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**Justice in Times of Austerity –  
Safeguarding the Efficient Protection of  
Rights**

Check Against Delivery  
Seul le texte prononcé fait foi  
Es gilt das gesprochene Wort

Seminar of the General Council of the Bar

**London, 20 June 2011**

Ladies and Gentlemen,

It is a pleasure to be here today in this splendid Hall, home to so many distinguished lawyers over the ages, and none more so than Thomas More, that great English lawyer and defender of universal values, who went on to become governor of Lincoln's Inn.

It is a place where many legal discussions and debates took place. I am sure that today's conference has its place among them. The subject "*Justice in times of austerity*" has certainly been well chosen because these are real difficult times in which we live. I would like therefore to share some of my thoughts on how access to justice can be preserved and improved, even in times of austerity.

I am aware that there is an important internal debate taking place – and sometimes even a painful debate. Let me assure you that your country is not alone in having this debate.

Inevitably the spotlight also falls on the justice sector.

It is certainly not for me, as a European Commissioner, to intervene in this national debate. I must make that much clear straight away.

But I know that as the European Justice Commissioner, I owe you an explanation and a contribution to today's discussions taken from the European perspective.

First of all, if I may, I would like to make an economic point. A well-functioning judiciary, providing effective access to justice without delays and backlogs of cases, these are matters essential to any society and modern economy. That is why we should take care to safeguard these essential guarantees. Because they are a lubricant for the wider societies in which we live. It is also not by accident that Europe's heads of state – following a proposal from the European Commission – have included justice parameters as part of the overall assessment to be carried out of the performance of Europe's economies.

The United Kingdom has long been a model for others to follow in setting the standards for guaranteeing access to justice. Your legal aid system in its present unified form dates back to 1949, which was a period also marked as an "age of austerity." Nevertheless, you built up the legal aid system and you should be an inspiration for all of us.

It is understandable that after many years, you are currently discussing how the legal aid system in Britain can be reformed, to make it work in times of ever tighter budgets and as part of a wider reform of the UK justice system.

But I would ask that in this wider debate, the European dimension is not lost. John Donne, Preacher to the Honourable Society of Lincoln's Inn, wrote the following, in some of the most famous lines of English poetry:

*"No man is an island,  
Entire of itself.  
Each is a piece of the continent,  
A part of the main.  
If a clod be washed away by the sea,  
Europe is the less."*

These very wise words should guide us – the 500 million who are part of us. That is why I am greatly encouraged by the constructive role that the United Kingdom's government has been playing in establishing a set of minimum procedural guarantees in criminal proceedings across Europe.

This is not a luxury to be cast aside when belts are tightened. The set of procedural rights that we are in the process of establishing is the foundation stone on which mutual trust between Europe's judicial systems is built.

Judicial cooperation between authorities in Member States takes place by way of mutual recognition. This means that a judicial decision, such as an arrest warrant, taken by a judge in one Member State must be recognised and executed in other Member States. For that to work properly there has to be mutual trust. And mutual trust cannot be imposed by decree.

We will only have mutual trust in Europe if each Member State can show its neighbours it has a criminal justice system that guarantees fair trials. Fair trial rights mean ensuring that an accused person has an interpreter if he doesn't understand the language, knows his rights and has access to a lawyer - even if he or she can't afford to pay for one. That might sound self evident. It is not self evident in all Member States.

EU citizens who live in other EU countries must never feel that their rights are weakened because they left home. But this is what has happened to many EU citizens, such as two British businessmen who went voluntarily to another Member State to stand trial under the European Arrest Warrant but found themselves in long pre-trial detention, and then released without charge and without explanation. Now this is exactly what must not happen in the future.

Cases like this show the crucial importance of the European area of justice – both for EU nationals living in Britain and for UK nationals living in Europe.

It is with these cases in mind that I have taken action to achieve a full set of procedural rights and establish a solid common level playing field throughout the European judicial area. Over the next few years I hope that our action in reinforcing procedural rights will strengthen mutual trust and increase cooperation between judicial systems across the European Union:

- the Directive on the right to interpretation and translation in criminal proceedings was adopted in October last year and must be implemented by Member States by October 2013;
- the Directive on the right to information about rights and about the charges, which I proposed last year, is in negotiation with Member States and with the European Parliament and I hope that an agreement can be reached this year;
- earlier this month I proposed a Directive on the right of access to a lawyer and on the right to communicate with family and consular authorities upon detention;
- and we are currently researching on the next steps which will include the protection of vulnerable suspects such as children, as well as measures on legal aid.

I know that some think in some quarters that these measures will cost fresh money. But I want to assure you all of two things. Firstly, the days of un-costed proposals, whose impacts have not been assessed, are over. All our proposals are well researched and are accompanied by a full impact assessment in which we set out the reasons for action and the potential costs. The EU law-making process does not take place in a vacuum; it follows an extensive consultation. I know that UK-based stakeholders and of course your national parliament have been and will continue to be closely involved in our work.

Secondly, let us also not forget that what we are building here are minimum procedural guarantees. This is not an optional extra. This is the basis for our society to function well.

I am pursuing a similar course of action on victims' rights. Providing minimum standards for victims of crime everywhere in Europe is a measure of necessity to strengthen confidence in the justice systems.

That is why I have recently put forward legislative proposals to ensure that around Europe, victims' needs are recognised and victims treated with respect and sensitivity. The proposals take as a model the victim support standards available in the United Kingdom which should serve as a to-do list for all other European Union nations. The aim is to ensure that no matter where crimes occur in Europe, victims can have confidence that somebody is there to take care of them.

I have also used the example, commitment and courage of Ms Maggie Hughes, a British national, as a source of inspiration throughout the legislative process. Ms Maggie Hughes, whose son, Robbie, was attacked while on holiday in the Mediterranean and is, since that time, badly injured, wrote to all European Commissioners and European Parliamentarians. She did not ask something for herself, but simply ask that another victim does not receive the same inadequate treatment.

Even in times of austerity we should not put a price tag on victims of crime. But if we do, let's make a real cost benefit analysis. The cost to society is €233 billion a year. This is a huge cost because no one has taken care of victims. I believe that the cost benefit analysis would be positive.

But access to justice not only matters in criminal law. In any cross-border case, including civil matters, access to justice can immediately get more difficult for the plaintiff or the accused than in a domestic setting.

So how can we deal with the challenge of ensuring access to justice, maintaining a high level of quality in the delivery of justice services, and keeping costs low at the same time?

We are working on several European initiatives that reconcile two ambitions: the need to look at alternative methods and tools to make justice more citizen-friendly, and the need to keep costs in check without diminishing standards.

I'm thinking of the 2003 Directive to improve access to justice in cross-border disputes in civil matters. People who do not have sufficient resources to defend their rights in court are entitled to appropriate legal aid.

But access to justice is not limited to access to courts. In fact, a range of disputes can be resolved without ever reaching the stage of judicial proceedings by resorting to Alternative Dispute Resolution (ADR). I fully agree with the Justice Secretary Kenneth Clarke that alternative ways of resolving disputes can avoid unnecessary litigation at the taxpayers' expense. Alternative methods can provide better and faster solutions than going to court and are often more suitable for resolving a conflict.

The Mediation Directive of 2008 introduces the amicable settlement of cross-border disputes in civil and commercial matters and encourages judges to promote recourse to mediation. Mediation is a viable option for "first resort". For example for situations where the parties can no longer settle their conflict themselves but where going to court would mean unnecessarily escalate their dispute. So for example in the area of family matters, mediation is particularly suitable.

Alternative Dispute Resolution can be applied to any dispute, in civil and commercial matters, including family matters and disputes between businesses and consumers. To date, 17 Member States, including the UK, have fully transposed the Mediation Directive.

Mediation and Alternative Dispute Resolution mechanisms save time and they save money and I will promote these alternative approaches in our justice policy.

In this context I'd like to mention the European Small Claims Procedure. This is a new procedure available since 2009 that is all about delivering efficient justice at the minimum of cost. It ensures effective access to justice for those with a claim in a cross-border civil and commercial case under €2,000. Perhaps I should not say so before this audience, but it even does away with the need for lawyers altogether!

Without going quite so far, in the Commission's proposal to recast the important Brussels I Regulation on jurisdiction and recognition and enforcement of judgments in civil and commercial matters, I also have sought to deliver a more efficient process. At present, much time, effort and money is wasted on the formality of exequatur, when we know that in almost all cases, it is "red tape" pure and simple. If we are looking to save money, without undermining access to justice – indeed quite the contrary – we can make a good start here. In 95% of cases, this is a mere formality and costs up to €2,000 per case or €12,000 for a complex case. Let's concentrate on the 5% of case that are a problem.

I have other proposals that are in the pipeline, such as cross-border debt recovery. 60% of cross-border debt is not recovered. That reduces trust in the system. This is a €600 million cost a year. For the Consumer Rights Directive, I have good news. There was an agreement between the European Parliament and the Council last week. A standard set of consumer contract terms can cut compliance costs of EU trade by 97% for EU-wide traders. For property rights of international couples, they can save up to €400 million a year in extra legal costs with clearer rules.

Mr Chairman, Ladies and Gentlemen,

Times of austerity are by definition times of hard choices. These are the times when difficult decisions are made and when one defines the type of society we want future generations to live in. Even when cuts are painful we should ensure that basic standards of justice are never compromised. Justice is a fundamental virtue of democratic societies ensuring a fair distribution of benefits and burdens. Without justice there would simply be no freedom and no society.