WHAT'S IN A (JEWISH) NAME?

by Dr Michael J.Pelling

In August 2014 the Upper Tribunal (Administrative Appeals Chamber) gave judgment in a child support appeal case in which I represented the father whom I can only refer to by his initials as "CA". The Child Support Agency had made a maintenance assessment in favour of the mother "EG" in respect of their son Nicholas now aged 15. The parents are Jewish and CA is the son of Holocaust survivor parents.

CA had appealed first to the 1st-Tier Tribunal and then appealed that decision to the Upper Tribunal where the appeal was allowed by Judge Turnbull and a rehearing ordered. The proceedings in the 1st-Tier Tribunal were heard in public and no orders were made against identification of the parties or their son. Similarly in the Upper Tribunal (which despite its name is actually a superior court of record) the appeal was heard in open court and no non-identification orders were made.

In due course the Judgment of the Upper Tribunal appeared on its public database of judgments: go to http://www.osscsc.gov.uk/Aspx/view.aspx?id=4272 . As reported on the public database it is entitled *CA v (1) The Secretary of State, (2) EG, (CSM), [2014] UKUT 0359 (AAC)*. The anonymisation of the parents was not judicially ordered and was done without authority by the administrative staff of the Upper Tribunal, in violation of the English Common Law principle of open justice. Given that the whole proceedings had been in open court CA strongly objected to this anonymisation; and there being no order against identification, the Judgment was lawfully published unanonymised by a third party in May 2016 on a website I am forbidden to name.

After the lawful publication of the full unanonymised Judgment, the injunctions began to fly which is why I cannot name CA or EG or the website where you could read it. CA's application to the Upper Tribunal to de-anonymise the Judgment will be heard in open court in the Upper Tribunal (Rolls Building, Fetter Lane EC4A 1NL) on 6 October 2016. It is opposed by EG and by the Secretary of State for Work & Pensions. The Judgment itself is of course not about the private and family life of the parties, but concerns only the correct calculation under the child support legislation of the CSA child maintenance that CA must pay EG and as appears from the Judgment it is all about the somewhat arcane question of whether a discretionary beneficiary (CA) has a beneficial interest in the trust assets of a trust, here established by the will of the late Inge Lattner, CA's cousin, within Reg.18(1)(a) of the *Child Support (Variations) Regulations 2000* [SI 2001/156].

There are literally millions of families in the UK where the parents have separated or divorced and where child maintenance has been assessed by the Child Support Agency: it is so commonplace that to know the fact of it in a particular case can hardly be called a breach of confidence or invasion of privacy. So why anonymise a technical judgment directed to determining the law on maintenance assessment by the State in trust cases? The answer is that there is an obsession in the English courts, particularly in the High Court Family Division and in the modern Family Court, and in the Court of Appeal, of anonymising any court case where a minor is involved directly or indirectly. The motive behind that obsession is explored in this article.

The President of the Upper Tribunal Administrative Appeals Chamber, Mr Justice Charles, who will hear CA's application, was a High Court Judge of the Family Division from 1998 to 2014 when he was assigned to the Queen's Bench Division and also became Vice-President of the Court of Protection, another notoriously secretive court. But you will say, surely it must be a good thing to protect the identities of the innocent children and not risk exposing them to publicity? And to protect the identity of the child, then naturally the identities of the parents must also be suppressed and they must not be allowed to identify themselves or the child publicly?

A little thought, however, suggests that suppressing a person's identity might not be such a good thing. Where the State or its organs do that, what is their true motive? A person's name and identity and his ability to freely publicise injustice under his own name, to tell his own story, are of the very highest value in any free and democratic society. Taking away a person's name and identity reduces him to an object, a cipher, and enables the State to treat him as less than a person, as a dehumanised cog in a machine who can be used and treated without dignity or even destroyed altogether. Here is an example of what can happen:-

TATTOOS AND NUMBERS: THE SYSTEM OF IDENTIFYING PRISONERS AT AUSCHWITZ

> During the Holocaust concentration camp prisoners received tattoos only at one location, the Auschwitz concentration camp complex, which consisted of Auschwitz I (Main Camp), Auschwitz II (Auschwitz-Birkenau), and Auschwitz III (Monowitz and the subcamps). Incoming prisoners were assigned a camp serial number which was sewn to their prison uniforms. Only those prisoners selected for work were issued serial numbers; those prisoners sent directly to the gas chambers were not registered and received no tattoos. Initially, the SS authorities marked prisoners who were in the infirmary or who were to be executed with their camp serial number across the chest with indelible ink. As prisoners were executed or died in other ways, their clothing bearing the camp serial number was removed. Given the mortality rate at the camp and practice of removing clothing, there was no way to identify the bodies after the clothing was removed. Hence, the SS authorities

> introduced the practice of tattooing in order to identify the bodies of registered prisoners who had died.
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> Originally, a special metal stamp, holding interchangeable numbers made up of needles approximately one centimetre long was used. This allowed the whole serial number to be punched at one blow onto the prisoner's left upper chest. Ink was then rubbed into the bleeding wound.
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> When the metal stamp method proved impractical, a single-needle device was introduced, which pierced the outlines of the serial-number digits onto the skin. The site of the tattoo was changed to the outer side of the left forearm. However, prisoners from several transports in 1943 had their numbers tattooed on the inner side of their left upper forearms. Tattooing was generally performed during registration when each prisoner was assigned a camp serial number. Since prisoners sent directly to the gas chambers were never issued numbers, they were never tattooed.

Anyone who has experience of the secret family courts of England and Wales soon realises that it isn't about *"protecting"* (a nice perversion of the truth - the correct word is *"concealing"*) the identities of children but about stopping parents publicising the injustice they often suffer in those courts and exposing a corrupt State which in public law cases often effectively kidnaps children from their parents by taking them into care and putting them up for adoption. It is difficult to tell one's story effectively from an anonymous standpoint, and in fact for *Children Act 1989* cases heard in chambers (i.e. in secret) case law has established that even to tell the story anonymously is a criminal contempt of court. What is being protected is not the children but the interests of the State in controlling and interfering with family life, in preventing bad laws being reformed and systemic injustice being exposed, and in protecting the judiciary, local authorities, and social workers in their secret courts from adverse publicity and attack. Justice is neither done nor seen to be done there.

CA's case is not even a *Children Act 1989* case and unlike nearly all such cases was heard in open court, but the same pernicious imposition of anonymity and suppression of identity by the State is at work. CA considers that he did suffer injustice at the hands of Upper Tribunal Judge Turnbull in 2014, who gave a maverick and perverse interpretation of the term *"beneficial interest"* simply to ensure if possible that when the case is reheard by the 1st-Tier Tribunal higher child maintenance will be assessed, but enforced anonymity prevents him effectively communicating and publicising his story to that section of the public that would be interested. For example, he would like to give a full account on the Fathers 4 Justice website www.fathers-4-justice.org and be able to freely communicate with other fathers, and ensure they can communicate with him, but that is seriously inhibited by enforced anonymity. That this could harm

Nicholas, a strapping confident and intelligent 15 year-old boy, is patently absurd but we confidently expect the Judge to come out with the usual mantra beloved of Family Division judges that *"it could lead to him being bullied in the school playground"* (no evidence in any court case in the law reports has ever been produced of this actually happening to a child because of unanonymised reporting, but the judges keep trotting it out as proven fact).

Ultimately, what matters is the fundamental principle that human beings are entitled to the dignity and respect of their own name and identity; every case where that principle is undermined by enforced anonymity weakens the principle and makes it just a little easier for the State to erode the principle further for its own totalitarian ends, and to succeed in those ends. Do not think it could not happen in Britain. Only in July 2016 the UK Supreme Court in the case of *The Christian Institute and others (Appellants) v. The Lord Advocate (Respondent) (Scotland) [2016] UKSC 51* struck down a major part of the *Children and Young People (Scotland) Act 2014* which involved a remarkable scheme for monitoring all Scottish children by a "Named Person" who would co-ordinate information sharing between State agencies and public authorities about children and their wellbeing: the latter being an undefined concept which the Named Person would be under a duty to promote. The Supreme Court held that this scheme would be a gross violation of human rights, particularly Article 8 of the European Convention protecting private and family life. In the Judgment §73 the Court scathingly stated:-

> "The first thing that a totalitarian regime tries to do is to get at the children, to distance them from the subversive, varied influences of their families, and indoctrinate them in their rulers' view of the world. Within limits, families must be left to bring up their children in their own way".

Had the Court not struck down this totalitarian piece of Scottish legislation you can be sure that many court cases would have ensued by aggrieved families and that identities of all the family members in such cases would be ruthlessly suppressed to minimise effective campaigning against an evil law and to protect State officials. Probably like all public law cases under the *Children (Scotland) Act 1995* the cases themselves would be heard in secret with ruthless suppression of all publicity. All under the guise of protecting the children and their identities.

The suppression of names and identity as a tool of the totalitarian state was brilliantly satirised in the futuristic novel *"We"* by Yevgeny Zamyatin in 1921, a forerunner of later novels such as Aldous Huxley's *Brave New World*. This is the setting. *We* is set in the future. D-503, a spacecraft engineer, lives in the One State, an urban nation constructed almost entirely of glass, which assists mass surveillance. The structure of

the state is Panopticon-like. Furthermore, life is scientifically managed. People march in step with each other and are uniformed. *There is no way of referring to people save by their given numbers*. The society is run strictly by logic or reason as the primary justification for the laws or the construct of the society.The individual's behaviour is based on logic by way of formulas and equations outlined by the One State.

Jerome K.Jerome has been cited as an influence on Zamyatin's novel. Jerome's short essay *The New Utopia* (1891) describes a regimented future city, indeed world, of nightmarish egalitarianism where men and women are barely distinguishable in their grey uniforms (Zamyatin's "unifs") and all have short black hair, natural or dyed. *No one has names*: women wear even numbers on their tunics, and men wear odd, just as in *We*. Equality is taken to such lengths that people with well-developed physique are liable to have lopped limbs. In Zamyatin, similarly, the equalisation of noses is earnestly proposed. Jerome has anyone with an overactive imagination subjected to a levelling-down operation — something of central importance in *We*. Even more significant is the appreciation on the part of both Jerome and Zamyatin that the individual, and by extension, familial love, is a disruptive and humanizing force.

CA asked me to write this article; he greatly resents having his name and identity suppressed by the English State; but besides being a campaigner for Open Justice generally he cannot forget the lessons of history from 75 years ago.

By the way, wills are public documents and the anonymised Judgment on the public database does give CA's residence as 18 Cedar Drive which he owns.

MJP 18/9/2016
