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Protection of social rights of citizens, including in the sphere of healthcare.

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I would like to express my sincere gratitude to all the organisers of this Conference, and particularly to the Prosecutor General of the Russian Federation, for inviting me, as the General Rapporteur and former President of the European Committee of Social Rights (ECSR), to participate in such an important high-level meeting on the role of the Prosecutor's Office in protection of human rights and public interest.

This invitation and the fact that I am here today prove indeed that you are all sensitive and caring about social rights, as well as about the importance of the role of Prosecutor's Office in protection of such rights and the need for public prosecutors to take account of respecting and fulfilling social rights.

Public prosecutors may indeed interact in many ways in processes and procedures concerning the protection of social rights when exercising their crucial legal functions, both in and outside the criminal judicial system.

This can be fully understood if you consider contents and requirements of State obligations in the field of social rights, as they are set out in the European Social Charter, which is - as you know - the fundamental European legal instrument for the protection of such rights, equipped with an effective legal supervision machinery, centred on the role played by the ECSR.

And this is what I will try to illustrate, by taking a few examples from the ESC system relating particularly to some topical social matters, such as healthcare, safe and healthy working conditions, and protection of children.

As the ECSR has often emphasised, the fact that the Social Charter is not just a declaration of principles, but a legally binding human rights treaty, and a living instrument, implies that States parties must protect social rights not merely theoretically but also in fact, and that the implementation of the Charter cannot be achieved solely by the adoption of legislation, if its application and respect of social rights are not accompanied by an effective and rigorous control.

In fact, many Charter's provisions explicitly provide for, or imply obligations for States to set up measures of supervision of laws and regulations aimed at guaranteeing social rights, as well as obligations to effectively protect social rights through the action of public authorities who ensure the application of the law where the breach of the law carries a criminal or other sanction, or who provide legal support to individuals in the protection of their rights.

It is precisely in such cases that the role of public prosecutors come into play as a relevant factor in the implementation by States of their social rights obligations, under the Charter.

The right of workers to safe and healthy working conditions is a good example of this.

According to Article 3 of the ESC, with a view to ensuring “occupational safety and health, and to prevent accidents and injury to health arising out or occurring in the course of work”, the States parties undertake not only to issue safety and health regulations, but also “to provide for the enforcement of such regulations by measures of supervision”.

The Charter does not prescribe any standard model for the organisation of such function of supervision, provided that public authorities concerned are entitled to inspect all workplaces, including residential premises, in all economic sectors, private as public, and have sufficient and appropriate means of information and powers of investigation and enforcement. In addition, the system of penalties in the event of breaches of the regulations must be efficient and dissuasive, and the types of penalty imposed must have either administrative or criminal nature, according to the gravity of the offences.

Depending on the different national situations and organisational models, this means that such function of supervision and inspection might not be appropriately performed by the Labour inspectorate only. It may also be necessary or more efficient, in some national contexts, to divide such function between several bodies having specialised jurisdiction.

This is precisely the case in the Russian Federation, where the supervision of compliance with occupational health and safety legislation and standards is carried out by the Federal Prosecutor General’s Office and regional public prosecutor offices, together with the Federal Labour Inspectorate. And the ECSR has indeed found that such system and its effective functioning make the Russian situation in conformity with the Charter requirements concerning the enforcement of safety and health laws and regulations.

Mutatis mutandis, another example, still relating to the sphere of healthcare, is that of protection against air pollution.

Art. 11 of the Charter guarantees the right to protection of health, which includes the right to a healthy environment. As part of the positive obligations that arise by virtue of this right, States parties must, *inter alia*, develop and regularly update environmental legislation and regulations, and take specific steps, such as modifying equipment, introducing threshold values for emissions, and measuring air quality, to prevent air pollution at local level. But they have also to ensure that environmental standards and rules are properly applied, through appropriate supervisory machinery, effective and efficient, that is comprising measures which have been established to be sufficiently dissuasive and have a direct effect on polluting emission levels.

Therefore, involving specifically the public prosecutor office in such supervisory machine and making it play a significant role in investigating and prosecuting cases of breach of environmental law, as indeed occurs in some national situations, can be a decisive factor from the perspective of State compliance with its obligation to ensure protection against air pollution, under art. 11 of the Social Charter.

I move now to another topical social matter, different from healthcare, namely that of social protection of children. Here, I would like to provide you with a couple of examples showing how the way in which public prosecutors perform their role in the criminal justice system can have a positive or negative impact on the right of children to social protection, and by consequence on adequate implementation by the State of its obligations under the European Social Charter.

I refer, first, to the States parties' obligation concerning the prohibition of all corporal punishment of children in the family and schools, which derives from art. 17, paragraph 1 (a) of the Revised Charter as well as from art. 7, para 10, of the 1961 Charter. According to the ECSR, this obligation requires States parties to set out in their legislation an express and comprehensive prohibition on all forms of corporal punishment of children that are likely to affect their physical integrity, dignity, development or psychological well-being, and also to act with due diligence to eliminate such punishment in practice.

Well, as it emerges from a series of decisions adopted by the ECSR in 2014 in collective complaints lodged by an INGO named APPROACH, there can be situations where the national legislation is not so satisfying, as it presents ambiguities which can determine, for example, a judicially recognised "right to correction" of parents or teachers. In such cases the attitude of public prosecutors, their pro-active or on the contrary passive attitude in tackling episodes of corporal punishment of children in the family or schools, may indeed be decisive (together, of course, with the attitudes of judges and courts) with a view to achieve the level of full and comprehensive protection of children which is required by the ESC.

In fact, in the decisions of collective complaints that I have just mentioned, you may find some States having such kind of not entirely satisfying legislation that have been found to be in violation of Art. 17 of the Revised Charter, like France and Belgium; while other States having a similar legislation, like Italy for example, have been found, on the contrary, to adequately protect children against corporal punishment in the family or schools; and this thanks precisely to the pro-active attitude of public prosecutors and judges to treat any corporal punishments (including those which are motivated by an alleged "right to correction") as criminal offences, to be sanctioned by effective, proportionate and dissuasive penalties.

My second example concerns an entirely different issue in social protection of children. I am referring to the situation of children in conflict with the law. According to art. 17 of the Charter, as interpreted and applied by the ECSR, States Parties must take all appropriate and necessary measures to ensure that children in conflict with the law, like any other child, enjoy adequate protection, including appropriate legal procedural protections. A failure to do so, and the resultant risks posed to the child in the context of, and as a result of, the relevant legal proceedings, are likely, in fact, to have significant and wide-ranging implications both for the child's short-term circumstances as well as for children longer term mental, moral and social development.

Such measures of appropriate legal procedural protection include, *inter alia*, ensuring children below the age of criminal responsibility, and their representatives, access to the police file in the pre-trial stage of juvenile justice proceedings. In some countries the public prosecutor can deny the right to consult such files for serious reasons, and can also, at the request of the person whom the denial concerns, expeditiously review the gravity of the reasons for which the police authority eventually denied the rights. Well, should this power of denial or review be arbitrarily or

inconsistently applied by public prosecutors, this would clearly determine a violation of the right of children in conflict with the law to social protection, as enshrined by art. 17 of the Charter.

The same would apply with respect to the right of the child to be informed promptly and directly (where appropriate through his or her parent or guardian) of the charges brought against him or her. Should public prosecutors not provide the persons concerned with information about the content of the final resolution of a police authority concerning the committing of an unlawful act by a child, this would also amount to a violation of the right of children to social protection, under the Charter.

Still, the failure to provide alternatives (diversion) to formal judicial proceedings for children below the age of criminal responsibility would also be in violation of the obligation to guarantee social protection to children in conflict with the law. According to the ECSR, this obligation includes the obligation to develop and take measures to reduce the especially harmful effects of contact with the justice system and to ensure that the danger posed to the child's wellbeing and development by such contact is limited. One of the primary ways in which this can be achieved is through the diversion of children away from formal processes and into effective diversionary programmes in line with international standards on the rights of the child.

In this respect the fact, for example, that under the Czech Juvenile Justice Act, the state prosecutor has an obligation to bring a case of a child under the age of fifteen before the juvenile court, without having an option as to whether to bring an indictment before the juvenile court, or rather to use one or more alternatives (diversions), has been assessed by the ECSR as being a violation of art. 17 of the Charter in a recent decision, of October 2020, in a collective complaint lodged against the Czech Republic by the International Commission of Jurists.

These are just some examples of how the role of public prosecutors may be relevant for protection of social rights and adequate implementation of the State obligations under the European Social Charter. I could also give you other examples taken from other social matters, like treatment of migrant workers, sexual harassment in the workplace, or free legal aid in gender discrimination cases; but some of these issues will be dealt with during this afternoon session. So, there is no need for me to dwell upon them now.

To conclude, let me just recall that in view of properly exercising functions which have an impact on social rights protection, and doing this in compliance with the Social Charter obligations, every Public Prosecutor Office would benefit greatly from taking account of the Recommendations set out by the Committee of Ministers of the Council of Europe.

In this respect, I can refer, for example, to Paragraph 8 of the Recommendation 11 of 2012, on the role of public prosecutors outside the criminal justice system, according to which "Public prosecution services should ... benefit from appropriate training in order to adequately fulfil their responsibilities outside the criminal justice system". Here, "appropriate training" should be intended as to also include, I think, training on social rights protection and the Social Charter system.

Paragraph 26 of the Recommendation, on national and international cooperation, is also relevant, in so far as it recommends that "public prosecution services should establish and, where

appropriate, develop co-operation or contacts with ombudspersons or similar institutions, other national, regional and local authorities, and with representatives of civil society, including non-governmental organisations". All this is indeed of crucial help for public prosecutors when they exercise functions which have an impact on topical social matters.

Lastly, let me refer to paragraph 24 on the *Role of public prosecutors as a supervisory organ on private entities*. This paragraph points out that "the public prosecutor should exercise his or her supervisory role in cases where there are reasonable and objective grounds to believe that the private entity in question is in violation of its legal obligations, including those derived from the application of international human rights treaties".

In this respect, let me remind you that human rights do include social rights, and that violation of legal obligations deriving from human rights treaties covers, at the European level, not only violations of the European Convention on Human Rights, but also infringements of obligations set out by the European Social Charter, which is complementary to the Convention and a fundamental human rights instrument.

Thank you for your attention.