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“How mediation could help the judges in their everyday work?”

Many people asked me what was the reason I choose mediation? A judge and a mediator, in the same person? How is it possible? How it is possible to change the judge's for the mediator's hat? It is so strange for many that somebody call us, I mean judges mediators, abnormal mediators. Am I an abnormal mediator or maybe an abnormal judge?

I was thinking I was born to be a judge and from the early beginning of my judging I did all the best in a sense of running fair processes and rendering as best possible judgments, and pretty fast I earned some significant professional reputation. But the time was passing by and I felt something was wrong in spite of all my efforts as a judge.

I was trying to find what was wrong. The first thing I found was the issue of understanding of my work. My wife is a living proof that the most people, of course those who are not familiar with the law, do not understand a court decision almost at all. At that time I was somehow offended that my wife didn't ask me anything seriously about my work as a judge. She said: “Ok, give me one of your decisions.” I picked one which I was thinking it was among the best and gave it to her. She started reading it, and after two pages she threw it on the table and pretty angrily said to me: “I won't read this anymore. I don't understand this at all.” Vaauuu!?

If a well-educated person cannot understand me as a judge, I can or you can only imagine what the case is with less educated people? It was like a thunder had hit me right into my head. It was the beginning of my questioning about what I was doing. Another issue that stroke my professional pride was the time when at some point in spite of my good feeling about my work and my position and great opinions on my professionalism, too, I finally realized that nobody was happy with my work no matter how good I was in my courtroom in collecting evidences and facts or in writing my conclusions in my decisions. Why was it like that?

Simply because most of the people went to the court convinced they were right and they went there with great and very often, with unrealistic expectations. Very soon they become faced with a litigation machine in which they fight only for their legal, not their life positions, in order to defeat the opposite party with every possible means. Many of them are trying to defend their legal positions hiding truth, using half-truths or even lie and use only the facts and evidence which are supporting their case. The result is a verdict with only the most probable truth, so called a puzzle justice – the puzzle without many pieces in it. The result is a verdict about who is right and who is wrong; a verdict declaring who is a winner and who is a loser. The loser is totally unhappy; he or she is defeated by the act of the state court. And the winner mostly isn't happy because he or she has got less than he or she has expected. Their relationship is destroyed forever and above all, they do not understand what and why all that happened.

Who is guilty? The judge, of course. The only person who has no interest in a particular dispute.

So, my feeling was I was the one who was spreading misery to all disputants, at least from time to time. I was somehow disappointed. I finally realized all of us are parts of the game in which all the players are lawyers, only.

But mediation has come into my work and into my life and entered firstly silently and then, more and more loudly, into the whole legal world. I felt as if somebody had thrown me a lifebelt.

We were talking a lot about the importance of looking at dispute resolution system finally through the lens of the parties, from the users of the system, not through our lenses, the legal professionals who run the system. In order to gain the disputants trust and to beat an enormous proportion of negative public perception, we should start not to think only about preserving status quo which does not lead us anywhere but about the ways with which we should assure different roles of all dispute participants. The disputants are seeking much more attention and recognition than they have today in litigation lottery. They are seeking for their active involvement in a process and in its outcome of their own dispute. They want to understand and to know what is happening at each stage of the process. They want back the ownership over their dispute and more control over their lives. They finally want that legal system including judiciary; become public service, not disservice as it is right now. They are searching to find a way not only to fight in the court arenas over legal positions and by legal weapons, but to cooperate in solving their own conflicts and in maintaining their relationship. They won't be defeated by any system any more.

Recently one of my colleagues has said in public that the role of the judge isn't to gain any satisfaction among disputants. Judges can offer satisfaction to the others, but only outside of the courts in their free time. What do you think about that?
Is that cynical or realistic?

I am wondering who can be anti-satisfaction and peace.

Are we so independent that we are not dependent of any perception or opinion of the users of our services? Are we so insensitive to not even to think about what disputants really ask from us and do we believe that our formal and legalistic sense of justice is the only one or the most righteous? If we do think like that we are wrong.

I think we have to find the ways how to maintain our relevance in our societies and how to show to everybody we are just humans. Nobody needs any more dehumanized courts and judges, nobody needs our formal masks only, nobody needs legal relevance only, and nobody deserves an uncaring mechanical treatment in the courtrooms, without seeing humanity in dispute participants. We need to make judging human and to make human judges. We need judging with everyday demonstration of explicit ethics of care. Otherwise, there is a chance that nobody will need us any more in a not so distant future.

Do we have our own capacity to enhance our reputation in our societies? Reputation is something we have to earn not only to get by our positions. The question is how to shape our practice to serve the disputants needs and not to compromise our sense of what a judge position means, and not to harm our professional pride.

The ideal adversarial system (litigation system) is designed to produce the truth. The idea of justice is nothing but the truth in action. Do we have that kind of justice system today? Actually we have very often an apparatus that converts less truthful or false inputs into truthful or right outputs. And the real truth is usually lost in translation from the life into the law. This is the way we harm individuals and this is not a kind of justice they or we want.

I think that for us, I mean the lawyers and the judges; it is not satisfactory any more to imply exhausting rules only, knowing there are possibilities of implementing a real justice, the justice about disputants care, in a much less formal environment. There is no greater reward for our legal profession than to help the disputants to reach their own solution, their own justice and to help them maintain their relationship, without forcing them to accept our very narrow legal solution. Our task should not be any more solving disputes and cases only, but solving conflicts by which parties will be empowered to continue their lives productively.

So, our main task is restoring humanity in dispute resolution system and to introduce humanity into the law. Everybody needs the dispute resolution system that guaranties equal opportunity for all parties involved. We cannot do that alone, but we can start doing this, right now.

ADR and especially mediation is crucial not only for the disputants but also for a legal profession and the whole legal system everywhere. Positive changes which legal profession has been faced with are great. The whole idea of implementing mediation and its postulates in everyday work of us as lawyers is an amazing challenge and opportunity for saving a face of our profession by our own improvement. That could be our contribution in making our world a better place.

Mediation is a great tool which can help judges to become much closer and more human to the disputants and to the public in general. Judges' status and authority and a mediator's skills and techniques are a dynamite combination. Could a judge mix or change his or her role with a mediator's role in the courtroom? Does it mean a conflict of two roles? It is a great challenge to a judge not to think of a dispute from the lens of who is right and who is wrong. In mediation, cooperation is crucial and the judge's role could be enhancing a cooperation of confronted parties and their responsibility for searching for a solution in order to settle the case. Everybody who is included in a case wins by means of a settlement. One of the most significant disputants' thoughts about court mediation programme is: "*Mediation in this court brought me back the faith in judiciary which I had lost at all before.*" Judges could achieve similar results in the court rooms simply by changing or adjusting their roles and behaviour according to the specific demands in particular cases.