**INTERVENTION BY THE HONOURABLE PRESIDENT OF THE SUPREME COURT OF CYPRUS, MR. JUSTICE MYRON M. NICOLATOS, AT THE ACADEMY OF EUROPEAN**

**JUDICIAL PRACTICE**

**MADRID-SPAIN, 29 MAY, 2019.**

**“INDEPENDENCE OF THE JUDICIARY**

**IN THE EUROPEAN UNION”**

The ancient Greek Philosopher Aristotle, in his work “On Politics”, 25 centuries ago, clearly recognised three separate Powers of the State: The Executive, the Legislative and the Judicial.

Many centuries later, the French Political Philosopher, Montesquieu, in his “De l΄ Esprit des Lois” developed the doctrine of separation of Powers, emphasising the importance of Judicial Independence.

Today, in Europe, the Independence of the Judiciary is considered as the Cornerstone of Democracy, the Rule of Law and respect of Human Rights, the three pillars of European Judicial and Legal Culture.

The European Union is composed of states with different Legal Systems. Furthermore we have the “Old” Democracies and the “New” Democracies, with important differences between them, mainly concerning background, culture, and mentality.

The two main Legal Systems are: (a) The (Continental) Civil Law System and (b) The (English) Common Law System.

In the Judicial and Legal Cultures of the two systems there are many similarities, but also some important differences, as well.

In the Continental System, qualified and suitable persons, who are Graduates of Judicial Schools are appointed as Judges. In the Common Law System, traditionally, Judges are appointed from the ranks of qualified and suitable practicing advocates.

The idea of a Judge who is considered as a quasi Civil Servant, is more compatible with the Continental Mentality, than with the Common Law mentality, which makes a clear distinction between Judges and Civil Servants.

The composition of Supreme Councils of Judicature (or High Councils for the Judiciary as they are usually known on the continent) varies considerably. Some such Councils are composed solely of Judges (as in Cyprus until today), some are composed by a majority of Judges and some are composed by a minority of Judges. The participation of Parliamentarians, Politicians, Advocates and others who are not Judges, may seriously affect the independence of the Judiciary in a country, as theese Councils exercise full Powers and control over the appointment, promotion and discipline of Judges.

The appointments of Chief Justices, Justices and Judges should ensure their Democratic Legitimacy, as well as their Independence. Such appointments, should be made upon merit, and not upon political or other orientation. Politicising Judicial appointments, in my opinion, adversely affects Judicial Independence.

Security of Tenure and Safeguards for the non reduction of salaries and emoluments of Judges, at least during their term of service, is another important aspect of Judicial Independence. In some countries, security of tenure is guaranteed, and dismissal or impeachment of Judges may occur only, on specific and serious grounds, and after a reasoned Judicial Decision. In other countries, Dismissal and Impeachment may be considered as political decisions made by Parliament. This is also an important factor that, directly, affects Judicial Independence.

In some countries, Judges΄ salaries are guaranteed by the Constitution, as their reduction is considered as a potential, indirect, pressure on them, to resign. In many other countries there is no such guarantee.

Sometimes, Judicial salaries and conditions of work, do not correspond to descent life and working conditions, for Judges, thus making them, potentially, vulnerable to corruption. Corruption in the Judiciary, is, of course, fatal for its Independence.

Judicial Independence is also correlated to Budgetary Independence. In some countries, the Judiciary has its own Budget in others it depends, for its finances, on the Executive and the Legislative Powers. Such dependence, necessarily affects Judicial Independence.

Judges are not a State within a State. They are not Kings in their own Kingdoms. They should have Democratic Legitimacy and they should be accountable and answerable to the elected Representatives of the people, always acting in good faith and with transparency.

Furthermore, Judicial Independence is not a privilege of the Judges, but it is an absolutely necessary prerequisite for the protection of the people΄s Rights.

Only independent, impartial and honest Judges, with Judicial courage, who are ready and willing to administer Justice without fear of prejudice or hope of advantage, and who respect the Cardinal Principles of the Rule of Law: (a) that nobody is above the Law and (b) that everybody is equal before the Law, may be the real Trustees and Protectors of the people΄s Rights and Freedoms, and only on such Judges, it is safe for the people to rely upon.