**WELCOMING REMARKS BY THE HONOURABLE MRS JUSTICE PERSEFONI PANAYI, PRESIDENT OF THE SUPREME COURT OF CYPRUS**

**AT THE CYPRUS BAR COUNCIL CONFERENCE**

**16th JUNE, 2022.**

**Distinguished Guests,**

**Dear Colleagues,**

**Ladies and Gentlemen,**

It is a great pleasure to address this joint conference of the Cyprus Bar Association and the Bar Council of England and Wales titled “Common Law in Europe.” The interesting spectrum of topics which will be discussed as well as the distinguished speakers, underscore the significance of the conference.

In my brief address, I will touch on certain general matters pertaining to the main subject of the conference as well as recent developments in Cyprus relating to judicial reform.

As practitioners of the common law, you will know that the common law, sometimes also referred to as Anglo-American law, originated in the early Middle Ages in the King’s Court. However, its dominance in the commercial field was not established until the second half of the 18th century, following an intervening jurisdictional struggle between the common law courts and the court of Admiralty which by the early 17th century had begun to attract a sizeable amount of commercial litigation. British colonial expansion took the administration of English common law to the newly acquired territories, including Cyprus. After independence, the legal systems of many of these countries, are still mainly based on or linked to English common law principles. It is not surprising, therefore, that there is a high level of comprehension of and regard for English law and that references to English law are normal and frequent. Since independence in 1960, the common law is applied in Cyprus under section 29(1)(c) of the Courts of Justice Law of 1960.

English Law’s reputable jurisprudence coupled with the wide prevalence of the English language, have been conducive in establishing it as a popular and convenient law of choice governing cross-border transactions. The common law adapts to and reflects evolving trade practices and customs. This is of particular importance in our fast-changing world in terms of communications, transportation, electronic processes, ethics and social values. Despite the different path which the common law in the United States has taken to that of its progenitor, I believe that Vanderbilt, C.J.’s dictum in ***State v Culver 23 NJ 495***, that one of the common law’s great virtues “*is its dynamic nature that makes it adaptable to the requirements of society at the time of its application in court*” holds true for all common law based systems of law. The all-important creative function of the judiciary, of developing the common law, is encapsulated in the words of Justice Michael Kirby in his *Judicial Activism* Hamlyn Lectures (2003):

“So long as human language remains imprecise and human capacity to predict the future limited, it will fall to judges to fill the gaps in the law’s rules. They will do so, as they should, by reference to considerations of principle and policy. Better that they should tell it as it is.”

Deeply rooted in the common law is, of course, procedural fairness, also known as “*natural justice”* which*,* “*lies at the heart of judicial function”[[1]](#footnote-1)* A right which is guaranteed by the European Convention on Human Rights and also finds expression in the Constitution of the Republic of Cyprus. The right to a fair trial, the demonstration of justice in public and the right to a speedy trial are but a few of the principles enshrined in the concept of procedural fairness.

The existence of an independent judicial system and respect for the judicial process, aspects of the common law, are also of fundamental importance for the fruition of justice and vital prerequisites for building public confidence in its administration.

Cyprus has been described as a “*unique combination of a European and a postcolonial country[[2]](#footnote-2).* Despite the extensive codification of common law principles, case law deriving from the courts of the [United Kingdom](https://en.wikipedia.org/wiki/United_Kingdom) and other [Commonwealth](https://en.wikipedia.org/wiki/Commonwealth_of_Nations) jurisdictions remains an important source of inspiration and guidance for the courts in Cyprus, including the Supreme Court, which, since independence in 1960 has developed an adequate body of its own rules in a number of fields. The accession of Cyprus to the [European Union](https://en.wikipedia.org/wiki/European_Union)  in 2004 has brought about the harmonization of Cypriot [statutes](https://en.wikipedia.org/wiki/Statutes) and [case law](https://en.wikipedia.org/wiki/Case_law) with the [acquis communautaire](https://en.wikipedia.org/wiki/Acquis_communautaire) and has introduced a number of [European Union legal instruments](https://en.wikipedia.org/wiki/EU_law) into the Cypriot [legal order](https://en.wikipedia.org/wiki/Legal_system). As to the effect this has had on the development of the common law in Cyprus, I believe it is reflected in Lord Neuberger’s comment on the effect of EU Law and the European Convention on Human Rights on English common law [[3]](#footnote-3):

“… the common law is the product of many different sources, and all the better for that. It has always developed as a synthesis, or, if you prefer, as a discriminating magpie, picking up and often improving the best from other legal systems. The development of the common law, in the light of its recent reception of EU and European Convention law is therefore entirely in keeping with its historical traditions.”

Building on the solid foundations which it inherited from its colonial days, the Judiciary of Cyprus has managed to remain, independent, honest and impartial, with a firm commitment to the principles of the Rule of Law. However, the Cypriot justice system has for some time now been facing a serious backlog of cases. It was only natural that in addressing the problem, the Supreme Court should look to other common law judicial systems.

A consensus in principle on the need for radical reform was established among all major stakeholders, who agreed that the starting point should be the existing English Civil Procedure Rules. The new rules, which will replace the existing legal framework in force since 1958, give effect to key recommendations made by a group of experts headed by the Rt. Hon Lord Dyson, who worked in close cooperation with the Rules Committee established by the Supreme Court. The rules were approved by the Supreme Court on 19 May 2021 marking a significant milestone in the reform process of the Civil Justice System in Cyprus and will come into force in September 2023.

Another significant change in the sector of commercial litigation is the recent enactment of a Law on 12 May 2022 for the establishment of a Commercial Court and an Admiralty Court, whose function also draws on the corresponding English rules. It is anticipated that these new specialized courts, in which proceedings may, in an appropriate case, be conducted in the English language, will alleviate the caseload of the District Courts and will help to establish Cyprus as an attractive venue for resolving international commercial disputes and make it more “*arrest friendly”*.

Other significant projects are the digitalization of court procedures- which is key for the effective implementation of the new rules - and the establishment of an independent court service responsible for the management and administration of the courts in Cyprus.

Justice in Cyprus is very much on the threshold of fundamental reform, which will maintain its common law heritage. As for the challenges facing the justice system, they are probably the greatest in the history of Cypriot Justice and will only be met successfully if the reforms are embraced by judges, lawyers and other stakeholders and are accompanied by a positive professional culture change.

With these general remarks, I wish you a successful conference.

1. Chief Justice Robert S French. [↑](#footnote-ref-1)
2. Nikitas Hatzimihail, Reconstructing mixity: Sources of law and legal method in Cyprus. [↑](#footnote-ref-2)
3. “Has the identity of the English Common Law been eroded by EU Laws and the European Convention On Human Rights?”, 18 August 2016 [↑](#footnote-ref-3)