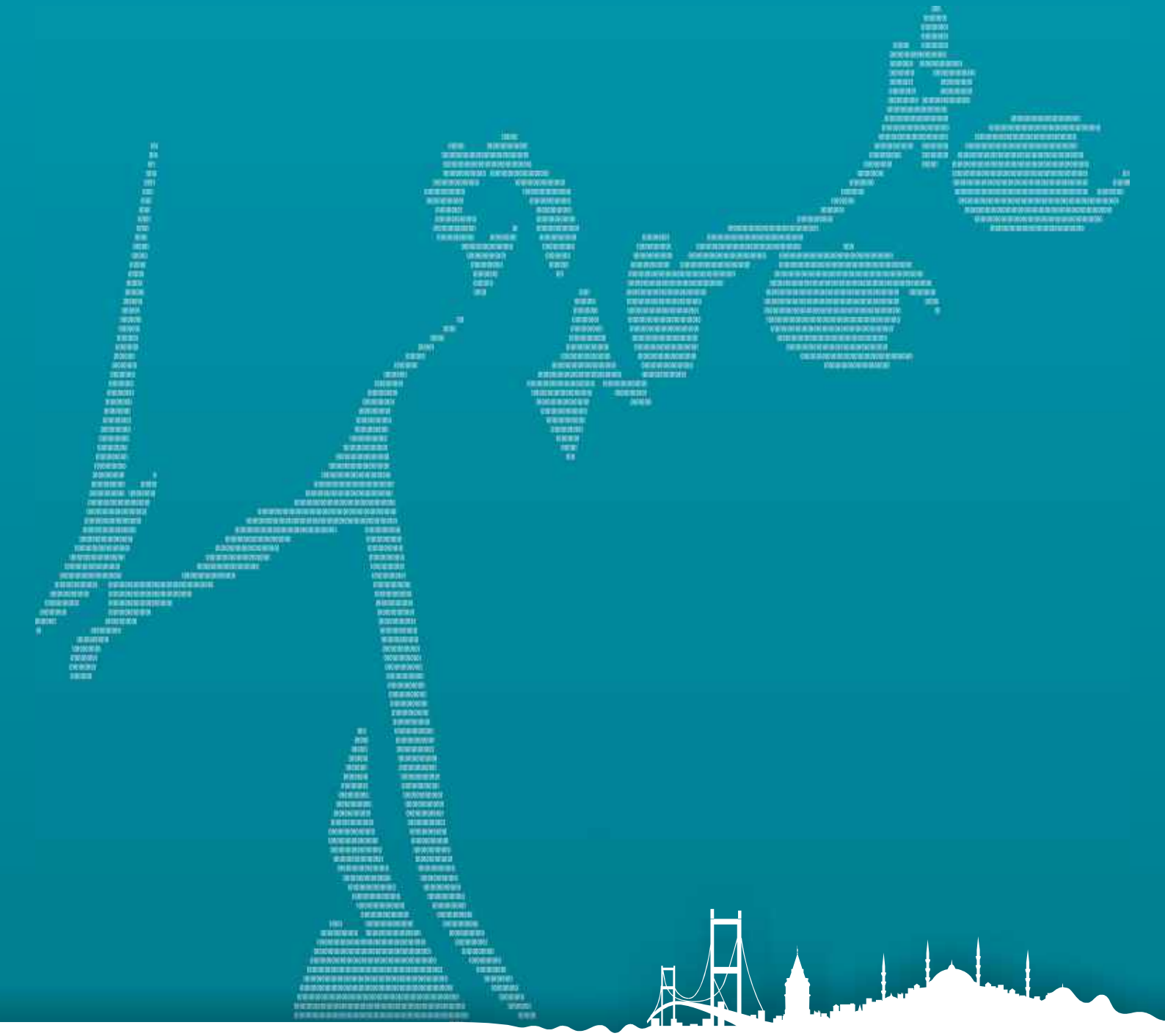
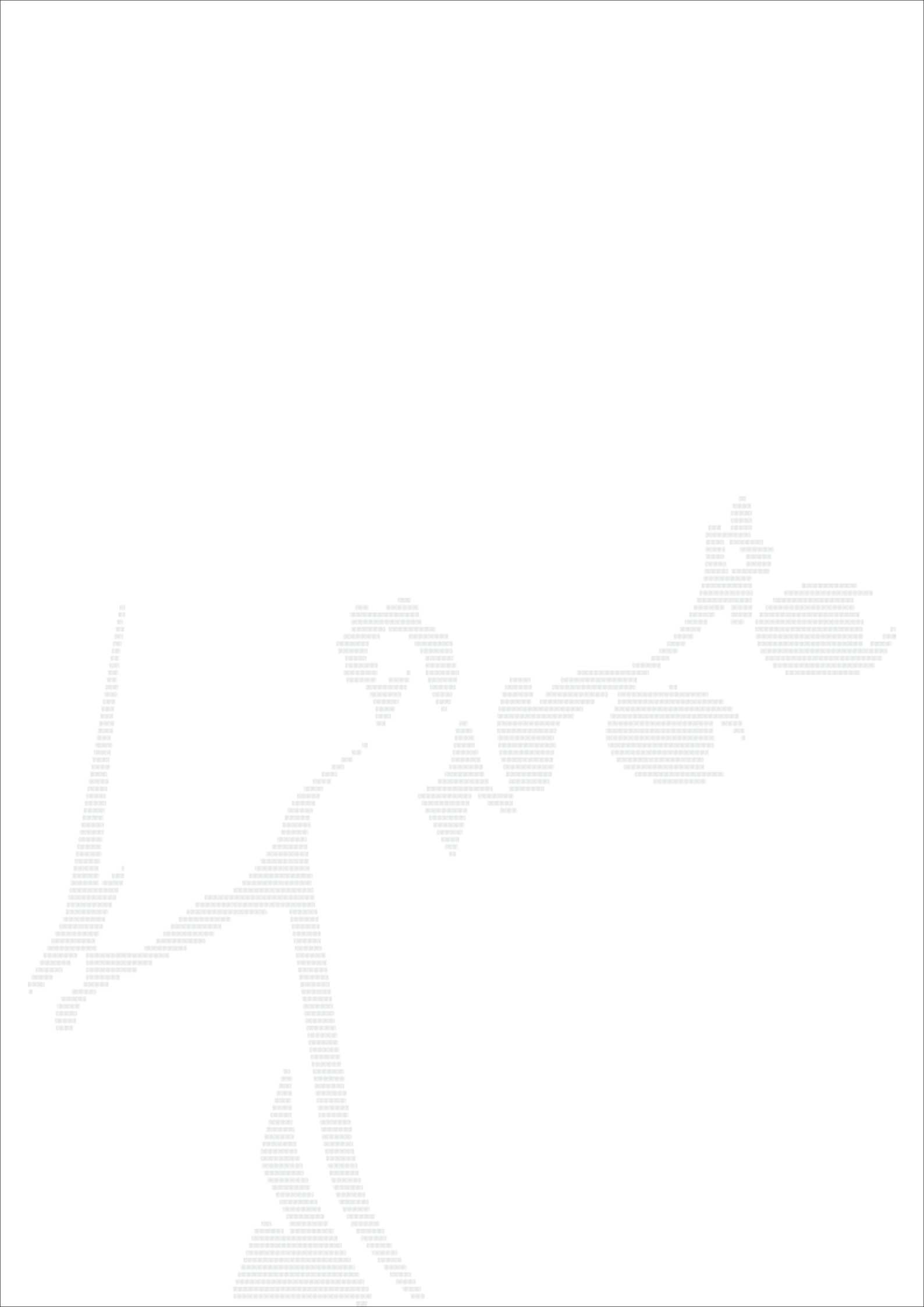
REPORT PRESENTED BY THE MINISTER OF JUSTICE OF TURKEY

30TH COUNCIL OF EUROPE CONFERENCE OF MINISTERS OF JUSTICE

MODERNISING JUSTICE IN THE THIRD MILLENNIUM

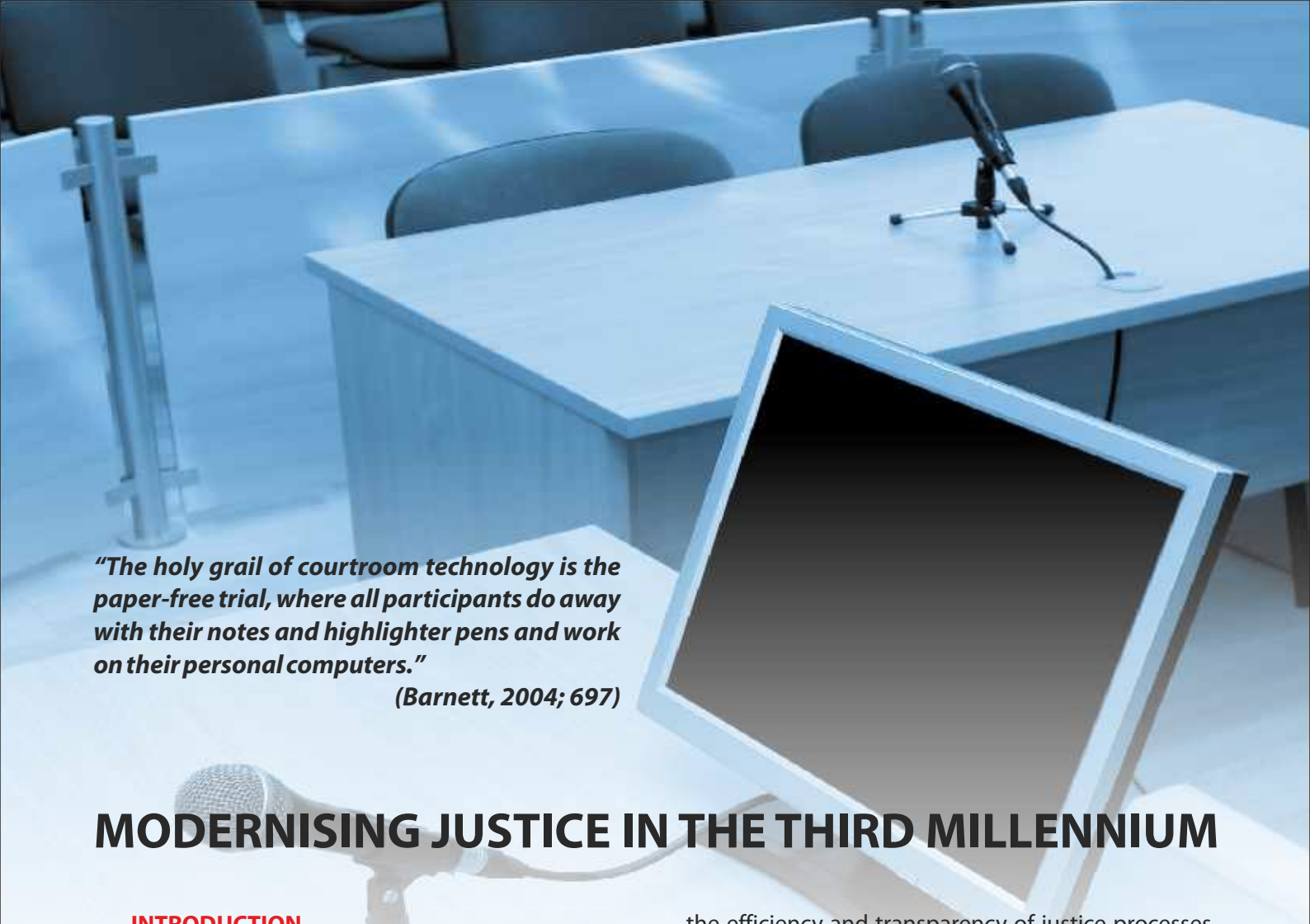
24 - 26 NOVEMBER 2010, ISTANBUL, TURKEY





MODERNISING JUSTICE IN THE THIRD MILLENNIUM

INDEX



"The holy grail of courtroom technology is the paper-free trial, where all participants do away with their notes and highlighter pens and work on their personal computers."

(Barnett, 2004; 697)

MODERNISING JUSTICE IN THE THIRD MILLENNIUM

INTRODUCTION

Modernity is the sum of the creative processes inherent in large-scale, continuing change, in a society, which has economic, political, social and cultural characteristics. Modernisation can be broadly summarised as a process that strives for constant innovation; is focused on change for the future; embraces the new; and promotes the establishment of rights and freedoms. Globalisation is one of the most visible consequences of modernity, stimulating enterprises and states to concentrate on modernisation (Martinelli, 2005;7-10).

The development of science and technology, industrialisation, political development, democratisation and the establishment of modern values are the essential characteristics of modernisation. In this context, modernising justice not only emphasises technical improvements but also the cultural, economic, social and political progress of the judiciary. Therefore, modernising justice has become an ambitious objective for many governments and a key component of this progress and has been the delivery of better judicial services to citizens by improving efficiency, reducing delays, and increasing transparency.

The use of Information and Communication Technologies (Hereafter ICT) in this context improves the efficiency and transparency of justice processes, enhancing the interaction between citizens and public authorities. According to Recommendation (2001)2 of the Committee of Ministers concerning the design and redesign of court systems and legal information systems in a cost effective manner, ICT has a powerful role to play in the modernisation of justice: improving efficiency, transparency and effectiveness, and redesigning the judicial process to manage the delivery of justice.

Modernising the justice system contributes to enhance effectiveness, efficiency, accessibility, accountably, fairness and ability to deliver timely decisions in a cost-effective manner. In order to ensure a modern system, enhancing administrative organisation of the courts and provide the relevant infrastructures plays a vital role for today's judicial needs. In line with new financial public management approach; performance based management and budgeting system on the basis of strategic planning has become increasingly influential for an accountable justice system. Besides, in order to better meet the increasing variety of judicial activities and workload of courts, and in order to serve the users of the courthouse, designing efficient, effective, and innovative facilities and justice buildings have been reconsidered in terms of modernising justice system and judicial architecture.

According to Kiskis and Petrauskas; *"failure of the judiciary to adopt ICT risks to solve the existing problems of the system of justice and might even stifle the development of the information society and arrival of e-government in the country or larger judicial region. Because of resulting differences in judicial defence, it also reduces the benefits of efforts of the full unification of the legal and business environment undertaken by the Europe. It thus results in a judicial digital divide — inability of the courts to take advantage of the ICT, inability of the judiciary to serve the citizens and business entities through the ICT, as well as inability to employ ICT tools for solving legal information problems— is a major drawback for the modern information democracy"* (Kiskis-Petrauskas; 2004; 38).

Within the context of modernising justice the benefits of ICT are undeniable; moreover the interface between the computer industry and the judicial system is demonstrably crucial for the system of justice to continue to work (Kelman-Sizer, 1982; 7). In this context traditional legal principles are ill-equipped to deal with this new world (Lloyd, 2000; 40). It is also reasonable to suggest that technology has not been embraced by the legal profession with enthusiasm, making them slow to respond to these new challenges. New technologies have outpaced the legal profession because they undermine the basic assumptions of law. With the law unable to control the technological revolution, its authority has been undermined and basic principles of justice, such as the fair trial, may be in jeopardy (Weeramantry; 1998; 47).

The use of ICT could ensure better delivery of government services to citizens, improved interaction with business and industry, and empowerment of citizens through access to information. The resulting benefits of using ICT could be more efficient government management, reduced corruption, greater convenience, revenue growth, and cost reductions. It becomes possible to locate service centers closer to citizens, rather than more traditional government office-based service platforms (Basu, 2004; 112). The proper and expedient administration of justice with ICT has become one important factor in the evolution of the modern democratic state and sound economic development (Federico, 2001; V). According to Malik, ICT can play an important role in preserving social peace and facilitating economic development through the resolution of disputes, the enforcement of criminal justice, and the determination of laws (Malik, 2002; 2).

Modernising the court by the use of ICT has a very real potential to improve access to justice and the efficiency of the courts. The use of information technologies had reduced the cost of litigation for both the customer and the State and brought justice closer to the customer. Therefore in the 23rd Conference of European Ministers of Justice, London, 2000, it has been decided to take all necessary measures at national and international level to improve the efficiency and the functioning of the judicial systems, by reducing delays, exploring alternative ways of delivering legal advice and assistance, as well as increasing the use of information technology (IT) systems in the administration and functioning of justice (Resolution No.1).

As a matter of fact the use of ICT is considered one of the key elements to significantly improve the administration of justice in order to enhance efficiency, access, timeliness, transparency and accountability, thus helping judiciaries to provide adequate services (CEPEJ Study N° 7: Use of Information and Communication Technologies in European judicial systems; 5).

EUROPEAN PERSPECTIVE IN MODERNISING JUSTICE WITH ICT

Modern ICT tools were first used in the war crimes tribunals after World War II, by way of the use of film materials, photocopies and simultaneous translation (Reiling, 2006; 189). Today most European countries use different kinds of ICT systems in their judicial organisations. Diffusion of basic and standard technologies for collecting and storing information for simple office tasks started during the 1980s in Europe. European countries began to equip courts more systematically with office applications on a large scale. These initial steps formed a base for further systems, enabling people working within the courts to become familiar with ICT and increase their ICT skills (Velicogna; 2007,131).

After examining the feasibility of providing court services electronically, further automated case management and e-justice systems have been developed and implemented in many European countries. These developments include the electronic payment of fines, electronic filing, electronic means for notifying and communication with attorneys and other parties and fully-electronic trials. The aims of these projects are: to radically change the paper based infrastructure; to improve and enhance access to justice; and to reduce inconvenience and the cost of justice. Firstly court proceedings are simplified then codified into the electronic environment. Courts are open and have become functional 24 hours a day, 7 days a week, both for the consultation and the submission of documents (CEPEJ Study N° 7: 36).

Since the beginning of the new millennium Parliaments, Governments and Ministries of justice all around Europe has been confronted with the need of better integrated judicial services within Europe and more efficient organisations. The Council of Europe contributed to the promotion of the use of information technology as a tool to make the justice system more effective. In the 23rd Conference of European Ministers of Justice, the Ministers of Justice instructed the European Committee on Legal Co-operation (CDCJ) and the European Committee on Crime Problems (CDPC) to consider:

a. Means to make best use of appropriate new technologies to provide improved legal services,

b. Means to strengthen international co-operation to enable States to obtain appropriate IT applications and expertise for legal services,

c. Setting up an Internet based information centre providing a showcase of examples of "best practice" of effective laws and procedures to assist States to improve the functioning of their judicial systems.

In this context, the Council of Europe has issued many recommendations regarding the importance of ICT which aims to support and promote the quality and effectiveness of justice.

Recommendation CM/Rec.(2001)2 of the Committee of Ministers concerning the design and redesign of court systems and legal information systems in a cost effective manner indicates the powerful role of ICT in the modernisation of justice by considering that systems corresponding to the state of the art in the field of IT and law will improve the quality, speed, efficiency and effectiveness of law and justice in the member States of the Council of Europe.

Recommendation CM/Rec.(2001)3 of the Committee of Ministers to member States on the delivery of court and other legal services to the citizens through the use of new technologies states that modern ICT has become an indispensable tool for the efficient administration of European States and, in particular as regards the administration of justice, thereby contributes to the efficient functioning of the administration necessary for a well-functioning democracy. This Recommendation points out that that the growing number of computer users and electronic communications, the digitising of sound and video recording, and the introduction of more powerful information technology systems are bound to increase the use of electronic documents in the legal sector.

"Resolution (2002)12 of the Committee of Ministers establishing the European Commission for Efficiency of Justice (CEPEJ)" states that: the use of ICT shall be promoted in order to strengthen the efficiency of justice, in particular in order to facilitate access to justice; speed up court proceedings; and improve the training of legal professionals, the administration of justice and the management of courts.

Recommendation CM/Rec.(2003)14 of the Committee of Ministers on the interoperability of information systems in the justice sector recognises that information technology has become indispensable for the efficient functioning of the justice system, especially in the light of the increasing workload of the courts and other justice sector organisations.

The time management checklist adopted by the CEPEJ emphasizes that the modern justice systems may best achieve proper time management in the justice sector by the use of up-to-date technology, both for the purpose of monitoring timeframes and for the statistical processing and strategic planning (CEPEJ (2005) 12 REV; Strasbourg, 7–9 December 2005).

The compendium of "best practices" on time management of judicial proceedings report adopted by the CEPEJ indicates that the timeliness of litigation can also be improved by the use of the internet to facilitate the exchange of data and information between the courts and the parties (CEPEJ (2006)13; Strasbourg, 6 - 8 December 2006).

The checklist for promoting the quality of justice and the courts adopted by the CEPEJ consists of some measurement tools concerning to the usage of IT in judiciary such as existence of case management systems, electronic files and archiving, video conference systems, data protection, access to legal and court information and IT policies (CEPEJ (2008)2: Strasbourg, 2-3 July 2008).

The European Commission has recently adopted a Communication to the European Parliament, Council and the European Economic and Social Committee (COM-2008; 329 Towards a European strategy on e-Justice, Reference: IP/08/821; Date: 30/05/2008). According to this; "If judicial systems are to be modernised, the further development of e-Justice is crucial". The objectives of the e-justice strategy in the area of both criminal and civil justice are mentioned:

- ***The creation of a European portal designed to facilitate access to justice by citizens and businesses across Europe. It will include relevant and updated information on the rights of defendants and victims in criminal proceedings and on the remedies available before the courts of another Member State in the event of cross-border disputes. To make it possible to exercise those rights in practice, the portal will also provide guidance to find the competent court or tribunal in the relevant country. Furthermore, the portal may allow access to certain on-line procedures, already foreseen in existing European Union regulations, such as debt recovery action for small claims.***
- ***The reinforcement of judicial co-operation, on the basis of existing legal instruments. An area of major concern to the Commission will be the interconnection of Criminal Record Databases. This ongoing project allows judges and enforcement agencies across the European Union to take account of defendants' past criminal convictions. The Commission also considers other actions, concerning exchanges of information between legal practitioners (for which a specially secured network will have to be devised), enhanced recourse to videoconference (so far, little used in cross-border proceedings) and innovative translation tools, such as automatic translation, dynamic forms and a European databases of legal translators and interpreters.***

It is worth mentioning the Treaty of Lisbon which is another important step for e-justice by stressing a more comprehensive, legitimate, efficient, transparent and democratic European Union in the field of security and justice. In this context ICT is believed to enable the European Union to sustain freedom, security and justice by accelerating effective cross-border judicial cooperation. Facilitating information and data exchange among judicial, security and law enforcement authorities is one of the main goals of the European Council.

The Malmo Declaration also stresses that citizens and businesses are empowered by e-Government services designed around users' needs and developed in collaboration with third parties, as well as by increased access to public information, strengthened transparency and effective means for involvement of stakeholders in the policy process.

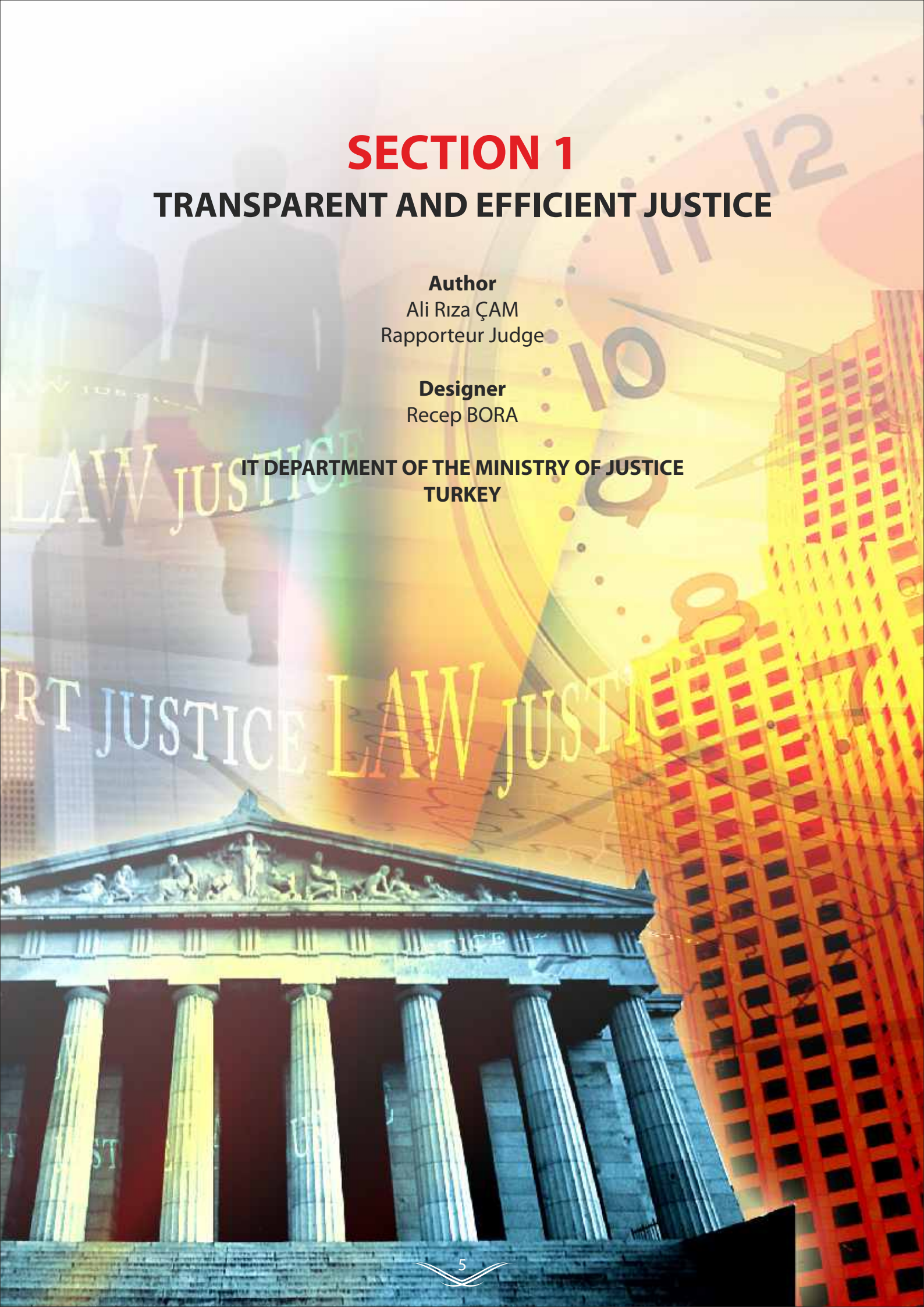
SECTION 1

TRANSPARENT AND EFFICIENT JUSTICE

Author
Ali Rıza ÇAM
Rapporteur Judge

Designer
Recep BORA

IT DEPARTMENT OF THE MINISTRY OF JUSTICE
TURKEY



PART I: THE EFFECT OF ICT FOR TRANSPARENT, EFFICIENT AND ACCOUNTABLE JUSTICE

Advances in technology, particularly the growing use of the internet, have created a borderless 'e-world' and paved the way for unprecedented and irresistible changes in every aspect of life, including justice. Since it has become a necessary duty for the judiciary to keep up with the constantly evolving technology, the use of ICT is now considered as one of the most significant elements in improving the administration of justice (Mowbray, 2000; 208). In this context, it has been attempted to transfer the daily routine of the judiciary into the electronic environment. Therefore, case management systems, computers and networks have become obligatory parts of the equipment of courthouses for better access to justice.

From the Council of Europe perspective, the transparency and effectiveness of justice have also become important elements of the justice administration of the modern age. This phenomenon stimulated the Council of Europe to encourage member States to initiate structural and procedural changes in their judiciary for the sake of transparent and efficient justice. The term of efficient and transparent justice basically requires the utmost use of ICT for all judicial proceedings such as prosecution, trials, enforcement and also litigation stages.

The concept of e-justice within the modernisation of judiciary is the most ambitious and revolutionary development in the legal world, making justice more accessible, transparent and effective. It seems clear that the use of new technologies reduces delays, improves transparency, efficiency and effectiveness and more importantly promotes confidence in the justice system (Velicogna, 2007; 129). For the Council of Europe, e-justice's primary objective is to help justice to be administered more effectively throughout Europe, for the benefit of citizens. The first hallmark of priority projects should be that they help legal professionals work more effectively and citizens obtain justice more easily.

I. TRANSPARENCY

Transparency, the absence of corruption and equal treatment of citizens are all essential features of modern judicial systems, enhancing the impartiality of the judiciary. Modernising justice can provide transparency and fairness to the judiciary thanks to electronic and instant access to the files and works of the courts as one of the most important measures to be taken. Easy electronic access to files via internet by citizens and lawyers in Turkey, giving opportunities to follow the proceedings without going to courts, is an efficient means for full transparency, making all citizens the permanent inspectors of the judiciary. The use of objective criterion for assignment of files, determined in an electronic environment also prevents corruption and promotes trust.

The online and easy exchange of information among the institutions of the judiciary and public will also increase transparency and provide a clearer picture as to priority needs, problems, achievements and failures of the judiciary (Henderson, 2006; 466). ICT enables organisations and data to be more accessible and visible (Mowbray; 2000, 207). Hence use of ICT makes the justice system more efficient and transparent, engendering greater public trust and confidence in the judiciary and respect for the rule of law (Magnus, 2004; 680). More transparent and effective systems compel people to obey laws and respect other people's rights due to the fact that rights and obligations can ultimately be enforced (Modernising Justice, Dec.1998 ,www.open.gov.uk/lcd).

II. EFFICIENCY

It is common to every judicial system that the time and skill of judges is a precious resource, which should be used effectively. They should be given the opportunity to focus on their main job, to judge, rather than tidying muddled court files, waiting for the information they need or doing things that could be done just as well by court staff or by technology (Brooke, 2004; 8). Modern software such as case management systems, electronic diaries and listing systems allow judges to do their main job more quickly and effectively, preventing delays and inefficiencies. With the electronic interchange of information, the number of employees, the re-entry of information, time which is spent on the manual engineering of information, the need for checks on data quality and the transportation time for documents/information can be drastically reduced (Hovik-Skagemo, 2002; 28). It is clearly the case that conversion from an arduous paper regime to a streamlined electronic one would enhance the efficiency and effectiveness of the courts (Sze, 2004; 50).

Basically, the use of ICT may facilitate the efficiency of the judicial system, accelerate cases without foregoing thoroughness, increase the quality of trials, facilitate access to and exchange of judicial information, standardise decision-making processes and legal interpretation across comparable cases and, finally, reduce malpractice and judicial errors (Susskind, 1998; 68-92). Some of the functions of modern case management systems, the key weapon in clearing the backlog of cases, are: the support and automation of the back-office and the administrative work of court staff; case tracking and planning; document management; scheduling of hearings; and the support of judicial activities. The case management systems automatically perform most of the physical tasks, which are hitherto very time-consuming, providing support to clerk and thus helping to improve the effectiveness of the judicial service.

Judges should be supported with the efficient working methods, and should manage their cases and monitor proceedings effectively. Some efforts have been made to produce applications to support the judges in drafting judgments. In many cases, standard decisions models are pre-programmed in the computerised systems. Data used in the course of litigation and stored in the automated registers or in case management systems (such as the name of parties, of attorneys, facts, procedure) can be automatically retrieved. Another direction that ICT investments have taken is the development of sentencing support and automated judgment systems. These systems should help improving the quality and timeliness of judgements, and lead judges to impose sentences that are more consistent over the time.

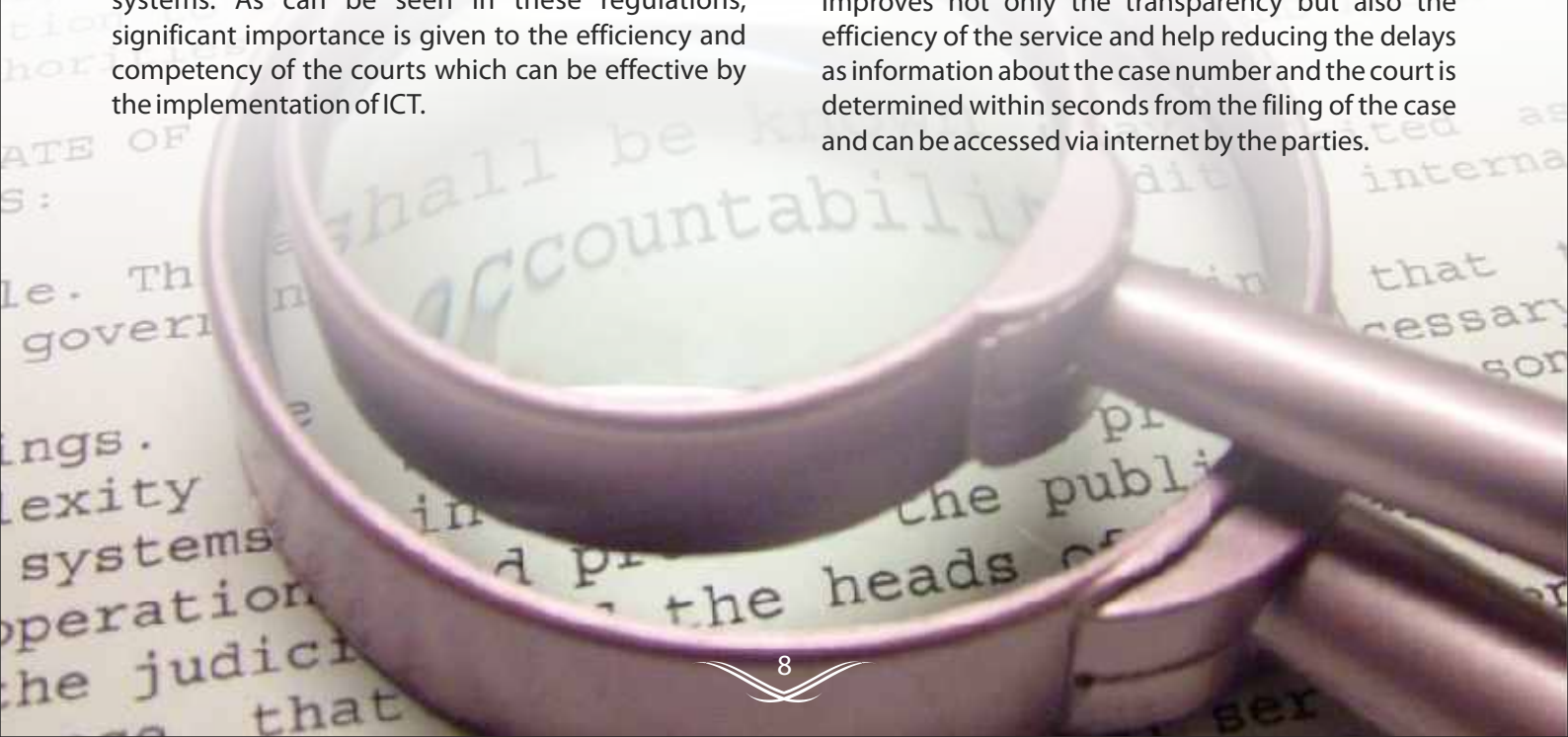
Article 6(1) of the European Convention on Human Rights (ECHR), as well as Article 47 of the European Charter of Fundamental Rights envisages; 'the right to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law'. The observance of this right requires signatory countries to have an independent, impartial, professional and efficient judiciary. Recommendation CM/rec. (2001)3 of the Committee of Ministers to member States on the delivery of court and other legal services to the citizen through the use of new technologies states that: delivery of court services through the use of ICT will facilitate the access to law as required by the ECHR. The checklist for promoting the quality of justice and the courts CEPEJ(2008)2 consists of some tools such as management of cases by the judges; management of judicial timeframes; management of files and archiving; access to legal and court information; virtual access to court; means of justice: information systems. As can be seen in these regulations, significant importance is given to the efficiency and competency of the courts which can be effective by the implementation of ICT.

III. ACCOUNTABILITY

Accountability is a vital principle of good practice, in any framework of administration of justice. The fact that the judiciary is independent does not mean that it has been granted total immunity. Confidence in courts has always depended on their ability to meet public expectations about accountability, impartiality, fairness, efficiency and effective service provision (Raine; 15). In this context corruption can be prevented by hindering the alteration and destruction of files through electronic recording validated by the electronic signature. All the irregular activities of parties and staff, even judges, can be logged and verified by the case management system. Once a file is opened by electronic means from the lawyers' office, it directly notifies clerks or judges on the system, at which point it becomes very difficult to change secretly (Fox, 2000; 119).

In addition to this ability to measure quantitative performance by ICT is another factor that can enhance accountability. Modern case management systems may: help to monitor the performance of the courts; to assist the planning and organisation of court activities and the allocation of resources; to summarise the court workflow on a daily, weekly and monthly basis; and to illustrate the court's activities through a range of graphical representational tools (Velicogna; 2007,135).

All judicial actions from the hearing, to random dispatch of files to the courts, and communication, should be dealt with electronically, helping the court to be fully in control. Automatic allocation of cases developed and integrated in the case management systems seems to provide utmost accountability within judiciary and prevent inequality among courts (for example in Turkey and Slovakia). This system improves not only the transparency but also the efficiency of the service and help reducing the delays as information about the case number and the court is determined within seconds from the filing of the case and can be accessed via internet by the parties.



PART II: THE MAIN ELEMENTS OF ICT FOR TRANSPARENT AND EFFICIENT JUSTICE

I. ELECTRONIC COMMUNICATION BETWEEN JUDICIAL AND NON-JUDICIAL BODIES

As the saying goes 'justice delayed is justice denied'. Justice becomes injustice if it is too slow. Article 6(1) of the European Convention on Human Rights (ECHR) and the corresponding case law of the European Court of Human Rights safeguards 'the right to a fair and public hearing within a reasonable time'. As with regard to its implementation, modernising justice with ICT tools accelerates judicial communication by transferring judicial processes into the electronic environment (Sterling, 2001; 13). Manual processes which can take days or weeks, can be done instantly by ICT such as: collecting, sharing and archiving data in different units; preparing statistics; and communication and correspondence. Electronic access to information and improved communication enables courts to use time much more efficiently and expediently. In 1997, it was revealed that the name and address of the parties could be re-entered manually as many as 12 times in different stages during the case handling process. In every stage of proceedings, data used and stored in the automated case management system (such as the name and address of parties etc.) can be retrieved or sent automatically, accelerating trials significantly by preventing data re-entry (Velicogna; 2007,136).

Online communication facilities allow parties to file their cases online and deposit the case fee electronically without going to courthouses. (VuystFairchild; 2006, 330). In the Netherlands, it is estimated that the registration of deceased persons by automated means saves 150.000 Euros a year (Hovik Skagemo; 2002, 15). In Turkey, thanks to the online communication among all judicial units, 79.559.648 Euros have been saved since the effective operation of the system in 2007 (www.uyap.gov.tr/english). Modern ICT tools enable parties, judges and court staff to have secure and easy access to all court files, data or case law in an efficient manner both inside and outside of the courtroom.

In a modern justice system, databases of internal judicial organisations, external units, and also different IT systems, should be integrated to provide access to all useful information. Authorised individuals should be allowed to access information related to cases irrespective of where the information is held, to enable sharing and open working practices. That prevents not only data duplications and discrepancies, but also provides timely information flow, reductions from hours to minutes in the time taken to perform administrative tasks, a reduction in the necessity for paper records, and ensures control of data flow. It also enables all judges, irrespective of boundaries, to safely send and receive sensitive information. In order to develop an integrated judicial system, a common set of technical standards should be used by the different organisations within it, to prevent discrepancies and duplications.

Recommendation CM/rec. (2003)14 of the Committee of Ministers to member States on the interoperability of information systems in the justice sector of the Committee of Ministers recognises that efficient functioning of the justice sector in the information age requires the legal recognition and wide use of electronic data exchanges between different organisations. According to this Recommendation "Member States should apply interoperability solutions to all relevant fields where the inter-institutional co-operation of individual justice sector organisations is vital, such as criminal and civil justice systems. Case management systems of justice sector organisations should, in particular, be prepared for delivering and receiving information from other external case management systems and providing support in the decision-making process by enabling access to a complete range of relevant databases. Member States should facilitate the interoperability of various databases by introducing such unifying measures as unique identification codes and uniform data definitions."

According to the CEPEJ (2008)8Rev1: SATURN Guidelines for judicial time management;

- The length of judicial proceedings should be monitored through an integral and well-defined system of collection of information. Such a system should be able to promptly provide both the detailed statistical data on the length of proceedings at the general level, and identify individual instances at the origin of excessive and unreasonable length.
- The timeframes of judicial proceedings have to be scrutinised through statistics. There should be sufficient information with respect to the length of particular types of cases, and the length of the all stages of judicial proceedings.
- The court managers should collect information on the most important steps in the judicial process. They should keep records regarding the duration between these steps.
- The information collected should be available, to inform the work of court administrators, judges and the central authorities responsible for the administration of justice. In an appropriate form, the information should also be made available to the parties and the general public."

II. AVOIDING/LIMITING THE OCCURRENCE OF JUDICIAL MISTAKES

The problems faced by the judiciary all over the world are complex, ranging from: enormous workloads; insufficient number of staff; missing or chaotic files; delayed cases; inadequate training; outdated equipments; inability to keep up with technological change; and lack of effective administrative support. Legal procedures are generally perceived to be protracted, expensive, complicated and ineffective by citizens, putting them off pursuing worthwhile cases in court. Such effects of an inefficient judiciary are thus detrimental to the public confidence in the judiciary and prevent access to justice. There seems little doubt that ICT may provide the tools to cope with the increasing flow and complexity of legal information and facilitate understanding of judicial decisions (Kiskis-Petrauskas; 2004, 38).

Nothing is more damaging for the judiciary than duplicated orders, the admission of lost files and the inability to respond quickly to citizens' claims due to their being made via paper-based systems (Brooke, 24.11.2004; 14). ICT support is urgently required, to transform an old fashioned, outdated, poor working judicial system, into a modern, effectively-functioning organisation which has earned the confidence of society (Oskamp, 2004; 3). E-justice can improve working practices and the interaction between courts, police, lawyers and parties, while easing information-sharing amongst them (VuystFairchild; 2006,328). It seems clear that the electronic exchange of such information system-to-system, and online data Retrieval reduces the risk of mistyping and delays (Hovik-Skagemo, 2002; 24).

ICT tools and e-justice applications can minimise the loss and destruction of documents caused by misfiling or non-filing, which can destroy public trust. Modern case management means double jeopardy is prevented. Criminal records, which are highly important in assessing offenders' personalities and whether they are entitled to release on bail or parole conditions, can be provided accurately and swiftly by electronic means.

By way of example, the Turkish e-justice system (UYAP) - the "Decision Support System" - has been developed to: make suggestions and give warnings by small pop ups on the computer screen in order to accelerate the judicial process and reduce the workload of the Public Prosecution Offices and courts; and reduce errors of fact and misleading information resulting from legal amendments and such like. In this system there are over 1.300 smart alerts functioning as an intelligent warning system (such as the requirement of a closed hearing due to an underage defendant; the impossibility of pursuing a case because of the death of accused; highlighting that the accused is already in jail; or the existence of the same case relating to the same crime in another jurisdiction…) that can be increased or decreased in number.

Forums and discussion groups in which judges can "virtually" meet and discuss about legislation, procedures and cases, have been an important development. In some cases, with the reductions of the opportunities for judges to work in panels (e.g. in the Netherlands), electronic forums and discussion groups have been thought as a tool to provide an opportunity for judges to share information and receive support which can prevent judicial mistakes while delivering justice. Judicial actors can benefit from the experiences of their colleagues and find solutions to the similar problems by forums.

III. THE USE OF ELECTRONIC SIGNATURE

A digital signature is a method of digital file encryption that facilitates verification of the integrity and authenticity of an electronic message, assuring the receiver that the document came from the sender and that the document has not been modified in the transmission process (McMillan; 50). Another best practice of modernising justice is the use of electronic signatures. Computerised communication based on electronic signature is faster, more accurate and cheaper than paper-based systems. Digital signatures can be attached to electronic documents sent by computer, fulfilling the same purpose as a handwritten signature. E-signatures can be used to perform the function of authentication of electronic documents (Orta, 2005; 59).

The digital signature is currently accepted to be the most secure technique for authenticating electronic information, and the most secure alternative for a hand-written signature (Dumortier-Goemans; 21). An electronic signature satisfies the legal requirements of a signature in an electronic environment the same as a handwritten signature in paper-based environment (Hovik-Skagemo; 20). The European Directive [Directive 1999/93/EC 13.12.1999] on electronic signatures provides that, when a handwritten signature would be recognised in a particular jurisdiction, its electronic equivalent should be also valid.

According to Multi-Annual European e-Justice Action Plan 2009-2013; "One of the essential conditions for the effective use of e-Justice across national borders is the development of uniform standards or interfaces for the use of authentication technologies and the components of electronic signatures. The Commission intends to promote a European Interoperability Framework (EIF) within the Interoperable Delivery of European e-Government Services to Public Administrations, Business and Citizens (IDABC programme [http://ec.europa.eu/idabc/]). European work on eSignature and identity[http://ec.europa.eu/ information_society/eeurope/i2010/docs/esignatures/e_signatures_standardisation.pdf] is particularly relevant in the legal field, where the authentication of acts is essential.

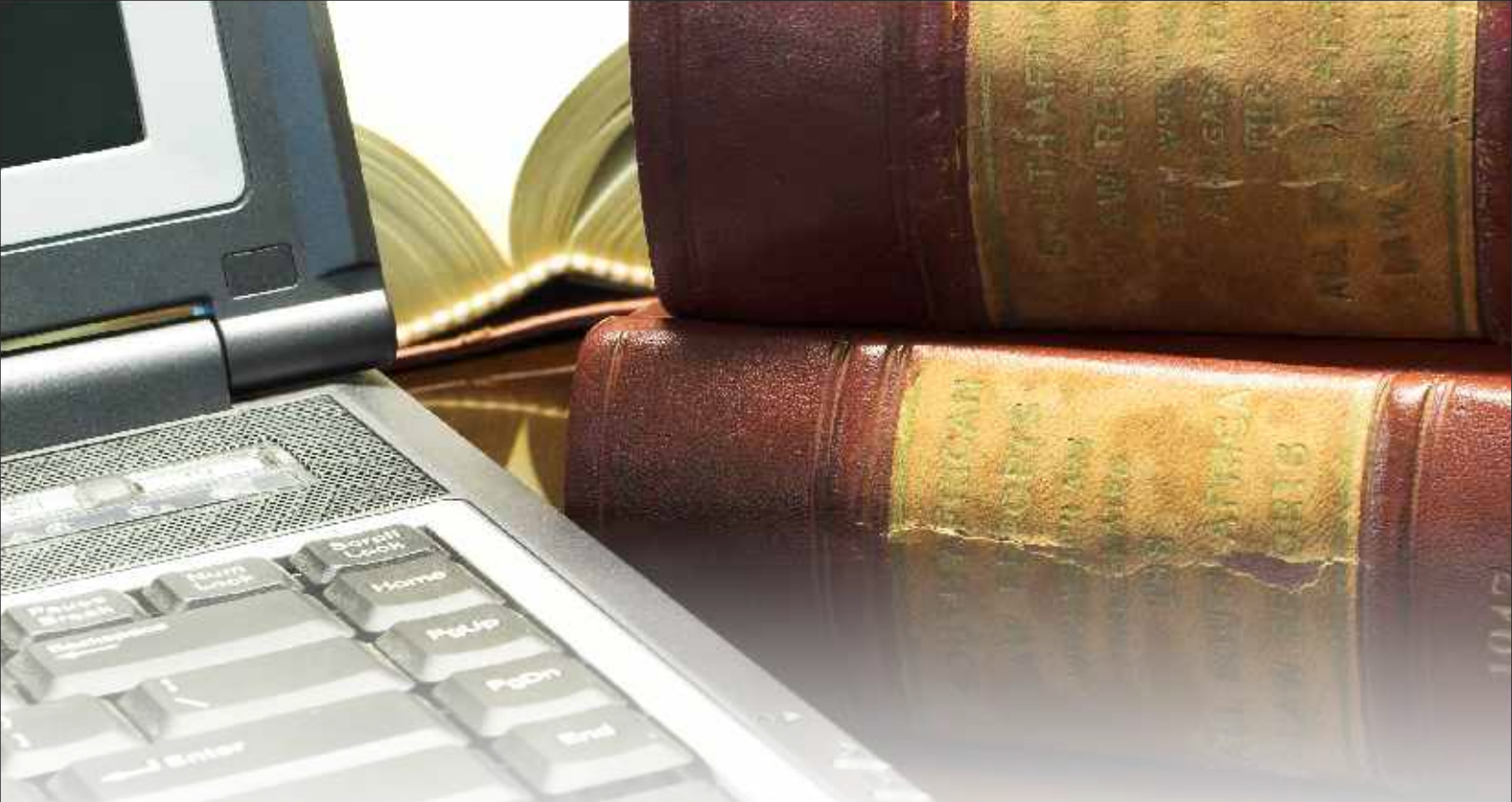
IV. ONLINE ACCESS TO JUSTICE FOR CITIZENS

Internet-based judicial services are of importance for citizens as they no longer need to go to court to make their claim for justice. In modern judicial systems supported by ICT, citizens would access their cases online, submit their claim to the court, pay their case fee and be notified of the trial date via the internet. ICT opens up the judiciary to the public, providing both general and specific information on its activities, thereby further increasing legitimacy (Velicogna; 129). According to studies carried out by the European Commission about 10 million people in European Union member States are currently involved in cross-border civil proceedings. This figure is destined to rise as a result of the increase in the movement of persons within the European Union (10285/08 ADD 1 JURINFO 45 JAI 305 JUSTCIV 119 COPEN 118 CRIMORG 87.) Compared with cross-border litigation in conventional courts, access to the courts supported by online means will be less costly, easier and more convenient for both parties (Tang, 2007;42).

According to Recommendation CM/Rec. (2001)3 of the Committee of Ministers to member States on the delivery of court and other legal services to the citizen through the use of new technologies, online cases offer: the possibility of initiating proceedings by electronic means; the possibility of taking further action in proceedings within an electronic work-flow environment; the possibility of obtaining information about the status of proceedings by having access to a court information system; the possibility of obtaining the results of proceedings in electronic format; the possibility of gaining access to any information pertinent to the effective pursuance of proceedings (statute law, case-law and court procedures). All the electronic data should flow electronically between parties, the same as judicial units.

As manual handling and distribution of paper is expensive, courts are increasingly moving to electronic systems for easier and faster communication and improved knowledge flow (Schweighofer, 2004; 55). In the near future legal practice and administration of justice will no longer be dominated by print and paper (Susskind, 1999; 292). Velicogna- Yein states that: 'When properly developed, the Internet can bring the judicial organisation into peoples' homes. As a consequence there can be a wider scope of power and therefore more independence for the judiciary.

The Internet can bring the judiciary closer to the people they serve, in terms of being accountable for the effectiveness and efficiency of their organisation (Velicogna- Yein, 2006; 11). The Draft Report on defining a new Digital Agenda for Europe: from i2010 to digital.eu (2009/2225(INI)) stipulates that all public services should be available online and accessible by persons with disabilities by 2015. Citizens expect their rights to be protected effectively without undue delay as slow justice is no justice (23rd Conference of European Ministers of Justice).



V. ONLINE ACCESS TO LEGAL DOCUMENTS

Primary sources of law, both statute and case-law, and other publicly available legal materials should be accessible online not only via an internal network for judges and other judicial staff only but also for the citizens from the web. All legal sources (general rules, procedures, practices, examples of forms or pleadings for the guidance of litigants, the explanation of terms and documents used in court process etc) should be well-archived and supplemented in a databank with user-friendly interfaces. The accuracy of decisions would be increased, for instance, if judges, who need to access case law and other legal sources particularly in specific issues, could be given the opportunity to reach the sources of previous decisions and legislation instantly (Brooke, 2000; 1-5). Likewise, thanks to web-based services, well-guided lawyers and citizens would not waste the time of court staff and judges with unreasonable claims, facilitating the early resolution of cases.

Even though the matter of providing these services free or at low cost to citizens and legal professionals is government policy, there should be a level playing field for rich and poor, as it is intended to be a public asset. It is also states' responsibility to ensure a means for their citizens to enable them access to the laws (Brooke, 28.05.2003; 12). The provision of more legal information (laws, procedural rules, judgements, and any kind of data produced in courts) to more people brings them closer to justice (Jimenez, 2004; 76). According to the Article 12 of Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents; documents, in particular legislative documents, should be made directly accessible to the public.

Recommendation CM/Rec.(2001)3 of the Committee of Ministers to member States on the delivery of court and other legal services to the citizen through the use of new technologies indicates that states should provide the text of the law both as enacted and as consolidated in electronic form readily available free of charge for the public. 'Where overriding economic circumstances requires charging, this should be limited to cost recovery. Where the presentation of published texts has been improved, thereby adding value, charging may be appropriate'.

Recommendation CM/Rec. (95) 11 of the Committee of Ministers to member States concerning the selection, processing, presentation and archiving of court decisions in legal information retrieval systems recommends that the governments of member States:

a. Bring the general principles and guidelines set out below to the attention of the persons responsible for the creation, the management and the updating of legal information retrieval systems;

b. Take appropriate steps to ensure that these principles and guidelines are applied to automated jurisprudence retrieval systems in the public sector, and to facilitate their application, and see to it that automated jurisprudence retrieval systems are objective and representative;

c. Take appropriate steps to ensure that all users have easy access to legal information retrieval systems that are open to the public."

VI. ELECTRONIC FILING

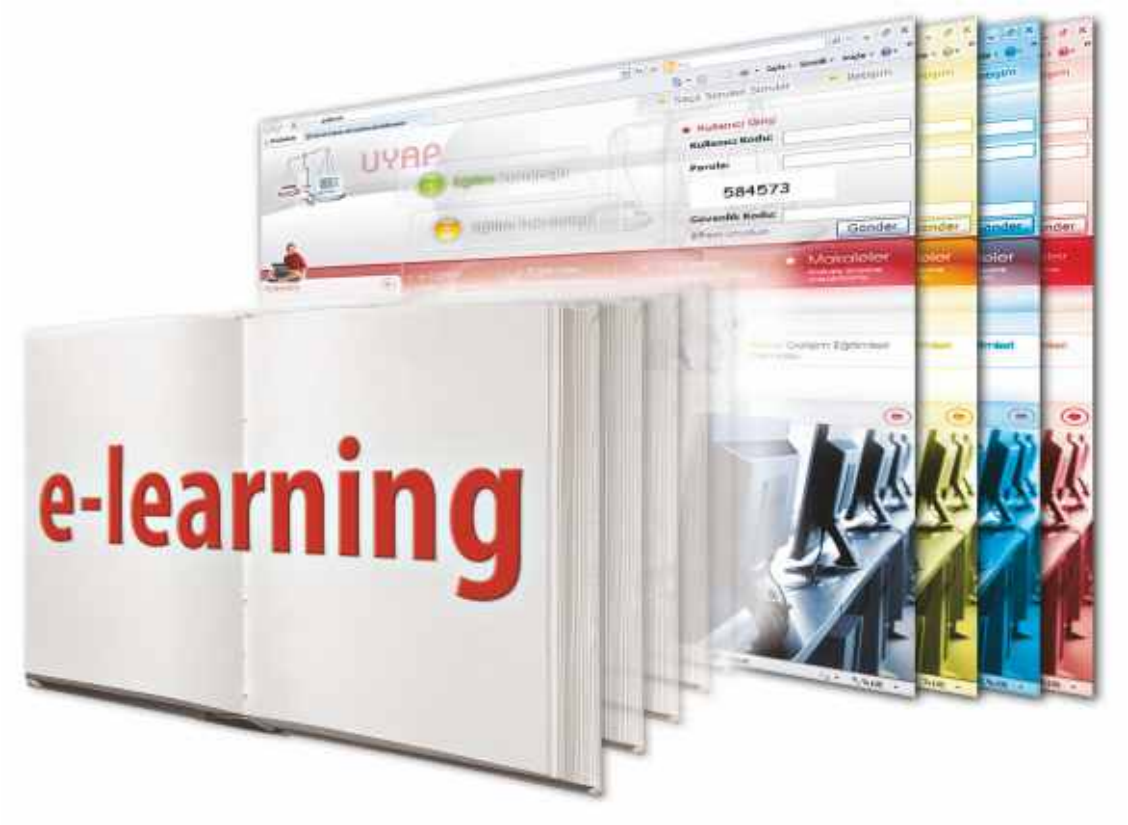
Electronic filing is defined as the process of transmitting documents and other court information to the court through an electronic medium, rather than on paper. It means online transmission and integration of data from a law firm or parties to the courts' case management system. This term also includes the electronic transfer of police data to the court. Electronic filing enables lawyers to get more of their work done with their PCs, to send and receive documents, pay filing fees, notify other parties, receive court notices, and retrieve court information. Information should be exchanged and processed automatically with the computer case management system between lawyers and courts. It consists of a document management system, a modern case management system and a network connection which must be integrated (McMillan-Walker-Webster, 1998; 13).

An electronic filing system minimises the physical movement of people and paper flow, as lawyers are able to perform filing from anywhere in the world (Sze; 2004, 55). Problems associated with handling of paper, such as non-filing and misfiling of documents, loss of case files, the inability to retrieve files instantly, and the need for huge storage places are no longer a burden for the judiciary. Electronic filing allows all data to be accurately stored and updated, and be ready at the click of a button, for more than one person concurrently (Sze; 2004, 62). Lawyers are no longer required to always go to court for their work as they can do their all court-related tasks, such as submitting claims and searching for information about cases, faster by electronic means 24 hours a day, seven days a week. Thanks to online connections to banks which enable electronic collection of case fees, handling of cash is unnecessary which prevents corruption and reduces the opportunity for bribes.

Several court offices have introduced procedures in order to scan both the documents filed to the court and the court judgements. This allows the creation of an electronic docket in the first case and archives of digital judgments in the second. A limit to this technique is the limited re-usability of the data contained in the documents. Although these procedures often generate a burden for the court, they may produce efficiencies in cases frequent photocopying is required or when a scanned document can be stored in place of a paper one (CEPEJ Study N° 7; 27).

The compendium of "best practices" on time management of judicial proceedings report adopted by the CEPEJ indicates that the timeliness of litigation can also be improved by the use of the Internet to facilitate the exchange of data and information between the courts and the parties (CEPEJ (2006)13; Strasbourg, 6 - 8 December 2006).

The "Time management of justice systems: A Northern Europe study" adopted by the CEPEJ (CEPEJ (2006)14: Strasbourg, 6 - 8 December 2006) describes measures that might be helpful in keeping time use in European judicial systems within the boundaries of the "reasonable time" - standard set out in article 6 (1) of the European Conventions of Human Rights. According to this study electronic case processing increases efficiency by 'recycling' information and by simplifying routines. If other authorities can then use the same registered information later on in the process it will result in significant savings in resources. This report also provides positive results of case management and national statistics systems used in Sweden (Vera database), Finland (Tuomas; electronic postrip system, Santra case management system and EPS) and Denmark.



VII. REDUCING THE DIGITAL GAP IN JUDICIAL SECTOR BY E-LEARNING FACILITIES

In order to keep up with scientific developments, judges, lawyers and judicial staff, who remain the main actors of every legal system, would be sufficiently trained and skilled to be familiar with ICT both at university and during their career by in or pre-service training programmes, in an era dominated by science and technology (Weeramantry; 1998, 113). All judicial actors dealing with justice should receive specific training in information technologies and data protection requirements and judges and lawyers would adopt different working methods owing to their improved access to information (London, 23rd conference of European Ministers of Justice; 2000).

According to Recommendation CM/Rec.(2001)3 of the Committee of Ministers to member States on the delivery of court and other legal services to the citizen through the use of new technologies, states should provide the necessary training and support services for the judiciary and staff involved in operating and using court and legal information systems. In addition, all legal information systems should be constructed in a user-friendly manner including effective assistance components. Before urging court staff and judges to use ICT, they should be given sufficient training to acquire ICT skills as they are the important players in every judicial system (Brooke, 13.02.2004; 713).

Guidelines, distance training methods and handbooks about the ICT tools are a good way of in-service training. Furthermore, a well-organised help desk, providing full time and professional assistance to users is another prerequisite for successful ICT implementation. As Longo mentions; 'To properly harness the technology requires a commitment to training and cultural change' (Longo; 8).

E-learning facilities seem to be a more appropriate solution to reducing the digital gap amongst lawyers. As experienced in the implementation process in Turkey, more than 60.000 staff, judges and prosecutors have been trained by distance learning so far. Thanks to e-learning, as the modern way of disseminating new IT projects, it has saved time, labour costs, and the cost of more traditional methods of training. As a good example; 25.644.318 € have been saved by the Turkish judicial system, through the use of distance training methods (http://www.uyap.gov.tr/english/savings/savings.html).

According to the Recommendation CM/Rec. (2003)14 of the Committee of Ministers to member States on the interoperability of information systems on the justice sector; Member States should take measures to promote the training of lawyers and other personnel of justice sector organisations in matters related to the application of information technology. Incentives for the personnel of justice sector organisations should be created to encourage them to use information technology applications in their daily work.

VIII. THE USE OF ICT TO IMPROVE INTERNATIONAL CO-OPERATION

In the 23rd Conference of European Ministers of Justice (2000, London) the Ministers indicated that a successful strategy to improve the efficiency and the functioning of the judicial systems in Europe requires a firm commitment by States to work together in order to find solutions to their common problems. According to Rec. (2003)15 of the Committee of Ministers to member States on archiving of electronic documents in the legal sector, member States should encourage the uniformity of document formats used in the legal sector and it should be ensured that these formats are open, internationally standardised, permit subsequent data migration, and allow processing in different languages. Standardisation improves data quality and prevents the discrepancy that commonly arises in the use of different form types. (Velicogna; 2008, 136).

Online connection between national portals would play a vital role in efficiently realising these priorities and to make judicial procedures more effective and secure throughout Europe, rather than using conventional methods. Recommendation CM/Rec.(2001)2 of the Committee of Ministers to member States concerning the design and redesign of court systems and legal information systems in a cost effective manner confirms that the integration of ICT systems will improve the quality, speed, efficiency and effectiveness of law and justice in the member States of the Council of Europe. Harmonisation of procedural rules, integration of information systems, cooperation and interoperability of judicial services are the main potential benefits of e-justice. It is also necessary to lay down procedures for choosing the technical standards that could be used to enable Member States' systems to be interoperable. Some basic standards and main requirements determined by the Council of Europe can motivate and urge member States to modernise their judicial systems in an upward and consistent level (Ander son_Apap, 2002; 19) .

According to Recommendation CM/Rec.(2003)14 of the Committee of Ministers to member States on the interoperability of information system in the justice sector:

- "Member states should adopt an integrated approach to the introduction of document and communications standards in the justice sector to enable data to be assembled in an agreed and structured way.
- Interoperability can nevertheless be achieved by using more than one data standard since the adoption of a single standard may not be always possible. In this respect, member States should follow the development of the leading market de facto standards rather than attempt to create distinct standards for the justice sector.
- In particular, member States should pay attention to the development of mark-up languages as promising emerging document and communication standards in the justice sector."

The Project on effective practical tools to facilitate judicial co-operation in criminal matters currently examined by the CDPC, has the very practical aim of facilitating the implementation of Council of Europe standards on judicial co-operation in criminal matters for practitioners (judges, prosecutors, central authorities, etc.). For this purpose, standard model request forms for mutual assistance requests in criminal matters will be created and customised according to the requirements of each member state. These forms will be accompanied by guidance to practitioners. By ensuring that mutual assistance requests include all relevant information from the outset, these tools will facilitate a prompt execution of the requests. They will also reduce delays in criminal proceedings with transnational elements, ultimately fostering compliance of member States with their obligations under Article 6 of the European Convention on Human Rights.

IX. PROTECTING DATA IN AN ELECTRONIC JUSTICE SYSTEM

The Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data ("Convention 108") is an achievement common to European and non-European states. It was opened for signature on 28 January 1981 and will celebrate its 30th anniversary on 28 January 2011. It defines a series of common core, legally binding principles that have become universally recognised. Being drafted in a simple and technologically-neutral way, the fundamental standards contained in Convention 108 remain valid.

Its strengths are:

- Its legally binding force;
- Its cross-cutting scope of application. Convention 108 protects against privacy intrusions by public and private authorities, both in the off-line and on-line worlds;
- A comprehensive legal framework for the transfer of personal data among countries that have ratified Convention 108;
- A platform for multilateral co-operation through a conventional committee, where all states parties are working together on an equal footing, exchanging ideas and best practices, as well as developing new standards.

Convention 108 and its additional protocol are already benchmarks for more than 40 states in Europe. Being drafted with the clear intention to associate non-European states, it is the only existing international legally binding instrument which has the potential to be applied worldwide. The Council of Europe's Committee of Ministers adopted on 2 July 2008 a decision calling for accession by non-European states with the required data protection legislation. This decision followed similar calls from European and international privacy and data protection authorities. On 10 March 2010, the Committee of Ministers encouraged the modernisation of Convention 108 with a view to deal with challenges for privacy resulting from the use of new ICT as well as strengthening the convention's follow-up mechanism.

According to Recommendation CM/Rec. (2003)14 of the Committee of Ministers to Member States on the interoperability of information systems in the justice sector, justice sector organisations should establish procedures to monitor and control potential exposure to risks arising from the misuse or failure of their information systems. These procedures should include security guidelines ensuring control of access to the various levels of their information systems. Member states should, where appropriate, promote the application of cryptography in the justice sector to address some of the risks inherent in the digital media to secure electronic communications between various justice sector organisations. Member states should also widely implement Public Key Infrastructure (PKI) with respect to the justice sector organisations to ensure message integrity and non-repudiation as well as confidentiality through the ability to authenticate the recipient or sender of the message and verify electronic signatures with electronic certificates issued by trusted intermediaries.

In the European Union part the most important regulation is the European Union Directive 95/46/EC – The Data Protection Directive; member States shall protect the fundamental rights and freedoms of natural persons and in particular their right to privacy, with respect to the processing of personal data. Member States shall neither restrict nor prohibit the free flow of personal data between member States for reasons connected with the protection afforded under paragraph first. Another important regulation on that issue is Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector, namely directive on privacy and electronic communications. According to Directive's first article, this directive harmonises the provisions of the member States required to ensure an equivalent level of protection of fundamental rights and freedoms, and in particular the right to privacy, with respect to the processing of personal data in the electronic communication sector and to ensure the free movement of such data and of electronic communication equipment and services in the Community.

With regards to Turkey Legislation in that issue, Law regarding the Protection of Personal Data The Council of Ministers conveyed the Draft Law on the Protection of Personal Data to Turkish Grand National Assembly on 24 April 2008. This law aims at preventing unlawful processing of personal data by electronic or other means. By-Law on the Personal Information Processing and Privacy in the Telecommunications Sector (6. Feb. 2004) has been adopted in order to define the procedures and principles related to guaranteeing personal information processing and protection of privacy in the telecommunications sector. In the meantime, a clause was added and approved by Turkish Parliament to the Turkish constitution Article 20 as third clause, related with personal data protection. This added clause is expected to come into force in the near future and so privacy will be better preserved.

In addition to data protection, e-justice facilities should be secure enough to prevent hackers and third parties to have access to the files. Since criminal organisations have shifted their activities to the electronic environment, security issues should be taken seriously. A web-based service through the internet and connection to other external organisations, in which an unknown level of security implementation exists, creates a risk to the integrity and confidentiality of the systems. All personal data of those who use online litigation facilities should be encrypted. All users should be reassured that all e-justice implementations are protected within robust information security principles. Appropriate security standards and sufficient firewalls need to be established in court systems (Macdonald; 2006, 11).

Digital signatures, PKI and certified mail are also thought to be essential for the security and reliability of data interchange (Velicogna; 2007, 144). In addition recovery or disaster centres should be established and regularly tested in order to prevent total crashes of the system, for any reason, which would mean a failure of the whole of the judicial system. According to Recommendation CM/Rec. (2003)15 of the Committee of Ministers to member States on archiving of electronic documents in the legal sector; member States should facilitate the use of modern security techniques to preserve the integrity of archived electronic documents, such as an electronic signature for storage media or the use of non-rewriteable storage media. All data in the system should be also backed up regularly.

X. DATA MINING

Policy makers in every judiciary need some data to evaluate the deficiency or effectiveness of the judicial systems to decide whether to make developments. In this context, data mining means; evaluation of aggregated and statistical data which is vital for future plans. Data mining provides a research capacity to policy makers to evaluate the impact of offender crime assessment tools and programmes and the effectiveness of regulations designed to reduce crimes. Statistics can be created easily such as crime maps, courts workload and performance of units. Users having the authority of access to all data at a macro or micro level can assess this data simultaneously to make policies, to highlight critical situations and alter the allocation of personnel, judges and other resources (Magnus, 2004; 679). Courts can foresee future trends and needs and take measures to increase productivity (Velicogna; 136). Data mining techniques enables policy makers to acquire a better insight into needs of the society instead of the need of politicians (Zouridis, 2001; 125-126).

According to the CEPEJ document [SATURN Guidelines for judicial time management adopted by the CEPEJ at its 12th plenary meeting; (2008)8 Rev1: Strasbourg, 10 – 11 December 2008] the length of judicial proceedings should be monitored through an integral and well-defined system of collection of information. Such a system should be able to promptly provide both the detailed statistical data on the length of proceedings at the general level, and identify individual instances at the origin of excessive and unreasonable length. The timeframes of judicial proceedings have to be scrutinised through statistics. There should be sufficient information with respect to the length of particular types of cases, and the length of the all stages of judicial proceedings. The court managers should collect information on the most important steps in the judicial process. They should keep records regarding the duration between these steps. The information collected should be available, to inform the work of court administrators, judges and the central authorities responsible for the administration of justice. In an appropriate form, the information should also be made available to the parties and the general public.

According to the another document of CEPEJ [CEPEJ Guidelines on judicial statistics (GOJUST) adopted by the CEPEJ at its 12th plenary meeting CEPEJ(2008)11: Strasbourg, 10 – 11 December 2008] developing IT use in the statistic system should enable to shorten the life cycle for submitting and processing judicial data and thus contribute to promote quality, transparency, accountability and accessibility of judicial statistics collected and processed in the member States, as a tool for public policy. Therefore, judicial statistics should enable policy makers and judicial practitioners to get relevant information on court performance and quality of the judicial system, namely the workload of courts and judges, the necessary duration for handling this workload, the quality of courts' outputs and the amount of human and financial resources to be allocated to the system to resolve the incoming workload. This contributes to facilitate comparison of data on European countries by ensuring adequate compatibility of key judicial indicators despite the substantial differences between countries (as regards judicial organisation, the economic situation, demography, etc.) so as to understand how the judicial systems function, identify common indicators for measuring activity and evaluating operation of the judicial system, bring out the major tendencies, identify difficulties and provide guidance for the public policies of justice in order to improve their efficiency and quality for the benefit of the European citizens.

Another relevant document of CEPEJ: "A new objective for judicial systems: the processing of each case within an optimum and foreseeable timeframe-Framework Programme" (2004/19REV2) stressed the necessity of appropriate statistical tools, where individual cases are registered for the states. It is said that the development of the national system managed by a central statistical department is essential as the differences between courts as regards statistical systems result in making it impossible to use efficiently the data collected, in particular as concerns the reduction of timeframes.

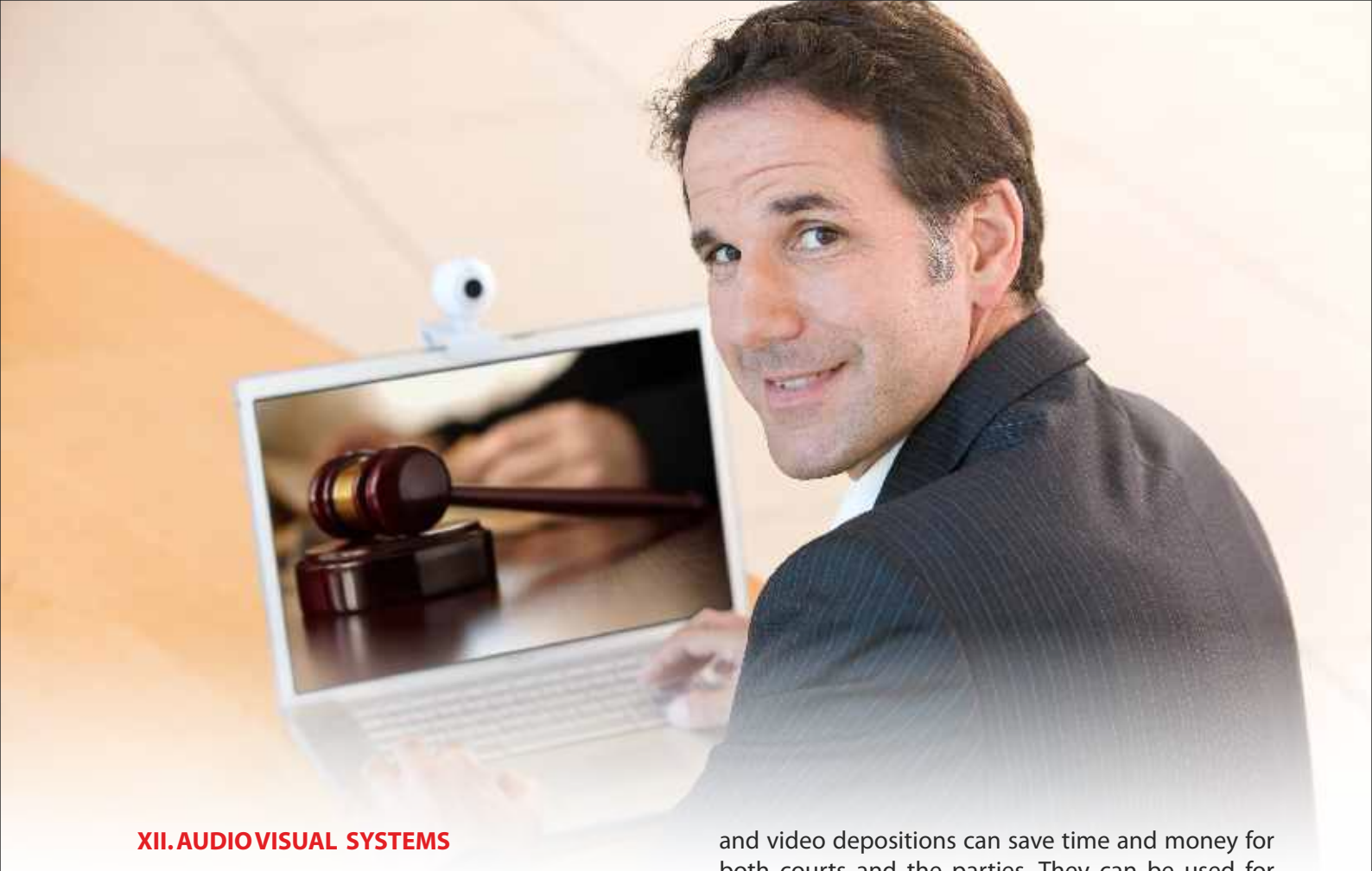
XI. CYBERCRIME

The "Budapest" Convention on Cybercrime was opened for signature in Budapest in 2001. It provides for:

- Substantive criminal law measures, including offences against the confidentiality, integrity and availability of computer data and systems (illegal access, illegal interception, data interference, system interference, misuse of devices), computer-related offences (computer related forgery, computer-related fraud), content-related offences (child pornography), and infringement of copyright and related rights.
- Procedural law, that is, measures for more effective investigations of cybercrime, expedited preservation of stored computer data and partial disclosure of traffic data, production order, search and seizure of stored computer data, real-time collection of traffic data and interception of content data. The procedural measures are to apply to any offence committed by the means of a computer system and the collection of evidence in general. Conditions and safeguards are to prevent the abuse of such powers.
- International cooperation, including general principles (related to extradition, principles related to mutual legal assistance, spontaneous information, mutual legal assistance, etc.), and specific measures (expedited preservation of stored computer data, the expedited disclosure of preserved computer data, mutual assistance regarding accessing stored computer data, trans-border access to stored computer data, mutual assistance in the real-time collection of traffic data, mutual assistance regarding interception of content data, 24/7 points of contact).

The Convention on Cybercrime is thus fairly comprehensive, not only in terms of its substantive law, but also with respect to procedural law. With regard to international cooperation it combines the traditional mutual assistance regime with urgent measures to allow efficient cooperation, and it follows the principle of subsidiary, that is, that existing bi- or multilateral agreements may be used first before resorting to the provisions of the Convention on Cybercrime.

The Convention is supplemented by an Additional Protocol covering the criminalisation of acts of a racist and xenophobic nature committed through computer systems. Further protocols could be added in the future to address emerging challenges should the need arise. The Cybercrime Convention Committee (T-CY) follows the implementation of the Convention and its Protocol and is also responsible for dealing with policy issues and legal questions arising from cooperation under these instruments. As of July 2010, the Convention on Cybercrime had been ratified by thirty European countries and the United States of America. Another sixteen countries had signed it, including states which are not member to the Council of Europe that participated in its preparation (Canada, Japan and South Africa). Chile, Costa Rica, the Dominican Republic, Mexico and the Philippines have been invited to accede. In addition to these more than fifty states, a wide range of other countries around the world have been making use of the Convention on Cybercrime as a guideline when preparing domestic legislation. The Convention on Cybercrime has received strong support by the Asia-Pacific Economic Cooperation, the European Union, Interpol, the Organisation of American States and other organisations and initiatives as well as the private sector. It is furthermore noted that many model laws, guidelines or handbooks are based on this treaty (SG/Inf (2010)4 16 February 2010). There is a need for international guidelines for law enforcement agencies to access cross-border data, ensuring respect for mutual assistance procedures, and in reducing the time needed to carry out cybercrime investigations, a subject actually considered by the Committee set up under the Cybercrime Convention (T-CY).



XII. AUDIO VISUAL SYSTEMS

Tele-conferencing and video conferencing and e-mail conferencing enable courts to take evidence from overseas, from a party in custody, or victims and witnesses outside the court, providing great flexibility in terms of location. Digital recording can be used to capture visual evidence which could be played back and viewed in the courts, making the presentation of evidence sound and accurate (Macdonald; 2006, 2). These systems can also be used in courts for evidence presented by instantaneously showing scenes of crime, films, and images of inanimate objects, photographs, documents and 'slide shows' on the screen. Computer simulations and animations can depict a complex physical event or illustrate a witness's testimony, making difficult concepts or mechanical events easier to visualize and comprehend for judges and juries (Wiggins, 2006; 185).

Using audio visual conferences and recording services is another complementary factor for the best model of the e-justice. "The time management of justice systems: A Northern Europe study" adopted by the CEPEJ, states that the needs for video conferencing will most likely increase in the future due to increasing international co-operation. Videoconferencing can enable attaining significant reductions in costs both to individual parties and the society (CEPEJ (2006)14: Strasbourg, 6 - 8 December 2006). Successful implementations of video conference and recording systems such as in UK, Sweden and Finland prove that audio conference and video depositions can save time and money for both courts and the parties. They can be used for preliminary hearings, but also in complex criminal cases to guarantee the security of the witnesses, or to avoid the transfer of persons under custody (CEPEJ (2006)13: Strasbourg, 6 - 8 December 2006.) This facility obviates a lot of the misreporting of sentencing remarks that can be encountered in every jurisdiction. It also makes the judge's and party's comments immediately available.

It has been suggested that video-conferencing could replace some of the need for physical courts, providing greater access to justice (Wallace; 2004, 27). In the case of the unanticipated absence of lawyers, juries, parties and even judges, this facility can be used to ensure attendance via their mobile phones. Formation of thousand of juries from public and reaching a verdict by voting through the Internet is possible thanks to technology. The JHA Council (doc. 10393/07 JURINFO 21) has identified several priorities for the development of e-Justice in the European Union, including improving the use of video-conference technology in cross-border proceedings, in particular concerning the taking of evidence. COM-2008; 329 has further encouraged the use of video-conferencing. Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters contains (article 9) a detailed regulation of hearings by video conference (2nd Additional Protocol to the MLA Convention (CETS 182, 2001) (http://conventions.coe.int/treaty/en/treaties/html/182.htm)

XIII.MOBILE JUSTICE: AS A TOOL FOR PROVIDING TRANSPARENCY

New, global technological developments have led to changes in e-government, and provided mobile services to citizens and businesses. It is widely believed that Mobile government is the next inevitable direction of e-government. The number of people obtaining access to information through mobile phones and mobile internet connections is increasing rapidly. The mobile access to information - anywhere any time – is becoming a daily routine, and governments will have to change their IT policies according to this demand.

The increased use of mobile devices urges judiciaries to implement new services for the swift and efficient delivery of legal information. Users want to see new services that can be delivered and accessible anywhere and anytime. Easy and on demand access to legal information via mobile phones has made it possible for all citizens to scrutinise the judiciary, compared with the past when they were largely unaware of courthouses' day-to-day activities.

In this context, the SMS judicial information system, developed by the IT Department of the Ministry of Justice of Turkey, provides a legal notification service for its citizens and lawyers. This system automatically informs all related parties, (who have cases before the Turkish Court's) by SMS, (Short Message Service, otherwise known as text messages) when any legal event, data or announcement related to their case needs to be sent. Thanks to this system, the parties no longer have to go to the courts to collect this information. This service also provides improved access for the disabled and elderly and enhances overall e-accessibility. Inviting citizens by SMS is a much more dignified and modern way for citizens, than calling them to court via a summons, or by means of security forces.

The Draft Report on defining a new Digital Agenda for Europe underlines the importance of maintaining Europe as the mobile continent in the world and ensuring that 75% of mobile subscribers are 3G (or beyond) users by 2015; recalls the necessity to accelerate the harmonised deployment of the digital dividend without compromising existing broadcast service (Vera; 2009; DRAFT REPORT (2009/2225(INI)). Therefore the functionalities provided by SMS judicial information system totally comply with the strategies of the European Union which aims to establish a high level information society and remove the gap between the justice staff and the individuals seeking justice.

SMS judicial information system could potentially be a good model for Europe providing direct benefits to the governments, citizens and businesses as in the near future it will be possible to transfer this system to other European Union member countries. Achieving this goal will result in swift notification of services for the people of the European Union about the legal processes happening in different countries. Compared with cross-border delivery of information in conventional courts, access to information in the courts supported by mobile phones will be less costly, easier and more convenient for both parties (Hunter; 2008; 6).

XIV. COMPETENT JURISDICTION FOR INTERNET RELATED ISSUES

Incompatibility or complexity of legal and administrative systems in member States can be considered as one of the main obstacles for individuals and businesses, preventing or discouraging them from exercising their rights in other states. The main objectives in a genuine European area of justice are legal certainty and equal access to justice for the citizens living in Europe, easy identification of the competent jurisdiction, clear designation of the applicable law, availability of timely and fair proceedings, and effective enforcement procedures, which can be provided with full cooperation in civil and criminal matters.

People should be given the same guarantees in everywhere in Europe and not be treated unequally according to the jurisdiction dealing with their case, even though existence of different rules. Cooperation should be improved among industry, government, law enforcement authorities, academia and civil society in order to continue to provide for a better understanding and awareness of jurisdiction issues particularly in cybercrime (EuroDIG conference). According to the Budapest Convention on Cybercrime each party shall adopt such legislative and other measures as may be necessary to establish jurisdiction over any offence established in accordance with Articles 2 through 11 and article 22 of this Convention.

Resolution no: 1 adopted in the 23rd Conference of European Ministers of Justice Delivering justice in the 21st century invites the Committee of Ministers to give high priority to the work in the field of justice and to instruct the relevant bodies within the Council of Europe, notably the European Committee on Legal Co-operation (CDCJ) and the European Committee on Crime Problems (CDPC) to consider, in their respective fields of competence, measures, in particular those indicated in this Resolution, aimed at promoting a culture of respect for law, justice and democracy, and promoting citizens' awareness of their individual rights and responsibilities, by ensuring that, in all member States, legal rights are given effect in practice, and guaranteeing that all citizens have effective access to justice. Such measures should in particular be aimed at:

a. Educating citizens as to their rights whilst at the same time making plain that they have responsibility to respect the rights of others;

b. Providing citizens with the information they need in order to enforce their rights with confidence through the appropriate judicial or extra-judicial mechanism;

c. Generating increased public confidence in the functioning of the justice system, notably by increasing its efficiency whilst guaranteeing its independence.

The European Council endorsed the principle of mutual recognition of judicial decisions and judgments, which is the basis of judicial cooperation in both civil and criminal matters, in special meeting on 15- 16/10. 1999 in Tampere (http://www.europarl.europa.eu/summits/tam_en.htm).

Regulation (EC) No 593/2008 of the European Parliament and of the Council regarding conflict between laws and contractual obligations in civil and commercial matters, regulates that a contract shall be governed by the law chosen by the parties either expressly or as clearly demonstrated by the terms of the contract or the circumstances of the case (Official Journal L 177, 04/07/2008 P. 006- 0016). Regulation (EC) No 44/2001 of the European Parliament and of the Council on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters which replaced the Brussels Convention (1968) sets up some rules concerning general jurisdiction and special jurisdiction in matters regarding to insurance, consumer contracts, individual contracts of employment, prorogation, examination, admissibility, enforcement of judgments, authentic instruments, court settlements and some exclusive jurisdictions (OJ L 12, 16.1.2001, p.1).

Regulation (EC) No 805/2004 of the European Parliament and of the Council creating a European Enforcement Order for uncontested claims allows creditors who have obtained an enforceable decision, with regard to a claim that has never been contested by the debtor, to proceed directly to its enforcement in another Member State (OJ L 143, 30.4.2004, p. 15).

Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations (Rome II) sets up a general rules:

(1) Unless otherwise provided for in this Regulation, the law applicable to a non-contractual obligation arising out of a tort/delict shall be the law of the country in which the damage occurs, irrespective of the country in which the event giving rise to the damage occurred, and irrespective of the country or countries in which the indirect consequences of that event occur;

(2) However, where the person claimed to be liable and the person sustaining damage both have their habitual residence in the same country at the time when the damage occurs, the law of that country shall apply;

(3) Where it is clear from all the circumstances of the case that the tort/delict is manifestly more closely connected with a country other than that indicated in paragraphs 1 or 2, the law of that other country shall apply. A manifestly closer connection with another country might be based in particular on a pre-existing relationship between the parties, such as a contract, that is closely connected with the tort/delict in question (Official Journal L 199, 31/07/2007 P. 40 –49).

Framework Decision 2006/783 established the rules under which a Member State should recognise and execute a confiscation order issued within its territory by a court competent in criminal matters of another Member State ((OJ L 328, 24.11.2006, p. 59)).

Decision No 1149/2007/EC of the European Parliament and of the Council of 25 September 2007 establishing for the period 2007-2013 the Specific Programme Civil Justice as part of the General Programme Fundamental Rights and Justice aims, notably: to contribute to the creation of a genuine European area of justice in civil matters based on mutual recognition and mutual confidence; and to promote the elimination of obstacles to the good functioning of cross-border civil proceedings in the Member States (Official Journal L 257, 03/10/2007 P.0016 - 0022).

Regulation (EC) No: 662/2009 of the European Parliament and of the Council of 13 July 2009 establishes a procedure for the negotiation and conclusion of agreements between member States and third countries on particular matters concerning the law applicable to contractual and non-contractual obligations; and establishes a procedure to authorise a member state to amend an existing agreement or to negotiate and conclude a new agreement with a third country, subject to the conditions laid down in this Regulation. (Official Journal L 200, 31/07/2009 P. 0025– 0030).

XV. ALTERNATIVE DISPUTE RESOLUTION (ADR)

It is believed that encouraging the use of mediation and other forms of ADR assists in the resolution of disputes and helps to avoid the worry, time and cost associated with court-based litigation thereby assisting citizens to secure their legal rights. According to Resolution no:1 adopted in the 23rd Conference of European Ministers of Justice "Delivering justice in the 21st Century"; a distinction should be made between access to justice and access to court proceedings as not all cases need to be resolved by the courts - extra judicial methods of dispute resolution can reduce the volume of cases before the courts and provide citizens with more appropriate means of settling disputes; parties should be encouraged, at an early stage, to reach an agreement and, whenever appropriate, alternative procedures, such as mediation, should be considered.

Recommendation CM/Rec.(98)1 of the Committee of Ministers recommends to the governments of member States: to introduce or promote family mediation or, where necessary, strengthen existing family mediation; to take or reinforce all measures they consider necessary with a view to the implementation of the following principles for the promotion and use of family mediation as an appropriate means of resolving family disputes.

Recommendation CM/Rec. (1999)19 of the Committee of Ministers concerning mediation in penal matters recommends that the governments of member States consider the principles set out in the appendix to this Recommendation when developing mediation in penal matters, and give the widest possible circulation to this text. These guidelines apply to any process whereby the victim and the offender are enabled, if they freely consent, to participate actively in the resolution of matters arising from the crime through the help of an impartial third party (mediator).

Recommendation CM/Rec. (2001)9 of the Committee of Ministers on alternatives to litigation between administrative authorities and private parties recommends that the governments of member States promote the use of alternative means for resolving disputes between administrative authorities and private parties by following, in their legislation and their practice, the principles of good practice contained in the appendix to this recommendation. Widespread use of alternative means of resolving administrative disputes can allow these problems to be dealt with and can bring administrative authorities closer to the public.

Recommendation CM/Rec. (2002)10 of the Committee of Ministers on mediation in civil matters recommend the governments of member States: to facilitate mediation in civil matters whenever appropriate; to take or reinforce, as the case may be, all measures which they consider necessary with a view to the progressive implementation of the "Guiding Principles concerning mediation in civil matters".

EUROPEAN UNION

The Vienna Action Plan in 1998, the Conclusions of the Tampere European Council in 1999, the European Commission Green Paper, the European Code of Conduct for Mediators and Proposal for a Directive of the European Parliament and of the Council on certain aspects of mediation in civil and commercial matters {SEC (2004) 1314} are the other main regulations to be mentioned in this context.

It is worth mentioning FIN-NET, a financial dispute resolution network of national out-of- court complaint schemes in the European Economic Area. Countries are responsible for handling disputes between consumers and financial services providers, i.e. banks, insurance companies, investment firms and others. This network was launched by the European Commission in 2001. Within FIN-NET, the schemes cooperate to provide consumers with easy access to out-of-court complaints procedures in cross-border cases. (http://ec.europa.eu/internal_market/fin-net/index_en.htm)

SOLVIT which has been working since July 2002 with the coordination of the European Commission, is another on-line problem solving network in which European Union Member States work together to solve without legal proceedings problems caused by the misapplication of Internal Market law by public authorities. The European Commission provides the database facilities and, when needed, helps to speed up the resolution of problems. The Commission also passes formal complaints it receives on to SOLVIT if there is a good chance that the problem can be solved without legal action. There is a SOLVIT centre in every European Union Member State (as well as in Norway, Iceland and Liechtenstein). SOLVIT Centres can help with handling complaints from both citizens and businesses free of charge. (http://ec.europa.eu/solvit/site/about/index_en.htm)

The ECODIR project that provides online consumer conflict resolution services stems from a university initiative supported by the European Commission and Irish Department of Enterprise, Trade and Employment. The aim of the ECODIR Project is to set up a system devoted to the electronic resolution of Internet disputes arising between consumers and merchants. Through ECODIR's Online Dispute Resolution process, a conflict born on the Internet can be resolved using the Internet. The system is designed to resolve disputes in an easy, swift and inexpensive manner. The process is confidential and voluntary (http://www.ecodir.org/about_us/index.htm)

XVI. CLOUD COMPUTING

Cloud computing is a technology that uses the internet and central remote servers to maintain data and applications, allowing consumers and businesses to use applications without installation and access their personal files at any computer with internet access. This technology enables much more efficient computing by centralising storage, memory, processing and bandwidth (http://www.wikinvest.com). This technology has been evolving rapidly and more companies and public institutions have been starting to use the infrastructure based in the cloud to offer services based on the Internet, but security still remains as one major concern under this current trend. It has not been fully trusted to cloud computing due to lack of legal certainty under the cloud environment because policies and regulation for this medium have not been yet clearly defined at the European and international level.

"Full implementation of existing tools and instruments against cybercrime, in particular of the Budapest Convention, and for the protection of personal data, using Convention 108 as the starting point will help address a number of the challenges related to cloud computing. Cooperation should be improved among industry, government, law enforcement authorities, academia and civil society in order to continue provide for a better understanding and awareness of cybercrime jurisdiction and cloud computing" (EuroDIG conference, 2010).

In this context:

- There is a need for further discussion about the criteria used to determine the laws applicable to information hosted in the clouds;
- There is a need to strengthen legal certainty on the application of data protection and international best practice for Internet service providers within the framework of cybercrime investigations;
- There was general consensus on the need to establish fair data retention policies that strike balance between investigation needs and the implementation of adequate safeguards in the field of privacy and data protection;
- There is the need for a multi-stakeholder approach to promote understanding and awareness of cybercrime jurisdiction and cloud computing and the establishment of clear obligations and responsibilities for each of stakeholder;

- There is a need for full implementation of the Budapest Convention, including the procedural safeguards and conditions pursuant to Article 15 thereof;
- There is a need to update the rules of judicial competence and jurisdiction in the field of data protection with regard to cloud-computing, ensuring a better efficiency and transparency of criminal investigations, while respecting the existing international standards on privacy and data protection; these concerns should be considered in the recently launched process to revise Convention 108"

New Digital Agenda for Europe: 2015.eu (2009/2225(INI)) calls for a study on harmonised rules within the European Union to promote a common market in cloud computing and e-commerce. The conclusions of workshop 7 of Eurodig on cloud computing for moving from fog to secure cloud can be summarised as below: Clarified roles and responsibilities of actors (including services provided to individuals acting in their personal capacity) through interpretation, guidance and possible revision of regulatory frameworks; improving and facilitating international data transfers and improving certainty as to applicable law and jurisdiction; increased transparency regarding privacy and security for customers of cloud computing services; Effective consumers' control over their privacy and the processing of their data (including deletion) and improved enforceability of consumers' data protection; Increased awareness on cloud services, privacy and contractual policies; and Increased legal certainty through the development of global privacy standards based on the Data Protection Convention 108.

PART III: THE MAIN CHALLENGES FOR THE SUCCESSFUL IMPLEMENTATION OF ICT

There are various challenges for the successful implementation of ICT projects within processes of justice modernisation essentially ranging from a lack of investment, a resistance of users based on IT inability, a slow legislative process of ICT implementation and a lack of user determination and motivation, for example. However, it has been proven in some countries that sufficient investment, strong, high level project management and determination of the policy-makers, paves the way for successful implementation of justice modernisation. As Pinetel says: 'as long as court managers, lawyers, and judges are willing to think 'outside the box' and adapt to the evolving technological opportunities, there is great and continuing potential to improve both the efficiency and the quality of operations in any court system' (Pinetel, 2004; 729).

I. LACK OF FUNDING

One of the biggest challenges to the ICT project is the lack of funding for even basic equipment. Huge expectations of investment in ICT so as to address all the problems of the judiciary have sometimes caused disappointment amongst fund raisers, (Brooke, 24.11.2004; 9). However, using the power of technology can help to solve, or at least mitigate, most of them. Funding difficulties hamper real progress in the judiciary, as spending money on justice seems extravagant by some politicians who believe that funding for the courts should come from litigants (Brooke; 2003 14). It seems clear that strong government support at any cost does speed up the process of implementing ICT within courts as introducing it to the courts is not inexpensive (Oskamp; 2004, 9). However successful implementations, such as in Turkey, Austria, Estonia, Singapore and etc. have proved that the financial support for ICT not only earned back in a short time thanks to saving from costs but also increased the value and quality of justice which cannot be weighed in money.

II. RESISTANCE OF USERS

The resistance of users to the new way of life is considered as one of the most important challenges to justice modernisation. The greatest obstacle to introducing any technological initiative in a profession is to change the mindset of its members (Sze; 2004, 50). As regards the computerisation of court process, it is the human element, namely judges, who are considered the most conservative group in the legal profession, and who experience the most difficulties in keeping up with new developments. For that reason they are either criticised or seen as obstacles to achieving e-justice implementation. To obtain their acceptance either via obligatory regulations or convincing campaigns is important because ultimately they are key users of the ICT projects in court (Sze; 2004, 51).

The inner workings of the judiciary are strictly regulated by rules: the cultural legal tradition has been formed over many years and is unfamiliar with concepts such as competition (as justice is a state monopoly). These are the main reasons for user resistance (Federico; 2001, VII). Lack of ICT skills is another issue that can be overcome by training programmes. Another is having different and individual working practices for each user, increasing the complexity of the task of e-justice which aims to provide organisational tools which require standardisation (Velicogna; 2008, 136).

ICT programs often result in new working methods and behaviours, with which it becomes difficult for judges to keep up. Furthermore judges do not like their performance to be evaluated by electronic means, for example quantitative methods, as this is believed to cause them to work faster and make mistakes (Lodder-Oskamp- Hoogen; 2001, 102).

III. INDEPENDENCE OF THE JUDICIARY

Judges further fear that using ICT could introduce a form of control over their activities by the executive body (Fabri, 2001; 128) In this case, the motivation, participation and education of judges, employees and users is fundamental, as programs that overlook factors like resistance to change almost invariably fail sooner or later(Malik, 2002, 11).

The question arises as to whether compelling judges to use ICT can be perceived to be against the independence of the judiciary. As it is regulated in every democratic system, judges and prosecutors are guaranteed a high level of autonomy by the constitutional principle of judicial independence to protect judicial decision-making from possible improper influences. In this context, a line should be drawn between being independent for delivering decisions about the content of the case and the methods of hearings and investigations. In terms of the decision-making process, ICT has no influence; moreover it makes the process easier. In terms of procedural rules, the utility of ICT outweighs the drawbacks.

As a result, it is very difficult to agree with the idea that ICT use may impair the independence of the judiciary; rather it contributes to its facilitation. It may be inferred from this point that claims of threats to judicial independence cannot be used as a pretext for ruling out the use of ICT. When the public interest and benefits of ICT are considered as a whole, judges and prosecutors cannot be given the freedom of choice to accept or reject changes which are critical for the judiciary itself. These arguments mostly arise from the elderly judges who are very experienced and effective in policy-making procedures in the judiciary. This group, with some exceptions, is against change even though it is beneficial and favours the status quo (Brooke, 24.11.2004, 10). One solution might be that these users should be convinced of the added value of the ICT tools via active campaigning, rather than compelling their use (Oskamp; 2004, 6).

IV. POSSIBLE DRAWBACKS

Some doubts arise regarding the nature of the ICT tools and whether they can replace conventional methods. Some judges believe that the use of some IT tools, for example video conferencing, might lead to an unfair trial, even considering the obvious benefits of saving time and money (Borkoswki, 2004; 686). According to such judges, video images cannot convey the some gestures and emotions of offenders or witnesses, which might be important for reaching a sound conviction. In addition the 'Confrontation Clause', which is a basic requirement in many constitutions for criminal proceedings, might be infringed (Gertner, 2004; 773). Besides, they also believe that the presentation of evidence with some ICT equipment does not give the same impression as in a live situation particularly given the inferior quality of the equipment (Brooke, 13.02.2004; 712). Furthermore, the person at the remote site may not feel a sense of being present in a court (Wiggins, 2006; 186).

In very critical cases in which direct and face to face presentation of evidence or live testimony is important and if judges feel that this evidence lacks the immediacy of live evidence, an exception to the use of ICT might be permitted, namely when a judge feels that the use of videoconferencing may endanger the course of the hearing, he or she may insist upon live evidence. Some believe that the burden of giving evidence to an inquiry would be greatly increased if every witness knew that there would be a live recording (Morton, 2004; 452). However, judges can order a trial to be held in private if the case involves issues of national security and the public can be excluded when a child is testifying in a case of alleged indecency, or for the protection of the identity of a witness (Clayton-Tomlinson; 2001; 37). The procedural rules should be clearly determined to prevent these issues.

V. UNFAMILIARITY BETWEEN LAWYERS AND ICT DEVELOPERS

As judges are unfamiliar with IT, and engineers are unfamiliar with the law, the creation of non user-friendly and impractical software often results. Moreover, there is a very high expectation amongst judicial staff, lawyers and various other stakeholders that, when an IT system is introduced in a court, it will instantly solve all its problems. As this does not happen every time they are disappointed with early results and give up at the initial stage. It should be explained to users that start up problems may be encountered during the initial period, as it is a natural result of every change.

In order to avoid the risk of expensive mistakes there need to be very strong knowledge sharing, extensive consultative discussions and collaboration between ICT experts and judicial staff. The awareness, support, tolerance and patience of users should be maintained with this degree of involvement and consultation. Although computer professionals and lawyers speak different languages they both live in a society where justice is held in the highest esteem and this can be only continued if they work together (Kelman- Sizer, 1982, 75). Productive partnerships are needed among technology developers and lawyers to identify and develop the appropriate technologies for the judiciary (Wiggins,2006; 190).

VI. CHANGES IN LAW AND ICT

In conjunction with changes in ICT, another problem that has developed is the continual amendment and revision of law, making it difficult for IT designers to adapt to these changes, as they need a period of stability to implement the fundamental systems in the first place. The use of ICT in judicial systems requires constant adjustment to procedural rules, codes and working practices, due to incessant technological changes. As Velicogna states, the recent development of ICT has blurred the boundaries of the court and traditional procedures are failing to keep up with unexpected, unforeseeable changes (Velicogna; 2007, 145). Simplifying rules and, procedures, gaining legal approval of electronic signatures and electronic documents, and the reduction of costs are of paramount importance (Kujanen, 2004; 4). Simplifying tasks for the development of on-line proceedings may mitigate users' disquiet, encouraging citizens to enter into litigation by online means, and also reducing the complexity of the task to a manageable degree. (Velicogna; 2007, 146). In addition to being based on the latest technologies to satisfy the users' expectations, ICT projects also should have the ability to embrace technological

changes in the future, in order to not to become outdated in the short term (Bauer; 2001, 66). All around Europe, legislative reforms have been enacted to change procedural codes and previous legislation in order to enable the use of computer-based technologies in place of paper. Council of Europe indications and recommendations mentioned in this report for example, have clearly played a propulsive role.

VII. ADDICTION TO PAPER

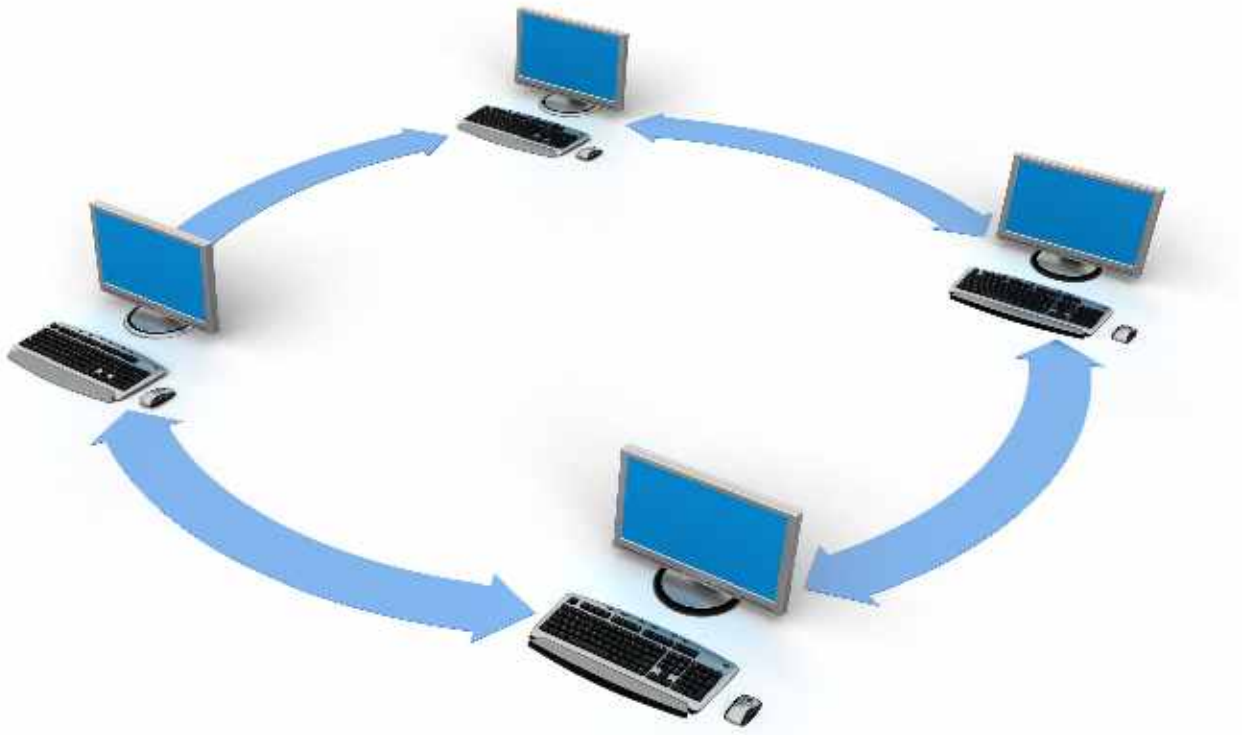
Another important drawback is the addiction of some judges to the use of paper, as most members of the profession were brought up and worked in an environment where paper was part of their everyday life (Sze; 2004, 51). They feel that paper is still indispensable and more secure in the legal process, due to their lack of information about how IT works, in particular regarding the technical guarantees of authenticity. They should be assured by the authentication methods such as safe identity verification of digital signatures (Dumortier-Goemans, 1999; 9). In addition, it is a fact that digital documents are far more durable and secure than those in hardcopy, since a digital document does not deteriorate with use. They are fast and flexible and travel effortlessly across great distances and are also far more current than their printed counterparts. At the initial stage of Turkish e-justice system called UYAP, some Turkish judges said that they do not feel comfortable when they were not able to touch or see the paper, because of being brought up in a traditional book-bound legal culture which did not much like the idea of change. Having seen the benefits of the ICT most of them become ardent defender of the use of ICT in courts. Therefore people working in judiciary should be assured that there would be sufficient time for members of the legal professions to adjust to working in an electronic environment before introducing a paperless environment (Sze; 2004, 51).

VIII. PROJECT MANAGEMENT

The system development and implementation methodology of ICT projects is another important issue which is crucial for success. Due to the great cultural shift inherent in such change, the re-engineering of business processes is required (Barnett, 2003; 3). Recommendation CM/Rec.(2001)3 of the Committee of Ministers to member States on the delivery of court and other legal services to the citizens through the use of new technologies states that an ICT strategy for the courts needs to take a careful account of the specific requirements and expectations of the judicial system. Therefore decision-making needs to be based on clear principles that properly reflect these expectations. In the course of implementing e-justice projects there are some issues to take into consideration such as: short term and long term interests; standard and custom-designed systems; automating existing procedures and the redesign of other procedures; in-house and outsourced development; and centralised and decentralised responsibility. Both options have advantages and disadvantages to be weighed up against one another, according to each country's particular circumstances.

In Recommendation CM/Rec.(2001)2 of the Committee of Ministers to member States concerning the design and redesign of court systems and legal information systems in a cost effective manner, the major steps in the management of large-scale e-justice projects are enumerated as: project management arrangements; needs assessment; architectural design; programming and installation; user testing, acceptance, training and implementation; use and maintenance; and system evaluation. Like other systems, ICT projects in the judiciary should be put into force stage by stage in order to allow users to adapt to working in an electronic environment, and to collect user feedback at each stage, to improve and optimise the whole process (Sze, 2004; 60).

If the planned system is complex, it might be a good solution to start with smaller parts of the system provided that the whole picture is not to overlooked (Hovik-Skagemo, 2002; 35). Initially judicial structures and procedures should be analysed very carefully by software creators. The needs and requirements of the users should be defined and ascertained by interviews before design, coding, integration, testing, and user acceptance testing stages. All new developments and additional improvements in the system have to be tested in pilot units thoroughly before rolling out nationwide, in order to highlight problems and issues that have to be solved before going any further (Oskamp; 2004, 9).



Users should be informed that the created software is not the last version that they are obliged to use and, on the contrary, that it will be improved according to their feedback. During the software development and implementation period, software engineers and judges should work closely and meet regularly, in order to monitor overall progress, solve problems in real time and discuss future plans throughout. There needs to be a team approach among judges, court administrators and ICT experts working harmoniously based on trust and exchange of knowledge (Hovik-Skagemo, 2002; 35). Full understanding of the impact of courtroom technology needs to be developed by a productive partnership of judges, attorneys, social science researchers, technology developers, legal scholars, and others who understand the functioning and organisation of the courts (Wiggins, 2004; 743). Whether the optimal outcome of a successful ICT project is achieved, depends on practical leadership, where more than one individual or organisation takes the leading role at different stages as appropriate, by virtue of their ICT implementation expertise. (Tan, 2005; 3).

According to Recommendation CM/Rec.(2001)3 of the Committee of Ministers to member States on the delivery of court and other legal services; in addition to many technical issues to be resolved, 'manage and change process' is a key challenge in this respect which requires dynamic and sensitive leadership. An effective system of project management should ensure: control of the project's progress; the transparency of its financing arrangements; a clear structure of responsibilities; and user participation. A knowledge management strategy should be based on the teamwork principle rather than depending on individuals, as the expertise of experienced staff must be transferred to other fellow-workers, to enable knowledge sharing (Hovik-Skagemo; 2002, 35).

In this context, efficiency, effectiveness and the capacity of ICT departments within the judicial system are the main factors required for the successful planning and implementation of ICT investment. Therefore, these units should be supported by skilled ICT professionals and qualified experts, as well as experienced lawyers, senior policy makers, judges, and intellectual IT managers who are committed to their job (Malik; 2002, 11). Since culture change requires the constant efforts of every actor in the judicial system, the participation and motivation of workers must be provided by training, open communications, clear incentives and awards. (Malik; 2002, 5)

IX. FAILURE OF ICT PROJECTS

It is an undeniable fact that there has been high failure rate in implementation of ICT projects due to the complexity of ICT solutions. In 1996 $82billion was spent in the USA on IT projects that were never implemented (Gay, 2007; 18). Furthermore, the fact that investment in ICT does not produce visible results every time is not only considered as a waste of resources, but also may limit future opportunities for innovation (Velicogna; 2007, 147). In order to prevent failures, ICT projects should be well-planned, organised and implemented. Successful introduction of ICT tools within the judiciary needs strong executive power (Oskamp; 2004, 9).

PART IV: WHAT HAPPENS IN TURKEY?

In the area of e-justice, the Ministry of Justice of Turkey has carried out a National Judiciary Informatics System (UYAP) since 2000, which is to implement a very ambitious information system between the Courts, Public Prosecutor offices and all other institutions of the Ministry. UYAP is an e-justice system as a part of e-government projects in Turkey, which has been developed in order to ensure a fast, reliable, and accurate judicial system. As a central informatics system, it covers all of the courts and other judicial units including prisons. All these units have been fully equipped with computers, document and case management systems and other updated hardware, connected to each other by a secure network and given access to legal sources such as legislation, case law, bulletins and circulars. The goals of UYAP can be stated briefly as minimizing the procedural errors in the judiciary, providing accuracy and accelerating judicial proceedings, increasing public trust in the justice system (UYAP; http://www.uyap.gov.tr/english/index.html)

After a training period for IT skills and UYAP software use, all judges and prosecutors were given laptop computers for case management and private purposes. In every 5 years these laptops are renewed. All judicial units have been given free access to the Internet. All judiciary processes, case management, trials, correspondence and transactions were transmitted into the electronic environment which enables paperless office structure. UYAP has been designed in order to improve the functioning and efficiency of the judiciary and to create an effective and less bureaucratic judicial system for the concerned institutions and individuals. All of the judicial units and agencies currently make use of ICT in their daily lives as all processes and transactions were transmitted into electronic environment.

The Ministry of Justice of Turkey prepared a "Judicial Reform Strategy" which has been approved by the government and "2010-2014 Ministry of Justice Strategic Plan" in order to restructure a new justice system on the basis of a new public management system which includes performance based management and budgeting system. Both documents encompass constitutional amendments, which took place on the 12th of September 2010, with a view to ensure an impartial and independent justice system. Those amendments and strategic objectives cover issues related to independence, impartiality, efficiency and effectiveness of the judiciary, enhancement of its professionalism, the management system and measures to enhance confidence in the judiciary, to facilitate access to justice and to improve the penitentiary system.

As for the physical infrastructure of the judicial system, the government initiated building projects for modern courthouses which are completely separated from local government buildings. Those modern courthouses are established as user-friendly for professionals and users by using modern technology. Providing and enhancing access to justice are the other objectives for building new modern courthouses.

I. THE LEVEL OF IT MATURITY

The project was started in 2000 and completed by the end of 2007. In due course, all hardware has been upgraded and also software has been improved and updated by the own project team of IT department of Ministry of Justice itself. UYAP not only integrated judicial units with each other but also with the relevant institutions. So, it is possible to access every kind of data electronically which is needed during both civil and criminal proceedings. In the trials, judges can access criminal records online according to their authority. Birth certificate registrations can also be accessed instantly online by the courts and prosecutor's offices.

All cases in Turkey's courts can be accessed electronically by the judges, prosecutors and lawyers, provided that they get online approval from the judges who are dealing with case. Land, address and driver registrations can be retrieved instantly at the beginning of the trials. Apart from all judicial organisations which are fully integrated internally, the number of external institutions that are integrated in UYAP has exceeded 27. The remote access ability of the UYAP system facilitates judges' preparation and research for trials and the writing of judgments in the convenience of their own homes. Within the project of UYAP e-learning, a central control system for distance training was established for all users according to their roles and duties. 52.605 personnel have been given opportunity to train themselves through internet by using distance learning facilities until now.

II. CITIZEN AND LAWYER PORTAL

Citizens can reach and examine their case information via the Internet and learn the day fixed for the trial without going to courts. They can submit their claims to court by using their electronic signature or mobile signature, examine their files and calculate possible amount of case fee through portal. The Lawyer Portal, which is available only for certificated lawyers who have electronic or mobile signature, to see which phase the cases are at or to provides learn the date of hearing without going to the courthouse. Lawyers can deposit case fees from their office or in Bars rooms through internet banking. They can litigate a claim or dispute to court through electronic means; review their cases via electronics means; submit their petition online via UYAP.

III. ELECTRONIC SIGNATURE

Since 2007, the use of the e-signature has begun and has increased significantly. Since September 2007, 41,669 personnel have applied for the e-signature and 38,400 of them actively use it in their daily work. A regulation was also issued that documents will no longer be circulated physically among the judicial units after 01.07.2008. The use of the electronic signature paves the way for cost, time and labour savings throughout the judicial process. By the end of 2007 all registry books have been abolished and started to be kept in the electronic environment.

IV. DECISION SUPPORT SYSTEM

With the decision support system, a unique intelligent electronic warning system, notices in labels on the screen can suggest proposals, remind or recommend some jobs to the users whenever they want or at important times by evaluating data at every stage of investigations in order to prevent basic judicial errors.

V. SMS INFORMATION SYSTEM

The SMS judicial information system, developed by the IT Department of the Ministry of Justice of Turkey, provides a legal notification service for its citizens and lawyers. This system automatically informs all related parties, (who have cases before the Turkish Court's) by SMS, (Short Message Service, otherwise known as text messages) when any legal event, data or announcement related to their case needs to be sent. Thanks to this system, the parties no longer have to go to the courts to collect this information. This service also provides improved access for the disabled and elderly and enhances overall e-accessibility. The SMS service does not replace official notifications, as it only intended to provide up-to-date basic information. The SMS information system has reduced communication costs which would otherwise be incurred in a paper-based system. Lawyers and citizens can access every kind of legal information by using their mobile phones, anytime, anywhere, enabling the utmost transparency in the judicial system (SMS judicial information system http://www.sms.uyap.gov.tr/english/).

VI. AWARDS

In Turkey, UYAP was awarded annual e-Government rewards in 2004, 2005, 2008 and 2009, organised by TÜSIAD and Turkey Informatics Foundation. In 2008, UYAP received a special mention in the "Crystal Scales of Justice" awards, presented by the EC and the Council of Europe. UYAP has been selected as a laureate in the computer world honours program held in Washington 01.06.2009 and was honoured as one of the most successful five finalists in the area of e-government projects in the world. In addition it has become the only e-justice project among the finalists. Gone beyond the state-of-the-art solutions in the field of providing public e-services to citizens, SMS information system has been awarded with the public prize of eGovernment Awards 2009 by the European Commission in the framework of the 5th Ministerial eGovernment Conference in Malmo, Sweden.

VII. INTEROPERABILITY

As for the interoperability; the UYAP database can be connected to the databases of other states to form a wider network. Achieving this goal will result in secure and swift transition of international requests such as regaratory letters, extradition matters and transfer of sentenced persons. The UYAP case and document management system and word processor, were designed to be independently used by other judicial systems. Thus, it is completely possible to transfer these main components to other countries. UYAP has transformed an old-fashioned, paper- based judicial system into a smooth functioning organisation, which is assessed by some to be the biggest revolution in the Turkish judiciary in its history.

As John Hunter observes (Head of the IT Department of ECHR), "UYAP is probably one of the most advanced nation-wide court justice systems in the world and an excellent example of best practice for national courts"(Hunter; 2008; 9). As reflected in the recent progress report on the topic of 'judiciary and fundamental rights', thanks to the UYAP, Turkey's Ministry of Justice has gained outstanding experience in the use of IT in judicial process. (Progress report 2007; http://ec.europa.eu/enlargement/pdf/key_documents/ 2007/nov/turkey/progress_reports_en.pdf p.10).

CONCLUSION

Modernising justice via ICT tools plays a crucial role in enhancing efficiency, reducing corruption, improving the quality of service delivery, and providing the community with better access to justice, by affording opportunities for citizens to interact with government (Bhatnagar; 2004, 37-60). In this context the term of e-justice within modernising justice has become a priority topic at the European level for the creation and maintenance of an independent, transparent, effective, accountable, modern and capable judicial system. It helps deal with the growing complexities of litigation and preserves the basic principles of judicial process: fairness, thoroughness, consistency, and acceptability (Mowbray; 2000, 207). ICT tools also improve working practices, facilitate the sharing of data and information, simplify and accelerate procedure, whilst providing enhanced transparency and reducing costs, thereby strengthening freedom and justice for all citizens around the Europe.

The principles set by the Recommendation (2003)14 of the Committee of Ministers are worth mentioning in the conclusion:

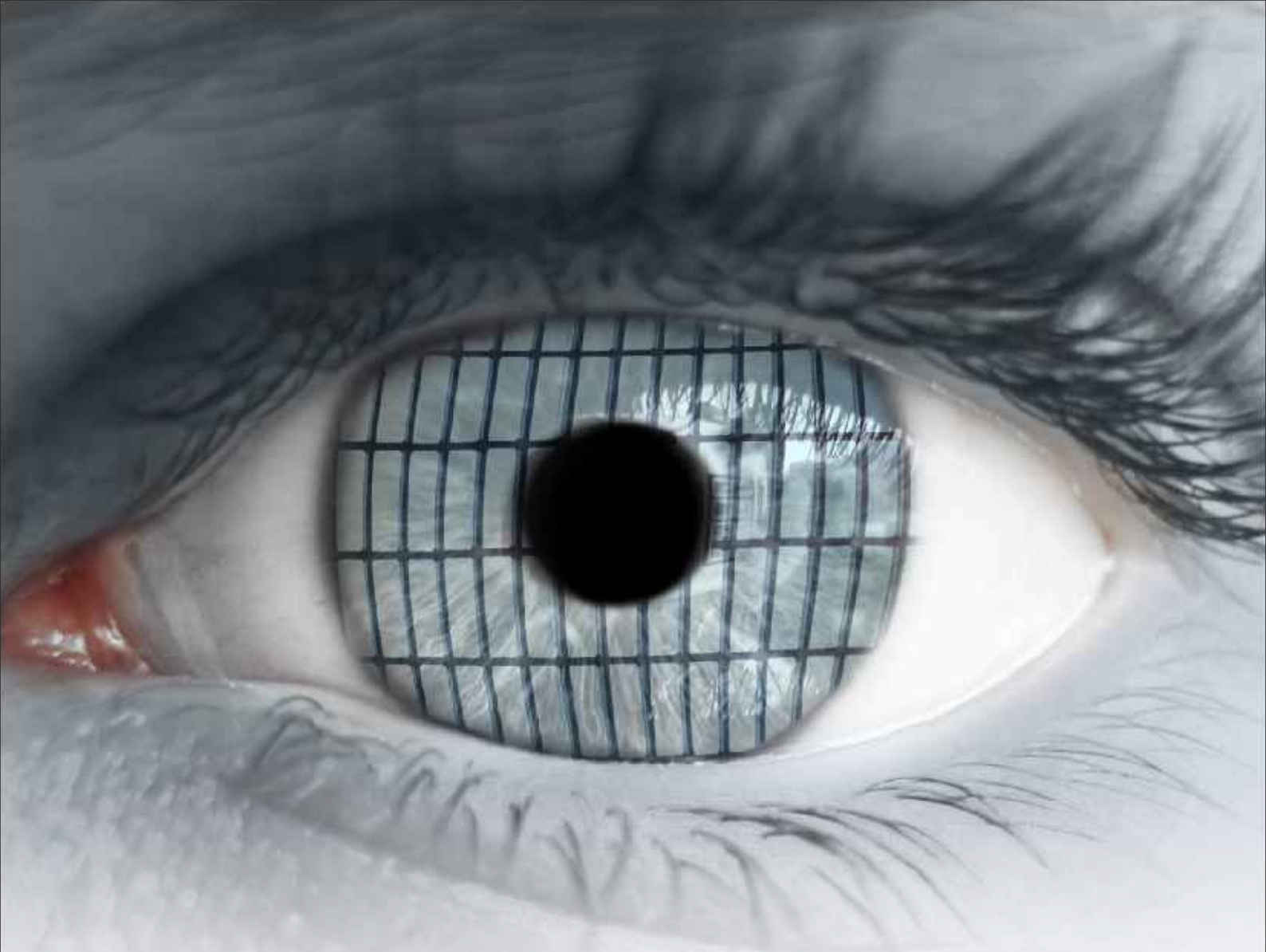
- To obtain maximum benefits from the introduction of information technology, member States should link the introduction of modern information technology in the justice sector to organisational changes to work processes of justice sector organisations.
- Member states should have an open-minded approach to modernising laws and regulations where they constrain the use of opportunities made available by the new information technologies and, in particular, interoperability.
- Introduction of interoperability in the justice sector should, however, be a controlled process. Member states should ensure that justice sector organisations identify, document and describe their work processes and monitor and control the changes introduced by interoperability

Clearly, the construction and maintenance of the modern justice system will need extensive preparation and determination, but there are already successful precedents in various countries for the use of ICT in court proceedings and, in any event, it seems inevitable that electronic processes will become part of judicial proceedings, nationally and internationally (Sterling; 2001, 13). According to Katsh, the future of law is not to be found in impressive buildings or leather bound books but in small pieces of silicon; in streams of light; and in millions of miles of wires and cable (Katsh, 1995; 4).

As Velicogna states the variety of solutions adopted by individual countries, both from a technical and managerial point of view, provides a unique insight into judicial applications of ICT and these solutions should be disseminated and discussed in-depth. There are some important areas such as conflict of laws, competent jurisdiction, cybercrime and data protection issues that need to be reviewed by the Council of Europe and other international organisations so as to provide guidance to the countries. In addition the recommendations of the Committee of Ministers regarding to e-justice should be revised and updated according to the recent changes in the law and ICT. Practical tools for mutual legal assistance in criminal matters should be developed such as checklists for requests and database with information about national law and procedures, extension of the judicial atlas to non-European Union member States.

Experience across all the European countries which have embarked on ICT in their justice systems show that ICT tools help to improve and develop the judicial process. For these reasons, e-Justice is and should continue to be a major priority for many European countries, as well as for the Council of Europe and the European Union Policy-makers, as well as users, should be patient and determined, as successful ICT projects need consistent financial and political support. Along with technological developments that require cultural change; institutional and social structural change within the judicial system should be considered, as well as the harmonisation of laws to ICT. Furthermore, the whole society has to keep up with the technology, not just the judiciary. Social demand is as necessary as effective government determination to improve the administration of justice by ICT (Metin-Tanoğlu; 2007; 9).

If properly planned and managed, ICT has a greater impact in court organisation as it reshapes work methods and habits (Federico; 2001, VI). Therefore, implementation takes strong commitment and political leadership to follow through. But it is the right thing to do, and has much greater benefits for the judicial process and for the public.



SECTION 2

PRISONS IN TODAY'S EUROPE

AUTHORS

Orhan ARSLAN

Rapporteur Judge, Probation Department, GD Prisons and Detention Houses

Adonis Çiğdem ERKUNT

Branch Manager, Foreign Relations Department, GD Prisons and Detention Houses

Kızbes Meral KILIÇ

Psychologist, Foreign Relations Department, GD Prisons and Detention Houses

Pınar AMANVERMEZ PEKER

Psychologist, Foreign Relations Department, GD Prisons and Detention Houses

Mehmet Özkan ASLIPEK

Social Worker, Foreign Relations Department, GD Prisons and Detention Houses

Çiğdem EROĞLU

Psychologist, Ankara F1 Type High Security Closed Prison, GD Prisons and Detention Houses

Ayşegül Gamze DÜNDAR

Psychologist, Ankara Juvenile Closed Prison, GD Prisons and Detention Houses

Kemal YÜCEL

Psychologist, Ankara Reformatory House, GD Prisons and Detention Houses

PART I: THE PREVENTION AND SOLUTIONS TO THE PROBLEM OF PRISON OVER-CROWDING

1. THE CURRENT SITUATION

As reported in the latest edition of the ***World Prison Population List,*** published by the International Centre for Prison Studies at King's College London, more than 9.8 million people are imprisoned in correctional facilities around the world. This represents an increase of 300,000 since the publication of the previous edition two years ago, and the number rises to nearly 10.6 million when prisoners under 'administrative detention' in China are included.

Prison overcrowding is a complex problem, which represents a major challenge to prison administration and to the world's criminal justice systems as a whole. Its main causes lie beyond the prison system and, given the minimal extent to which the influx of new inmates can be regulated, the solution to the problem appears correspondingly overwhelming.

There exists a further problem with regard to the definition of 'overcrowding'. In most countries in Western Europe, it is common to detain each prisoner individually, in a single cell. In those countries, overcrowding generally means having two or three prisoners in a cell that has originally been constructed for one person. On the other hand, in Eastern European countries throughout the 1990s, overcrowding meant three prisoners having to share one bed, sleeping in turns.

The cell is only one element to be taken into account when considering overcrowding however. Other pressures include what portion of the day a prisoner spends out of his cell, as well as kitchen capacity, sanitary and sewer arrangements, and facilities for visiting, education and outdoor exercise and working conditions.

The mismatch between prison capacity and the total prison population to be accommodated is usually chalked up to the rapid growth in the number of prisoners, which in turn is related to priorities in crime control, the range of penalties, the severity of the sentences, the frequency of the application of community sanctions and measures, the use of pre-trial detention, and the efficiency and effectiveness of criminal justice agencies.

Overcrowding and prison population growth have become significant administrative challenges, and the provision of sufficient prison space, the maintenance of order and discipline, the efficient implementation of various types of prison-based programs (educational, psycho-social, work-related), and the provision of health care etc, are all affected.

2. STATISTICAL DATA

The total number of persons detained in correctional institutions in the forty-seven Council of Europe (hereafter CoE) member States was reported to be 1,856,153 on September 01, 2008, of whom almost 47% were held in Russian prisons (887,723). In spite of the fact that this rate in Russia has been declining in recent years, it still has the highest prison population rate of any other Member State.

Moreover, there exist stark reporting differences: in England and Wales, 'total capacity' in fact refers to operational capacity. Since 2003, these countries have never reported an overcrowding problem, although its prison density (number of prisoners per 100 places) is usually close to 100 (e.g. 96 in 2007). However, it should be noted that the operational capacity of a prison, designed for a specific number of prisoners, can nevertheless be increased by, for example, simply adding extra beds. On the other hand, in Scotland, 'total capacity' refers instead to the design capacity of the institution concerned, and thus the latter usually reports overcrowding as a result, i.e. more than 100 prisoners per 100 place (e.g. 117 in 2007).

Table 1: *Situation of penal institutions on September 2008*[1]

Country	Population 2008 - annual estimates (thousands)	Total number of prisoners (including pretrial detainees)	Prison population rate per 100.000 inhabitants	Total capacity of penal institutions / prisons	Surface area per prisoner (in m^2)	Prison density per 100 places
Albania	3 619.8	5 041	139.3	3 899		129.3
Andorra	82.6	60	72.6	125		48.0
Armenia	2 968.6	3 825	128.8	4 396	4	87.0
Austria	8 205.5	7 899	96.3	8 552	8.51	92.4
Azerbaijan	8 177.7	20 986	256.6	25 150	4	83.4
Belgium	10 404.0	10 234	98.4	8 202		124.8
BH: BH (state level)	2 327.0	19	0.8	20	14.74	95.0
BH: Fed. BH	2 327.0					
BH: Rep. Srpska	1 437.5	924	64.3	1 085	4	85.2
Bulgaria	7 262.7	10 723	147.6	7 948	4	134.9
Croatia	4 491.5	4 734	105.4	3 501	4	135.2
Cyprus	796.9	831	104.3	552	7	150.5
Czech Republic	10 220.9	20 502	200.6	19 471	4	105.3
Denmark	5 484.7	3 451	62.9	3 807		90.6
Estonia	1 307.6	3 656	279.6	3 880		94.2
Finland	5 244.7	3 531	67.3	3 497		101.0
France	64 057.8	66 712	104.1	50 894		131.1
Georgia	4 630.8	19 507	421.2	15 040	2.75	129.7
Germany	82 369.5	74 706	90.7	80 507		92.8
Greece	10 722.8	11 798	110.0	9 103		129.6
Hungary	9 930.9	15 079	151.8	12 585		119.8
Iceland	304.4	140	46.0	142	9.5	98.6
Ireland	4 156.1	3 523	84.8	3 686		95.6
Italy	58 145.3	55 831	96.0	42 992		129.9
Latvia	2 245.4	6 544	291.4	9 168	3	71.4
Liechtenstein	34.5	10	29.0	22	9.2	45.5
Lithuania	3 565.2	7 744	217.2	9 062		85.5
Luxembourg	486.0	673	138.5	702		95.9
Malta	403.5	577	143.0	480		120.2
Moldova	4 324.5	7 252	167.7	9 630		75.3
Monaco	32.8	34	103.5	81	5.6	42.0
Montenegro	678.2					
Netherlands	16 645.3	17 113	102.8	21 418		79.9
Norway	4 644.5	3 278	70.6	3 585		91.4
Poland	38 500.7	83 152	216.0	83 124	3	100.0
Portugal	10 676.9	10 807	101.2	12 294		87.9
Romania	22 246.9	27 262	122.5	34 744	6	78.5
Russia	140 702.1	887 723	630.9			
San Marino	29.8	2	6.7	12	3	16.7
Serbia	7 413.9	9 510	128.3	6 500	4	146.3
Slovak Republic	5 455.4	8 313	152.4	10 390	4	80.0
Slovenia	2 007.7	1 318	65.6	1 098	9	120.0
Spain (State Adm.)	38 793.7	61 939	159.7	43 647	9	141.9
Spain (Catalonia)	7 364.1	9 839	133.6	8 800		111.8
Sweden	9 045.4	6 853	75.8	6 941		98.7
Switzerland	7 581.5	5 780	76.2	6 736		85.8
FYRO Macedonia	2 061.3	2 235	108.4	2 005	4	111.5
Turkey	75 793.8	99 416	131.2	97 952	20.7	101.5
Ukraine	45 994.3	148 339	322.5	158 717	4	93.5
UK: England and Wales	54 439.7	83 194	152.8	83 316		99.9
UK: Northern Ireland	1 775.0	1 523	85.8	1 595		95.5
UK: Scotland	5 168.5	8 088	156.5	6 845		118.2
Canada (federal level)	33 212.7	13 923	41.9	14 857		93.7
Mean			**140.4**			**99.6**
Median			**109.2**			**95.9**
Minimum			**0.8**			**16.7**
Maximum			**630.9**			**150.5**

1 *Data taken from Council of Europe Annual Penal Statistics (SPACE I) 2008*

Figure 1: *Countries with the highest Prison Population Rates per 100.000 inhabitants (more than 100 prisoners per 100,000 inhabitants)*[2]

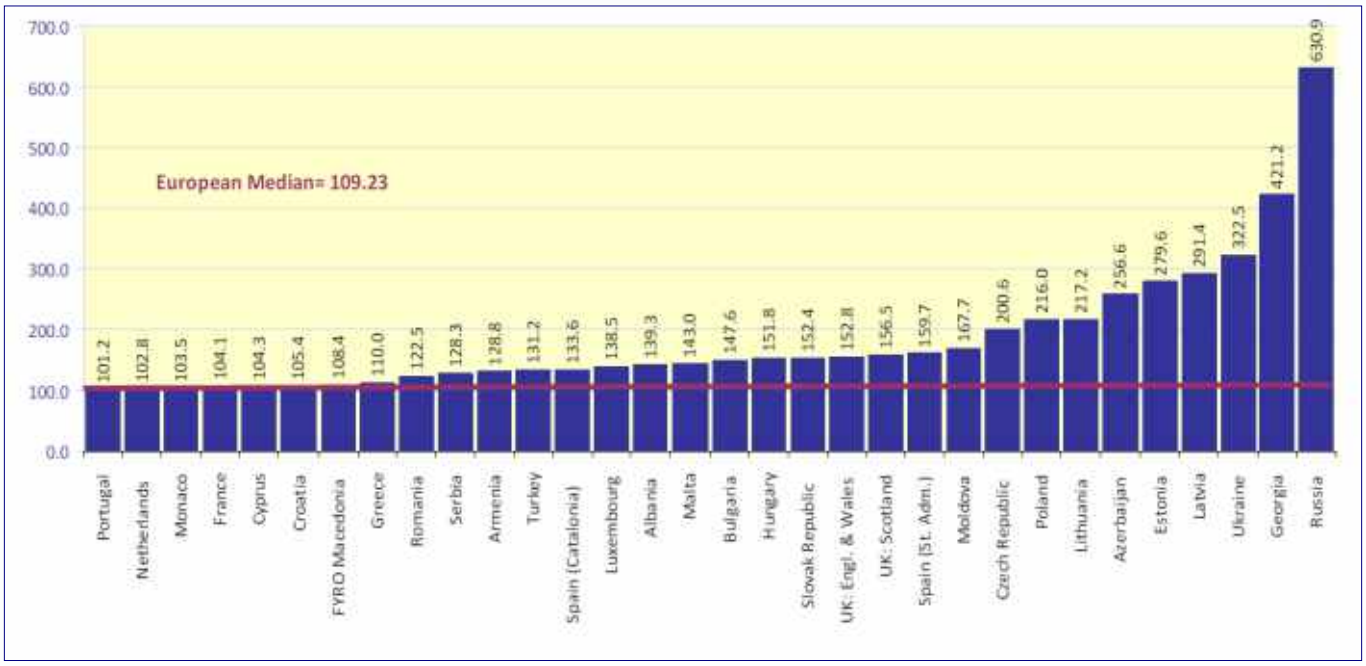
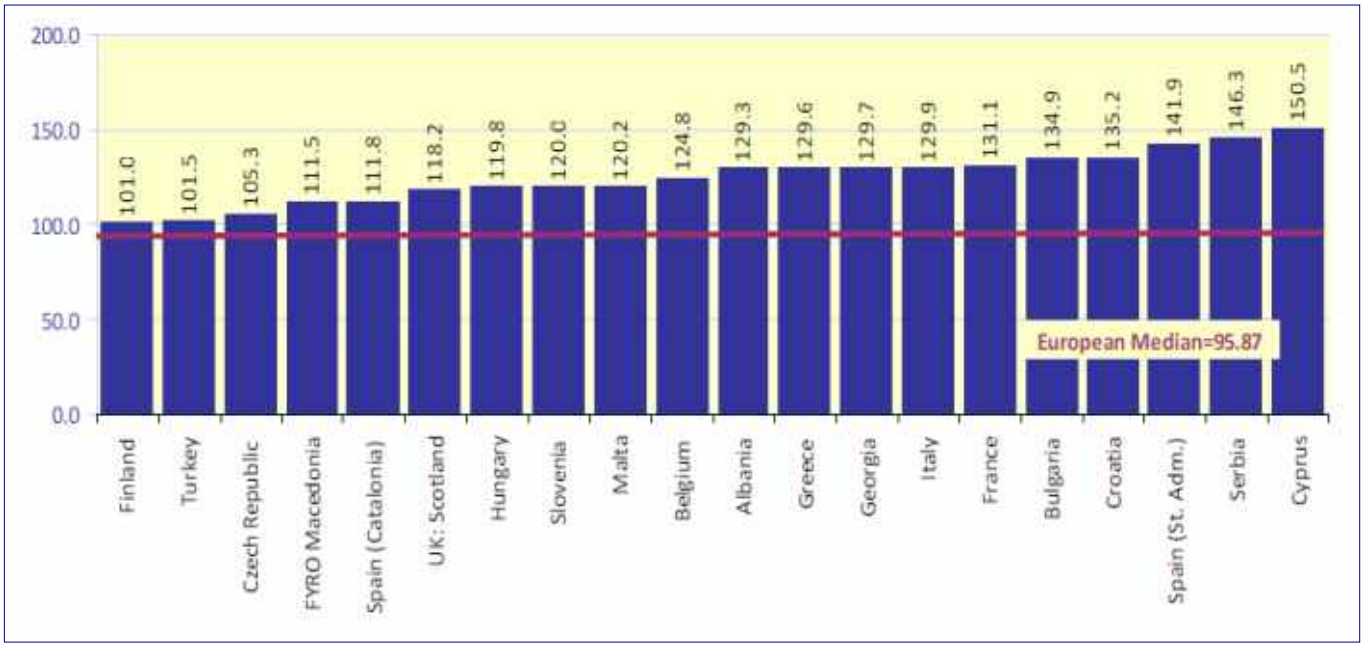


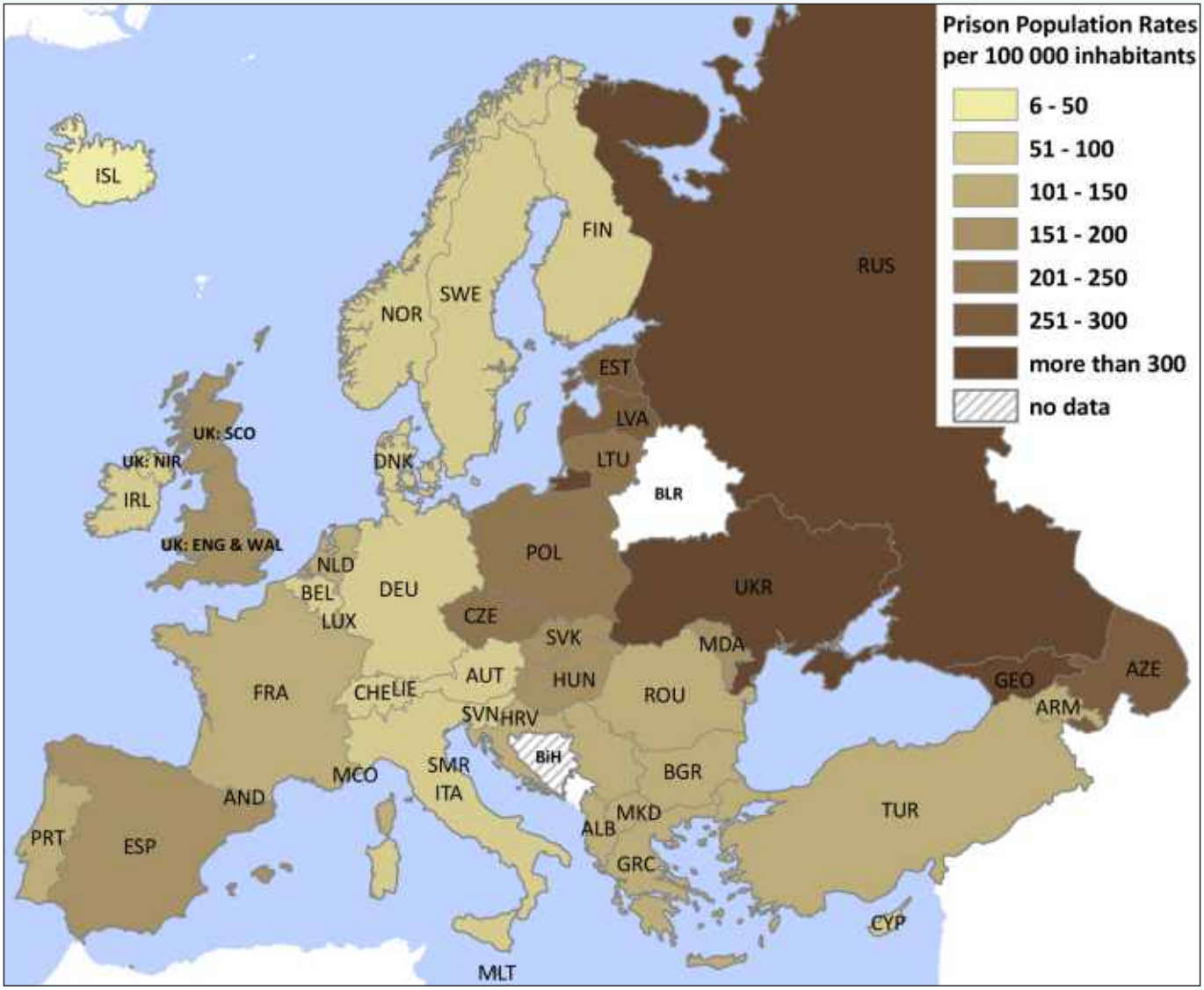
Figure 2: *Countries with prison population overcrowding (more than 100 prisoners per 100 places)*[3]



2 *Data taken from Council of Europe Annual Penal Statistics (SPACE I) 2008*

3 *Data taken from Council of Europe Annual Penal Statistics (SPACE I) 2008*

Map 1: *Prison population rates per 100,000 inhabitants*[4]



As can be understood from Table 1, Figures 1- 2 and Map 1, approximately one-third of Council of Europe member States suffer from prison overcrowding. Russia has the highest rates, whilst Georgia, the Ukraine, Latvia, Estonia and Azerbaijan are in line, as are certain other states.

Table 2: *Year-to-year rates of increase and decrease of prison population rates between 2007 and 2008*[5]

Increase of more than 5%		Between -5% and +5%		Decrease of more than 5%	
Ireland	5.4	Cyprus	-4.7	Romania	-12.8
Serbia	5.5	Germany	-4.0	Austria	-11.2
Spain (incl. Catalonia)	5.8	Finland	-2.7	Moldova	-10.7
Georgia	6.5	Bulgaria	-2.0	Luxembourg	-10.6
Estonia	6.5	Slovenia	-1.3	Netherlands	-9.1
UK: Scotland	8.0	Lithuania	-1.0	Poland	-7.8
Czech Republic	8.5	Norway	-0.5	Portugal	-7.1
Turkey	8.7	BH: Rep. Srpska	-0.3	Monaco	-6.0
The FYRO Macedonia	8.8	Slovak Republic	0.8	Denmark	-5.1
Armenia	10.6	Switzerland	0.8		
Iceland	20.7	Sweden	1.0		
Italy	22.5	Hungary	1.5		
Liechtenstein	65.6	Latvia	2.4		
		Spain (Catalonia)	2.5		
		Belgium	3.4		
		UK: Engl. and Wales	3.6		
		France	4.2		

4 *Data taken from Council of Europe Annual Penal Statistics (SPACE I) 2008*

5 *Data taken from Council of Europe Annual Penal Statistics (SPACE I) 2008*

3. COPING WITH OVERCROWDING

Tension is more likely to occur in overcrowded institutions, with more violence among prisoners and against staff. These circumstances can have a lasting effect on prisoners' personality, increasing the risk of self-harm and even suicide. The reduction of the staff/prisoner ratio inevitably inhibits effective supervision by staff, including the supervision of rooms and dormitories. As a result in many countries, prisoners have been given a certain degree of responsibility by staff for control and the maintenance of order.

The reduced staff-prisoner ratio also tends to lead to a reduction of the time available to staff, to organise the activities necessary to ensure the successful social reintegration of prisoners, upon their release. Vocational training in prisons invariably suffers when institutions are overcrowded. Overcrowding may have much more of an adverse effect on foreign prisoners, since arranging special diets and providing religious facilities, in addition to the daily routine, may put extra pressure on staff: as such, it can also therefore have a harmful effect on staff, by way of increased stress and related staff sickness.

In order to cope with such overcrowding issues, Recommendations Nr R (99) 22 concerning prison overcrowding and prison population inflation and Rec(2006)2 (European Prison Rules) adopted by the Committee of Ministers of the Council of Europe (hereafter Committee of Ministers) should be put into effect as soon as possible, as they suggest realistic solutions to the countries that suffer from overcrowding problems in their prison systems. The outlines of these recommendations are presented below.

3.1 Basic principles - Recommendation No. R (99) 22

The deprivation of liberty should be regarded as a last resort and such measures should therefore only be applied in cases where any other response to the severity of the offence would be deemed inadequate;

Prison expansion should only be considered as an extreme measure, as it does not constitute a permanent solution to the problem of overcrowding;

Provision should be made for an appropriate range of community sanctions and measures, possibly graded in terms of relative severity; prosecutors and judges should be prompted to use them as widely as possible.

Member states should consider the possibility of decriminalising certain types of offences, or reclassifying them so as to avoid the deprivation of liberty.

In order to establish a coherent strategy against prison overcrowding and prison population inflation, a detailed analysis of the main contributing factors should be carried out, which addresses in particular issues like the types of offence leading to long term prison sentences, priorities in crime control, public attitudes and concerns, and existing sentencing practices.

3.2. Harmful effects on life in prisons - Recommendation Nr R (99) 22 and Recommendation Rec (2006) 2

Where living space is restricted, privacy is reduced for each pre-trial detainee or sentenced prisoner. Recommendation Rec (2006) 2 does not specify the extent of the space to which each prisoner should be entitled, but it does indicate, by way of Rule 18, that convenient and reasonable accommodation conditions should be provided.

Hygiene standards and sanitation arrangements are much poorer in overcrowded prisons. Thus in Rec (2006) 2 Rule 19 focuses on the cleanliness of institutions and the personal hygiene of prisoners. Rec (99) 22 rule 7 emphasises that: "Where conditions of overcrowding occur, special emphasis should be placed on human dignity, the commitment of prison administrations to apply humane and positive treatment, the full recognition of staff roles and effective modern management approaches. In conformity with the European Prison Rules, particular attention should be paid to the amount of space available to prisoners, to hygiene and sanitation, to the provision of sufficient and suitably prepared and presented food, to prisoners' health care and to the opportunity for outdoor exercise."

There is furthermore less time devoted to outdoor exercise: all prisoners need exercise and time for recreation, although these activities should not be compulsory [Rec (2006) 2 Rule 27]. Rec (99) 22 rule 26 emphasises that: "Effective programs for treatment during detention, and for supervision and treatment after release, should be devised and implemented so as to facilitate the resettlement of offenders, to reduce recidivism, to provide public safety and protection and to give judges and prosecutors the confidence that measures aimed at reducing the actual length of the sentence to be served and community sanctions and measures are constructive and responsible options."

There is likely to be insufficient bedding for prisoners where the institution experiences a significant population increase: Rec (2006) 2 provides that each and every prisoner shall be provided with separate and appropriate bedding (Rule 21). Rec (99) 22 Rule 6 further emphasises that: "in order to avoid excessive levels of overcrowding a maximum capacity for penal institutions should be set."

In some countries, due to the limitation of resources, food may be less satisfactory where prison overcrowding occurs. Ensuring that prisoners receive nutritious meals is an essential function of prison authorities [Rec (2006) 2 Rule 22], and providing the number of calories specified in the national law is always a major problem. Sharp increases in levels of the prison population exacerbate this: necessary calories may not always be provided, and menu quality may suffer.

Healthcare is more difficult to manage effectively in overcrowded institutions, a serious issue as prison authorities are responsible for the protection of the health of all prisoners [Rec (2006) 2 Rule 39]. In addition overcrowding increases the cases of depression and suicidal attempts among prisoners and enhances the spread of contagious diseases and viruses.

Harmful effects can further be observed as regards limited opportunities for prisoners to receive visits from family and friends. Rec (99) 22 rule 8 and 9 emphasises that: "In order to counteract some of the negative consequences of prison overcrowding, contacts of inmates with their families should be facilitated to the extent possible, and maximum use of support from the community should be made." "Specific modalities for the enforcement of custodial sentences, such as semi-liberty, open regimes, prison leave or extra-mural placements, should be used as much as possible, with a view to contributing to the treatment and resettlement of prisoners, to maintaining their family and other community ties, and to reducing the tension in penal institutions."

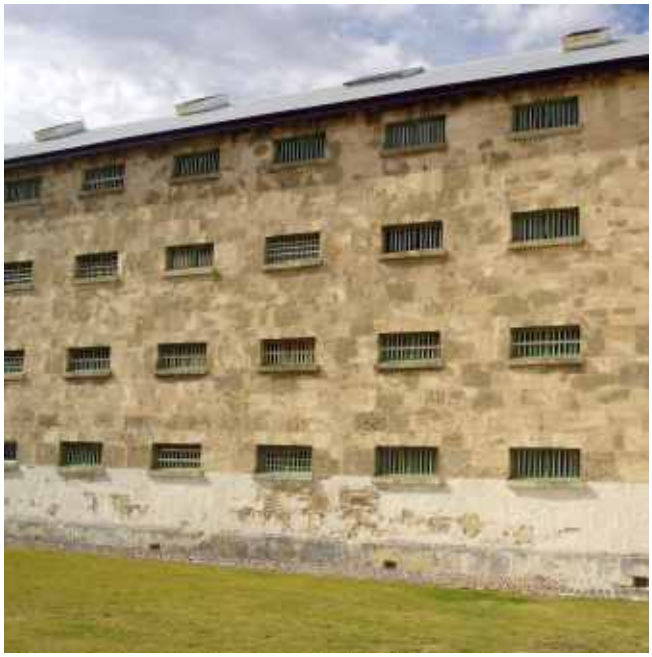
3.3. Measures related to the pre-trial stage, which avoid criminal proceedings – reducing recourse to pre-trial detention - Recommendation No. R (99) 22

Appropriate measures should be taken to fully implement the principles laid down in Recommendation No R (87) 18 concerning the simplification of criminal justice. Member states should resort to the principle of discretionary prosecution (or measures having a similar purpose) and should use simplified procedures and out-of-court settlements as alternatives to prosecution in appropriate cases, in order to avoid full criminal proceedings.

The use of pre-trial detention and its length should be reduced to the minimum possible to be compatible with the interests of justice. Member states should ensure their law and practices conform with the relevant provisions of the European Convention on Human Rights and the case-law of the Court, and be guided by the principles set out in Recommendation Nr R (80) 11 as regard the grounds on which pre-trial detention can be ordered.

Some alternatives to pre-trial detention could include: requiring suspected offenders to reside at a specified address; restriction on leaving or entering a specified place without authorisation; the provision of bail or supervision; and assistance by a judicially appointed agency. Consideration should be given to the possibilities for supervising the requirement to remain in a specified place through electronic surveillance devices.

In order to ensure that pre-trial detention is properly employed, adequate financial and human resources should be made available, and the appropriate procedural and management strategies developed.



3.4. Measures related to the trial stage - Recommendation No. R (99) 22

Efforts should be made to reduce the recourse to sentences involving long-term imprisonment, which creates a heavy burden on the prison system, and to substitute community sanctions and other measures for short custodial sentences.

As regards community sanctions and other measures which could be employed as an alternative to the deprivation of liberty, consideration should be given to:

> suspension of imprisonment, with imposed conditions;

> probation as an independent sanction imposed without the pronouncement of a sentence to imprisonment;

> high intensity supervision;

> community service (i.e. unpaid work on behalf of the community);

> treatment orders / contract treatment for specific categories of offenders;

> victim-offender mediation / victim compensation;

> restrictions of the liberty of movement by means of, for example, curfew orders or electronic monitoring.

- Community sanctions and other measures should only be imposed in conformity with the guarantees and conditions laid down in Recommendation No. R (92)16 on the European Rules on Community Sanctions and Measures.
- Combinations of custodial and non-custodial sanctions, and other measures, should be introduced into legislation and practice, such as custodial sentences followed-up with community service, (intensive) supervision in the community, electronically monitored house arrest or, in certain cases, by an obligation to undergo treatment.

3.5 Sentencing and the role of prosecutors and judges

When applying the law, the prosecutors and judges should keep prison capacity in mind.

Prosecutors and judges should be involved in the creation of penal policies with regard to the prison overcrowding and prison population inflation and their support be engaged, so as to avoid counterproductive sentencing practices.

Sentencing policy should be set by the legislator or other competent authorities, with the aim to reduce recourse to imprisonment, by extending the use of community sanctions and other measures and diversifying away from custodial sentences towards mediation, or victim compensation.

Particular attention should be paid to the role of aggravating and mitigating factors, as well as previous convictions, in determining the appropriate sentence.

3.6 Measures related to the post-trial stage - Recommendation No. R (99) 22

In order to make community sanctions and measures credible alternatives to short terms of imprisonment, their effective implementation should be ensured in particular through:

The provision of the infrastructure for the execution and monitoring of such community sanctions;

The development and use of reliable risk-anticipation and risk-assessment techniques as well as supervision strategies;

The development of measures that reduce the actual length of the sentence should be promoted by giving preference to individualized measures, such as early conditional release (parole) over collective measures for the management of prison overcrowding (amnesties, collective pardons);

Parole should be regarded as one of the most effective and constructive measures, which not only reduces the length of imprisonment but also contributes substantially to a planned reintegration of the offender in the community;

In order to promote and expand the use of parole, best conditions for support, assistance and supervision of the offender in the community must be created.

PART II: ALTERNATIVES TO IMPRISONMENT AND ARREST

The primary goal of the contemporary prison system is to encourage prisoners to socialise, reduce their propensity to reoffend, and facilitate their adaptation to a responsible and productive lifestyle, which respects the law and other social rules, thereby reducing crime in society generally. Sanctions that offer an alternative to imprisonment, and which would effectively achieve these aims, are one of the most important means by which the contemporary prison system hopes to improve the current situation.

The prison sentence, which restricts the personal freedom of the convicted person, is regarded as the best alternative to the death penalty in modern societies, and is routinely applied. Nevertheless, over time it has become apparent that deficiencies in the prison system exist, and States have found themselves compelled to search for new alternatives to imprisonment, and review the reintegration of criminals, when it was found that: the record of criminal reform was not being achieved; that sometimes the criminal's family suffered as much as the criminal; and, most importantly, there was an excessive increase in prison numbers.

In the 19th century, punishments restricting freedom, the basic sanction of the criminal law, began to be viewed as causing the convict to be cast out, rather than affording opportunities for his or her reintegration into society: thus, it was decided that it should be used as the last resort, and questions regarding potential alternatives began to be asked.

Contemporary prison overcrowding has increased the need for such alternatives today, and the Council of Europe has conducted some important studies, in an effort to find a solution to the problem. In Recommendation R(99)22 it is stressed that overcrowding and the increase in the prison population pose a great challenge for the administration of criminal justice, in terms of both human rights and of the effective management of correctional institutions. Amongst the basic principles contained in this Recommendation, it is stated that depriving a person of his or her freedom should be regarded as a last resort, and therefore should be applied only when the severity of the offence renders other sanctions or measures inadequate.

Most recently (on 20 January 2010) the Committee of Ministers adopted Recommendation CM/Rec(2010) 1 on the Council of Europe Probation Rules which contains European standards regarding the role and tasks of probation agencies and promotes the importance of their work as a better and more humane and efficient alternative to imprisonment.

1. DEPRIVATION OF LIBERTY AS PUNISHMENT

Imprisonment is the penalty which comes to mind when one talks of restricting a convicted person's freedom. Such penalties are the sanctions that are considered to renew society's faith in the law, and which allow for the rehabilitation of criminals through institutional training programmes designed to facilitate their reintegration into society.

Throughout history, criminal punishment has developed according to the time, place and prevailing culture. In ancient societies, the most commonly applied punishments targeted the body. Whilst fines were the only practical means of punishment in the early mediaeval period, towards the end monstrous physical punishments had begun to be applied until, in the 17th century, punishments restricting freedom began to develop. In the course of time, physical punishments gave way to punishments restricting freedom.

Which begs the question, why are the custodial sanctions being criticised? Criticisms regarding custodial sentences are being directed towards the duration and practical reality of imprisonment, rather than the punishment itself. Whilst custodial sanctions in contemporary law are invariably classified as 'long' or 'short-term,' the practicalities of imprisonment are generally the same. This lack of differentiation has begun to attract criticism, leading to a search for new alternatives. The conditions at contemporary prisons can cause physical and psychological breakdown: prisoners reportedly sink into despair over time, particularly those who are middle-aged and know they will grow old behind bars.

Some also claim that such institutions, by their very nature, are places that can reinforce the behaviours they are designed to correct, and that imprisonment can harm the convict's self esteem, affecting his or her sense of personal responsibility. Furthermore, as a result of the deprivations experienced during imprisonment, psychological issues such as boredom and anxiety, as well as psychosis and even suicide, are frequent phenomena within prison populations.

The aim of contemporary criminal policy is to find a number of alternative sanctions to imprisonment, to avoid implementation of custodial sanctions as much as possible, and to ensure the rehabilitation and socialisation of the criminals outside prison. Yet, in some cases, there is no effective solution other than imprisonment, and the complete abandonment of it as a penalty does not seem possible for now, though it is more generally accepted that it should be used as a last resort.

2. ALTERNATIVE SANCTIONS IN THE JUDICIAL SYSTEM

When the adverse effects of incarceration on the convict, and the related harm caused to society as a result, are more fully appreciated, the implementation of other alternative sanctions, as outlined below, will become a priority.

3. DAY FINES

The 'day fine' is a system of payment, which involves a daily residual payment made by the convicted person, after the deduction of the rent, transportation, food and other daily essentials, deductions which would be defined by the convicted person: essentially a Community Service Labour Program. When the person is sentenced to the penalty of community service labour, he or she lives at home and can have a job. However he or she must often work for what is effectively nothing, after their daily essentials are accounted for. The convicted person may work in an official job or some local nonprofitmaking organisation, however, the convict does not have the right to choose the type of work or its location. The judge decides the convict's working day and the number of hours.

Despite limits inherent in its implementation, community service labour has many benefits: it provides for repaying society through social work; the re-socialisation of the convict is facilitated and encouraged; socially productive behaviours are learned through consistent and prolonged work; and a sense of social responsibility develops, strengthening their self-esteem.

4. COMPENSATION OF THE VICTIM'S DAMAGE

Judicial systems generally forget the victim and deal solely with the accused person. However, the state should consider the protection of victims as well as society in criminal proceedings, as it is the victims who suffer when the commission of an offence causes their rights to be violated. Throughout proceedings efforts should thus be made to protect the victim and compensate his or her physiological, physical and financial harm. Compensation of the victim's damages could be one of the most effective sanctions in this regard: such a system would permit the confrontation of the perpetrator by the victim, enabling the offender to see the victim's suffering and the damage he or she has caused first hand. It is submitted that this will prove to be very important for the reintegration of the offender into society. This approach is a key element in the new conventions of the Council of Europe whose main objective is to protect the most vulnerable victims, i.e. Convention on the protection of children against sexual exploitation and abuse and the future convention on preventing and combating violence against women and domestic violence.

5. ALTERNATIVE SANCTIONS IN CRIMINAL PROCEEDINGS

Criminal procedure law deals with how to determine whether a person has committed an offence or not, and how to prosecute and punish him or her if proven so. In this process, which accounts for the joint work of the defence, prosecution and court, the aim is to reveal the actual facts of a crime while respecting the rights of the suspect and the accused.

Exemption of the Offender from Punishment (judicial amnesty): Judicial amnesty means ""the remission of a punishment conditionally and through judicial means where the public will requires not executing the decided penalty."

Suspension of the public prosecution: It means that the judiciary, after having considered the personality of the offender and the nature of the offence, suspends the initiation of a public lawsuit under certain conditions.

Suspension of the hearing: After a public lawsuit is initiated and in case some certain conditions are met, to give the accused a probation period and to impose some obligations on him/her to fulfil during this period.

Suspension of the announcement of the sentence: After the prosecution is concluded, the information and evidences are gathered, the court hearings are ended and the court has finalised the legal description of the case, the final accusation process of the person and the announcement of the sentence are suspended thus leading to suspension of the execution of the sanction.

6. ALTERNATIVE MEASURES OF LAW ENFORCEMENT

Enforcement law is the law branch which regulates the relations between the State and the convict starting from the final court judgement until the full execution of the sentence. The enforcement law may be applied also by agencies which are responsible for executing alternatives to imprisonment.

Probation: The general meaning of probation is to supervise and monitor offenders in the society; it also involves assisting offenders in a positive way with employment, housing, training, social reintegration in general in order to help them lead law-abiding lives.

Suspension of the Sentence: Suspension of the sentence is a legal opportunity which provides the convict with a probation period and suspends the execution of the prison sentence until the end of that period, and in case the convict commits no further crime during this period the sentence is considered to have been executed.

Release on Probation (conditional release): Release on probation means to release a prisoner who is serving his or her sentence, before the sentence is fully served. The condition here is that the convict who gains his/her freedom before the time due will abide by the conditions and obligations set and will not commit further crimes during the probation period set.

We need to further promote the importance of alternatives to detention with the aim of: ensuring the suspect's presence in court, prior to conviction; securing the collection and examination of the material evidence or facilitating the execution of the sentence, following the conclusion of criminal proceedings.

In order to avoid the aforementioned issues associated with incarceration, and to provide a conclusion to criminal proceedings which avoids human rights violations, it has become necessary to implement measures of independent judicial control, which offer an alternative to arrest. Where such rights and freedoms have been severely affected, such controls should be applied according to the principle of proportionality.

7. CONCLUSION

In conclusion, it is submitted that imprisonment, essentially a criminal sanction from the 19th century, which removed offenders from society rather than providing for their rehabilitation and reintegration, should today be considered to be a sanction of last resort. Comprehensive studies have been conducted regarding potential alternatives that could be implemented for simple offences: alternatives which take the legal, social, psychological, financial and political implications of crime into consideration, and which have begun to be implemented in many countries.

The penalty of imprisonment, which restricts personal freedom, is regarded as the best alternative to the death penalty in modern societies and has been routinely applied for many years. However, over time, States had to search for new alternatives for the punishment of offenders, observing that imprisonment did not achieve the intended results, namely: the rehabilitation of criminals and the discouragement of their criminal behaviour. It was further recognised that the family of offenders often suffered as a result of their imprisonment, and that the general prison population had increased excessively.

With the aim of overcoming these issues, and ensuring the reintegration of offenders into society, alternative measures have been considered, including the suspension of public prosecution, provided the person does not reoffend within a pre-determined period of imprisonment, judgement either not being pronounced or conviction suspended, in an effort to ensure that offenders abide by such pre-determined obligations. In this way, it is anticipated that offenders can be reintegrated into society, without having them unnecessarily affected by adverse prison conditions and lengthy imprisonment.

PART III: FOREIGN NATIONALS IN PRISONS AND TRANSFER OF FOREIGN DETAINEES

FOREIGN NATIONALS IN PRISONS

1. THE GENERAL SITUATION, PROBLEM AND SUGGESTIONS

The term 'foreign national prisoner' covers a wide range of people, who are convicted and imprisoned in a country other than that of their home. There exist large numbers of foreign national prisoners in prisons throughout the world, and this rate is increasing everyday.

In Council of Europe countries, there are about 176,000 such prisoners incarcerated in member States' prisons[6]: table 1 shows the 20 countries with the highest such population. As of May 2010 there were 1,146 detainees, 556 convicts and 324 persons on remand waiting for appeal, making a total of 2,026 such persons in Turkish correctional facilities.

Table 3. *Top 20 Highest % of Foreign Prisoners within Total Prison Population.*

Monaco	83.3	Liechtenstein	33.3
Luxembourg	73.3	The Netherlands	30.3
Switzerland	69.7	Norway	28.1
Cyprus	53.2	Sweden	27.5
Greece	43.9	Germany	26.3
Austria	43.6	Denmark	22.5
Belgium	42.1	Portugal	20.3
Malta	39.7	France	19.2
Italy	37.1	Iceland	19.1
Spain	35.5	UK: England and Wales	13.6

6 *Data taken from Ms Femke Hofstee-van der Meulen's report "Foreign Prisoners in Europe", presented at the 15th Conference of Directors of prison Administration (9-11 September 2009, Edinburgh)*

Imprisonment in a foreign country can cause a number of problems for the detained person including, not only linguistic issues, but also:

> Inadequate or non-existent (free) legal aid;

> Lack of information regarding legal rights / status / their case;

> Inconsistent consular assistance;

> Inadequate access to medical or psychiatric care;

> Exclusion from work, education and training;

> Inadequately trained prison staff;

> Difficulties in maintaining contact with family;

> Poor contact with the outside world;

> Fewer or no opportunities for early or conditional release;

> Fewer opportunities for resettlement.

Foreign prisoners are accepted as "vulnerable group" because of these disadvantages. They are often socially excluded and this exclusion has a negative impact on their successful reintegration into society after release. To eliminate these problems, the following principles should be considered;

When foreign nationals are imprisoned in a country where they have no diplomatic representative, they must be allowed to communicate with those diplomatic representatives that represent their home country. All foreign prisoners are entitled to communicate with their consular officials at any time.

The treatment of foreign prisoners should not be differentiated from the treatment of national prisoners. Prison authorities may employ special measures to help foreign prisoners with language difficulties, and to relieve social and/or cultural isolation;

Foreign prisoners are at a disadvantage due to linguistic difficulties: the prison's administration should provide them with access to interpretation facilities, and should translate the main documents that a prisoner needs to understand;

Foreign prisoners can be socially excluded because of their language and their culture. Where this is the case, foreign prisoners from the same language background or country should be accommodated together in the same prison, or part of it;

Foreign national prisoners should not be discriminated against, or be asked to pay for their healthcare in prison;

For many such prisoners, social network support, such as visiting by family and friends, is lacking. They are less likely to receive letters, or apply for home leave. Telephone calls also pose more difficulty to foreigners, due to the enhanced associated costs and time differences. The prison administration should make arrangements to maintain contact with visitors;

Some specialised diversity training should be given to prison staff, in order to combat discriminatory behaviour, and ensure the equal treatment of all prisoners;

Female foreign prisoners have additional disadvantages, since they represent a minority group within a minority group and, in the case of long-term sentences, may have to live without any contact with their children for many years. Special arrangements could be made to meet the needs of these women and enable them to maintain contact with their children.

2. TRANSFER OF FOREIGN DETAINEES

The transfer of sentenced persons, within the framework of an agreement between both States, and with the consent of the sentenced person, involves moving these persons to their home state ('the Administering State'), for the purposes of serving the whole or the remaining part of their sentence, as imposed by the state in which the crime was committed ('the Sentencing State').

The need for such a transfer arises from the perception that it is more appropriate for the convicted person to serve his or her sentence in an environment within which he or she has family and cultural ties, and where he or she could best be reintegrated. From the Sentencing States' perspective, this further eases their own problems of prison over-crowding.

Where both Administering and Sentencing States are parties to the "European Convention on the Transfer of the Sentenced Persons" (CETS n° 112), ratified by 64 States throughout the world, such transfers are conducted with due regard of it; where they are not, the transfer takes place in accordance with the appropriate bilateral agreements between the two; or by taking into account the "reciprocity" rule in cases where the states are not party to any such convention or agreement.

As regards the transfer of sentenced persons, the most significant problems are the following:

Lack of detailed data analysis: It has been observed that there are no detailed studies regarding the implementation of "the European Convention on the Transfer of Sentenced Persons" at the level of international institutions, or that of member States.

Length of transfer procedure: Transfer procedures generally take between 1 and 3 years. In this extended process, providing the documents necessary for the transfer is important.

Policies of States: in general, States do not have sufficient information regarding other States' transfer systems. Although there are many requests for transfer proceedings, at the end of the process the Sentencing State may not approve the transfer if it finds the Administering State's system inadequate.

Improper or imperfect implementation of the Convention: it has been observed that some States request guarantees regarding matters which are already guaranteed by the Convention, whilst some states do not take reservations into consideration.

Transfer costs: covering the transfer costs can pose problems.

Requests of convicts with physical or psychological disorders: difficulties in transferring convicts with physical or psychological disorders can be experienced.

3. THE EUROPEAN PRISON RULES

The European Prison Rules incorporated the following general principles for foreign national prisoners (Rule 37.1-37.5):

Prisoners who are foreign nationals shall be informed, without delay, of their right to request contact and be allowed reasonable facilities to communicate with the diplomatic or consular representatives of their state;

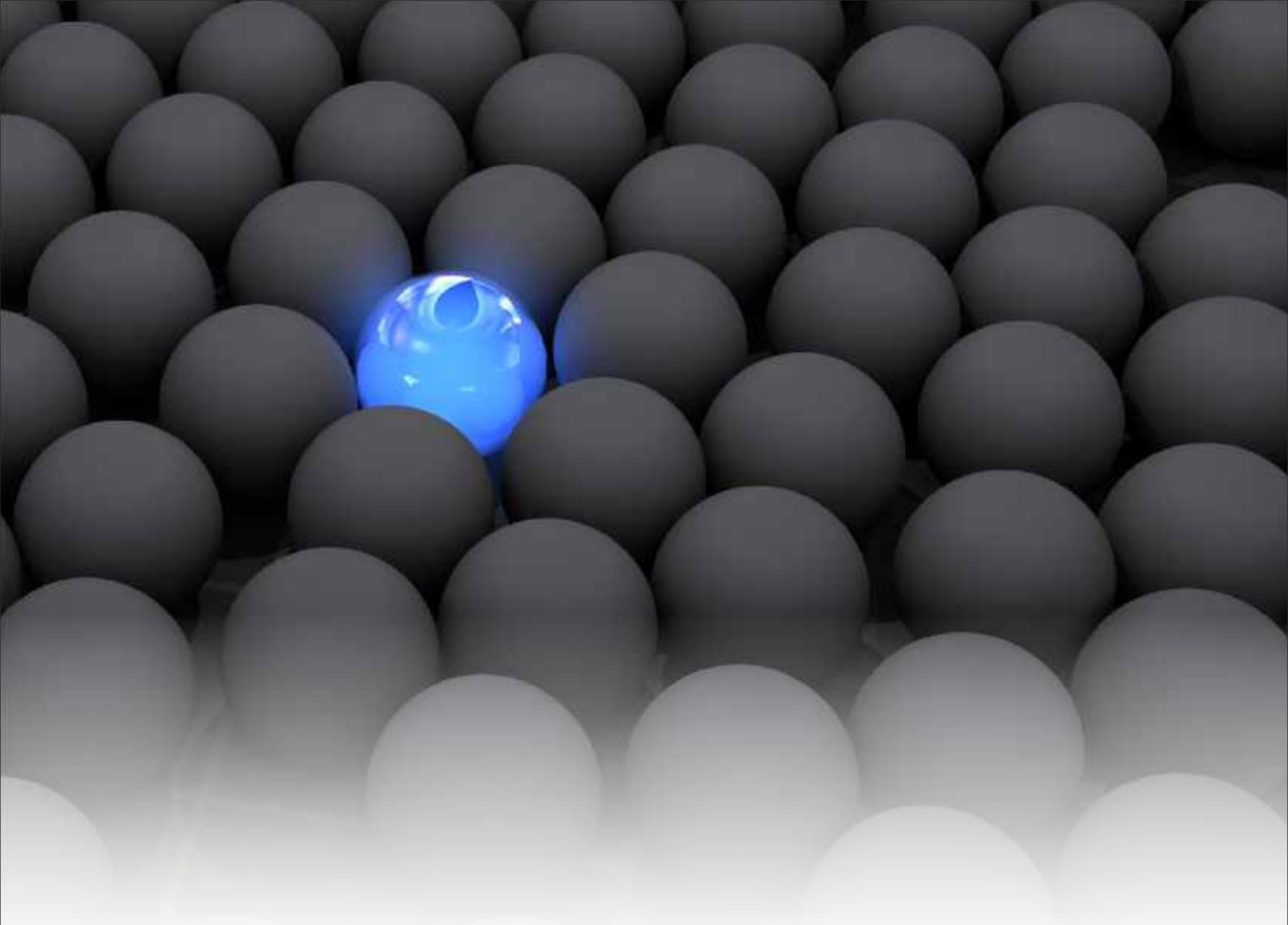
Prisoners without diplomatic or consular representation in the country, and refugees or stateless persons, shall be allowed similar facilities to communicate with the diplomatic representative of the state which takes charge of their interests, or the national or international authority whose task is to protect the interests of such persons;

In the interests of foreign prisoners who might have special needs, prison authorities shall co-operate fully with diplomatic or consular officials representing them;

Specific information about legal assistance shall be provided to foreign prisoners;

Foreign prisoners shall be informed of the possibility of requesting that the execution of their sentence be transferred to another country.

At the 14th Conference of Prison Administration Directors held in Vienna (19-21 November 2007), the participants discussed issues related to the problems related to foreign prisoners. The report of the conference emphasised that; "European Prison Rules essentially state equal rights for all prisoners. Rule No.13 is particularly clear: "these rules shall be applied impartially, without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status." All rules decree a rehabilitative and re-integrative penal system as a matter of principle. Rule No 6. further States that "all detention facilities shall be managed so as to facilitate the reintegration into free society of persons who have been deprived of their liberty." Finally, Rule No. 7 provides that: "co-operation with outside social services and, as far as possible, the involvement of civil society in prison life shall be encouraged."



4. RECOMMENDATIONS

A two year study commissioned by the European Union on 'Foreigners in European Prisons' was completed in May 2007, which examined legislation, regulations, and practice in 25 European Union countries. This comprehensive study led to 73 practical recommendations and examples of good practice. The study anticipated some basic recommendations including foreign prisoners' transfer to their home country for proper rehabilitation. It was found necessary to develop alternative measures to pre-trial detention and imprisonment for foreign detainees.

In the aforementioned study, foreigner inmates' problems were identified and in critical areas some of the following recommendations were made:

Prison authorities should acknowledge the vulnerable position of foreign prisoners and be committed to addressing their special needs. For this reason they should introduce special provisions in prison regulations for foreign prisoners, as well as implement special programs to compensate for the disadvantages experienced by foreigners in daily prison life;

Prison authorities should be aware that putting together prisoners of the same national, cultural and religious backgrounds can be seen as 'good practice,' as it can lessen feelings of isolation;

Foreign prisoners should be allowed to enter correctional institutions where they have a better chance of successful resettlement, even if they will not remain in the detaining country after release;

Foreign prisoners should be kept in correctional institutions located in the relevant capital city, to facilitate regular contact with diplomatic missions and relatively easy transportation to and from the airport when relatives visit from abroad;

Admission to correctional institutions can be an intimidating and de-humanising experience: it is therefore essential that prisoners have a proper understanding of what is actually happening, and that prison authorities have information available in various languages;

Reception staff should receive special language education and learn about cultural diversity;

Prison authorities should take into consideration that foreign prisoners often have to make long-distance calls, sometimes at odd hours because of different time zones, in order to notify their families about their detention;

Being engaged in useful and paid work is essential, especially for foreign prisoners, because they often do not receive financial support from outside the institution. Prison authorities should ensure that foreign prisoners have equal access to work, education and training programs;

Prison authorities could seek support from local libraries and diplomatic missions to create a prison library collection of books, magazines and newspapers in various languages;

Prison authorities should stock prison shops with culturally specific ingredients or products;

Prison authorities should create a multi-faith room for the use of prisoners from different religious backgrounds;

Prison authorities should make sure that representatives of the most common religions have regular access to foreign prisoners for individual meetings and to hold religious services;

All prisoners should be allowed to wear the clothing, hairstyle and head-dress of their choice;

Prison authorities should provide medical care free of charge to all prisoners, including foreign prisoners who may not have health insurance;

Foreign prisoners must be made aware of their right to contact their diplomatic mission. To avoid misunderstandings, prison staff should be informed that foreign prisoners can only give up this right if he or she makes a written request to that effect;

Diplomatic missions should acknowledge the important role they play for foreign prisoners, recognizing that they are, in many cases, prisoners' only lifeline;

Prison authorities should provide (free) legal assistance to foreign prisoners;

Prison authorities should allow foreign prisoners more flexible visiting to allow family and relatives to make what is quite possibly a long trip worthwhile. Furthermore, they should allow foreign prisoners to make telephone calls at different times, as appropriate for different time zones;

Community welfare organisations should be encouraged to pay social visits to foreign prisoners to reduce their social isolation;

Prison authorities should acknowledge that reintegration activities and prison leave for foreign prisoners are as important as for other prisoners. Social welfare organisations can play a role in the resettlement of foreign prisoners;

The decision to expel foreign prisoners should be made as early as possible (see also Recommendation 32) and foreign prisoners should preferably not be put in administrative detention while waiting to be expelled;

Social welfare services should, where possible, offer assistance to foreign ex-offenders with their reintegration;

Prison authorities should recognise that dealing with prisoners, particularly foreign ones, in a professional way requires effective management, interpersonal and technical skills on the part of prison staff. Prison staff should be carefully selected, properly trained, paid as professionals, have adequate work conditions and receive a respected status in society;

Foreigners should not be detained for prolonged periods for reasons beyond a detainee's own control, such as States failing to cooperate in the removal process;

Persons unable to return to their home countries because of circumstances which risk their being 'subjected to torture or to inhuman or degrading treatment or punishment,' should not be detained while the host state is waiting for such circumstances to change;

More cooperation between national States and involved authorities would be beneficial;

There is an urgent need for the introduction of minimum standards. These standards should contain provisions for: the social, legal and financial support of detainees; assistance to families at home; and help with transfer agreements;

Transfer agreements between European countries could be more effective if procedures were simplified and quicker. The transfer of European Union prisoners to their home countries has advantages for their social, educational and rehabilitation needs and will thus better protect the public from reoffending;

Allowing alternative sanctions and other measures, to be managed and enforced throughout European Union countries would provide courts with sentencing alternatives to imprisonment; and thus reduce the foreign national prisoner population of the European Union;

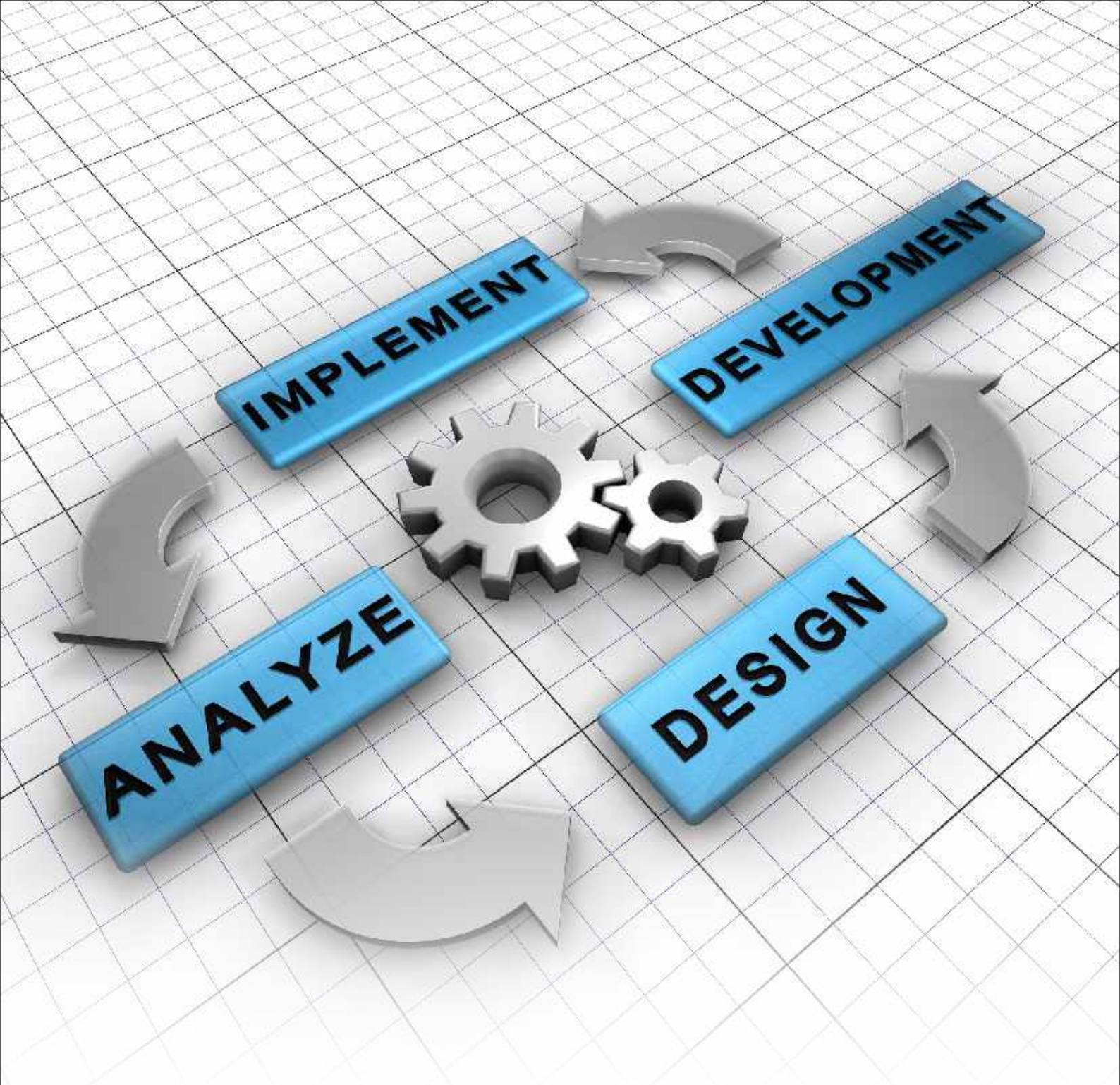
Prison authorities should develop special training and vocational programs to help the reintegration of foreign prisoners into their home country;

Nationals who have been detained abroad should receive access to national aftercare and probation provisions upon return to their home country.

PART IV: ASSISTING MEMBER STATES IN SHARING BEST PRACTICES AND IN PROVIDING SUPPORT FOR SUCCESSFUL PRISON ADMINISTRATION AND THE IMPROVEMENT OF PRISON CONDITIONS

Council of Europe member States have recently initiated important reforms, aimed at improving their prison systems to conform to European standards. The international legislation and associated recommendations, particularly the European Prison Rules, have been used as a basic reference text in these developments.

Despite years of efforts to agree on common standards throughout Europe, a valid "European Prison Model" has yet to be conceived. Nevertheless, some countries are conducting studies in the field and making some considerable progress, making changes to national legislation; improving prison services; improving prison conditions, to bring them in line with modern standards and human rights; implementing staff training programs; and managing human resources in a more effective way. It is notable that prison services in certain Council of Europe member States still need assistance in order to conform to guidelines, such as those contained in the European Prison Rules, and other international legislation. Strategic international cooperation projects and their effective implementation have enabled sharing of information and good practices. In addition individual countries fund carrying out of similar projects and activities such as international seminars and conferences etc., which are carried out with the support of the various European institutions.



1. PROJECTS

Projects, which support information and experience-sharing activities amongst European countries, carried out for the purpose of improving their respective prison systems, generally take the form of technical support, direct grants or 'twinning.'

Technical support projects include the provision of information and technical equipment from the private-sector institutions of European Union member States, which specialise in specific fields and have as their general goal the strengthening of institutional capacity. Twinning projects, which are one of the most important means for the sharing of best practices amongst States, is an initiative both of the Council of Europe (1997 – 2006) and of the European Commission from 1998, operating in the wider context of contemporary preparations for the European Union enlargement. Twinning was established as a means for administrative cooperation, with the aim of supporting acceding States in strengthening their administrative and judicial capabilities, in order for them to be able to implement common legislation as future member States of the European Union. Since 1998, more than 1,300 twinning projects have been implemented by those States: the project entitled "Development of Work with Juveniles and Victims by the Turkish Probation Service," carried out in Turkey in 2007 by the Ministry of Justice and the United Kingdom, is an important example of such a project.

Direct grant projects include activities such as the sharing of best implementation practices, and providing expert support through institutions that have a leading experience in the field. For example, the Council of Europe, which is a leading institution in the field of prisons and within the framework of which were adopted the European Prison Rules, gives support within the scope of direct grants to the projects carried out for the purpose of spreading European Prison Rules in its member States.

Council of Europe efforts in the field of improving prison systems, further include adopting standards, project implementation, and programme development. Whilst encouraging such information-sharing, the Council of Europe also provides support for projects carried out by member States. The countries in which penal reform projects have been carried out in conjunction with the technical cooperation of the Council of Europe include: Albania, Armenia, Azerbaijan, Bosnia and Herzegovina, Georgia, Moldova, Estonia-Latvia-Lithuania (North Baltic Project), the Russian Federation, Serbia, the Ukraine, "the former Yugoslav Republic of Macedonia" and Montenegro. Furthermore was carried out the CARDS Regional Prison Project, involving Western Balkan States (it ended in 2008). Along with new reform studies, the Council of Europe assists penal reform projects in countries such as Turkey, and supports their implementation mostly through joint programmes with the European Union.

Study visits, internship programmes, staff training, conferences and seminars, all operating within the context of these projects, provide significant support for best implementation practice- and experience-sharing across member States. Short-term and long-term projects, involving experts experienced in member States' criminal justice systems, contribute significantly to these initiatives. As these experts, from countries that have already completed programmes of penal reform, are involved more widely in projects of this nature, more progress on reaching common European standards will be achieved.

The Technical Assistance and Information Exchange (TAIEX), which could be presented as an example of an information-sharing and cooperation mechanism between European countries, directs requests for assistance by state institutions, and provides the most appropriate expertise for the "short-term" solution of their problems. Within the remit of TAIEX are penal reform projects which include improvement of health services, the selection and training of staff and convicts' social reintegration.

The MATRA programme, carried out by the government of the Netherlands with the aim of supporting the accession process for new, candidate, and potential candidate European Union member States, provides financial and technical personnel in support of projects in the fields of primary and secondary legislative compliance, public administrative reform, education, justice and domestic affairs, health, environment, public works, social policy and working conditions. The aim of the MATRA program is to assist the public sector in the implementation of Acquis, or policies for the purpose of accession, and in the establishment of a sustainable relationship between the public institutions of the Netherlands and potential EU member States. The MATRA projects generally coordinate activities such as exchange study visits, internship programmes, personnel training and translation services, supporting information and experience exchange between States. Recent projects conducted in Turkey under the MATRA programme include "Work and Education in Prisons," and "Harm Reduction in Treatment of Drug Addiction in Prison System."

Although both MATRA and TAIEX require bilateral cooperation, information- and experience-sharing and technical support to be effected between European member States, such programmes are limited, both in terms of their scope and budget. The fact that States are European Union candidates, or potential candidates, also limits the number of States that might benefit from them. Therefore, in order to facilitate the cross-border sharing of technical expertise and support throughout Europe, greater active participation of international organisations, such as the Council of Europe, is crucial.

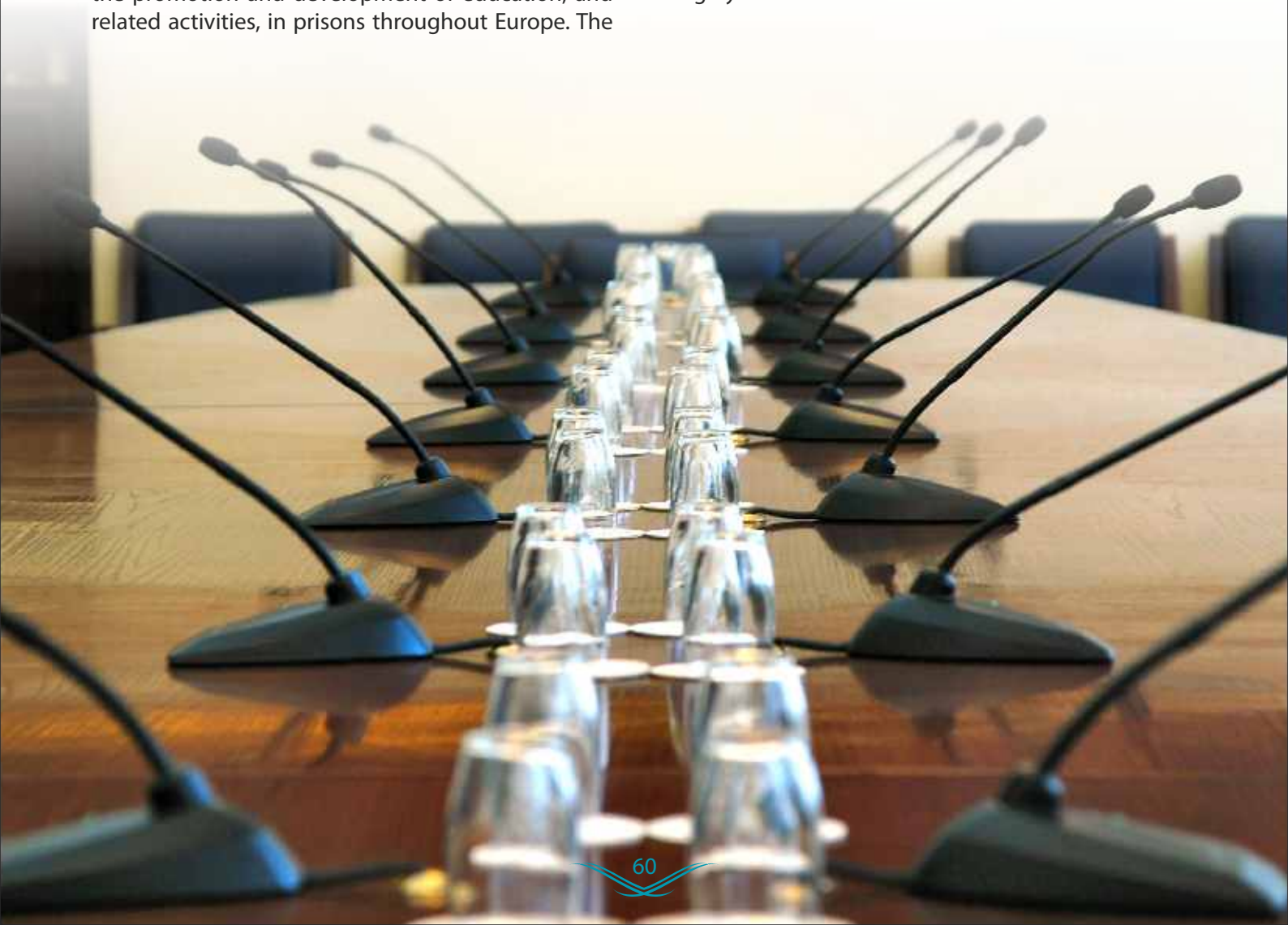
2. THE ORGANISATION OF CONFERENCES AND SEMINARS

One of the most important conferences to be organised by Council of Europe member States is the "Conference of Directors of Prison Administration (CDAP)," which paved the way for the sharing of best practices and information in the field of penal reform, in particular institutional management and prison conditions. The subject of the most recent conference – the 15th – which took place in Edinburgh, Scotland (9-11 September 2009), was "Overcrowded Prisons: Looking for Solutions." The conference, a regular gathering of Council of Europe member States since the 1970s, has proved to be an important solution-orientated platform for member States to share problems, and exchange information and experience. These conferences, in which participants also share best implementation practices, demonstrate the Council of Europe pivotal role in the communication and cooperation of the 47 member States.

Another important player in this field is the "European Prison Education Association (EPEA)". The EPEA is an organisation made up of prison educators, administrators, governors, researchers and other related professionals, whose primary interests lie in the promotion and development of education, and related activities, in prisons throughout Europe. The EPEA is recognised by the Council as a non-governmental organisation (NGO), and operates in accordance with its recommendations. It is committed to working with prison administrations throughout Europe in the pursuit of its goals, but is a completely independent organisation.

Another of the institutions organising international seminars on European penal reform is the European Institute of Public Administration (EIPA). The creation of a European model for prisons was subject of several seminars organised by this organization in Barcelona, Bratislava and Luxemburg, in the course of 2007 and 2008. The issues considered included: model staff training and management practices; the rights of prisoners; the implementation of monitoring and evaluation systems; total quality management; recruitment; and behaviour modification programs.

Such conferences and seminars, attended by European Union and Council of Europe and Council of Europe member States, make a vital contribution to the exchange of best practices, information and experience. An expansion in the number of events organised by the Council of Europe, with the aim of including other penal system professionals, would be highly desirable.

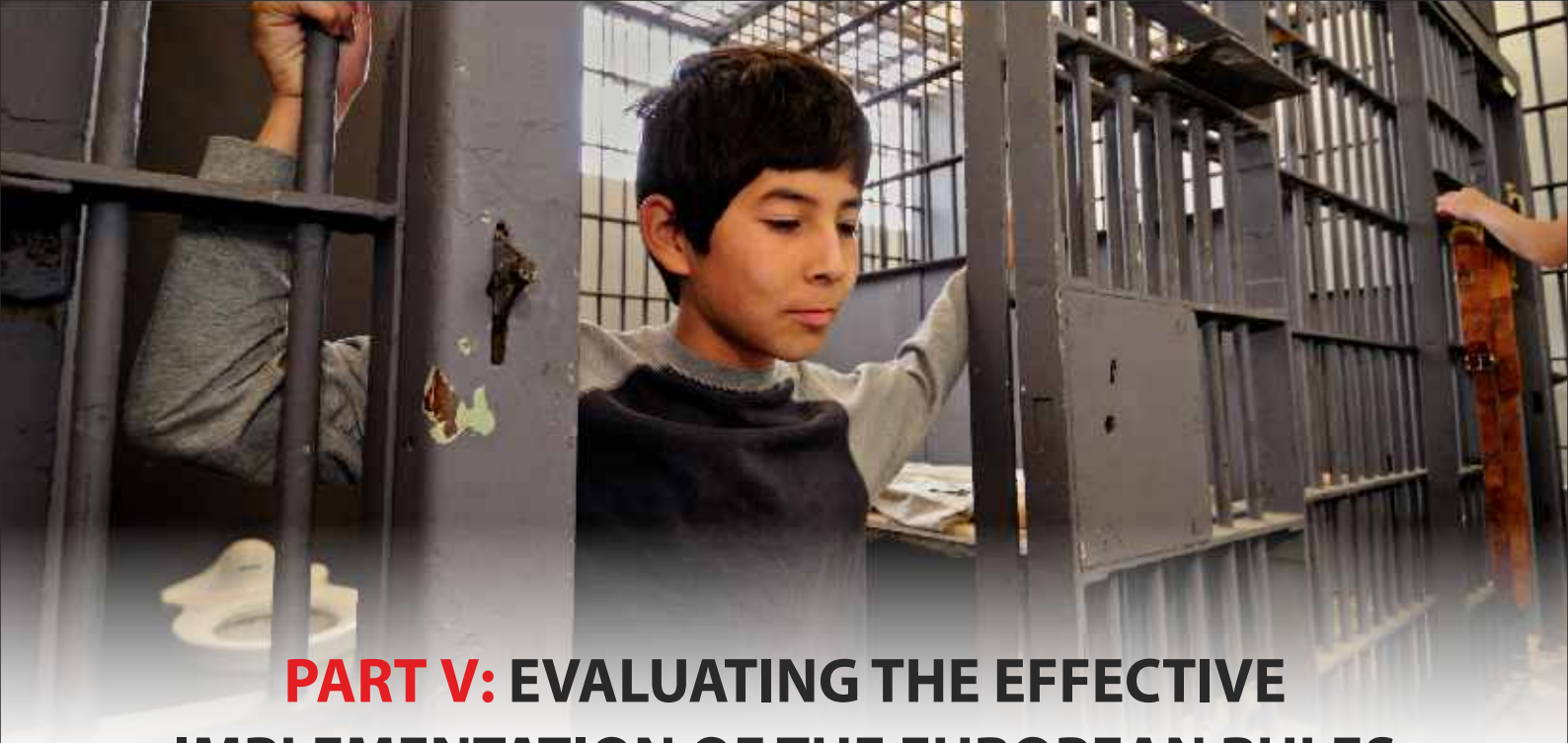


3. VISITS OF OFFICIAL DELEGATIONS OUTSIDE DEFINED PROJECT PARAMETERS

A significant, though somewhat indirect, tool for the exchange of best practices and experience between European member States, with regard to the improvement of prison conditions, is that of the parliamentarians who periodically visit prisons, with the aim of examining the conditions in which are held their respective citizens. Such visits tend not to fall within the remit of the specific project activities carried out by assembly delegations, non-governmental organisations, and other official institutions, and can prove highly useful for sharing best practices on good prison management, and the improvement of institutional conditions. Furthermore, their onsite observations can indicate model ways of doing things. Each country allows such visits to the extent that their internal legislation permits.

In particular, delegations composed of the respective countries' assembly commissions on this issue, stand out as important visits that enhance communication and information-sharing on prisons and penal reform, enabling information to flow between the units so charged. According to the European Prison Rules, each country shall allow foreign prisoners to communicate with the diplomatic or consular representative of their States.

Regimes which resist such visits are considered to be obstacles to this process of exchange: the facilitation of prison visits by other countries' official institutions and non-governmental organisations should rather be carried out in accordance with the appropriate security regulations and will, indirectly, contribute greatly to the sharing of information and cooperation to which such international organisations and projects aspire.



PART V: EVALUATING THE EFFECTIVE IMPLEMENTATION OF THE EUROPEAN RULES FOR JUVENILE OFFENDERS

It is clearly difficult to characterise any single 'type' of child or young person who commits crime in Europe. Some claim that there has been a gradual increase in violent crime committed by juveniles in recent years: others suggest, and it is submitted that these are better borne out by available statistics, that there is no bona fide increase in such crimes amongst young people per se. In any event, it is clear that this phenomenon should be evaluated independently from the crime rates which show an increase for the general population.

There exist certain difficulties in preparing a comparative study of the juvenile justice systems. The inadequacies inherent in the data, due in part to the different labels and data collection methods used in the field, exacerbate the problem. Some European countries are more likely to apply criminal sanctions than was the case in the past, and continue to detain children in correctional institutions along with adults. The minimum age for criminal liability has surreptitiously decreased in some European countries, and the number of detained juveniles is concerning: an examination of the total number of children held in European prisons further indicates that the number of such children belonging to minority groups is statistically significant. Even though some alternative sanctions are applied in certain situations, there is a general trend to apply criminal sanctions, particularly for older children involved in more serious offences.

On the other hand, in certain countries there has been an observable reduction in the number of children sent to correctional institutions. In these countries both guidance programmes have been developed as an alternative prior to the prosecution phase, and resolutions to implement alternatives to detention are acted upon. It is remarkable that the practices for which restorative justice programs and family group meetings lay the foundations are commonly used in such examples. These approaches are efficient in require in-depth evaluation in order to examine to what extent they play a role in crime reduction and to ensure their full compliance with the principles stipulated by international and European standards on juvenile detention.

In discussing this subject, we should not forget the fact that, according to international standards, a child means a human being below the age of eighteen, unless domestic law defines otherwise. There are many such of definitions with regard to children and juvenile offenders, the latter described in the European Recommendation as 'any person under the age of eighteen who commits or is alleged to commit an offence.'

Approaches to juvenile offenders and associated systems of criminal justice differ from country to country. As such, standards for the rights of the child identified within international and also European conventions are increasingly becoming important. These standards reflect a common approach, which emphasises differences and the implementation of sanctions other than detention, and focusing on the needs and interests of the child. Thus they are crucial to the legal systems of all Council of Europe member States.

1. INTERNATIONAL STANDARDS

International standards of juvenile justice have been improved for more than twenty five years, by the United Nations at the global level, and by the Council of Europe at the regional. Instruments specific to juveniles, such as the Convention on the Rights of the Child and generic conventions on human rights such as the European Convention on Human Rights, have played a tremendous role in identifying state obligations with respect to dealing with juvenile offenders. Such conventions, together with their associated mechanisms (respectively the Committee on the Rights of the Child and the European Court of Human Rights), stipulate and develop international standards regarding the approach to the children who violate the law. Some instruments such as the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment have a more specialised role in monitoring the treatment of detainees, including juveniles. In addition, special rules have been developed via a number of non-binding declarations and recommendations within the context of juvenile justice system, which have been adopted by both the United Nations and the Council of Europe, on the issues of the rights of juvenile offenders; guidance; prevention of juvenile delinquency; public service sanctions and measures; and detention.

2. UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD (UNCRC)

There are four core principles contained in the Convention on the Rights of the Child, which were adopted by all Member States of the Council of Europe: non-discrimination; devotion to the best interests of the child; the right to life, survival and development; and respect for the views of the child. These principles should become part of States' approach to identifying how they behave towards children who are in conflict with the law. States should guarantee that laws, policies and practices, related to the juvenile justice system, are regulated to protect all rights of the child and to ensure the development of these rights. The Convention on the Rights of the Child provides for the establishment of particular laws, procedures and institutions for children who break the law, with the condition that they must comply with human rights and the appropriate legal guarantees: in other words, the Convention provides for an entirely separate juvenile justice system, identifying a minimum age for criminal liability and employing measures to ensure that children are dealt with without resorting to judicial proceedings, wherever possible (Article 40).

3. UNITED NATIONS GUIDING INSTRUMENTS ON JUVENILE JUSTICE SYSTEM

Three core international instruments, adopted as United Nations General Assembly Resolutions, stand out as detailed guidelines in this field. These instruments are as follows:

United Nations Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines) – 1990

United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules) – 1985

United Nations Rules for the Protection of Juveniles Deprived of their Liberty (Havana Rules) – 1990

4. THE UNITED NATIONS GUIDELINES ON DETENTION

United Nations guidelines related to the rights of juvenile detainees include the Convention on the Rights of the Child and the Havana Rules. In addition, the various judgments made by the UN Commissioon Human Rights on this issue draw attention to international standards in the field of juvenile justice system. The condition of devotion to the best interests of the child is a recurrent theme in all kinds of decisions regarding depriving a juvenile of his or her liberty. In the course of a study carried out by the Secretary General of the United Nations in 2006, on the issue of violence against children, it was underlined that juvenile detainees are exposed to high levels of physical violence and punishment, and it was recommended that special efforts be made to end this practice.

4.1. The European Rules for juvenile offenders subject to sanctions or measures

In 2008, the Council of Europe adopted Recommendation Rec(2008)11 on the European Rules for juvenile offenders subject to sanctions or measures. These rules regulate the important principles that States have to follow in their dealings with juvenile offenders. Among these principles are included the principles of proportionality and respect of the best interests of the child, in making the decisions which may or may not lead to the execution of criminal sanctions or measures, as well as their implementation: for example, the age, physical and mental health, development, competency of the children, and their respective personal circumstances should be taken into account, depending on the seriousness of the offence they have allegedly committed. These principles ensure that the relevant measures are regulated in accordance with the particular circumstances of the child, and that they are implemented without undue delay, in compliance with the principle of minimum intervention. This instrument can also be used as a detailed guide to the detention conditions to which all Member States should conform by law, as well as by the implementation and follow up to these policies.

The Council of Europe Guidelines on the Prevention of Juvenile Delinquency

In addition, Council of Europe has also made a series of recommendations on systems of juvenile justice, and the prevention of juvenile delinquency. These include:

> Recommendation R(87)20 on social reactions to juvenile delinquency;

> Recommendation R(88) 6 on social reactions to juvenile delinquency among young people coming from migrant families;

> Recommendation R(2000)20 on early psychosocial intervention in the prevention of criminality;

> Recommendation R(2003)20 concerning new ways of dealing with juvenile delinquency and the role of juvenile justice;

> Recommendation R(2004)10 concerning the protection of the human rights and dignity of persons with mental disorder;

> Recommendation R(2005)5 on the rights of children living in residential institutions;

> Recommendation R(2006)2 on the European Prison Rules.

4.2. Suggestions to Improve the Effectiveness of the Recommendations for General Rules

Taking particular account of the negative effects of imprisonment on juveniles, and by accepting the important role of society in their social and psychological re-integration, public support for developing sanctions alternative to prison should be encouraged.

Mobilising the contributions of NGOs to juvenile and adult correctional facilities, and strengthening the relations between them, should be the goal to improve standards and make institutions more transparent.

The increased participation of such institutions' staff in the training and awareness-raising activities organised within this context should be formalised: specialised training programmes should be designed for staff working predominantly with juveniles.

In order to strengthen coordination and to contribute to the creation of mutually complementary initiatives, a databank that could be shared by all NGOs involved in such projects should be created. Projects that will facilitate information- and experience-sharing on the common problems of specialist correctional institutions (e.g. juvenile prisons, women's prisons, prisons with high-security, etc.) should be developed.

International human rights standards, especially in juvenile correctional institutions, should be carefully implemented by developing NGO training programs and instruments in various fields.

To inform and raise awareness on the prison system, accurate, clear and impartial information regarding prison reform, human rights, and the activities of international, national and local institutions should be provided to the public. Communication, through bulletins and other kinds of publications, should be encouraged.

International, national and regional conferences, seminars and study visits, which bring together the General Directorate of Prisons and Detention Houses, Government and NGO representatives, who work in the field of penitentiary system, should be organised. This will facilitate information-sharing and promote mutual assistance. The findings of such events should be thoroughly evaluated in order to reinforce the practical enactment of conclusions drawn.

The conclusions of the Council of Europe biannual Conferences of Directors of Prison Administration (CDAP) should be evaluated more efficiently and communication and cooperation between national prison administrations should be reinforced in order to ensure that these conclusions are applied in practice.

PART VI: EXAMINING WHETHER THERE IS A NECESSITY TO ADOPT LEGALLY BINDING STANDARDS IN THE FIELD OF EXECUTION OF SANCTIONS

1. LEGAL INSTRUMENTS

International instruments and treaties provide a framework within which States can cooperate in order to address common issues, which they recognise as important and worthy of international concern and attention. Treaty law (treaties, conventions, covenants), is legally binding on States, which are parties to it. Human rights treaties in particular set international standards for the minimum treatment of human beings that States are bound to follow.

1.1 International Law

International human rights law includes both instruments designed for the universal protection of all human beings, and those designed specifically for the protection of prisoners and detainees. The basic premise of these instruments is that, apart from the deprivation of liberty, prisoners retain their human rights: the right to a free and fair trial; to freedom of thought, conscience and religion; the right to have a private and family life; the right to have adequate food, shelter and clothing; healthcare rights; and, the right to receive education are the inalienable rights for each and every human being. The right of prisoners to be treated in a respectful manner and the prohibition of all kinds of torture, inhuman or degrading treatment or punishment are confirmed in all human rights instruments, including two international treaties: the International Covenant on Civil and Political Rights (ICCPR) and the UN Convention against Torture (CAT) which are legally binding. Additional legal instruments lay out the rules of conduct for every level of prison staff, and set acceptable minimum standards for prison design, provisions and conditions.

1.1.1 The United Nations

The United Nations has set out international standards regarding the treatment of those deprived of their liberty. These standards have a universal status because they are agreed on and accepted by the international community and are legally binding on all States which have ratified them, regardless of the legal system or legal framework of a particular state.

'The Standard Minimum Rules for the Treatment of Prisoners' instrument, adopted by the Fifth Crime Congress in 1975, was among several 'soft' legal instruments developed by the United Nations Commission on Crime Prevention, protecting the human rights and personal liberties of detainees. The other important instruments are the Universal Declaration of Human Rights (1948), the International Covenant on Civil and Political Rights (1966) and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984).

Apart from these, the most widely known and authoritative are the United Nations Standard Minimum Rules for the Treatment of Prisoners, also known as The Standard Minimum Rules (SMR) adopted in 1957 by UN Economic and Social Council. "What is generally accepted as being good principle and practice in the treatment of prisoners and the management of institutions" is the preamble of SMR. The SMR lists a very specific set of guidelines for the treatment of offenders, ranging from basic food, shelter and exercise requirements to guidelines on prisoner classification and the provision of educational and vocational training.

Although The Standard Minimum Rules are not legally binding, they have been used by national and international courts and non-governmental human rights organisations to provide guidance in interpreting binding human rights norms and standards. In some countries they have been enacted into law or form the basis for national prison regulations.

'The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment' (OPCAT) is an addition to the UN Convention against Torture (1984). It establishes the first international inspection body for places of detention in order to prevent torture and other forms of ill-treatment.

1.1.2 Council of Europe

For more than forty years, the Council of Europe has played a crucial role in the reforming prison services and the improvement of prison conditions in Europe.

Council of Europe has developed specific standards in the prison field through binding texts like conventions and protocols, and the case-law of the European Court of Human Rights related to cases concerning detention and imprisonment. Detailed standards are also established in the "non binding" texts like Committee of Ministers' recommendations and the annual general reports of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT). Although these recommendations are not legally binding, they have been unanimously approved by the Committee of Ministers of the Council of Europe, and therefore represent a consensus amongst the member States. These conventions, protocols, the case-law of the Court and standards adopted by the Committee of Ministers and CPT, are crucial in guaranteeing the human rights protection of detainees, but also of the staff responsible for their treatment.

1.1.2.1 European Convention on Human Rights (ECHR)

'The European Convention for the Protection of Human Rights and Fundamental Freedoms' does not contain special provisions dealing with prisoners' rights. The Convention's provisions are also applicable to those that are deprived of their liberty since imprisonment does not automatically limit all of a person's rights.

1.1.2.2 The European Court of Human Rights (ECtHR)

The European Court of Human Rights is a judicial body of the Council of Europe, its decisions are legally binding and the court has the power to award damages. Not only signatory States but also individuals and organisations have the right to file cases against countries which are bound by the Convention directly to the Court.

1.1.2.3 The European Prison Rules (EPR)

The European Prison Rules are a clear and comprehensive statement of the current European consensus on the standards that all prison services should meet concerning the treatment of prisoners. Unlike treaties and conventions, Recommendations are not legally binding but, as they have been adopted by the governments of Council of Europe member States, they represent an authoritative up-to-date guidance for the development of the legislation, policies and practice of prison services in all European countries. In addition to these rules, there are also other recommendations by the Council of Europe that are applicable to prison authorities and the treatment of prisoners.

1.1.2.4. The European Committee for the Prevention of Torture

The European Committee for the Prevention of Torture (CPT) was established in 1989 by the 'European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.' Although its recommendations are non-binding, it is an important mechanism for the prevention of torture in Europe. The work is based on a system of visits to detention facilities, and monitors the extent to which individual States implement the European Prison Rules.

1.2. The European Prisons Charter

Although there is a clear need to harmonise prison conditions all over Europe, it is very difficult for countries to adopt a binding legal instrument in this field. The story goes back to 1988-1997 when a proposal was made and a draft protocol to the European Convention on Human Rights dealing with rights of persons deprived of their liberty was prepared by the Steering Committee for Human Rights (CDDH). This text did not meet at that time the political agreement of the Council of Europe member States and the idea was abandoned.

In 2004, the Parliamentary Assembly of the Council of Europe (PACE) urged the Committee of Ministers to adopt an European Prisons Charter (Recommendation 1656 (2004) on the situation in European prisons and pre-trial detention centres) because "living conditions in many prisons and pre-trial detention centres have become incompatible with respect for human dignity. There is clearly a need to harmonise detention conditions...". PACE recommended that the work on the binding legal instrument is done jointly with the European Union.

Parallel to that the European Parliament adopted a similar proposal (Recommendation to the Council of the European Union on the rights of prisoners in the European Union (2003/2188 (INI) adopted on 9 March 2004).

According to PACE the following principles should form the basis of the European Prisons Charter: the right of access to a lawyer and a doctor during pre-trial detention and the right for persons held pending trial to notify a third party of their detention; humane detention conditions; the right of access to internal and external medical services; activities geared to rehabilitation, education and social and vocational reintegration; the separation of prisoners; specific measures for vulnerable categories of prisoners; visiting rights; effective remedies enabling prisoners to defend their rights against arbitrary sanctions or treatment; special security regimes; promoting non-custodial measures and informing prisoners of their rights, etc.

In its own recommendation (2003/2188 (INI) the European Parliament called on the Council to urge member States and acceding countries to ratify the 'Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment;' take measures at European Union level; initiate an assessment of the laws of the Member States; encourage the Member States to allocate appropriate resources for the restructuring and modernisation of prisons; and urge the Council of Europe Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment and the Human Rights Commissioner to conduct a series of unannounced visits to member States which have established special regimes.

The European Committee for crime Problems (CDPC) was requested by the Committee of Ministers of the Council of Europe to give its opinion on the PACE proposal in 2004 and it in turn requested the PC-CP (its subordinate advisory body on penitentiary issues), which was drafting at the same time the new European Prison Rules, to consider this issue.

The PC-CP agreed that with the enlargement of the Council of Europe and the European Union there was an obvious need to take a step further in the penitentiary field by adopting a European Prisons Charter which should contain the essence of the relevant European standards. In addition it proposed a regular updating of the new European Prison Rules in close cooperation with the European Court of Human Rights and the CPT which would contribute to their effective implementation by the national authorities.

In 2006 the CDPC did not reach a political agreement and was of the opinion that it was not feasible to adopt a European Prisons Charter because it would be difficult for the States to reach a consensus on more than a very limited number of binding legal rules, which could impoverish and stigmatise existing standards and could lead to a weakening of the importance and the impact of the European Prison Rules. The CDPC rather supported the suggestion to consolidate all relevant Council of Europe standards in a single Compendium of texts related to penitentiary questions. This view was reflected in the Committee of Ministers' reply to PACE.

PACE was not satisfied with the opinion expressed by the Committee of Ministers and in 2006 it adopted a new Recommendation 1747 (2006) on the European Prisons Charter because it considered that "the situation in the prisons of a number of European countries is worrying, not to say critical. Overcrowding, illness, malnutrition and deplorable sanitary conditions are the fate shared by hundreds of thousands of prisoners. .... inadequate prison facilities and the lack of any real penal policy in some member States and of any proper co-ordination between States on penal and prisons policies mean that Europe must adopt a robust, efficient and ambitious instrument to promote a genuine European prisons policy, establishing fully binding standards and common criteria for the member States and allowing the harmonisation of sentences and conditions of detention and the monitoring of their enforcement."

PACE also urged the Committee of Ministers to strengthen the role and function of the CPT by way of a mandate not only to prevent torture and inhuman and degrading treatment or punishment in places of detention but to monitor in general the situation in prisons and detention centres and the respect of the rights of detained persons. It also urged it to set up in conjunction with the European Union, a European prisons observatory.

However, in its reply to PACE adopted on 27 September 2006, the Committee of Ministers wished to keep the existing instruments and to invite countries to implement the new European Prison Rules (adopted on 11 January 2006) which will be reviewed every five years in order to reflect, if necessary, the standards contained in the relevant case-law of the European Court of Human Rights and the CPT reports. The Committee of Ministers was also of the opinion that the mandate of the CPT was sufficiently strong and broad as it was given unlimited access to all detention facilities and all possible efforts were made to follow the recommendations made by the CPT in its reports to member States.

2. WHY IS A LEGALLY BINDING INSTRUMENT NEEDED?

The management of prisons can be described as one of the core prerogatives of state governance. The debate regarding their use should be the concern of civil society as a whole. The way prisons are managed is linked closely to the social structures within each state. Imprisonment is influenced much more by political decisions than by levels of crime or rates of crime detection.

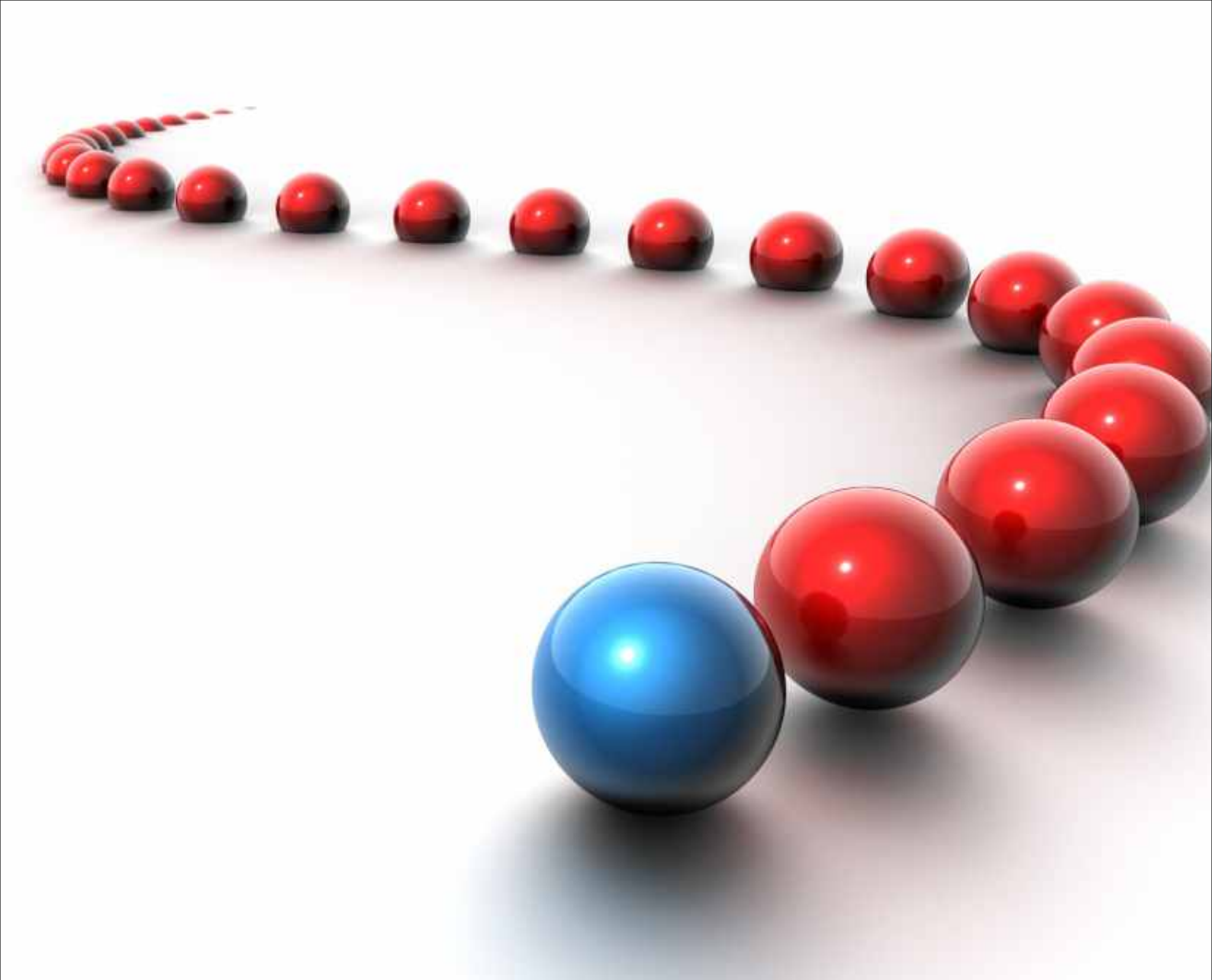
Some people, even those working in the field, tend to think that prisons should be places surrounded by high walls or fences, with locks, bars and bolts. According to them prisoners should be kept in close confinement, continuously supervised by staff. The findings of recent studies, as discussed above, begs the question whether there exists a need for a revision of this definition.

Although years have passed since the last recommendation of the Parliamentary Assembly of the Council of Europe, dealing with the conditions of detention in prisons, the situation had not improved at all. Living conditions are worse in most member States, mostly because of overcrowding. There is an obvious need to take further steps in the field of prison reform.

In the "Workshop on the Survey of United Nations and Other Best Practices in the Treatment of Prisoners in the Criminal Justice System", held in Salvador, Brazil in April 2010, the United Nations Special Reporter on Torture described massive differences in the treatment of prisoners, highlighting the need for stiffer measures to improve prison conditions and ensure full respect for basic human rights standards. "In light of some 10 million human beings deprived of personal liberty and their alarming conditions of detention, the need for a legally binding and enforceable human rights instrument is pressing," Special Rapporteur Manfred Nowak said. He underlined the need for a legally binding document, such as a United Nations Convention, to protect the rights of detainees and proposed setting a limit on the number of individuals imprisoned in order to improve the treatment of prisoners and conditions in prisons by reducing overcrowding.

One of the problems to which Member States frequently draw attention is the lack of resources available to improve prisons, which leads to a necessity to create a budget heading for encouraging them to comply with high standards and recommendations. Legally binding standards may prove to be a stronger incentive to make resources available.

The agenda of the 30th Council of Europe Conference of Ministers of Justice was approved on 5 May 2010, just a few days before the Committee of Ministers meeting. The PC-CP (the Council for Penological Co-operation), which has considered the topic of "Prisons in Today's Europe," has insisted on the need for elaborating a binding legal instrument on prisons. Since the Council of Europe is the only inter-governmental organisation competent in the prisons field, it should take the lead in this endeavour.



3. RECOMMENDATIONS

A prison sentence should always be a measure of last resort and all appropriate measures should be taken to counter the negative effects of incarceration, allowing the full reintegration of prisoners into society upon release. To lay down detailed and binding rules concerning respect for human rights of all persons deprived of their liberty could assist the social reintegration of prisoners.

Such a binding legal instrument may take the form of a Charter which might start with the most important rules contained in the European Prison Rules, providing the terminology and the general contextual principles to be followed. It may outline the main principles, fundamental rights and freedoms and basic functions of the prison administration. Some articles may be compulsory for all parties, whilst the rest may be optional and States may choose which obligations to follow.

Within this legally binding structure, the same standards could be applied to all prisoners, entitling them to the same levels of human rights protection. Although the standards for treatment of prisoners, and the level of their protection may not be the same in reality in all countries, regular updates should ensure consistency of the standards. It should also act as a 'living' instrument, providing a mechanism for continuous updating and development.

Thorough monitoring of the enforcement of the rules and principles would result in a robust, legally binding instrument. If a fully binding legal framework could be established, the new structure should have an efficient control mechanism building on the existing one under the CPT Convention.

The new structure should be ambitious; covering not only Council of Europe (and thus also all European Union member States), but also non-members. Common principles and standards of criminal policy should be established to fight crime globally. A European prisons observatory could be established at international level. The European Union should also actively participate in the creation of this legally binding instrument and should be a member of the body set-up to monitor its implementation.

REFERENCES

SECTION 1

TEXTBOOKS

1. Bhatnagar, S., 'E-Government From Vision to Implementation', Sage Publications, 1st edition, London, 2004
2. Clayton, R., and Tomlinson, H., 'Fair Trial Rights', Oxford University press, 2001
3. Fabri, M., Contini, F., 'Justice and Technology in Europe: How Ict is Changing the Judicial Business', Kluwer Law International, 2001
4. Federico, D.G., 'Foreword' in Fabri, M. 'Justice and Technology in Europe: How Ict is Changing the Judicial Business', Kluwer Law International, 2001
5. Fox, H. R., 'Justice in the Twenty-First Century', Cavendish, 2000
6. Henderson, K.E., 'Global Lessons and Best Practices: Corruption and Judicial Independence', in Canivet, G.,Andenas, M., and Fairgrieve, D., 'Independence, Accountability, and the Judiciary', British Institute of International and Comparative Law, London, 2006
7. Katsh, M.E., 'Law in a Digital World', Oxford University press, New York,1995
8. Kelman, A., and Sizer R., 'The Computer in Court, Hampshire', Gower publishing, 1982
9. Lloyd, I., 'Legal Aspects of the Information Society', Butterworths, Reed Elsevier, 2000
10. Lodder, A.R., Oskamp, A., and Schmidt, A.H.J., 'IT-support of the Judiciary in Europe' ITeR 43, The Hague, Sdu 2001
11. Martinelli, A., 'Global Modernization Rethinking the Project of modernity', 1st edition, Sage publications, London, 2005
12. Mowbray, A., 'Justice and technology', in Fox, H. R., 'Justice in the Twenty-First Century', Cavendish, 2000
13. Orta, M. 'Elektronik İmza ve Uygulaması', Seckin, 2005
14. Oskamp, A., Lodder, A.R., and Apistola, M., 'IT Support of the Judiciary' Information Technology and Law series, 4 TMC Asser Press, the Hague, 2004
15. Susskind, R.E., 'The Future of Law: Facing the Challenges of Information Technology', Clarendon Press, Oxford, 1998,
16. Sze, T.Y., 'Singapore', in Oskamp, A., Lodder, A.R., and Apistola, M., 'IT Support of the Judiciary' Information Technology and Law series, 4 TMC Asser Press, the Hague, 2004
17. Taylor, R.W., Caeti, T.J., Loper, K., Fritsch, E.J. and Liederbach, J., 'Digital Crime and Digital Terrorism', Prentice Hall, New Jersey, 2006
18. Wallace, A., 'Australia IT System in judiciary' in Oskamp, A., Lodder, A.R., and Apistola, M., 'IT Support of the Judiciary' Information Technology and Law series, 4 TMC Asser Press, the Hague, 2004
19. Weeramantry, C.G., 'Justice without frontiers; Protecting Human Rights in the Age of Technology', Kluwer Law International, The Hague, 1998

ARTICLES

1. Anderson, M., And Apap, J., 'Striking A Balance Between Freedom, Security And Justice In An Enlarged European Union', Centre For European Policy Studies , Brussels, 2002
2. Barnett, J., 'United Kingdom', The Symposium: International Conference on the Legal and Policy Implications of Courtroom Technology William & Mary Bill of Rights Journal 12 Wm. & Mary Bill Rts. J., p 687 699, HeinOnline, 2003-2004
3. Basu, S., 'E-Government And Developing Countries:An Overview', International Review Of Law Computers & Technology, Volume 18, No. 1, Pages 109–132, March 2004
4. Bauer, P., 'A Show Case For the Future; E-Justice in Austria', in Fabri, M., Contini, F., 'Justice and Technology in Europe: How Ict is Changing the Judicial Business', Kluwer Law International, 2001
5. Borkowski, J., 'Court Technology in Canada', The Symposium: International Conference on the Legal and Policy Implications of Courtroom Technology William & Mary Bill of Rights Journal 12 Wm. & Mary Bill Rts. J. 681-687, HeinOnline, 2003-2004
6. Brooke, H., 'Technology and the Judicial Process', in Saville, M.O. and Susskind R.E., 'Essays in Honour of Sir Brian Neill: The Quintessential Judge', LexisNexis UK 2003
7. Brooke, H., 'The use of technology in the Courts', Leeds University, 28 May 2003
8. Brooke, H., 'Court Modernisation and the Crisis Facing Our Civil Courts', Society of Advanced Legal Studies, London 24 November 2004 http://www.dca.gov.uk/judicial/speeches/ljb241104.htm, accessed: 30.05.2008
9. Brooke, H., 'The Legal and Policy Implications of Courtroom Technology', The Emerging English Experience International Conference at Williamsburg 13 February 2004, This speech was first published in the William & Mary Bill of Rights Law Journal, Vol 12, Issue 3, April 2004.
10. Cam, A.R., 'EU principles in modernisation of Justice and the Turkish IT project UYAP', European Journal of Epractice, 14 may 2008 http://www.epracticejournal.eu/volume/3/document/4718 accessed: 13.06.2008
11. Dumortier, J. and Goemans, C., 'The Challenge of the Information Society: Application of Advanced Technologies in Civil Litigation and Other Procedures', March 1999
12. Fabri, M., 'Judicial Electronic Data Interchange in Europe: Applications, Policies and Trends', 2003
13. Fabri, M., 'State of the Art, Critical Issues and Trends of ICT in European Judicial System', in Fabri, M. and Contini, F., 'Justice and Technology in Europe: How ICT is Changing Judicial Business' (Eds,.) Kluwer Law International, The Hague, 2001
14. Fabri, M., 'Italy, Practical perspective', In IT support of the Judiciary in Europe (Eds, Lodder, A. R., Oskamp, A. And Schmidt, A. H. J.) SDU, 2001
15. Gay, A., 'Modernising Criminal Justice, Working Across Boundaries and Creating Efficiencies', The OIS Vision within NOMS, presentation, 17thMay, 2007, Kable Conference, Modernising Criminal Justice, London, May 2007
16. Gertner, N., 'Videoconferencing: Learning through Screens' Symposium: International Conference on the Legal and Policy Implications of Courtroom Technology, William & Mary Bill of Rights Journal 12 Wm. & Mary Bill Rts. J. p 769-790, HeinOnline, 2003-2004
17. Hovik, K., Skagemo, S., 'Judicial Electronic Data Interchange in European Civil Proceedings and Criminal Matters', Norway, 2002
18. Kiskis, M. and Petrauskas, R., 'ICT Adoption in the Judiciary: Classifying of Judicial Information', International Review Of Law Computers, & Technology, Volume 18, No. 1, Pages 37–45, March 2004
19. Kujanen, K., 'E-services in the courts in Finland', Presentation at the Seminar on Law and Informatics, Bern, 26 October 2004, p. 4

20. Lodge, J., 'eJustice, Security and Biometrics: the EU's Proximity Paradox', European Journal of Crime, Criminal Law and Criminal Justice, Vol. 13/4, 533–564, 2005

21. Longo, J., 'Investigation Issues, Perspectives on white collor crimes towards 2000', Seminar, Adelaide, 27.02.1998 in Oskamp, A., Lodder, A.R., and Apistola, M., 'IT Support of the Judiciary' Information Technology and Law series, 4TMC Asser Press, the Hague, 2004

22. MacDonald, R.M., Burdon, M., and Jackson, S.M., 'Ensuring the integrity of the E-court process', in Proceedings Justice Environments Conference 2006, pages pp. 1-12, Melbourne. Accessed from http://eprints.qut.edu.au accessed: 30.05.3008

23. Magnus, R., 'Confluence of Law and Policy in Leveraging Technology: Singapore Judiciary's Experience', The Symposium: International Conference on the Legal and Policy Implications of Courtroom Technology William & Mary Bill of Rights Journal 12 Wm. & Mary Bill Rts. J., p. 661-680, HeinOnline 2003-2004

24. Malik, W.H., 'E-Justice: Towards A Strategic Use Of Ict In Judicial Reform', The World Bank Marrakech Conference Strategies For The Modernization Of Justice In Arab Countries Organized By Pogar, Undp/Wb/Moj Morocco March 15-17, 2002

25. McMillan, J.E., Walker J. D., and Webster, L.P., 'A Guidebook for Electronic Court Filing', West Group, Inc. ISBN 0-314-23340-7,1998, http://www.ncsconline.org/D_Tech/archive/guidebook/PDF/efiling.pdf accessed: 25.06.2008

26. Metin, E., Tanoğlu, I., 'e-yargı ve Türkiye' inet-tr.org.tr/inetconf8/bildiri/87.doc, 2007

27. Morton, J., 'Court TV - the Cameras are Switched On Again', J. Crim. L. 2004, 68(6), 451-453, (Journal of Criminal Law), 2004

28. Pimentel, D., 'Technology in a War Crimes Tribunal: Recent Experience at the ICTY', Symposium: International Conference on the Legal and Policy Implications of Courtroom Technology William & Mary Bill of Rights Journal 12 Wm. & Mary Bill Rts. J. p 715-731, HeinOnline, 2003-2004

29. Raine, J.W., 'Modernising Courts and Tribunals through ICTs—Lessons from The London Parking Appeals Service', IJL&IT 2001 9 (International Journal Of Law And IT-115) 1 June 2001

30. Reiling D., 'Doing Justice With Information Technology', Information and Communications Technology Law vol.15, no.2 June 2006

31. Schweighofer, E., 'Knowledge Management And Administration Of Justice', Internatýonal Revýew Of Law Computers & Technology, Volume 18, no. 1, Pages 47–57, March 2004

32. Sterling, J.A.L., 'The International Copyright Code and e-justice: basic proposals for global solutions to global problems', E.I.P.R. 2001, 23(11), 528-538, [European Intellectual Property Review] Publication Date: 2001

33. Susskind, R., 'The Challenge of the Information Society: Application of Advanced Technologies in Civil Litigation and Other Procedures:Report on England and Wales', , p. 5, available at: http://ruessmann.jura.unisb.de/grotius/english/Reports/england.htm 1999 accessed: 25.06.2008

34. Tang, Z., 'Online Dispute Resolution, An Effective Dispute Resolution System For Electronic Consumer Contracts', Computer Law & Security Report, 2 3 (2 0 0 7) 4 2 – 5 2, available at www.sciencedirect.com. accessed: 23.06.2008

35. Velicogna, M. 'Justice Systems and ICT, What can be learned from Europe?' utrechtlawreview Volume 3, Issue 1 (June) 2007, http://www.utrechtlawreview.org/ accessed date:30.05.2008

36. CEPEJ Study N° 7: Use of Information and Communication Technologies in European judicial systems, CEPEJ Publications. http://www.coe.int/t/dghl/cooperation/cepej/series/Etudes7TIC_en.pdf

37. Vuyst, B., Fairchild, A., 'The Phenix project: a case study of e-justice in Belgium' , ACM International Conference Proceeding Series; Vol. 156, 2006

38. Wiggins, E.C., 'The Courtroom of the Future is Here: Introduction to Emerging Technologies in the Legal System', LAW & POLICY, Vol. 28, No. 2, April 2006

39. Wiggins, E.C., 'What We Know and What We Need to Know about the Effects of Courtroom Technology' Symposium: International Conference on the Legal and Policy Implications of Courtroom Technology William & Mary Bill of Rights Journal 12 Wm. & Mary Bill Rts. J. p 731-745, HeinOnline, 2003-2004

REGULATIONS, REPORTS, PROPOSALS AND RECOMMENDATIONS

1. CEPEJ (2005) 12 REV: Time management checklist adopted by the CEPEJ at its 6th plenary meeting (7–9 December 2005)
2. CEPEJ (2006)13: Compendium of "best practices" on time management of judicial proceedings adopted by the CEPEJ at its 8th plenary meeting (Strasbourg, 6 - 8 December 2006)
3. CEPEJ (2008)2: Checklist for promoting the quality of justice and the courts adopted by the CEPEJ at its 11th plenary meeting (Strasbourg, 2-3 July 2008)
4. CEPEJ (2006)14: Time management of justice systems: A Northern Europe study adopted by the CEPEJ at its 8th plenary meeting (Strasbourg, 6 - 8 December 2006)
5. CEPEJ (2006)14: Time management of justice systems: A Northern Europe study adopted by the CEPEJ at its 8th plenary meeting (Strasbourg, 6 - 8 December 2006)
6. CEPEJ (2006)13: Compendium of "best practices" on time management of judicial proceedings which has been adopted by the CEPEJ at its 8th plenary meeting (Strasbourg, 6 - 8 December 2006)
7. CEPEJ (2008)8Rev1: SATURN Guidelines for judicial time management adopted by the CEPEJ at its 12th plenary meeting (Strasbourg, 10 – 11 December 2008
8. CEPEJ (2008)11: CEPEJ Guidelines on judicial statistics (GOJUST) adopted by the CEPEJ at its 12th plenary meeting (Strasbourg, 10 – 11 December 2008)
9. CEPEJ (2004)19REV2: "A new objective for judicial systems: the processing of each case within an optimum and foreseeable timeframe - Framework Programme
10. CNS/2008/0101 Commission Proposal – 27/05/2008 Criminal judicial cooperation: establishing the European Criminal Records Information System ECRIS
11. CNS/2005/0267, Criminal judicial cooperation: exchange of information extracted from criminal records between Member States. Framework decision
12. Commission Recommendation of 4 April 2001 on the principles for out-of-court bodies involved in the consensual resolution of consumer disputes, OJ L109, 19/04/2001, pp. 0056–0061.
13. Commission Recommendation of 30 March 1998 on the principles applicable to the bodies responsible for out-of-court settlement of consumer disputes,
14. Council Decision 2006/35/EC of 23 January 2006 on the principles, priorities and conditions contained in the Accession Partnership with Turkey. http://eur-lex.europa.eu/smartapi/cgi/Sga_doc?smartapi!celexplus!prod! DocNumber&lg =en&type_doc= Decision&an_doc=2006&nu_doc=35
15. COUNCIL DECISION of 28 May 2001 establishing a European Judicial Network in civil and commercial matters (2001/470/EC)(OJ L 174, 27.6.2001, p. 25)
16. COUNCIL REGULATION (EC) No 593/2008 of the European Parliament and of the Council regarding to conflict of laws and contractual obligations in civil and commercial matters
17. COUNCIL REGULATION (EC) No 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters
18. COUNCIL REGULATION (EC) No 805/2004 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL creating a European Enforcement Order for uncontested claims
19. COUNCIL REGULATION (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations (Rome II)
20. COUNCIL REGULATION (EC) No 1206/2001 of 28 May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters

21. COUNCIL REGULATION (EC) No: 662/2009 of the European Parliament and of the Council of 13 July 2009 establishing a procedure for the negotiation and conclusion of agreements between Member States and third countries on particular matters concerning the law applicable to contractual and non-contractual obligations

22. COUNCIL REGULATION (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000

23. Council Of The European Union 9956/08 (Presse 146) Press Release, 2873rd Council meeting Justice and Home Affairs Luxembourg, 5-6 June 2008

24. Council Of The EU 9956/08 (Presse 146) Press Release,Luxembourg, 5-6 June 2008

25. Council Joint Action 98/428/JHA of 29 June 1998 published in OJ L 191, 7.7.1998, p. 4

26. Decision No 1149/2007/EC of the European Parliament and of the Council of 25 September 2007 establishing for the period 2007-2013 the Specific Programme Civil Justice as part of the General Programme Fundamental Rights and Justice

27. Directive 1999/93/EC of the European Parliament and of the Council of 13 December 1999 on a Community framework for electronic signatures, Official Journal L 013 , 19/01/2000 P. 0012 – 0020

28. Directive 95/46/EC - The Data Protection Directive

29. Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce')

30. Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002

31. Directive 2002/8/EC of 27 January 2003 to improve access to justice in cross-border disputes by establishing minimum common rules relating to legal aid for such disputes

32. Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008

33. Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002

34. Draft Report on defining a new Digital Agenda for Europe: from i2010 to digital.eu (2009/2225(INI))

35. E.C. Turkey Screening Report Chapter 23 - Judiciary And Best Practices

36. Electronic interconnection of criminal records- establishment of the European Criminal Records Information System, Reference: IP/08/823 Date: 30/05/2008

37. E-Commission 2006-2010: enabling efficiency and transparency; http://www.ec.europa.eu/dgs/informatics/ecomm/doc/ecomm-2006-010_cs_en_v414_postcis.pdf, (accessed date 26.06.2008).

38. Modernising Justice, The Government's plans for reforming legal services and the courts, December 1998, www.open.gov.uk/lcd (accessed date 18.06.2008)

39. Monitoring The EU Accession Process: Judicial Capacity www.eumap.org/reports/2002/judicial/international/sections/overview/2002_j_05_overview.pdf (accessed date 26.06.2008).

40. Progress report 2007 http://ec.europa.eu/enlargement/pdf/key_documents/2007/nov/turkey_progress_reports_en.pdf p.10 (accessed date 26.06.2008).

41. Proposed Solutions for the Future EU Justice Programme, June 2008, High-Level Advisory Group on the Future of European Justice Policy, http://www.statewatch.org/news/2008/jul/eu-futures-justice-report.pdf

42. Recommendation (1998) 1 (Adopted by the Committee of Ministers on 21 January 1998 at the 616th meeting of the Ministers' Deputies)

43. Recommendation (1999)19 (Adopted by the Committee of Ministers on 15 September 1999 at the 679th meeting of the Ministers' Deputies)

44. Recommendation (2001)9 (Adopted by the Committee of Ministers on 5 September 2001 at the 762nd meeting of the Ministers' Deputies)

45. Recommendation (2002)10 (Adopted by the Committee of Ministers on 18 September 2002 at the 808th meeting of the Ministers' Deputies)

46. Recommendation (2001)2 of the Committee of Ministers to member States concerning the design and redesign of court systems and legal information systems in a cost effective manner (adopted by the Committee of Ministers on 28 February 2001 at the 743rd meeting of the Ministers' Deputies)

47. Recommendation (2001)3 of the Committee of Ministers to member States on the delivery of court and other legal services to the citizen through the use of new technologies (adopted by the Committee of Ministers on 28 February 2001 at the 743rd meeting of the Ministers' Deputies)

48. Recommendation (2003)14 on the interoperability of information systems in the justice sector of the Committee of Ministers

49. Recommendation (2003)15 of the Committee of Ministers to member States on archiving of electronic documents in the legal sector (adopted by the Committee of Ministers on 9 September 2003 at the 851st meeting of the Ministers' Deputies)

50. Resolution No. 1; "Delivering justice in the 21st century", THE MINISTERS participating in the 23rd Conference of European Ministers of Justice (London, 2000)

51. Signposts towards e-Government 2010; (This report is prepared by the European Commission e-Government Unit in cooperation with the eTEN, e-Europe and IDABC units on behalf of the e-Government subgroup of the e-Europe Advisory Group.) European Commission Information Society and Media Directorate, November, 2005

52. Towards a European strategy on e-Justice, Référence: IP/08/821 Date: 30/05/2008, http://europa.eu/rapid/pressReleasesAction.do?reference= IP/08/821&format=HTML&aged=0&language=EN&guiLanguage=fr

53. 2nd Additional Protocol to the MLA Convention (CETS 182, 2001) http://conventions.coe.int/treaty/en/treaties/html/182.htm

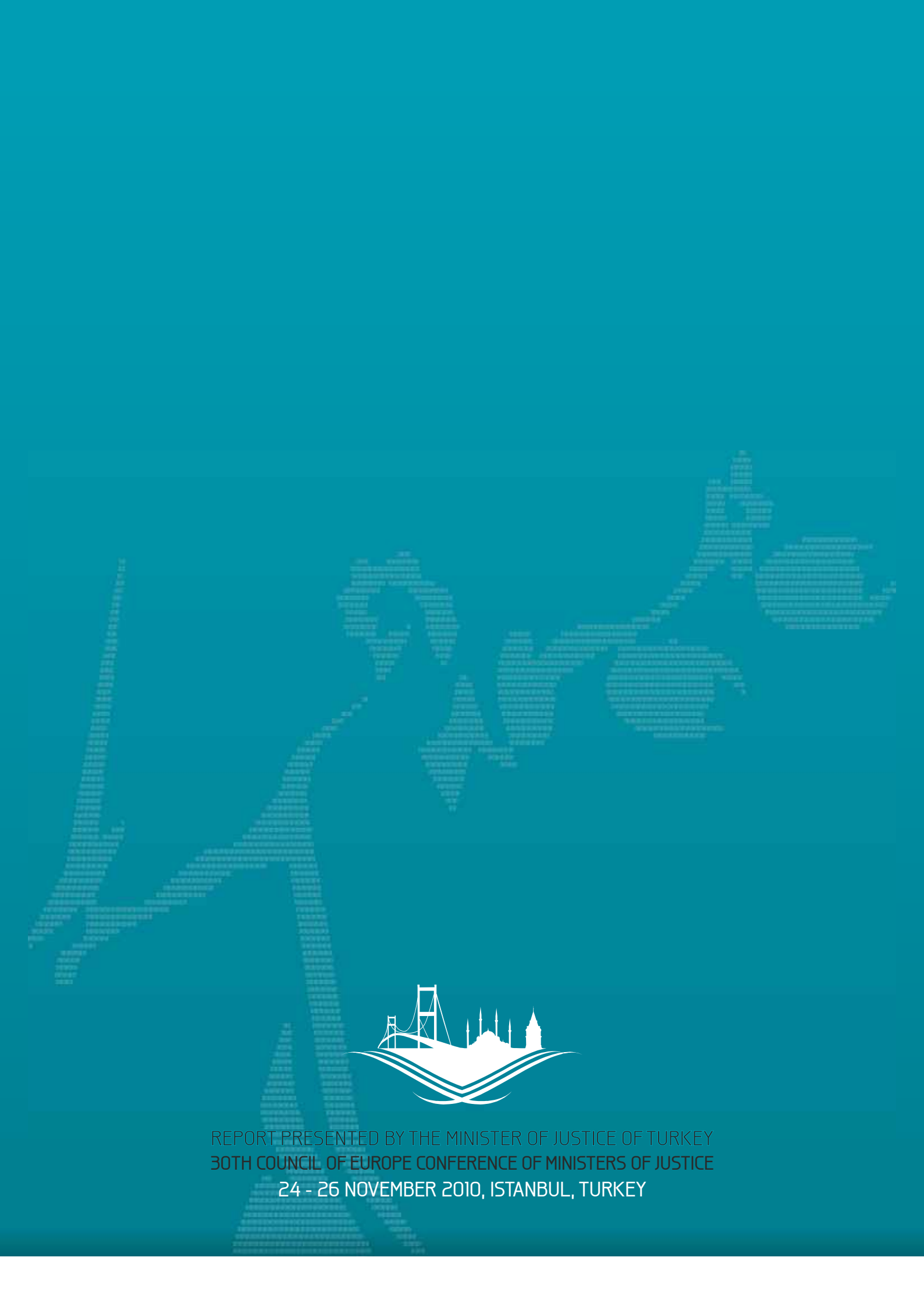
54. EuroDIG conference http://www.eurodig.org/eurodig-2010/programme/workshops/workshop-1

55. Budapest Convention on Cybercrime; http://conventions.coe.int/treaty/en/treaties/html/185.htm

56. Hunter, J., Head of the IT Department European Court of Human Rights; report; http://www.adalet.gov.tr/duyurular/2008/kasim08/ENExpertReportUYAP.pdf

REFERENCES
SECTION 2

1. Aebi, M.F and Delgrande, N. (2010). Council of Europe Annual Penal Statistics: SPACE I.
2. Balo, Y.S, Akço, S. (2005). B.M. Çocuk Haklarına Dair Sözleşmesi: İlgili Sözleşmeler, Yasalar, Tüzükler ve Yönetmelikler, Ankara:Unicef.
3. Bulletin EU 3, (2004). Human rights (4/9). Penitentiary questions Conventions, recommendations and resolutions
4. Convention on the Transfer of Sentenced Persons, European Treaty Series, No. 112, Strasbourg, 21.03.1983.
5. European prisons charter- Recommendation 1747 (2006) [] Text adopted by the Standing Committee acting on behalf of the Assembly on 29 May 2006 (see Doc.10922, report of the Committee on Legal Affairs and Human Rights, rapporteur: Mr.Michel Hunault and Doc. 10936, opinion of the Social, Health and Family Affairs Committee; rapporteur: Mr Ali Riza Gülçiçek)
6. European Committee On Crime Problems (CDPC), Report of 14th Conference of Directors of Prison Administration (CDAP), Managing prisons in an increasingly complex environment, Vienna, 19-21 November 2007, "meeting public demands and expectations: current challenges faced by prison administrations", Paper by Mr Wolfang Gratz and Mr Arno Pilgram Rapporteurs.
7. Hammerberg, T. (2009). Çocuklar ve Çocuk Adalet Sistemi: İyileştirmeye Öneriler, Strasbourg: Avrupa Konseyi İnsan Hakları Komiserliği.
8. Nursal, N. (2007). Avrupa Cezaevi Kuralları ve Yorumu, Ankara.
9. Recommendation No. R (2006) 2 of the Committee of Ministers to Member States On the European Prison Rules..
10. Recommendation No. R (99) 22 of the Committee of Ministers to Member States Concerning Prison Overcrowding and Prison Population Inflation.
11. Recommendation R(2006)1747 on a European prisons charter
12. Rob Allen, Current Situation of Prison Overcrowding: International Centre for Prison Studies, London, UK.
13. UN and EU Recommendations on the Treatment of Foreigners in Prison, Tilburg University, The Netherlands, International Commission for Catholic Prison Pastoral Care.
14. World Prison Brief, September 2009
15. http://www.unodc.org/southerncone/en/frontpage/2010/04/15-relator-especial-da-onu-sobre-tortura-cobra-melhores-condicoes-em-presidios-no-mundo.html-
16. http://assembly.coe.int/Documents/WorkingDocs/Doc04/EDOC10332.htm
17. http://www.coe.int/t/e/legal_affairs/legal_cooperation/prisons_and_alternatives/committees/MeetingsPCCP.asp
18. http://www.comece.org/content/site/en/europeinfos/archive/61/article/1911.html?SWS=4476c761c36f0e329f0bde026dbbb0a4
19. http://www.coe.int/t/e/legal_affairs/legal_co-operation/steering_committees/cdpc/documents/1cdpc%20(2007)%2012%20-%20e%20(priorities%20of%20the%20CDPC).asp
20. http://www.coe.int/t/dghl/standardsetting/minjust/mju26/MJU-26(2005)Res4E.pdf
21. http://assembly.coe.int/Documents/WorkingDocs/Doc06/EDOC11041.pdf
22. http://europa.eu/bulletin/en/200403/p102004.htm
23. http://assembly.coe.int/Documents/WorkingDocs/Doc06/EDOC10922.pdf
24. http://www.coe.int/t/f/affaires_juridiques/coop%E9ration_juridique/emprisonnement_et_alternatives/conf%E9rences/15thHofstee.pdf



REPORT PRESENTED BY THE MINISTER OF JUSTICE OF TURKEY
30TH COUNCIL OF EUROPE CONFERENCE OF MINISTERS OF JUSTICE
24 - 26 NOVEMBER 2010, ISTANBUL, TURKEY