



FEATURES OF THE FAMILY MEDIATION IN TERMS OF DIVORCE

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Abstract. The article reveals important role of the psychologist as a mediator in family disputes on examples from history and current practice of mediation in Georgia, focusing on activities of the project "Advocacy for the Protection of Children and Youth" implemented on the basis of the psychology clinic at Batumi Shota Rustaveli State University.

Key words: mediation, psychologist mediator, domestic violence, family disputes, children in mediation.

JEL Classification: J52; L84

Formulas: 0; **fig.:** 0; **tabl.:** 0; **bibl.:** 28.

Introduction

Realities of modern life are full of conflict and controversy: in family, at work, in society and international community. Escalating conflicts generate and are generated by psychological pressure. Usual way to deal with conflicts through adjudication creates even more pressure, stress, and finally leads to pains of failure.

Mediation is a negotiation process in which a neutral mediator assists the opposing parties and/or their representatives in achieving a mutually beneficial agreement; it is one of the methods of alternative dispute resolution (ADR) called so because people choose mediation instead of going to the court.

Practice of mediation is a complex field. Every adult can become a mediator, but professional conduct needs specific skills. The fields closest to the essence of mediation are jurisprudence and psychology, of which psychology plays a most significant role. In mediation, personal relationships beyond a dispute are crucial; the advantage of psychologists is that they used to deal with relations and feelings, when lawyers hardly can forget legal ways of dispute resolution to approach a problem only from the human point of view.

Literature review

Orjonikidze, Kartsivadze and Bujiashvili (2021) point out that focusing on personal problems and resolving them is one of the most important prerequisites for resolving a dispute. A psychologist will be better able to solve the problem in this way than a lawyer. They list several advantages of the psychologist-mediator, namely:

1. She/he is not focused on the legal settlement of the dispute and does not give a legal assessment to the actions of the parties;

2. She/he does not follow the structure established by the procedural law for a lawyer. The mediation process is not conducted as a judge, however, it has the ability to manage conflict and resolve disputes;

3. Since the issue is approached from a "human" point of view, the psychologist manages to establish a more direct relationship with the parties, which has a positive impact on the dispute resolution process [1].

The development of mediation in Georgia by public policy began about two decades ago. As a result of the implemented changes in the legislation, notarial, court, medical, tax, family mediation appeared. Lipartia (2015) points out that implementation of ADR today is mainly the state project aimed to unload the judicial system [2].

As reported by the National Center for Alternative Dispute Resolution (2013), on September 28, 2019, the law of Georgia on mediation entered into force, which aims to institutionalize mediation. One of the important innovations of this law is the creation of an equal and competitive environment for the development of judicial mediation and private mediation. Until January 1, 2020, the activities of court mediators were carried out on a voluntary basis, and today, the work of all mediators involved in the mediation program is funded from the state budget [3].

If we look at history, we will see that every country has its own tradition of dispute resolution.



According to Tkemaladze (2016), Georgia is no exception, the nation developed early-stage forms of mediation long before the state started to cultivate it. This method of dispute resolution was maintained in the middle ages and has survived in some parts of Georgia, in particular, in Svaneti and Khevsureti this institution still operates today. The main purpose of the mediation was to reconcile the parties peacefully. Ancient mediators practiced an evaluative approach, arbitration-like, making a decision by which the offender was liable for compensation in favor of the victim. The decision should have been such as to satisfy the aggrieved party and force it to reject hostility and revenge [4]. Such decision-making today is usually practiced by the courts in family disputes, but a more voluntary modern mediation process helping spouses to make their own decisions starts to compete with the judiciary.

Purpose

The aim of the article is to explain the role of the psychologist as a mediator in family disputes on examples from historical and contemporary development of mediation in Georgia, in particular, from the practice of psychology clinic at Batumi Shota Rustaveli State University (BSU Psychology Clinic).

Method

The article employs interdisciplinary methods and statistical analysis of data gathered at the BSU Psychology Clinic when providing the service of mediation in the project "Advocacy for the Protection of Children and Youth".

Results and Discussion

In ancient forms of mediation which are still practiced in some regions of Georgia, the number of mediators depended on the complexity of the crime. In simple disputes, the number of mediators ranged from 2 to 4, while in complex cases such as murder, their number rose to 12. Mediators were usually chosen by the parties, however, their names could also be named by the intermediary man. Usually, the parties named an equal number of mediators, however, there were exceptions. Men were chosen as mediators, who were distinguished by honesty, authority, wisdom, sincerity, god-fearing. The mediator should have good communication skills and be able to "find the right words in a critical situation. As a rule, the mediators were only men, especially in the mountains. Only in ex-

ceptional cases, and even later, could a woman be appointed as a mediator. The oath played a big role in the mediation process, especially the oath on the icon, which had a great probative value. It can be said that to some extent the oath on the icon was even a pillar of the institution of mediation, as it was the oath that conditioned the confidence of the parties in the process, as well as the execution of the decision made by the mediators.

Mediation in the valley was mainly related to family separation. Historical materials preserved to this day show that the division of family property with the help of a mediator was widespread in all parts of Georgia. Even more, mediator involvement in family disputes has survived into the 20th century. The mediators' duty was to describe the entire family property (movable and immovable) and to draw up a document on the divorce and division of the family property ("Division sheet", "curtain sheet", "decision on division of property", etc.). This document was written in as many pieces as there were participants. One piece had to stay with the mediator as well.

In Adjara, the division of property by "fish-cash" was established. The mediators were dividing the whole property equally and assigned a certain mark to each share. After that, they were throwing in a hat as many marked sticks as many shareholders there were. The individual stick was an expression of belonging to a predetermined share that only the mediators knew about. They were mixing the sticks in the hat with each other, after which each participant was taking out one of the sticks and accordingly owned his property. The family was choosing mediators itself, who were often family relatives, neighbours, or distinguished people in the village. This role was often played by the brothers of the participants' mother. There could have been one person as a mediator. It was possible to elect three people, one of whom was elected as the head and called the ober-mediator. The person chosen as a mediator should have been smart and experienced, well-versed in literacy and land measurement. The authority of the mediator determined the frequency of their election. In exceptional cases, mediators may be invited as observers and fact-providers.

The main distinguishing feature between the historical form of mediation and today's mediation is that historically, the mediator has made



the decision. Therefore, in parallel with the reconciliation of the parties, the mediator also had the function of establishing the truth. In the modern sense, mediation precludes decision-making by the mediator. Under the current system, the mediator's role is limited to asking questions to the parties, conducting the process and finding possible ways to resolve the dispute, while the decision on the agreement is made by the parties themselves [4].

If old Georgian art of mediation rarely involved jurisprudence skills (rather moral intelligence and customary wisdom), modern emphasis on helping people to decide for themselves instead of imposing on them authoritative solution to dispute makes psychology skills even more important for mediator, despite knowledge of jurisprudence is also useful to formalize agreements and participate in the state-driven mediation framework emerged after legal reform.

Our personal experience many times proved the significant role of a psychologist as a mediator in solving family problems.

In Georgia, from December 6, 2016 to May 2019, the public health foundation implemented the project “Advocacy for the Protection of Children and Youth” (№-ENPI/2016/379-321) in cooperation with the organisation "Step Forward", rehabilitation and development charity center "Tanaziari" and the International Catholic Child Bureau (BICE).

The associated partners of the project were Batumi Shota Rustaveli State University (BSU) and Child Helpline International (CHI).

The aim of the project was to improve the child protection system, protect children and young people who are victims of domestic violence and sexual violence, prevent violence against them and respond to cases appropriately. The main activities of the project were carried out in Tbilisi, Adjara (Batumi).

Activities implemented by the three regional centers within the project are presented in detail in the following table:

Services provided at the center	
Total online adjustments	953
One-time consultation	502
The number of completed cases	430
The number of current cases	9
Services will be provided in the future	12
According to the type of entry	
By self-flow (for example, after school training)	208
From a social agency	91
From an educational institution	16
From law enforcement	79
From a health care facility	2
Other	55
Quantities in started / completed cases	
Number of successful cases in completed cases	339
Number of failed cases in completed cases	92
Number of children - parent / legal guardian / caregivers	493
Total number of children / youth	439
0-6 years old	82

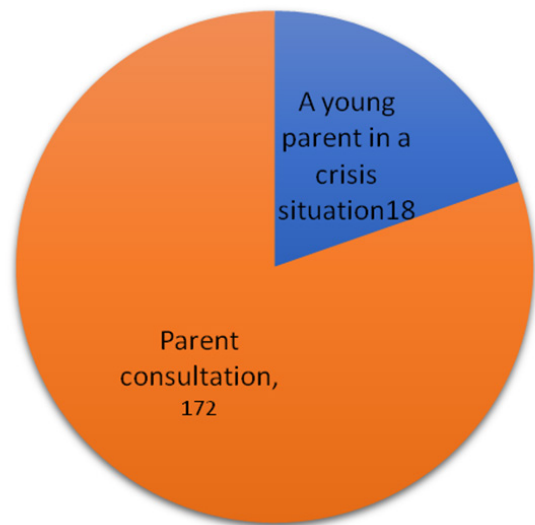
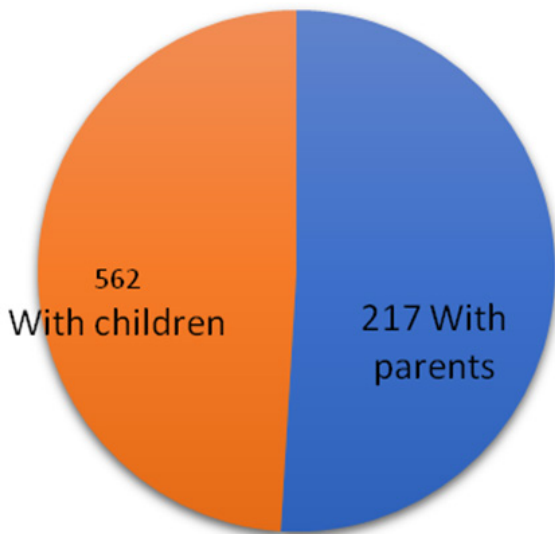


7-12 years old	183
13-21 years old	176
Girl	225
Boy	214
According to the type of violence	
Psychological violence	256
Physical violence	102
Sexual violence	66
Neglecting	15
According to the type of victim	
A child victim or witness of domestic violence	232
Child and young victim of sexual violence	79
A child with disabilities who is a victim or witness of domestic violence and other crimes - will receive services tailored to their individual needs	137
Child from divorced families - dealing with divorce trauma / therapy	171
Children and young people attempted to commit suicide due to violence will receive counseling and rehabilitation services	32
In or out of state care victims of various forms of violence Young (18-21 years old)	82
Parliamentary commission for the murder of two minors on Khorava street.	30
Total number of meetings with parent / legal guardian / caregiver	1258
Number of meetings with children	2132

Batumi children and youth advocacy center actively cooperated with the Adjara social service agency, the psychologists working at the center submitted court-based findings on family dispute issues involving minors. Although the project did not provide for the position of mediator, but in fact, psychologists and social workers had to combine the function of mediator, they played the role of conciliator in resolving various conflict situations: psychological, physical, sexual violence, neglecting, domestic violence, bullying at school, and family disputes.

The diagrams show the total number of consultations conducted by the center's psychologists, both with children and parents.

With full protection of confidentiality, we present one of the most successful cases. The case concerned the relationship of the children with their father after the divorce. In particular, the divorced couple had two young children (a 3-year-old girl and a 5-year-old boy) who lived with their mother. According to the court decision, the father was given the right to take the children 2 days a week but did not have the right to leave the children with him overnight. The mother opposed to the idea of children staying overnight in the father's family as she felt that the ex-husband would not be able to take care of the children because he already had a second family, the infant and at the same time, his stepson and his wife's sister lived with them. The



father lives with his second family in a small apartment where there are no desirable living conditions for the children. The father filed a lawsuit against his ex-wife. The social agency turned to us for help. The center's psychologist and social worker investigated the case and planned to arrange a meeting of the spouses together with them. The meeting between the spouses took place several times and both parties came to an agreement that since the children were small at first, the father could take them during the day 2 days a week, and after 2 years it would be possible to leave them with him overnight as well.

A child-centered interview room has been set up at the BSU children and youth advocacy center. Authorised and competent representatives of the Ministry of Internal Affairs and the Prosecutor's Office were allowed to use the room and/or be present during the conversation with juveniles.

After the completion of the project, BSU Psychology Clinic continues its work on a private basis. The number of referrals to the clinic is quite high.

Many clients from Batumi, other cities and regions benefit from the clinic's services.

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Conclusion

Both from theoretical perspective and practical experience, the psychologist is the most competent professional to deal effectively with divorce and family disputes. In particular, stereotypic thinking about legal actions and law enforcement among lawyers hardly helps them to reconcile disagreements between spouses in amicable and voluntary way, nor to repair family relations, at least when lawyers aren't developing psychological skills. Knowledge of psychology of the people helped Georgian elders to mediate family disputes in past times, and our modern project "Advocacy for the Protection of Children and Youth" as well as mediation practice in the BSU Psychology Clinic succeeded because of psychologists' professionalism. However, training in the field of mediation and basic legal knowledge are helpful to resolve problems of private and family life in the complicated socio-legal environment of Georgia.

Acknowledgements

This publication is prepared as part of the implementation of Grant Project «Mediation: Training and Society Transformation» of the EU Program ERASMUS + KA2: CBHE.