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The strengthening of cooperation to counter transnational crimes

Informal conference of Ministers of Justice of Council of Europe

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

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Minister,

I thank you very much and would like to express my warmest congratulations to Malta for the very successful presidency.

Ministers, colleagues,

We are meeting today to discuss the modernisation of a 1959 convention. This is very poignant for me.

I too was born in 1959. I too need modernisation, but unfortunately the option of a protocol is not available to me. I would like to extend my warmest congratulation to everyone involved in the development of the Valletta Protocol.

It is an extremely useful tool. It is an important tool for strengthening cooperation in criminal matters. Of course, I especially welcome the close attention to human rights and data protection, vital elements of the modernisation effort.

As we all know, human rights are integral to the delivery of justice in all its aspects. Access to justice is itself a human right, and justice has to be delivered in full conformity with the European Convention on Human Rights and the other relevant instruments.

These human rights requirements throw up many challenges, often novel ones, particularly in the context of the move online of the doing of justice. Not least, of course, in the context of our discussion of judicial cooperation across borders. I welcome that at least three important human rights issues in this context do receive attention and are reflected in discussions around the development of the Protocol.

The first of these human rights is the protection of privacy, the privacy of people and of data. Second, and closely connected to the protection of privacy is the protection of people and the safety of human beings. And then to take one additional third area that, of course, receives attention, it is the honouring of the essential principle of the equality of arms.

An additional concern or a complicating factor for judicial cooperation is, of course, the role of the private sector that owns and controls many of the platforms that we need to use in order to share and to store data. In this regard, I notice with real interest the initiative of the European Union to develop a decentralised IT system supported by the EU agency eu-LISA. I think this is a practise that we should watch very closely as a promising development.

But a still further problematic dimension of the large background role of the private sector in the sharing of data and of communication is that its primary driver is not human rights compliance, but rather speed and profit.

Another IT challenge that should be considered in the context of judicial cooperation is the increasing recourse or the temptation of increasing recourse to generative AI for data analysis. Great care needs to be paid to the propensity of generative AI to make mistakes and how error multiplies through the operation of feedback loops.

These issues can obviously have a devastating human impact. Just take by way of an example, well outside the justice sector, the problems caused for delivery of social welfare in a number of countries in recent years.

As states move forward in navigating these challenges, I very much encourage a recognition that getting it right and ensuring human rights compliance will greatly support the levels of trust among and between states.

And within that trust, I would encourage states to continue to learn from each other. I appreciate and welcome context for such learning. I look for instance at the tools of the Committee on International Cooperation in Criminal Matters.

I look also at the work of the Europol Innovation Lab, UNODC's Sherlock Portal and Eurojust Digital Criminal Justice Programme.

Turning to the longer future, what do I hope to see? I would like to imagine three things.

First of course, a well-supported Convention and Protocol.

But also, the building of innovative technical tools such as some form of a Council of Europe equivalent of the EU decentralised IT system.

And of course, a well-supported international capacity to assist states to navigate the challenge of human rights compliance in their essential cooperation.

Thank you.