

LEGAL ASPECTS OF SOCIAL WORK

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Abstract

Social work and law are closely related concepts. Social work could not fully function without the implementation of selected aspects of law, and law without social work would be very difficult to implement in the social field. It follows from the above that discussing legal aspects of social work is still a current topic. The paper aims to identify the legal aspects of social work and, in the end, to describe the person of a social worker in the legal field. As a result, we concluded that, in some cases, there is only a fragile line between the roles of a social worker and a lawyer.

Keywords: social work, law, social worker, legal aspects

Abstrakt

Sociálna práca a právo sú úzko prepojené pojmy. Sociálna práca by nemohla plnohodnotne fungovať bez implementácie vybraných aspektov práva a právo bez sociálnej práce by sa v sociálnej oblasti implementovalo len veľmi ťažko. Z uvedeného vyplýva, že diskusia o právnych aspektoch sociálnej práce je stále aktuálnou témou. Cieľom príspevku je identifikovať právne aspekty sociálnej práce a v závere popísať osobu sociálneho pracovníka v právnej oblasti. Výsledkom je záver, že v niektorých prípadoch existuje len krehká hranica medzi úlohami sociálneho pracovníka a právnik.

Kľúčové slová: sociálna práca, právo, sociálny pracovník, právne aspekty

Introduction

Many of the legal responsibilities of social workers are based on their fiduciary relationships with clients. Many cases have contributed to the evolution of fiduciary principles in the helping professions, and the significance of these cases for social work practice is discussed. Confidentiality, informed consent, and conflict of interest are legal issues influenced by the fiduciary relationship. The duty to tell the truth and the responsibility of loyalty emanate from

the fiduciary relationship and contribute to forming legal standards for professional conduct (Kutchins, 1991).

Recognition of the importance of the interplay between law and social work is not a recent phenomenon. During the 1920s, many books and articles described various legal-social work relationships. In the 1960s, the civil rights movement, the war against poverty, and court decisions that gave rights to children and families affected the practice of social work. As a result, numerous articles were written in legal and social science journals about the need for lawyers and social workers to understand and collaborate to help their clients more effectively. During the 1970s, the first textbook about social work and the law was published. Since then, many texts have addressed the interplay between law and social work in general terms and, more specifically, the legal issues of social work practice with children and worker liability. In these texts and many related articles, authorities suggest that the best way to achieve effective communication and collaboration is for the social worker to learn more about the law (Reamer, 1994).

1. International Adoption Convention (Hague 1993)

As the adoption convention is being fully implemented in more and more countries, the implications of the Convention for the work of social workers are being realised on multiple levels. On a practical level, social workers help enforce the treaty by carrying out some of the essential services that the treaty specifies, such as conducting home studies of prospective parents following the treaty and state regulations (Rosicky, Northcott, 2010).

The State created a resource for social workers about their roles in assisting with international adoptions under the Hague Convention. The help cites six specific services that a social worker should be involved in the process (Rosicky, Northcott, 2010):

1. Identifying a child for adoption and arranging an adoption.
2. Securing the necessary consent to termination of parental rights and adoption.
3. Performing a background study on a child or a home study on prospective adoptive parent(s) and reporting on such a study.
4. Making non-judicial determinations of the best interests of a child and the appropriateness of an adoptive placement for the child.
5. Monitoring a case after a child has been placed with the prospective adoptive parent(s) until final adoption.

6. When necessary, because of a disruption before final adoption, assuming custody of a child and providing (including facilitating the provision of) child care or any other social service pending an alternative placement.

In addition to carrying out some of the Convention's core services, social workers are also educating and advocating for the correct applications of the treaty in less typical situations. Here are two examples (Rosicky, Northcott, 2010):

1. When a family wants to adopt an undocumented child from a Hague country that is involved in the child welfare system, the social worker working with the child and family must ensure that all parties, including the lawyer and Judge, understand that the case needs to be handled under Hague guidelines, not state or local guidelines.
2. When sending a child from a Hague country to live in a kinship placement in another Hague country and the receiving family is considering adopting the child eventually, the social worker needs to advocate strongly for a Hague Adoption rather than kinship placement. The reason to advocate for adoption over a kinship placement is that the State is concerned with, and is actively preventing, kinship placements that are made to circumvent the safeguards established through the Hague Convention on International Adoption.

Social workers also advocate for the fundamental principles within the treaty. In particular, social workers are strong proponents of appropriate intercountry adoption concerning other permanency options. In addition, where appropriate, social workers are advocating for a system of care that enable families to remain together. The Hague adoption convention clearly states in the Preamble that these permanency decisions must ideally aim to allow the child to stay in the care of their family of origin. According to the most common interpretation, the family of origin consists of the father and mother. If the family of origin is ultimately separated, they advocate for the child to be reunified first with parents and, if not possible, with other family members. Further, the Convention holds that domestic measures should be given preference over those that may be available outside the country, which can also fall under the purview of social workers (Rosicky, Northcott, 2010; Skotnický, 2023a).

Social workers have been instrumental in advocating for the principle of subsidiarity, particularly in countries that have long relied almost exclusively on institutional care for orphans. The research on institutional care is conclusive. Families, not orphanages, are in the best interest of children. However, the lack of resources to fund a social work infrastructure to

support families prevents some countries from implementing a well-regulated and appropriate child welfare system (Rosicky, Northcott, 2010; Schlesinger, 2020).

2. U. N. Guidelines for Alternative Care of Children

Realising that alternative care systems are lacking in many countries, The Guidelines for the Alternative Care of Children (the Guidelines) are intended to enhance the implementation of the UN Convention of the Rights of the Child 1989 and other relevant international and regional human rights law provisions. The Guidelines focus on matters of protection and well-being of children in need of, or at risk of needing, alternative care outside of the family of origin. As stated in the UN Guidelines: Each child needing alternative care has specific requirements concerning, for example, short or long-term care or keeping siblings together. The care option chosen has to be tailored to individual needs. The suitability of the placement should be regularly reviewed to assess the continued necessity of providing alternative care and the viability of potential reunification with the family (Rosicky, Northcott, 2010).

The Guidelines establish specific actions for social workers to follow if a child is potentially in need of alternative care: When a public or private agency or facility is approached by a parent or legal guardian wishing to relinquish a child permanently, the State should ensure that the family receives counselling and social support to encourage and enable them to continue to care for the child. If this fails, a social worker or other appropriate professional assessment should be undertaken to determine whether other family members wish to take permanent responsibility for the child, and whether such arrangements would be in the child's best interests. Where such arrangements are not possible or are not in the child's best interests, efforts should be made to find a permanent family placement within a reasonable period (Rosicky, Northcott, 2010).

Some American countries continue to struggle with many children in institutional care rather than family-based care. To fully achieve the true intent of the Hague Adoption Convention, and more particularly, the Guidelines on Alternative Care, social workers are instrumental in (Rosicky, Northcott, 2010):

- Identifying children at risk and helping to prevent family separation.
- When separated, search for families or family members to care for the child.
- Providing reintegration services if children are placed with a family.
- Finding and evaluating possible adoptive families if no foster or kin families are available to care for the child.
- Providing post-adoptive services to help prevent the dissolution of an adoption.

- Providing a host of case management, counselling or other needed services to support children and families in the various stages of separation and reintegration.
- Advocating for a children's right to family and promoting policies, laws, and best practices that support the care of children with their families or in family-based care whenever possible.

Social workers play a critical role in the Hague adoption convention and in following UN Guidelines by providing necessary services and advocating for family-based care, first with their own families, and if not their own, then with kin, domestic, non-kin, families and finally with families (non-kin) outside their country of origin, as a last resort.

3. Abduction Convention (Hague 1980)

Unlike the Hague adoption convention, the Hague abduction convention focuses not on children's best interests but on the complex legal requirements of determining the appropriate jurisdiction to oversee the case. While this can be very frustrating to many social workers, they still have a critical role to play by providing services to prevent a parental abduction, intervene during kidnapping, and advocate for additional protocols to the current Convention to protect better the best interests of children (Rosicky, Northcott, 2010).

Ideally, parental child abduction is best dealt with before it happens. Therefore, social workers can play a critical role in prevention through education, awareness, and service referrals. While one never thinks that an abduction could happen to their child, certain factors predispose some families to be more at risk. For instance, a foreign parent with solid ties to their homeland can be more at risk of becoming an abductor because of their connection to extended family, the culture, and/or religion of their homeland. Parents who may consider abducting their child also tend to be those who idealise their own family, country, and culture while devaluing the culture they are currently living in. They also generally have emotional and financial support available to them in their home country if the relationship with the other parent ends or is in crisis (Rosicky, Northcott, 2010).

When a couple considers starting a family, they are not usually thinking about what might happen to the child if their relationship fails or there is persistent marital conflict. However, children are most at risk for abduction when significant family conflict or the relationship dissolves and one member, as described above, has strong ties to another country. Therefore, social workers should help families consider the implications of the current conflict and its potential to escalate when a child is involved. They should encourage couples to seek remedies for disputes, such as counselling or mediation, and they should inform teams what could happen

if the conflict is allowed to fester. Social workers should also promote alternatives and educate couples about the lasting emotional damage abduction could cause a child. Finally, parents should be encouraged to discuss and create parenting plans, even if there is no immediate concern for abduction (Rosicky, Northcott, 2010; Skotnický, 2023b).

Unfortunately, most couples do not come to the attention of the social work profession until just before or after the conflict has escalated and one parent has left with the child(ren). Once an abduction occurs, social workers can play a critical role in helping the left behind parent follow appropriate procedures and seek expert assistance. For example, a social worker could ensure that the family files a missing person report, assist with the abduction petition, and connect the parent to various resources available through government and non-governmental organisations (Rosicky, Northcott, 2010).

At any point before, during, or after an abduction, social workers can assist families in learning about the benefits of using mediation, which is an effective tool for resolving cross-border family conflicts. Since mediation is relatively new in some regions and has recently become more mainstream in others, it is critical that mediation is appropriately explained and that parties fully understand the process before deciding whether to participate. Social workers can also actively work with one or both parties, the abductor and the left behind parent, as they pursue mediation to resolve their conflict. Once mediation is completed and an agreement is developed, social workers can again play a critical role in ensuring that both parties understand how to abide by the agreements and help the child return to the left behind parent (Rosicky, Northcott, 2010).

In addition to mediation, social workers can refer the left behind or abducted parent to other needed services. In the case of the left behind parent, the social worker might recommend individual or group support services while encouraging appropriate legal action. Likewise, the social worker in contact with the abducting parent (assuming the abducting parent is cooperating) can refer or link the child with services in the country where they have been abducted. Additionally, the children involved need support and counselling during the separation and preparation during and post-reunification with their other parent. Assuming parties grant appropriate permissions, services can be coordinated wherever possible by a social worker, whose role includes promoting the best interest of the child in both the country in which the child was taken to and in the child's country of habitual residence (Rosicky, Northcott, 2010; Javorský, 2020).

If parents cannot be present to escort children back to the child's country of habitual residence, it might be necessary to enlist the help of social workers to prepare the child for transfer and to escort the child. Many people underestimate the challenges for the child and family upon return. Therefore, it is best practice that once a child is resettled, a social worker should conduct a child welfare check to maintain the child's safety and well-being. Social workers might also assist with parental alienation syndrome or other emotional and behavioural challenges that may occur during post-return and reintegration. Many social workers and lawyers alike are unhappy with the shortcomings of the Abduction Convention. Progress is underway in the Hague to develop additional protocols to enhance the Convention and promote better outcomes for children. A delegation of expert social workers from ISS worldwide have been actively engaged in providing feedback to the Hague based on their expertise and experience in delivering social work assistance in abduction cases (Rosicky, Northcott, 2010).

4. Child Protection Convention (Hague 1996)

The Child Protection Convention determines which country's authorities have jurisdiction to take measures to protect children across international borders. It also clarifies the applicable laws and enables recognition and enforcement of protection measures in all Contracting States. While the focus of this Convention is on jurisdiction and other legal aspects of children moving across international borders, the involvement of social workers is needed to implement many of the regulations of this Convention (Rosicky, Northcott, 2010).

Central Authorities of each participating country must take all appropriate steps to facilitate, by mediation or similar means, agreed solutions for the protection under the Convention of the child's person or property. Social workers, as described above, are instrumental in explaining the mediation process, referring parties to mediation, and providing follow-up on how to enforce mediation agreements if obtained. The Central Authority of the State where the child is habitually resident and present may provide a report on the child's situation. Suppose an authority of a Contracting State contemplates placement of a child in foster or institutional care or the provision of care for a child in another Contracting State. In that case, it shall first transmit a report to the Central Authority of the latter State and can only authorise the placement with the latest State's consent (Rosicky, Northcott, 2010; Jasečková, Konvit, Vartiak, 2022).

In implementing the requirements of both articles, it may be necessary for a social work assessment to determine the child's situation (and whether a subsequent placement elsewhere might be in the best interest of that child) or the condition of a potential sequence before relocating a child. Both of these activities need to be carried out by a qualified social worker to

recognise by the court. There must be a coordinated system of social services, wherein social workers can work collaboratively between countries to facilitate timely and professional services, appropriate placements, and follow-up in the child's best interest (Rosicky, Northcott, 2010).

5. Legal Standards in social work

In the legal realm, social workers must be mindful of five distinct sets of requirements and guidelines: constitutional law, statutory law, regulatory law, court-made law and common law, and executive orders. Ethical and legal choices are prominent in social work practice. Social workers in a wide range of practice settings as diverse as family service agencies, community mental health centres, prisons, schools, medical and psychiatric hospitals, hospice programs, substance abuse treatment centres, the military, public welfare offices, and nursing homes frequently encounter circumstances that entail ethical and legal issues. Social workers in family service agencies may need to decide whether to comply with a police detective's request for confidential information about a client who is a suspect in a murder case. Social workers in public welfare offices may need to decide whether to adhere to strict eligibility guidelines, meaning that vulnerable clients would not receive much-needed benefits. Hospital-based social workers may need to help a family member decide whether to approve the termination of a patient's life-support technology (Reamer, 2005).

In many instances, ethical standards, expectations, and requirements in social work are consistent with prevailing legal standards and requirements. For example, social workers in every State are required by law to report suspected abuse and neglect of children. Complying with state mandatory reporting laws is generally consistent with ethical standards in social work that permit practitioners to disclose confidential information to prevent serious, foreseeable, and imminent harm to a client or other identifiable person.

However, according to the National Association of Social Workers (1999), social workers sometimes encounter circumstances in which legal standards conflict with the profession's ethical standards or, at least, practitioners' interpretation of the profession's standards. Some of these conflicts involve acts of commission when social workers deliberately decide to violate the law to fulfil what they believe is their ethical duty (for example, by reporting false information to government agencies or insurers to obtain critical services for vulnerable clients). Other conflicts arise out of acts of omission when social workers fail to take steps to comply with the law to fulfil what they believe is their ethical duty (for example, by not reporting information about possible abuse or neglect to protective service officials, as required

by law, to preserve a therapeutic relationship with a client). These are among the most challenging dilemmas encountered by practitioners.

Conclusion

As a social worker, the lawyer recognises that all problems arise within a community and that even those problems that appear purely individual have a basis within that community. The problem may arise as a result of the community. For example, a disabled child may be having difficulty obtaining special education assistance because no advocacy organisations ensure that children with special needs are accommodated. The problems that individual clients encounter certainly impact the community, and the lawyer, as a social worker, is sensitive to those effects. While helping a parent negotiate the intricacies of the special education laws and bureaucracy, the lawyer may think about policy initiatives that could provide broader help to other parents who may not be able to obtain a lawyer. The lawyer may assist in bringing together the parents of children victimised by a school's zero-tolerance policies, and she may assist them in identifying legal, social, economic, and political interventions. The lawyer as a social worker might offer training in lay advocacy and education about parents' and children's rights (Kisthardt, 2006).

The lawyer as social worker spends a good deal of time with the client and in the community to gain insight into the context in which problems may arise. She establishes a trusting relationship with her clients by being reliable, following problems through completion, being a good listener, and being committed to client empowerment. She is attentive to the many constituencies within the community that work toward that community's goals. She assists community groups but may also facilitate links between individual clients and those proactive organisations. For example, a client seeking an order of protection might be interested in organisations challenging welfare to work, child care cooperatives, and community economic development organisations that might provide her with employment. A client with an eviction problem might be interested in joining a tenant union, assisting in community economic development, and groups advocating for affordable housing (Lubove, 1965).

Social work identifies client empowerment and investment in problem-solving as one of the primary goals of the social worker/client relationship. There is no reason why this should not also be true of the lawyer/client relationship. The lawyer recognises that unless the client is a partner in problem-solving, the best that the lawyer can do is obtain a legal solution to a narrowly defined problem, a problem often determined by the lawyer as limited to the answers provided within existing law. Such a response may isolate the client and insulate the problem

from its context. It may thus imply that the legal issue is idiosyncratic and will dissuade engagement in the more extensive dialogue about justice (Tyler, 1952).

The lawyer, as a social worker who works with groups, recognises that she is merely a resource, not the director of the activity. Once again, client empowerment is the goal and coalition use is a powerful tool. The lawyer assists the group in gaining access to courts and legislatures, drafting legislative materials, and researching available options. The lawyer can also facilitate the organisation's growth by referring potential clients to the group. The lawyer can offer insights into what kinds of class actions or legislative changes are necessary to meet the group's needs (Oliphant, Ver Steegh, 2019).

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