Legal Seminar in St Petersburg, 11-12 November 2016

‘Working with offenders in the community. Alternative forms of justice’

The seminar ‘Working with offenders in the community. Alternative forms of justice’ is the second in a series of seminars held in St. Petersburg in collaboration between Citizens’ Watch International (London) and Legal Training Centre (St. Petersburg). The seminar was attended by over 50 defence lawyers from St Petersburg and the Northwest Region of Russia.

The three speakers from the UK all have rich experience, both of working in the justice system in the UK and in contributing to international projects.

Judge Nick Crichton CBE, a solicitor for 15 years and a District Judge for 27 years, is a passionate advocate for children's rights who has chaired the Voice of the Child sub-committee of the Family Justice Council for many years. He has been instrumental in setting up the Family Drug and Alcohol Court and is also a trustee of Lumos, a charity set up by JK Rowling to enable provision of care for children outside institutions.

Andrew Bernhardt has worked for 22 years as a probation officer and specialises in the management and assessment of high risk offenders. He is a senior lecturer at the UK's Hertfordshire University where he teaches on a Masters program in child protection.

Keith Davies is Associate Professor at the School of Social Work, Kingston University, and currently leads the BA in Social Work programme. He has extensive experience as a probation officer and a Senior Lecturer in criminal justice in higher education. He has also worked as a trainer for Her Majesty's Inspectorate of Prisons in the UK.

11 November 2016 (Friday)

The first session led by **Andrew Bernhardt** began with a look at what probation is and how it works. He set the seminar off with an unusual brainstorming session. He proposed participants imagine a world without crime and consider the resultant pluses and minuses. The 'pluses' that participants ascribed to this 'golden era' were varied, including: universal happiness, well-being, positive human relations, a reduction in spending on law enforcement, and an increase in the population.

Participants' 'minuses' were less varied. In a wonderful world without crime, they suggested, there would be no work for lawyers, investigators, prosecutors, judges or prison officers. Another consequence would be the impoverishment of the arts since crime, as is well-known, provides a remarkably important genre in literature, the theatre and the cinema. In a word, how would people be entertained without crime?

However, the primary conclusion drawn from the brain-storming session was that the chief minus in a world without crime would be unemployment for those who earn their living as employees of the justice system and law enforcement. In other words, the law enforcement system itself has an interest in maintaining crime at a certain level to ensure employment for its workforce.

The session then went on to consider how offenders' behaviour can be changed and what can be learned from offenders in this regard. Andrew Bernhardt invited participants to consider their experience of improving their own behaviour. He then proceeded to discuss a methodology used by probation officers in working with offenders known as the 'Cycle of Changes', with each step illustrated by examples. He pointed out that criminal justice systems around the world are increasingly preoccupied with risk assessment and management. In the ensuing discussion, special attention was paid to the risks that pertain in seeking to correct offenders' behaviour and the need to understand difficulties faced by offenders belonging to 'risk groups' (such as alcoholics, drug addicts, those living in great poverty, the psychologically instable, victims of violence, and so on).

Participants concluded that what distinguished the work of probation officers from what might be a superficially similar Russian experience was the careful assessment of risks and risk management.

The differences between the English probation service and elements of Russian justice system were further examined in a detailed narration by Andrew Bernhardt of the history of the probation service in the UK, the training programme for staff, the role and duties of probation officers, and their relations with judges and defence lawyers. Key differences between Russia and the UK included: the independence of the probation service; the role of specially trained staff focused on the effective resocialization of offenders; the role of the probation officer in advising the judge on the convicted person before sentencing (including, among other things, making recommendations on non-custodial alternative forms of punishment); wide judicial discretion in sentencing; and the participation of social services and other professionals in the process of resocialization of the offender.

This session also drew out the importance of social attitudes that make resocialization possible – or difficult, along with the realization that changing the behaviour of offenders makes economic sense. Resocialization is far less costly to society than long detention in prison or even than alternative methods of punishment (for example, when someone is released on parole, they often confront insoluble problems deriving from their period of incarceration that make a return to criminality more likely).

Using examples from his own experience, Andrew Bernhardt then invited participants to consider the positive and negative outcomes in particular cases, and to ask questions and make comments based on their own experience of changing offenders' behaviour. The questions showed there was special interest in the organization and financing of the probation service, and in the role of the probation officer in court hearings.

In the second session of the day, **Keith Davies** led a discussion of the practice of juvenile and restorative justice. He gave numerous examples of conciliatory procedures that have been developed in England and Wales, examining not only the formal organization of procedures for conciliation, but also how they help both sides in overcoming victimization, restoring the status of the victim, and providing a space for sincere repentance and change of behaviour by the guilty party. Participants pointed out that conditions for the development of conciliation procedures in the future in Russia were in many respects promising, not least because under Russian law the victim has a significantly higher status in criminal procedure in England and Wales. This should provide good opportunities for conciliatory procedures, especially in cases of minor crimes and private prosecutions.

Participants then engaged in a role play, acting in small groups the parts of the accused, the victim and the mediator. Most groups succeeded in coming to a reconciliation between the parties, finding various means to end the conflict, and reported in a plenary on their observations.

The discussion then moved on to participants sharing examples from their own legal practice of the use of conciliatory procedures for the purpose of halting a criminal case and for reducing liability. Despite the fact that they are defence lawyers rather than professional conciliators, the participants talked about how nonetheless they perform psychological and educational functions in relation to offenders. A minority of participants spoke about special training they had had as mediators.

Most of the Russian lawyers present approved of the notion of restorative justice. However, participants noted the complexity of the issue, primarily because restorative justice with regard to the victim of a crime is not the main concern of the key participants in criminal legal proceedings. Lawyers, like investigators and judges, are oriented towards using conciliatory methods mainly for the purpose of procedural economy than in order to achieve the restoration of relations between the parties or the full resocialization of both the accused and the victim.

The day (which ended with the setting of homework for the participants: they were asked to find on the Internet, or remember from their own legal practice, examples of cases related to juvenile or restorative justice) created a strong impression on participants. One noted, 'I was amazed by the radically different approach to the justice system and to offenders.' Another said: 'I was interested in the theme of restorative justice before, since in my work I meet with repeat offenders.' A third commented: 'Before 11 November 2016 I was a strong opponent of juvenile justice as a whole. It is no longer like that. Now I am a strong opponent of distortions of the essence of juvenile justice.' And a fourth: 'Mediation in criminal proceedings holds much hope for the future, and it undeservedly gets little attention in Russia nowadays. But existing legislation allows for conciliatory approaches to justice to a small degree. Now I'm thinking it will be very effective to try to use these possibilities in my work.'

12 November 2016, Saturday

The second day was led by **Judge Nick Crichton**, for many years a passionate advocate for children's rights and chair of the Voice of the Child sub-committee of the Family Justice Council. Judge Crichton has been instrumental in setting up the Family Drug and Alcohol Court that provides intensive support to families with serious drug and alcohol problems in the hope of enabling them to retain or recover the care of their children. The session was therefore devoted to an approach to the protection of children's rights that was relatively new to participants. As one participant commented: 'It is rare that, at training sessions dedicated to the development of professionalism among lawyers, so much is said about goodness, humanity and compassion.'

Judge Crichton began with a review of the developmental theory of the child, based primarily on the theory of attachment developed by John Bowlby. He proceeded through examples and discussion to consider the legal issues of limiting parental rights and removal of a child from the family in the context of the need to meet the interests of the child. Formally, as the participants were quick to point out, Russian law (which includes international norms such as the UN Convention on the Rights of the Child) demands precisely such an approach. But in practice, in legal proceedings which are usually punitive in nature between state agencies and parents guilty of inappropriate behaviour, the child's interests are often treated as a matter of secondary importance.

Judge Crichton described in detail the Family Drug and Alcohol Court (FDAC), of which he has been such a strong advocate, and its role in considering cases of parents who are alcohol or drug dependent. He also talked about how the experience of the FDAC was being disseminated in England and Wales, and the relations between the FDAC and the local authorities and social services. He provided numerous examples of how the FDAC works with parents. As one participant said, 'It was impressive to hear about the goals, principles and methods of work of the FDAC courts, about the engagement of professional teams in the rehabilitation of parents suffering from addictions, and how every effort is made to place the interests of the child at the very centre of attention.'

Judge Crichton demonstrated the impressive statistics of the FDAC: the positive outcomes of rehabilitating and maintaining the family are significantly higher in these courts than in standard procedures. At the same time, the UK local authorities (similar to the child protection services in Russia) are able to transfer to the FDAC courts the more complex cases, such as one case Judge Crichton described concerning the removal, not of the first, but of the eighth child from a mother suffering from drug dependence (a case which was successfully concluded when the mother began looking after her family again, with the assistance of the support team). However, Judge Crichton also told of cases where the outcomes were unsuccessful, and involved the separation of a child from its parents. He also gave the example of one case where the mother herself came to the realization it was not possible for her to change her behaviour, and she asked that the court remove her child in its own best interests. For Judge Crichton, removal of a child from the family is always the last resort, and he is categorically against children being placed in institutions. He talked about the work he does - in a number of countries - in assisting the placement of children in adoptive families as part of the Lumos project, the charity founded with the support of the 'Harry Potter' author, the writer J.K.Rowling.

Judge Crichton is a committed advocate of the idea of court proceedings as problem solving, rather than as the imposition of punitive measures. Indeed, the FDAC can be seen as a move away from the paradigm of the traditional adversarial criminal trial altogether, towards a 'problem-solving' court based on the notion of restorative justice. In these courts, the role of the defence lawyer is limited, and much greater emphasis is placed on psychological and educational methods. Indeed, this kind of 'problem-solving' court requires quite different values and professional methods on the part of those involved in the proceedings. Judge Crichton devotes considerable time to seeking to persuade experts and government officials to introduce this problem-solving approach in the judicial system. However, many professionals used to traditional punitive justice are very cautious.

This caution was reflected in the discussion among seminar participants. At least one lawyer expressed astonishment that the FDAC courts reject so much of the practice of the classical

adversarial courts. Others pointed out that in Russia reformers of the justice system have fought for the introduction of adversarial trials with a neutral, impartial judge. Their objective has been to move away from an inquisitional to an adversarial trial. It is no surprise, then, that as yet Russian lawyers do not have appropriate terms for the adequate translation of the term 'problem-solving approach'. In this context, the experience of colleagues from the UK challenges the established notions of the participants. It may not readily excite imitation. On the other hand, it may inspire innovative thinking about how to adapt elements of this approach within the existing judicial framework.

The seminar concluded with an extensive Q&A session in which the participants were able to raise numerous questions with the speakers, and also with an opportunity to share the results of the 'homework' set the day before. Interestingly, discussion revealed that indeed many participants had positive experiences to share in terms of a restorative approach to justice. Some of those present, for example, learnt for the first time that some regions of Russia – for example, Rostov region – already have special youth courts that work successfully in collaboration with social workers in examining criminal cases against minors. And these courts also draw on their knowledge of the UK's probation service. This brought home to both the UK speakers and the Russian lawyers the fact that practical adaptations of new ideas are not only possible within the Russian justice system, but in many instances have actually borne fruit. It was an optimistic note on which to end proceedings.

Arkady Gutnikov, director of the Prince Oldenburgsky St. Petersburg Institute of Law who coordinates the seminar programme, was full of praise for the UK experts. 'They don't force their opinions on participants,' he said, 'but share their experiences, giving examples, sometimes asking unusual questions, and suggesting to the participants that they draw their own conclusions.'

In conclusion, it is perhaps fitting to give the last word to one of the speakers, Keith Davies, who spoke both for himself and his colleagues when he praised the high quality of the organization of the seminar. He also noted that the first-rate simultaneous translation had 'helped enormously in making the workshop a dialogue.' He praised the 'energy and commitment' of the participating lawyers who 'brought experiences, questions and views in abundance' – and all this when the second day of the seminar - a Saturday - might have otherwise been a day of rest or with family.

Group photo, St Petersburg 12 November 2016