

Problem-Solving or Narrative Approach to Mediation?

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ABSTRACT:

Mediation is a one of the well-known forms of alternative dispute resolution and is commonly used for solving conflicts in social work. Following introduction, where the mediation is put in social context, authors introduce readers to different approaches to mediation specifically to narrative mediation in comparison with mediation focused on solving problems. These approaches have different theoretical bases, mediation processes and aims and, therefore, their utilization is appropriate in distinct situations and areas of social work. In the conclusion these different approaches are compared to each other. While the narrative mediation is concerned with relationships and belongs to therapeutic style, the problem-solving approach to mediation falls into negotiating style and is concerned with reaching an agreement between parties of the conflict. If there is a need to solve the actual problem, the mediation focused on solving problems seems more fitting. If there is a need to understand and solve relationships between parties of the conflict, then the narrative mediation may be recommended.

Keywords: conflict, mediation, narrative mediation, problem-solving mediation, social work

INTRODUCTION

Mediation holds an irreplaceable position in the field of social work and can be understood as one of the methods of social work. Considering different application areas for mediation, some of them are really close to social work – e. g. peer mediation, intercultural mediation, community mediation, family mediation and mediation connected to labour law relationships. It is not common for social workers to be qualified in mediation, however, the knowledge of it could be highly beneficial. They may try at least to propose a meeting for their clients with a certificated mediator to help them solve their problems. To be able to recommend a process of mediation social workers should know possible approaches to mediation and how these approaches may be applied to particular situations. Gaining the knowledge is one of the purposes of following text which will introduce readers to recent types of mediation with regard to holistic approach to human beings and their differences. A link between mediation and social work can be found also in following definition: “Mediation is an alternative method for solving problems which helps to mitigate communication obstacles as well as to bring people together”. (Matoušek 2003)

Interest in mediation, which resulted in legal regulation of this issue,¹ is closely related to dynamic changes in western society since the second half of the 20th century. Contemporary society, which has been referred as postmodern society since the sixties of the 20th century, is becoming less and less homogenous, and the ethnic, religious and cultural differentiation is growing. This period is associated with the development of mediation in which the effect of social changes is very obvious. In contemporary postmodern society there is a whole range of social conflicts that did not occur in the previous types of societies. These conflicts are arising in the context of solving issues of quality of life, and equality of rights in connection with the emancipation of the various social groups, i.e. conflicts related to the changing society (Beck 1986). Every day we witness the expansion of new communication and information technologies and the growing consumer lifestyle (Castells 1996). The world is becoming interconnected and creates a kind of a global shopping centre providing the same ideas and products available worldwide (Bauman 1998). On the one hand, paradoxically, we can observe a certain similarity and on the other hand we can encounter unexpected diversity. We

¹ See e. g. Directive 2008/52/EC of the European parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters and the implementations of the directive by Member States into their national law.

are more and more confronted with a number of significantly different value systems, normative systems – none of which can be ignored, and all of them seem to have the same liability. The number of rules has been increasing and thus orientational uncertainty is higher as well as number of conflicts. Under rigid understanding of the postmodern concept we can get the impression that everyone is right and it is very difficult to determine whose truth is "better" and whose "worse" (Harrington 2005). Each part presents its own story, which can be variously "deconstructed" (Škop 2007). That is precisely the situation which is evident in the narrative mediation and which is discussed in this paper (Bruner 1991).

Mediation is thus a response to the social situation and also to a certain dysfunctionality² of existing institutions. Dysfunctionality is also obvious in the length of legal proceedings. Average length of legal proceedings in civil cases was in OECD countries around 240 days at first instance in 2010 (OECD 2013). These statistics vary in EU countries from several days to years but in majority of EU countries there is almost no progress over past few years to see (European Union 2018). It is obvious that this length represents a global problem and has an impact on the psychological and social aspects of participants. With increasing length of legal proceedings financial costs are also rising. Of course, mediation also includes a reward for the mediator but it turns out that the dispute is resolved through mediation more quickly than in the case of legal proceedings. On the other hand, we must note that the success of resolving the dispute through mediation cannot be one hundred percent for its voluntariness. Nevertheless, according to mediators, the success rate of mediation is usually high.³

The effectiveness of mediation contributes to satisfaction of the participants with the results of conflict resolution, which is higher compared to court proceedings. Satisfied clients are more likely to adhere to the agreement than dissatisfied ones.

An important aspect that differs the court proceedings from the mediation is the approach to the process of dispute resolution. Court hearings are based on very formal approach. On the contrary, mediation represents an approach that seeks to evoke an intimate and friendly atmosphere. Participants can control the entire dispute process themselves. They are also

² In the sociological terminology this term means disorder, impaired function, but not dysfunction in terms of non-functioning state.

³ According to Centre for effective dispute resolution, the success rate of commercial dispute is even about 86%. See [https://www.cedr.com/docslib/The_Seventh_Mediation_Audit_\(2016\).pdf](https://www.cedr.com/docslib/The_Seventh_Mediation_Audit_(2016).pdf)

responsible for the final solution. On the other hand, court judgment is the authoritative resolution of the dispute.

1 APPROACHES TO MEDIATION

The concept of mediation does not represent a unified way of resolving conflicts. It contains several different approaches (Rubinson 2004). These mediation models may vary quite significantly. Among the oldest and most common models of mediation, sometimes referred to as traditional, belongs the problem-solving approach. However, nowadays there are emerging new streams in mediation which are often influenced by therapeutic tendencies. The later of these streams include narrative mediation. The aim of the following text is to describe the two mediation models, to compare them and evaluate their potential application in clinical social work.

1.1 Problem-solving mediation

Even today the problem-solving model is the most widely used model of mediation (Spangler 2003) and in last decades the hegemony of this approach was apparent (Harper 2006). Problem-solving approach to mediation represents a higher stage of development compared to the model solution of conflicts based on the schema win-lose, which is usually the result of court proceedings. The mediation model comes with a win-win solution, which is a cooperative solution, in which the main tool for achieving objectives is negotiation (Winslade and Cohen 1995).

The conflict between the parties according to this concept emerges from the incompatibility between the needs and interests of the parties (Harper 2006). The mediator tries to help the parties to define the problem. Defining the problem opens the way for negotiation, for finding solutions and for satisfying the needs of both parties. Parties are encouraged to solve only the defined interests, with a focus on their understanding of each other's interests instead of defending demands (Paquin and Harvey 2002; Bush and Folger 2004). Mediators sometimes act as experts and they propose potential terms of the agreement (Spangler 2003). Mediation should result in achievement of fulfilling individual needs and interests.

In the problem-solving approach, the mediator's sole purpose is to assist the clients in resolving the dispute (Abramson 2005). He conducts the process, maintains a dialogue between parties, enhances negotiation efforts and encourages settlement (Spencer and Brogan 2006).

The main principle of this individualistic based model is neutrality, which is derived from the role of a judge, who is represented by the mediator (Winslade and Cohen 1995). But the mediator does not take any judgmental attitude towards the needs, interests or proposals for solutions of the parties. In mediation the principle of balance is applied; it is derived from the main tool of the problem-solving mediation which is negotiation.

1.2 Narrative Mediation

Narrative mediation represents the following evolutionary stage of solution of conflicts. In the history of the practice of mediation the shortcomings of problem-solving mediation were gradually revealed; it focuses on the main problem and takes into account only partially the interconnection among individuals and social contexts that affects them. On the basis of this criticism the narrative model was developed. This can be understood as a movement beyond the frame of problem-solving approach to mediation. Narrative mediation focuses on the construction of conflicts – that is what stories people tell about themselves and which roles they play in these stories (Winslade and Cohen 1995).

Narrative mediation is a relatively new mediation model. It was developed on the basis of narrative therapy, which was initiated in Australia in the 1980s by Michael White and David Epston. But the main development of the narrative approach to mediation brought at the turn of the millennium scientists in New Zealand – especially Gerald Monk, John Winslade and Alison Cotter from Waikato Mediation Services (Hansen 2004). Then this mediation model spread mainly to the US.

Narrative mediation is based on the ideas of postmodernism and social constructivism. These concepts emphasize that our point of view can never be objective because it is based on the cultural and historical context. The context determines how the human will perceive a particular situation. Therefore all the facts are considered relative. This represents a diversion from the modernist understanding of facts as immutable paradigms. It is a transition from the unchangeable rational reality to the uncertain reality (Winslade and Cohen 1995).

Another aspect is that human behaviour is not perceived as the result of the individual's inner nature, but as a result of the social process (Winslade and Monk 2000). Therefore the effort of narrative mediation is emancipation from the influence of the dominant culture and from the social discourses. These factors significantly affect our negotiation. The narrative model tries to see the conflict situation of the parties from the local viewpoint – that is to have a particular view on a particular conflict that partly eliminates aforementioned global factors (Winslade and Cohen 1995).

From social constructivism emerges the statement that people organize their experiences into the form of stories. These stories form a platform for the interpretation of the sense of their lives and relationships. The creation of these stories is significantly influenced by language. Social constructivism regards language as an essential prerequisite for thinking. According to this concept language determines the way we think. Linguistic formulations and discourses form our own subjective experiences. We come to a finding that words construct events. Thus language has not only a simple communication function, but directly forms the significance of events, and hence reality (Winslade and Monk 2000).

Following the above-mentioned findings mediators cannot be regarded as neutral. They are unable to stop bringing their cultural and historical patterns of thinking to the mediation process. Violation of neutrality begins with the mediator's way of managing the mediation, with the selection of questions for parties (Hansen 2004).

The neutrality of the mediator refutes also the stance of Harlene Anderson. She thinks that for the mediator it is necessary to support both of the parties of the conflict. Neutrality is impossible and it is even undesirable to strive for it. This author sees as important mutual respect and understanding of the parties (Malinen and Anderson 2004).

Narrative mediation model sees conflict in cultural context. The problem is viewed from a local perspective of a particular story. It begins with the mere existence of differences among people (Winslade and Cotter 1996). People are different and so everyone prefers different stories. From this diversity of preferences of stories arise conflicts. Then mutual understanding between parties is important.

2 MEDIATION PROCESSES OF SELECTED MODELS

In this chapter a possible course of mediation process is demonstrated. The simulation of the process is performed in both described approaches.

2.1 The process of problem-solving mediation

In the first phase the mediator welcomes clients. He seeks to create a friendly and intimate atmosphere. He describes again the mediation process and his role in the process and explains the phases of mediation. The important part of the explanation is feedback focused on understanding the process. Another important point is the establishment of the rules that will be followed in the mediation process; for example the principle of confidentiality, impartiality, and other fundamental principles of mediation. A very important rule for the parties is prohibition of mutual interruption.

The second phase is devoted to a mutual exchange of point of view on the conflict of the parties. The mediator writes notes on these attitudes, feelings and problems of the parties. He is trying to understand them, find out their needs and interests (Šišková 2012).

The mediator transforms the negative complaints of the parties into needs. There is an effort to eliminate the negative concepts and "translate" them into a positive level (Hicks 1999). The mediator tries to find better words for the same meaning, e.g. if a wife says about her husband that he does not respect her needs to have a fulltime job, a possible way for mediator to describe it is to say that the lady feels a need to be an equal partner in every field of life. The aim of this phase is to identify issues of the future negotiation and identify the problem (Šišková 2012). The mediator and parties cooperate on this.

In the third phase the parties are listening to each other and they are striving for mutual understanding. They explain their interests, needs and feelings. But still there is no form of solution of the problem. The mediator helps the parties to relabel the situation. He asks questions about the relevant topic to find out what their ideas on solving the problem are. The parties are actively listening. At the end of this phase the mediator emphasizes what the parties have in common and the platform for a next stage is prepared (Šišková 2012).

The mediator emphasizes common interests. The subsequent stages of the negotiations between the clients are focused on these issues. If the parties are running out of topic the mediator explains to them again that they have to pay attention only to the objects of the negotiations (Šišková 2012).

The fourth stage is focused on searching for the possible solutions (Hicks 1999). One of the ways to find possible solutions is brainstorming. The mediator prepares a flipchart or whiteboard and explains brainstorming techniques to the clients. The parties generate options for possible solutions under a time limit. The mediator encourages them to create also unusual solutions. All suggestions are evaluated according to certain criteria (Šišková 2012). For example, the parties of a family dispute agree on the following criteria: Will we be able to explain comprehensibly to children the solution? Will not it be confusing for them? How is this solution financially demanding? Will this solution be acceptable for both of us from the point of view of our occupations? Then according to these criteria the clients evaluate the proposals written on a flipchart, a whiteboard or a chalkboard.

In the fifth phase clients evaluate the opportunities that have emerged from brainstorming. They consider the pros and cons. It is also possible to agree with a temporary solution of their problems (Hicks 1999). After that they can continue solving a given issue and conclude the final agreement, or they can try to find other solutions if one of the parties does not agree with previous options. Before the next session the parties can give consent to a longer break to have time to think over all options, or discuss them with their families (Šišková 2012).

In the sixth phase the parties choose a solution (Hicks 1999). The mediator helps the parties to arrange selected solutions into concrete steps of actions. It is important to formulate clearly the following specific steps. The mediator together with the clients specifies and clarifies the conflict resolution. It is possible to include also sanctions or penalties (Šišková 2012).

The last stage is the elaborating of the agreement. Once the parties agree on a particular solution there is time for setting the specific steps of this solution and for writing the agreement. The mediator helps the parties with its formulation. The agreement must be balanced. It must represent a beneficial solution for both parties, not only for one of them. The acceptable solution should be feasible and concrete. It is not viable to accept a solution that

cannot be realized for factual or legal reasons. Concrete steps are scheduled (Šišková 2012). The agreement has to represent needs and interests of the parties which were said or defined during the sessions. If the mediator finds out (no matter at which phase) e.g. in a family dispute about childcare that a husband's life attitude (or his need) is to feel and to be accepted as a head of the family, the agreement can therefore include majority share of the husband regarding the financial security of their children. Obviously it has to be also balanced in favour of a wife.

2.2 Process of narrative mediation

The first phase of narrative mediation is called engagement in the literature. This is the initial meeting of the parties with a mediator. At the beginning of this phase it is important to build a relationship of trust, respect and a sense of security among the participants. Once harmony is induced, it is possible to accede to the core of this phase – "the storytelling". Each party shares its story. So the comprehensive view of the conflict is provided to other participants of mediation (Hansen 2004). The way we talk about our lives in stories helps give us a sense of continuity in life and a sense of coherence about who we are (Cotter 2012).

In these introductory stories the so-called theory of responsibility can be applied. It is based on the fact that each party tries to portray itself as a victim in its story. The other party is conceived as an offender. At the same time in the storytelling each party seeks to provide a comprehensive picture of the situation, which can then not be refuted by the other party (Winslade and Monk 2000).

After listening to the storytelling of each party, the mediator summarizes its content to the satisfaction of the speaker. Subsequently, the mediator asks questions. The questions are aimed mainly to address the effects of the conflict on the speaker and on his or her contribution to the conflict and on his or her willingness to apologize to the other party. The purpose of this inquiry is to set the conflict in the context of the entire relationship (Nagao and Page 2005).

After introducing the stories and questioning the mediator gives both parties a space for mutual asking questions for better understanding of the point of view on the conflict of the other party. In this stage of mediation the mediator is trying to figure out the deeper needs and

interests of the parties as well (Nagao and Page 2005). The result of this phase should be the identification of objective positions of the parties. There are not big differences between the first stages of presented approaches.

The other phase of narrative mediation is called deconstruction. The main purpose is to critically discuss the shared stories of participants. These stories can be described as conflicts saturated and constructed on the basis of discourses. The mediator is trying to weaken security of conflict platforms and encourage the parties to look at the problem from a different point of view. It is a violation of the dominant story line formed by the dominant social discourses (Winslade and Monk 2000).

An important factor of this phase is the curiosity to come up with a description of the problem. In order to achieve this goal, questioning is used as the key instrument not only for deconstruction, but for the whole narrative mediation. Questions open the space for the parties in which they can reconsider their conflict story. Questions allow them to look at their experiences from a different perspective. Based on questioning the mediator also seeks to disclose the effect of the dominant discourses in their conflict (Winslade and Monk 2000).

Nagao and Page (2005) in their work mention four basic types of questions which among others the mediator can use for maintaining the perspective of the problem. These are the questions:

- *Open* - they are inciting wide answers of parties revealing their stories;
- *Closed* - they can be answered in one word and they are often used in cases where the mediator wants to regain control over the session;
- *Proofing* - they are used for confirming the true and obvious facts;
- *Investigative* - are highly valued, they deepen responses (e.g. Why?).

The discourses may be based historically from the upbringing in a family of the party (e.g. behaviour of his or her parents), but the party may be also influenced by colleagues from work or school.

At this point we would like to emphasize that the narrative mediation does not have to strictly comply with the order of the phases. Even in the process of deconstructing the parties can clarify their feelings.

The second important tool of the stage of deconstruction is externalization. It is the attempt of the mediator to separate the parties from the conflict. Externalization is a tool for the destabilization of shared stories of parties because the parties use their stories as a mean to clarify their point of view on the conflict. A spokesman has tendency to portray the situation in his favour and transfer the blame to the other party. The purpose of the externalization is to transfer the blame outside of the both parties (Hansen 2004; Christian 2014), objectify the problem and empower clients to respond (Pauli 2016).

Thus the deconstruction of the dominant discourse in the stories is brought about primarily with the help of these tools - curiosity and externalization. Thanks to them the mediator can help the parties to deconstruct their assumptions which are platforms of their stories (Winslade and Monk 2000).

After deconstruction of these conflict saturated stories the narrative mediation provides the opportunity for the participants to continue in the final stage – the construction of an alternative story (restorying). It is about creating a conflict-free story according to which the parties will continue in managing their lives. Only at this stage when a better relationship between parties has been built it is possible to utilize an approach focused on problem solving. Hereafter it will be effective (Winslade and Monk 2000). The parties now understand the feelings of the other party and they are able to see their problems also from the other point of view. It certainly eliminates at least some of mutual negative thoughts and feelings (if there are some). Additionally, they may be able to eliminate some of their stereotypes. Now they should be able to communicate together better. It can be beneficial not only for their relationship but also their vicinity.

One of the last steps in the process of narrative mediation includes creating a written record. All records of the mediation process can serve for this purpose. It is advisable to formulate them together, so as to not look like court judgments (Winslade and Monk 2000) but like something they have created together. This can ensure that the agreement will be followed, because the parties will experience a certain responsibility and they will feel that this is their own agreement, and not the order of somebody, even if the mediator has helped them.

3 COMPARISON OF SELECTED MODELS

In principle, these models can be classified into two basic styles of mediation. The problem-solving model falls into the negotiating style. For this style it is essential to reach an agreement between the parties in conflict. The emphasis is on resolving the core issue of the dispute. Other issues, in particular the relationship, are considered as secondary problems and they are not taken into account during the sessions. On the other hand the narrative mediation model is a therapeutic style. Compared to the problem-solving approach its main goal is to reach understanding between the parties. Primarily relationship problems are solved. The aim is not concluding an agreement, but first of all to improve communication between the parties. This model is based on the belief that only if good relations between parties are established then mutual agreement can be effectively implemented (Hansen 2004; Paquin and Harvey 2002). Therefore the narrative approach could be advantageous for instance in types of conflicts, where maintaining good and long-standing relationships is important.

These two different approaches also look differently at the origin of the conflict. They recognize that the incompatible needs of the parties caused the conflict, but the needs arise from different causes. The problem-solving approach assumes that these needs are based on human nature. However, according to the narrative approach the needs are based on patterns of thinking influenced by the culture (Winslade and Monk 2000). In this approach the conflict is rather seen in the difference of prioritizing of stories.

Regarding the processes of selected mediation approaches the problem-solving model strictly separates the process from the content. While the process should be managed by the mediator, the parties determine its content. In the narrative model this separation is blurred. All participants of mediation are involved in the process and in the content as well (Hansen 2004).

The beginning stages of mediation of both approaches are not very different. The initial phases of the mediation process are aimed at introducing of the mediator. The mediator primarily tries to create a friendly and intimate atmosphere so that clients should not be afraid to speak. It is important to make the parties talk about their needs and interests. They should speak openly even about sensitive topics. They have to believe that the mediator follows the

principle of confidentiality. Therefore, the mediator cannot without their consent disclose any information regarding the mediation process.

But the difference is more appreciable in the following phases. In the practice of the narrative approach it is not necessary to follow the order of the stages, which can freely overlap; it is necessary to adapt the phases to the specific case. Whereas in the problem-solving approach, it is necessary to strictly follow the order of the phases (Hansen 2004). It means that if the goal of a certain stage is not reached it is not possible to omit this phase and begin with a new phase. In this case the mediator must change his approach to clients, encourage them etc.

The narrative approach is focused on the relational aspect of the problem. The mediator seeks to understand the relationship between clients. He helps them to look at the problem through the eyes of the other party, and even find other possible perspectives. This allows them to understand each other's position and therefore ultimately to improve their relationship in the future, which could be reflected in better communication between the parties. If the parties clearly communicate, cooperate, then they can easily comply with the agreement. The problem-solving approach usually does not solve every aspect of the relations between clients. It tries to resolve only the offered conflict. This approach can also produce an agreement that will be beneficial for both parties. But it is important to resolve the factual issue, not the improvement of the relationship between the parties.

Typically, the narrative approach is focuses not only on the present but also on the future and on the past. It is important for understanding the relationship between clients. The other approach seeks to free them from the past. It focuses on conflict resolution and almost solely on the future.

Narrative mediation deals with the social context of the conflict. Its goal is understanding the social discourses that influence the parties, and then breaking these discourses. On the contrary, the problem-solving approach is focused purely on the individuals. It does not deal with the deeper influences affecting them.

The disadvantage of the narrative process in comparison with the process of the problem-solving model could be its slowness, because it uses techniques such as storytelling and

discussing all aspects of the conflict. On the other hand the other type of mediation is closer to negotiation.

TABLE: The differences between problem-solving and narrative approach to mediation:

	PROBLEM-SOLVING APPROACH TO MEDIATION	NARRATIVE MEDIATION
The aim of the approach	agreement	mutual understanding
Primary object	problem	relationships
The conflict emerges from	different needs of parties	different cultural and social environment
The main method	negotiation	story telling
Relationship between the mediation process and its content	separation of the process and the content	unification of the process and the content
Specifics of the mediation process	strict maintaining of the order of the phases	the possibility of overlapping of the phases
The probable length of the process	shorter	longer
Dealing with the past	separation from the past	focus on the past

CONCLUSION

In general, mediation can be suitably used as a tool for dealing with potential conflicts in the context of social work. The narrative approach can be particularly useful if there is a need to understand and solve relationships between clients. The therapeutic elements of the narrative approach – focus on the past, the effort to improve the relationships between people and the use of methods of externalization of the conflict outside of the parties – are suitable for resolving these types of disputes. On the other hand, the course of narrative mediation could be longer than the course of problem-solving mediation, and thus may be socially (especially financially) and mentally demanding. The mediation focused on solving problems, on the contrary, seems more fitting if there is a need to solve an actual problem by virtue of its negotiating components.

The need to find a suitable mediation model often leads to satisfaction with mediation and its overall success. Narrative mediation allows for a better understanding of the behaviour of the individual actors, for an understanding of oneself, others and conflict situations, thus improving relationships. Its application therefore appears to be particularly suited for dealing with conflicts in which the parties seek more than just agreement and/or the negotiating of a certain thing or promoting a certain interest within the shortest possible period of time. Applying this model is especially appropriate for dealing with such conflicts in which the parties want to understand one another and maintain good relationships or even try to improve them.

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