Seminar

Access to Justice for Victims of Domestic Abuse in Russia and Great Britain

3-4 December 2018

St. Petersburg

Domestic violence remains one of the most serious issues in both countries. In Russia, the subject has attracted a lot of attention recently, since controversial amendments to Russian law decriminalized some forms of domestic violence in February 2017.

However, improving legislation alone would not be sufficient to solve the problem. Traditions of violence, gender inequality and suppression of human dignity are centuries old and hard to break. The experience of how the British society and legal system react to cases of domestic abuse is important for Russian lawyers and human rights activists not only in the legal context but also in terms of overcoming stereotypes. Interestingly, not so long ago the UK was rated behind other civilised countries as far as gender equality and the use of physical force in families and schools were concerned. It seemed as if the reputable British rule of law system had stopped in front of the shut doors of private homes and schools. Nevertheless, the situation changed in the second half of the 20th century. The British example shows how much can be done for human rights in a particular area in the lifetime of just one or two generations.

Advocates and lawyers from St. Petersburg, Kaliningrad, Pskov, Cherepovets, Moscow and Nizhny Novgorod gathered at the Legal Training Centre in St Petersburg to share experiences with each other and with their British colleagues. The aim of the workshop was to provide an opportunity for the Russian participants to learn how domestic abuse cases are dealt with in criminal and civil proceedings in Russia and England, how to work with victims of domestic violence and how international conventions can be applied to protect victims at the national level.

Robert Brown

Chair of CWI Robert Brown opened the seminar with welcome words. The atmosphere became friendly from the very first minute. It was perhaps thanks to this informal way of communication that the participants were able to get fully engaged in the discussion of very grave family issues.

Marie Davtyan and Valentina Frolova

To start the workshop, the Russian lawyers Marie Davtyan (Center for Protection of Domestic Abuse Victims) and Valentina Frolova (Makarov, Karacheva & Partners) asked the participants to address the main stereotypes justifying violence against women:

Domestic abuse is only possible in families with a low social status.

Victims must like being beaten up, otherwise they would have left.

A woman should not ruin the family; the children need the father even though he is an abuser.

Domestic abuse is a family matter and people should not interfere.

Women provoke violence themselves.

The cause of domestic abuse is alcohol and drugs.

Domestic abuse has existed forever; fighting it is hopeless.

Working in pairs, the lawyers developed arguments in defence and in contradiction of typical statements about gender relations and domestic abuse. Being on the opposite side was not always easy for the lawyers, but it would be difficult to help victims if a lawyer didn't understand these stereotypes, which are often shared by the victims themselves.

In legal practice, such stereotypes can cause inaction on the part of the police. Sometimes police officers use stereotypes to persuade the victim not to file a claim about the abuse.

The participants then discussed the definition and signs of domestic abuse, the cycle of violence and psychological aspects of domestic abuse.

A possibility of reconciliation in domestic abuse cases was raised in the course of discussion. Conflict resolution techniques are only partially applicable in situations of domestic abuse. The abuser and the victim are not equal parties to the conflict who that may come to terms. Conciliation procedures can be used for agreements on marital settlement, alimony or similar consequences of a domestic conflict, but liability for an abusive act can hardly be a subject for reconciliation.

Knowing the cycle of violence is extremely important for lawyers working with victims. It enables them to predict the development of the situation and to demand adequate remedies.

Valentina Frolova

The participants also discussed applying international human rights protection tools in the sphere of domestic abuse. Unfortunately, Russia is not a member of the 2011 the Istanbul Convention, but that does not prevent lawyers from using the provisions of this Convention in national courts. The European Court of Human Rights refers to the Istanbul Convention in its judgments including its list of protective measures and definitions. Lawyers can use this document as 'soft law' for interpreting national law provisions. The same applies to the 2015 Recommendations for Russia by the UN Committee on the Elimination of All Forms of Discrimination against Women. *O.G. vs Russia (2017)* is an example of a strategic case that defined very important legal views.

Taking cases to the ECtHR and using the ECtHR case law is another way to help with combating domestic abuse.

Having examined the types and manifestations of physical, mental and sexual abuse in detail, the participants determined which acts are punishable, what procedures can be used, and what problems arise in the practice of bringing perpetrators to justice.

The Russian legal practice is very diverse; it varies even from region to region. The ambiguity of some legal provisions and the lack of clear recommendations from the Supreme Court often make it difficult for a lawyer to apply the existing tools of liability. However, it cannot serve as an excuse not to prosecute. As Marie Davtyan said,

"Every lawyer should have at least one precedent case in his or her life!"

Marie Davtyan

Russian lawyers are now trying to develop new practice of bringing perpetrators to administrative liability; they continue fighting against police refusals to initiate administrative and criminal proceedings; they struggle for protection measures for victims including children who have witnessed abusive acts. In this struggle, lawyers often find themselves in confrontation with not only the perpetrator but also the judicial and law enforcement system. This is probably the greatest systemic difference from the UK situation.

Judge Tan Ikram

Deputy Senior District Judge for England and Wales Tan Ikram presented a detailed description of a court pilot project on domestic abuse aimed to make trials less traumatic for the victims. In addition to regular types of crime, such as threatening behaviour, property crimes, violent crimes with or without bodily harm, sexual crimes and harassment, this court also takes cases of a new crime known as “controlling coercive behaviour.”

The level of domestic violence in England is hidden and actual figures are of concern. Typically, women, on average, will tolerate latent violence for three years and only then seek protection. In such a situation, waiting for the victim to report a crime, presents its own challenges. An appropriate response is needed and requires training for police officers, prosecutors and judges, the setting up of specialist courts, and developing a victim sensitive approach. A distinctive mark of the English legal system is that it can react flexibly to certain types of crime. It allows experimenting with specialist courts that have specialist support from professionals who engage with complainants and make full use of rules of court and evidence. As Judge Ikram said,

“Subject to there being enough evidence, it is likely in the public interest that a case of domestic abuse will go to court.”

Therefore, a prosecutor will decide whether to proceed with a domestic abuse case based on criteria designed with the particular type of offence in mind. For example, a prosecutor will bear in mind the risk of recurrent abuse. A very first interview with the victim may be videotaped and this recording viewed in court to save the victim from testifying again.

In England and Wales, a victim does not have a victim status. In a trial, he or she is a witness for the prosecution. In domestic abuse cases, the court can appoint a lawyer to conduct the cross examination of the complainant, so that the defendant does not put them through the risk of further abuse and to secure the best evidence. An important task of the court is to prevent the further victimisation of genuine victims. It may be unnecessary for the victim to attend at all. If the victim is called, the vulnerable witness may be afforded protected by the use of screens or video-links or be heard in private.

English judges have a wide discretion to impose protective orders to prevent further violence. In emergency situations, the police will use power of bail conditions and seek domestic violence protection orders.

Judge Ikram answered many questions of Russian lawyers. Comparing the work in the two systems is difficult due to procedural differences. However, what matters here are the fundamental values of fairness shared by judges and the degree of public trust in the judicial system.

A judge is fully capable of assessing the testimony independently. It is very seldom that experts are invited to examine video and audio recordings. This is not necessary as a judge can assess the evidence using their own eyes and ears.

The main objective of the judge is ensuring a fair trial focussing on acquitting the innocent but convicting the guilty.

In simple cases, a sentence will be orally announced in court and in jury trial, will be audio-recorded. In all cases, the judge will give their reasoning.

On Day 2, the trainees split into mini-groups to take part in a role play, presenting a meeting of a lawyer and a victim of domestic abuse. The stories were based on real cases from the English legal practice. Comments by the British and Russian experts were very helpful for the participants.

Practical exercises revealed some gaps in the professional training. Most of the Russian lawyers are perfectly skilled to analyse the evidence, to phrase questions and to develop defences. However, some lawyers found it difficult to establish and maintain a trusting relationship and psychological contact with a victim of abuse. Sometimes, they nearly switched to the position of an accusing investigator. This experience was very important for personal professional skills. It became clear that lawyers working with victims of domestic abuse need special training and that they need to cooperate with other professionals, such as psychologists, social workers and physicians.

Robert Hush

Family law solicitor Robert Hush shared his experience in the protection of DA victims in civil proceedings. He presented a brief history of the attitude to domestic abuse in England and Wales, from the 1780 statement by Judge Buller that a man can beat his wife with a stick no wider than his thumb – to the current uncompromising system of reacting to domestic abuse implemented in Wales.

Since 1996, various regulatory acts have been introduced providing greater protection for victims of domestic abuse. Contrary to popular belief, the laws of England and Wales are very dynamic. Robert Hush began an answer to nearly every question by saying, “Amendments have recently been made...” However, implementation of new approaches is going slowly. Changes are needed not only in the justice system but also in the work of the social services.

Unlike criminal courts, the primary aim of family courts, when dealing with children cases, is to act in the best interest of children and to keep a family where possible. A judge will try to have the parties reach some kind of agreement.

Orders used by civil judges are very diverse, depending on the consideration of all circumstances. The UK Supreme Court has made it clear that orders which cannot be executed should not be applied. Judges have discretion on matters of property. For example, the court may evict an owner from his home for up to six months if he has committed domestic abuse where the victim does not have a legal right to occupy the property and more than six months where she does.

Civil proceedings usually take from 12 to 18 months. However, recent legal changes mean that case of child protection should be completed within six months.

Robert Hush emphasised the importance of the proactive role of judges in setting standards for the protection of abuse victims. The rules of court have been modified to require judges to consider the impact of DV at the earliest opportunity when managing the case.

At the end of the seminar, the participants shared their impressions and plans. The enthusiasm of the Russian lawyers to fight domestic abuse was so great that there should be a remarkable progress in the protection of victims’ rights even if just a minor part of these plans becomes reality. After two days of work, lawyers from different Russian regions became a team united by common ideas of protecting human rights, combating discrimination and helping people in difficult situations.