

Access to Justice for Vulnerable Groups in Russia

Seminar

Protecting the Rights of Migrants and Persons with Disabilities in the UK and Russia

16 February 2018, St. Petersburg

At the final event of the project the delegates of two study trips to the UK shared their impressions and observations with their colleagues from St Petersburg and other regions.

The meeting was amazingly emotional. It became clear, once again, how important it is to see someone else's experience with your own eyes for understanding how the institutions of legal and social protection operate in another country. Lectures, publications, and presentations can describe the system, provide statistical data or explain the fundamental concepts but cannot convey the atmosphere of everyday work of legal professionals. The most frequent word used by the delegates when they spoke about their experiences in the UK was *respect*. Regardless of a person's status, health, origins or professional role, interaction between people can be based on respect toward each other. We know this is the way it should be, we refer to anti-discrimination provisions of basic laws, but in reality we often make a distinction between declarations and practice. The experience of the Russian delegates who were plunged into the contemporary British legal environment shows that respect for an individual person is possible in reality - in the daily practice of judges, lawyers and social institutions. And it is not an imitation, not a 'demonstration of respect' required by traditional decency, professional duties or formal legal rules. It is a sincere attitude growing out of self-respect. It is something that cannot be learned as science or trained as a skill. It is something that can be sensed when one travels between different cultures. This feeling will not be forgotten; it will keep motivating professional discussions and a desire to change oneself and the surrounding reality.

Study trip to Nottingham and London 10 – 15 December 2017

Disability and the Law. A United Kingdom Perspective.



Dmitry Bartenev talked about the role of lawyers in promoting the values of the UN Convention on the Rights of Persons with Disabilities in the British and Russian context. So far, the Convention is an underestimated document in Russia, and we don't see a wide application of the discrimination concept in practice, especially in cases of protection the rights of persons with disabilities. At the same time, in the UK, extensive practice has made it possible to develop detailed standards for implementation of the rights of persons with disabilities. They are described in special manuals, best practices, and judgments of courts.

For example, the standard of reasonable accommodation includes consideration of the following factors:

- the effectiveness of the accommodation (to what extent its implementation leads to the goal);
- the negative effect for the business;
- the resources of the employer.

Unfortunately, in the Russian practice the legal criteria of reasonable accommodation have not been

developed. As a result, the approach is rather formal. The requirements of job quotas are observed in Russia, but the conditions are not customised for people with certain forms of disability (e.g., the workplace is not fit for wheelchairs users or persons with impaired sight; accommodation is therefore not effective).

As far as legal incapacity of persons with mental disabilities is concerned, the UK practice focuses on the value of personal autonomy. The British judicial system places high emphasis on assessing an individual situation and trying to help everyone. Lawyers have no doubt that their arguments will be heard, the situation will be examined in detail and the judges will analyse what it means for a person to lose social connections or experience limitation of some of the rights. The value of nonmaterial benefits is estimated as very high in England, as well as a possibility to make one's own decisions, including consent to medical intervention. In Russia, the value of personal freedom is very poorly represented in court. Judges seldom pay attention to a person's circumstances and the consequences of the judgment for his/her life. But the very purpose of the Convention is to defend one's freedom to make decisions and to choose a lifestyle that one considers important for him/herself.

The standards of the British approach include the following:

- the recognition of each person's rights to make decisions;
- the presumption of each person's ability to make decisions;
- the need to help people in making decisions (there is a similar trend in Russia, e.g., in the form of the so called limited (partial) legal capacity; this regulation has been in place for three years already, but the courts have not yet come to understanding that for most people limited legal capacity is better than complete incapacity and that people should have an opportunity to make their own decisions;
- the right to make unreasonable (!) decisions (an example from the British practice: a single woman used to buy various things online every day, which seemed unreasonable. She explained that she had no one to talk to and enjoyed a conversation with couriers of delivery services; the court dismissed her family's claim for acknowledging her incapable);
- the priority of the 'best interest' of a person, e.g. when assessing his/her guardian's acts. A great number of cases in the UK practice are about this issue. One of the criteria, for example, is "what decision would the person make if he/she were able to make a decision". This is a very powerful criterion. In theory, such judgments in Russia should meet this requirement as well. There is a provision in the Civil Code of Russia that the guardian should make decisions in the best interest of a person, and in case the interests cannot be known, the person's preferences should be found out. The freedom of the guardian is therefore limited, but there is no serious analysis in practice of what the 'best interest' of a specific person is. There was only one case when the court admitted, with a reference to the Convention, that an opinion of an incapable person on the choice of guardian was of legal significance.

The procedures for evaluation of legal capacity differ in the two countries. In Russia, everything is based on an expert examination, which is monopolised by psychiatrists. In Britain, a person's condition can be assessed by various experts including doctors, psychologists, lawyers and social workers. There is no concept of general restriction of legal capacity. The decision is made in the specific context and with regard to the specific situation. The guardian has no right to make personal decisions on where and what the person under care should do, who he/she should meet and talk to, etc. The judges pay great attention to how the judgment or supervision or isolation will affect the implementation of a person's personal freedoms. Everyone aims to preserve personal relations and to enable one to live in the normal environment to the maximum extent possible.



Olga Bezborodova presented a comparative analysis of protecting the rights of disabled persons in the UK and Russia. She noted that the UK laws on the rights of persons with disabilities contain many more special provisions, and, unlike Russia, they don't contain reservations relating to possible changes in the state budget. In Russia, the parties are less flexible during the court proceedings, the role of a judge is more active. Alternative resolutions, such as conciliation or mediation are underdeveloped and are still perceived by courts with great

caution. In Britain, the court is entitled to apply liability measures to lawyers who did something unjustified or improper during the proceedings. An advantage of the Russian practice is that the legal fees are lower.

In questions concerning access, reasonable accommodation and legal capacity, the British system aims to achieve justice as a balance of interests. This is also an objective of the 2014 Care Act. In the UK, the level of social benefits depends on limitations of a person's abilities rather than on his/her formal disability status. In Russia, disability is regarded as needing social protection due to a disease, while in the UK it is about limitations in a specific life situation.

In the UK, the emphasis is made on achieving results with as few restrictions as possible. Even in neuropsychiatry institutions there are possibilities for alternative communication. In comparison, the conditions in similar institutions in Russia are close to those in prisons.

It is important that the UK Care Act guarantees support for everyone who needs it including guardians. The Act also describes specific types of abuse by guardians.

Olga mentioned that, in her opinion, it would be helpful if Russia established an independent body like the UK Equality and Human Rights Commission.

Andrey Zaytsev described a visit to Highbury Hospital, a psychiatric clinic near Nottingham. He noted the difference in priorities when the fate of a person with mental problems is being determined. In the UK, the priority since the 1980s is social assistance at home (which is provided by municipalities and the private sector), while in Russia the priority is placement in a psychoneurological institution.



The number of residents in Highbury Hospital is not permanent. At present, it is about 25 persons. This is typical for such institutions (compared to hundreds of patients in Russian psychoneurological institutions). People in this type of hospitals in England have much more freedom than in the Russian institutions. Social services do their best to find guardians. Inmates can go out to do shopping, walking, etc. Hospital staff welcome help of NGOs and volunteers.

At same time, safety and security is taken seriously. Some rooms are equipped with CCTV; persons with a criminal record are placed in a separate secured wing.

Patients are only referred to hospital for a temporary period. The aim of the entire system is that people

should live in their own homes or in residential care homes. The Russian practice has no such aim so far; in most cases people are locked up in institutions for life.

Yekaterina Nikonova and **Olga Berkuta** shared their impressions of a meeting with Disability Rights UK. Philip Connolly, a person with disabilities himself, talked about this organisation and its aim to engage disabled persons in various activities. Disability Rights UK is a charity which publishes useful information on its website and offers individual consultations, lobbies for the interests of persons with disabilities, and organises promotion activities in their interests using various communications including campaigns, publications, online communications, a hotline, and Twitter. In the near future, they are planning to create an app for persons with disabilities and upload motivation videos on overcoming barriers and examples of success in beating one's disease.



The charity implements numerous social projects for active involvement of persons with disabilities in cultural, religious, sporting and other activities on the local level as well as finding and creating jobs for persons with disabilities. Every year the charity funds about 10 social studies carried out by persons with disabilities on such topics as e.g. participation in the economy, public life, support of victims of violence.

The Russian delegates also mentioned the humane attitude to disabled children, acceptance of children with special needs, and the implementation of the principle “everyone has a right to communicate and the right to be heard”. This is helped by the system of early diagnostics of children's conditions (a school for a child is chosen, considering his or her needs, before the age of five).

The delegates concluded their part of presentations by suggesting that persons with disabilities can be helped to overcome their inner feeling of inferiority. For that purpose, promotion of best practices and stories of success is very important.

Study trip to Nottingham and London 22 – 26 January 2018

Asylum Law and Migrants' Rights

Olga Tseytlina noted the differences in the Russian and British practice in asylum seeking cases. In Russia, the conditions are quite severe, namely, the refugee status is granted for a term of three years, and temporary asylum is granted for one year. The Law on Refugees stipulates an opportunity for staying in the Russian Federation on lawful grounds, but in reality the migration status (registration) is very seldom prolonged. In the UK, the refugee status is granted for a term of five years, and then a person can be allowed to stay in the country for an indefinite term. Assistance with housing and finance is provided. Children can attend schools for free. Persons requesting refugee status and their families can use NHS, the National Health Service. Asylum seekers with dependent children receive support up until they are deported from the UK or until the youngest child reaches 18. Accommodation is provided without a right to choose a place to live. The weekly financial allowance is currently £36.95 per week for each person. Free Legal Aid covers assistance with obtaining refugee status and appealing a refusal in court.



Victims of trafficking can stay in the UK for up to 2.5 years (or longer in some cases) due to their physical and mental condition. During this period of time they can provide assistance in police investigations and pursue claims for compensation from traffickers. In Russia, such grounds are not considered. Olga illustrated the human trafficking problem on the example of the ECHR case *Rantsev v. Cyprus and Russia*.

Olga also mentioned the problem of refugee status seekers travelling between different countries. After the ECHR case *M.S.S v. Greece and Belgium*, the EU has taken steps for a more efficient procedure of recording asylum seekers.

However, there is also a positive change in the Russian practice. After the Kim case at the ECHR and the Mskhiladze case at the Constitutional Court of Russia, persons placed in temporary asylum centres for foreigners and stateless persons have the right for a review of the decision to restrict their freedom. In the UK, there are no maximum terms for keeping persons in deportation centres.

Anna Delova talked about the work of British lawyers on migrant cases. The participants of the study trip were lucky to visit a few law firms and also to see lawyers in action in court

At the first meeting with a client, the task of a lawyer is to find out all circumstances of his journey to the UK. It is important to determine the grounds precisely. Sometimes, the client will change a story or explanation, which does not look good for the authorities. Then an interview is set by the Home Office. A decision is made as to whether the person will be sent to a temporary asylum centre or remain in the community. The policies have become stricter now. Asylum seekers do not have the right to work, get a driver's license or rent housing on their own. However, they get an allowance. After one year, they may apply for a work permit.

The second interview at the Home Office is very detailed and takes up to three hours. The lawyer will help the client prepare but is not present at the interview, except when he/she represents a child under 12). The interview is audio recorded and minutes are taken. The applicant will sign receiving a copy of the minutes. Any inaccuracies can be appealed against later.

Decisions on refusal of refugee status are very detailed. The reasons are explained, as well as what and why was not believed in the applicant's story. The lawyer will undertake the appeal if the probability of winning is higher than 45%. A decision not to proceed with appealing can be appealed against with the Free Legal Aid agency. In the event of success, the case will be handed over to the same or another lawyer. The Home Office decision can be appealed up to the Supreme Court. In the event of loss, the state will buy a ticket and pay allowance to a deported person.

Alexandra Voystrikova and Anton Polenov added, commenting on the rights of migrants' children, that the main principle is protection of a child's best interests. The provisions used by English lawyers are the Convention on the Rights of the Child (article 22) and articles 3, 5, 8 of the European Convention of Human Rights. Cases are heard by migration tribunals, not youth courts.

If a child is in detention in exceptional cases, the conditions should be as mild as possible, the time should be as short as possible, the family should be united, and care and education safeguards should be applied. The fact that parents are migrants cannot be used as a ground for keeping a child in detention. What is important is that if a child is able to express his/her opinion, this opinion must be taken into account.

The delegates then presented the work of UK charities and lawyers working with charities providing assistance to migrants.

The Russian delegates were deeply impressed by Freedom From Torture, a charity providing comprehensive assistance to victims of torture from various countries. In addition to legal assistance, they provide medical and psychological support, art therapy, etc. Specialists use audio and video recording when they work with victims. This is necessary for identifying post-traumatic syndrome. **Leonid Krikun** commented on his own experience in St Petersburg. When defence lawyers see their clients in Russia at a detention centre to discuss claims of torture, all they can do is take notes of a narrative, which makes it difficult to prove the defendant's physical and mental condition later on.

Nottingham and Nottinghamshire Refugee Forum implements projects in fighting poverty, providing food and essential commodities, and legal support for refugees. There are many projects in education and culture aiming to reuniting families, integration, and establishment of youth, women's, and religious groups and interest groups.

Joint Council for the Welfare of Immigrants is the oldest charity that exists for longer than 50 years. In addition to legal assistance to migrants, it solves the problem of informing the people about migrants in order to overcome stereotypes and phobias.



Olga Startseva, Ekaterina Gribanova and Leonid Krikun talked about the work of English lawyers with NGOs providing assistance to migrants and refugees. One of these NGOs is called Detention Action, a UK charity dealing with the rights of migrants in temporary asylum detention centres. The conditions in these centres vary from place to place. At the centre near London the conditions are better than in similar institutions in Russia. However, the conditions at the centre near Liverpool are much worse.

Another problem is that staff have no special training. There is no maximum term of detention, which can be regarded as torture, as a person does not know when he/she will be released. Asylum seekers complain that temporary asylum detention centres do not offer any training programmes available in prisons.

Keeping people in detention is very expensive and is a burden for the taxpayers. The goal of the charity is convincing the government that instead of spending so much money on asylum detention centres, they should release asylum seekers, which would save 90% of taxpayers' funds. This is the experience of Canada, Sweden and Belgium. A similar practice may be relevant for Russia.

In the final part of the seminar, **Alexander Mamyshev** and his colleagues shared their impressions of visiting Nottingham Crown Court, Nottingham Magistrates' Court, and a London Migration Tribunal.

The Russian lawyers noted:

- easy access to courts for members of public – no one is asked to present IDs or name the goal of their visit at the entrance;
- there are rooms for lawyers, meeting rooms and rooms for witnesses in court buildings;
- the average percentage of acquittals at the Crown Court is about 40%;
- most of the judges are former barristers;
- the workload of judges is lower than in Russia;
- there are many screens in courtrooms used for presenting evidence;
- seating in courtrooms: the judge is facing the parties to the trial;
- all parties have microphones and jugs of water to drink;
- there are seats for the public; one can enter and listen to the hearing at any moment;

- jury members are given different sacred texts for their oaths;
- the judge explains the rights to the jury members in great detail;
- the judge is very polite, respectful, and unbiased toward the defendant;
- prosecution and defence barristers look exactly the same and both parties very respectful to each other;
- the prosecution barrister presents his opening speech in his/her own words rather than reads it;
- the parties use laptops and tablets all the time.

At the Magistrates' Court, the Russian lawyers were amazed to realise that most of magistrates were not lawyers. The Chief Magistrate was an engineer by profession. Magistrates are not paid for their work. They work for 36.5 half-days a year. However, some of them work for more than 100 half-days. All magistrates are provided with iPads equipped with special applications aimed to facilitate the proceedings. The clerk helps with all legal issues. Magistrates are very polite and often choose fines to imprisonment in their sentencing.

Migration tribunals as such have functioned in the UK since 2008. Appeals against decisions are taken up to the Supreme Court.

Rita Babichenko mentioned that in an informal conversation with judges and lawyers in England she asked them, what qualities, in their opinion, were important for a judge. The main qualities mentioned in response were education, work experience, life experience, knowledge of legal culture and culture in general.

All delegates marked that British lawyers were easy-going, sincerely interested to learn about Russian legal practice and willing to share their experiences with Russian colleagues.

As one of the participants said, "The trip was very inspiring. We felt that the value of human life is seen as a priority in England. And we are now very eager to defend members of vulnerable groups."