Legal Seminars in St Petersburg and Tver, 10-13 October 2016

There are not many things of greater interest to a lawyer than an opportunity to compare notes with legal practitioners from another jurisdiction. Early in October 2016 jurists in St Petersburg and Tver had opportunities to do precisely this when two prominent lawyers from the UK – Lionel Blackman and David Osborne – came to Russia to share their perspectives on key legal issues.

UK lawyers

Lionel Blackman is an English solicitor advocate and senior partner in a criminal litigation practice, with a long-standing interest in human rights, and is currently chair of Solicitors' International Human Rights Group, which he co-founded in 2005.

David Osborne worked for many years as a solicitor, providing advice in the police station and representation in the magistrates' court, before taking up practice as an advocate in the crown court. He has taught advocacy, both in the UK and abroad and provided training to lawyers on a variety of legal issues; he also sits as a Recorder (part time judge) in the crown court.

Coordinating the training programme were Maria Razumovskaya, Legal Training Centre, and Arkady Gutnikov, director of the Prince Oldenburgsky St. Petersburg Institute of Law.

Seminars

The seminars are part of a project, entitled 'Raising the professional standards of defence lawyers in Russia,' which is a second phase of the long-term educational programme Magna Carta International run by Citizens' Watch International (London). The seminars, organised jointly by Citizens' Watch International, Legal Training Centre (St.Petersburg) and Solicitors International Human Rights Group (London), attracted 50 lawyers in St. Petersburg (10-11 October), and a further 30 in Tver (13 October).[1] Those attending the St Petersburg event came from the city itself and Leningrad region, although a number had travelled from the cities and regions of the North West Federal District, including Pskov, Vologda and Novgorod. The seminar in the Venice of the North was opened by Keith Allan, the UK's Consul General to St Petersburg. The current project is funded by the UK's Foreign and Commonwealth Office via its Russia Civil Society Fund.

Arkady Gutnikov and Keith Allan

Stimulus to discussion

The overarching theme of the seminars was the comparison of two different legal systems as a stimulus to discussion and interrogation of established legal practice and the institutional legal framework. Within this context, two issues formed the focus of each seminar: the role of the defence lawyer in the pre-trial investigation; and the requisite skills and professional ethics of lawyers. In addition, in St Petersburg, there was a discussion of the practice of trial observation. Each session began with presentations by the UK lawyers and was followed by discussions, drawing on an analysis of case studies from the jurisdiction of England & Wales (Scotland, as the two British visitors pointed out, has its own legal system).

[1] A series of training events has been organised following a trip to the UK last March by a group of 10 Russian lawyers that included visits to Westminster Magistrates Court, a jury trial at the Old Bailey and a central London police station, as well as meetings with leading lawyers in London. Four future seminars (three in St. Petersburg, one in Kaliningrad) and two webinars are planned.

St Petersburg seminar, 10 - 11 October 2016

Pre-trial proceedings Lionel Blackman began the seminar by noting that, over the years, in England & Wales the focus has shifted from a view of legal proceedings as neatly divided into pre-trial and post-trial, to an emphasis on both these elements as parts of a single process. This is because what happens during pre-trial investigation has a huge impact on the trial itself. Consequently, legal principles such as equality of arms and presumption of innocence must apply as much in the police station as in court. This means that defence lawyers have a fundamental role to play in asserting a suspect's rights in the investigatory phase, for example in relation to matters such as access to legal representation, the length and conditions of detention, access to medical care, practices of custody review, the use of bail, police questioning, the right to silence and powers of search.

Lionel Blackman, St Petersburg seminar

While the Russian judicial system has undergone far-reaching reforms over the past 25 years, the UK lawyers stressed there have also been major changes to the legal system in England & Wales in the post-war period. For example, to take but two examples related to access to legal representation, in 1949 a system of government-funding for defence lawyers for clients unable to afford them was introduced; and 1984 saw the adoption of the Police and Criminal Evidence Act which, among other things, introduced access to lawyers for suspects from the moment of their first detention (in compliance with Article 6 of the European Convention on Human Rights and Article 14 of the International Covenant on Civil and Political Rights). The UK lawyers noted that the PACE saw a sea-change in pre-trial investigation. While the police did not initially welcome the new regulations, with time they realized the changes were to their benefit. The primary motivation for these reforms was straightforward: there had been a significant number of miscarriages of justice resulting from the use of evidence in court that had been obtained from suspects without lawyers being present (for example in the case of the Birmingham Six, a case related to an IRA bombing).

David Osborne, Lionel Blackman

Professional Ethics In discussing the role of defence lawyers, David Osborne stressed that in line with their professional ethics, lawyers must be pro-active, independent, and indeed fearless, in defending the rights and interests of their clients. In the adversarial English & Welsh criminal justice system, in which judges play the role of neutral referee between prosecution and defence, the defence lawyer has duties both to the client (for example, in terms of confidentiality) and the court (for example, a lawyer must not mislead the court).

The seminar looked in detail at a number of examples of cases, which gave participants the opportunity to discuss how the defence lawyer should behave at each step of the case. The discussions led up to the trial as the culmination of the investigatory process, and David Osborne set out how lawyers need to draw up a theory of the case, a blueprint to set out how the lawyer will seek to prove their case. He suggested in the first place that each case theory should consist of a list of the strong and weak points of the case for the defence. On that basis, the lawyer should proceed to identify between three or six central points of which it would be crucial to convince the jury if the case were to be won.

Discussion of cases in small groups, St Petersburg seminar

Group feedback, St Petersburg seminar

Trial observation

In the concluding session of the St. Petersburg seminar, attention was turned to trial observation, for which, the UK lawyers suggested, there are three main reasons: suspicion that a particular trial may be politically motivated; systemic issues in the judicial system that need investigation; and assessment of current practice with a view to evaluating the potential for reforms. Essential guidelines for trial observation include the need for observers to be independent, to be familiar with standards of fair trial, knowledgeable about both local and international law, and to have reviewed a range of background material (including, for example, from sources such as Amnesty International or Human Rights Watch). The two UK lawyers stressed that while observers should not be isolated from the key actors in the process – indeed, they should seek to introduce themselves to the judge and to meet both the defence and the prosecution – they should not only be independent as a matter of fact, but should also be demonstratively neutral, for example, by not showing emotion during the court proceedings in any way. The session ended with the viewing and discussion of an engaging feature film about a trial in India.

Trial observation, St Petersburg seminar

Particular interest

Matters of particular interest to the Russian lawyers attending the seminars included the strongly adversarial system in England & Wales, the 'neutrality' of the judge, the enforcement of equality of arms, and the focus on case law of a common law system as opposed to the attention to the legal code of a civil law system. Within this context, specific points of interest included the role of the custody sergeant in a police station as a 'semi-independent'; the recording of all police interviews; the fact that the 'clock' measuring the period in detention stops for medical care (in Russia the time of medical treatment is

considered to be part of the time in custody); the frequency with which bail is permitted; and the modification of the right to silence in England & Wales under which a court may draw inferences from a defendant's silence (compared with the constitutional right in Russia not to testify against oneself). A factor of considerable interest was that, despite the differences, both legal systems share international obligations deriving, for example, from the European Convention on Human Rights and Fundamental Freedoms and the jurisprudence of the European Court of Human Rights (through membership of the Council of Europe) on the one hand, and from the International Covenant on Civil and Political Rights, to which both states are signatories, on the other.

Tver seminar, 13 October 2016

Outcomes Not the least positive of the outcomes of the two seminars was the tangible growth in mutual respect between the UK lawyers and their Russian counterparts. As the jurists from the UK impressed the Russian lawyers by their professionalism and ability to fluently and accessibly expound the details of a considerably different legal system, so the Russian lawyers impressed their UK colleagues by the depth of their legal knowledge, their experience and commitment.

Group photo, St Petersburg seminar

Yet perhaps the most positive outcome of the seminars, and no doubt one the organizers had been aiming for, was that the presentations about a foreign jurisdiction prompted lively discussions among the lawyers from St. Petersburg and Tver (not to forget the other cities and regions). So not only did participants leave the seminars having made the acquaintance of two lawyers from the UK, but they also made new friends and partners in debate among the Russian participants. And these debates, once sparked, will no doubt continue in the coming weeks and months. At least until the next seminar in the series, to be held on 11 – 12 November 2016 in St. Petersburg, presents a new range of issues for discussion.[2]

Group photo, Tver seminar

[2] The next seminar in the series to be held on 11 - 12 November 2016 in St. Petersburg will consider probation; alternative sanctions; youth justice and child rights; restorative justice; mediation; and the Family Drug and Alcohol Court.