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The role of public prosecution in the protection of human rights and public interests outside the criminal law field

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The prosecutor: a pillar for democratic society

by Thomas Hammarberg, Council of Europe Commissioner for Human Rights

Mister Chair, ladies and gentlemen. In the old days probably all the prosecutors were not seen as the most credible defenders of human rights, but times have changed and today I think that the prosecutors are actually one of the pillars when it comes to the defence of human rights in our nations. When I go on my visits I always try to meet with the prosecutors, and in fact I have met several of you. What I am going to say now is largely based on our conversations when it comes to the concrete human rights problems that are in the hands of the prosecutors.

I think it is important is to keep in mind that the prosecutors in the different Council of Europe countries have different mandates, quite different mandates, not least when it comes to non-criminal justice matters. This affects also the role that the prosecutors play in the field of human rights.

But there are certain principles that I think are always necessary to respect, whatever mandate there is for the prosecutor. One is that it is absolutely necessary for the prosecutors to avoid a "conflict of interest" situation. There is a need for separation of powers also in this respect to ensure that there are checks and balances in the way that the system of justice functions. If the prosecutor is representing the executive in his/her role, there might be problems when it comes to the role of the prosecutor to investigate cases of corruption within the executive itself.

If the prosecutor is in charge of the police forces, there may be a need for another system to investigate allegations about the misconduct by the police, for instance police brutality.

I think it is always necessary to underline the importance of the separation between the role of the prosecutor and the role of the judges. The independence of judges, I think, should always be respected.

Another aspect is to ensure respect for the role of the ombudsman. Some of the complaints that may have gone before to prosecutors, may today go to the ombudsman. There is a need to clarify precisely where the line is between the ombudsman's mandate and the prosecutor's mandate.

The prosecutor represents the public interest, which means that he or she should promote the Rule of Law. With Rule of Law we mean something deeper than just the rule by law. The term includes a dimension of substantive justice, qualitative justice. There of course the European Convention on Human Rights is absolutely essential. Not only because it is part of the law in all of our member countries, but also because it sets the standards, gives the substance to the meaning of justice in our society. This is an important component of what we mean by Rule of Law.

The experience I have is that probably the best contribution that could be given by the prosecutors for the protection of human rights is to be **professional**, to do their job in a very professional manner in the field of criminal justice. That, of course, requires a system to ensure such professionalism of the prosecutorial function: that there should be high-quality education and training; that there should be an impartial, non-corrupt and transparent system of recruitment of the prosecutors; that there should be a competent system of promotion of those who should be promoted; that there should be an effective and fair system of disciplining those who are not living up to the standards. In all these aspects, of course, the respect for human rights is essential.

There are certain aspects I would like to emphasise which I think are particularly important when it comes to human rights and the role of the prosecutors. The first, of course, is to defend the interest of the **victims**. We have all heard the complaint that the victims are somehow forgotten in the system of justice, and that the focus is only, or to a large extent, on the culprits, while the victims are forgotten. The prosecutors have a particular role to secure that the interests of the victims are indeed represented in the system of justice.

Another important aspect is to give protection to **witnesses**. It is not easy in some situations to be a witness. Some witnesses are under pressure, some witnesses fear being ill-treated by those who feel offended by the substance of the witness report given. Again the prosecutors have a particularly important role: to protect the witness.

The prosecutors also have a unique role to ensure the principle of "equality of arms". It is important that the prosecutors respect this principle and are prepared to share the information that has come up through the investigations, which might be of great importance for the defence in the proceedings. I know that this is not always respected in reality.

Another responsibility for prosecutors is to contribute to solving the problem we have today in so many European countries, namely **excessive length of proceedings**. When trials are drawn out, we run the risk of denying justice to those who depend on a fairly quick and prompt conclusion.

Next, I would like to mention a couple of particularly important problems on which your input will be crucial; they relate to the principle of **access to justice**. Poor people, marginalised people, people who have little money and few contacts are disadvantaged in our systems of justice. I don't think any system in Europe is without problems in this field. We should constantly try to limit the problems of the poor people, the disadvantaged people when they seek full access to justice.

One problem is, of course, corruption – corruption generally in the society – but also corruption in the system of justice itself. Clearly, the prosecutors must keep an eye on the risk of corruption.

Another problem is how the police act when they have arrested people and when they are preparing the case, when they are interrogating. I have received so many reports that people are beaten up, ill-treated in order for the police to get a quick confession, and thereby advance quickly in the proceedings. This is something we need to stem. We have to make absolutely clear that such methods cannot be used. Again, the prosecutors have an important role.

When I talk with prisoners in privacy they often mention that they were beaten up by the police. When I ask them why they have not complained, they say that they were afraid of being beaten up again. This is a problem that we have to face, should not deny, should try to keep an eye on. And try to teach the police forces that this is just not acceptable.

A third problem relating to how the system of justice works in reality, where I think there is a weakness in how the system of legal aid works in reality. Prisoners who cannot afford to pay for a lawyer are disadvantaged. The lawyers allocated by the state are often not up to standard; too often they are not very interested in the cases; and too often they are not very competent. The solution to this problem may not be within the mandate of the prosecutor but it disadvantages those who have little means to defend their rights in the system.

Certain groups are particularly vulnerable in the system. One is the young people who go astray and commit crimes at an early age, juvenile offenders. We had a discussion at a previous meeting of general prosecutors on this particular problem. Within the Council of Europe there is now a discussion, an important discussion on how to secure that young people in conflict with the law would be fairly treated within the justice system – in the spirit of children's rights.

Migrants are often disadvantaged in the system of justice, in particular, of course, those who have no permit to stay in the country. I would emphasise the importance of giving attention to those who have been trafficked. Trafficking of human beings is still a major problem, and the victims of trafficking are vulnerable in society.

There is also a tendency of **xenophobia** in many European countries. The number of hate crimes is high, and many of those crimes are fed by racism and anti-semitism, xenophobia, homophobia and other prejudices among the population at large. Again I believe that prosecutors have a role to address this problem in their professional work.

And, finally, **women**. Women are, in some situations, subject to human rights violations because they are women. Many women who suffer domestic violence do not want to report on those who violate them.

There are serious problems when it comes to the trials in those cases, not least in cases of rape. Women have been traumatised by having to go through a trial in which they have had to explain in detail what happened, and thereby in a way experiencing this traumatic event once again – and sometimes in the presence of the one who perpetrated the crime. There is a need to find ways of dealing with these procedures in a way that respects the women and does not humiliate the victims. I hope that the prosecutors also, together with others, could continue to safeguard the rights of women in these situations.

Finally, I met cases recently where people have been disappointed that prosecutors had decided not to charge the suspects – in corruption cases for instance. People appeared to suspect that the position not to bring charges probably was corrupt in itself. That raises the issue on how can one find a system where the prosecutor's office would in an objective manner report why in some

cases they are not prosecuting, of course respecting the integrity of all of the people involved. There seems indeed to be a need in some cases for the public, or for the people concerned directly, to know why a prosecutor has decided not to bring charges. This is hopefully another matter that we could discuss in the course of this conference and future conferences. Thank you.