



Генеральная прокуратура
Российской Федерации



COUNCIL OF EUROPE CONSEIL DE L'EUROPE

CONFERENCE OF PROSECUTORS GENERAL OF EUROPE

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

organised by the Council of Europe and the Prosecutor General's Office of the Russian Federation

Saint Petersburg, 2-3 July 2008

Konstantinovsky Palace

“Protection of human rights and prosecution services in Germany ”

Speech by the Federal Minister of Justice

Brigitte Zypries M.P.

Mr President,
Mr Prosecutor General,
Mr Secretary General,
ladies and gentlemen,
many thanks for the kind invitation to your conference. It is a great pleasure and honour to be taking part in your discussions.

The importance of human rights is self-evident, as you strikingly re-emphasised today, Mr President. In Germany, and in many other countries worldwide, your inaugural speech at the Kremlin on 7 May made a deep impression.¹ On that occasion you singled out freedom and human rights as the paramount values of Russian society, and you made it clear that the key to a country's strength is citizens who enjoy freedom and are in charge of their own lives. Those words struck a chord in Germany and met with great approval.

I fully agree with your assessment, Mr President. Only when a country respects its citizens' human rights can people live in freedom and security. And only when people live in freedom and security can they fully realise their potential and thereby ensure economic growth, a prosperous society and cultural diversity.

I therefore welcome this conference's focus on how protection of human rights can be arranged and what contribution the state and the prosecution services can make.

As far as state respect for human rights is concerned I see three main avenues:

- state self-limitation of its activities,
- commitment to the rule of law in all state action,
- and effective checks to ensure that state action is in accordance with human rights.

Human rights are primarily means of individual self-defence against the state. In matters such as freedom of opinion, press freedom or freedom of assembly and association, the state best protects the rights involved by exercising self-restraint. Here, state refusal to resort to censorship and prohibition is the best way of safeguarding human rights.

There are of course areas of life where state action is absolutely necessary – security and combating crime being two examples. In this field, human rights provide necessary benchmarks and boundaries for state action. When translated into specific pieces of

¹ See Appendix 1.

legislation, human rights determine on what conditions the state authorities can, for example, search a house or arrest or convict someone, and how a person is to be treated in state custody. By complying with the relevant laws and observing the boundaries to state intervention, prosecution services and courts give tangible effect to human rights.

The third aspect of the state-and-human-rights question concerns supervision of official action. What guarantees are there that the state will actually allow freedoms to be exercised? Firstly there is control by civil society. Critical media and citizens confident of their rights can uncover state abuses, and these can then be stopped and recurrences of them prevented. Committed action by civil society thus also affords protection to human rights.

This commitment on the part of civil society is indispensable, but still not enough. The state must establish control mechanisms as well. What it must ensure is – to use the English term current in constitutional law – checks and balances. In both cases there are quite a few ways of providing them and no single ideal solution. Every country has its own experiences, institutions and traditions here, and this makes it very stimulating to consider what contribution prosecution services can make.

In Germany there is a range of state institutions responsible for protection of human rights, and I shall single out three of them.

My first example is the military ombudsman, who is appointed by Parliament and is responsible for ensuring that human rights are also observed in the armed forces. Every member of the armed forces can lodge a complaint with the military ombudsman.

Secondly, there is the federal government's human rights officer. He or she ensures that, in its policies, the government does not neglect the civil freedoms dimension.

Thirdly, a new, independent commission is shortly to be established.² It will be empowered to check on all places where people are detained by order of the state. This will include prisons and psychiatric hospitals.

All the institutions I have just mentioned differ from a prosecution service in two basic respects. Unlike a prosecution service they take no legally binding decisions. They rely entirely on the power of the word, issuing public reports and appeals, so their direct influence on protection of human rights is very small. Unlike a prosecution service, however, these

² Basis: Optional Protocol to the UN Torture Convention (Opcat).

institutions do not represent officialdom. They are not subject to instructions but operate independently, and this can be advantageous when it comes to defence of human rights.

There is another state institution that combines both the characteristics I have mentioned: the courts. They are empowered to deliver legally binding decisions and they are also independent of government and the authorities.

In Germany, for that reason, it is the courts which have the leading role in effective protection of human rights. If an administrative decision interferes with somebody's rights, that person has the right to appeal to the administrative courts. In addition, everybody can appeal to the Constitutional Court against laws that adversely affect their rights. The courts are empowered not only to set aside decisions of the authorities but also, if necessary, to declare laws null and void. Consequently the courts have supervisory powers over ministers, and that includes me and what I do. So there are sometimes tensions between government and the courts, but that is a necessity because it shows that the checks and balances are in working order. Human-rights protection is all the better for it.

Ladies and gentlemen, the organisational model best suited to safeguarding human rights is something for each country to decide. Various arrangements are conceivable and there is no single ideal solution. As I see it, the main thing is the end result: freedom and human rights must be properly protected – from the power of the state, but also with the help of the power of the state.