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Exchange of views with the Committee of Ministers

Speech by Michael O'Flaherty  
Council of Europe Commissioner for Human Rights

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Dear President, dear ambassadors,

It is a great pleasure to be back with you. I look forward to meeting those of you who are new to your positions and to continuing to engage closely and warmly with all of you.

Let me begin by saying that, as always, my focus and top priority in the period since we last met, has been to support the human rights of the people of Ukraine. Since we last met, I have published a memorandum on the situation – a ten-point roadmap, if you will – towards embedding human rights in the path to peace. We discussed that extensively when I was last with you. If you'll allow me, I won't come back to it again now.

Instead, I'd like to turn to three other issues.

The first issue has to do with the management of migration, including in the context of practises that we refer to as externalisation. The second relates to the human rights of Roma and Travellers. And the third issue concerns pressure on civil society.

First, migration.

Tomorrow, I will publish a report on the topic of externalisation. This, in fact, will be my first full report on any topic, and indeed my first thematic report since taking up this mandate.

There is no single definition of externalisation. When I use the term, I am looking at three distinct phenomena.

The first is the transfer of asylum seekers and the processing of their claims in another state.

The second are externalised return procedures, including the so-called return hubs.

The third, which is by far the most longstanding practice, is the seeking and the offering of support to third or to other countries to patrol borders and to support the management of migration.

I would like to emphasise that none of these practices are inherently incompatible with human rights, as you will see in the report tomorrow. It is all about how they are administered and how they are implemented and how the risks with which they are replete are addressed.

What are these risks?

For instance, the externalisation of the determination of asylum when that is done to another country with a poor record on the matter or a weak infrastructure for the determination of claims raises obvious issues.

Second, the externalisation of procedures for return can be problematic when the country employed to support returns has a poor human rights record or lacks the capacity to manage people, particularly to manage those for whom efforts to return them will fail.

Third, issues arise with regard to both of types of externalisation concerning the adequacy of reception conditions, the use of detention and the treatment of children and vulnerable people.

Finally, with regard to risk, the risks associated with the third form of externalisation — partnership with third states for the management of migration are very well covered and documented. The incident on last 24 August when the Libyan Coast Guard fired on a rescue ship in international waters from a vessel paid for with funds from the European Union is a case in point.

I conclude the upcoming report – a very detailed analysis – with just four principles and recommendations.

First, member states should adopt what I call a precautionary approach when engaging in external cooperation.

Second, they should articulate clear, non-negotiable standards and ensure that these are not undermined.

Third, they should put in place adequate, specific human rights preconditions and safeguards by which externalisation can be kept under constant review.

Fourth, with regard to constant review, they should ensure there is the necessary transparency for review to happen, and that adequate monitoring and accountability mechanisms are in place.

I look forward to having a discussion on this with you, once you have had a chance to review it.

Finally, please allow me to make one last general observation regarding migration management in light of the current controversies.

1. I accept and acknowledge that the management of migration is extremely politically challenging in the current climate.
2. It is undeniable that migration is being instrumentalised by third states, notably by Belarus, and that this instrumentalisation puts human beings at risk as part of unacceptable hybrid warfare-related strategies.
3. It is equally clear to me that migration is also being instrumentalised by populist troublemakers who seek to spread disinformation and hate, making our management of the situation ever more challenging.
4. I accept that not every migrant is entitled to international protection. It is important for the preservation and protection of the asylum system that those who do not qualify for

international protection are respectfully returned home, obviously with respect for their human rights.

5. It is necessary that our member states be evidence-led in their management of migration. They need to challenge the disinformation. For instance, who are the migrants? Notwithstanding the proportion of migrants who do not qualify for international protection, it is undeniable that a significant number of them continue to come from conflict-affected countries. This raises an assumption that many of them will indeed qualify for protection. A myth is commonly spun that migrants are predominantly criminals importing crime into our societies. There is no evidence whatsoever for this assertion; in fact, the incidence of criminality in migrant communities is not notably different to that in the settled society. Another fiction commonly referred to is the alleged inability of our states to deport migrants guilty of criminal acts. Not only is this untrue, but our states are also remarkably effective at deporting the vast majority of criminal migrants. One may ask, where the problem lies in terms of the challenges of migration management. Rather than looking at Strasbourg and other such locations first, it is important to look at the national practice to see to what extent problems may arise from the domestic interpretation of international commitments rather than from the actual international commitments themselves. In this regard, I consider the United Kingdom's current review of its domestic practice regarding the application of articles of the European Convention on Human Rights to be a promising practice in the domestic context.
6. It is imperative that our member states behave lawfully.

Preventing the possibility to apply for asylum is unlawful. Putting people at risk of refoulement is unlawful. Not undertaking or actually impeding search and rescue is unlawful.

We need to recall that when our states are behaving unlawfully, they are undermining our commitment to the rule of law.

Please allow me to turn to the situation of Roma and Travellers.

I have spoken about it before, but I am bringing it up again today because I am very pleased to inform you that I will present my report on standing up for the human rights of Roma and Travellers in the coming weeks, during the week of the Parliamentary Assembly. I will draw largely part, but not exclusively, on the country visits I have done on the issue.

I have conducted six dedicated country visits, but I have also raised these issues in some eight countries.

I want to express my appreciation for the most recent visits to Greece and to North Macedonia, with regard to which I published memoranda since we last met.

Coming back to the report, it will explore six thematic areas of the lived experience of Roma and Travellers: housing, education, health, employment, policing, and culture.

Throughout the examination, there will be a particular focus on women and girls. Why? Because wherever I go, I see that they are the catalyst for change. We have to work with them to empower them to play their enormously significant role.

Another unusual feature of the report will be the way it is written. It will be written in an informal, first-person voice and will contain many stories. This is a deliberate choice because I want to try and get the story through where thousands of previous reports seem to have failed. It will also be heavily illustrated, with powerful, respectful photography taken by professional photographers who accompanied the visits.

There will also be a travelling exhibition, which you will see for the first time here in PACE week. I very much hope that some member states will take the initiative to bring the exhibition to their own countries and use it. It's available indefinitely for that purpose.

I'll leave it there with regard to Roma and Travellers and I hope the report will trigger a lot of discussion.

Finally, I'd like to turn to the situation of civil society.

I'm very concerned about the current situation. It has been the issue that has engaged my attention most frequently over the summer months.

Since last June, I have felt obliged to send a letter to the Hungarian Parliament and engaged on issues in Georgia, in Montenegro, on the arrest of Mr Hocaoğulları in Türkiye, on the sentencing of Mzia Amaglobelli in Georgia, on the conviction of Ieva Raubiško in Latvia and twice on the policing of protest in Serbia.

On the topic of policing and protest, I have sent a letter to the government of Germany, and this issue has been a focus of attention during my visit to the United Kingdom, albeit I have not yet issued a follow-up document regarding that visit. Overall, I am concerned about what I consider the excessive restraint on such rights as assembly, association, and expression across multiple countries. As we all know, these rights, are fundamental to our democratic states.

What is more, pressure on human rights civil society undermines the protection of human rights across our societies. Our human rights cultures diminish when civil society is impeded from carrying out activities such as fact-finding and advocacy. Even the European Court of Human Rights is impacted when we consider the role of civil society in supporting it in bringing cases and in advocating for the implementation of judgments.

As regards my own mandate, it would be undoable were it not for cooperation with a vigorous civil society.

Let me again, just by way of conclusion, recall that, beyond its advocacy role, civil society plays an essential in service provision role in most of our societies.

Thank you for your attention, and I very much look forward to our dialogue.