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CO-OPERATION PROGRAMME TO STRENGTHEN THE RULE OF LAW

**CONFERENCE OF PROSECUTORS GENERAL OF EUROPE (CPGE)
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**SOME THOUGHTS ON THE CONFERENCE THEME:
“THE ROLE OF THE PUBLIC PROSECUTOR IN THE PROTECTION OF
INDIVIDUALS”**

Presentation

prepared by

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Mr President of the Russian Federation
Madame Deputy Secretary General
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Your Excellencies
Ladies and Gentlemen

It is a great honour to be able to make this intervention in your presence Mr President and that you have taken the time from your very busy schedule to be with us this morning. May I also thank the Council of Europe and especially its Director General of Legal Affairs Mr Guy de Vel for the kind invitation and opportunity to speak at this very significant conference. I am delighted to be here and to be able to offer some observations at the beginning of our discussions.

I feel it is particularly significant to have been invited speak at this historic Council of Europe annual meeting of Prosecutors General - the first to be held in Moscow. I say this because in March this year the organisation I represent - Eurojust - began negotiations with the office of the Prosecutor General of the Russian Federation which we hope will soon lead to a formal co-operation agreement. We were very impressed with the commitment and enthusiasm of all our counterparts in the Prosecutor General's office. We look forward to closer and more effective co-operation in the future

All the major cities across Europe have ex-patriot communities from other European countries. These communities bring thriving businesses to their adopted countries. But sadly crime is on the agenda of some travellers and as prosecutors we have to equip ourselves with tools to bring cross border criminals to justice – but we must also respect and protect the rights of individuals whether they are victims or suspects.

The Council of Europe has helped us to do this - particularly through its 1959 Convention on Mutual Legal Assistance in Criminal Matters. It has proved to be the main framework for all judicial co-operation in Europe and elsewhere for over 45 years. Many commentators even feel that the new European Evidence Warrant agreed only last month by European Union Justice Ministers, will be less helpful than the 1959 Convention. That is quite a tribute to the Council of Europe.

But the Council's 1950 European Convention on Human Rights that is better known to the public. It sets out clear and universally accepted standards for the rights of individuals.

I would like to offer a few thoughts on the role of the prosecutor in relation to the subject of this conference: the role of the Public Prosecutor in the protection of the rights of individuals. Forgive me if I draw on my own experience in my former post as a Chief Crown Prosecutor in the Crown Prosecution Service in England and Wales and particularly our approach to victims.

The European Convention on Human Rights is an engine to deliver equality and fairness but so often the oil which makes any engine work in practice and in reality is the exercise by prosecutors of their prosecutorial discretion. The Prosecutor is often the person who actually enforces the rights of individuals on a daily basis in the prosecutors' offices and in the courtrooms of Europe.

I should like to take this opportunity to reflect on the role of a Prosecutor to remind us of the importance of the function and to offer a few thoughts on tackling the important work which you all do on a daily basis.

Prosecuting is an honour but it requires talent and experience; it is a skill and some even say an art. To be a prosecutor brings different responsibilities in different jurisdictions. Even after a short time working with prosecutors from many different jurisdictions I soon learned that - whatever the legal system - all prosecutors seek and strive to uphold the principles of fairness and justice

whilst incorporating the rule of law. In our work we must be tenacious and determined to ensure that criminals are investigated, caught and brought to justice quickly and fairly. These principles are at the heart of every prosecutor's work whatever their nationality. And of course these principles include close observation of the rights of all individuals involved in, and affected by the criminal process. It is reassuring to find this common approach whether the prosecutor is from France or from Finland; from Russia or from Romania; from Sweden or from Spain.

Roman law, the Napoleonic code and the Common Law are at the basis of many of the criminal law systems in Europe and many other parts of the world. The prosecutor's role can be very different in different legal systems. In some systems the prosecutor simply prepares the papers for trial and deals with cases as an advocate in court. In others it can mean leading an investigation from the start; or in others supervising it. In some of our systems the prosecutor oversees all the actions of the police and investigators. But in almost all systems the prosecutor is asked to represent the community and he or she is entrusted with special powers and responsibilities. The prosecutor is asked to balance the exercise of these powers as a representative of the community and to use those powers to intervene in the lives of individuals for the benefit of the community as a whole. Despite differences, the responsibilities of Prosecutor Generals in Europe, their staff as prosecutors, and their counterparts are very similar in many ways.

We find many common themes: in the exercise of a prosecutor's function we all make decisions and take action which touch the lives of individuals and can affect on their rights.

To prosecute effectively at the beginning of the 21st century requires a broad range of basic skills: as an academic lawyer and as a practical lawyer; as an advocate in court, as a negotiator and persuader as an investigator and researcher. The ever increasing quantities of information, materials and documentation and evidence are so huge that a good prosecutor has to be a data analyst and fully computer literate. Senior prosecutors must have vision and be leaders, good managers and organizers; to be trainers, team builders and team players with the strength and commitment to lead and to where necessary to work alone. Awareness of human rights, the rights of individuals, and of course the related jurisprudence, is an integral part of the all prosecutions and the decision making process. The balancing of those rights when for example considering the rights of the victims and the witnesses against the rights of the suspect or the accused is a delicate and difficult process. So a huge range of skills are required for success. It is not a job for the faint hearted.

But let me return to the Human Rights Convention: Article 5 deals with the Right to Liberty and Security: prosecutors, and courts, must make decisions on the lawfulness of arrest and detention prior to trial. Prosecutors make these types of decisions many times every day.

They also regularly make decisions on the Right to a Fair Trial under Article 6; for example, if there has been a breach of Article 6, should the prosecutor allow a trial process continue?

These decisions have to be made by prosecutors when they may be under huge pressures from victims, from the police, from politicians and from the media and from the public for a suspect to be prosecuted and convicted. Often the easy response is to say: "Leave it to the court to decide"

But that is a weak solution; prosecutors should be strong, brave, impartial and independent. I recommend you read the outline of the standards for the role of prosecutors prepared and published by the International Association of Prosecutors. I know many delegates here today are members of the IAP and I was very pleased to be asked to join the Executive Committee of the IAP two years ago. These standards set out the role, duties and responsibilities for prosecutors very clearly. It is pleasing that so many prosecutors across the world have embraced these standards which mention the importance of observing Human Rights and rights of individuals many times in the 3 or 4 pages of the IAP document.

Prosecutors should be strong enough to intervene and if necessary stop prosecutions when breaches of individual rights are discovered which are so severe that justice demands the cases should be halted or the prosecution discontinued. But decisions of this type are rarely easy. They require the voluminous facts to be analysed; complex law to be considered; various consultations to be made and a range of interests to be balanced. This balancing exercise and these considerations can be as complex as any formulae taught by professors of mathematics. But only then can an informed decision be made. Ensuring that prosecutors are properly trained and fully aware of the jurisprudence of the decisions of the Strasbourg Court is vitally important so they can perform their role effectively. That is a responsibility for Prosecutors General.

Very few people will be happy with a controversial decision to stop an investigation or prosecution and the prosecutor will often be criticised privately and in public.

Our countries all retain the responsibility for the investigation and the prosecution of crime at a national level. So the convention is applied in different ways in different countries. Comparisons are not always fair or clear. For the time being at least, there is no consistency as our systems are so different. There is no European criminal justice system or European Public Prosecutor but Eurojust is waiting! Of course problems and difficulties arise when national laws may be seen as inconsistent with international conventions and it is the prosecutor and the court that must make the decisions on how conventions should be applied. Prosecutors must be properly trained; and I cannot over emphasise this point.

Let me say a few words about the hugely important issue on the how we treat victims of crime. I think as practitioners in the legal systems of Europe, we should consider what victims and witnesses might want and need from us as prosecutors. Of course these needs would be different as each victim and witness is different. The needs of the young will be different to the needs of the old. The needs of a victim in a rape case will be different from those of a businessman in a fraud trial. If we asked them I think they want:

- 1 A clear understanding of the investigation and court process;
- 2 Explanations, information on, and even consultation as part of the decision making processes;
- 3 Help when they are involved in strange court procedures; familiarisation visits to courts should be arranged;
- 4 A speedy court process with minimal trauma – the trial experience should not make them a victim for a second time! Prosecutors have a responsibility to help avoid this happening.
- 5 Victims would also like compensation – some systems can provide this more readily than others. As prosecutors I think we should consider this as an important part of delivering effective results in our cases.

How can we as prosecutors help to achieve this? Can we achieve it?

First I think we must try we must try to be more open and approachable to help to build the trust and confidence of the public in our legal systems and especially in the role of the prosecutor. Dealing effectively with victims is an important step in the process of building that trust and confidence.

If we do not use witnesses effectively and if we do not enable victims to be good witnesses we will fail to have successful case and ultimately we will fail to bring criminals to court and so to justice. We must do all we can to encourage victims to work with us and help to build confidence in our legal systems.

In the year 2000 my home department the Crown Prosecution Service in England began introducing a process which ensured victims were fully informed in advance in writing when the prosecutor's charges against a suspect were going to be reduced to less serious offences or

when cases were dropped completely. Letters were written and in serious cases the victims or their families were invited to meet prosecutors to receive explanations as to why this had happened. This openness was very difficult initially but in the longer term it has helped to establish credibility and greater trust and confidence in the prosecution service. But it requires special interpersonal skills and also training, commitment, time and resources.

This work has now developed to improve witness care further. We call the initiative to support witnesses and improve procedures for dealing with witnesses: No Witness = No Justice. It means that if we have no witness there will be no justice.

The CPS has recently launched a scheme called "The Prosecutors Pledge" on how witnesses will be dealt with by prosecutors. Essentially the "Pledge" is a series of 10 promises or undertakings which prosecutors have agreed to keep when dealing with victims and witnesses.

In short the prosecutors will:

- 1 Take into account the impact has had on the victim and their families when deciding on which charge to bring;
- 2 Inform the victim when a charge changed substantially or withdrawn;
- 3 Where possible to consult victims on change of pleas especially to lesser charges;
- 4 To address specific needs of victims and if appropriate protect their identity in court;
- 5 Assist victims in and before court when giving evidence and helping them to understand court procedures;
- 6 To promote and encourage two way communication between victim and the prosecuting advocate at court;
- 7 To protect victims from irrelevant attacks on their character;
- 8 After conviction of the accused to challenge robustly any defence mitigation which is derogatory to a victim's character;
- 9 Apply to the court for appropriate compensation and future protection for the victim; and,
- 10 To keep the victim informed of the progress of any appeal and the effect of the appeal judgements on the victim.

This will undoubtedly help build better relationships between victims and prosecutors. There are other issues too. We should also think about the rights of witnesses to anonymity in court. Most often they will be victims – often very young victims – but they may be criminals giving evidence against their former criminal colleagues – but they have rights too and prosecutors should push the barriers of our legal systems to help them and to protect them. They could be given anonymity or other in court? Or new identities and new lives far away from their countries after they have helped to convict their criminal colleagues? Some systems have developed sophisticated arrangements in this regard. For Example the Direzione National Anti-Mafia deals very effectively with Mafia "pentitti" those who give evidence against former criminal colleagues. The Council of Europe made recommendations on witness protection in 1997, which has resulted in new laws being adopted recently in Portugal and in several new eastern European member states.

So prosecutors must consider the rights of suspects and accused, as well as witnesses and victims and the public. All these issues show that to be a Public Prosecutor is to be not just a prosecutor for the public but a prosecutor for the good of the public and one who acts in the best interests of the people and the state as a whole. Prosecutors also have a responsibility to protect individuals against the excesses of the state.

As part of their overall effectiveness prosecutors should also ensure that we have a means of input into the states' law making process for effective law enforcement and prosecution. In my view this is really important and helps to ensure that enforcement laws are properly balanced with adherence to fundamental principles of individual human rights.

Later today and tomorrow we will discuss the relationship between the Public Prosecutor and Victims and Witnesses - and especially juveniles but the conference will also discuss and consider the Public Prosecutor in relation to those deprived of their liberty. These are all important issues and decisions are within the wide remit of the Public Prosecutor.

Prosecutors have to balance the practical implementation of the Council of Europe's European Convention on Human Rights on the ground: "sur le terrain". The framework of the Conventions was established by the Council of Europe. It is overseen by the Court in Strasbourg who rules on the application of the Convention and provides judgements, precedents and jurisprudence on these issues. But Strasbourg is not where the real impact is felt or the real implementation occurs; that takes place in the European States where key decisions are made by prosecutors and courts and whose law enforcement officers are supervised by prosecutors and lawyers.

The leadership provided by you Ladies and Gentlemen as Prosecutors General and your staff, is felt by individuals on daily basis through the action - or the inaction - of your staff, prosecutors, often your very junior prosecutors who apply these principles on a daily basis.

Like you I have personal experience dealing with victims' families. For example I had a case where a 15 year old girl had been killed in traffic accident when travelling in a car driven badly by her 18 year old boyfriend. It is not an unusual case – I am sure you have had far worse - but when there is not enough evidence to prosecute for a the most serious offence explaining this face to face with the parents of the dead girl is very difficult, very hard and heart breaking. But by doing it openly, consistently and regularly it adds credibility of prosecutors and to an acceptance of our work.

There have been other difficult cases too. Cases involving racial issues require especially sensitive dealings with victims' families and with the media. They are traumatic and often it will be impossible to satisfy those whose close relatives have died in tragic circumstances and where mistakes have been made.

Looking at our work from another perspective: Prosecutors should be a Shield for suspects or defendants against over zealous exercise of powers by police, by courts, by security services and by others

Independent, impartial, consistent and strong prosecutorial oversight of the investigation and the prosecution is a key factor in ensuring fairness and true justice in our legal systems.

I think that we should always remember that the open observance and adherence to the principles of individual human rights will always be seen as the basis of public confidence in our legal systems;

As prosecutors we should have basic principles. I have repeated these in other speeches but in conferences like this they can prove to be useful reminders. Prosecutors should:

Be confident without being arrogant;

Be brave without being blind;

Consult and take advice but should not prevaricate;

Be vigorous and robust but also be fair;

Be transparent and open but be frank;

Be a guardian of the Human Rights for all members of our public;

Yes be a public prosecutor; but be a prosecutor working for the public and for justice for everyone.

Perhaps most importantly in the context of this conference I think:

Prosecutors should be the champion of victims - but we should not be their puppets!

Thank you