

Seminar
**Children's rights in civil and criminal proceedings
in Russia and the UK**

September 9-10, 2019, St. Petersburg

87 Ligovsky Prospect, office 300

Protecting civil rights in civil and criminal proceedings is not a subject that can be covered extensively in one or two days, however the cooperation of Russian and British experts provided a wide-ranging and thought-provoking experience for all the participants.

Day 1. Civil proceedings: working with vulnerable children

The seminar began with the presentation by an experienced St Petersburg lawyer, Galina Ibryanova, who has for many years represented clients in disputes concerning children at risk. She noted that most of the sources for interpreting the concept of "the best interest of the child" were drawn from international documents and practice.



Galina Ibryanova

Galina outlined some of the complexities involved in determining outcomes for children where there are multiple issues in play: parental alcoholism, children's exposure to open drug use and/or violence and how these require the obtaining of evidence from a range of sources: schools, doctors, hospital admission records etc. before a reasonably safe determination can be made. Beyond this Galina stressed the importance of assessing the impact on the children while also constructing a clear child protection strategy for each case. These ideas prompted debate among the participants citing a range of cases where there were difficult conflict of interests between that of the parent and that of the child. During the discussion there was a crucial systemic question - who protects the interest of the child in our courts? This drew the attention to the need for skilled independent experts to be involved. In further discussion and with additional interesting case examples it was noted that, in the UK, some aspects of the adversarial conflict that arose in such cases were assisted by the appointment of independent specialists who act solely in the interests of the child. By this means the 'voice of the child' is seen as crucial (but not paramount) in assessing the interests of the child and is intended to be heard above the clamour of adversarial disagreement. By this means the clear principle of the 'best interests of the child' can be better perceived and legally enabled.



Trainees discuss case studies

London District Judge Kenneth Grant and independent **social worker Gill Timmis** described work on child protection in the courts of England and Wales.

Kenneth Grant worked as a lawyer, then as a criminal judge, a judge in the family court and a FDAC judge (in cases involving alcohol and drug addiction). Gill Timmis is a teacher by training and has worked as a social worker for family and minors, including interacting with the courts.

The dominant guiding principle used by our British colleagues is clear: *to always consider the interests of the child.*



DJ Kenneth Grant and Gill Timmis

UK Family law depends on international standards, Conventions on the Rights of the Child and British laws, including the Children's Act 1989, the Human Rights Act 1998, the Adoption Act 2002, etc.

The aim is to develop mutual respect between social workers and judges in theory at least! Interestingly, during the seminar, the judge asked the social worker to comment on international law in this area.

International standards help judges ensure a number of fundamental children's rights: the child's right to a fair trial, respect for private and family life, freedom from discrimination, the right of a child to participate in decisions concerning a child, the right to priority protection interests of the child, the right to protection, the right to meet basic needs, the right to information. At the heart of all procedures is the focus on child welfare.

When making a decision, the court considers the probability and extent of the risks of harm to the child, the wishes and feelings of the child; physical, educational, emotional needs; the effects of any changes in the child's life; potential harm and obvious issues of age, gender etc. Consideration is given to what the child *feels and wants* but more importantly what the child *needs*.

The Children and Family Court Advisory and Support Service (CAFCASS) is involved where the question of transferring custody to the State arises because of the risk of causing significant harm to the child. A CAFCASS employee is a child rights guardian independent of local or state authorities. The guardian makes assessments, presents recommendations, supports the child and family members and gives a detailed report to the court of the child's circumstances and the roles of family members. Where possible discussions are held with the child to ascertain the desires and feelings of the child and represent these to the Court.

If the child wishes to meet with the judge, the wish must be brought to the attention of the judge. The task of meeting with the judge is not to discuss the case with the child but to give the opportunity for the child to say whatever he/she sees fit, directly to the judge. The purpose of the judge's meeting with the child is not for the child to present evidence but to enable the child to express their true feelings, not retell what his parents told him.

The judge must tell the child that the ultimate outcome of the case does not depend on what the child will say at the meeting but will be part of many factors taken into account as part of the final decision.

The development of the Family Drug and Alcohol Court in the UK has seen a significant increase in the quality of decision making in cases where parents are attempting to deal with their alcohol – and more successful – way of supporting parents to deal with their substance use problems, mental imbalances and domestic violence where these might lead to harm to their children. The judge is assisted by an interdisciplinary team of specialists, which includes a supervisor, administrator, profile nurse, social worker, child and adolescent psychiatrist, narcologist, mental health specialist and specialist domestic violence. Crucially the court understands that the 'timeline' for the successful rehabilitation of the parents is often longer than the crucial developmental timeline of the child thus requiring skilled intervention to enable provision to be made for both, as the founder of such courts, U.K. District Judge Nicholas Crichton, said: "*The FDAC is better for parents, better for children, better for families and generally better for our society.*"

In these courts the judge regularly meets with parents without the participation of lawyers. Parents take part in setting targets and agree to an intervention programme at the outset of the trial which may cover a range of issues: substance abuse problem, mental health, physical health, housing, debt and unfinished criminal cases.

The facts tell their own story: The London FDAC has been operating successfully for 10 years. FDAC courts show significantly higher percentage of mothers stop abusing (46% v 30%); at the end of the FDAC trial a significantly higher percentage of families reuniting or continuing to live together (37% v 25%); five years after the FDAC trial, a significantly higher percentage of mothers in reunited families continue to abstain alcohol and drug use (58% v 24%); three years after reunification with children at the end of the FDAC program, a significantly higher percentage of mothers do not experience a breakdown in stability family life (51% v 22%).

Day 2. Criminal proceedings: working with young offenders, victims and witnesses

The second day of the seminar was devoted to working with juvenile offenders, victims and witnesses in the criminal proceedings and after the sentencing.

Most criminal cases are heard in the magistrates' courts in England and Wales. In general, all cases begin in these courts (the most serious of which can then be referred to Crown Courts).

Naomi Redhouse, District Judge from Sheffield, South Yorkshire, spoke about the work of the youth justice system in the criminal courts of England and Wales. After describing her background working in impoverished areas helping with housing and youth work, Naomi was eventually promoted to the role of full judge where she was able to lead juvenile cases. At the same time, she taught lawyers, other juvenile justice judges and wrote a book on the subject.



DJ Naomi Redhouse

In order to set the scene Judge Redhouse gave a historical account of the development of youth justice in the UK with key milestones including, in the 19th century the growing realisation that childhood and adulthood were different and as offenders these groups required, at least in part, separate systems. Reforms were slow. Throughout the 20th century a range of Acts were passed building on this philosophy, notably in 1907, the Probation Act and in 1908, the Crime Prevention Act which introduced the concept of a separate court for children.

Section 44 of the Children's Act 1933 stated *"Any court dealing with a child or young person who is in court as a result of a conflict with the law or on other reasons should be **guided by the welfare of the child** or young person and, if necessary, take steps to remove the child from the undesirable situation and ensure proper education and education."*

In 1963, the age of childhood was raised to 10 years. In 1969, a proposal to raise the age to 14 was discussed, but this has not yet been done. The youth justice system has been influenced by international norms: Beijing's rules on minimum standards of juvenile justice, the UN Convention on the Rights of the Child.

The Special Supervisory Government, the Independent Audit Commission radically criticised the youth justice system as ineffective and recommended cooperation between state and local Bodies. Across the country there are now specialist Youth Justice Teams who work with juvenile offenders in each region. These staff will usually include representatives from education, health, social work, probation and the police who work together with an aim of reducing offending and providing constructive support and opportunity for the offender. The team supplies reports to the Courts to assist in sentencing with the main idea of preventing a repeat crime.

Within the court process there are a range of modifications both to the process and the physical conditions/layout to take into account the defendants' age and maturity. Great efforts are made to ensure the child understands what is happening and has an opportunity to speak if they choose to do so.

The judge controls not only the content, but also the form of questions. There are recommendations for judges on how to ask questions clearly and simply, what questions not to ask and so forth.

Regarding basic statistics, over the last decade there has been a remarkable decrease in the incarceration of young offenders from 3000 ten years ago to around 900 now.

Responding to the participants' questions, Judge Redhouse, in particular, noted that *"the court must consider the specific needs of a person and adapt the procedure. And the judge must decide whether a person can be brought to justice at all. The judge cannot blindly trust the expert. You cannot use an adult psychologist or psychiatrist. There are not enough children's specialists. There are no child psychiatrists in Wales at all."*

She also commented on the idea of introducing a new threshold of adulthood at the age of 25: *"Infantilization is a global trend. Even physically people continue to grow after 20 years. In court, if you can show that the person was unable to understand what was going on, the prosecutor's office can drop the charge. Otherwise, it will affect the punishment, but it will not exclude it."*

Keith Davies, Senior Lecturer in the Department of Health, Social Care and Education at Kingston University, spoke of a new approach to working with children, developed in Wales, which recognises that young child offenders are "Children First, Offenders Second" (*Kevin Haines and Stephen Case in "Positive Youth Justice: Children First, Offenders Second. 2015)* The approach is not purely on criminal prosecution but gives due consideration to the rights of the child.



Keith Davies

In practice, respect for human rights is evident in everything from task-setting to language used. The word "criminal" is not used as this defines a person in advance. Instead, they say *"a child who is in conflict with the law."*

The remarkable judge Nicholas Crichton, co-founder of FDAC, always spoke to the child outside the courtroom at first, without the mantle, to better understand the person, so that the person felt comfortable. His guiding questions and principles were: How to hear the voice of a child? How to communicate with a person who seems to be an adult but is in fact a child. Our responsibility is to hear what the child says about himself, about their life, about what happened, about the consequences for himself. This is where a social worker can help. The goal is to understand the inner world of the child and help him or her understand what is happening.

In illustration of some of the complexity involved when practising social work with young offenders two case examples which illustrate on of the questions above – how do we work with someone ‘who seems to be an adult but is in fact a child,’ **Andrew Bernhardt, a senior lecturer in** the Department of Social Work at the University of Hertfordshire, cited two examples from his extensive experience as a probation officer.



Andrew Bernhardt

He spoke of two cases Leo and Allan, both 16 years old and involved in serious offence. He used the cases to show how factors outside of the crime – family, local gangs, personal hopes and ambitions – pulled each offender not only down two different criminal pathways but also shaped their ability to respond to Probation intervention. Each presented as adults: Leo as a tough guy gang member; Allan as someone who was capable of rescuing his impoverished family. Leo became a gang member with poor prospects: Allan, a high achieving young man who through a building apprenticeship literally constructed his way to independence and a ‘pro-social life’. In order for this to happen Andrew proposed that there needed to be a good ‘working alliance’ between the offender and the Probation Officer involving an understanding of ‘the child’s world’ – their motivations, ambitions, fears etc; this took patience, training and time. Andrew called this combination ‘practical magic’: the possibility of change though hard work, motivation and self-belief on the part of the young offender. Gill Timmis added that literacy work with young offenders can play an especially significant role here.

Lyubov Smykalo, Deputy Chairman of the Board of Doctors for Children and a lecturer at the St Petersburg University Department of Mental Health and Early Support of Children and Parents, told the participants about her work in this field which, in order to reduce re-offending, aims to encourage maturity and responsibility taking, to really grow up. The young offenders learn about lawful and undue behavior, the ability to behave competently in a conflict, and to control emotions. Through the use of one to one work with other adolescents they can, in turn, offer advice and guidance based on their own experiences.



Lubov Smykalo

Considering the practice of child-friendly justice Lyubov then held a hands-on session to illustrate some of the principles for questioning of underage victims and witnesses to enable the participants to be able to immediately apply the recommended techniques in their work.

Presentations by British and Russian experts and discussions in the audience revealed many problems in the practical implementation of common international principles. The child has the right to be treated as a person with rights, to be respected, to express his opinion, to receive information and participate in decisions that will affect his life. Even within existing institutions, we can already make efforts to ensure these rights. Each such attempt will contribute to a change in the attitudes of all participants of the process and gradually influence the system changes. It is very important to continue to analyse and use the experience of other countries, including the experience of England and Wales. All participants of the seminar expressed their sincere desire to continue cooperation in this area.