ownership over resources), or in cases where oppressive, abusive, inefficient or inoperable norms, strict conditions and limitations are inflicted – those situations may appear in cases in which interacting individuals and/or the social and/or natural environment impose restrictions and generate pressure upon communication process participants, making those to react unconsciously and/or to decide in a conscientious way to oppose to given limitations (Loghin 2016, 69).

The results generated by the differences and diversity, by intra and interpersonal tensions and by conflictual conditions, situations and relations can be perceived and evaluated as being positive, associative, constructive, functional, progress generators and able to lead towards the reaching of desired, licit, right, sustainable, acquisitive objectives, or as negative, unwanted, dissociative, destructive, dysfunctional and able to lead to tangible and intangible destructive results. While it is generally accepted that every and each social work activity is significantly important for beneficiaries of social services, for their communities, for their providers and for the social system as a whole, it is of obvious importance the way in which the results of such activities are perceived and/or evaluated; accepting

those considerations, it is of paramount importance to efficiently administer conflictual conditions, situations and relations linked to all social work activities and/or to identify and solve the problems which generated and were generated by those conflicts while being evaluated as generating negative effects.

The administration and/or the resolution of conditions and situations of conflictual type is performed through their management, which is understood as a collaborative, adapted and on mostly conscientious level performed structured processes by which understandings and responses are given to relevant conflictual conditions and situations – the pending administrative processes aim the control conflictual conditions, situations and their results without engaging in activities of offering acceptable and implementable responses to problems that generated and that were generated by the conflict, as in the case of the resolution activities.

The same inventory of activities, structured and ordered upon a same process logic, that constitutes the process by which the management of conflictual conditions, situations and relations is done can lead to different results according to the way this process is done – a significant category which makes the difference in this case is the strategy used in performing the process, while this category is understood as a specific and conscientiously selected mode in which a specific activity is planned and performed. There is a large inventory of strategies that are used in the conditions, states and relations conflictual management, each having specific and also common features which recommend them to be included in different categories.

The importance allocated by the field of conflict management to strategy lead to its use as significant criteria in defining different categories of types and methods of conflict administration and/or solving; considering that justice is basically a process of conflict management, inventories of strategies used in these kind of processes can and are used on defining of different justice conceptual systems. Among the most known and used justice conceptual systems it is to mention the Classic or Retributive and the Restorative or Alternative systems.

Considering the specific strategies, the Classic or Retributive conflict management (justice) system uses lose-lose, autocratic, distributive, mainly administrative ones, which are based on mandatory norms, on competition and negative motivation, on adjudicative approaches and intervention¹ of the

¹ In Conflict management the concept of intervention is understood as a process in which the decisions are taken by the service provider which also has the highest level of power among all process participants; beneficiaries have lower or no decision power in the process and are frequently negatively motivated.

service provider which lead – among others – to the allocation of a major level of decision power to the service provider and a minimum one for the beneficiaries. The use of this types of strategies in conflict management (justice) processes frequently leads to a high level of pressure and low level of satisfaction for beneficiaries and to partial, unilateral, temporary, difficult to implement and to sustain solutions which are also inefficient and costly – considering the levels of tangible and non-tangible spent resources.

The Restorative or Alternative conflict management (justice) system is characterized by the use of democratic and consensual strategies of collaboration and mutual gain, based on the identification and given response to beneficiaries' needs and interests, on the use of norms created and/or adapted by those through negotiation, of integrative approaches aiming the resolution of the identified problems and on positive motivation and assistance² services which are leading – among others – to the highest level of decision power allocated to the beneficiaries, to a higher level of understanding, assuming and involvement of the parties in the process of conflict management and mutual agreed solutions implementing and not at least to a high level of satisfaction given to the participants by the process experience and efficient, implementable and long term sustainable negotiated solutions.

The field of social work theory and practice is frequently affected by the presence of conflictual conditions, situations and relations which involve high levels of intra, interpersonal and social tensions, limitations imposed by the existence of perfectible but imperative organizational, functional, technical normative systems and on available material, time and human resources. Another factor which jeopardize the quality in social work field is the presence and use of Classic/Retributive approaches, strategies, models, paradigms and stereotypes which are confirming and enhancing the dependent behaviors of beneficiaries of reactive support measures, the understanding that persons in need for social support present some form of guilt and are sole responsible for their status and results on their efforts to overcome their special situation, the imperative that the support processes must be designed and administrated exclusively according to generic imperative norms and that the service providers must have always the final and mandatory decision (while those are considered the only ones able to understand situations, needs and interests and take best decisions) and not at least the

² In the field of Conflict resolution the concept of assistance is generally understood as a process in which the decisions are taken by all process participants in collaborative processes, even if not all of them have the same level of decision power.

use of negative motivation upon beneficiaries in order to put in practice the decisions imposed on them. It is to emphasize that the sum of those type of characteristics traditionally lead and seem to recommend furthermore the use of Classic/Retributive concepts, models, and strategies in the management of conflictual states and situations the social work theoreticians and practitioners are confronted with.

It is to underline that the same problematic can be approached from another conceptual perspective which is consistent with Restorative and Alternative approach which recommends overcoming the culture of precariousness and dependency by enhancing, confirming and strengthening independent attitudes and behaviors of the beneficiaries by pro-social and professional competency development, suitable to lead to enhancing the self-determination and sustainability of persons being temporarily in special conditions. According to same conceptual perspectives it is considered that social problems are mainly effects of the social systems inefficiency which must be solved through the common involvement of the state, community and individual involvement and public and private approaches, that the normative systems must have mainly preventive and pro-active character and that their and social work structure and content must follow real individual, family, group and community needs and not just or mainly political purposes or temporarily available resources. Consistent to this approach, in the management of all conflicts related to social work Restorative and Alternative Dispute Resolution concepts, methods and models should better work and have priority (over the Classic/Retributive ones), while those offer the possibility to assist beneficiaries in approaches leading them to significant increase of gain potential as a result of their participation in collaborative and constructive processes of social problems and conflicts resolution, which are based on beneficiaries needs and interests, on norms with a high level of individualization and particularization, on integrative, democratic and consensual strategies and positive motivation.

Any social system should be consistent, uniform, balanced, predictable, clear, accessible, efficient, sustainable, work on the basis of realistic objectives, norms, principles, strategies, institutions, models, measures, instruments, social markers and support measures, to be adapted to actual needs and limitations and to be run by a sufficient number of competent, experienced, specialized service providers. In the real life though, practically each social work system must respond to a tremendous volume of needs and expectations while the resources are always too limited for satisfactory responses.

One of the significant ways to increase the efficiency of social work activities while the costs are kept relatively low consists in enhancing the level of human resources involved in those activities, both at academic and practice levels. Considering that and adding the facts that conflictual conditions, situations and relations are continuously present in social work while that field and profession promotes social change, inter-personal relation and social problem solving aiming also the increase of beneficiaries' self-determination, it is to be considered that one way to make research and practice in this field more efficient is that of enhancing the importance given by this field to the conflict management based on Restorative conceptual system and Alternative Dispute Resolution, including it in social work field's conceptual and instrumental inventory and accordingly training it's human resources. In those conditions providers of social work might have access to the knowledge and the use of significant Restorative inventory of concepts, basic Alternative Dispute Resolution methods (i.e. Collaborative, Structured and Efficient Communication, Negotiation, Solving Problems and Conflicts Facilitation, Mediation, Conciliation, Arbitrage) and the hybrid ones (defined as combinations of two or more basic methods characteristics).

While in the most of the world the use of those methods is limited only by the existence of needed competencies and their response to different assistance processes, it is to observe that in the case of Mediation – at least in Romania – its use beyond the upper mentioned conditions is legally restricted so that only accredited mediators may deliver such assistance, the breaching of that limitation being considered as a crime (Romanian Parliament 2009, art. 12, row 4 and 5). Considering all the above presented, that Mediation is one of the most effective Alternative Dispute Resolution methods and that now there is by far an insufficient number of social workers to respond to Romanian's legal conditions regarding the practice of Mediation, it is to find a response to this limitative situation; one of the possible ones might be to emphasize that this legal limitation does not affect the competency development and the use of principles, instruments and good practices of mediation theory and practice (without delivering proper Mediation assistance) in the conflict management of social problems that came under the attention of the social workers.

3. Conclusion

Social work is an academic and a practice field with objectives and responsibilities closely linked to the management of conflictual problems, conditions and/or situations rised in the social field that could efficiently use the

theoretical and practical results obtained in the theory and practice of Restorative conceptual system and Alternative conflict management for accomplishing its goals.

References

1. ***, *Legea 192 din 16 mai 2006 privind medierea și organizarea profesiei de mediator*, Parlamentul României, publicată în *Monitorul Oficial* nr. 441 din 22 mai 2006.
2. ***, *Legea 370/2009 pentru modificarea și completarea Legii 192/2006 privind medierea și exercitarea profesiei de mediator*.
3. Hussein, S. (2011). *Social Work Qualifications and Regulation in European Economic Area (FEA)*, Final report, <https://www.kcl.ac.uk/sspp/policy-institute/scwru/pubs/2011/hussein201eea.pdf>
4. International Federation of Social Workers, International Association of Schools of Social Work (2000). *Social Work Profession*.
5. International Federation of Social Workers, International Association of Schools of Social Work (2014), *Global Definition of the Social Work*.
6. Loghin, C. (2016). *Conflicte – metode alternative de administrare și soluționare*, Editura Universității Alexandru Ioan Cuza, Iași.
7. Maslow, A. (2013). *Motivație și personalitate*, Editura Trei, București.
8. Mauss, A., Jenness, V. (2001). *Social Problems*. In: Borgatta, E. & Borgatta, M. (eds.), *The Encyclopedia of Sociology*, Macmillan, New York, pp. 2759-2766.
9. Michailakis D., Schirmer, W. (2014). Social work and social problems: A contribution from systems theory and constructionism. *International Journal of Social Welfare*, 23(4).
10. Pincus, A., Minahan, A. (1973). *Social Work Practice, Model and Method*, Itasca, IL, FE. Peacock.