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The characteristics of mediation according to fields of application

Abstract

Mediation has various features as being a special communicational endeavour regarding to the agreement of two or more parties in a conflicted situation. Presenting these features allows to draw the conclusion that mediation is beyond simple conflict management, thus, it has independent institutional framing both theoretically and practically. This paper reflects on the Participation Theory of Communication (PTC) as a theoretical framing, although the practical implementation stands in its main focus. By presenting all application fields of mediation – family, workplace, communal (urban), peer (school), healthcare and intercultural (minority) mediation – based on the author’s personal experience as practicing mediator, the specific features of the mediation process are demonstrated.

Keywords: family mediation, community mediation, workplace mediation, peer-to-peer mediation, intercultural mediation, participation theory

Introduction

The number of applicable areas of a mediation protocol is practically unlimited. The legal regulation supports rather opportunities, and does not regulate by limitations. Only penal processes limit in certain cases the application of the restorative process.¹ The practical distribution of mediation will be decided by its applicability, usefulness for the participating agents. The time of distribution of mediation will be determined by its embedding into bureaucracy

1 In cases where mediation cannot replace penal process, it can be used as additional, damage repairing or contact settling procedure. The court even takes participation in reparation processes into consideration in rendition of the verdict (Fellegi, 2009).

and professional coherence. Professionally the most coherent field is presently healthcare and the medical profession within that. Below, the fields will be presented and interpreted on participation where mediation processes are applied in highest case numbers.

Family mediation

Mediation is mostly used in Hungary in case of problems in connection with crises at several periods of partner relationships. On this field we have the highest number of cases, which has several reasons, seemingly divergent from each other. To make this most complex and most complicated type of mediation understandable - which has probably the highest importance – we need a detailed examination of their reasons.

In case of mediations completed by us, problems in partner relationship were in the background. A partner relationship is the most intimate scene between a woman and a man. On this scene the presence of more agents is not possible. As in case of appearance of a third agent, it is not the intimate scene between a woman and a man anymore, which could be later the bases of a family. Several psychological and theological schools of thought skim over this type of connection. Psychologist Feldmár means that the emergence of a connection between woman and man means the death of the ‘ego consciousness’ and the birth of the ‘we consciousness’, and childbirth means the death of ‘we consciousness’ and the birth of the family companionship. (Feldmár, 2006) With these ‘deaths’ go hand in hand the death of the connected communication.

The communication changes in connection maintain the relationships among family members, which can be stronger in certain cases than the forced sustenance of the marital connection. Here is shown the thesis of PTC, according to that the scene means a connection of the own worlds among the agents (Horányi, 2007) – because of the communication characteristics for and driving of the connection – and not the physical scene categorically, which is the consequence of the forced cohesion of connections. In the family as an institute, the single members have their own roles and fields of activity and a considerable part of the operations in connection with these fields of activity cannot be assigned to another member of the family. These roles and the connecting tasks, common activities can function if the connection between woman and man – that means the basis for the family – is based on stable, calculable and cooperative fundamentals, in spite of any changes. The basis of functioning is assured by the continuous connection and cooperation of the two agents. The agents do not make

public a part of their own world for the partner anymore, only the part needed for a cooperation in connection with the children persists shared. On a certain field it is important to remain a problem realising and problem-solving agent - and both parents aspire after that - as the connection to the education and the future of the child, etc. are important. The intimate connection between woman and man - starting from the beginning and excluding any others - has to be closed, and one of the partners has also to mourn it regularly (Viorst, 2002). It is a rare constellation that both partners are - nearly - at the same emotional level in a connection between a woman and a man, regularly one of the partners is not bound to the other one anymore, e.g., feelings gone away, in love with another person, etc. Release and new basis of the connection are only partial, as the children mean a continuous connection between the parents. So, the partial conclusion of the own world and the regular operation of another part need similarly a common will, a partner connection with the other agent, just like in any other mediated situations.

For people having acute problems in a partnership connection, it is sometimes enough to offer a safe scene for mediation and the attention of mediators to articulate fears and grievances. A meeting on a common scene might be in an acute case enough to accept the situation and to understand the feelings of the other partner.

The case of chronic, long-lasting problems in the partnership is much more complicated and complex. Here the partners have not been living together on the scene of intimation between woman and man for a long time already, but they further fulfil their roles - or at least a part of them - to meet expectations of society and environment. This situation the agents experience in their own worlds in a very different way. Some people realise it as a dismal failure and escape into psychosomatic diseases. Others use the aches for continuous regeneration of play situations (Berne, 2008), because in this way they stay in a kind of connection with the other party. Others blame themselves and go to therapists and healers to change themselves in order to sustain earlier conditions.

The problem, i.e., the gist between the present and the desirable situation is that one of the parties identifies the requested future state in chronic partnership situations with the past state before the problems. This cannot occur, because the changed situation between the parties makes only the realisation of another desired status possible. Even in the case that both parties would like to restore the situation before the problem in the past - i.e., if their goals correspond - it cannot be performed in the same way.

This anomic situation brings along uncertainty and fear, the agent means the desired situation to be available by attack, destruction and neglect of the other party.

The parties usually turn to external help in this period, which can be exclusively the legal way at that time, except if they intend to get the other party into therapy. Through this step the agents give up the opportunity to control the problem. The goal is in this case not the resolution of the problem but defeating the other party by legal means. The agents form a coalition with their legal representatives. The legal representative has only availability to the knowledge within the institutional system of law. In most cases this information is compromising and presenting the other party in a negative way. Law judges and applies the logical system of winner-looser, because one of the parties is ‘in the right’.

There are situations where even law is unable to decide, for example in child custody. In such situations the legal representatives can present an infinite interlocking and explanation of arguments and counter-arguments, so that the judge will continuously adjourn the case, or decides – which corresponds legal regulations but not the interest of the parties or of the child -, or he can send the parties to mediation. In latter case they became again agents with problem realising or problem-solving function after years of litigation. In mediation the parties need time to realise that they will change the existing situation and to act as an agent again and bring own decisions for their own future.

Family mediation was made obligatory² in Britain from April 2011. Those only may enter legal procedure who tried mediative process verifiable unsuccessfully. In Hungary the Family Law Book of the Civil Code (Boros, Katonáné Pehr, Kőrös, Makai & Szeibert, 2014) has introduced the term obligatory mediation from 15th March 2014. In order of settlement of the regulatory law of parents, for maintaining contact between parents and children and for child custody at third party, including cross-border legal matters, too (Boros et al., 2014). It is a very important milestone in the regulation, but it functions practically in a small part only because of unfamiliarity and novelty of the process.

Workplace mediation

The workplace as an institute is the scene of the realisation of several interpersonal relationship systems. On one side it is the scene of actions of employees according to developed and expected protocols on the given workplace. On the other side it is also the scene of private interpersonal connections developed by coherent, frequently from each other dependent duty cycles.

2 The participation at mediation information and assessment meeting (MIAM) was obliged.

Employees join forces for centuries to increase enforcement of interest in connection with work and to try to achieve goals. The private communication descending from interpersonal cooperation increase or decrease effectivity and through that also marketability of a given economic organisation in an unmeasurable way.

Labour mediation

To the world of labour are not only concrete labour disputes and problems connected, during working the employees get into interpersonal interactions practically in each minute of the work time. Such interactions can induce disputes – even unintended – and these can be professional or absolutely personal, and occasionally these two fields can be mingled.

In research from 2008³ were workplace conflicts examined, each incident defined as conflict which can interrupt work process. Employees meant that the main reasons of conflicts were due to personalities or excessive selfishness. To indulge in personality means an attack against another person in a conflict, while egoism means – just in the opposite way – a strong effacement of the other party from communicative point of view. The people asked felt themselves unmotivated, angry and frustrated. In the countries of the examination people spend at an average 2.1 hours with conflicts in a week, that means, in the United States only, 370 million work days a year. These conflicts are mostly not developed about unsolved concrete work disputes but they are based on the relationship between the parties. The responders mentioned as solution the timely recognition of the personal line, the increase of the time spent for the solution of the conflict and the involvement of a mediator. The participation at a conflict treatment training was refused by a significant majority, but the time for learning about others - either in form of community events (team building trainings) or in form of concrete mediation – was supported.

In cases getting into the workplace mediation process, the stress due to work, overload and not appropriate interpersonal connection are the sources of problem. An example for that is the case of a mediation between the general manager and the commercial manager of a big multinational company in Hungary

3 The research consisted of two main periods. In the first one 5000 employees of nine countries – United States, Brazil, United Kingdom, Denmark, France, Germany, Ireland, the Netherlands, Belgium – were asked about their relationship to workplace conflicts. In the second one the employer perspective in 660 workplaces was examined in the United Kingdom – incorporated the HR departments - the same subject.

a few years ago⁴. The general manager intended to give the commercial manager notice, though it was not supported by any performance indicators. Before an employment-related process the parties agreed on mediation. The starting situation of the mediation was how to cancellate a contract by the agents without an employment process. In contrary to that neither the place of the real problem nor its solution was connected to the performance at the workplace, to the amount and quality of work performed or the professional personality of the other agent. To realise that it was indispensable to present the problem in another scene – with its apparent perpetrator - the other agent together. The identification of the real situation is frequently enough to sense the previously problematic meant situation in another way by the agent. So, the agent will have the opportunity to find the steps leading to a solution – like it is shown in the problem mentioned above.

Mediation guides the agents, by realisation of a safe scene, in a direction where they can present own interests and necessities based on own resources and earlier positive experiences.

Communal (urban) mediation

In the following will be discussed (more detailed) the mediation cases with the most participants and their relations.

The number of participants may reach even 40-50 persons, the results of their mediation may influence even towns with citizens over thirty thousand. The high number of participants could seem to be unintelligible and unmanageable on first look, considered the available time only. How can be so many own worlds presented and agreed about within so short time?

Community mediations can be shared – according to my experiences collected – in two main groups as follows: (1) the aim is the solution for a given and by each participant in the same way regarded problem; so, for example the change in traffic regulation in a city, (2) restoration in a concrete damaging event, i.e., in the course of a victim-offender mediation⁵ support and hearing of the partners, or participation of others – not directly met in the case – as listeners. So can be for example a school ruck, where both the offended party and the offender or offenders and supporters are present, who help the parties to find the best solution

4 The mediation process was made with a mediator together in 2011.

5 Perpetrator-victim mediation, or restorative process, is a mediation process where a damage will be restored.

for atonement. In such cases the supporters can be parents, friends, class mates and also further participants like teachers, educational psychologist, or also a person named by the victim and not met in the given case directly (Herczog, 2004).

Community mediations are also carried out to change a given sample or habit or to set up an earlier not existing, new order. Interests and necessities are perfectly clear, they are not, or only at a very small part hidden. So, the topics of community mediation sessions are statements of problems and search for solutions at a conscious and rational level.

The key question for mediators is the selection of proper representatives of community interests. Persons with appropriate knowledge and preparedness are needed to represent the community at the sessions, for a proper visualisation of the problem to be solved and for expression of the connected demands and needs. Among mediators are people who only deal with preparations. The preparative mediators are not present at the sessions. The mediation is led by two mediators and they are supported by a minute writer.

Agents in coalition

During a community mediation, agents get into coalition with other participating agents. The own capacity can be complemented with capacities made available for each other, which can be used for realisation and solution of the problem and also in communication (Horányi, 2007).

A sample for that is a community mediation initiated by an architect general of a Mayor's Office in a Hungarian city, as presented afterwards⁶:

The regulation of the traffic order in the city has not followed a uniform conception for the last decades. Decision makers did not agree with other parties interested and competent in these questions, due to other problems isolated decisions were made about the traffic order of the city. Agents using several areas of the city complained in the Mayor's Office but no appreciable changes were generated by the private complaint. What associates of the Office could do, was limited on listening to and registering of the complaints. It generated a newer problem – intensifying the other one – because through that the associates of the office lost a lot on professional authenticity.

In the evolved situation the associates of the Mayor's Office initiated any kind of reconciliation in vain, the citizens did not appear or did not consider the initiators of such professional forum's objective. The architect general of the city has previously taken part in community mediation process as observer and so

6 The mediation was led together with three mediator colleagues, in two parts, in 2013.

has known methodical, effectivity financial and constructional implications of the procedure. Altogether two mediation sessions were hold, lasting each of them for four hours.

At the mediation session the public suggested after a few formal questions that the persons belonging to the several districts should start to measure, mark and note problems with traffic order separately, with the help of an A0 sized map: and when they finished to bring them to the attention of the whole population. The problems starting up were walked through several times by each agent group.

The second session took place two weeks later, with the same participants, working this time on solution of the traffic problems collected at the first occasion. The first filter of the solutions were the demands of traffic participants, the second one the traffic policing regulations, and the third one the low financial opportunities of the city.

The groups made altogether 57 solution proposals in coherence with traffic policing regulations, with opinions of professionals of the city's traffic department and satisfied the demands of the users of the city – and these all were solved at a very low budget. The proposal was overtaken by the Traffic Department of the Mayor's Office.

The basis for success in above cases gave the coalition of agents with - earlier not coinciding – preparedness, knowledge and competencies at a common scene (Horányi, 2007).

The agents with this preparedness participated – accompanied with a coherent and appropriate communication – both at works of small groups of several districts and also at questions meeting the whole of the city. This latter one has a key importance as at the beginning of the mediation session proposals were assigned to the target and associated priorities. In this way, the necessary changes, needed to meet the goal of the whole community, could be found. Both at taking into account problems in connection with traffic order and at elaboration of solutions complied with previous priorities, the community let adhered priorities set up earlier by workers in small groups, i.e., a strong controller role of the whole community could be experienced, too.

The resultant of knowledge both of collaborators in small groups and of the traffic order of the city was taking into account all possible traffic problems and the opportunities for their improvement. The groups have taken into consideration opportunities staying above but influencing traffic at the first session already. This can show very well, that in case when appropriate preparedness is accumulated, then proposals can help not only in problem solving – i.e., in solving problems of the past – but also in offering sustainable future solutions.

This arises from the fact, that the own logic of the agents working as members of the coalition – which was to experience in cost effective and planning thinking for the city – was identical with logic of other members of the coalition.

At the common work the parties visualised only from their own worlds their preparedness in connection with concrete problems to be solved in the mediation scene.

School or peer mediation

School mediation covers a wide spectrum of means and types of mediation. On this scene you can find the widest variation of mediation solution forms assigned to conflicts.

School mediation means to solve conflicts in the upper classes of primary schools or in secondary schools among students, teachers and parents, or students and teachers. Considering its form, it can mean conflicts of individuals or cases meeting the whole community of the school or a smaller part of that. School mediation is a subtype of community mediation where the school - with its institutional characteristics - defines clearly scene and participants of the subtype.

In the own world of students opens and appears place for new pattern both with biological changes and the connecting mental processes. The appropriate choice and application of these pattern is a difficult process due to lack of experiences, and therefore companions, helpers, i.e., pedagogues are needed.

I continuously followed the demands of teachers during school mediations and so I experienced that they consider the loss of their prestige as the source of conflicts. They want to keep or regain it in any way. The means used for that create an opposite effect: threatening, punishment, making superiority felt can provisionally appear as means of solution, but in the long run these do not mean real results. Settlement of disputes of students among each other has a basic importance as they will have to meet each other daily after any conflict and to stay in the same room frequently. In case that the conflict is not settled in an appropriate way, it may have a negative effect on the development of their personalities; they might be separated from the community and they will decrease activities in learning. *‘So, it is unconditionally important that students learn in the school technics of conflict handling and social and emotional abilities. The appropriate learning environment in the school is much more effective for progression of the students than a private school status’* (Törzs, 2010).

In peer communities we understand peer mediation as the sort of mediation, where problems among students are solved with the help of a fellow student of

their age (according to experiences one-two years elder) as mediator. Handling of the conflict will not be considered in such cases as an unpleasant and unsolvable task, but rather as a positive challenge (Kinnunen, 2010). Peer mediation considers closedness and rejection of teenagers against other age groups. It offers a safe scene for them to undertake conflicts, to present their own interests and needs, and so it also provides an opportunity to find a real, interest-based solution.

The special communicational situation of the young teenagers further restricts the scene of presentation of the own world on their age group. Only they are considered as authentic for understanding, acceptance and safe handling of the problem. The leadership of a peer mediator gives a guarantee that no retorsion or negative consequences happen after the mediative session; in case of teachers this confidence is missed. The mediator has to be present not as an expert but as an everyday person, compeer with the parties, who can lead and control the process, as the most important goal in this process is the restoration of the relationship between the parties (Marklund, 2010). Follow-up is easy at school level because of the everyday meetings. The work of peer mediators is always supported by one or more adult mediators. About mediation the parents get information, too.

At a peer mediation are numerous preconditions to be fulfilled for proper functioning. For presentation of the agents' own world is here not expertise of the mediator and the use of special communicational technics needed but rather the realisation of a safe, confidential and discrete atmosphere. Understanding of each other's own world, the expression of interests take place easier than in the case of elder generations.

Healthcare mediation

Healthcare mediation means the handling of conflicts between healthcare workers and patients. In the healthcare sector state-run and private institutes have different approaches to mediation process. In the state-run sector are patient rights processes characteristic, where – according to the survey of Decastello – health institutions are sued for 1,3 billion HUF, and this kind of processes are to 80% won by the patients in Hungary (Decastello, 2008).

From communicational point of view there was a change on the part of the patients in the relationship healthcare workers – patients. It arose on one side from better preparedness of the patients about illnesses and from always more conscious articulation of this knowledge, and on the other side appeared private hospitals, where patients' rights were effectively admitted. So, from the side

of the patients arose a kind of consumer awareness – and relevant communication – with a main characteristic that patients are even ready to choose the legal way against the healthcare system to allege their expectations and demands.

This process was realised by the healthcare system as a problem, which cannot be solved for years mainly due to financial reasons – although the opportunities for professional solutions are known.⁷ Decastello means that it has turned out several times that the patient does not want to avenge the insult during his hospital treatment, but intends to get known the reason of that. The patient does not intend to litigate, rather would accept an apology. When it is expressed, the patient calms down, even making suggestions to avoid similar situations later (Decastello, 2008). For lack of appropriately trained personal to satisfy informational demands, the patients do not get any information and choose the legal way to remedy grievances.

The satisfaction of these kind of demands of the patients by competent personal could bring in the state-funded sector – according to experiences – considerably cost reduction for the institutional system of healthcare. Not satisfying these – partially already recognised – demands is not only a paradox on one side because it was more profitable to make steps for solution – even at local level in the particular hospitals – and on the other side because experts of physical and neurobiological processes – which is the root of the matter – are employed in the healthcare system.

Mediation is used presently mainly in the private sector. This is the area where the majority of medical interventions is utilised as a kind of ‘convenience’ service.⁸ Patients here have absolutely consumer awareness in contrary for example to a patient of a road accident.

Considering the other party, in the state-funded healthcare system a market-oriented attitude of the leadership in a hospital is not, or only partially present. The healthcare system cannot make use of such opportunities increasing cost effectiveness like contentment due to emotional care of the patient. Private hospitals are perfectly market-orientated, and therefore pay attention to communication with patients. Naturally, physicians make mistakes in this system, too, patients are also here aggrieved, but the handling of indignities is very important, even if making public of the given case appears as an argument. The measurement of future losses needs a kind of advance thinking, risk analysis and deliberation but only from those where sustainment, growth are self-dependent and are not

7 In numerous West-European countries are sister employed to satisfy social and information demands of the patients, they declare in details what will happen, inform about the process of recovery, what are the opportunities, i.e., their task is to give mental support and to calm the patients. In Hungary is this the task of the physicians, what they cannot perform due to overload and lack of preparedness.

8 Plastic and corrective surgeries, e.g., ophthalmological interventions.

supported by any other organisation. This can be a market organisation, where we can see by the frequently mentioned evolutionally parallel, that the other agent fights as humane for assertion of own interests. A successful mediation is able to choose the solution serving own interest in the best way – and is able to apply his emotions-fed communication not for attacks, destruction, punishment, i.e., along the logical way of legal winner-looser, – but to adjust it along an undoubtably more advanced solution. The other agent is also able to choose a solution causing the smallest loss.

Compared with that, in the state-funded institute systems the lack of knowledge and preparedness is obvious. These institutes are not interested in positive outcome, even the acknowledgment of mistakes means the greatest risk for physicians and leaders socialized there. The retention of professional prestige is the most important, there are no financial aspects, i.e., the protection of values – in this case the infallible and perfect physicians – instead of interests is the only interest. And all this in spite of the fact that the institutes lost 80 p.c. of the processes. The explanation of that is that the value-based approach involves position-based trials. It means logically that an either-or (winner-looser) solution is possible. For these institutes could mean a solution if the possibility of erring could be officially acknowledged – according to practical proportions – and the institutes could offer protocol solutions for such cases. The lack of this security and the uncertainty and fear caused can trigger a reaction of denial and the inherent communication at physician and healthcare institutes. Therefore, medical malpractice proved at court is only acknowledged.

Minority / intercultural mediation

Minority or cultural mediation concerns releasement of problems between the majority of the society and a – due to certain characteristic different – minority community. The minority can be an immigrant group, which left the fatherland due to political of economic reasons. A part of minority groups is formed by the metics⁹, who have been living in the given country for decades but do not become citizens of the given country even after several decades, a good example is for that the community of Turkish people in Germany. To minorities belong members of separated religious groups. So are e.g., the Muslims settled down in European countries.

9 Metics (Greek) cohabitants, those who live together with the majority society over generations, have the same lifestyle but do not become a homogeneous part of the society.

To the group of minorities belong national minorities. In Hungary this group is regularly considered as the synonym of the expression minority. At the present are fourteen officially acknowledged minorities, the biggest one is the community of Romani with one million members.

A conflict emerges between the majority of the society and the minorities, when the parties feel themselves endangered because of – real or meant – cultural differences. A considerable part of these differences remains hidden at groups belonging to the same culture, dress similarly and speak the language of the majority without accents. Their minority culture is basically only practised in own four walls and occasionally, e.g., on holidays are these presented for the majority of the society. All Hungarian minorities do in such way, except Romani.

In case the members of the minority do not perceive the differences, they are not considered as different and so does not start a process of stigmatisation either. In case, there is no distinction, no prejudices will emerge against the group.

At cultural mediation are two main tools applied in my own praxis. One of them is narrative mediation when a solution on group level should be found. When the parties- starting from generalisation – get always deeper known their concrete community and cultural own worlds, in most cases projected into a story or a tale. In this way they can get acquainted with concrete cultural elements instead of prejudices; intention will be replaced by ration. This step will change the principle of only truth: as the parties get known and accept cultural elements of the other party, they can accept truth and basic values visible from their perspective. By these technics the agents do not create common own worlds as cultural values with roots developed in millennia cannot and should not be changed. The goal is here to sense, recognise and accept the existence of the other culture.

The other tool also can be applied to solve problems with other minorities emerging at community mediations. This tool is concretisation,¹⁰ locating the problem and the agents indicating that.

From the processing of a co-mediative session, you can draw the lesson that the members of the community of a different nationality were able to draw a conclusion valid for themselves, too: beside the village day arranged monthly, the organisation of common cultural events, the widening of the stream of communication was considered as most important to avoid community problems. The sessions of the settlement's self-government were broadcasted by the village-tv, resp. actual information in connection with particular communities were presented continuously on the official website of the mayor's office.

10 This is practically the transformative mediation itself.

It means practically a share and enlarge of the agglomerate knowledge in the widest circle. Geertz (1994) and Niedermüller (1999) say that this agglomerate knowledge implies the implicit and explicit conceptions, explanations and subsequent modes of action and regulations (Horányi, 2007).

This practical case clearly confirms that the differences in habits and limits of particular communities – in lack of appropriate preparedness and knowledge – start intentional guessing, avoidance and separation on community level. In case the reasons behind cultural differences become clear, information as factual data is handled and differences are not approached on an emotional but on a rational basis.

During minority mediations – in case of communities keeping contact with each other in physical space, or living together in a certain form - it is important, beside narrative mediation technics, which helps the acceptance of the other group, to search for concrete reasons and cases where the problem can be manifested, e.g., made concrete. In this process is possible to separate the problem as process and the person of group identified with the problem, and to treat them as agents. This is the phase where two agents appear connected to the problem. Until now an only agent has existed, as the other party has not been considered as agent, therefore latter one could not appear as equal party in problem solution, a common own world could not be developed.

During a minority mediation prejudices against appearing communities and the intentional fear in the agent realising the problem, show essential similarity. The starting basis of both is the endeavour for adherence of the given norm, regulation system. The several norm systems of several communities can cooperate – according to practical experiences – in a natural way in case that the norm system of the other party is mutually known. The appearing problems are caused by lack of knowledge of a particular argument connected to or implied in the norm system.

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