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Family Mediation: A Manifestation of Changes in Caring for Seniors

Mediacja rodzinna jako wyraz przemian zachodzących w opiece nad seniorami

Abstract

Our society is aging and the attitudes of children toward caring for their elderly parents are becoming an increasingly frequent cause of family conflicts, especially between siblings. Potential family conflicts, increasingly often concern decisions on the type, extent, and time of caring for aging parents. Sharing responsibilities and organizing care for the parents is a cause of growing tension inside families. Problems include the lack of clarity about the division of duties related to helping with general household chores (cleaning, preparing meals, shopping) between siblings or duties related to personal and general care (feeding, bathing, administering medications, making medical appointments, and recreation). The main research problem in this article is to define the caring function of the family and family relations in the context of caring for parents with the use of mediation. The research method used in the text was content analysis. Mediation is an increasingly popular procedure implemented to restore normal relations between conflicting parties, including family members. Apart from conciliation, arbitration, and negotiations, it is the most dynamically developing method of dispute resolution and an alternative to the existing procedures offered by the justice system. Family mediation can help families in making many difficult decisions. The advantages of this procedure result both from the fact that it offers a holistic approach to very complex problems that require an effective resolution, as well as from the involvement of a neutral third party facilitating and organizing the process of communication between family members.

Keywords: family, old age, conflict, family mediation, support

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Abstrakt

Ze względu na fakt, iż jesteśmy społeczeństwem starzejącym się, postawy i relacje dzieci względem opieki nad starzejącymi się rodzicami stają się coraz częstszą przyczyną konfliktów rodzinnych, zwłaszcza między rodzeństwem. Potencjalnym źródłem konfliktów rodzinnych coraz częściej jest ustalenie formy, zakresu i czasu opieki nad starzejącymi się rodzicami, zwłaszcza pomiędzy rodzeństwem. Podział obowiązków i organizacja opieki nad rodzicami niejednokrotnie powoduje wzrost napięcia w rodzinach. Problemem staje się niejasny podział obowiązków rodzeństwa względem pomocy w pracach domowych o charakterze ogólnym (sprzątanie, przygotowywanie posiłków, zakupy) czy tych o charakterze opiekuńczo-pielęgnacyjnym (karmienie, kąpiel, podawanie leków, wizyty lekarskie, rekreacja). Wielokrotnie stosowanym rozwiązaniem przywracającym poprawność relacji pomiędzy stronami konfliktu, również w przypadku środowiska rodzinnego, jest postępowanie mediacyjne, które obok koncyliacji, arbitrażu i negocjacji stanowi najprężniej rozwijającą się metodę wygaszania konfliktów oraz alternatywę dla dotychczasowego działania systemu sprawiedliwości. Mediacje rodzinne mogą pomóc w podjęciu wielu trudnych decyzji rodzinnych. Ich zalety wynikają zarówno z możliwości holistycznego podejścia do bardzo złożonych problemów, które trzeba rozwiązać kompleksowo, jak i obecności neutralnej trzeciej strony, facylitującej i porządkującej proces komunikacji pomiędzy członkami rodziny.

Słowa kluczowe: rodzina, starość, konflikt, mediacja rodzinna, wsparcie

Introduction

Constantly expanding and intensifying social relationships are a characteristic feature of modern society. The increasing number of interactions and relationships leads to conflicts between individuals, social groups, and communities. Family relationships are one of the basic conditions that determine the functioning of individuals in society. The concept of family and family environment has changed over the centuries. However, regardless of the changes in its functioning and structure, the family remains the most important social group.[1]

Nowadays, we are increasingly dependent on other people, and our needs and plans are sometimes significantly limited by them. Contemporary families have more and more needs, plans, and demands, which, if not fulfilled, lead to dissatisfaction, frustration, and, consequently, conflicts, for example, when it comes to caring for aging parents. It is impossible to talk about the situation of the elderly without referring to relationships with their closest family. Old age is a stage of life in which the family and relationships between family members acquire greater significance. According to Leon Dyczewski, a society, even one that embraces a modern lifestyle, cannot do without elderly people.[2]

This article presents family relationships in the context of providing care for aging parents and describes family mediation as an effective method for

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[1] Z. Tyszka, *System metodologiczny wieloaspektowej integralnej analizy życia rodzinnego*, Wyd. Naukowe Uniwersytetu im. Adama Mickiewicza, Poznań 2001, p. 60.

[2] L. Dyczewski, *Ludzie starzy i starość w społeczeństwie i kulturze*, Wydawnictwo KUL, Lublin 1994, p. 120.

resolving conflicts related to caring for the elderly. The prospect of long-term care for aging parents gives rise to many arguments, challenges, problems, and decisions that increasingly often cause conflicts within the family, especially between siblings.[3]

Recently, there has been a significant increase in the popularity of alternative methods of solving conflicts and disputes (Alternative Dispute Resolution, hereinafter abbreviated: ADR)[4], which are especially relevant to the sphere of institutionalisation of the conflict against the background of the traditional judiciary in the modern state.

Family mediation is a professional method of dispute resolution that has been used around the world for over 30 years. In many countries, family mediation has gained acceptance among legal professionals and divorcing spouses.[5] The evolution of family mediation in Poland resembles, in many respects, the evolution of this practice in other European countries.[6]

Statistics confirm the increasingly frequent use of mediation to solve conflicts; the frequency of its application quadrupled in the last five years. The popularity of mediation is evidenced by the fact that it is used in contentious cases going far and wide beyond conflicts in the fields of labour law, and economic or criminal matters, and being more and more often associated with marital and family disputes.[7]

Fundamental considerations begin with the presentation of the relationship between the needs of family members and family bonds as the basic caregiving potential of the family. The analysis of issues related to old age and forms of caring for family members presented in the article refers to the main research problem, i.e. mediation as an alternative method of dispute resolution. The aim of this paper was to analyse this specific type of ADR. The research methodology relied on the analysis of relevant texts.

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[3] A. Rękas, *Rozwój mediacji w Polsce*, „Mediator" 2007, vol. 43, no. 4, p. 12.

[4] American Arbitration Association, www.adr.org (accessed: 09.05.2023), p. 2.

[5] A. Zariski, *A Theory Matrix for Mediators*, "Negotiation Journal" 2010, vol. 26, no. 2, pp. 23–25.

[6] D. Rynkowska, *Family Mediation as a Form of Alternative Dispute Resolution in Poland*, "New Trends and Issues Proceedings on Humanities and Social Sciences" 2020, vol. 7, no. 2, p. 11.

[7] M. Wojciechowicz, *Mediacja rodzinna w latach 2006–2020 w statystykach Resortu Sprawiedliwości*, „Arbitraż i Mediacja" 2021, no. 4, https://czasopisma.beck.pl/arbitraz-i-mediacja/artykul/mediacja-rodzinna-w-polsce-w-latach-2006-2020-w-statystykach-resortu-sprawiedliwosci/ (accessed: 19.04.2023).

An elderly person in a family – family relationship

The growing population of elderly people in contemporary society is a fact and has numerous repercussions in many areas of social life, the economy, and healthcare. The structure of the modern family shows that the number of elderly people exceeds the number of younger family members, and therefore positive relationships between an older person and other family members are of crucial importance. Old age is a stage of life in which the family and relationships between family members acquire greater significance. Seniors often equate the quality of their life with the sense of belonging to the family, which is the most important social group. Life satisfaction in different stages of old age depends primarily on the range and quality of ties between seniors and their family members or friends.[8] The restriction of social interactions and social roles due to retirement or health problems increases the need for maintaining contact with family members.

The family situation of elderly people depends on the type of bonds between the elderly and other family members. Bonds inside each family are not always the same; they change in different phases of the family's life and different circumstances. Therefore, some families are highly consolidated and attractive to their members from the sociological point of view, while others are not.

Leon Dyczewski distinguished three types of family bonds:

- structural and objective bond, where relationships between family members and intergenerational contacts are based on the roles played in the family. The roles are focused on running a household, and taking care of children and grandchildren, while the relationship is based on cohabitation;
- personal bond, which is one of the most important bonds according to Dyczewski. Relationships between family members and generations are based on feelings and are voluntary which is impossible to achieve in institutionalised environments, such as the school, or workplace, where interactions are often hostile and based on competition;
- cultural bond, where relationships between family members and generations depend on their attitudes to specific values. This concerns having shared or different values, patterns of behaviour, norms, traditions, and cultural products. The extensive aspects of the cultural bond influence the stability and quality of intergenerational relationships, which determines elderly people's perception of the quality of their lives.[9]

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[8] M. Rapley, *Quality of Life Research – A Critical Introduction*, Sage Publications Incorporated, London 2003, p. 28.

[9] L. Dyczewski, *Więź między pokoleniami w rodzinie*, Towarzystwo Naukowe KUL, Lublin 2002, p. 15.

The family is one of the most important social environments for humans, and even though many elderly people live alone, the family is still the fundamental group providing them with support and security. It bears the main responsibility when it comes to caring for the elderly person, thus fulfilling the caregiving and protective function. This function consists of providing financial and physical security to family members, living with the family or separately, who are wholly or partially destitute, or are physically unfit and need care. These caring responsibilities are related to personal care, material, and physical assistance, and caring for people who are handicapped due to old age and disability. The basic functions of the family make us realize that no other institution can replace the family and meet such a wide range of needs of the individual.

The relationships within the family and the bonds that connect family members depend on whether the needs of a given family, in particular the elderly members of the family, are adequately met. Kawczyńska-Butrym defined this as the caregiving potential of the family.[10] She distinguished seven features of the family that are important for adequate caregiving:

- the family structure, the presence of a person capable of taking on the role of caregiver, and the position of the person who needs care;
- the health of other family members;
- availability of the family members, social roles of family members;
- housing conditions, appropriate household appliances, and rehabilitation equipment;
- the quality of family ties, support, respect, and acceptance of the role of the caregiver;
- theoretical and practical preparation for the role of the caregiver;
- psychophysical abilities of the caregiver and their motivation for providing support.

Factors that may hinder or even prevent the performance of the caregiving function in a family include financial problems, poor health of the caregiver, changes in attitudes and behaviour of the elderly person, lack of knowledge and basic caregiving skills, and specific attitudes of the younger generation towards life. Sometimes, elderly people demand more care than they really need, which makes caregiving inconvenient and may put some elderly people at risk of neglect.[11] Changes in family relationships can also be noticed in the social and moral spheres. Undoubtedly, one of the key changes is the growing number of working women and the fact that women are traditionally assigned the role of caregiver in the family. Women are usually responsible for caring for seniors

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[10] Z. Kawczyńska-Butrym, *Wyzwania rodziny: zdrowie, choroba, niepełnosprawność, starość*, Wydawnictwo Makmed, Lublin 2008, p. 36.

[11] M. Halicka, *Problemy rodziny w opiece nad człowiekiem starym i niesprawnym*, in: *Zostawić ślad na ziemi,* eds. M. Halicka, J. Halicki, Wydawnictwo Uniwersytetu w Białymstoku, Białystok 2006, p. 243.

and other family members in need. The family's ability to satisfy the needs of seniors for care is also affected by:

- increased geographical dispersion – children live far away from their parents;
- social advancement of the offspring – children may be ashamed of their roots, which limits their contact with the rest of the family;
- development of e-technologies – modern technologies do not satisfy the needs of seniors, but are sufficient for younger generations;
- changes in the perception of the family – the care for family members influences public policy agendas;
- popularisation of the neo-local pattern – young married couples choose to live in a separate household.

In Poland, helping parents is not only a moral responsibility resulting from the strong bonds or norms that prescribe caring for family members but there is also a legal obligation imposed on family members by the Family and Guardianship Code. This code clearly specifies the maintenance obligation, which orders descendants and ascendants to take care of their family members in need. Individuals who are subject to this maintenance obligation, decide to provide care, and meet certain criteria may become eligible for cash benefits based on an administrative decision.[12] Moreover, under the Family and Guardianship Code, the maintenance obligation concerns not only direct relatives, but also the siblings of an elderly person, and by law they are required to provide maintenance for the elderly person and cover the costs of basic life needs if that person's resources are insufficient. The scope of the maintenance obligation depends on the needs of the elderly person, and the income and financial capabilities of the person obliged to provide maintenance.[13]

Types of care and help provided to seniors

The vast majority of seniors, when asked about the preferred type of help in old age, indicate the closest family members as capable of providing them with the best help in everyday life. Seniors would prefer to stay in their apartments and benefit from the help of relatives only as and when needed. This declaration indicates that the elderly need independence and self-reliance, and expect that, if necessary, they will receive support from their family members.

The literature dealing with this subject presents the following types of care provided by children to aging parents:

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[12] W. Anioł, R. Bakalarczyk, K. Frysztacki, K. Piątek, *Nowa opiekuńczość? Zmieniająca się tożsamość polityki społecznej*, Wydawnictwo Naukowe Uniwersytetu Mikołaja Kopernika, Toruń 2015, p. 59.

[13] D. Bek, A. Jaworska-Wieloch, O. Sitarz, *Prawo karne wobec naruszeń praw i wolności osób starszych*, Wydawnictwo C.H. Beck, Warszawa 2020, pp. 70–75.

- Routine help – an adult child provides regular, daily care for the parent;
- Backup help – an adult child is not regularly involved in caring for the parents, but can be relied upon in specific circumstances (provide emotional support and substantial help when asked for it by a sibling who provides regular help);
- Limited help – help provided to the parent is limited and provided with great caution. For example, a brother may leave most of the issues related to helping elderly parents to his sister, and declare his willingness to take responsibility for managing the parents' finances;
- Sporadic help – this help is provided from time to time, whenever it is convenient for the children. For example, a daughter who lives in another town may maintain little contact with her elderly, frail parent on a daily basis, but she may be involved in helping during a holiday visit at her parent's home;
- Dissociation – an adult child decides not to provide any type of help to elderly parents. Such situations often result from a long history of problematic parent-child relationships.[14]

Care and help provided to an elderly person by family members, friends, acquaintances, institutional partners, or non-institutional peer circles is defined as informal care. People providing care are often referred to as informal caregivers or family caregivers. If family members accept their responsibilities towards a dependent senior and have a sense of a successfully completed mission, they usually derive satisfaction from performing these responsibilities. Motivation is one of the most important factors that determine the way seniors are cared for. Love and attachment to the elderly person are the main reasons why family caregivers provide help to the elderly person. Such a relationship usually involves women (daughters, granddaughters, daughters-in-law) and their parents who experience health problems.

Care may be provided by individuals, groups of caregivers, as well as care and educational institutions. Some caregivers have qualifications and experience in this field, i.e. professional caregivers, while others are non-professional caregivers, and have no relevant qualifications and/or training, but have experience acquired, for example, by caring for an elderly family member with a disability, or by doing voluntary work. "Reliable caregivers", that is people who can be relied upon in the sense of a definition formulated by Tadeusz Kotarbiński, are individuals who are sensitive to other people's needs, are willing to help, have a strong will to take action, and are highly responsible: "A reliable caregiver is someone who can be rightly trusted that they will not disappoint you, that they

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14 H. Przybyła-Basista, *Konflikty rodzinne pomiędzy dorosłym rodzeństwem o opiekę nad starzejącymi się rodzicami a mediacje rodzinne*, „Społeczeństwo i Edukacja. Międzynarodowe Studia Humanistyczne" 2015, vol. 16, no. 1, p. 15.

will do everything they are supposed to, that they keep you safe, and generally will be a solid support in difficult circumstances".[15]

Sometimes, however, the primary reason for which family members are taking care of a senior is the very high cost of professional care services.[16] When family members capable of providing care decide to do it themselves and they are employed, they either combine caregiving with employment, or give up their employment, either for a certain period or permanently.

Surveys in Poland have revealed that only 33.6% of persons caring for elderly people, who are aged between 50 and 65 years, are employed. This means that one in every three caregivers is employed, while the rest are either retired or unemployed due to the need to care for a family member. In many cases, caring for an elderly person is stressful and exhausting, and a family member providing care is forced to give up employment because alternative ways of care are not seen as a rational choice. Family caregiving is less expensive than professional care, and therefore it is constantly encouraged. Family caregivers who leave the labour market and take on the caregiving role no longer have an income, and their new function is unpaid. In many cases, caregiving is very stressful and exhausting.[17]

The provision of help requires regular personal contact, and only in some respects can it be done remotely, by telephone, or over the Internet. Ongoing interaction with a person requiring care contributes to the physical and mental exhaustion of the caregiver. At the same time, this contact means that a wide range of emotional needs of an elderly person has to be satisfied, which requires the right atmosphere and close interaction.

There are many negative behaviours related to poor health that are not revealed in interactions between an elderly person and a formal caregiver but are expressed toward family members. This complicates the relationship between the caregiver and the family member in need. Because of emotional and physical exhaustion, the caregiver may become hostile and may mistreat the dependent person.[18] Many caregivers are overworked, for example when caring for both parents who are very ill at the same time. Each parent requires a personalised approach and support, and they often suffer from multiple diseases, be it Alzheimer's disease, senile dementia, or cancer. It is not uncommon for family caregivers to support their parents financially too. Although most seniors have their own means of support, such as a pension or disability allowance, their

[15] T. Kotarbiński, *Medytacje o życiu godziwym*, Wiedza Powszechna, Warszawa 1986, p. 59.

[16] A. Chabior, *Wspomaganie procesu pomyślnego starzenia się u ludzi starych*, Oficyna Wydawnicza „Impuls", Kraków 2017, p. 35.

[17] Ł. Jurek, *Polityka łączenia pracy zawodowej z opieką nad osobą starszą*, „Acta Universitatis Lodziensis. Folia Oeconomica" 2015, vol. 2, no. 312, pp. 95–110.

[18] M. Halicka, *Problemy rodziny…*, pp. 250–251.

income is often not sufficient to buy all prescribed medications and cover other costs of living.[19] Such a situation in caregiving promotes burnout, which is the result of long-term exposure to stress caused by financial problems, physical and emotional exhaustion, social exclusion, and conflicts arising inside the family, for example between spouses or siblings.

Having a support system is very important for elderly people. Support can be either formal or informal. In both cases, caregivers provide personal and general care, offer help in running the household, and ensure that elderly people are provided with the best opportunities for achieving independence and self-reliance.[20]

Taking care of an elderly person is an extremely difficult and demanding task, both in physical and emotional terms. Therefore, an appropriate support system is needed to enable informal family caregivers to fulfil their roles effectively. The family holds a high position in the system of values and is considered an irreplaceable support group.[21] No wonder it is so important in the lives of elderly people. The family also brings benefits for seniors who are appreciated in traditional family networks and receive the help and support they need. For elderly people, the family is usually the most important sphere of activity. A well-functioning family creates conditions that promote strong ties between family members, regardless of the age gap.[22] The closest environment of an elderly person consists mainly of their family members, friends, acquaintances, and neighbours. These people form a support network for seniors, who are given an opportunity to get involved in various social interactions. The environment of elderly people consists of two spheres: social and physical. These spheres are presented in the figure below (Figure 1).

The components of the support network are interconnected and interact with each other. This means that one missing component can be compensated by another. Therefore, it is essential that the support network is optimally diversified and extensive to ensure the enhancement and replaceability of individual components and to minimize the risk of loneliness.[23]

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[19] E. Mirewska, *Model opieki senioralnej i wsparcia opiekunów osób starszych-zależnych*, in: *Starość. Poznać, przeżyć, zrozumieć*, eds. M. Halicka, J. Halicki, E. Kramkowska, Wydawnictwo Uniwersytetu w Białymstoku, Białystok 2016, pp. 81–100.

[20] *Krajowy Raport Badawczy. Pomoc i integracja społeczna wobec wybranych grup – diagnoza standaryzacji usług u modeli instytucji*, ed. R. Szarfenberg, Wydawnictwo Wrzos, Warszawa 2011, p. 170.

[21] K. Slany, *Alternatywne formy życia małżeńsko-rodzinnego w ponowoczesnym świecie*, Zakład Wydawniczy NOMOS, Kraków 2002, p. 201.

[22] Z. Szarota, *Opiekun osoby starszej*, „Państwo i Społeczeństwo" 2007, no. 3, p. 117.

[23] A.I. Brzezińska, J.A. Sienkiewicz-Wilowska, S. Wójcik, *Opiekun jako mediator w środowisku fizycznym i społecznym seniora: perspektywa psychologii pozytywnej*, in: *Człowiek w wieku podeszłym we współczesnym społeczeństwie. Różne oblicza starości*, eds. K. Wieczorowska-Tobis, D. Talarska, Wydawnictwo Uniwersytetu Medycznego, Poznań 2011, p. 123.

Fig. 1. Social and physical environments of an elderly person
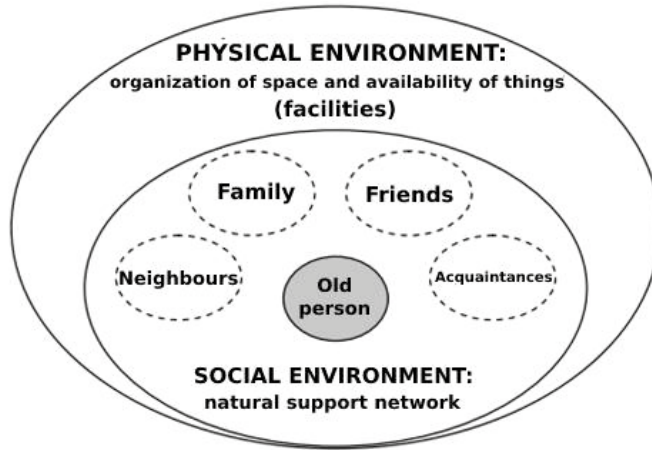
Source: A.I. Brzezińska, J.A. Sienkiewicz-Wilowska, S. Wójcik, *Opiekun jako mediator w środowisku fizycznym i społecznym seniora: perspektywa psychologii pozytywnej*, in: *Człowiek w wieku podeszłym we współczesnym społeczeństwie. Różne oblicza starości*, eds. K. Wieczorowska-Tobis, D. Talarska, Wydawnictwo Uniwersytetu Medycznego, Poznań 2011, p. 119.

Mediation as a procedure for resolving family conflicts

Poland has been a conservative country when it comes to caring for the elderly, and there is still a belief that in extreme necessity children should give up their professional ambitions and devote themselves to caring for an elderly parent. Accessing formal care is often perceived in negative terms and is shameful for the family, as it may indicate that family members are incompetent to provide care and, above all, are reluctant to do so.[24]

Because our society is aging, the attitudes of children toward caring for their elderly parents are becoming an increasingly frequent cause of family conflicts, especially between siblings. Conflicts are an integral part of human life and can emerge at all levels. They can be manifested as personal internal dilemmas and in interpersonal relationships.[25]

In the family, as in any social group, there are various types of conflicts and "(…) they emerge when the interests of two parties cannot be reconciled or when a person has hurt another person."[26] We often hear the opinion that a conflict

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[24] Ł. Jurek, *Polityka łączenia pracy zawodowej…*, pp. 95–110.

[25] M. Plucińska-Nowak, *Status i oblicza mediacji w społeczeństwie polskim*, Wydawnictwo UAM, Poznań 2021, p. 10.

[26] E. Górska, *Mediacje w praktyce-dlaczego warto z niej korzystać?*, „Mediator" 2007, vol. 41, no. 2, p. 28–33.

temporarily or permanently destroys valuable relationships, destroys mutual trust, and endangers the interests of individual groups or people, even if they are bound by close family relationships.

Family patterns change because of the numerous transformations taking place in the modern family, its models, functions, and roles. Changes are observed in family models, the ways of spending free time, including holidays and family celebrations, as well as the forms and methods of caring for the oldest members of the family, specifically aging parents.

The illness of parents is a critical time in the life of every family. In the face of illness and the multiple responsibilities associated with it, this situation becomes a challenging test for the whole family. Sometimes elderly people who are ill feel that they are a burden to the rest of their family, which intensifies their anxiety. The coexistence of negative emotions and illness leads to a general deterioration of physical and mental health in seniors. Hospital beds are increasingly often occupied by elderly patients who have no place to return to after discharge because their families do not feel responsible for taking care of them. This situation gives rise to apathy, depression, suicide attempts, and a general negative attitude toward life, which leads to social isolation. Potential family conflicts, especially between siblings, increasingly often concern decisions on the type, extent, and time of caring for aging parents. Sharing responsibilities and organizing care for the parents is a cause of growing tension inside families. Problems include the unclear distribution of duties related to helping with general household chores (cleaning, preparing meals, shopping) between siblings or duties related to personal and general care (feeding, bathing, administering medications, making medical appointments, and recreation).

Other issues under dispute concern the place where parents should live, and between the lines there are unclear decisions and concerns about the division of property, and compensation for the costs of treatment, rehabilitation or stays in a sanatorium. Lack of agreement, uneven distribution of responsibilities, or avoidance of responsibility by some family members lead to remonstration, stress, and conflict. In addition, caring for ill parents contributes to physical and mental exhaustion among caregivers. The life situation of the elderly and ill depends to a large extent on their closest family. In many families, there are discussions and disputes between adult siblings about how to ensure care for aging and sick parents. Family members usually have different opinions about the help, support, and financial assistance offered to their parents in need. Family members may often reject elderly people, may be ashamed of them, and they may be unwilling to bear the hardships of caring for sick and old parents.[27] The

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[27]   A. Mielczarek, *Człowiek stary w domu pomocy społecznej*, Wydawnictwo Akapit, Toruń 2010, pp. 185.

prospect of long-term care for elderly parents becomes difficult for many of them to imagine and accept.

This situation creates tension, conflict, and stress in the family, and family members often evade responsibility. In such cases, the interactions between siblings will likely become fraught with disputes, often flaring up into a long-term conflict. It turns out that many families have unclear ideas and patterns regarding the rules of caregiving. The duty of care for elderly parents is fulfilled in families mainly by women, usually the younger spouse/partner, daughter, or daughter-in-law. There is still a presumption about the fundamental role of a woman (as a family member) in caring for the elderly. Traditionally, women are often perceived as the family keepers and binding agents, who organise meetings and contacts and provide care in sickness. Women most often provide help, which consists of dealing with daily responsibilities, such as cleaning, cooking, or providing personal care to those in need. These activities can no longer be performed by an elderly person without assistance. Men, on the other hand, if they are obliged to help, prefer to pay a caregiver rather than do it themselves.[28] The behaviour of family members in a problematic or conflicting situation, as well as attempts to resolve it, depend not only on the severity of the conflict, but also on personality traits, individual preferences, or life experience, as well as the strength of bonds between family members.

Mediation is an increasingly popular procedure to restore normal relations between conflicting parties, including family members, and apart from conciliation, arbitration, and negotiations, it is the most dynamically developing method for dispute resolution and an alternative to the existing procedures offered by the justice system. Family mediation can help in making many difficult family decisions. The advantages of this procedure result both from the fact that it offers a holistic approach to very complex problems that need an effective resolution, as well as the involvement of a neutral third party facilitating and organizing the process of communication between family members.[29]

In modern times, families are certainly affected by numerous social changes. The family model in Poland is also changing; there are traditional marriages (legalised unions), with or without children, informal unions, marriages in separation, and patchwork families. This situation often leads to divorce-related conflicts (regarding changed family structure after divorce, maintenance obligations, financial and property matters, custody, and contacts with children).

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[28] Z. Szweda-Lewandowska, *Opieka nad osobami starszymi. Wspierający i wspierani*, Wydawnictwo Uniwersytetu Łódzkiego, Łódź 2017, pp. 45–47.

[29] H. Przybyła-Basista, *Konflikty rodzinne pomiędzy dorosłym rodzeństwem*…, p. 15.

Parties to a dispute may choose a conventional in-court procedure or an alternative procedure for dispute resolution.[30] Recently, there has been a significant increase in the popularity of Alternative Dispute Resolution (ADR), which is a special institutionalized method of reaching a negotiated settlement available in addition to traditional options offered by the justice system in a modern state.[31]

Family mediation as a professional procedure facilitating dispute resolution has been used worldwide for over 30 years. In many countries, family mediation has been appreciated both by lawyers and divorcing couples.[32]

The two types of ADR used in Poland are mediation and arbitration. Provisions on Alternative Dispute Resolution, which is a fundamental procedure for out-of-court conciliation, fully accepted by Polish law, were specified for the first time in Polish legislation in the Act on the Resolution of Collective Disputes of 23 May 1991. On 10 December 2005, a minor amendment to the Code of Civil Procedure entered into force, introducing a mediation procedure in civil law cases, including family cases.[33] This created an opportunity for the family courts to refer relevant cases to professionals specializing in mediation.[34] It should be noted that in Poland, in contrast to other countries, mediation was introduced first in criminal law, and only later in other areas of law.

Mediation is a voluntary, confidential, and informal out-of-court procedure used in cases where it is possible to reach an amicable settlement. It involves parties to a dispute who are assisted by a third party, i.e. a neutral mediator. The purpose of mediation is to reach an agreement about a specific dispute. Several principles apply to mediation: it is voluntary, confidential, should lead to an agreement acceptable by the parties to a dispute, and be facilitated by an impartial and neutral mediator.[35] Parties to a dispute should be involved in mediation only if they are willing to do so. Family mediation is dedicated to a specific category of cases and specific subjects.[36] Participants in family mediation may be people in formal and informal unions, spouses, siblings, relatives, as well as parents and children of various ages. Family mediation is a dispute

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[30] A. Suchorska, *Mediacje rodzinne ze szczególnym uwzględnieniem osób starszych-wybrane przykłady praktyki mediatora*, in: *Prawne aspekty starości*, eds. A. Wilk, M. Gołowkin-Hudała, Wydawnictwo Difin, Warszawa 2014, p. 98.

[31] A. Zienkiewicz, *Studium mediacji: Od teorii ku praktyce*, Wydawnictwo Difin, Warszawa 2007, p. 47.

[32] D. Rynkowska, *Family Mediation…*, p. 11.

[33] A. Pietrzkiewicz, *Mediacje rodzinne w polskim systemie prawnym*, „Acta Scientifica Academiae Ostroviensis. Sectio A, Nauki Humanistyczne, Społeczne i Techniczne” 2016, vol. 7, no. 1, p. 236.

[34] M. Plucińska-Nowak, *Status i oblicza mediacji…*, p. 9.

[35] D. Rynkowska, M. Artymiak, *Mediacje w pracy socjalnej*, Wydawnictwo Uniwersytetu Rzeszowskiego, Rzeszów 2014, p. 36.

[36] H. Przybyła-Basista, *Akceptacja mediacji jako formy rozwiązywania konfliktów rodzinnych*, „Chowanna” 2011, vol. 37, no. 2, pp. 251–252.

resolution procedure in which an impartial and neutral mediator facilitates family members in defining their needs and interests and crafting an agreement that is acceptable to them.[37]

Mediation is becoming increasingly popular when it comes to resolving issues related to personal and family life, such as:

- family matters, e.g. disputes between spouses, disputes about property, inheritance, household matters; conflicts between parents and children; the rules of custody over minor children, and caring for disabled or elderly family members;
- divorce-related matters, e.g. making decisions on custody after divorce and which *parent* a child *will live* with; the rules of cohabitation after divorce or the amount of maintenance obligation;
- division of property after divorce and all other potential issues related to family and marital life;
- other matters, e.g. related to the cooperation between a biological family and a foster/adoptive family; resolution of disputes between neighbours, business partners, or peers, problems related to education; criminal law cases (to obtain compensation), cases regarding juveniles (as a form of restorative justice).[38]

Compared to traditional options offered by the justice system, mediation is an alternative procedure that transfers responsibility for the dispute resolution to the parties involved in a dispute. It is less formalized, less time-consuming, and less expensive, and responds better to a variety of family problems and needs.[39] Mediation is most effective in cases involving people related by blood or people in other types of close relationships. An important aspect of mediation is that parties should be involved in it only if they want to because clients often resort to the services of a mediator after they have had negative experiences in court or did not receive support from other relevant institutions.[40]

Mediation, whose special nature of assistance consists in overcoming problematic situations together, offers dignity and autonomy to its participants, who in many cases are linked by close family ties. Judicial practice indicates that there

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[37] J. Folberg, A. Taylor, *Mediation: A Comprehensive Guide to Resolving Conflicts Without Litigation*, Jossey-Bass Publ., San Francisco 1984.

[38] K. Wojtanowicz, *Mediacje rodzinne jako sposób na rozwiązywanie konfliktów w rodzinie*, in: *Wybrane zagadnienia pedagogiki rodziny*, eds. A. Błasiak, E. Dybowska, Wydawnictwo WAM, Kraków 2010, p. 275 et seq.

[39] M. Skibińska, *Zalety i wady mediacji jako sposobu rozwiązywania sporów cywilnych*, „Kwartalnik ADR" 2010, vol. 11, no. 3, pp. 109–110.

[40] A. Bieliński , *Mediator w sprawach cywilnych – wybrane zagadnienia regulacji obcych i polskich*, „Arbitraż i Mediacja" 2008, no. 3, pp. 23–33.

are certain situations when mediation is not appropriate, as it will be ineffective, and might even be dangerous. Mediation is inappropriate if:

- one or both parties to a dispute are addicted to alcohol or drugs;
- one or both parties suffer from a mental illness or severe emotional disorder;
- there is a significant power imbalance between the parties which makes it impossible to negotiate from equal positions;
- violence has occurred between family members.[41]

Mediation may also be inappropriate when strong emotions or recent traumatic experiences of one or both parties make it difficult to make an informed, rational judgment and focus on working out solutions.

The above cases were addressed in the European guidelines contained in Recommendation No. R(98)1 of the Committee of Ministers to Member States adopted on 21 January 1998 under the Statute of the Council of Europe, where attention was also drawn to the increasing internationalisation of family relationships (defined as international matters).[42]

Family mediation, including procedures regarding criminal cases, is increasingly popular with respect to cases concerning contacts with one of the parents, contacts of grandchildren with grandparents, hooliganism of juvenile subjects, and domestic violence, including abuse of elderly members of the family. Elderly people's awareness of their rights is increasing, and therefore more and more such cases are brought before courts of law.

The advantages of family mediation include immediate benefits, i.e. reaching an agreement, and long-term benefits, such as improved communication between family members, reaching amicable settlements, preservation of personal contacts between parents and children, as well as reducing the social and economic costs of divorce and separation.[43]

Statistics confirm the growing popularity of mediation in dispute resolution – the increase has been fivefold in the last decade. In Poland, we observe a slow but consistent increase in the use of mediation for the resolution of family disputes.[44] Between 2006 and 2019, the number of cases involving family matters referred to mediation compared to all family cases considered in district courts increased fivefold. Amicable settlements were reached much more often in family cases than in commercial or civil cases.[45]

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[41] A. Gójska, *Mediacja w sprawach rodzinnych*, MS, Warszawa 2011, p. 8.

[42] A. Pietrzkiewicz, *Mediacje rodzinne…*, p. 239.

[43] M. Araszkiewicz, J. Czapska, M. Pękala, K. Płeszka, *Mediation in Poland: Theory & Practice*, Wydawnictwo JAK, Kraków 2015, p. 7.

[44] M. Plucińska-Nowak, *Status i oblicza mediacji w społeczeństwie polskim*, Wydawnictwo UAM, Poznań 2021, pp. 144–147.

[45] Zestawienie statystyczne ze strony internetowej Ministerstwa Sprawiedliwości, https://isws.ms.gov.pl/pl/baza-statystyczna/opracowania-wieloletnie/ (accessed: 01.05.2023).

Parties to the mediation procedure can decide which issues they want to discuss, work out solutions themselves, and specify the consequences of not complying with the concluded agreement. Mediation is based on the assumption that the parties to the dispute know best what they need, and that they are experts in their cases. Relying on their knowledge and experience and having the best understanding of their needs and interests, they are able to work out the optimal solution, as long as favourable conditions are created for them. Parties are in charge of the agreement they reach, and the mediator remains neutral and impartial both towards the parties to mediation and the decisions they make.[46]

Mediation is a confidential procedure that makes it possible to avoid discussing private and sensitive issues about delicate matters, such as the relationship between spouses, siblings, children, and aging parents in public, and to determine the scope of responsibilities towards the elderly. The mediator helps the parties to look closer at their problems and needs and to analyse them while keeping the dispute as private as possible. The mediator cannot act as a witness in court.[47]

The procedure of mediation is particularly important in cases involving close interpersonal relationships. Family mediation as a professional procedure facilitating conflict resolution has been used for over 30 years. Mediation is one of the forms of restorative justice and a method of reaching an agreement. Mediation involves voluntary communication between the conflicting parties assisted by a mediator accepted by them and is a procedure that relies on basic principles: mediation is voluntary and confidential, while the mediator is impartial and neutral.[48]

The common element – mentioned in all definitions, regardless of the issue under mediation – is the presence of a third party, a mediator neutral in the subject under dispute, and following the principles of voluntary participation, impartiality, neutrality, confidentiality, and acceptability. These principles serve both the benefit of the parties involved in mediation and the mediator, ensuring optimal conditions for cooperation.[49]

The mediation procedure creates conditions and opportunities for understanding the feelings of another person, even if that person is to blame for family conflict. Therefore, mediation is particularly useful in matrimonial law,

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[46] A. Hromiak, *Mediacje rodzinne*, in: *Mediacje sądowe i interwencja kryzysowa w teorii i praktyce*, eds. Ł. Wirkus, M. Pięta-Chrystowiak, Wydawnictwo Uniwersytetu Gdańskiego, Gdańsk 2023, pp. 125–158.

[47] M. Szyszka, A. Łacina-Łanowski, *Family Mediation in Poland. Mechanisms, Chances, Perspectives*, in: *Resolving Disputes in the 21st Century*, eds. S. Karkošková, L. Holá et al., P-T Muhely Ltd., Budapest 2013, pp. 257–258.

[48] D. Rynkowska, M. Artymiak, *Mediacje w pracy socjalnej…*, p. 25.

[49] P. Waszkiewicz, *Zasady mediacji*, in: *Mediacje. Teoria i praktyka*, eds. E. Gmurzyńska, R. Morek, Wolters Kluwer Polska, Kraków 2009, p. 173.

in conflicts involving closely related people. Conflicts between closely related people are usually charged with strong negative emotions that block normal communication. Mediation is most effective in situations involving family members or people in other types of close relationships.[50] An important aspect of the mediation procedure is that participants should be involved in it only if they want to because clients often resort to the services of a mediator after they have had negative experiences in court or did not receive support from other relevant institutions. The ultimate goal of mediation is to work out solutions through compromise.[51] The advantages of family mediation include immediate benefits, i.e. the concluded agreement, and long-term benefits.

Family mediation is not a substitute for legal family counselling or psychotherapy, but it helps in making arrangements that enable the parties to solve disputed issues, e.g. how they should provide care for aging parents.

Summary

In Poland, we can observe a slow but consistent increase in the use of mediation procedures for the resolution of family disputes. The experience gained so far shows that the mediation procedure as an instrument is of particular importance in cases involving closely related people.[52] Family mediation is a special type of this procedure, which, due to the emotional aspect of family conflicts, is often turbulent and difficult to calm. Family mediation offers participants an opportunity for active confrontation with other parties to the dispute, so they can understand the reasons behind their actions and forgive them, obtain compensation for damages, avoid stigmatisation, reduce the sense of guilt, and achieve resolution. It helps resolve conflicts between parties that once used to be in a very close marital, parental, or fraternal relationship.

Mediation also helps to maintain relations, preserve one's positive image, reduce the level of negative emotions, and understand one's own and the other party's needs, thus reducing the emotional stress associated with a conflict, which is crucial in the case of disturbed intrafamily communication regarding complex and sensitive issues such as sharing the responsibilities of care for aging parents. In close relationships, especially between family members, the conflict

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[50] M. Smalcerz, *Projekt „Upowszechnienie alternatywnych metod rozwiązywania sporów poprzez podniesienie kompetencji mediatorów, utworzenie Krajowego Rejestru Mediatorów (KRM) oraz działania informacyjne" jako szansa na rozwój mediacji w Polsce*, in: *Mediacja w kierunku ugody*, ed. M. Romanowski, Wydawnictwo DiG, Warszawa 2021, pp. 23–32.

[51] D. Rynkowska, M. Artymiak, *Mediacje w pracy socjalnej…*, p. 65.

[52] Portal Ogólnopolskiego Stowarzyszenia Zawodowych Mediatorów, www.mediacje.pl (accessed: 09.05.2023).

is multi-faceted and emotionally charged. In most cases, it has been escalating for a long time, causing more and more communication problems, and fuelling tension. Mediation helps family members to see things from a different perspective and voice their arguments. In cases where elderly people, e.g. aging parents, are also involved in the conflict, mediation should be used as often as possible.[53] Family mediation, whose special nature consists in overcoming problematic situations together, offers dignity and autonomy to its participants, which is particularly emphasised in the principles of ADR,[54] the essence of which is that individuals should make their own decisions, overcome obstacles, and craft their own way of overcoming the difficult situation.

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[53] A. Suchorska, *Mediacje rodzinne…*, p. 112.

[54] S. Raines, S. Kumar Pokhrel, J. Poitras, *Mediation as a Profession: Challenges That Professional Mediators Face*, "Conflict Resolution Quarterly" 2013, vol. 31, no. 1, pp. 80–81.

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