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***The Administration of Justice: the lawyer, the courts
and the police***

Introduction

Acceptance of the principles of the rule of law and of the enjoyment by all persons within their jurisdiction of human rights and fundamental freedoms is one of the basic conditions which states accept when they accede to the European Union or other international organizations (Council of Europe etc). The contributions of such organizations to the acceptance of the rule of law throughout Europe cannot be overvalued.

In countries that uphold democracy and the rule of law, fundamental values must be manifest in the entire constitutional framework which regulates the relationship between the individual and the state. Adherence to the rule of law can only be a reality if government itself is subject to the rule of law. In practice as well as in theory citizens must have the right to challenge the unlawful acts of governments and emanations of government, for example, the police.

Such a possibility can only exist if there is an independent judiciary. One of the core values of the rule of law is the basic concept that judges must be independent of government, with absolute power over the decisions taken within their own courts, which can only be overturned by equally absolute judgments of judges in higher courts.

It is clear that courts play a vital role in the building of a democracy. An essential element in this whole process of change and transition is reform of the judicial system, modernisation of its structure and organisation and the way in which judicial authority is exercised, all in conformity with the constitution.

The concept of the rule of law is central to the invariably complex and at times tumultuous relations between the judiciary and political power. The latter must, however, agree to define and limit itself in relation to the law. Only then can the rule of law take form, embodying and safeguarding the fundamental values of every democratic society. Whereas in a totalitarian regime the law is subordinate to the *raison d'état*, a democratic system is based on the rule of law and respect for human rights.

In a period of transition, such as many countries of Central and Eastern Europe are undergoing, two requirements must be met: a rapid and far-reaching reform of legislation must be implemented whilst maintaining legal certainty. However no institutional or statutory reform is complete without the presence of an impartial, independent, efficient and transparent judicial system that is accessible to all and in conformity with the European Convention on Human Rights, Charter of Fundamental Rights of the European Union and other international conventions. For this reason the judiciary must be independent of the legislature and the executive. This independence must be real and must be exercised in day-to-day situations.

Lawyer

The word “*advocate*” as used in most European countries is derived from the Latin expression “*ad auxilium vocatur*” which can be translated as “the one who is called upon for help”.

Art. 1 of the CCBE Code of Conduct states that “in a society founded on respect for the rule of law the lawyer fulfils a special role. His duties do not begin and end with the faithful performance of what he is instructed to do so far as the law permits”.

In the Recommendation (2000) on the freedom of exercise of the profession of lawyer issued by the Council of Europe which lays down the general principles of professional standards as well as the duties of lawyers, we read as follows: “ all necessary measures should be taken to respect, protect and promote the freedom of exercise of the profession of lawyer without discrimination and without improper interference from the authorities or the public, in particular in the light of the relevant provisions of the European Convention on Human Rights”. The ruling of the European Court of Justice in case 308/99 (*Wouters case*) has established the existence of core values of the legal profession and has named three of them: the duty to avoid conflicts of interest, the duty to maintain strict professional secrecy and the independence of the lawyer.

The rule of professional secrecy is centuries old. In the Polish legal system, for example, the duty to maintain the rule of professional secrecy is defined in the Law on the Bar of 26th May 1982. Pursuant to article 6 **excerpt 1** of the Act, a barrister is obliged to keep secret everything he has learned in the course of providing legal advice. This duty cannot be limited in time. An additional guarantee is laid down by the rule in **excerpt 3** of this article, which states, that a barrister cannot be released from the duty to maintain a professional secret with regard to facts he has learned whilst providing legal advice or acting as legal counsel.

The text of article 6 of the above-mentioned act was elaborated upon in § 19 of the Collection of rules of bar ethics and professional dignity – The Code of Bar Ethics adopted by the Polish Bar Association on October 10, 1998 (resolution #2/XVIII/98), which states that:

1. A barrister is obliged to keep secret and protect from disclosure or undesirable use everything he has learned in the course of performing his professional duties.
2. Materials contained in case files are subject to the rule of professional secrecy.
3. The rule of professional secrecy extends to all messages, notes and documents pertaining to the case, acquired from the client and from others, regardless of their location.
4. The barrister shall oblige his associates and staff and all persons employed by him in the course of practicing his profession to obey the rule of professional secrecy.
5. A barrister who uses a computer or other electronic data-recording device in his professional practice is obliged to use software that secures data against undesirable disclosure.
6. The transmission of information subject to the rule of professional secrecy by electronic and related means requires that extra caution be exercised and the client be warned of the risk to confidentiality when using such means.
7. The duty to maintain professional secrecy is unlimited in time.
8. A barrister may not submit as evidence the testimony of a witness who is a barrister or legal counselor entailing the disclosure of information acquired in the course of practicing his profession.

We believe that maintaining a secret is one of the prime ethical duties of a barrister. *“It is of the essence of a lawyer's function that he should be told things by his client which the client would not tell to others, and that he should be the recipient of other information on the basis of confidence. Without the certainty of confidentiality there cannot be trust. Confidentiality is therefore a primary and fundamental right and duty of the lawyer”* (the CCBE Code of Conduct for Lawyers in the European Union).

Secrecy applies not only to what the barrister hears from a party in confidence, but also to everything he has learned directly and indirectly while working on a case.

Even where keeping a secret would entail adverse results for a third party or for the public, the barrister must never and under no circumstances betray the secret to anyone. The above demonstrates that the question of a barrister's discretion has been and continues to be treated extremely seriously. In different countries there is a different understanding of the essence and scope of the rule of professional secrecy, but the notion of discretion as an extremely important element of a barrister's practice is emphasized everywhere. Keeping a secret is foremost in the client's interest, as a barrister, holding information acquired from the client, could potentially become (against his own will) the client's most dangerous enemy. Upholding the barrister's duty to maintain professional secrecy allows the client to gain a real, rather than simulated defence. If the rule of professional secrecy were to be abolished, it would also harm the administration of justice. The administration of justice without a real defence would become a defective and ailing institution. Tragic examples of this abound in totalitarian states.

However, in recent years we have seen attacks upon professional secrecy deriving from governments, or governmental authorities, who state that crime is becoming so difficult to tackle that lawyers – who might have interesting information regarding the commission of crimes by their clients – should inform the authorities of what they know about their clients' secrets. This was the case in the second EU Money Laundering Directive, which was passed at the end of 2001, requiring lawyers to report suspicions about clients. All this legislation necessarily puts lawyers in a bind. If the state describes, on one hand, the profession of a barrister as a profession of public confidence, and on the other hand provides additional duties to the barrister pertaining to providing the state with certain information – it thereby provides proof of its lack of confidence in barristers. Such a lack of confidence in barristers on the part of the state leads to a loss of client confidence in the barrister and threatens the legal interest of the existence of public confidence professions. Burdening barristers with duties infringing the client's feeling of trust constitutes an infringement of the principle of proportionality, as an excessive interference of the state in the realm of lawyer-client relationships

In order to prevent such situations, a lawyer (barrister) must perform his profession independently, without a risk of any pressure being brought to bear against him by anybody in this regard. This is rendered all the more important taking into account the duties and obligations to which he is subject. The best guarantee of such independence is a self-governing body, understood as an organisation independent of the state or any other national institutions, associating all lawyers meeting the criteria set out in relevant legal provisions.

The Bar has a professional organisation intended to improve conditions for the most effective exercise of professional responsibilities by barristers, including, *inter alia*, the following activities:

- Representation of the Bar and protection of its rights
- Improving professional skills and training attorney trainees
- Establishing and promoting rules of professional conduct and ensuring their observance

In order for the functions of a self-governing body to be performed successfully, it must enjoy far-reaching independence.

In the CCBE Code of Conduct for Lawyers in the European Union we read: *“The many duties to which a lawyer is subject require his absolute independence, free from all other influence, especially such as may arise from his personal interests or external pressure. Such independence is as necessary to trust in the process of justice as the impartiality of the judge. A lawyer must therefore avoid any impairment of his independence and be careful not to compromise his professional standards in order to please his client, the court or third parties”*.

Supervision on the part of the Minister of Justice should be restricted to a minimum: the Minister should only intervene in exceptional circumstances where absolutely necessary from the perspective of the interests of the administration of justice. By way of example, under Polish provisions concerning barristers, the Minister of Justice has certain rights in respect of the bar (and legal advisers). Of course, this is not a right of supervision, nonetheless however, among others the Minister currently has a whole range of rights breaching the independence and self-governance of the bar, which allow him to react to cases of unethical conduct on the part of lawyers. The Minister of Justice may: apply to the Supreme Court to quash unlawful resolutions of bodies of the bar, apply to the National Bar Convention or to the Supreme Bar Council for an appropriate resolution to be adopted, consider an appeal against a final decision refusing entry in the register of barristers and to object to an entry in the register of barristers.

It is not a matter for the Minister of Justice to issue licences or permits to practise the profession to barristers, or to cancel such permits. Passing the bar exam before a special committee and entry of the barrister into the register kept by the corporation should be the sole condition for a barrister to commence activity.

An important factor in the independence of the profession of barrister is the issue of decisions by independent disciplinary tribunals appointed within the corporation in matters of breach of rules of ethics. These tribunals have the task of deciding upon all matters where a barrister is accused of undermining the dignity of the profession and breaching the rules of (bar) ethics. A guarantee that such tribunals will be free of external influence (including political influence) is ensured by the rule that they comprise entirely of judges – barristers selected by all the barristers of a given chamber in periodic, direct elections. Only a barrister may perform the function of spokesman in respect of an accusation in disciplinary proceedings against a barrister. Only such a court may bring disciplinary measures to bear against a barrister, including the most severe measure of all, expulsion from the association. Of course, certain rights on the part of the Minister of Justice cannot be excluded, provided that they are not decision-making rights. Continuing the example of the Polish Act concerning barristers, the Minister of Justice may recommend that disciplinary proceedings be commenced against a barrister or trainee barrister, file a judicial review against a final disciplinary judgment, participate in hearings before the disciplinary tribunal and access files and demand information regarding disciplinary proceedings. The disciplinary spokesman must inform the Minister in minute detail regarding cases conducted at the Minister's request, and in the event that such proceedings are discontinued, the Minister may appeal to the disciplinary tribunal.

It is significant that a lawyer (barrister), in order to perform his functions with due independence and in a manner which is consistent with his duty to participate in the administration of justice, is excluded from certain occupations. Following the Polish regulations we can read in The Collection of Rules governing the Ethics of an Advocate and the Dignity of the Profession (Code of Professional Ethics) that: "*Activities which conflict with the exercise of the advocate's profession are:*

a) acting as a manager in somebody's enterprise;

b) being a member of a management board or a proxy in companies (this does not apply to companies providing legal services);

c) professional involvement in brokering commercial transactions;

d) running advocate's chambers in the same premises as a person running other business activity, where such activity would be contrary to the bar's rules on ethics”.

The Court

Acceptance of the principles of the rule of law and of the enjoyment by all persons within their jurisdiction of human rights and fundamental freedoms is one of the basic conditions which states accept when they accede to the European Union.

In accordance with art. 47 of the Charter of Fundamental Rights of the European Union “everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article”.

The principles of a state of law, above all of a tripartite separation of powers, have allowed a model for the judiciary to arise, the main characteristic of which is the independence of the judiciary from any other power. In such a situation, society expects a great deal both from the courts and from judges. In this context, there is always a problem of the independence of judges, guaranteeing the impartiality of the judge and the absence of any influence upon him and a problem of the independence of the courts as institutional independence pertaining to the whole judiciary. Independence is a condition for civic trust in the administration of justice, and even in the entire system of law in the country.

When speaking of the judiciary, the main issues to be dealt with in theory, and more importantly in practice are:

- The status of judges
- Constitutional guarantees for the operation of the judiciary
- The recruitment and selection of judges
- The promotion and dismissal of judges
- The *de facto* respect of each power for the two other powers coupled with proper self-restraint where its own role is concerned

Guarantees of due process constitute an exceptionally important element for ensuring the appropriate authority for administering justice. This concerns ensuring the individual independence of the judge, consisting in prohibiting any interference in the decisions made in the given matter and guaranteeing the institutional independence of the courts. Whereas it is relatively easy to provide legal guarantees of the institutional independence

of courts and of judges, it is difficult to use legal means to influence the impartiality of judgments. Encroaching upon this area may itself lead to a breach of the judge's independence. In this matter, creating the proper ethical climate in order to influence the judgment process appropriately in particular cases is more important than legal regulation.

The Collection of Rules of Conduct for Judges adopted by the "Iustitia" Association of Judges provides that:

"The public function entrusted to independent judges consists in protecting rights and freedoms under the obligation to administer justice. One of these rights, confirmed in art. 45 (1) of the Constitution of the Republic of Poland and art. 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, is the right to due legal process.

The essence of this right, and also the essence of the administration of justice by independent courts, is the right of each person to have his case considered justly and transparently, without undue delay, by appropriate, impartial and independent judges.

The right to due legal process is also a guarantee that other rights and freedoms will be respected. Only in a due legal process can a person expect his rights and freedoms to be protected and only in a due legal process can he be deprived of them.

The specific role of judges therefore consists in ensuring the right of each person to due legal process, understood not only as a goal in itself but also as a means of protecting other rights and freedoms.

For this reason, the proper attitude of judges and their appropriate conduct, supported by knowledge and experience, constitute the best guarantees that rights will be observed and have fundamental significance for the social understanding of justice. Judges therefore have a duty to respect the office of judge and to use their best endeavours to maintain and strengthen public trust in the judicial administration of justice.

It would be irresponsible and improper not only for a judge's conduct to lead to a breach of the right to due legal process or undermine public trust in the administration of justice and law in general, but also for his conduct to give rise to a feeling that his ability to perform the duties of his office in an honest, impartial and professional manner has been impaired or to

lead to a loss of public confidence in the office of judge.”

Referring more specifically to the role of judges, in the judicial systems of states governed by the rule of law, the European Ministers of Justice devoted their 22nd Conference in Chisinau (1999) to the “independence and impartiality of judges”. At the end of that conference, they proposed that a framework global action plan be adopted to strengthen the role of judges in Europe, and that a consultative council of judges be set up within the Council of Europe. The Committee of Ministers decided to set up the Consultative Council of European Judges (CCJE). The CCJE is the first body consisting solely of judges ever set up within an international organisation. The CCJE has adopted opinions for the attention of the Committee of Ministers: on standards concerning the independence of the judiciary and the irremovability of judges, on the funding and management of courts with reference to the efficiency of the judiciary and to Article 6 of the European Convention on Human Rights, on the principals and rules governing judges’ professional conduct, in particular ethics, improper conduct and impartiality.

On 13th October 1994 the Committee of Ministers of the Council of Europe adopted Recommendation No R (94) 12 on the Independence, Efficiency and role of judges of the Council of Europe. This Recommendation is of fundamental importance, not only because it is based on the wishful thinking of politicians to overcome all the practical problems and gaps gathered by national reports and the experience of decades. First of all it is derived from and based on Article 6 of the European Convention on Human Rights, which provides that everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Doubtless nearly every country will have a different approach to this basic European Law. However, there is also no doubt that every state must at least meet the minimum standard enshrined in Article 6 of the Convention. The Recommendation is a guideline for our various legal systems as well as a yardstick for measuring whether our respective legal system still is or will be consistent with what we have as a common basis. This far-reaching Recommendation calls upon governments to be guided by six principles when promoting an efficient and fair legal system. These principles relate to the independence of judges, their authority, proper working conditions, the rights to form associations, judicial responsibilities and the consequences of failure to carry out such responsibilities and disciplinary offences.

Efficiency of action on the part of the courts impacts upon citizens’ trust in

them. Courts must be organised to ensure this efficiency and also independence of judgment, whilst respecting the rights of citizens (see: *Pretto & Others vs. Italy, Garcia vs. Portugal*). Court presidents must organise courts, the aim of which will be to serve citizens. These changes cannot only be introduced only by amending legal provisions.

National constitutions guarantee the independence of judges, among others by prohibiting their dismissal and granting them immunity. Judges and courts must be subject to control, both by institutions and the media and public opinion. The extreme importance of this fourth power for the judicial system begins with the question posed daily in the work of a judge: “What will the newspapers say if I decide this case in this way?” The above-mentioned Rules of Conduct for Judges provide that: “A judge cannot allow anybody, for any reason, directly or indirectly, to exert an influence on his conduct or judgement. In particular, a judge cannot allow any family or social contacts, political or religious convictions or world view to exert an influence on his conduct or judgement. A judge is not subject to pressure from public opinion or fear of criticism. Criticism of judges and the court is not prohibited *per se*. However, it should be borne in mind that only substantial criticism as to merits may have an effect and it cannot prejudice the independence of judges and courts.

The option of appealing to a higher instance is the main guarantee that judgments can be reviewed. The legislature may also amend provisions, diminishing the consequences of judicial interpretation. Judges themselves are subject to controls (of course, not as to merits) by court presidents and their deputies. Disciplinary courts and judicial committees, if they function effectively, can penalise judges who breach rules of law and judicial ethics.

At the end of this part of my address, I wish to cite a statement of Mr. Philippe Abravanel, Honorary President of the International Association of Judges at a conference in Strasbourg in May 1996 dedicated to the training of judges and prosecutors:

“The judiciary is able to play an effective role only if it is independent of political authorities. The conditions of such independence are as follows:

- *All forms of interference by governments in the exercise of the judiciary’s authority, including administrative matters, must be ruled out*
- *The appointment, promotion and transfer of judges must be independent of the executive authorities*
- *Disciplinary authority over judges must be exercised by judges*

themselves

- *Judges must receive a decent level of remuneration, comparable for those working in the major courts, to that received by ministers*
- *The judiciary must have its own budget and be responsible for managing it*
- *The judiciary must be free to appoint its own staff*
- *The Head of the Judiciary must rank third-highest in State protocol*
- *The Head of the Judiciary is a primus inter pares who plays no part in the assignment of cases*

These rules always at all time in every system of law and in every country.

Police

The first definition of the modern police can be found in the Declaration of the Rights of Men and Citizens of 1789. It can be summarised by stating that police forces constitute a public power that safeguards rights and liberties and serves all. Such a public power has to be financed by public funds.

The police play a vital role in any criminal justice system, and many European countries are currently reorganising their police forces to make them a key component in the promotion and consolidation of democratic ideas and values in their societies. This also creates a need for improved international police co-operation.

In 2001, the Committee of Ministers adopted Recommendation Rec(2001) 10 on the European Code of Police Ethics. The text focuses on police ethics, the role and function of the police in a democratic society, the position of the police in a state governed by rule of law and supervision of the police. A Council for Police Matters has been created, as a permanent advisory body to monitor the implementation of the European Code of Police ethics.

Returning to the essence of this lecture, what is important from our point of view is the police's place in the judicial system, its role as an active entity in criminal procedure and, in particular, the manner in which the rights guaranteed to suspects are implemented and observed.

In connection with the conference under the title "Enhanced Criminal Law Practice" organised by The Law Society and planned to be held in London in November 2005, the Polish Task Force consisting of a judge,

prosecutor, lawyer and representative of the Bar has prepared a report presenting, *inter alia*, how the police implement the rights of detainees and suspects on remand during an investigation. At this point, a fragment of this report should be quoted:

“Detention is carried out by the police or other criminal prosecution bodies authorised under art. 312 of the Code of Criminal Procedure (CCP). Pursuant to article 244 § 1 CCP a basic condition lawfully authorising detention is a “justified suspicion” that a specific person has committed an offence. A police officer is then required to inform the detainee immediately of the reasons for his detention and of his rights and to hear him out (art. 244 § 2). Implementing the requirements of this provision, the detainee is served a notice with information about his rights. When giving the reason for detention, the police officer sets out the factual and legal grounds, including the reasons for detention with information on the offence the detainee is suspected of committing. A police officer is also required to state the basis for arrest (fear of abscondment or hiding, erasing traces of the crime). This occurs either at the time of detention or immediately after, usually when drawing up a detention protocol, as required by art. 244 § 3 CCP. This protocol is drawn up following the detainee’s escort to a police station. Pursuant to this provision, the fact that the detainee has been given information regarding his rights must be included in the protocol. This concerns informing him of his rights: to make immediate contact by available means with an advocate and to speak to him directly (art. 245 § 1), to demand that a person of his choosing be notified of his detention (art. 254 § 2 in conjunction with art. 261 § 1), to demand that his workplace, school or university (or in the case of a soldier, his commanding officer) be notified (art. 254 § 2 in conjunction with art. 261 § 3) and to submit an interlocutory appeal against detention to court (art. 246 § 1). All the rights of the detainee are listed together in the detention protocol, a copy of which is given to the detainee. Furthermore, following verbal instruction regarding the above-mentioned rights, the police officer takes statements from the detainee regarding his intentions as to the exercise of his rights and enters these statements into the protocol.

Furthermore, a detainee has the right to submit an interlocutory appeal to court within 7 days. The detainee may demand in the appeal that the grounds and legality of detention and the correctness by which it is performed be examined (art. 246 § 1 CCP). An appeal is submitted immediately to the district court for the place of detention or location of the proceedings, which considers it without delay”.

But how does this theory look in practice?

“In practice, only a small percentage of detainees demands contact with an advocate. This is due to the fact that such persons simply do not know any advocate whom they could contact, as they have never used this type of service in the past. A police officer may enable a detainee to contact an advocate only when the detainee provides, at the very least, the advocate’s surname. Although a detainee is served an advice form, apart from general information on the right to contact an advocate and speak to him directly, the form does not contain a list of advocates and their contact numbers. In Poland there are no so-called duty lawyers to whom detainees can turn for legal assistance in the event of deprivation of liberty in connection with detention. A detainees demand to be put in contact with any advocate will be refused, as he has no right to an advocate appointed ex officio. Therefore, the right to contact an advocate is most frequently exercised by detainees who often come into conflict with the law or those who use the services of a lawyer “on a daily basis” due to their type of work or their business, and are hence able to give the personal details of the person they wish to be contacted.

Where such details are given, the police generally allow the detainee contact with such an advocate, “by available means”. This is almost always by telephone or fax. The detainee may also demand to speak directly with the advocate. The detaining person may demand to be present during such a discussion (art. 245 § 1 CCP), which is regarded as controversial by lawyers. In particular, a large percentage of advocates believe that this provision hinders implementation of the right of defence. In practice, police officers rarely “do not demand” to be present during the discussion between the detainee and his advocate, which is dictated by the “interests of the investigation” and the need to ensure the proper course of proceedings, which are usually in their initial stage. The decision in this regard is not subject to appeal.

As can be seen, the practical implementation of the right of defence encounters serious limitations during the detention phase.

The advice sheet, receipt of which the suspect confirms with his signature, does not set out how the right to the assistance of defence counsel can be exercised or how to provide a power of attorney to an advocate to act in the case whilst detained. At this stage of the proceedings, a detainee who is ignorant of applicable legal provisions receives no written information on the possibility to apply to court for defence counsel to be appointed. Hence, exercise of the right to legal assistance requires the detainee to have established contact with an advocate prior to detention. In this respect, the possibility of forming direct contact with an advocate during this phase of proceedings appears significantly limited.

In practice, a detainee is most often forced to rely only upon the

information provided by the detaining body, usually police officers. Meanwhile, according to advocates, police are disinclined to put the detainee in contact with a lawyer. This disinclination arises from the fact that, in the opinion of police officers, a discussion with an advocate may hinder the preparatory proceedings, e.g. following a discussion with a lawyer the detainee may refuse to provide any explanations. In the meantime, the role and significance of the first interrogation is highly significant for the course of further proceedings in the case. Case law shows that detainees do tend to confess to having committed an offence during the first interrogation, counting on lenient treatment, following suggestions made to them by the interrogating body. During interrogation, the police often suggest that if the suspect remains silent and fails to confess, it will turn against him and he will be arrested on remand. As a result, detainees often make statements and confess their guilt due to fear of arrest on remand. It frequently happens that having such irrefutable evidence as a confession regarding commission of an offence, the prosecution body makes no further diligent attempts to conduct evidence gathering proceedings or check other lines of inquiry in the case. Cases are commonly noted in which the detainee revokes his previous statements when charges are filed, claiming that certain suggestions were made to him. This situation requires that the court conduct further, often time-consuming, evidence-related activities, as it is bound by a requirement to establish the material truth during the proceedings. Often it is impossible to adduce any such evidence due to flux of time. The shortcomings of such a situation (including for the accused) appear obvious.

A police officer usually informs the detainee that he has the right to one telephone call. If the detainee has contact with an advocate, he may notify defence counsel in exercise of this right. However, it must be emphasized that the detainee often prefers to inform his family rather than an advocate. The time of detention adds to this problem. If it is night-time or evening, advocate chambers are closed and the detainee does not always have the home telephone or mobile number of an advocate. The lack of an “advocates for detainees” system and lack of a list of advocates whom detainees may contact means that even if the detainee has contact with an advocate, he has no guarantee that the given advocate will be able or want to contact the detainee (in particular immediately), or come for a visit, take on the case and provide advice.”

This example of the statutory rights of the police and their practical implementation shows that the police is, on the one hand, a significant component in the administration of justice in a broad sense and, on the other hand, bears particular responsibility, in particular with regard to compliance with procedural rights to which defendants are entitled. Therefore, one cannot overestimate the role of defence counsel who,

performing their obligations appropriately, should ensure that the suspect's rights are not restricted in any way.

The contributions of the above three entities: the lawyer, the court and the police to the acceptance of the rule of law throughout Europe cannot be overvalued. This is not, however, a time to complacency and there is no time to rest. Serious problems still exist in some parts of Europe. A freely elected parliament and countries' declared acceptance of the rule of law are only the first steps towards making the avowed intentions a reality. Institutions and cultures need to be put into place if this is truly to be the case. In countries which maintain democracy and the rule of law, attachment to these fundamental values must find expression in the whole constitutional framework which regulates the relationship between the lawyers, the courts and the police.