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“Mediation through the Lances of Croatian Mediator”

Mediation is something so good that everybody is afraid of it! Most of them are those who really don't know much about mediation, yet. Otherwise, they would have already been infected with the mediation, just as we are.

I have tried many times and I have still been trying to find some weak spots inside the mediation, but despite my hard and continuous efforts, I couldn't find any. So, the only cure for those who are literally fighting for the status quo in our traditional world of dispute resolution, is to keep themselves as far as possible from any significant knowledge of mediation. Keeping that way they are only postponing inevitable.

Somebody calls mediation a “sleeping giant”. We can call it even better, a “sleeping gentle giant” who is just about to become awake. We are among those who would like to be ready when that moment of its full awakening comes. Unfortunately, it has no ability to awake everywhere at the same time and with the same speed. That means we have to help it a little bit, we need to find a princess who will give it a big awakening kiss.

When we are talking about Europe including Russia, the future we want, needs a little more time to become really present. The best way to predict future is to invent it. Don't you agree?

We are living in a world of mass societies in which humans have lost a lot of their humanity focusing mostly only on themselves as individuals. Humans have lost a lot of their inner sense to see others as humans and a lot of immanent ability to care about each other and to cooperate. This is a kind of capitulation to the conditions of mass society. Humans forget somehow they do not only have capacity to fight and confront with each other (destructive anthropology) but they also have the inner capacity to solve their own problems and conflicts and to keep their relationships (constructive anthropology). No matter what the recent human history has said, there is no true

evidence that humans are naturally evil. Humans are naturally good and they have survived as a species through cooperation not by wars. And all kinds of human cooperation have always been a sign of their strength, not their weakness. The cooperation among humans is a basic principal for any kind of progress.

Today all kinds of antagonism, confrontation, hostility and opposition still prevail. It seems it has become a kind of common behaviour with which humans have been trying, for any cause, to show their strength to others just in order to convince them they are right. Every conflict, even a war, ends in peace. So, why not start with peace, first?

What all of us are really doing, is trying to remind the disputants of their immanent humanity. Humanity implies the acknowledgement of humanity of the others. All people who are involved in different kinds of conflicts have a great capacity and responsibility, too, to cooperate first in solving their own conflicts. If they do not succeed in consensual ways of solving their conflict, they have the right to put their conflict in the hands of others.

What happens when the disputants put their conflicts only in the hands of others, in the hands of doctors for disputes: lawyers, attorneys, judges, etc.? From that moment they are losing any significant control over their conflict, over the process and the outcome, over their destiny, over their life, and they fully transfer their responsibility for all of that to others. From that moment they become the passive players in a game in which the only players are we, the lawyers. In that game we are doing everything we can and know to translate disputants' life into the law and we are pretending, actually we believe, we know much better what to do the best for them. From that point rules become more important than a real life. From that point there is no more existence of anything that is relevant for disputants, only what is legally relevant. Have you ever thought that the most of what is legally relevant is actually irrelevant for the disputants? They are literally lost in translation, from the life into the law.

Legal process only, filters, reduces and distorts reality. It alienates disputants from their own case and from their reality, and it takes power over their lives. This is a kind of civilization gap between people and traditional legal system. They are asking help from the state courts for solving their big life problem. They are searching for relief, as all of us do when we are in pain. Only what traditional dispute resolution system offers them, is solving their legal problem. They do not even understand what legal means.

The result is frustration, misunderstanding, helplessness and disappointment, loss of hope, dissatisfaction, negative feelings and negative perception of the whole legal system. Perception, no matter how subjective it is, is always a form of reality. A negative public perception is not a ghost that will disappear by itself!

The time has come when the legal system finally has to fulfil the needs of those it is serving. We, I mean the legal professionals first, have to put the disputants into the centre of all our actions, including the legal ones. Disputants cannot be any longer only the observers of their disputes in the legal arenas where we run ritualized court battles. We have to bring them back the ownership of their disputes. We cannot steal disputes

from them anymore. No matter we like that or not, we as professional dispute resolvers, shouldn't be any more out of disputant's control.

Justice requires responsiveness to individual human beings. Justice cannot fight any more and lose battles with formalism. Justice cannot afford any more to turn neighbours into strangers, friends, relatives and business partners into enemies. The present way of helping disputants only in fighting to each other by legal weapons in the court arena, is a wasted concept. Justice is not something people usually get from the government. Justice is something people give to each other. People maybe do not always know what justice is, but they can always recognize injustice very well.

Any conflict or dispute is a sign of weakness in any relationship, and at the same time, an opportunity to improve it. So, litigation especially a massive one, is a sign of epidemic weakness of a society. All of us and our societies are confronted with a great challenge and great opportunity, too, of positive transformation of legal profession and legal systems. Every legal system is the soul of its society. A core function of legal system is to provide fair and just results. In that sense we have to stress that a blindfold of the Goddess of Justice, is not just a fashion detail. We should achieve that every modern legal system has to define its own and common future and embrace changes it is faced with in order to create our common environment a much better place to work and live in.

As somebody said, we cannot afford any longer to have a train that can go only where trucks go. We have to provide a form of transportation with the destination to be determined by our passengers. Are we more concerned about preserving a track right-of-way than we are for transporting our passengers? If we really want to exist further we should adapt ourselves to a modern form of transportation of our passengers, the disputants, and to allow the others to transport them, too.

People are much more satisfied with a process when they are asked for a feedback and believe that they have some measure of control over those aspects of the process that are problematic to them. Mediation is thus promising for inducing a greater satisfaction with legal processes because it highlights so many features that are connected with happiness: control, choices, feedback, flow and hope of a better and meaningful relationship (Nancy Levitt).

What is so important that disputants can get in mediation what they cannot get anywhere else: great opportunity to be acknowledged, recognized, respected and heard (to tell their story) and great opportunity for participation and control over the process and the outcome. We can agree that nobody likes uncertainty, unpredictability and risk. No one can afford any more to be a part of litigation lottery.

Creative ideas from mediation definitely are causing adjustment of law and legal institutions including legal profession. Mediation and other ADR forms should become constituent and equivalent part of the dispute resolution system. Formal and informal ways of solving disputes are the two hands of the same body. They need each other, and people, the disputants need both. They need opportunity to choose.

We cannot change the past. We are living in the present in which our actions define our future.