

**EFFECTIVENESS OF THE JUDICIARY
AND CRIMINAL JUSTICE SYSTEM**

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by

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EXECUTIVE SUMMARY

This report is aimed at assessing the effectiveness of the Turkish justice system and progress achieved in the criminal field and in the judicial training.

As regards **effectiveness**, according to the CEPEJ report issued in 2010, Turkish courts are in line with the standards of Council of Europe Member States both for duration of trials and quantitative performance. However, CEPEJ figures are only a rough guide and refer to 2008 data.

According to data the expert was provided with by the Ministry of Justice, serious reasons for concern emerged during the last two years because of heavy workload, large backlog and long duration of trials, especially of superior courts.

Determining a sustainable case load and setting the inflow of cases at a sustainable level is an important element of every judicial strategy. The Ministry of Justice judicial strategy envisages indeed multiple measures to tackle the backlog and the duration of trials. However, further action is needed.

Reliable indicators need to be adopted, like productivity and clearance rates, together with reliable benchmarks, such as average standards productivity and average time benchmarks for finalising cases, properly assessing the performance of the judicial system; deciding on the allocation of human and material resources to courts and prosecution offices; deciding, in cooperation with the High Council of Judges and Prosecutors, on mergers and changes in the territorial division of courts. Judicial statistics should be compiled, through a reliable and modern methodology. In the meantime, courts of appeals need to be made operational as a matter of urgency and vacant posts for first instance judges and prosecutors need to be filled.

Courts need to adopt modern administration techniques to increase their productivity, improve the quality of their service and restore confidence in the judiciary. Isolated courts should be merged and presidents of courts appointed and trained to manage judicial offices pursuant to performance standards. Judges and prosecutors should be relieved of their administrative tasks. Functions of clerks should be differentiated and specified, in order to build up specialised and trained administrative staff.

As regard quality of justice and case management, in order to enhance the legal certainty, to prevent divergent case law and to unify practices, regular meetings should take place between judges of same court or of different courts of the same courthouse in order to exchange experiences and practices and to discuss case law; judgments, especially of higher courts, should be regularly published, summarised and classified; practises should be adopted in courts to schedule hearings, in cooperation with the counsels of the parties, within a framework which takes into account the foreseeable duration of proceedings.

Mediation, both in civil and criminal fields, should be implemented and encouraged. Duration of judicial proceedings should be monitored; judges need to pay particular attention and give priorities to older cases and pre-trial detention cases.

Justice system should be conceived as a public service mission to serve the interests of the citizens and safeguard court users' rights: to this respect, unique information desks, linked to UYAP, should be set up in courts and prosecution offices to ensure effective orientation and information of the public; "litigant's charters" should be established and published; surveys on courts' staff, lawyers' and users' satisfaction about the functioning of courts and the judicial system should be organised; procedures to deal with users' complaints should be set up.

With reference to **criminal justice system**, important progress has been achieved as regards juvenile justice: children are no longer penalized on charges of committing a terror crime and being a member of a terror organization in case of resisting to law enforcement and committing propaganda crime by participating in demonstrations organized in favour of a terror organization; they are not subject to the application of aggravating circumstances provided for by the anti-terror law; they have the right to be tried in juvenile courts or heavy juvenile courts.

However some concerns remain and some recommendations have to be reiterated. The number of juvenile courts and places for detention of children is still inadequate. The trials at juvenile courts last, on average, too long. The Bylaw on judicial police has not yet been implemented. Pre-trial detention needs to be limited to those circumstances where it is strictly necessary in the public interest. The appearance of impartiality of judges is not sufficiently preserved.

The **Judicial Academy** has consolidated its capacity to train newly appointed judges and prosecutors but, in time of significant changes of the legislation, there is room for improving the in-service training, with a view to spreading know-how and best practices all around the country.

Finally, I wish to underline the constructive and cooperative approach of the Ministry of Justice which shows a genuine intention to solve problems facing the judiciary.

METHODOLOGY

The expert drafted the present report relying on information gathered during the official visit to Turkey, which took place from 17 to 21 January 2011, and on documents provided by the Turkish authorities and the European Commission before and during the mission.

The visit to Turkey consisted of full four days meetings arranged by the Turkish Authorities with: the President of the Supreme Court, the Secretary General and judges of the Council of State; Deputy Undersecretary and Directors of the Ministry of Justice, Members of the Supreme Council of Judges and Prosecutors, Ankara Chief Public Prosecutor, Ankara Deputy Public Prosecutor, Ankara Prosecutor dealing with art. 250 PPC crimes, the President and judges of Ankara Regional Administrative Court, the President of Ankara 8th Administrative Court, the Director of the court and clerks of the Ankara Regional Administrative Court, the President of the Ankara 1st Heavy Criminal Court, Directors and clerks of the Ankara courthouse; a judge of the Ankara 9th civil peace court; a judge of the 1st juvenile heavy criminal court and a judge of the 2nd juvenile criminal court; police directorate Officers; the President and representatives of the Justice Academy of Turkey; the President and members of the board of the Union of Turkey Bar Association; the president and members of the board of Ankara Bar Association; representatives of the following NGOs: Democrat Judiciary, YARSAV, TOHAV-Foundation for Society and Legal Studies, Human Rights Agenda Association, Contemporary Lawyers Association, Amnesty International, Constitutional academicians.

The expert conducted his **analysis of the Turkish justice system using data** included in reports of the European Commission or elaborated in the framework of projects, missions and studies supported by the European Commission and the Council of Europe. These include the 2007, 2008, 2009, 2010 *EC progress reports on Turkey*, the Third Advisory Report of 2005 by Kjell Björnberg and Ross Cranston titled “The Functioning of the Judicial System in the Republic of Turkey”; the reports drafted by the experts Bert van Delden and Thomas Giegerich following the 2008 peer review mission to Turkey; the Strategy Plan for a new court management system for five pilot courthouses, drafted by the experts of the Council of Europe and the European Commission joint

“project on support to the court management system in Turkey”; the 2010 report by the European Commission for the Efficiency of Justice (CEPEJ) of the Council of Europe.

The main sources of Turkish Law consulted by the expert for the assessment can be listed as follows: the Constitution of the Republic of Turkey, law n° 6087 of 11.12.2010 on the *High Council for Judges and Prosecutors*, law n° 2797 of 04.02.1983 on the *Court of Cassation*, law n° 5235 on the establishment, duties and powers of the ordinary courts of first instance and regional courts of appeal, law n° 2802 on judges and prosecutors, the criminal and criminal procedural codes, regulation n° 25832 on apprehension, detention and statement taking, the civil procedural code, Law n° 2575 of 06.01.1982 on the *Council of State*, Law n° 2576 on the constitution and functions of the district administrative courts. Administrative courts and tax courts, Law n° 4954 of October 2003 on *The Judicial Academy*, and statistics provided by the Ministry of Justice.

This assessment is guided by the reference to the **European standards** derived mainly from the following sources: the European Convention for the Protection of Human Rights and Fundamental Freedoms and the case law of the Strasbourg Court; the Charter of Fundamental Rights of European Union; Recommendation CM/Rec(2010)12 of the Committee of Ministers to member states on *judges independence, efficiency and responsibilities*, adopted by the Committee of Ministers on 17 November 2010 at the 1098th meeting of the Ministers' Deputies; Recommendation (1994)12 adopted by the Committee of Ministers of the Council of Europe on 13 October 1994 and its explanatory memorandum on *Independence, efficiency and role of judges*; Opinion n°. 1 of the Consultative Council of European Judges (CCJE) to the attention of the Committee of Ministers of the Council of Europe on standards concerning *the independence of the judiciary and the irremovability of judges*; Opinion no. 3 of the Consultative Council of European Judges (CCJE) to the attention of the Committee of Ministers of the Council of Europe on *the principles and rules governing judges' professional conduct, in particular ethics, incompatible behaviour and impartiality*; Opinion n°. 4 of the Consultative Council of European Judges (CCJE) to the attention of the Committee of Ministers of the Council of Europe on *appropriate initial and in-service training for judges at national and European levels*; Opinion n°. 10 of the Consultative Council of European Judges (CCJE) to the attention of the Committee of Ministers of the Council of Europe on *the Council for the Judiciary at the service of society*; Opinion n°.11 (2008) of the Consultative Council of European Judges (CCJE) to the attention of the Committee of Ministers of the Council of Europe on *the quality of judicial decisions*; the European Charter on the Status of Judges, adopted by participants from European countries and two judges' international associations meeting in Strasbourg on 8-10 July 1998; United Nations Basic Principles on the Independence of the Judiciary, endorsed by the United Nations General Assembly in November 1985; report on European standards as regards the independence of the judicial system: part I- *the independence of judges*, adopted by the Venice commission at its 82nd plenary session, in Venice on 12-13 March 2010; Recommendation Rec(2000)19, adopted by the Committee of Ministers of the Council of Europe on 6 October 2000 on “*The role of public prosecution in the criminal justice system*”; the “Budapest Guidelines” adopted in Budapest on 31 May 2005 by the Conference of Prosecutors General of Europe; report on European standards as regards the independence of the judicial system: part II – *the prosecution service*, adopted by the Venice commission at its 85th plenary session, in Venice, on 17-18 December 2010.

The assessment takes note of the important progresses and efforts made by the Turkish Authorities to improve the effectiveness of the Judiciary and the criminal justice system and of the **Judicial Reform Strategy** drafted by the Turkish Ministry of Justice.

Following the mission and the elaboration of the draft report, the expert received the comments on it by High Council of Judges and Prosecutors; the Ministry of Justice; the Turkish National Police

and Union of Turkish Bar Association. The comments were taken into account by the expert in revising and finalising the report.

This report has been made possible thanks to the constant, open and warm cooperation by the Turkish Authorities and the expert and wise support by the representatives from the European Commission DGs Enlargement and Justice and the EC Delegation in Turkey.

1. INTRODUCTION

Turkish justice, like justice in other European countries, are undergoing profound changes to meet the expectations of citizens that judiciary operates independently and efficiently. Until late 1980s European democracies did not put much emphasis on the organisation of the judicial system because it was taken for granted that if judicial independence were guaranteed, then access to justice would also be guaranteed. Since then, almost everywhere in Europe a growing attention towards accountability of public institutions in general and of the Judicial Institution in particular has been registered.

In order to enable to innovate and to increase quality of Justice systems, the Council of Europe, and in particular the European Commission for efficiency of justice (CEPEJ), as well as many European Countries have progressively defined appropriate **measuring, monitoring and evaluation tools**, whose mechanisms range from annual activity reports to the establishment of performance indicators. The idea stemming from the theories about public management and organisation is that judicial institutions should not only be able to fulfil their tasks in an efficient and effective manner, but they should also be customer-oriented.

Accountability in the judicial field cannot be limited to verifying productivity or efficiency of judges and courts but it has to include a broader scope of values, which are connected to the independence and impartiality principles and to the respect of the fair trial principle. However it is difficult establish what forms or mechanisms of accountability are compatible with and appropriate to the functions of the judges, the courts, and the prosecutors' offices, the Ministries of Justice and the Judicial Councils, where they exist.

The Minister of Justice is responsible for allocating funds and accounting to Parliament for their expenditure: he or she must ensure that public funds are spent appropriately. The Minister also bears responsibility for policy implementation. Traditionally Justice Ministries, as bodies of the Executive Power, answerable to the Legislature, account for their use of funds by simply monitoring the legality of the expenditure. The traditional legal system of evaluations of judges' work is instead focused on the way law has been applied to the facts in individual cases, by higher courts reviewing the decisions of lower courts.

New forms of accountability are indeed emerging in the judicial field aimed at grounding the assessment of the **quality of justice on the quality of the judicial system as a whole**, with the accent on the effectiveness steered by the Minister of Justice and by the Council for the Judiciary. The administration of justice is now viewed as a tool with the aim to assess the overall quality of justice and of the judicial system, to improve the effectiveness of justice and the quality of the work delivered by the courts and therefore to resolve malfunctions in the justice system and to restore the public's confidence in the Judiciary.

THE EUROPEAN STANDARDS ON THE EFFECTIVENESS OF JUSTICE

Effectiveness and quality of justice¹ are a constant and long-standing concern of the Council of Europe, as shown by the large number of conventions, resolutions and recommendations adopted by the Council. The effectiveness of Justice is reflected by the principles laid down in the European Convention on Human Rights and the Strasbourg Court's case law.

The principle of fair trial, enshrined in article 6 of the Convention, as interpreted by the Strasbourg Court, determines the quality of a trial, with reference to: the right to an independent and impartial tribunal established by law; the right to access a court; the observance of defence rights during the trial; the principle of equality of arms; the adversarial trial principle; the right to have adequate time and facilities for the preparation of the defence; the right to representation and legal aid; the right to a public hearing; the right of the parties to be present at trial and to be able effectively to participate in the proceeding with special rights for juveniles; the right to an interpreter; the right to a judgment within a reasonable time; the observance of the reasoned decision principle; and, finally, the right to an effective remedy according to article 13 of the Convention, including also the prompt execution of the decisions. These principles have been transposed into the justice section (Chapter 6) of the European Union's Charter of Fundamental Rights, which, according to art. 6 of the Treaty on European Union as amended by the Treaty of Lisbon shall have the same legal value as the Treaties. Those standards concern not only the trial itself but, considered as a whole, they also relate to the quality of the judicial system and the need for justice to be **effective**.

There is emphasis in the case-law of the Strasbourg Court about the reasonable duration of trial² on the **positive duty on States to organise their legal systems** so as to allow the courts to comply with the requirements of Article 6.1 including that of concluding trials within a reasonable time³. In some decisions the European Court stated that although Article 6 requires that judicial proceedings be expeditious, regard must also be given to the more general **principle of the proper**

¹ About quality of Justice:

European Commission for the Efficiency of Justice (CEPEJ) *Monitoring and Evaluation of Court System: A Comparative Study*. Report prepared by the Research Team Gar YEIN Ng, Marco VELICOGNA and Cristina DALLARA and discussed by the CEPEJ-GT-EVAL at their 8th meeting.

European Commission for the Efficiency of Justice (CEPEJ), *Administration and management of judicial systems in Europe*. Study by the Observatoire des Mutations Institutionnelles et Juridiques (Observatory of Institutional and Legal Change – OMIJ, EA 3177) University of Limoges. Authors: Laurent BERTHIER, PhD student at the OMIJ Hélène PAULIAT, Professor of public law, member of the IUF.

European Commission for the Efficiency of Justice (CEPEJ), Pim ALBERS, *Performance indicators and evaluation for judges and courts*.

European Commission for the Efficiency of Justice (CEPEJ), Marco VELICOGNA, *Use of information and communication technologies (IT) in European Judicial Systems*.

ENCJ working group, Quality Management Report 2008-2009, *Quality Management and its Relation to Transparency and Access to Justice*.

Jean-Paul JEAN & Hélène PAULIAT, *An evaluation of the quality of justice in Europe and its developments in France*, in Utrecht Law Review.

Pim ALBERS, *Quality of Courts and Judiciary: European Experiences and Global Developments*, in Quality Development in the Field of Justice, edited by Patrick Staes and Nick Thijs, 2008.

Committee for the evaluation of the modernisation of the Dutch Judiciary, *Judiciary is Quality*, December 2006, The Hague.

Jyrki MÄÄTTÄ, *Quality Work and Quality benchmarks in Finnish Courts*, in *Judiciary is Quality*, December 2006, The Hague.

Richard MOHR and Francesco CONTINI, *Judicial Evaluation in Context: Principles, Practices and promise in Nine European Countries*, in <http://www.ejls.eu/2/30UK.pdf>.

Marco VELICOGNA, *Justice Systems and ICT What can be learned from Europe?* in Utrecht Law Review.

² The European Court established in its case-law that the reasonableness of the length of proceedings must be assessed in the light of the particular circumstances of the case and having regard to the criteria laid down in the Court's case law, in particular the complexity of the case and the conduct of the applicant and of the relevant authorities. ECtHR, 25 June 1987, *Capuano v. Italy*.

³ ECtHR Grand Chamber, 29 March 2006 *Scordino v. Italy*.

administration of justice⁴. The Fair Trial principles contained both in the Convention for Human Rights and in the EU Charter of Fundamental Rights, then converge to better-quality judicial systems, in which both the rights of the parties concerned and the proper administration of justice are to be safeguarded. This means that the requirements for a fair trial must be reconciled with the **need for promptness and efficient case-flow management**.

To assess the effectiveness of the judicial system, the CCJE⁵ encourages peer review and self evaluation by judges but it encourages as well the participation of “external” persons (e.g. lawyers, prosecutors, law faculties’ professors, citizens, national or international non-governmental organisations) in the evaluation process.

1. THE ADMINISTRATION THE JUDICIAL SYSTEM BY THE MINISTRY OF JUSTICE AND THE HIGH COUNCIL FOR JUDGES AND PROSECUTORS AND THE PRINCIPLE OF JUDICIAL INDEPENDENCE.

➤ FINDINGS

According to art. 4 of the law no 6087 dated 11.12.2010 *on the High Council for Judges and Prosecutors*, the Council shall have, among others, the following competences:

- to make final decisions about the Ministry’s proposal concerning the **abolishment of a court or a change in court’s jurisdiction**;
- to adopt decision regarding judges’ and prosecutors’ career, among which **to distribute cadres**, to promote them according the professional evaluation outcomes, to transfer them to another locality;
- to supervise whether judges and prosecutors **perform their duties** in compliance with laws, regulations, bylaws and circulars;
- **to issue circulars concerning the administrative duties of judges** other than those related to matters concerning the exercise of judicial power **and the judicial tasks of prosecutors**, other than those related to the power of assessment of evidence and determination of crime.

Pursuant to the law no: 5235 *on the establishment, duties and powers of the ordinary courts of first instance and regional courts of appeal*, articles 5 and 9, civil and criminal **courts shall be established by the Ministry of Justice with the approval of the High Council for Judges and Prosecutors**. Articles 7 and 15 of the same law set that the High Council for Judges and Prosecutors shall decide on the recommendation of the Ministry of Justice and according to geographical and workload considerations, whether to **abolish** a civil or a criminal court, to **change its area of jurisdiction** or to **determine the area of jurisdiction** of civil and criminal courts where this is not stipulated by the relevant special laws. Article 25 establishes that the **area of jurisdiction of the courts of appeal** shall be determined by the High Council for Judges and Prosecutors that shall decide on the recommendation of the Ministry of Justice and according to geographical and workload considerations of the province and region concerned. According to the same article 5, the High Council for Judges and Prosecutors shall determine the **distribution of work** between civil courts and the basis on which it is to be done.

➤ REPORT OF CONSIDERATIONS

Most of European Constitutions, the Italian and the Turkish included, guarantee the **independence** of the judiciary. The principle of the Judiciary independence is also protected by article 6 of the European Convention on Human Rights and by article 47 of the Charter of Fundamental Rights of the EU. Judicial independence is a pre-requisite to the rule of law and a fundamental guarantee of a fair trial, because judges are “charged with the ultimate decision over life, freedoms, rights, duties

⁴ ECtHR, 12 October 1992, *Boddaert v. Belgium*, Series A, No. 235-D, p. 82, § 39; ECtHR, 22 June 2000, *Coëme v. Belgium*

⁵ CCJE opinion no 11 *on the quality of judicial decisions*.

and property⁶ of citizens. In Europe, in the past 20 years we have assisted to the remarkable growth of the Councils for the Judiciary, as protector of the judicial independence. Progressively we have, indeed, also assisted to **an increasing role of the Judicial Councils in the administration and organisation of the justice service**⁷.

According to the opinion n°. 10 of the CCJE⁸, as regards the role of the Judicial Council for the evaluation of the judicial system, *to respect the principles of objectivity and transparency, it is very important that, in each Member State, the Council for the Judiciary holds a vital role in the determination of the criteria and standards of quality of the judicial service and in the implementation and monitoring of the quantitative and qualitative data provided by the different jurisdictions.*

In Turkey, where the responsibility of administration of justice is shared by the Ministry and High Council of Justice, which have to take joint decisions about the establishment, the abolition or the change of territorial jurisdiction of courts and prosecution offices, it is of utmost importance, for ensuring judicial independence and, at the same time, pursuing an efficient justice service, that the Ministry of Justice, which is accountable to Parliament for the management of the budget, and the High Council, whose main constitutional task is to protect judicial independence and to manage judges' and prosecutors' careers, to **cooperate for working out a common strategic framework** for the effective management of judicial system and that, at regular intervals, establish common strategic plans for managing, monitoring and assessing the implementation of that framework. In drafting strategies and action plans the High Council and the Ministry of Justice are expected to consult and take into account the views of Bar Associations. Turkish judicial institutions are expected to multiply their efforts to **improve the quality of the justice system** and to **strengthen the credibility of the judiciary** vis-à-vis the general public and the users of courts.

We ENCOURAGE

the Ministry of Justice and the High Council to **cooperate** for working out **common strategic frameworks** and consequent **strategic plans** for managing, monitoring and assessing the effectiveness of the judicial system.

2. CRITERIA AND STANDARDS TO MEASURE AND ASSESS THE PERFORMANCE OF JUDGES AND PROSECUTORS OF COURTS AND PROSECUTION OFFICES AND OF THE WHOLE JUDICIAL SYSTEM.

➤ FINDINGS

THE WORKLOAD

⁶ United Nations *Basic Principles on the Independence of the Judiciary*.

⁷ Depending on the role played by the Judicial Councils as to the administration of Justice, three standard models of judicial administration may be identified in European Countries.

- According to the so called **unitary -or ministerial or centralised model-** the administration of justice is exclusively a matter for the Government and the Ministry of Justice. This model is adopted by Countries (examples are Austria and Germany), where they do not exist Judicial Councils, although the principle of judicial independence is formally asserted in the Constitution.
- According to the **classic model, also known as decentralised or “competitive” model**, administration of the judicial system is shared between the Ministry of Justice, the Judicial Council and the court managers (judges or public administrators). A substantial majority of European countries have adopted this model (for example Bulgaria, Czech Republic, France, Italy, Poland, Romania, Spain, Slovenia, and Turkey).
- According to the third model, known as **“autonomy-oriented” model**, Judicial Councils enjoy broad financial and administrative responsibilities, being vested with the power to allocate funds to courts whilst trying to encourage organisational management of the courts themselves. This model is followed by countries like Denmark, Hungary, Ireland, and the Netherlands.

⁸ Opinion no. 10 (2007) of the Consultative Council of European Judges (CCJE) to the attention of the Committee of Ministers of the Council of Europe on *the Council for the Judiciary at the service of society*.

According to the 2010⁹ CEPEJ report about the evaluation of European judicial systems, in Turkey in 2008:

- the **clearance rate of civil litigious cases** (Table 2.1) in first instance was 95.5 % (it was 97% in 2006); in the same year it was 94.3% in France, 95.8% in Italy and 96.3% in Poland.
- **The clearance rate of enforcement cases** (Table 2.2.) was 95.5% (98% in France and 106.4% in Italy).
- **The clearance rate of 1st instance administrative cases** (Table 2.3.) was 102.1% (104.3% in France and 102.2% in Poland).
- **The clearance rate of 1st instance criminal cases** (Table 2.4.) was 95% (101% in France, 94% in Italy, 100% in Poland).

According to the same report (2008 figures), the number of **1st instance incoming civil and commercial litigious cases per 100 000 inhabitants was roughly half the average of comparable European Countries** (Table 2.): they were 1 562 in Turkey, 2 728 in France, 4 768 in Italy, 1 959 in Poland, 3 579. The number of **1st instance incoming criminal cases per 100 000 inhabitants** was instead in line with the average (Table 2.4): 2 400.6 in Turkey; 1 035.4 in France; 2 523.5 in Italy, 2 522.3 in Poland, 2 796.3 in Spain.

The picture changes significantly looking at the statistical figures released by the Ministry of Justice. These statistics (Table 10. and following) display that, in the past three years, Turkish courts have been generally characterised by **an increasing influx of cases, an increasing workload, an increasing backlog, an increasing duration of trials** and, therefore, a **decreasing clearance rate, despite of an increasing productivity rate.**

Data provided by the Ministry of Justice illustrate that higher courts are almost blocked by the workload:

- **the clearance rate of the criminal divisions of the Court of Cassation** (Table 10.1) was **70.8%** in 2007 (new cases were 182 733 against 129420 cases decided); **80.36 %** in 2008 (245 604 new against 197375 cases decided); **78%** in 2009 (279 725 new against 218 201 cases decided). Even though the productivity of the divisions increased significantly in the course of the three years, the **backlog** (cases transferred to the next year) passed from 141 005 in 2007 to a more than double size of 304 071 at end of 2009. As a consequence, considering both civil and criminal cases and new and transferred cases, at the beginning of 2010 the Court of Cassation had to deal with more than one million cases.
- **The clearance rate of the Council of State** (Table 10.2) in year 2010 was **84.47 %** (124464 new cases against 105146 cases decided). The **backlog** increased accordingly: 168 462 cases, more than the number of new cases, were transferred to the next year.

However the figures referred to first instance courts show that the entire judicial system is suffering because of the increasing workload and duration of trials. Looking, by way of example, at the figures of the courts visited by the expert in Ankara and those of similar courts in Istanbul, the conclusion is that **the problem of the accumulation of workload and backlog is generalised also at first instance level: the Ankara administrative regional court** is accumulating approximately a 10% additional workload year after year (Table 10.3); **the clearance rate of the Ankara administrative and tax courts** in 2010 was **84.79%** (Table 10.4); **the average clearance rate of the 8th Ankara administrative court** was in years 2007, 2008, 2009 (Table 10.5) equal to **91%**. Even though Ankara and Istanbul civil courts are rather efficient in general terms (Table 10.6) some important specialised civil courts are not: in year 2010 the **clearance rate of the Ankara labour court** was **76.4%**; that of the Istanbul labour courts was **85,8%**; that of the **Ankara consumer courts** was **65.4%**; of the Istanbul consumer courts was **78.2%**.

⁹ 2010 report by the European Commission for the Efficiency of Justice (CEPEJ) of the Council of Europe, on the Evaluation of European judicial Systems, based on figures from 2008 concerning 45 states.

A similar picture concerns the **workload of criminal courts in Turkey** in 2010 (Table 10.7), whose clearance rate was **87.9%**. Particular problems are related to the **Ankara and Istanbul peace penal courts** which, in 2010, had a clearance ratio of respectively **68.8%** and **40.9%**. The Istanbul peace penal court **tripled the backlog** in only one year passing from 70657 cases transferred from the previous year to 208308 cases transferred to the next year (table 10.9).

The worst situation is related to the **workload of Juvenile courts and children courts. In 2010 their clearance rate was 78.5% (Table 10.10). Some courts were able to decide only a minor part of new cases, such as:** Konya 2 Juvenile Court 20.1%; Istanbul 3 Juvenile Court 48.7%; Beyoglu 1 Juvenile Court 28.5%; Antalya Juvenile Court 49.50 (Table 10.11).

THE NUMBER OF JUDGES

According to statistics released by Ministry of Justice, at the time of the previous experts' visit the number of prosecutors was **4 007**; 3 847 of which were attached to first instance courts and 160 were prosecutors attached to the Court of Cassation. The Judges of first instance were **5 121** and rapporteurs of the Court of Cassation were **492**. The total number of judges and prosecutors was **9 620**.

After more than two years, according to the figures provided by the Ministry of Justice, prosecutors are **4 224**, 4 036 attached to the first instance courts and 188 to the Court of Cassation. The Judges of first instance are 5 275 and rapporteurs of the Court of Cassation are **553**. The total makes **10 052**, with an increase of **4.49%**. The **vacant posts are 2570** which represent the **25.56%**.

Following the figures contained in the European Commission for the Efficiency of Justice report, edited in 2010 but based on figures from 2008, about the *Efficiency and quality of justice in the European Judicial System*, the **number of professional judges per 100 000 inhabitants** was 10.1, in Turkey, 9.1 in France, 10.2 in Italy, 25.9 in Poland, and 10.7 in Spain (table 4.). The number of professional prosecutors per 100 000 inhabitants was 5.9, in Turkey, 3.0 in France, 3.4 in Italy, 14.1 in Poland, and 4.8 in Spain (table 4.1).

THE SOLUTIONS

Those **proposed by the Turkish Government**¹⁰ to tackle the workload and the backlog are¹¹:

- **Preventing some cases from entering the jurisdiction**, by adopting the following measures:
 - the decriminalization of the offences “evasion of enlistment” and “roll call evader”, which will require in future administrative fines, and of other offences provided for by the Law on Enforcement and Bankruptcy and other laws
 - The introduction of legal fees for application to regional courts of appeal and to the Court of Cassation
 - The transfer of competences related to the certificate of inheritance from courts to public notaries

¹⁰ After the mission, on **31 March 2011 the Parliament adopted the law No. 6217 Amending Certain Laws to Accelerate the Functioning of the Judiciary**. The law, which came into effect on 14 April 2011, provides for multiple measures to enhance the effectiveness of Justice. The assessment of the content and of the impact of the measures contained in the law will be the subject of future mission and report.

¹¹ The information are extracted from two documents titled “*Brief information on legislative amendments concerning the High Courts in Turkey*”, and “*Outcomes of the draft law intended to ease the workload of the judiciary and to accelerate its functioning*”.

- “Some decisions given by the administrative courts will be appealed to the regional Administrative court instead of the Council of State”
- **Increasing the number of chambers of Court of Cassation**¹² from 32 to 38 and increasing **the members of the Court of Cassation** by recruiting 137 new members
- **Increasing the numbers of chambers of Council of States** from 13 to 15 and **increasing the members of the Court of Cassation** by recruiting 61 new members

According to the government’s statement the increase of the number of chambers and of the number of members will provide “every chamber” with “a sufficient number of members” to tackle “the lengthy which goes far beyond the reasonable time guarantee”¹³. The members of the Council of State and the President of the Court of Cassation met by the expert expressed their opposition to the increase of the number of chambers, in order to allegedly avoid different decisions on the same issue. The members of the Council of State proposed instead to transfer to the Regional Administrative Court cases decided by the Council of State as first instance court.

➤ REPORT OF CONSIDERATIONS

As highlighted above, according to the figures the expert was provided with, Turkish courts are characterised by a general **increasing of backlog** and **disparities in workload**. Many courts have a rapidly increasing workload and an insufficient number of judges. This does not guarantee a quality judicial process. The situation is worse as regards high courts but it is worrying for the entire judicial system.

The number of 1st instance incoming civil and commercial litigious cases per 100 000 inhabitants, which is roughly half the average of that of comparable European countries (Table 2.), suggests that, probably, following the economic and social development of Turkey, the influx of new civil cases will continue to grow in the future. Determining a sustainable case load and setting the inflow at a sustainable level is an important element of every judicial strategy¹⁴. An excessive inflow of cases will eventually cause an unsustainable backlog and a generalised excessive duration of trials and there might be inadequate resources to meet the new demand of justice. An excessive workload may affect the quality of judges’ work, forcing judges to allocate a very short time to cases, no matter how complex they are.

The solution proposed by the Government to tackle the workload of courts cannot be fully evaluated, because to the expert's knowledge, solutions have not been assessed as to their impact on

¹² After the mission, on 31 March 2011 the Parliament adopted the law No. 6217 *Amending Certain Laws to Accelerate the Functioning of the Judiciary*, which amended the Law on Court of Cassation and the Law on Council of State. Subsequently the Plenary of High Council of Judges and Prosecutors, at the session held on 24 February 2011, appointed 61 new members to the Council of State, who passed from 95 to 156 and 137 new members to the Court of Cassation, who passed from 250 to 387. The number of chambers of the Court of Cassation was increased from 32 (21 civil and 11 criminal chambers) to 38 (23 civil and 15 criminal chambers). The number of chambers of the Council of State was increased from 13 to 15.

¹³ Excerpt from the document called *Brief information on legislative amendments concerning the High Courts in Turkey*

¹⁴ In **Romania**, starting from similar premises, that are the highly increasing workload and the insufficient number of judges, following the Decision no.2119/03 of December 2009 the Romanian High Council for the Judiciary implemented a project called project on setting the optimal workload for judges. The project purpose is to ensure the quality of the justice by: establishing an annual standard for the files that are distributed to the judges, depending on the number of files, their complexity and their procedural stage; allocating the adequate time to each case; reducing the risks of producing juridical errors. According to the project, the files are distributed per judge and per hearing based on their complexity; a maximum number of files, for the judge to enter into the courtroom with, is established, depending on their complexity. The level of complexity of the files is established by the Romanian High Council decision No 830 A/2007 which attributes a grade of complexity, ranging from 1 to 9, for each category of cases. The complexity degree of the file is represented by a load point, which is dependent on the procedural stage of the case. The load points of a dossier are calculated by multiplying the complexity degree of the dossiers and the load per judge according to the procedural stage.

the workload of the courts. The Government claims that by increasing the number of the divisions and of members of the Court of Cassation and the Council of State, “every chamber will have a sufficient number of members” to tackle “the lengthy of the proceedings”. However no explanation is provided on how the “sufficient number of members” has been calculated. Will the members and the divisions be sufficient to deal with the current influx of new cases? Will the members and the divisions be sufficient to deal with the future influx of new cases? Is a larger influx of cases expected in the next years? Will the members and the divisions be sufficient to eliminate the huge backlog accumulated by the courts? In what period of time? Will the members and the divisions be sufficient to allow the allocation of the necessary time for a careful decision to each file? Has the possibility that courts of first instance will increase their productivity to tackle their workload and that an increasing productivity will cause a bigger influx of cases to the Higher Courts been taken into account? What is the average productivity expected by the old and the new members of the Courts? Does the average productivity depend on the complexity of cases dealt with by the single division?

An assessment of the impact of the reforms should imply that all the above questions have been answered. It has furthermore to be taken into account that the reform might have a significant impact **in terms of legality certainty**. The Court of Cassation and the Council of State are already amongst the largest high courts in Europe. A large number of judges and chambers in high courts, dealing with millions of cases, brings legal uncertainty because it multiplies the possibility of contradictory decisions. The legal uncertainty is in itself a cause of influx of cases and therefore of inefficiency.

In order to avoid the increase of trials duration, the Turkish judicial authorities should focus on the **calculation of efficacy of the judicial action**. The efficacy is based on the assumption that the length of proceedings is fundamental to the effectiveness of justice and the rights of citizens. In order to tackle properly the situation, it would be of utmost importance for the Ministry of Justice and the High Council to assess correctly the functioning of the judicial system, by using and developing the **appropriate indicators of judicial performance**¹⁵.

To evaluate the efficacy of the court’s or of the judge’s activity, in the first part of this paragraph the expert has resorted to a very common indicator, that is **clearance rate** (CR indicator). It

¹⁵ In the **Netherlands** during years 1999-2001 a small project team composed of judges, court staff, advisors of the ministry of justice and specialists from a quality agency for the judiciary (PRISMA), developed a Dutch measurement system for court quality. The Dutch measurement system includes several areas of assessment which are related: to efficiency (timeliness of proceedings), judicial quality (unity of law and expertise) and the (ethical) behaviour of judges (independence, integrity and treatment of the parties). Dutch measurement system for court quality then evolved in the Dutch RechtspraakQ model which is based on the framework of the European Foundation for Quality Management, whose characteristic is the use of a set of indicators and measurement tools which allow the measurement of the judicial system in five areas of quality: independence and impartiality; timeliness of proceedings; expertise of the judges; treatment of the parties at court sessions; judicial quality

In **Finland**, in 2003, a quality project was started by the courts of Rovaniemi, which became part of the quality project for all the Finnish Courts. To measure and assess the judicial system a set of quality benchmarks was introduced, which consists of six aspects of quality and 40 quality criteria. The six aspects of quality are the following: 1) the process (nine quality criteria); the decision (seven quality criteria); treatment of the parties and the public (six quality criteria); competence and professional skills (six quality criteria); organisation and management of adjudication (eight quality criteria).

The benchmarking is aimed at assessing the quality of the system, measuring progresses and establishing annual targets for the judicial performance. Quality benchmarks are intended neither for evaluating the individual professional performance nor for sanctioning the judge but they are intended as a tool for a constant improvement of court operations, for the development and maintaining of the skills of the judiciary and for the improvement of judicial training.

indicates the relationship between the new cases and completed cases within a period, in percentage, according the following formula

$$\text{Clearance Rate (\%)} = \frac{\text{resolved cases}}{\text{incoming cases}} \times 100$$

For example: if in a calendar year 500 new cases were submitted to the court, and the court completed at the same time 550 cases, the CR is 110%. If the court would complete 400 cases, the CR would be 80%. A CR above 100 % means that the number of pending cases decreased. The clearance rate allows assessing the capacity of the judge and of the court to deal with the inflow of cases, keeping the efficiency of the court. The clearance rate was excerpted by the expert from the statistical figures provided for by the Ministry of Justice.

According to the statistical tables communicated to the expert, the Ministry of Justice instead assess the efficacy of the courts' performance using the following formula

$$\text{Case Turnover Ratio} = \frac{\text{Number of Resolved Cases}}{\text{Number of Unresolved Cases at the End}}$$

Case Turnover ratio expresses the relationship between the number of resolved cases and the number of unresolved cases at the end. This requires a calculation of the number of times during the year (or another observation period) that the standardized case types are turned over or resolved. That is the same formula used by the Turkish Authorities for assessing the individual performance of judges, in the process of professional evaluation, in view of judges' promotion. However this formula does not give any useful information as regards the evaluation of the efficacy of the court's or the judge's performance in a year, because the outcome is dependent on the dimension of the backlog.

For example: assume that the Court A has no backlog; Court B has a backlog of 500 cases (cases transferred from the previous year). If in a calendar year 500 new cases are submitted to court A and 500 new cases are submitted to court B and both courts decide 500 cases, the case turnover ratio for the Court A shall be 1 (or 100 if expressed in a multiple number) and the case turnover ratio for the Court B shall be the half (0.5 or 50). Even though the productivity of the two courts is the same, the court or judge A appears to be much more efficient than court or judge B. The efficacy of the courts and judges performance would be then better assessed by using the **clearance rate (CR)** indicator. Case Turnover ratio could instead inform about the capacity of judge to deal with the entire workload (new cases plus cases transferred from the previous year plus cases sent back from higher courts).

However CR indicator is not sufficient for a proper assessment of the judicial performance, since the outcome of the clearance formula is dependent on the dimension of the influx of cases. For example: Court A in a calendar year receives 500 new cases and decides 500 new cases; Court B receives 1,000 cases and decides 500 cases. The CR indicator for court A will be 100% and for court B 50% even though the two courts decide the same number of cases. The CR indicator should be then associated to the **labour productivity benchmark**, which is the most widely used measure of the individual professional performance. It is usually calculated by dividing the total output (of cases) of a court by the number of personnel. The total factor productivity attempts to measure the overall productivity of the inputs used by an organization. Labour productivity is a performance indicator informing on the production (in terms of judicial decisions for example) delivered by the judges (and/or court staff). The two indicators¹⁶, should be associated with standards of productivity

¹⁶ Other indicators commonly used to measure the performance of the courts are the following:

1. **Efficiency rate (ER indicator):** Relationship between the number of personnel used in a court in a year and the output of cases from the same court at the end of the year.

benchmarks and standards trial duration benchmarks. The High Council should indeed establish the **average standard of productivity**, which, depending of the complexity of cases, a judge or a court could ensure in a certain period of time¹⁷.

A deeper approach to the problem would result in estimation, for each case-category, of the **time that is needed for a judge or the court staff to prepare and finalize a case**. For each category of cases a standard timeframe should be defined which could be used as a point of reference for judges and court staff. This standard should be set on the basis not of the average current duration but rather of those periods of time which cannot be reduced and the periods of inactivity that could be eliminated. Such standards could then be incorporated into programmes for improving the operation of courts.

Taking into account the measurement indicators and productivity and duration benchmarks to prevent a future increase of backlog of cases and a longer duration of court proceedings and to re-equilibrate the workload of the various courts, the High Council and the Ministry should adopt organisational strategies and measures to improve the performance of the judicial system, with a view to:

- recruit new human resources, judges, prosecutors and court's staff, at different levels
- decide changes in the territorial division of courts
- increase the financial resources to sustain a bigger workload (see below the paragraph devoted to budget and finance)
- courts' specialisation

However, the impact assessment process will take time, at least for developing suitable productivity and duration benchmarks.

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2. **Total backlog (TB indicator):** Cases remaining unresolved at the end of the period, defined as difference between the total number of pending cases at the beginning of the period, and the cases resolved within the same period. *Example:* If there were 1000 cases pending at the beginning of the calendar year, and the court terminated 750 cases during the calendar year, at the end of the calendar period there would be 250 cases that are calculated as total backlog.
 3. **Backlog resolution (BR indicator):** The time needed to resolve the total backlog in months or days, calculated as the relationship between the number of cases and the clearance time. *Example:* If there are 100 cases considered as total backlog at the end of the period, and the court completed 200 cases in the same period, the BR indicator is 6 months or 180 days.
 4. **Case per judge (CPJ indicator):** Number of cases of a particular type per judge in the given period. *Example:* If a court has 600 pending civil cases at the end of the calendar year and 4 judges that deal with them, the CPC is 150.
 5. **Standard departure (SD indicator):** Departure from the set targets per type of case in the given period, in percentage or days. *Example:* If the target for completion of litigious divorce case in the first instance was set to be 200 days, and in the calendar year the average duration of such cases was 240 days, the SD indicator is 40 days or 20%.

¹⁷ In **Italy**, in 2009, the Italian High Council for the Judiciary (Consiglio Superiore della Magistratura) implemented a project to measure the performance of the judicial system, by establishing two working groups, for civil and criminal issues, composed by judges and prosecutors, with the purpose to determine benchmarks aimed at measuring the average and the optimum productivity of courts and magistrates. During a six-month period of intense work, the members of the two working groups selected some pilot courts of different dimensions and locations, visited the courts, interviewed judges and prosecutors, collected the statistical data about the workload, inflow of cases, outputs and productivity of the courts. The outcome of the project was the definition of various standards of productivity tailored for various clusters of judges and prosecutors; the clusters were defined including in the same cluster the judges/prosecutors working in homogeneous courts (for dimension and the availability of human and material resources), dealing with homogenous set of judicial proceedings (for complexity and duration), subject matters of cases (depending on their complexity) flow of workload and pending cases. Throughout those benchmarks, the Italian CSM will be able to measure and compare the judicial work and to outline strategies for the improvement of the judicial performance, by reorganising the structures of the courts, establishing targets of performance, and inducing the Ministry of Justice to distribute the resources according to courts' effective needs.

In the meantime, the easiest and –probably- most effective decisions to tackle the workload are:

- ✓ As regards the Court of Cassation, **to make the Court of Appeals operational**. As soon as the Courts of Appeal start to operate, the influx of new cases to the Court of Cassation will almost stop for a certain period, until the first decisions will be issued by the Court of Appeals, allowing the Court of Cassation to focus on the backlog. After that the influx of new cases to the Court of Cassation shall certainly be reduced, because only a part of Court of Appeals decisions will be contested in front of the Court of Cassation.
- ✓ As regards the Council of State, according to what has been suggested by a Council of Europe and European Commission joint “project on support to the court management system in Turkey”:
 - a **conciliation mechanism** could be set up and become a prerequisite for filing a case before the administrative and tax courts
 - **the regional administrative court should become an effective and ordinary court of appeal**. This will enable the Council of State to focus on case law harmonization and to work as a supreme court instead of functioning as an appeal court as currently is the case
 - multiple **administrative and tax courts could be merged** into one single administrative tribunal for each big city or administrative area and specialized chambers could be established according to local specificities (civil service, construction and urbanism, taxes.)
 - more **decisions should be taken by a single judge** instead of a three judge panel
 - **public authorities should make a more selective use of appeals** against administrative tribunals' decisions. Currently the practice consists in an automatic appeal system as the lawyers of public authorities are obliged to make an appeal against judgements rendered in favour of the applicants unless they are instructed to do otherwise
- ✓ As regards first instance courts, **the vacant posts should be filled**, starting from the courts with a lower CR indicator. Decriminalisation and transfer of competences, regarding non contentious cases, to the public administration and public notaries are welcome measures.

RECOMMENDATION

We RECOMMEND

- the Ministry of Justice to adopt reliable indicators, such as the productivity and clearance rates, to assess the performance of courts and of the judicial system as a whole
- the Ministry of Justice and the High Council to adopt reliable benchmarks, such as average standards productivity benchmarks, depending on the complexity of cases, and average time benchmarks for finalising cases, in order to assess the quantity of human and material resources needed to eliminate the backlog and to deal efficiently with the influx of new cases
- the Ministry of Justice and High Council, to take into account the above measurement indicators and benchmarks with a view to increasing the human and financial resources of certain courts to sustain a bigger workload; deciding changes in the territorial division of courts; enhancing courts' specialisation

and in the meantime:

- to establish the courts of appeal as a matter of urgency
- to adopt the above multiple measures to enhance the efficiency of the administrative jurisdiction
- to fill the vacant posts for first instance judges and prosecutors

3. RATIONALISATION AND FUNCTIONING OF THE COURT NETWORK

➤ FINDINGS

The CEPEJ report reveals that Turkey has by far the greatest number of courts (considered as legal entities) per 100 000 inhabitants and the highest number in court locations per 100 000 inhabitants. In 2008, the **number of courts of general jurisdiction (legal entities) per 100 000 inhabitants** was 5.8 in Turkey, 1.3 in France, 1.7 in Italy, 1 in Poland and 4.7 in Spain (Table 3.1.). The **number of all courts (geographic locations) per 100 000 inhabitants** was 8.1 in Turkey, 1.4 in France, 2.2 in Italy, 1 in Poland and 1.6 in Spain (Table 3.1.).

According to article 23 of Law no 5235 *on the establishment, duties and powers of the ordinary courts of first instance and regional court of appeal*, a registry shall be established in each court. A secretariat and, where this is deemed necessary by the Ministry of Justice, separate administrative, financial and technical directorates shall be established in each chief public prosecutor office. Each secretariat or directorate shall have a director and an adequate number of staff.

➤ REPORT OF CONSIDERATIONS

The effective functioning of a court is indeed characterised by the interaction of different factors:

- a) the number of cases to be processed;
- b) the resources available to the system to process these cases: staff, equipment, judges (and their corollary: budgetary resources and the way the courts are organised);
- c) case processing times;
- d) quality of case processing, reflected both by the substantial quality of judgments and the compliance with procedures.

Acting on one of the four elements could have consequences on the other three. Dealing with the workload, reducing processing time and increasing the quality of processing are possible only if the resources are distributed and managed in the proper way. The proper management of resources is possible only if there is a proper “organisation”, which presupposes a certain number of judges and administrative staff and a president of the court having the task to steer the resources toward efficiency objectives.

The current fragmentation of Turkish courts, each having a separate registry and which are not connected and coordinated, even though they are located in the same courthouse, prevents an effective management of the human resources. It is therefore suggested to establish, in each courthouse, one general court of first instance, with specialised departments like criminal, civil, and only one or two single registries.

RECOMMENDATION

We RECOMMEND

that, for an efficient management of human resources, the Ministry of Justice and the High Council, merge isolated courts and establish, in each courthouse, one general court of first instance, with specialised departments like criminal and civil, and only one or two single registries

4. CRITERIA AND PROCEDURES FOR THE ALLOCATION OF FINANCIAL RESOURCES TO COURTS FINANCIAL MANAGEMENT

According to the European Commission for the Efficiency of Justice (CEPEJ) report of 2008, the **total annual budget** allocated to courts, public prosecution and legal aid in Turkey in 2006 was € **522 486 876**. In the same year the budget allocated by Germany (for a population of 82 351 000) and by Italy (for a population of 58 751 711) was respectively of € 8 731 000 000 and of € 4 088 109 198. According to the 2010 report (2008 figures), the **total annual budget** allocated to courts,

public prosecution and legal aid (Table 6.) in Turkey was € **786 503 133**. In the same year the budget allocated by France was € 3 692 145 526, by Italy € 4 282 629 598, by Poland € 1 560 094 000 and by Spain € 3 906 088 640.

The same CEPEJ reports mention that **the budget** allocated in Turkey to the judicial system **per inhabitant** in 2006 was one of the lowest in CoE Countries: it amounted indeed to € 7, compared to € 106 of Germany or € 70 of Italy. In 2008 (Table 6.3) it passed to € 10.3 in Turkey and it was € 52.8 in France, € 69.9 in Italy, € 40.3 in Poland, 81.4 in Spain, when it was € 47.1 in the average Council of Europe Member State. In the same years Turkey allocated one of the lowest level of **budget** for the judiciary also in the perspective of the total public budget allocated to the judicial system **as percentage of per capita GDP**; the figures on this parameter are as follows (Table 6.3): in 2006: Turkey 0.16%, Germany 0.38%, Italy 0.26%. In year 2008: 0.15 in Turkey, € 0.16 in France, € 0.25 in Italy, € 0.51 in Poland, 0.34 in Spain, whilst it was 0.29 in the average Council of Europe Member State.

As regards the **administration of the budget**, in Turkey the courts and the prosecutors' offices are closely linked to each other, being located in the same premises. The administrative duties are led by an internal board including representatives both of the court and the prosecution office. The daily administrative work and executive tasks are under the responsibility of the chief public prosecutor, who normally delegates tasks to one of the prosecutors. The administrative functions of public prosecutors are related to the management of courthouses and prisons. Public prosecutors have overall responsibility for all aspects of the day-to-day administration and support the work of the courts and of the prisons. It is their duty to ensure that the necessary services are provided to judges and prosecutors, court's users and personnel so as to ensure the efficient functioning of the courthouses. In this capacity, public prosecutors are also responsible for matters such as the maintenance of lighting, the provision of electricity, the cleaning of the buildings and ensuring that there is adequate stationery. Public prosecutors are also responsible for overseeing the administration of the quarters where judges and public prosecutors live. Chief prosecutors negotiate the budget with the Ministry of Justice officials, when specific or urgent needs emerge at the courthouse.

➤ **REPORT OF CONSIDERATIONS**

According the Council of Europe Res(2002)12:“*The proper administration of justice and the effective management of courts is an essential condition for the proper functioning of the judicial system and requires, amongst others, adequate budgetary appropriations*”.

The resources of a court are: personnel (judges and court staff), material (court buildings, office and IT equipment) and financial (the budget of a court). Influencing the level of these three types of resources can have an impact on the productivity of the court. Shortage of resources (in terms of judges, staff, equipment, and budget), a fortiori when –like in the Turkish judicial system - the influx of cases and the workload increase, can lead to an increase of the length of proceedings and a growing backlog of cases.

Every State is responsible for providing the judiciary with the necessary resources with which to operate. According to the CEPEJ report¹⁸, the total budget assigned to the Turkish judicial system (courts, prosecution offices and legal aid), considered either in absolute terms or as a percentage of *per capita* GDP is lower than in most European states. In order to allocate sufficient budgetary resources to courts and prosecution offices the Ministry of Justice should consider **performance assessment as a standard**.

¹⁸ European Commission for the Efficiency of Justice (CEPEJ) – Report about *European judicial systems* - Edition 2010 (2008 data): *Efficiency and quality of justice*.

As stressed above, the assessment of the performance of the judicial system, according to reliable and consistent statistical data and pursuant effective benchmarks, should be the basis for preparing, justifying, and presenting budgetary requests by the courts to the Ministry of Justice and in any case for the Ministry of Justice decisions on budget allocation. In order to define appropriate benchmarks to distribute resources to courts and prosecution offices, the Ministry of Justice could resort to very common and **important indicators** of the **economy efficiency**, which are:

- the *cost per decision*, which is calculated by dividing the annual budget of a particular court by the number of decisions made by its judges;
- the *cost per case* which is calculated by dividing the annual budget of a particular court by the number of cases which compose the workload of the court during the year.

The cost per decision and the cost per case indicators¹⁹ could be used, in the Turkish judicial system, **to reallocate resources** to particular court offices in order to face bigger workload and backlog. Furthermore the indicators could be a source of knowledge of the economic performance of courts, on which to base discussions around the **negotiation of the budget** by each individual court with the Ministry of Justice.

It should be noted that, according to the 2008 CEPEJ report, Turkey is one of the few countries where **courts and prosecution offices do not have separate budgets**. That means that the final responsibility for the way the appropriated funds are allocated to courts lies in the hands of the chief public prosecutors. This might create a problem of **appearance of impartiality of courts**, whose budget is dependent on decisions by prosecutors. Furthermore, it does not make courts responsible for the identification of their budgetary needs pursuant to the **performance assessment** standards. There should therefore be a separate budget for public prosecutors' offices and courts.

RECOMMENDATION

We RECOMMEND

- that the Ministry of Justice considers performance assessment as a standard for establishing strategies on budget management and for allocating funds to courts
- that the assessment of the performance of courts and prosecution offices, on the basis of reliable and consistent performance indicators and pursuant to effective economic benchmarks, be used for preparing and justifying the Ministry of Justice decisions to reallocate resources to particular courts in order to address heavier workload and backlog
- that separate budgets for public prosecutors' offices and courts be established

5. MANAGEMENT OF COURTS. DIVISION OF COMPETENCES BETWEEN CHIEF JUDGES AND CLERKS. MANAGEMENT OF PROJECTS AND REPORTS.

➤ FINDINGS

Most courts in Turkey are composed of only one judge.

According to article 5 of law n° 5235 *on the establishment, duties and powers of the ordinary courts of first instance and regional court of appeal* civil courts, civil peace courts, criminal courts of general jurisdiction, and criminal peace courts shall have a **single judge**. Administrative and tax courts are composed by a president and two judges²⁰; however, some cases are adjudicated by a single judge²¹. Commercial courts, aggravated felony courts, district administrative courts, court of

¹⁹ Those indicators are used in the **Dutch** and in the **Finnish** judicial systems.

²⁰ Article 3 of the Act no 2576 *on the constitution and functions of the district administrative courts, administrative courts and tax courts*.

²¹ Article 7 of the Act no 2576 *on the constitution and functions of the district administrative courts, administrative courts and tax courts*.

appeals and division of court of appeals (not yet established), the Council of State and divisions of Council of State, Court of Cassation and divisions of Court of cassation are instead **presided over by a President of the court or of the division.**

According to article 34 of law n° 5235 *on the establishment, duties and powers of the ordinary courts of first instance and regional courts of appeal*, the president of a court of appeal shall **ensure that the court functions in a harmonious, efficient and organised manner**, carries out general administrative tasks; he/she takes measures necessary for this purpose and supervises the staff of the regional court of appeal. Under the following article 35, the board of the presidents of a regional court of appeal shall determine the number of judges to the civil and criminal divisions of the regional court of appeal and the **distribution of work** among them and settle any disputes concerning the distribution of work that may arise between them.

Pursuant to articles 9 and 10 of the Act n° 2576 *on the constitution and functions of the district administrative courts, administrative courts and tax courts*, the president of the district administrative court shall take **necessary measures for the productive and orderly functioning of the courts** consulting the presidents of administrative and tax courts; the presidents of administrative and tax courts shall secure the productive functioning of the divisions.

Under article 55 of the Act 2575 of 06.01.1982 *on the Council of State*, the President of the Council of State shall be responsible for the general administration of the Council of State. He/she shall ensure the orderly functioning of the Council of State. According to the following article 57, the presidents of the Divisions **shall ensure the productive functioning of their divisions**. At the end of each calendar year, the presidents of the Divisions shall present a **report** to the Presidency of the Council of State, informing on the state of the cases examined by the Division and any deficiency in the execution of the functions of the Division; they shall also report on measures to be taken.

NON-JUDGE AND NON-PROSECUTOR STAFF

According to the CEPEJ report, in 2008, **the number of non-judge staff** in courts per 100 000 inhabitants was 39.3 in Turkey, 29.1 in France, 42.6 in Italy, 84.0 in Poland and 101 in Spain (table 8.) The number of non-judge staff per one professional judge was 3.9 in Turkey, 3.2 in France, 3.2 in Italy, 1.1 in Poland and 9.5 in Spain (table 8.). Furthermore, in the same year, the number of **non-prosecutor staff** attached to the prosecution services per 100 000 inhabitants was 5.2 in Turkey, 16.6 in Italy, 18.1 in Poland and 4.4, in Spain (table 8.1) The number of non-prosecutor staff per prosecutor was 0.9 in Turkey, 4.9 in Italy, 1.1 in Poland and 0.9 in Spain (table 8.1).

➤ REPORT OF CONSIDERATIONS

The good management of the justice system is fundamental to judicial independence. Courts need to adopt modern administration techniques to increase their productivity, improve the quality of their services and restore confidence in the judiciary. Traditionally, Turkish judges spend a large percentage of their time on administrative tasks and there is no clear division between administrative and judicial work. In addition, judges are accustomed to working alone with their own staff.

Effective and efficient performance of courts should instead imply a proper modern management of courts by presidents of courts, who adopt the performance assessment as managerial standard. **Court Presidents**²² play an essential role in monitoring judicial work and are a visible link with the public. In particular, heads of courts exercise a two-fold function, on the one hand judging and on the other managing, with an independent status for their judicial duties and an administrative officer status in their administrative duties. From the latter perspective, the involvement of presidents of

²² The expert is referring to the **Italian, French and Spanish** models of presidency of courts.

courts in management of courts is indispensable to make the judicial system more efficient and more effective. High-quality justice presupposes competent presidents of courts trained in administration. Therefore new requirements and skills must be taken into consideration when choosing heads of courts, with specific reference to managerial and organisational capacities²³.

As regards instead **judges**, their **core business should be the resolution of disputes**. The non-judicial tasks entrusted to judges should therefore be delegated to other judicial officers such as court clerks and registrars. This would increase both judges' productivity and the quality of their work. As regards **clerks**, comparative statistics show that their number both per 100 000 inhabitants and per professional judge is close to the average of comparable European countries. Again, in order to increase their productivity, their functions should be differentiated and specified, in order to build up specialised and trained administrative staff, which has the capacity to perform the administrative functions currently entrusted to judges.

Therefore, it would be useful to create a function of **legal assistant** who would assist judges in preparing cases and hearings, make proposals to judges as regards actions to be taken, collect relevant case law, and possibly draft simple judgements to be checked, approved (and signed) by a judge. This would enable the judge to concentrate on his core tasks, i.e. hearing cases and taking decisions. Legal assistants should also be introduced in the prosecution office where they could prepare decisions to be taken by the prosecutor as to prosecution, further investigations, experts' reports, indictments. Some judicial officers may have the competences to solve certain cases without judges' intervention or with a limited judicial supervision. This could be done by way of delegation of competence from the judge to the *Rechtspfleger*²⁴. This type of judicial officers can perform different tasks in selected civil proceedings especially in uncontested probate cases²⁵. Prosecutors, as well, must be relieved of their administrative and management tasks, in order to concentrate on legal issues, both in individual cases, strategy developing and policy making as far as prosecution is concerned.

RECOMMENDATION

We RECOMMEND

- that, following the envisaged merger of first instance courts, posts for presidents at

²³ In **Romania** and **Spain** candidates to presidents' posts have to submit a concrete programme for the management of the court concerned.

²⁴ According to the 2010 CEPEJ report on the evaluation of the European judicial systems, a distinction is made between four types of non-judge staff:

- the "**Rechtspfleger**" function, which is inspired by the German system. In model of the European Union of *Rechtspfleger*, the *Rechtspfleger* is defined as follows: "an independent judicial body, defined by the tasks that are attributed to it by law. As a judicial body, the *Rechtspfleger* is anchored in the constitution of the countries". They may carry out various tasks, for example, in the areas of family and guardianship law, the law of succession, the law of land registry, commercial registers, decisions about the granting of nationality, payment orders, execution of court decisions, auctions of immovable goods, criminal cases, the enforcement of judgments in criminal cases (with the issue of arrest warrants), orders enforcing non-custodial sentences or community service orders, prosecution in district courts, decisions concerning legal aid, etc. The *Rechtspfleger* does not assist the judge: he/she is competent for his/her own judicial decisions and independent in his/her decisions.
- Non-judge staff whose **task is to assist judges directly**. They may be referred to as judicial advisors or registrars. For the most part, they play a role, in hearings, assisting judges or panels of judges; they provide assistance in the drafting of judgments or they research case law.
- **Staff responsible for different administrative matters**, as well as court management. Thus for example, heads of the administrative units of the courts, financial departments or information-technology departments would fall into this category. Administrative staff responsible for the registration of cases or the filing of cases is also included in this category.
- **Technical staff**. For example personnel responsible for IT-equipment, security and cleaning.

²⁵ See on these points, the Council of Europe and European Commission joint "*project on support to the court management system in Turkey*".

- first instance courts are established and presidents of courts are appointed
- that for the appointment of presidents of courts, managerial and organisational capacities of candidates are taken into account
 - that president of courts be trained to manage courts pursuant to assessment and performance standards
 - that judges and prosecutors be relieved of their administrative tasks
 - that functions of clerks be differentiated and specified, in order to build up specialised and trained administrative staff, which have the capacity to perform new administrative functions of legal assistants and *Rechtspfleger*

6. CRITERIA FOR ALLOCATION OF CASE. SPECIALISATION. CASE MANAGEMENT. QUALITY MANAGEMENT AND QUALITY OF DECISIONS. LEGAL CERTAINTY.

➤ **FINDINGS**

SPECIALISATION

In most courts, case are assigned through an automated system managed by an IT system called UYAP. In visiting Ankara administrative and tax courts, the expert ascertained that judges are not specialised and that cases are equally distributed to all judges, according to a scoring system. Four (4) out of twelve (12) Ankara heavy criminal courts are instead specialised, dealing with custom and banking crime (1st and 2nd courts) and with terrorism and organised crime (11th and 12th courts). The remaining eight (8) are courts of general jurisdiction.

The newly appointed Ankara Chief prosecutor re-organised the prosecution office according to the principle of specialisation and issued an internal circular to assign the prosecutors, depending on their experience and their capabilities, to the 18 internal divisions composing the Ankara prosecution office and to establish a single front office, a single press office and a common execution office.

QUALITY MANAGEMENT AND QUALITY OF DECISIONS

According to the President of the Court of Cassation, more than 50% of the judgments appealed are reversed by the Court of Cassation. Lawyers interviewed by the expert affirmed that different courts in the same courthouse or different divisions of the same court, possibly a higher court, issue contradictory decisions. Judges from the Council of State, administrative courts, and civil and criminal Ankara courts admitted that they do not usually convene meetings with judges of the same court to discuss and confront the case-law or cases returned by superior courts. Approximately, only 1% of the decisions of the Council of State and the Court of Cassation are published in legal reviews or magazines. The decisions of the Constitutional Court, Court of Cassation and Council of State are indeed accessible through UYAP, but they are not classified according to indexes or research keys and they are not accompanied by a summary of the decision.

CASE-MANAGEMENT

The expert ascertained a strong rigidity in the management of cases and hearings by Turkish judges, considering that:

- it is not possible to re-allocate cases assigned by UYAP to judges working in the same courthouse, in order to increase the courts' efficiency, also because of the fragmentation of courts and the lack of court's president who could perform this task;
- judges rarely give priority to certain types of cases;

- hearings are not scheduled to decide, in cooperation with the counsels of the parties, on the duration of the proceedings;
- judges do not organise their hearings in such a manner that people can be heard at specific time;
- judges rarely resort to alternative yet non-coercive measures to solve conflicts during a pending proceeding.

➤ **REPORT OF CONSIDERATIONS**

SPECIALISATION

The specialisation of judges is a recognised tool to increase the competence and the efficacy of the judicial action. This specialisation implies the existence of a president of the court, who distributes cases according to pre-defined criteria. Pursuant to principle 8 of Rec(2000)19, *specialisation should be seen as a priority, in terms of the organisation of public prosecutors, as well as in terms of training and in terms of careers. Recourse to teams of specialists, including multi-disciplinary teams, designed to assist public prosecutors in carrying out their functions should also be developed.* This need of specialization is of particular important to fight those forms of criminal offences which fall under the competence of prosecution offices authorised by article 250 of the CPC. The fight against organized crime, trafficking of human beings, money laundering and corruption require skilled and trained prosecutors and the development of special investigative techniques²⁶.

QUALITY MANAGEMENT AND QUALITY OF DECISIONS

As stated by Bert Van Delden in its 2008 report, quality management is a difficult issue, complicated to agree upon and to implement. Nevertheless improvements are required as regards exchange of experience among judges, both in the same court and with higher courts. At present judges give often the impression to work alone, while in a professional organisation judges can learn much from each other. **Regular meetings**²⁷ should take place between the presidents and the judges of same court or of different courts of the same courthouse and possibly of the same city and regional area in order **to exchange experiences and practices and to confront case law**. This will also be very useful for preventing divergent case law.

The quality of a judicial decision depends not only on the individual judge involved, but also on a number of parameters external to the process of administering justice such as the quality of legislation, the adequacy of the resources provided to the judicial system and the quality of legal training. The law can affect the type and volume of cases brought before courts, as well as the ways in which they are processed. The quality of judicial decisions may also be affected by over-frequent changes in legislation, by poor drafting or **uncertainties in the content of laws and in the content of the decisions issued by superior courts**, and by deficiencies in the procedural framework.

According to opinion n° 11 of the CCJE²⁸, it is important that **clear reasoning and analysis** are basic requirements for judicial decisions; these are important aspects of the right to a fair trial and increase legal certainty. All judicial decisions must be drafted intelligibly in clear and simple language such that they can be understood by the parties and the general public. Publication of judgments is a common and important tool to reduce uncertainties about the interpretation of the

²⁶ According to article 140 of CPC, to fight these crimes, **special investigative means** are available, like the activities and the workplace of the suspect or the accused may be monitored in public places, or it may be subject to audio-visual recording by means of technical devices.

²⁷ In **Italy**, presidents of courts and president of courts' divisions must –pursuant to a regulation issued by the Consiglio Superiore della Magistratura- periodically convene judges to discuss practices and case law.

²⁸ Opinion no.11 (2008) of the Consultative Council of European Judges (CCJE) to the attention of the Committee of Ministers of the Council of Europe on *the quality of judicial decisions*.

law by judges and make parties aware of the content of the decisions. The publication of judgments makes decisions effectively accessible by parties, as long as the published decisions are summarised and classified, in a way to allow lawyers and parties to easily detect the case-law relevant for a case. Legal certainty, as regards case-law, would discourage parties and lawyers to file unfounded legal actions and appeals, when similar cases have been already rejected by higher courts. Legal certainty should reduce the influx of new cases and increase the effectiveness of the judicial system. However, classification and summarisation of judgments requires a serious commitment by the judicial institutions: it needs a large number of jurists, may be judges and prosecutors, devoted the task²⁹.

CASE MANAGEMENT

Seen from the perspective of the court users, the quality of justice is not only referred to the quality of the decision itself but also to **the quality of the judicial process**, which is ensured by a reasonable length and by a smooth and transparent communication between the judge and the parties. Bringing a legal action often means embarking on a process that is expected to be long but whose exact length is impossible to predict. Foreseeable proceedings reinforce the confidence by citizens in the justice system. Therefore, a case management conference with the parties to set a **clear schedule of events** has been recognised as one of the most effective tools to help settlements, avoid adjournments, concentrate hearings, and maintain timeframes³⁰.

According to opinion n° 6 of CCJE³¹, the idea of mandatory provision of information to individuals on the foreseeable timeframe of the case in which they are parties could be introduced. Moreover, it could be possible to consider developing a procedure requiring the court and the opposing parties to agree on a jointly determined time-limit, to which both sides would commit through various provisions. The parties concerned should be granted an appropriate representation while negotiating this timeframe. Such a procedure would develop the responsibility of all the stakeholders in the trial. Furthermore, according to the same opinion, courts should organise hearings in a way that the uncertainty as to the time when the persons are called to appear before the judge is reduced as much as possible. Any measures taken should, as a matter of priority, give consideration to victims and witnesses. As regards the organisation of hearings, particular attention needs to be paid to the most vulnerable categories. Victims of violent offences are most concerned³².

RECOMMENDATIONS

We RECOMMEND

- that, in order to prevent divergent case law and to unify practices, regular meetings take place between the presidents and the judges of same court or of different courts of the same courthouse and possibly of the same city or region to exchange

²⁹ In **Italy** 40 judges work in the Massimario of the Court of Cassation, bearing the task to summarize and classify Court of Cassation decisions.

³⁰ In **France**, procedural contracts have been introduced, enabling judges and counsels for the parties to decide on the timetable for the proceedings at the very first hearing, in an attempt to reduce the length of trials, but above all make it predictable.

³¹ Opinion no 6 (2004) of the Consultative Council of European Judges (CCJE) to the attention of the Committee of Ministers on fair trial within a reasonable time and judge's role in trials taking into account alternative means of dispute settlement

³² In **Italy** in many courts, judges, lawyers and court staff have agreed written protocols for an efficient and smoother implementation of administrative and judicial activities, which involve lawyers and parties. Those protocols are aimed at giving precedence to cases which, for their nature, need to be prioritised; at minimising waiting times of parties and lawyers; at simplifying way of communications between courts and lawyers (for example through the use of e-mails); at establishing rules for the management of the hearing which ensure that judges have enough time to prepare and deal with their cases properly; at informing parties about the foreseeable timeframe of proceedings.

experience and practice and to confront case law

- that, in order to reduce uncertainties about the interpretation of the law by judges and to make parties aware of the content of the decisions, judgments, especially of higher courts, be regularly published, summarised and classified
- that practises be adopted in courts to schedule hearings, in cooperation with the counsels of the parties, within a framework which takes into account the foreseeable duration of the proceedings
- that, in establishing the time framework of proceedings, judges take into account cases which deserve to be prioritised
- that courts organise hearings in a way that the uncertainty as to the time when the persons are called to appear before the judge is reduced as much as possible and in a manner that people can be heard at specific time

7. ADR MEDIATION

➤ FINDINGS

Turkish legislation pays attention to mediation. Pursuant to art 21.13 of civil procedural code **the judge** can encourage parties to negotiate in every phase of proceedings. According to the criminal procedure code, mediation can be conducted by the **prosecutor** during the investigation³³ or by the **court** at trial stage³⁴. In both cases the criminal procedure provides for the possibility of an intervention by a **lawyer** acting as a mediator³⁵. In the Code of lawyers, art 35A, there is a **possibility for lawyers to use mediation** before initiation of proceedings. The expert ascertained that **mediation is not used in practice** because of reluctance of judges to resort to it allegedly because of the workload.

A draft law on mediation on civil disputes was sent to the Parliament on 3 June 2008. This draft law contemplates mediation *as a method for the resolution of disputes carried out voluntarily and with the participation of an impartial and independent third person specially trained, bringing the parties together to discuss and negotiate and establishing a communication process between the parties in order to help them to understand each other and thus enabling them to work out their own solutions*. According to the law the **parties shall be free** to resort to a mediator, **before filing a lawsuit or during the course of a lawsuit**. **The court may also inform and encourage** the parties to resort to a mediator. **Mediators** shall enter the register of mediators maintained by the Ministry;

³³ Article 253 of the CPC (titled “Mediation”) states that: (1) In cases where statute permits the procedure of mediation, and in accordance with the case investigated, the **public prosecutor** shall summon the offender according to the procedures provided for in this Code and shall ask him whether he accepts responsibility with regard to the offence concerned. (2) If the offender confesses to the offence and agrees to pay for all or most of the material and non-material damage caused by his offence and act or to compensate/make good the damage, the victim of the offence or his lawyer or legal representative, if any, shall be notified of the fact. (3) If the victim of the offence states that he will accept a friendly settlement of his own free will if reparation is made for all or most of the damage caused, the investigation shall be discontinued. (8) The decision not to prosecute shall be given when reparation is made for the damage according to the mediation agreement and the costs of the mediation process have been paid by the offender.

³⁴ Pursuant article 244 of the CPC (“**Mediation conducted by the court**”): In cases where a public prosecution is brought in respect of an offence subject to the mediation procedure, the mediation procedure can be conducted by the court in accordance with the procedures laid down in Article 253. (2) If the mediation takes place it shall be decided that the case is dropped.

³⁵ Art. 253 of CPC (4) states that if the offender and the victim cannot agree upon a lawyer, the public prosecutor may ask the Bar Association to appoint one or more **lawyers as mediators** in order to lead the mediation procedure between the offender and the victim, to bring the parties together and reach a solution. (5) The mediator shall finalize the mediation procedure in thirty days at the latest as of the day the application is made. The public prosecutor may extend this period with thirty more days for only once. During the course of the mediation process, statute of limitation shall be suspended. (7) The mediator shall submit a report to the public prosecutor within ten days, setting out the steps he has taken and the interventions he has effected in order to achieve a settlement.

this requires a four-year study undergraduate degree, *being fully competent*³⁶, completing the mediator training and passing the written and practical examination carried out by the Ministry of Justice. The draft law has not yet been adopted, in the face of strong opposition by lawyers.

The Ministry of Justice is implementing a project on mediation in coordination with the United Nations Development Program, to identify the obstacles which prevent mediation from proper functioning and raise the knowledge level of judges and prosecutors on functioning on mediation.

➤ REPORT OF CONSIDERATIONS

The use of mediation³⁷ is an important part of the strategy to make the justice system efficient and effective. As far as **alternative dispute resolutions** (ADR) methods are concerned, the Council of Europe has produced many Recommendations³⁸. According to the opinion n° 6 of the CCJE, ADR is definitely useful and effective because it places the accent on an agreement between the parties, which is always preferable to an imposed judgement. The CCJE has also discussed the role of the judge in mediation³⁹, considering first of all that resorting to mediation, in civil and administrative proceedings, may be chosen on the parties' initiative or, alternatively, the judge may be allowed to recommend the parties to appear before a mediator, with their refusal to do so sometimes being relevant to costs. Both in criminal and civil-administrative matters, **the CCJE emphasises the need that ADR schemes be closely associated with the court system, since mediators should possess relevant skills and qualifications, as well as the necessary impartiality and independence for such a public service**. Therefore the CCJE emphasises the **importance of training** in mediation.

The draft law on mediation is in compliance with CCJE opinion, since it provides for mediation chosen by the parties or recommended by the judge. However, criteria for the selection of mediators and for the assessment of their competences to perform this delicate task should be better clarified. Judges could be involved in the process of selection and training of mediators, and lawyers should be eligible for the task.

A public awareness programme on ADR is also very important.

In order to encourage judges to engage in mediation during the trial, incentives should be provided: the Ministry should require specific statistics on how many cases are settled by a judge and these statistics could be included in the personal file of a judge.

RECOMMENDATION

We RECOMMEND

- that the Ministry of Justice adopts a public awareness programme on ADR
- that mediation provided for in the civil procedure code, in the criminal procedure

³⁶ Ar. 20 of the draft law.

³⁷ *Mediation*: this is a voluntary, non-binding private dispute resolution process in which a neutral and independent person assists the parties in facilitating the discussion between the parties in order to help them resolve their difficulties and reach an agreement. It exists in civil, administrative and criminal matters.

Conciliation: the conciliator's main goal is to conciliate, most of the time by seeking concessions. She/he can suggest to the parties proposals for the settlement of a dispute. Compared to a mediator, a conciliator has more power and is more proactive.

³⁸ Recommendation No R (98) 1 of the Committee of Ministers to the member States on family mediation; - Recommendation No R (99) 19 of the Committee of Ministers to the member States concerning mediation in penal matters; - Recommendation Rec (2001) 9 of the Committee of Ministers to the member States on alternatives to litigation between administrative authorities and private parties; - Recommendation Rec (2002) 10 of the Committee of Ministers to the member States on mediation in civil matters.

³⁹ See also the study: (CEPEJ) Better Implementation of mediation in the Member States of the Council of Europe. Concrete rules and provisions

code and in the code of lawyers is effectively implemented in judicial practice and that judges, prosecutors and lawyers are trained for the task

- that incentives be provided to encourage judges to engage in mediation
- that the draft law on mediation be passed and implemented, and that the criteria for the selection of mediators are clarified in a way that judges are involved in the process of selection and training of mediators and lawyers are considered eligible for the task.

8. DURATION OF COURT PROCEEDINGS; ACTION TO ADDRESS BACKLOGS IN PENDING CASES

➤ FINDINGS

According to the CEPEJ report **the disposition time**⁴⁰ of Turkish judicial proceedings (tables 2.1 2.2 2.3. 2.4.1) in 2008 was in line with the average standards in Council of Europe Member States. However, according to the same report Turkey in 2008 was convicted by the ECtHR because of the violation of article 6 of the Convention about reasonable duration of trials 64 times. There was only one judgment against France; 54 against Italy; 63 against Poland. There were no judgments in 2008 against Spain (table 9).

As far as duration of trials is concerned, long duration of trials is **a serious reason of concern for high courts**, because of their huge workload and backlog. First instance courts, in general terms, are able to keep the duration of trials within reasonable time limits, as they are intended by the ECtHR. However, taking into account the increasing influx of new cases and the clearance rate (please see chapter 2), which is almost everywhere under the efficiency line, it may be that in few years the duration of first instance trials will be dangerously extended, if measures to increase the efficiency of the judicial system are not adopted. Furthermore some courts and, in general, juvenile courts, which are marked by low clearance rate and case turnover, already face serious problems of duration of trials.

Specific causes of delays have been detected for regional administrative courts, in which trials are suspended when they are connected with cases pending at Council of State. A general reason of delay, in first instance courts, comes from the long time it takes court's experts to deliver opinions. A specific concern regards the **duration of investigations**, in particular when the accused person is kept in pre-trial detention. In landmark cases accused persons were released from pre-trial detention in the course of the investigations, because of the expiry of the maximum time limit provided for under article 102 CPC.

As a general consideration, the expert concluded that **there are no clear parameters in law or judicial practice to establish when a case has been resolved in a reasonable time**. There are no pre-established mechanisms in place for the prosecutors to have constant control over investigations conducted by the police.

➤ REPORT OF CONSIDERATIONS

As stressed above, whether a decision is given in a reasonable time in accordance with Article 6 of

⁴⁰ Disposition time (DT indicator) compares the number of resolved cases during the observed period and the number of unresolved cases at the end of the observed period. 365 is divided by the number of resolved cases divided by the number of unresolved cases at the end, so as to be able to express it in a number of days. The ratio measures how quickly the judicial system (of the court) turns over received cases – that is, how long it takes for a type of cases to be resolved. This indicator provides further insight into how a judicial system manages its flow of cases.

$$DispositionTime = \frac{365}{CaseTurnoverRatio}$$

ECHR, can be regarded as an important element of quality of justice. The increasing workload in Turkey demonstrates that tensions can arise between the speed with which a proceeding is conducted and other factors relevant to quality of the judicial process. However, long duration of trials is a major problem in many European states. Various surveys⁴¹ have shown that judicial delay is perceived as the main problem affecting judicial performance not just by public opinion as a whole but also by those with direct experience of the courts.

The European Court for Human Rights has defined the concept of “reasonable time” which draws the border line between the violation and non-violation of the article 6 of Convention⁴². According to European standards⁴³, the statistical system should enable to assess the overall length of proceedings according to a sufficiently elaborated typology of cases at both national and court level. To this respect⁴⁴: **every court should collect data regarding the timeframes of proceedings** that are taking place in the court. Pending and completed cases within a period (e.g. calendar year) should be monitored separately, and the data on their duration should be split in groups according to the periods of their duration, i.e. cases pending or completed in less than one month, 1-6months, 7 to 12 months, 1-2 years, 2-3 years, 3-5 years and more than 5 years. In addition to the spread of cases according to periods of their duration, the average duration of the proceedings has to be calculated, and an indication of minimum and maximum timeframes should be given as well⁴⁵. The time of processing should consider only the time that was needed to process the case within the particular court, i.e. the time between the moment when the case arrived to the court and the moment when the case left the court (e.g. final decision, transfer to a higher court to be decided on appeal, etc). If possible, the information on timeframes of proceedings for the completed cases should be distinguishable for the cases completed after a full examination of the case (i.e. the cases that ended by a decision on the merits) and the cases that were completed otherwise (by withdrawal, settlement, lack of jurisdiction etc.) and should also include the time needed to enforce the decisions⁴⁶.

In the meantime, adoption of other measures can be suggested. In particular, courts

- should pay **special attention to older cases**, by developing monitoring mechanisms for such cases, for instance by periodical reports on cases that have been pending for a given length

⁴¹ See, for example, *La qualité de la justice*, Marie-Luce Cavrois, Hubert Dalle, Jean-Paul Jean, La Documentation Française, Paris, 2002, page 30: “for the majority of French citizens, the judicial system functions weakly (66%) and too slowly (73%)”.

⁴² To determine whether or not the time is reasonable the Court has laid down various criteria: the complexity of the case, the applicant’s conduct, the conduct of the relevant authorities and what is at stake for the applicant.

⁴³ CEPEJ Time management checklist, Checklist of indicators for the analysis of lengths of proceedings in the justice system, which can be found at following website: [https://wcd.coe.int/ViewDoc.jsp?Ref=CEPEJ\(2005\)12&Sector=secDGHL&Language=lanEnglish&Ver=rev&BackColorInternet=eff2fa&BackColorIntranet=eff2fa&BackColorLogged=c1cbe6](https://wcd.coe.int/ViewDoc.jsp?Ref=CEPEJ(2005)12&Sector=secDGHL&Language=lanEnglish&Ver=rev&BackColorInternet=eff2fa&BackColorIntranet=eff2fa&BackColorLogged=c1cbe6).

⁴⁴ CEPEJ Saturn Guidelines For Judicial Time Management, [https://wcd.coe.int/ViewDoc.jsp?Ref=CEPEJ\(2008\)8Rev&Language=lanEnglish&Ver=original&BackColorInternet=eff2fa&BackColorIntranet=eff2fa&BackColorLogged=c1cbe6](https://wcd.coe.int/ViewDoc.jsp?Ref=CEPEJ(2008)8Rev&Language=lanEnglish&Ver=original&BackColorInternet=eff2fa&BackColorIntranet=eff2fa&BackColorLogged=c1cbe6).

⁴⁵ In **Romania**, the High Council for the Judiciary recently started a pilot project to establish the optimum time to solve cases.

⁴⁶ According to the CEPEJ guidelines, the monitoring of timeframes should not be limited to the collection of data regarding total timeframes between the start and the end of the proceedings. Information on duration of intermediate stages of the proceedings should also be collected. As a minimum, the stages to be monitored should include: the duration of criminal investigations, the duration of the preparatory stage of the proceedings (e.g. time between the start of the proceedings and the first hearing on the merits), the central stage (e.g. from the first to the last hearing on the merits) and the concluding stage of the trial (e.g. from the last hearing to the delivery of the decision on the merits). The data on duration of appeals proceedings, or duration of other legal remedies should also be available. Special monitoring should be provided for the periods of inactivity (waiting time). The data about the duration of trials should be used, together with the indicators about the workload, in order to reorganise the system –as stressed above- and in order to reach efficiency and effectiveness of the judicial action.

- of time, including it in the annual activity report of the courts;
- should draw up **processing priorities** on the basis of an initial appraisal of the categories of pending cases (the issue is obviously not to determine priorities according to the cases themselves), according to consultative methods and objective criteria.

Specific attention should be devoted to **pre-trial detention cases**. According to the ECtHR the protection stemming from the fair trial principle –article 6 of the European Convention- and therefore from the reasonable duration principle, starts to be applied from the time when a person is charged with a criminal offence. The Court has defined a “charge” for the purpose of article 6 as “the official notification given to an individual by the competent authority of an allegation that he has committed a criminal offence and that article 6(1) covers the whole of the proceeding⁴⁷. As regards the duration of pre-trial detention, art. 5(3) of the Convention provides the “Everyone arrested or detained (...) shall be entitled to trial within a reasonable time or to release pending trial”.

Whether a period of pre-trial detention can be considered “reasonable” must be assessed according to its special features. Article 5(3) requires that there must be a special diligence in bringing the case to trial if the accused is detained⁴⁸. A detained person is entitled to having the case given priority and conducted with particular expedition⁴⁹. To prevent that a violation of article 6 occurs, measures should be adopted by each country to ensure that the duration of the trial is kept to the minimum time compatible with the quality of the judicial process and the respect of defence rights. By way of example, the Court has found excessive periods of pre-trial detention lasting from two and a half to nearly five years⁵⁰.

RECOMMENDATION

We RECOMMEND

- that the Ministry of Justice and the High Council of Judges and Prosecutors adopt benchmarks, according to the CEPEJ standards, to monitor and assess the duration of judicial proceedings, intermediate stages of them included, in order to improve the efficacy of the judicial action
- that judges pay special attention to older cases, by developing monitoring mechanisms and by establishing rules to prioritise cases among the different categories of pending ones
- that judges and prosecutors pay specific attention to duration of pre-trial detention cases, adopt measures to give priority to those cases and ensure that the duration of the trial is kept to the minimum time compatible with the quality of the judicial process and the respect of defence rights

9. STATISTICS

➤ FINDINGS

In its work CEPEJ collects statistical data in order to identify ratios and benchmarks in some key fields of the justice system and to allow comparisons amongst different judicial systems.

⁴⁷ ECtHR *Eckle v. Germany*, judgment of 15 July 1982.

⁴⁸ ECtHR *Stogmuller v. Germany*, judgment of 10 November 1969.

⁴⁹ ECtHR, *Wemhoff v. Germany*, judgment of 27 June 1968.

⁵⁰ ECtHR, *Punzelt v. Czech Republic*, judgment of 25 April 2000; *Pantano v. Italy*, judgment of 6 November 2003.

In Turkey, statistical data, collected by courts are aggregated at national level by the Ministry of Justice. UYAP allows for an automated extraction of diverse statistical data about the functioning of the judicial system, following diverse keys of interrogation.

➤ **REPORT OF CONSIDERATIONS**

According to Cepej Guidelines on Judicial Statistics (GOJUST), adopted by the CEPEJ at its 12th plenary meeting (Strasbourg, 10 – 11 December 2008)⁵¹ it is necessary that States are provided with appropriate statistical tools. It is also essential that each court develops a statistical monitoring system on its own cases on the basis of a national system managed by a central statistical department.

The main aim of judicial statistics is to facilitate the efficient functioning of a judicial system and contribute to the steering of public policies of justice. 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 and productivity of courts and judges, the necessary duration for handling this workload and the amount of human and financial resources to be allocated to the system to resolve the incoming workload.

When the competent authorities allocates resources between judicial bodies using benchmarks based on statistics, a mechanism of monitoring the proper application of rules for collecting, processing and analysing data should be established to guarantee a fair and transparent system. All data collection and analysis should be undertaken in a transparent way. Public availability of data collected at national level should be ensured, namely through publication on internet. It is therefore important that UYAP is used to perform the automated extraction of figures which are relevant for the evaluation of the performance of the whole judicial system, as stressed in paragraph 2.

RECOMMENDATIONS

We RECOMMEND

that judicial statistics be compiled, through a reliable and modern methodology, in compliance with CEPEJ Guidelines on Judicial Statistics, to enable policy makers and judicial practitioners to get relevant information on courts' performance and quality of the judicial system

10. I.T. EQUIPMENT. UYAP PROJECT

➤ **FINDINGS**

According to the **CEPEJ** report, the Turkish Judiciary enjoys a high level of computerisation. Judges, prosecutors and clerks are all provided with laptops. The Ministry Of Justice has developed an integrated IT-system, called UYAP. The IT system, designed for the management of a judicial system, is a very advanced one. It contains **automated registers**, allows **case tracking** and

⁵¹ The document can be found at the following website: <https://wcd.coe.int/ViewDoc.jsp?id=1389931&Site=DGHL-CEPEJ&BackColorInternet=eff2fa&BackColorIntranet=eff2fa&BackColorLogged=c1cbe6>.

The aims of the guidelines are to:

- promote quality, transparency, accountability and accessibility of judicial statistics collected and processed in the member states, as a tool for public policy;
- 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;
- contribute to ensure the transparency and accountability of the CEPEJ process for evaluating European judicial systems and to improve this process.

automatic assignment of cases to judges; allows lawyers and parties to have access, using passwords, to important information about judicial proceedings. It allows **communication** with the parties and lawyers through short message service (SMS). UYAP has also been developed to make the decisions of the courts available to the public. UYAP serves for **statistical reporting**. It does allow for an electronic filing of judicial acts but not yet for the so-called electronic trial⁵².

➤ **REPORT OF CONSIDERATIONS**

The use of information and communication technology (ICT) is considered one of the key elements for the improvement of the administration of justice⁵³. Effective court administration is linked to good management of statistical data. UYAP is a valuable means for managing and tracking cases and for communication with lawyers. However it could be better developed for monitoring the inflow of cases, assessing the productivity of courts and prosecution offices, allocating resources and tracking different procedural stages of cases to identify backlogs and provide remedial measures.

RECOMMENDATIONS

We **RECOMMEND**
to improve UYAP functionalities for statistical reporting.

11. OPEN –UP OF COURTS TO THE PUBLIC INCLUDING OPEN WEBSITES. ORGANISATIONAL TRANSPARENCY. ACCESS TO CASE LAW, AND COMMUNICATION EXCHANGE BETWEEN COURTS, PARTIES AND GENERAL PUBLIC. TREATMENT OF COMPLAINTS.

➤ **FINDINGS**

In visiting the administrative courts, the expert ascertained that: most **cases are filed by parties personally**, without the assistance of a lawyer; the administrative courts hold only one hearing per month; the parties are not present, unless they ask for. As regards civil courts, many cases are filed by the parties personally, without professional legal advice. The parties are called to be heard by the judge.

In December 2007 amendments to the Turkish criminal code and the criminal procedure code were adopted in relation to, among other things, the **compulsory commissioning of a defence lawyer**. According to the new provisions, a defence lawyer shall be appointed *ex officio* for suspects and defendants in cases where the suspect or the defendant do not have a defence lawyer and the offence is calling for a lower limit of imprisonment of more than five years. Previously a defence lawyer was appointed in case of offences calling for an upper limit imprisonment of 5 years or more. According to members of bar associations met by the experts in the course of the previous mission, the change in the law brought the case of mandatory defence from 80% of the total criminal cases to only 20%. The expert was informed that the Ministry of Justice, the High Council

⁵²An example of electronic trial can be drawn from the **Italian** experience, by mentioning the “*decreto ingiuntivo telematico*” (a judicial decree containing an injunction of payment), which has been implemented in many courts, as an application which allows the electronic filing of money claims and the electronic communication of the decisions to the parties. Furthermore in **Italy** it has been for long time studied and piloted il *processo civile telematico* (a computerized on-line civil trial) which aims at reproducing traditional paper-based civil procedures in an electronic medium. In **Italy** on-line filing of claims, transmission of communications and notifications are currently under experimentation.

⁵³ European Commission for the Efficiency of Justice (CEPEJ), Marco VELICOGNA, *Use of information and communication technologies (IT) in European Judicial Systems*. Marco VELICOGNA, *Justice Systems and ICT What can be learned from Europe?*, in Utrecht Law Review. Mrs Maria CRUZ DEL VALLE PINTOS, High Council of Justice, Spain, *Information system*, in <http://www.coe.int/t/dghl/cooperation/cepej/thematiques/Citoyens/CruZE.pdf> .

of Judges and Prosecutors and courts do not publish brochures or other means of information about the judicial proceedings. The courts do not provide parties with forms or models to file petitions. In courts there are not information desks.

COMPLAINTS

Turkey has put in place a compensation procedure for the 3 following circumstances: (a) non execution of court decisions, (b) wrongful arrest and (c) wrongful conviction. There are not compensation procedures in place for length of proceedings.

➤ REPORT OF CONSIDERATIONS

The justice system is entrusted with a public service mission to serve the interests of the citizens. Thus, the rights of court users must be safeguarded. These rights can be protected and improved in various ways.

One of the means of doing so is to provide them with **information** not only about relevant legal texts and case law of higher courts but also concerning practical information for courts' users, foreseeable timeframes of judicial proceedings as well as assistance and compensation programmes for victims of crimes. This specific information, to be provided in the interests of the users, but not yet general across Europe, can only be given by states which have experienced, within their jurisdictions, an efficient system of case management.

Information to courts' users would be of outmost importance in Turkey, considering that, in many cases, may be most of the cases, parties are not assisted by professional lawyers. Single information desks should be set up in courts in order to ensure an effective orientation and information of the public. These information desks should be linked to UYAP. Information brochures on each type of procedure should be made available to the public in courthouses and on the internet. Information posters could be used as well. The brochures could, for instance, cover the following topics: how to file a petition or a complaint; how the procedure is regulated; what are the procedural rights the parties have; what happens after a person is arrested; how to remove criminal records; how to file a small claim action; how to collect a small claims judgment. Furthermore, all types of forms, to be used in courts' proceedings of every kind, should also be available at the information desks. A colour based guiding system should be set up in order to facilitate public's orientation within the buildings.

ORGANISATIONAL TRANSPARENCY. A CHARTER FOR USERS

Furthermore a systemic approach to transparency requires that processes to get information are clearly defined in a sort of **litigants' charter**, covering, among others: the practical information to access courts and to receive legal aid; dates and places of court hearings; basic rules about judicial proceedings; the foreseeable timeframe for processing the files; and any other useful information for users and victims of criminal offences⁵⁴.

Transparency strengthens accountability as part of the strategy to maintain or support public confidence and trust. Technology makes data collection and information processing possible and even simple. It is nevertheless important not only to establish rules and tools to provide information but also verify that information effectively reaches the courts' users.

⁵⁴ In **Spain** the Parliament in a plenary session held in april 2002 unanimously approved the Charter of Citizen's Rights before the Administration of Justice, which is this text on citizen's rights. The Charter of Citizen's Rights Before the Administration of Justice identified citizens' information needs and established a number of rights that might be grouped as follows: general and updated information on the operation of Courts and on the characteristics and general requirements of the different judicial procedures; information on the situation of all procedures –both handled and pending- of all the judicial bodies throughout the country; up-to-date information of Spanish and European Union laws through an easy-access electronic data system; concrete information on the contents and situation of those procedures where the petitioner has a legitimate interest on the basis of procedural laws.

SURVEYS OF PERSONNEL'S AND PUBLIC'S SATISFACTION WITH THE JUDICIAL SYSTEM

One of the important aspects of the quality judicial systems developed in European countries⁵⁵ and in the US, is the measurement, through periodical and specific surveys, of personnel's and public's satisfaction with the judicial system, as a tool for the constant improvement of quality of the Judicial System.

As stressed above, qualitative justice strongly relies on good administration of the Judicial System, which is not only dependent on the work of judges and clerks but also on the **contribution of those who participate in the implementation of the judicial process**: in particular lawyers, but also bailiffs, legal experts, interpreters, representatives of government agencies, notaries and ultimately the users themselves. To improve the quality of the judicial system is therefore important that regular **information and feedback** is given by those categories on the functioning of courts and that appropriate means to exchange and develop consultation with court presidents are set up.

COMPLAINTS

The ECtHR stresses the need for **setting up national mechanisms to provide adequate redress for violation regarding excessive delays**⁵⁶ through compensation or other means. Several States⁵⁷ have introduced special arrangements to meet the courts' concern. Addressing people's complaints about the functioning of the judicial system is an essential question for remedy malfunctions, miscarriages of justice and delays. Complaints by parties and courts' users may concern the content of a court decision, judges' or prosecutors' behaviour or the functioning of courts. A complaint about the content of a court decision cannot be regarded as a proper complaint about functioning of the judicial public service. This "criticism" can only be dealt with by an appeal, according to legal procedure rules, because court decisions are directly connected with the independence of the judiciary. Pursuant to the European standards in the field, "Decisions of judges should not be the subject of any revision outside the appeals procedures as provided for by law"⁵⁸.

Complaints may concern instead complex issues connected with the specific or whole mode of operation of the court. This kind of complaints lodged by members of the public may generate a sort of interactive dialogue between the courts and the authority responsible for processing the complaints, helping the court's management to identify court's malfunctions, generating the right processes for the improvement of the courts' functioning and preventing further malfunctions. Complaints should therefore be viewed as a factor for measuring the degree of public satisfaction with the judicial public service and should serve to improve the management of the judicial system. It is therefore important that parties and courts' users have access to clear procedural framework to process complaints, with a precise indication of the authority competent to receive the complaint, predefined procedural rules, the ways to find a solution or at least a response to the

⁵⁵ In the **Netherlands** and in **Finland** surveys of personnel's and public's satisfaction are regularly performed.

⁵⁶ ECtHR, 26 October 2000, *Kudla v. Poland*; ECtHR Grand Chamber, 29 March 2006 *Scordino v. Italy* In the case of *Kudla v. Poland*, considers that "the correct interpretation of Article 13 is that that provisions of the Convention guarantees an effective remedy before a national authority for an alleged breach of the requirement under Article 6§1 to hear a case within a reasonable time". This assertion was clearly linked to a very simple fact: "If Article 13 is ... to be interpreted as having no application to the right to a hearing within a reasonable time ..., individuals will systematically be forced to refer to the Court in Strasbourg complaints that would otherwise, and in the Court's opinion more appropriately, have to be addressed in the first place within the national legal system. In the long term the effective functioning, on both the national and international level, of the scheme of human rights protection set up by the Convention is liable to be weakened" (grounds 156 and 155).

⁵⁷ In **Italy** the so called Pinto Law, Law No. 89 of 24 March 2001, set up an internal procedure in front of the Court of Appeal to ensure parties of judicial proceedings compensation of damages in case of excessive duration of trials.

⁵⁸ CoE REC12 (98), which also states that: *Judges should not be obliged to report on the merits of their cases to anyone outside the judiciary.*

complainant⁵⁹. The lack of a response to a complaint is what fuels public criticism and loss of confidence in the justice system. This approach reflects a desire to make justice a quality-oriented public service.

RECOMMENDATIONS

We RECOMMEND

- that the Ministry of Justice set up in courts and prosecution offices single information desks, linked to UYAP, in order to ensure effective orientation and information of the public
- that the Ministry of justice make information brochures, on each type of procedure, available to the public
- that the Ministry of Justice establish and publish a “litigant’s charter” and introduce an appropriate mechanism, like satisfaction surveys and tools to get users’ feedback, in order to control that courts’ users receive proper and accurate information about the judicial service
- that the Ministry of Justice, the High Council of Judges and Prosecutors organise regular surveys on courts’ staff, lawyers’ and users’ satisfaction about the functioning of courts and the judicial system and regularly use this information for improving the strategies and planning about the judicial system
- that the High Council of Judges and Prosecutors set a normative framework for the courts to deal with complaints about the malfunctioning of the judicial system with a view to help the court management to identify courts malfunctions, to cause processes for the improvement of courts’ operations and to prevent further malfunctions
- that the Ministry of Justice establish mechanisms for compensation of damages in case of excessive duration of trials

12. ACCESS TO LEGAL AID – LEGAL FRAMEWORK IN PRACTICE

➤ FINDINGS

According to 2010 CEPEJ report, the annual public **budget allocated to legal aid** per inhabitant (table 7.) was € 0.7 in Turkey, € 4.9 in France, € 1.9 in Italy, € 0.6 in Poland, € 4.9 in Spain. For the average of Council of Europe Member States was 7.2 €. The annual public **budget allocated to legal aid per inhabitant and as part of the GDP** per capita (Table. 7) was 0.01% in Turkey, 0.02 %in France, 0.01% € in Italy, 0.01% € in Poland, 0.02 € in Spain. The average of Council of Europe member States was 0.03%.

In Turkey Legal aid is conceived to cover lawyer fees. The fees paid by the State to lawyers for the entire trial are as follows:

1. Peace Criminal Court 249 TL. = (approximately) € 130
2. Lower criminal court 274TL = € 140
3. Heavy Criminal Court 498 TL = € 250
4. Juvenile Heavy Criminal Court 498TL = € 250
5. Court of Cassation: 558 TL = € 275

➤ REPORT OF CONSIDERATIONS

⁵⁹ European Commission for the Efficiency of Justice (CEPEJ), *Administration and management of judicial systems in Europe*. Study by the Observatoire des Mutations Institutionnelles et Juridiques (Observatory of Institutional and Legal Change – OMIJ, EA 3177) University of Limoges. Authors: Laurent BERTHIER, PhD student at the OMIJ Hélène PAULIAT, Professor of public law, member of the IUF.

Legal aid is essential to guaranteeing equal access to justice for all, as provided for by Article 6.3 of the European Convention on Human Rights, which provides that everyone has three minimum rights: (1) to defend himself in person, or (2) to defend himself through legal assistance of his/her own choosing, and (3) if he has not sufficient means to pay for legal assistance, to be given it free when the interest of justice so requires. The aim of this provision is to ensure that defendants have the possibility of presenting **an effective defence**; as to legal aid, it has been interpreted by the Court of Human Rights in strict terms, having the Court stated that “where the deprivation of liberty is at stake, the interests of justice in principle call for legal representation” and if the defendant cannot afford to pay for this himself, **public funds must be available as of right**⁶⁰.

The effectiveness of legal aid is strictly dependent on the budget allocated to it. The CEPEJ comparative report shows that the budget allocated to legal aid by the Turkish Government is not sufficient to ensure an effective defence. The fees paid to lawyers are so low that are considered as a humiliation for their professional qualifications. Fees should be increased in line with the average fees paid in European countries.

RECOMMENDATIONS

We RECOMMEND

that the Ministry of Justice devotes sufficient budget to legal aid and increases the lawyers’ fees in compliance with the average fees paid by the defendants in ordinary cases

13. COURT EXPERTS SYSTEM

➤ **FINDINGS**

During his visit to courts the expert ascertained that, when a medical expertise is needed, both in civil and criminal trials, judges tend to appoint doctors from the Forensic Medicine Institute. The long time doctors from the Forensic Medicine Institute take to deliver their expertise is considered by judges one of the causes for the long duration of trials. There are neither official lists of experts registered at courts nor official fees for remuneration of expert’s work. Courts’ experts usually do not go to courts and are not subject to cross examination.

➤ **REPORT OF CONSIDERATIONS**

The court expert’s system should be completely revised. A twinning project has been recently launched by the EC in this respect. The lack of official lists and official fees for experts does not allow a proper control by the judge and the parties of the professional capacity and of the costs of courts’ expertise. Specific deadlines should be provided to submit an expert opinion. If the deadline is not observed the expert should be sanctioned. To respect the fair trial principle, a cross examination of the expert by the parties should be allowed.

RECOMMENDATIONS

We RECOMMEND

to revise the court expert’s system in a way to provide for official lists and official experts’ fees; to establish deadlines for submitting an expert opinions; to make court’s experts subject to cross-examination

B. CRIMINAL JUSTICE SYSTEM

INTRODUCTION

This part of the report does not contain a full assessment of the criminal justice system but it is intended only as an updating of the 2008 report, with specific reference to the issues highlighted by

⁶⁰ *Benhm v. United Kingdom* (ap. 1938/92), Judgment of 10 June 1996; (1996) 22 EHRR 293.

the European Commission (EC) 2010 Turkey Progress Report. The recommendations contained in the previous report, included in Annex I to this report, are still valid. Very important progress has indeed been achieved as regards juvenile justice, as reported below.

I. THE FORENSIC MEDICINE INSTITUTE

➤ FINDINGS

The EC 2010 Progress Report mentions that *there are concerns about the functioning of the Forensic Medicine Institute. In a number of cases the institute gave conflicting reports on the same case at different times. The backlog of the Institute leads to delays in judicial proceedings.* The Forensic Medicine Institute (FMI) is composed of six (6) specialised boards (directorates). In these directorates, approximately 100 doctors who are mostly academics and specialised in their fields are recruited. Moreover, there exist 19 specialised departments in total under the group presidencies established in 8 provinces. FMI doctors perform the functions of coroner, medical expert during the criminal investigations and at trial, both in criminal and civil fields. It manages nine (9) laboratories in nine (9) provinces. Other 6 laboratories are going to be opened very soon.

In the course of his visit at the Ankara FMI directorate, the expert was told that:

- in Provinces where there are not FMI doctors, in case of urgency –like in case of alleged torture- the visits are performed by ordinary doctors from hospitals; all doctors have a minimum of knowledge in forensic science;
- FMI doctors perform their visits in courts' facilities because the "Forensic Institute is attached to the Ministry of Justice"; whereas ordinary doctors conduct their business at hospitals;
- in case of custody or detention, the patient is visited at hospitals by ordinary doctors while in case of alleged torture FMI doctors visit patients at courts⁶¹;
- only part of the courts is equipped with adequate facilities for medical visits⁶².

Furthermore, the expert was informed that forensic doctors are appointed as court experts in more than 50% of cases where medical expertise is needed. Forensic doctors do not go to courts to perform their expertise and are not often subject to cross examination, even though cross examination is provided for by articles 60 and 201 of Criminal Procedure Code. Delays in delivering their expertise are allegedly one of the causes of the long duration of trials.

➤ REPORT OF CONSIDERATIONS

The previous advisory and assessment reports recommended, among others, that all **facilities** within the general courthouses for the **forensic medical examination** of detainees and the documentation of torture and other cruel, inhuman or degrading treatment or punishment be transferred to state hospitals and health centres. According to the information collected by the expert, the forensic doctors continue, instead, to conduct their visits at forensic facilities, where available, in courthouses without any convincing justification. Furthermore, the Forensic Medicine Institute, even though it's a well organised structure, has not the capacity to meet all the requests for expertise and medical visits. The Forensic Medicine Institute should then refrain from accepting tasks it cannot perform duly and timely.

RECOMMENDATIONS

⁶¹ In the its **comments on the draft report**, the Ministry of Justice observed that if any symptom or trace (of torture) is found on a patient's body during the medical examination at any hospital, he/she is immediately transferred either to the 2nd Specialised Board (Directorate) of FMI in Istanbul or to departments of FMI in region.

⁶² In the its **comments on the draft report**, the Ministry of Justice observed that in no circumstances patients are examined in courts, instead they are examined in rooms allocated for FMI units which have all required technical equipment. In case of any deficiency concerning technical or personnel infrastructure which may cause an improper examination, then the person in question is transferred to group presidencies or to the FMI centre in Istanbul.

We reiterate the **RECOMMENDATION**

that the process on transferring forensic examinations to state hospitals or health centres be expedited

II. ROLE AND FUNCTION OF THE JUDICIAL POLICE

➤ FINDINGS

The EC 2010 Progress Report mentions that *investigations in some high profile cases continued to raise concerns. This points to the need to improve the work of the gendarmerie but, also, the working relationship between the police and the gendarmerie on the one hand and the judiciary on the other. The ECtHR in its Chamber judgment of 14 September 2010 on the case of Dink v. Turkey considered that the Turkish authorities had not everything that could reasonably have been expected of them to prevent Mr Dink's assassination and that no effective investigations had been carried out into the failures which occurred in protecting the life of Mr. Dink.*

Under article 161 of the CPC, **it is the Public Prosecutor** - either directly himself or through the judicial police under his/her command – that **conducts the investigations**. Pursuant to article 164 of the same code, investigation procedures shall be undertaken primarily by the **judicial police** upon the instructions of the Public Prosecutor. Members of the judicial police shall **carry out the instructions given by the Public Prosecutors** with respect to judicial duties. Judicial police shall be obliged to **notify** its particular Public Prosecutor **immediately** about the incidents that it has taken over, the persons apprehended and the measures applied; and it is obliged to comply without delay with the judicial orders⁶³ of the particular Public Prosecutor (Art. 161/2 of the CPC).

During his visits to the Ankara prosecution office, the expert was informed that prosecutors do not resort to written guidelines or to written protocols to guide and direct the police in its investigations and rely instead on verbal agreements. The way practically prosecutors keep control over the investigations is by calling or writing to police officers in charge with the investigations at undefined intervals of time. There are no time-limits and specific communication channels set for the police to report to prosecutors about development in the investigations. During his visit to the prosecution office attached to the Ankara heavy criminal court, the expert was, instead, informed that prosecutors keep a strict control over the work of the police, by issuing written instructions for each individual case; that the police officers can file requests to the judge only through prosecutors; that police never questions the accused person without the presence of a prosecutor; that the arrest is immediately communicated by the police to the prosecutor who provides for the appointment of a lawyer through the bar, in case the arrested person has not yet appointed one.

In order to define the relations between prosecution and judicial police, in 2005 a “**Bylaw on Judicial Police**”, was adopted jointly by the Ministry of Justice and the Ministry of Interior as foreseen in article 167⁶⁴ of the new CPC. It came into force on 1 June 2005, together with the new CPC. Pursuant to the above law, the public prosecutors should have full supervision over the police forces in judicial investigations and cases. However, prosecutors currently operate availing themselves of judicial police units within the police directorates, which operate under the hierarchical control of the Ministry of Interior.

⁶³ According to paragraph 3 of article 161 of CPC public prosecutor shall give his orders to the law enforcement officials in writing; in urgent cases, the orders may be given verbally.

⁶⁴ Article 167 of CPC states that (1) *the qualifications of the members of the judicial police, their pre- and in-service training, their relations with other service units, the preparation of evaluation reports, the departments where they will work according to their areas of specialization and other issues shall be laid down in a regulation to be issued jointly by the ministries of Justice and Interior within six months after the date of entry into force of this Law.*

➤ REPORT OF CONSIDERATIONS

According to Rec(2000)19, *in countries where police investigations are either conducted or supervised by the public prosecutor, State should take effective measures to guarantee that the public prosecutor may: a. give instructions as appropriate to the police with a view to an effective implementation of crime policy priorities, notably with respect to deciding which categories of cases should be dealt with first, the means used to search for evidence, the staff used, the duration of investigations, information to be given to the public prosecutor, etc.; b. carry out evaluations and controls in so far as these are necessary in order to monitor compliance with its instructions and the law; c. sanction or promote sanctioning, if appropriate, of eventual violations.*

According to the information received by the expert, the capacity of the prosecutor office to effectively guide the investigations is jeopardised. Some prosecutors keep a strict control over the police activity; other prosecutors simply wait for the outcomes of the investigations. In order to comply with the above-mentioned standards, it would then be highly recommendable to establish police units attached to the prosecution office and to set up, within the bigger prosecution offices, specialized judicial police units for investigating the most challenging criminal offences. In the meantime ways should be found to ensure that the police perform the duties in criminal cases according to reasonable instructions of the prosecution. It would therefore be highly recommendable that the prosecutors instruct the police about the investigative techniques by issuing written guidelines and establishing written protocols about: priorities of police investigations; guidelines for contents of police reports; smooth communication lines, preferably along IT means; the duration of the investigations; means for searching evidence; covenants on quality and quantity of police work; feedback from the prosecutor's offices.

RECOMMENDATIONS

We reiterate the **RECOMMENDATIONS**

- to establish police units attached to the prosecution offices and to set up specialized judicial police units attached to prosecution offices for the investigations related to the most challenging criminal offences
- that prosecutors instruct the police about investigative techniques, issue written guidelines and establish written protocols about: priorities of police investigations; guidelines for contents of police reports; smooth communication lines, preferably along IT means; the duration of the investigations, means for searching evidence; covenants on quality and quantity of police work; feedback from the prosecutor's offices

III. PRE-TRIAL DETENTION

➤ FINDINGS

The EC 2010 Progress Report mentions that *the implementation of pre-trial detention is not limited to circumstances where it is strictly necessary in the public interest.* Article 102 of CPC provides for maximum duration of detention on remand. The expert was informed that it is not rare that accused persons are released in the course of the investigations because of the expiring of the maximum duration of detention in remand.

➤ REPORT OF CONSIDERATIONS

In interpreting article 5 of the ECHR, the ECtHR held not only that pre-trial detention should be limited to those circumstances where it is strictly necessary in the public interest, but it also held that the **continuing detention must be justified, as long as it lasts, by adequate grounds** of a genuine requirement of public interest which, notwithstanding the presumption of innocence, outweighs the rule of respect for individual liberty, **and that, independently of those grounds, its**

duration must not exceed a reasonable time⁶⁵ (see above paragraph 8). The persistence that the person arrested has committed an offence is a condition sine qua non for the lawfulness of continued detention; however, it no longer suffices after some time: *other grounds* must continue to justify the deprivation of liberty. The national authorities must display special diligence in the conduct of proceedings; the complexity and special characteristics of investigations are factors to be considered in this respect. States should also adopt the organisational measures which ensure that the duration of the trial is kept to a minimum compatible with the quality of the judicial process and the respect of defence rights. By way of example, the Court has found excessive periods of pre-trial detention lasting from two and a half to nearly five years⁶⁶.

RECOMMENDATIONS

We RECOMMEND

- that provisions on pre-trial detention be implemented by limiting it to those circumstances where it is strictly necessary in the public interest and that the continuing detention be justified, as long as it lasts, by adequate grounds of a genuine requirement of public interest
- that, in any case, pre-trial detention does not exceed a reasonable period of time, irrespective of the maximum time limit established the CPC.

IV. CRIMINAL PROCEEDINGS. THE PRINCIPLE OF EQUALITY OF ARMS. APPEARANCE OF IMPARTIALITY OF PROSECUTORS. ACCESS BY THE LAWYER TO INVESTIGATIONS FILE

➤ FINDINGS

During his visit the expert ascertained that:

- after five years from the entering into force of the CPC the tools of cross examination have been implemented very rarely in practice;
- the prosecutors and judges still seat in the same buildings;
- maintenance of the entire building and the management of the court's budget is still entrusted with the Chief prosecutor;
- judges and prosecutors enter and leave the hearing room together through the same door, seat close to each other in the same elevated position, wearing quite similar robes, while the defence lawyers, in different robes, enter and leave the court room through another door together with the public, and have their desk on the court room floor below the elevated position of the prosecutor.

The press has recently reported that defence lawyers in the “*Ergenekon* case” claimed to have been prevented by prosecutors from accessing the evidence concerning their client contained in the investigation file.

➤ REPORT OF CONSIDERATIONS

Direct questioning is an important procedural tool and should be properly implemented; it is aimed at making the Turkish criminal trial comply with fair trial guarantees of art. 6, paragraph 3, letter d of the ECHR, according to which everyone charged with a criminal offence has the right to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his/her behalf under the same conditions as witnesses against him. The position of the prosecutor in Turkish courts having their offices in the court buildings near the judges, being in charge of court administration, sitting next to the judges in the courtroom, entering and leaving the courtroom together, sitting at the same bench in the same elevated position, wearing quite similar robes, continue to affect the **appearance of impartiality of judges**. As stressed in the previous advisory and peer assessment reports, those attitudes should be changed.

⁶⁵ ECtHR, *Scott. V. Spain*, judgment of 18 December 1996.

⁶⁶ ECtHR, *Punzelt v. Czech Republic*, judgment of 25 April 2000; *Pantano v. Italy*, judgment of 6 November 2003.

Pursuant to article 153 of the CPC, the defence lawyer may examine the full content of the file during the investigation phase and may take a copy of the documents of his choice free of charge. **The power of the defence lawyer to access the file may be restricted at the request of the public prosecutor only by decision of the district judge** dealing with criminal matters, if his/her examining the contents of the file or taking copies is likely to jeopardize the aim of the ongoing investigation. Lawyers' access to files concerning the defendant is a crucial element of the right to a fair trial. Article 6 of the ECHR, (paragraph 3 letter b) establishes that those charged with a criminal offence should have adequate time and facilities for the preparation of their defence.

In Turkey, however, as in most continental criminal procedures, most of the evidence is compiled in the pre-trial stage, in particular during the investigation. In the pre-trial phase the rights of the accused coincide with the public prosecutors duty to conduct swiftly and efficiently the investigation and the preparation for the indictment. The accused, if made aware that certain incriminating evidence has been found, may abuse this information. They may wish to destroy further evidence which would incriminate the accused even more or to instruct others do so. Evidence obtained may also assist the accused in committing further offences. Finally, the public prosecutor may wish to protect witnesses, for instance in vulnerable situation, such as victims, in particular juvenile victims. In this situation, the public prosecutor has every interest in keeping the relevant evidence confidential for as long as possible in order to conduct the proceeding effectively. This interest directly collides with the interest of the accused in being placed on an equal level with the public prosecutor and in particular being entitled to comment on the evidence and put questions to the witnesses.

The European Convention strikes indeed a balance between these divergent interests. The public prosecutors must be aware that, as a rule, the accused shall have access to relevant documents pointing at innocence or guilt already early in the proceedings; that the limitation of this right has to be justified by the need to protect specific public interest; and that this limitation has to be always decided upon by a judge upon the evaluation of this need.

RECOMMENDATIONS

We reiterate the **RECOMMENDATIONS**

- that cross examination in criminal trials be fully implemented.
- that public prosecutors have their offices located in a completely separate part of the courthouse from that occupied by judges
- that public prosecutors be required to enter and leave the courtroom through a door other than that used by the judge
- that public prosecutors and defence lawyers be positioned on an equal level in court rooms
- that the accused be permitted to have access to the relevant documents pointing at innocence or guilt already early in the proceedings and that the limitation of the right be justified by the need to protect specific public interest and be allowed by a judge's decision

V. JUVENILE JUSTICE

➤ FINDINGS

Legislation on juvenile justice was amended in 2010 to comply with the international standards and in particular with the UN Convention on the Rights of the Child, ratified by Turkey in 1995. The Law on Meetings and Demonstrations n° 2991 of 6 October 1983, was amended to include a new provision, article 34/A, according to which the second paragraph of Article 2 of the Act, related to charges of committing a terror crime and being a member of a terror organisation, shall not be

applicable with respect to the offences of minors who attend meetings and demonstrations in violation of the same Anti-terror Act and commit the offence of resistance or propaganda during these meetings and demonstrations.

The Anti-terror Act was also amended in a way that article 5, containing the provision of a number of aggravating circumstances, shall not be applicable to minors. Furthermore article 250 of the CPC has been amended and a new paragraph has been added according to which *minors cannot be tried at the courts established pursuant to the provisions of this article, and the investigation and prosecution related provisions specific to such courts shall not be applied to minors*. According to the latter provision, minors, irrespective of their age and even if they are charged with criminal offences falling under the Anti-terror law, should be referred to Child protection law under all circumstances; even when the offence were committed together with adults, their cases would be separated from those of adults and they would be tried in heavy juvenile courts.

However the expert ascertained that in Turkey they are establishes 20 heavy juvenile courts: 3 are in Ankara, 10 in Istanbul, 3 in Izmir, 2 in Kocaeli, 1 Diyarbakir and 1 in Trabzon, but only 14 of these courts are functioning. Additionally, 75 juvenile criminal courts exist in the Country and 65 of them are functional. In provinces where such courts do not exist, children continue and will continue to be tried in courts for adults. Furthermore, the expert was informed that, in most of the country, there are not yet adequate facilities for children's pre-trial detention, such that children are kept in custody separately from adults and are provided with proper psychological support⁶⁷. Finally, as highlighted above (paragraph 2), the duration of trials at juvenile courts rank among the longest.

➤ REPORT OF CONSIDERATIONS

Since the last peer review mission took place, very important progress has been achieved on juvenile justice. It is indeed a very positive step that children will not be penalized on charges of committing a terror crime and being a member of a terror organization in the case of resisting to law enforcement and committing propaganda crime by participating in demonstrations organized in favour of a terror organization and that they will not be subject to the application of aggravating circumstances provided for by the anti-terror law. It is a great advancement that children are tried only in children's courts and heavy juvenile courts.

However some serious concerns remain. **The number of juvenile courts and places for detention of children is still inadequate.** This results in **unfair trials**, because many children are forced to be tried in adults' courts. **Longer trials** imply that children are deprived of their liberty for longer periods of time.

RECOMMENDATIONS

We reiterate the **RECOMMENDATIONS**

- that every child deprived of liberty be always kept in custody separately from adults
- that children are tried only in children courts and heavy juvenile courts
- that prosecutors and judges display special diligence when treating cases in which

⁶⁷ In its **comments on the draft report** the Ministry of Justice observed that the legislative infrastructure and its implementation in this sense are in line with the international standards in this field, namely, the Convention on Juvenile Rights, Havana Principles and Beijing Principles. Juveniles are not kept together with adult inmates, and also juveniles under arrest are not kept together with convicted ones. Juveniles under arrest are kept separately in special juvenile penitentiary institutions in Ankara, Istanbul and Kayseri. Convicted juveniles are kept in juvenile prisons built in Ankara, Izmir and Elazığ. In regions where there is no juvenile penitentiary institutions exist, juveniles are kept separately in special sections of ordinary prisons and detention houses. Additionally, it has been planned by the Ministry of Justice under the 2010-2015 financial investment term to build closed-type juvenile prisons in Diyarbakır, Tarsus and Kayseri where construction works in Izmir/Aliağa are in progress. Additionally, education centres for juveniles are planned to be built in Ankara, Istanbul, Izmir, Erzurum and Diyarbakır for the same periods.

children are involved and speed up investigations and trials to respect the reasonable time principle

C. TRAINING

➤ FINDINGS

The EC 2010 Progress Report mentions that *a Council of State judgment in 2009 pointed to the overlapping responsibilities for provision of in-service-training between Training Department of the Ministry of Justice and the Turkish Justice Academy.*

In its comments on the draft report the Ministry of Justice pointed out that the Council of State, in a judgment given in 2010 stated that the competence to organize in-service or pre-service training programmes belongs solely to the Justice Academy. The By-Law of the Ministry of Justice on In-Service Trainings of Judges and Prosecutors has been annulled by the mentioned decision of the Council of State. The Ministry of Justice did not include any item regarding judges and prosecutors in 2011 Training Plan.

In more than six years, between 20 September 2004 and 31 December 2010, the Justice Academy organised training sessions for 2,507 judges and prosecutors.

➤ REPORT OF CONSIDERATIONS

The quality of judicial proceedings and judicial decisions, and therefore the effectiveness of the Justice system, depends strongly on legal training. In past years, the legal system of Turkey, such as that of the other EU candidate countries, has undergone through profound changes. New procedural tools, like cross examination in criminal trials or mediation, both in civil and criminal fields, have been introduced. An effective implementation of the new provisions require and intense and widespread training of judges and prosecutors. Such training should, therefore, equip judges and prosecutors with the abilities necessary to give effect to changes in domestic and international legislation and to acquire the organisational capacities necessary for an effective case management. Furthermore, an effective justice requires judges trained in ethics and communication skills, to deal properly with parties to judicial proceedings as well as with the public and the media.

The Turkish Judicial Academy has, during the years, reinforced its capacity to organise effectively the initial training of newly appointed judges and prosecutors. However, it has not yet developed the capacity to provide adequate in-service training. 2,507 judges and prosecutors trained in more than six years means that the Judicial Academy can reach only 4,34% of judges and prosecutors every year. The practice in EU Member States is that all judges and prosecutors shall undergo judicial training at least once a year.

The Judicial Academy needs to reinforce its in-service training organisation, in order to collect training needs from judges and prosecutors all around the country and to organise a continuous training programme for all judges and prosecutors. In order to reach judges and prosecutors working in provinces far from Ankara and to minimise costs, the Judicial Academy should train trainers and set up training structures at decentralised level.

In its opinion n° 10, the Consultative Council of European Judges the **independence** of the authority responsible for drawing up syllabuses and deciding on training to be provided must be preserved⁶⁸; the responsibility for organising and supervising judicial training should in each country be entrusted not to the Ministry of Justice or any other authority answerable to the legislature or the executive, but to the judiciary itself or to a special autonomous body with its own budget and which should work in consultation with judges⁶⁹.

⁶⁸ OP no 4 of CCJE paragraph 15

The 2010 judgment of the Council of State, which annulled the By-Law of the Ministry of Justice on in-Service Trainings, solved the problem of overlapping responsibilities for provision on in service-training between Training Department of the Ministry of Justice and the Turkish Justice Academy: Therefore, the Judicial Academy is the sole Institution to provide training for judges and prosecutors.

RECOMMENDATIONS

We RECOMMEND

- that the Judicial Academy reinforces its in-service training organisation, in order to collect training needs from judges and prosecutors all around the Country and to organise, at central or decentralised level, at least one training event per year for every judge and prosecutor

⁶⁹ OP no 10 of CCJE paragraph 65

D. TABLES

Table 1 CEPEJ 2010 **Economic and demographic data** in 2008 in absolute values

Country	Population	Per capita GDP
Turkey	71 517 100	7 050 €
France	63 937 000	32 500 €
Italy	59 619 290	27 423 €
Poland	38 136 000	7 910 €
Spain	45 283 259	24 038 €

Table 2 CEPEJ 2010 Number of **1st instance incoming and resolved civil** (and commercial) litigious and non-litigious **cases per 100.000 inhabitants** in 2008

Country	incoming litigious cases	resolved litigious cases	incoming non litigious cases	resolved non litigious cases
Turkey	1 562	1 495	704	698
France	2 728	2 573	159	164
Italy	4 768	4 518	2 132	2 063
Poland	1 959	1 886	5 143	5 044
Spain	3 579	2 925	485	493

Table 2.1 CEPEJ 2010 **Clearance rate** in% and **disposition time** (in days) of civil *litigious* and *non-litigious* cases in 2008

Country	clearance rate of non-litigious cases	clearance rate litigious cases	disposition time of non-litigious cases	disposition time of litigious cases
Turkey	99,1	95,7	NA	NA
France	103,2	94,3	20	286
Italy	96,7	94,8	44	533
Poland	98,1	96,3	41	166
Spain	101,7	81,7	138	296

Table 2.2 CEPEJ 2010 Number of **1st instance** incoming and resolved **enforcement cases per 100 000 inhabitants**, clearance rate and disposition time (in days) in 2008

Country	incoming cases	resolved	clearance rate in %	disposition time
Turkey	288	275	95,5	119
France	323	316	98	89
Italy	800	852	106,4	368
Poland	NA	NA	NA	NA
Spain	1298	877	67,6	1176

Table 2.3 CEPEJ 2010 Number of **1st instance** incoming and resolved **administrative cases per 100 000 inhabitants**, clearance rate and disposition time (in days) in 2008

Country	incoming cases	resolved	clearance rate in %	disposition time
Turkey	462	472	102,1	119
France	276	287	104,3	89
Italy	NA	NA	NA	368
Poland	152	156	102,2	NA
Spain	397	354	89,2	1176

Table 2.4 CEPEJ 2010 Number of **1st instance criminal cases** (severe criminal offences) and misdemeanour cases (minor offences) in first instance courts. Absolute figures and per 100 000 inhabitants, in 2008

Country	incoming cases (severe criminal offences)	incoming cases (minor criminal offences)	incoming cases (severe criminal offences) per 100.000 inhabitants	incoming cases (minor criminal offences) per 100.000 inhabitants

Turkey	796 920	919 901	1 114.3	1 286.3
France	610 674	513 400	955.1	803.0
Italy	1 280 282	224 239	2 147.4	376.1
Poland	496 855	465 014	1 302.9	1 219.4
Spain	345 707	920 577	763.4	2 032.9

Table 2.4.1 CEPEJ 2010 Number of 1st instance of criminal cases (severe criminal offences) and misdemeanour cases (minor offences) clearance rate in % and disposition time (in days) in 2008

Country	clearance rate in % of severe criminal offences cases	clearance rate in % of minor offences case	disposition time of severe criminal offences case
Turkey	95	119	102,1
France	101	90	104,3
Italy	94	99	NA
Poland	100	99	102,2
Spain	90	100	89,2

Table 3 CEPEJ 2010. Number of 1st instance courts as legal entities and number of all the courts as geographic locations in year 2008

Country	1 st instance courts of general jurisdiction (legal entities)	specialised 1 st instance courts (legal entities)	total number of 1 st instance courts in 2008	% of specialised 1 st instance courts in 2008
Turkey	4 141	1 617	5 758	28,1%
France	1 131	1 251	2 382	52,5%
Italy	1 011	58	1 069	5,4%
Poland	364	30	394	7,6%
Spain	2 109	1 305	3 414	38,2%

Table 3.1 CEPEJ 2010. Number of courts per 100 000 inhabitants

Country	number of 1 st instance courts of general jurisdiction (legal entities) per 100.000 inhabitants in 2008	number of all courts (geographic locations) per 100.000 inhabitants in 2008
Turkey	5,8	8,1
France	1,3	1,4
Italy	1,7	2,2
Poland	1	1
Spain	4,7	1,6

Table 4 CEPEJ 2010. Number of judges

Country	type and number of professional judges in 2008 in absolute numbers	type and number of professional judges in 2008 per 100.000 inhabitants	average annual variation between 2004 and 2008 (in %) of the number of professional judges
Turkey	7 198	10,1	16,2
France	5 819	9,1	1,7
Italy	6 109	10,2	- 0,9
Poland	9 890	25,9	0,7
Spain	4 836	10,7	4,5

Table 4.1 CEPEJ 2010. Number of prosecutors

Country	number of Public Prosecutors in 2008 in absolute numbers	number of Public Prosecutors in 2008 per 100.000 inhabitants	average annual variation between 2004 and 2008 (in %) of the number of prosecutors
Turkey	4 222	5,9	18,5
France	1 908	3,0	1,9
Italy	2 018	3,4	- 3,0
Poland	5 379	14,1	- 0,1
Spain	2 178	4,8	11,9,

Table 5 CEPEJ 2010 Absolute **number of lawyers**, number per 100.000 inhabitants and number per professional judge

Country	absolute number of lawyers	number of lawyers per 100.000	number of lawyers per professional judge
Turkey	63 487	88.8	8.8
France	48 461	75.8	8.3
Italy	198 000	332.1	32.4
Poland	27 310	71.6	2.8
Spain	120 691	266.5	25.0

Table 6 CEPEJ 2010 **Public Expenditures**: courts, prosecution system and legal aid

Country	total annual approved public budget allocated to all courts with neither prosecution nor legal aid	total annual approved public budget allocated to legal aid	total annual approved budget allocated to all courts and public prosecution	total annual approved public budget allocated to all courts, public prosecution and legal aid
Turkey	736 932 152	49 570 981	736 932 152	786 503 133
France	NA	314 445 526	3 377 700 000	3 692 145 526
Italy	3 008 735 392	115 938 469	4 166 691 129	4 282 629 598
Poland	1 204 202 000	22 403 000	1 537 691 000	1 560 094 000
Spain	NA	219 707 018	3 686 381 622	3 906 088 640

Table 6.1 CEPEJ 2010 Total annual approved **budget allocated to the overall justice system** in 2008, in €. which may include, for instance, the prison systems' budget, the operation of the Ministry of Justice or other institutions such as the Constitutional Court or the Council of Justice. Evolution of this budget between 2006 and 2008, in %

Country	2006	2008	evolution between 2006 and 2008 (in %)
Turkey	1 255 196 514	1 288 654 751	2.7 %
France	6 447 440 000	6 497 010 000	0.8 %
Italy	7 819 041 068	7 278 169 362	-6.9 %
Poland	1 507 679 000	2 428 891 000	61.1 %
Spain	3 186 400 970	4 040 218 130	26.8 %

Table 6.2 CEPEJ 2010 Break-down by **component of court budgets** in 2008, in €

Country	annual public budget allocated to (gross) salaries	annual public budget allocated to computerisation (equipment, investments, maintenance)	annual public budget allocated to justice expenses	annual public budget allocated to court buildings (maintenance, operation costs)	annual public budget allocated to investment in new (court) buildings	annual public budget allocated to training and education
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Turkey	529 883 710	11 689 140	117 630 542	904 977	126 389 786	4 977
France	1 860 379 400	52 050 000	405 000 000	335 300 000	118 000 000	52 000 000
Italy	2 390 027 432	73 987 488	287 571 836	253 913 969		857 675
Poland	624 811 000	15 163 000	145 365 000	86 661 000	69 107 000	4 050 000
Spain	2 489 442 790	59 530 490	2 944 000	56 252 870	33 051 440	

Table 6.3 CEPEJ 2010 Total annual **budget** allocated to all courts and public prosecution **per inhabitant** in 2008, in € and as part (in %) of the GDP per capita, in 2008

Country	total annual budget allocated to all courts and public prosecution (without legal aid) per inhabitant in 2008, in € Average 47,1 € Median 37,3 €	annual public budget allocated to all courts and prosecution service (without legal aid) as part (in %) of the GDP per capita, in 2008 Average 0,29 € Median 0,27 €
Turkey	10,3	0,15
France	52,8	0,16
Italy	69,9	0,25
Poland	40,3	0,51
Spain	81,4	0,34

Table 6.4 CEPEJ 2010 **Evolution** between 2006 and 2008 of the total budget

Country	evolution between 2006 and 2008 of the total annual approved public budget allocated to all courts, public prosecution and legal aid Average 24,9 % Median 16,8 %
Turkey	50,5%
France	10,2%
Italy	4,8%
Poland	3,5%
Spain	30,9%

Table 7 CEPEJ 2010. Annual public **budget allocated to legal aid** per inhabitant and as part (in %) of the GDP per capita

Country	Annual public budget allocated to legal aid per inhabitant in 2008 € Average 7,2€ Median 1,7€	Annual public budget allocated to legal aid as part (in %) of the GDP per capita, in 2008 Average 0,03 € Median 0,01,€
Turkey	0,7	0,01
France	4,9	0,02
Italy	1,9	0,01
Poland	0,6	0,01
Spain	4,9	0,02

Table 7.1 CEPEJ 2010. Cases granted with legal aid and **average amount of legal aid** allocated per case

Country	cases granted with legal aid per 100 000 inhabitants (total) Average 1 506.0	criminal cases granted with legal aid per 100 000 inhabitants Average 994.7	other than criminal cases granted with legal aid per 100 000 inhabitants Average 757.3	average amount of legal aid allocated per case Average 536 €	average amount of legal aid allocated per criminal case Average 826 €	average amount of legal aid allocated per other than criminal case Average 2 011 €
Turkey	8 298.6	4 276.9	4 021.7	8 €	13 €	3 €
France	1 392.0	626.8	765.2	353 €	263 €	427 €
Italy	247.1	165.3	81.8	787 €	898 €	563 €
Poland						
Spain	1 389.6			349 €		

Table 8 CEPEJ 2010. Non-judge staff in courts 2008

Country	number of non-prosecutor staff attached to the public prosecution service	number of non-judge staff per 100 000 inhabitants	number of non-judge staff per one professional judge
Turkey	3 692	39,3	3,9
France		29,1	3,2
Italy	9 872	42,6	3,2
Poland	6 900	84,0	1,1
Spain	1 986	101	9,5

Table 8.1 CEPEJ 2010 Distribution of non-judge staff in courts 2008

Country	total number of non-judge staff working in courts	non-judge staff (Rechtspfleger or similar body) %	non-judge staff whose task is to assist the judge such as registrars %	staff in charge of administrative tasks & management of the courts	technical staff %
Turkey	28 091		94,3	2,2	3,5
France	18 586		90,6	4,4	5,0
Italy	25 385				
Poland	32 038	5,5	61,7	21,6	11,2
Spain	45 733	8,6			

Table 8.2 CEPEJ 2010. Non-prosecutor staff attached to prosecution services in 2008

Country	number of non-prosecutor staff attached to the public prosecution service	number of non-prosecutor staff per 100,000 inhabitants	n of non-prosecutor staff per prosecutor
Turkey	3 692	5,2	0,9
France			
Italy	9 872	16,6	4,9
Poland	6 900	18,1	1,1
Spain	1 986	4,4	0,9

Table 9 CEPEJ 2010 Number of cases regarding Article 6 of the European Convention of Human Rights: length of proceedings, in 2008

Country	judgements establishing a violation
Turkey	64
France	1
Italy	54
Poland	63
Spain	0

Table 10 UYAP statistical data. 2010 Workload of civil chambers and civil plenary of the Court of Cassation

Years	cases transferred form the previous	cases received during the year	approved	cases overturned to first instance	finalised cases during the year	cases transferred to the next	average trial period

	year					year	
2007	76 707	345 374	158 847	79 026	326 128	95 953	126
2008	95 953	350 313	161 026	76 689	326 109	120 157	150
2009	12 0157	364 594	164 508	81 888	334 967	149 784	176

Table 10.1 UYAP statistical data. 2010. **Workload of penal chambers and penal plenary of the Court of Cassation**

years	Cases transferred form the previous year	cases received during the year	approved	cases overturned to first instance	cases dropped because of time limitation	finalised cases during the year	cases transferred to the next year	average trial period
2007	141 005	182 733	51 112	48 398	9 111	129 420	194 318	390
2008	194 318	245 604	37 501	124 646	12 354	197 375	242 547	359
2009	242 547	279 725	42 613	13 6286	14 809	218 201	304 071	399

Table 10.2 UYAP statistical data. 2010. **Workload of chambers and plenary of the Council of State**

instance	cases transferred form the previous year	cases received during the year	finalised cases during the year	cases transferred to the next year	average trial period
first instance	9 816	5 824	6 838	8 802	529
appeal	139 328	118 640	9 8308	159 660	496
Total	149.144	124 464	105 146	168 462	498

Table 10.3 UYAP statistical data. 2010 **Workload of Ankara Administrative Regional court**

years	incoming	decided
2008	15 053	13 902
2009	15 384	14 317
2010	18 262	16 353

Table 10.4 UYAP statistical data. 2010 **Workload of Ankara Administrative and tax courts- 2010 figures**

Courts	incoming	overruled and sent back by the Council of State	Pending	decided	transferred to the next year	average duration
16 administrative courts	39 482	5 228	59 153	32 450	26 200	8 months
7 tax courts	17 457		24 111	15 832		Average duration 8 months

Table 10.5 UYAP statistical data. 2010 **Workload of 8th Ankara Administrative Court**

	incoming	decided	transferred to the next year
2008	1 895	1 924	1 033
2009	2 104	2 108	1 029
2010	3 155	2 503	

Table 10.6 UYAP statistical data. 2010 **Workload of Ankara and Istanbul civil courts in year 2010**

	cases	cases received	cases	case received	finalised cases
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courts	transferred form the previous year	during the year	overturned by the Court of Cassation	plus cases overturned by the Court of Cassation	during the year
Ankara civil courts	94 962	153 053	6 353	159 406	148 288
Istanbul civil courts	255 462	350 597	10 779	361 376	340 085

Table 10.7 UYAP statistical data. **Ankara and Istanbul labour and consumer courts** in year 2010

Court	cases transferred form the previous year	cases received during the year	cases overturned by the Court of Cassation	cases received plus cases overturned by the Court of Cassation	finalised cases during the year	cases transferred to the next yea3	the ratio of finalised cases	average trial period
Ankara labour court	28 807	23 660	1 986	25 646	19 601	34 852	36	403
Ankara consumer court	4 190	9 421	324	9 745	6 382	7 553	45	195
Istanbul labour court	56 706	36 990	2 660	39 650	34 048	62 308	35	563
Istanbul consumer court	5 011	5 986	211	6 197	4 851	6 321	43	309

Table 10.8 UYAP statistical data. 2010 **Workload of criminal courts in Turkey** in year 2010

Year	cases transferred form the previous year	cases received during the year	cases overturned by the Court of Cassation	case received plus cases overturned by the Court of Cassation	finalised cases during the year	cases transferred to the next yea3	the ratio of finalised cases
2010	1 231 721	1 812 842	114 232	1 927 074	1 694 321	1 434 384	62,55

Table 10.9 UYAP statistical data. 2010 **Workload of Ankara and Istanbul criminal courts** in 2010

Court	cases transferred form the previous year	cases received during the year	cases overturned by the Court of Cassation	cases received plus cases overturned by the Court of Cassation	finalised cases during the year	cases transferred to the next yea3
Ankara peace penal court	18 693	34 575	638	35 213	24 227	29 679
Istanbul peace penal court	70 657	230 145	978	231 123	93 472	208 308

Table 10.10 UYAP statistical data. 2010 Workload of juvenile courts and children courts in Turkey in 2010

Year	cases transferred form the previous year	cases received during the year	Cases overturned by the Court of Cassation	cases received plus cases overturned by the Court of Cassation	finalised cases during the year	cases transferred to 2011
2010	37 096	45 937	1 315	47 252	37 096	45 937

Table 10.11 UYAP statistical data. 2010 Workload of some Juvenile courts and children courts in Turkey in 2010

Court	cases transferred form the previous year	cases received during the year	cases overturned by the Court of Cassation	cases received plus cases overturned by the Court of Cassation	finalised cases during the year	cases transferred to 2011
Adana 2 juvenile Court	1 527	1 244	21	1 265	808	1 984
Antalya juvenile Court	535	1 802	0	1 802	892	1 445
Bakirköy 1 juvenile Court	1 262	1 371	9	1 400	717	1 925
Bakirköy 1 juvenile Court	756	1 333	7	1 340	819	1 277
Beyoglu 1 juvenile Court	1 104	1 046	3	1 049	299	1 854
Istanbul 3 juvenile Court	712	882	6	888	433	1 167
Konya 2 juvenile Court	0	873	0	873	176	697

**RECOMMENDATIONS CONTAINED IN 2008 ADVISORY REPORT
ABOUT CRIMINAL JUSTICE SYSTEM**

- To enhance the recourse to mediation as an alternative system of resolution of disputes.
- To establish a judicial review on the decisions assumed by prosecutor to dismiss a case in which the injured party is the State.
- To establish police units attached to the prosecution office and to set up specialized judicial police units for investigations related to the most challenging criminal offences.
- That the prosecutors instruct the police about the investigative techniques by issuing written guidelines and establishing written protocols about the investigations.
- That Chief prosecutors effectively exercise the power to prepare an evaluation report on the judicial police authorities.
- That training for officers in the Judicial Police and prosecutors about the bylaw on judicial police is developed and carried out by the Judicial Academy.
- To establish legal criteria for the withdrawal of cases from prosecutors.
- That the JA develops training on special investigative techniques.
- That UYAP is completed, by allowing lawyers full access to the system and by ensuring the interoperability with Polnet.
- That Turkish judges and prosecutors take care that pre-trial detention be limited to those circumstances where it is strictly necessary in the public interest.
- That in cases of allegation of torture and ill-treatment by State's agents: the State ensure full and prompt access by the applicant to all the relevant information, that the investigation be effective and the prosecutors comply with the duties established by the case law of the ECtHR, that prosecutors secure the evidence and be independent from those implicated in the events.
- That the process on transferring forensic examinations to state hospitals or health centres in accordance is expedited.
- That in cases of alleged torture or mistreatment lawyers are always be allowed to attend forensic examinations when the person to be examined so requests.
- That the Ministry of Justice and the Ministry of Interior take all necessary steps to inform and train law enforcement officers and physicians carrying out forensic examinations on the subject about the provisions contained in the by-law on Apprehension, Detention, and Statement Taking .
- That the new regulation enabling mediation is fully implemented.
- That the criteria for sending back indictments are clarified and that courts are entitled not only to send back but also to reject indictments.
- That measures are taken to ensure equality between prosecution and defence counsel during the course of criminal proceedings and that the new regulation enabling defence lawyers to cross-examine be fully implemented.
- That an intense, specific and widespread training for prosecutors, judges and lawyer is conducted about the new criminal procedural provisions regarding mediation and direct questioning.
- That measures are taken to extend the scope of compulsory defence to all cases in which the defendant cannot afford to pay for legal representation.
- That the accused is properly informed about his/her defence rights and legal aid.
- That lawyers are fully permitted to consult with their client during the course of court proceeding.

- That the accused is permitted to have access to the relevant documents pointing at innocence or guilt already early in the proceedings and that the limitation of the right is justified by the need of protection of concrete public interests and is allowed by a judge's decision.
- That public prosecutors are required to enter and leave the courtroom through a door other than that used by the judge.
- That public prosecutors and defence lawyers are positioned on an equal level in court rooms.
- That in case of change of function from judge to prosecutor and vice versa change of location of work becomes mandatory.
- That a system of accredited interpreters is introduced
- That juvenile courts and prosecutor's bureau for juveniles are established in every province and that where they do not already exist, psychologists, psychiatrists and pedagogues are appointed to the juvenile courts.
- That every minor, irrespective of his/her age and the accuses charged against him or is fully ensured the protection provided by the International Conventions for the protection of children and by the Turkish law on child protection.
- That arrest, detention or imprisonment of a child is used only as a measure of last resort and for the shortest appropriate period of time.
- That every child deprived of liberty is always separated from adults and tried separately, irrespective of seriousness and kind of the criminal charge.
- That prosecutors and judges display special diligence when treating case in which children are involved and speed up investigations and trials, giving them precedence over ordinary investigations and trials.
- That prosecutors communicate, once a week, to the local bar the list of the children arrested or detained in order to ensure to minors a full right of defence.
- That specialised judges and prosecutors be constantly trained on international and national principles and techniques about the protection of children involved in criminal investigations and trials.
- That the legislator adopts adequate measures to protect victims of criminal offences and vulnerable persons in particular in case of rape; for victims of terrorism; domestic violence and ethnic minorities.
- That prosecutors are entrusted with the task to take care of the rights of the victims during the investigations and at trial.