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MEDIATION AS A CONFLICT RESOLUTION TECHNOLOGY

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МЕДІАТОРСТВО ЯК ТЕХНОЛОГІЯ ВРЕГУЛЮВАННЯ КОНФЛІКТІВ

Abstract. Today's society is characterized by conflict as a permanent feature of a person, determined by both natural inclinations and social experience, and represents a threat to society. The article analyzes the conflict as a result of the struggle for status, attention, leadership, when the causes are intolerance, enmity, mistrust, inadequate expression of emotions, etc. The article also highlightssubstantive foundations of mediation technologies in conflict resolution, clarifiesthe role and functions of the mediator for the formation of skills in conflict resolution, and outlinesthe structure of the mediation procedure to ensure the parties' communicative readiness for objective reasoning and making the right decisions for conflict resolution.

Key words: mediator; conflict resolution; social work; content of mediation; interdisciplinary approach.

Анотація. Для суспільства сьогодні характерною є конфліктність як перманентна риса людини, зумовлена як природними задатками, так і соціальним досвідом, і являє собою загрозу суспільству. У статті проаналізовано конфлікт як результат боротьби за статус, увагу, лідерство, коли причинами є нетерпимість, ворожнеча, недовіра, неадекватність вираження емоцій та ін. Виокремлено змістові основи технологій медіаторства у вирішенні конфліктів, з'ясовано роль та функції медіатора задля формування навичок у вирішенні конфліктів й окреслено структуру медіативної процедури для забезпечення комунікативної готовності сторін до об'єктивних міркувань та прийняття правильних рішень для врегулювання конфлікту.

Ключові слова: медіатор; врегулювання конфліктів; соціальна робота; зміст медіаторства; міждисциплінарний підхід.

Introduction. The modification of modern ideas about conflict resolution, the advantage of technologies of peaceful resolution of conflicts and negotiations provides an opportunity for the transition of Ukrainian society to a qualitatively new level of mutual relations, tolerant attitude towards each other, promotion of democratic values [13, 16].

The aim – to analyze mediation as a socio-pedagogical technology aimed at solving certain socio-pedagogical tasks and conflict situations.

Theoretical framework. As research of specialists proves, people often conflict with each other. According to I. Rusynka, personality conflict is "a character trait,

a personal quality that determines the frequency of an individual's entry into conflict situations" [12]. Personality conflict is determined by the integration of three components: extra-individual (perception of personality conflict); individual (characteristics of the personality); meta-individual (influence of personality conflict on others). H. Lozhkin distinguishes variants of correspondence between internal and external in a conflict situation, in particular adequately perceived conflict; inadequately perceived; unconscious conflict; false conflict, when there is no objective situation, but the parties perceive their relationship as conflict [7].

The cause of conflicts is a lack of understanding and tolerance towards the opinion of others, unwillingness

to support othersin a difficult situation, inability to rejoice in the successes of others. Arguments that are often observed are the reasons of lack of communication skills;a person feels tension, loneliness, fear,isolationand self-doubt. In these cases, frequent misunderstandings arise, as a person can incorrectly interpret the intentions, feelings, desires and actions of the persons with whom he/she communicates. Trying to formulate his/her opinion, a person often makes mistakes and does not know how to express his/her emotions and feelings correctly, often offends others, which causes a fear of interaction, ostentatious indifference, which in turn is perceived by the interlocutor as mental callousness. A low level of mastery of active listening skills contributes to avoiding communication with others; inability to express emotions [5]. Emotions always accompany conflict situations, their correct expression affects the further settlement of the situation and determines its constructive or destructive outcome.

The influence of mass media, social networks, as well as the example of others contribute to the formation of a behavior style in conflict, which is characterized by manifestations of force, pressure, aggression. Again, whoever is stronger, more influential, is the winner using verbal violence (name-calling, insults, desire to shout, desire to silence). Often, people resort to such forms of interaction due to the inability to choose the right forms of influence and the desire to be heard, to receive attention; and the reason of it is misunderstanding in mutual relations(manifestations of aggression, bullying in the struggle for authority and leadership) [1].

According to these characteristics, K. Thomas and R. Kilman distinguish, among others, five ways of resolving conflict situations: - competition - is expressed in rivalry, confrontation, striving to achieve one's interests, and this can harm others; - adaptation - in contrast to the rivalry of sacrificing one's own interests for the benefit of others, preference is given to meeting the needs of other people; - compromise - each of the parties gives up their own interests to resolve the dispute; - avoidance - unwillingness to fight and defend one's own position, but also persistent unwillingness to satisfy the interests of the other party; - cooperation - search by the parties for ways to settle the dispute that satisfy all parties [18].

Based on the above-mentioned conflict behavior styles, K. Thomas and R. Kilman consider the following conflict resolution methods:

– the method of evasion consists in the fact that a person moves away from a conflict situation, avoids any issues that concern him/her, which can lead to the development of the problem;

– the method of coercion, its essence is that attempts are made to force adherence to one point of view, which is considered correct by only one side of the conflict. The opinions, interests and needs of the other party are leveled, their value is diminished;

– the smoothing method – consists in the fact that, putting well-being among team members in the first place, conflict participants are satisfied with minimal consideration of their interests and needs and cease to clarify the causes of contradictions, stop the dispute;

– the method of cooperation involves the active participation of all conflict parties in the search for solutions that can satisfy their needs and interests. Every opinion is valuable, important and has the right to be voiced and heard;

– the compromise method means that when resolving a dispute, the interests of the parties are taken into account, and it is assumed that they should make concessions on certain issues in favor of the interests of the other party [18].

Therefore, conflict is determined by the complex influence of psychological, socio-psychological and social factors (temperament, character, level of self-awareness and self-regulation, attitudes, values, self-esteem, living conditions, upbringing, social environment, etc.). Conflicts manifest as a struggle for leadership, attention, status, gender conflicts, etc.

We consider mediationas a constructive technology for creating a safe and tolerant environment for successful human socialization, which is interpreted as an alternative technology for settling and resolving disputes and conflicts, and reconciling conflicting parties based on the organization and conduct of negotiations between them with the help of an independent mediator [6]. Mediation is understood as an approach to conflict resolution in which a neutral third party (the mediator) provides a structured process to help conflicting parties reach a mutually acceptable solution to disputed issues. The mediator's functions include helping the parties make a decision, establishing a dialogue for the sake of reconciliation, and not making a decision instead of the participants in a conflict situation [3].

By using mediation to resolve the conflict, the parties adjust to the method of cooperation, which is the main goal of the mediator – to impartially approach the discussion of the situation that has arisen and to help the parties make a mutually acceptable decision for its

settlement. It is worth noting that the mediator does not take part in decision-making, but instead:

– facilitates the expression by each participant of the conflict of his/her vision of the situationand point of view;

– controls that the parties to the negotiations are heard by each other, express all their concerns and fears that arise in them;

– summarizes what has been said and identifies the key issues in relation to which negotiations are carried out and decisions are made;

– emphasizes the common positions and interests of the parties. Analysis of its principles is important in revealing the essence of mediation as an alternative conflict resolution technology. In the generally accepted sense, principles are basics, starting points, ideas, guidelines, general requirements [14]. A system of principles is the cornerstone of any conflict resolution mechanism.

The issue of mediation principles became a separate subject of research by foreign and Ukrainian scientists (B. Leko, L. Riskin, H. Chuyko, Yu. Prytyrka, etc.). By the principles of mediation, scientists understand "the initial and defining ideas, provisions and principles that constitute the procedural and organizational basis for the implementation of the mediation procedure and are aimed at an effective, mutually acceptable, legal resolution of the conflict between the participants in the dispute" [11]. Analysis of the source base reveals a wide variety of mediation principles. Based on the fact that mediation is a dispute settlement mechanism and was originally considered in the field of law, Yu. Prytyka considers three groups of mediation principles: 1) general legal; 2) interdisciplinary; 3) specific legal [11]. The general legal principles of mediation include the classical principles: humanism, democracy, social justice, legality, a combination of coercion and persuasion, the highest value of human life, giving priority to the norms of international law, respect for the Constitution, the rights and freedoms proclaimed by it. These principles operate in the system of legal law, various industries, and institutions that belong here [10]. General legal principles become the moral basis for the growth and activity of various legal institutions and mechanisms. They characterize the objective properties of law, which is the basis of the development of society, realize the perception by the subjects of society of their demands, aspirations, desires, views, and this, in turn, is embodied in numerous legislative doctrines, theories, normative legal acts, etc.

Mediation is an alternative mechanism for the settlement of legal disputes and is characterized by complexity and regulated by the codes responsible for the procedure of conducting cases in the state court. Therefore, during mediation, procedural principles are applied, which include: a combination of publicity and confidentiality, equality before the law, immediacy of the examination of evidence, the principle of objective truth, protection of honor and dignity of the individual, inviolability of the individual, presumption of innocence, independence of judges (in the case of a judicial mediation), admissibility and propriety of evidence, comprehensiveness, completeness and objectivity of the study of all materials, compliance with the requirements of the language regime of proceedings, evaluation of evidence based on internal conviction, compliance with the procedural form, etc. [10].

If the parties do not agree with a decision or wish to interrupt the mediation, the negotiations shall be terminated, unless otherwise provided by law. If, when resolving, for example, labor disputes, the contract stipulates that mediation is mandatory, then the parties do not have such a right to terminate the mediation procedure until certain decisions are made on the case [2]. As for Ukrainian legislation, in the case of labor disputes, a conciliation commission must be formed, to which a mediator is also involved, if necessary, but mediation is not mandatory. However, there are cases in which the contract stipulates a mandatory appeal to a mediator in case of settlement of labor disputes. Basically, such contracts are concluded by private firms, business corporations that cooperate with a large network of clients.

The essence of the principle of neutrality and impartiality lies in the mediator's duty to be impartial in relation to the parties to the conflict, the situation being discussed, as well as to the issues that are submitted for agreement. Instead, he/she bases his/her conclusions on the circumstances of the case, taking into account the opinions of the parties, and does not impose on the parties the adoption of a certain decision. If the parties suspect the mediator of bias, they have the right to refuse his/her help and demand that someone else be involved in the discussion. In the case that the mediator feels that he/she may be biased (for example, a female mediator is recently divorced and involved in the settlement of a divorce dispute), then he/she should immediately report this and, if possible, suggest another competent person to act as mediator [9]. It is also necessary to avoid a conflict of

interest, any interest of the mediator in the case being discussed is excluded.

It should be noted that there are exceptions to the observance of certain principles. For example, the equality of the parties in the mediation process, their equal right to choose a mediator, express their position, determine the agenda of the meeting, assess the acceptability of proposals, and participate in the formulation of the provisions of the final agreement seems to raise no doubts. But there are situations when one of the parties is "strong" and the other is "weak". Accordingly, the mediator seeks to change the balance of power to a more balanced one, which is a prerequisite for constructive negotiations. Most often, this is done at the expense of giving small advantages to the "weaker" side [11]. This party is the first to be addressed and the first to be given the floor; it is less limited in time, etc. In international negotiations, mediators can use means of pressure on the non-negotiating party (threat of economic, political, diplomatic sanctions). Parity is somewhat limited in the name of equality or efficiency.

Confidentiality is a principle and one of the benefits of mediation. If the mediator holds separate meetings, he/she agrees with each party what can be conveyed to the other. In order to use information about the case in the educational process, the mediator must obtain the consent of both parties. If the parties believe that all information that became known during the mediation is confidential, the mediator is obliged to respect their decision.

A mediator performs the functions of a facilitator: a regulator of communication between opponents. He/she creates conditions under which the parties express and discuss their own points of view. The main task of the mediator is to listen to the parties, using active listening, to distinguish the main and important. Analyzing the causes of the conflict, the parties gradually establish communication in order to eliminate contradictions. At the same time, the mediator follows the rules and principles of the mediation procedure and reminds the parties of their behavior if they violate them.

Therefore, the mediator is obliged to listen with respect, show empathy for each of the parties to the negotiations, create a situation of indifference so that the participants feel that their views and opinions are taken into account. An important aspect for a mediator is the possession of knowledge in various spheres of a person's social and everyday life, since certain points in the settlement of disputed issues will require a professional view of the situation. If the mediator does not have the appropriate (legal) education in order to provide applicable advice, then he/she has the right to advise a competent person who can be consulted for advice.

Another component of conflict resolution is reaching an agreement. The mediator clearly controls the resolution of the conflict so that as many options as possible are expressed by the participants for getting out of a difficult situation. The realism of each proposed option must be proven by the party proposing one or another method, that is, the mediator constantly encourages both parties to do so. The mediator should not offer his own decisions, even if, in his opinion, the parties make wrong decisions, because the implementation of the agreement points is controlled by the parties themselves.

An important component of the mediator's professionalism is his/her attentiveness to the parties. Mediator sets an example of a tolerant attitude towards the interlocutor and thus encourages the parties to a similar attitude. Compliance with the rules of mediation by the participants in the dialogue creates a situation of non-violent communication and motivates better disclosure of the parties.

The multifaceted nature of mediation and, accordingly, the wide range of possibilities for its use, explains the variety of its types. Note that in the meaning of "types" some researchers also use such concepts as "models", "directions" (the analysis of the spectrum of semantic loads of these lexemes in dictionaries reveals their synonymous meaning with the concept of "types", which gives us reason to use them as synonyms) [13].

In the first case, the mediator ensures compliance with procedural rules, does not interfere in the content of the dispute and does not offer options for its resolution. The second level, on the contrary, involves the inclusion of a mediator in the consideration of the dispute causes (economic, legal, technical, etc.), has the right to express his/her own opinion about possible ways out of the conflict. According to the level of intervention, the mediator must meet certain requirements. If a mediator is involved at the procedural level, he or she must be competent in mediation to be able to settle the dispute (usually, mediators are specially trained persons who work on a professional basis).

In the situation of intervention at the level of the disputesubject, people who are competent and have special knowledge on issues related to the field of the conflict subject act as mediators. On the basis of the specified components, N. Alexander singles out

the following six types of mediation: 1) regulatory mediation; 2) facilitating mediation; 3) transformative mediation; 4) expert advisory mediation; 5) mediation of "wise advice"; 6) traditional mediation [15].

When resolving a dispute, confidentiality is maintained, and the mediator's main task is to create conditions for dialogue between the parties to the dispute, help them realize their own interests and come to a mutual solution. In any case, the mediator does not encourage the disputants to make a decision, but only helps them in the dialogue process to find ways out of the conflict situation. But if in the usual process of mediation the conclusion of a realistically enforceable, viable agreement or compromise between the parties is considered a sufficient result, then in school mediation the mediator always strives for a deeper result - to reach a consensus. That is, we are talking about such a resolution of the dispute, which at the same time allows to change the attitude of the participants not only towards this conflict, but also contributes to the formation of a culture of constructive behavior in the conflict, in stressful situations in general.

The mediation procedure and the mediation approach contribute to the experiencing by the parties to the conflict their own strength, gradually acquiring the experience of adequate behavior in a difficult conflict situation. As such experience accumulates, it becomes possible to be self-confident (thanks to the acceptance and growth of self-esteem), to remain oneself, showing independence and freedom in demarcating and defending of "one's own" (by the concept of "one's own", psychotherapist A. Lengle understands what a person perceives and experiences as his/her own, – analyzes V. Lyakh [8].

Conclusions and Prospects for Research. So, in the context of the research, among applied socio-pedagogical technologies of a partial type, mediation is considered as an applied socio-pedagogical technology of a functional type, focused on solving specific functions or socio-pedagogical tasks, including conflict resolution. We see the prospects for further research in the determination of the components, criteria and indicators of the development of mediator competence of the future specialist in the social sphere.

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