

**SOLEMN CELEBRATION OF 20TH ANNIVERSARY
OF THE NATIONAL COUNCIL OF THE JUDICIARY OF POLAND**

18 FEBRUARY 2010

**SPEECH OF SIR JOHN THOMAS,
PRESIDENT OF THE EUROPEAN NETWORK OF COUNCILS FOR THE
JUDICIARY**

It is a considerable privilege and a great honour to be present here today on this solemn occasion so I can add, on behalf of the European Network of Councils for the Judiciary, my congratulations to the Chairman and Members of the National Council of the Judiciary of Poland on the occasion of the celebration of the 20th Anniversary. Since the formation of the European Network of Council for the Judiciary in 2004, I have had the privilege of working with a number of Members of the Council and know first hand of the contribution they have made to the strengthening and improving of the administration of the delivery of justice in Poland and to the work in the creation of a common area for justice in Europe.

If I may take the second of these first. The creation of a common area for justice must be a concomitant of the gradual evolution of the European Union. Its creation is, without doubt, a very considerable challenge. We have, over many centuries, developed differing legal traditions and different laws and different court systems. And even within States there are different legal systems and traditions as, for example, there is in my own State where the legal system of Scotland is different to that of England and Wales. Over the years we have tended to stress the differences between our systems and this has proved a fruitful source for excellent work in the field of comparative law.

However, with greater day to day working and co-operation between judges of the Member States, there is an increasing view that the similarities far, far outweigh the differences. These similarities are, of course, exemplified in the European Convention on Human Rights but they operate on a much more detailed level. For example, great stress is often laid upon the difference in criminal justice between the inquisitorial procedure of much of continental Europe and the adversarial procedure of the common law countries. There are, of course, differences in the way in which investigations are carried out and the evidence of witnesses collected, but it is accepted throughout Europe that the accused is entitled to confront those who give evidence against him and to have the benefit of an adversarial procedure. The differences are, on analysis, not as great as may be thought.

Another example is the position of the prosecutor. In some judicial systems the Councils for the Judiciary comprise both prosecutors and judges; in others, this is not so. Indeed in some States the existence of such a Council is not understood as it is thought that the role of prosecutor and judge are quite distinct. It is true that the roles are quite distinct, but what every system seeks to achieve is the independence of the prosecutor. You have recently sought your own way to protect the independence of the prosecutor. In those countries where prosecutors and judges sit on the same Council, analysis again shows that a joint Council is seen within that State as the best means of ensuring the independence of the prosecutor; the roles of prosecutor and judge remain distinct, but the independence of the prosecutor is protected.

At the heart of these common principles and this shared approach to justice are core principles which Councils for the Judiciary seek to protect by performing three tasks.

First, a Council seeks to ensure that there is in place a system that enables the judiciary to optimise the timely and effective delivery of justice for the benefit of all citizens. Insofar as financial and other resources are provided to Councils by the other branches of the State, Councils endeavour to make sure that the citizen can obtain justice cheaply and within a reasonable time in disputes with other citizens and the State.

Second, a Council safeguards the independence of the judiciary. The hallmark of your Council and of other Councils within the European Union is their provision of an institutional framework for the independence that each judge must have, not as a privilege but as an essential pre-requisite of delivering justice. This institutional framework has many aspects. One aspect is the responsibility of Councils for the appointment of judges. It is self evident that no system of justice can function unless persons of the highest quality are appointed as judges and that appointment is made on merit and not other considerations. But there are other aspects of maintaining independence. For example, the provision of well-financed and independent training is essential for the proper functioning of a judiciary where so much new law is being created. Councils have a special responsibility for this, as for the provision of training free from political or executive influence is a necessary pre-condition for the maintenance of each judge's independent decision-making.

Third, even though independent, the Council representing the judicial power of the State works with the other powers of the State in many fields. For example, given the wide scope of modern legislative activity, it is essential that legislation is drafted in a form that is technically accurate and can work in practice. Co-operation between the three powers of the State, on properly understood principles, is essential in this respect. Councils play an essential role in discharging this task.

The performance of these three tasks by Councils for the Judiciary are important in each Member State, as they are in your own. They are essential to the maintenance of the rule of law, to delivering justice and in ensuring that there is a strong foundation on which a free market system can operate.

On the European level, the European Network of Councils for the Judiciary is seeking with the other judicial networks to ensure that the ways in which the judicial branch of the State operates with each Member State is reflected in the operation of the European Union. Our work is primarily directed at the first and third of the tasks – trying to ensure that the emerging system of EU law and mutual confidence delivers justice effectively and gives detailed technical advice on legislation.

I would like to stress how much both on the level of the Member State and on a European level, the National Council of the Judiciary of Poland has contributed. It would be presumptuous of me to speak in detail of the contribution made to your State, but on a European level the National Council for the Judiciary of Poland is playing a leading role not only in the more far-reaching goals I have described but on detailed practical issues on the first and third tasks which are so important to the

citizens – the proper functioning of the European Arrest Warrant, the creation of better standards for victims in courts, mutual confidence between the judiciaries and the strengthening of public confidence in the judicial systems of each Member State. It is through that laborious and detailed work that the wider goals will be achieved and our tasks discharged. I would wish to pay particular public tribute to the work of the Chairman of the Council and Teresa Flemming-Kulesza for all they have done.

I would like warmly to thank all the members of the National Council for all they have done, as I look forward with confidence to their contribution over the next 20 years, not merely here in Poland but to the very important work in building the common area for justice within the European Union.