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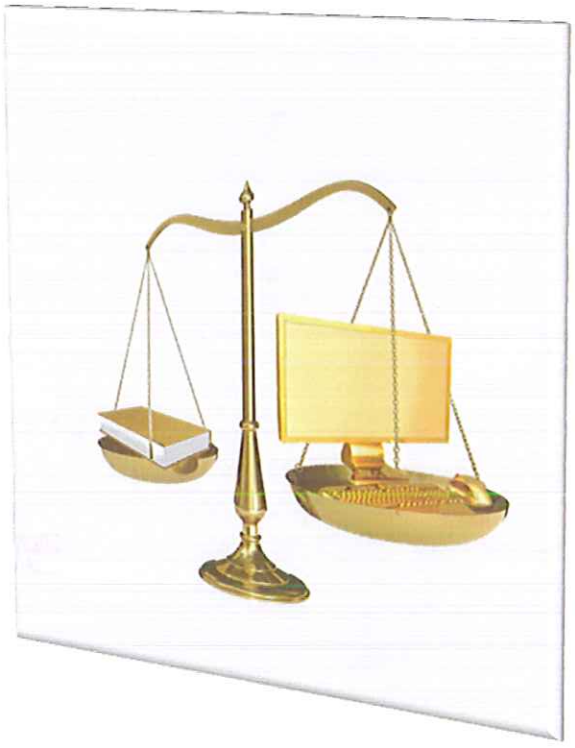
Themis Competition 2011

Article 6 of the ECHR



Reasonable Time and IT Solutions in Turkish Justice System

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INTRODUCTION

Notion of fair trial is universally accepted as a human right. It is recognized and protected by different conventions and human rights protection systems. Article 6 of the European Convention of Human Rights[1] guarantees the right to fair trial. A fair trial, in civil and criminal cases alike, is a basic element of the notion of the rule of law and part of the common heritage of the Contracting Parties.[2]

Right to a fair trial plays a crucial role where it serves as a tool to demand and realize other conventional rights. It is because that in democratic states governed by rule of law, judicial process is the only way to seek and acquire the rights.

The scope of the Article 6 is wide; however the reasonable time provision is especially crucial where the largest amount of the violations of Article 6 arise from that requirement.[3] In order to provide this condition; Contracting States make efforts to improve the quality of their judicial systems including IT solutions. Turkey is one of those countries that enjoys the benefits of this technology.

In this paper, we present the general concept of Article 6 and focus on the reasonable time provision. Afterwards, we demonstrate the benefits of IT solutions in judiciary and we present the Turkish model of IT solutions on judicial matters in order to improve the quality of justice especially by shortening the judicial process.

GENERAL CONCEPT OF THE ARTICLE 6

Article 6 of the European Convention on Human Rights is a provision which protects the right to a fair trial. In *criminal* law cases and cases to determine *civil rights* it protects the right to a public hearing before *an independent and impartial tribunal* within *reasonable time*, *the presumption of innocence*, and other minimum rights for those charged in a criminal case. While Article 6(2) and (3) contain specific provisions setting out 'minimum rights' applicable only in respect of those charged with a criminal offence, Article 6(1) applies both to civil and criminal proceedings.[4]

1. CIVIL RIGHTS AND OBLIGATIONS

While stating that 'In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing...' the Article 6 sets the standards for the way of

[1] Convention for the Protection of Human Rights and Fundamental Freedoms , ETS 5, Entered into force 3 September 1953.
[2] Jacobs,White and Owey, *'The European Convention on Human Rights'*, Oxford University Press, 2010, p. 242.
[3] Annex III
[4] Jacobs,White and Owey, *'The European Convention on Human Rights'*, Oxford University Press, 2010, p. 242.

proceedings are run. Those judicial proceedings must lead to a "determination" of civil rights and obligations or criminal charges.

To determine whether a certain right or obligation is a "civil" right or obligation, firstly it should be examined what the nature of the right or obligation according to the law of the respondent State[5].

For Article 6(1) to apply *the right must exist in domestic law*. It does not require a State to provide legal remedies where none already exist. Therefore, it does not in itself guarantee any particular content for civil rights and obligations in substantive law.[6]

If the right and obligation forms part of private law, it is an evident that the Article 6 (1) applies.[7] In contrast, the mere fact that the right or the obligation is governed by public law does not exclude the applicability of Article 6 (1); what matters are the contents and effect of that right or obligation rather than its legal classification[8].

2. CRIMINAL CHARGE

"Criminal charge" is defined differently from one legal system to another one. Hence, it would be inequitable and discriminatory if the availability of procedural safeguards of due process that are meant to be universal depended solely on the accident of the domestic-law definition.

The concept of a "criminal charge" bears an "autonomous" meaning, independent of the categorizations employed by the national legal systems of the Member States.[9] The concepts of 'criminal' and 'charge' should be taken separately to have a better understanding. "Charge" has to be understood within the meaning of the Convention. It may thus be defined as *"the official notification given to an individual by the competent authority of an allegation that he has committed a criminal offence"*[10].

As to the notion of "criminal", the Convention is not opposed to the moves towards "decriminalisation" among the Contracting States. However, offences classified as "regulatory" following "decriminalisation" may come under the autonomous notion of "criminal" offence. Leaving States the discretion to exclude these offences might lead to results incompatible with the object and purpose of the Convention[11].

[5] König v. German (28 June 1978).
[6] H v. Belgium (30 November 1987).
[7] Rasmussen v. Denmark (28 November 1984).
[8] König v. Germany (28 June 1978).
[9] Adolf v. Austria (26 March 1982).
[10] Deweer v. Belgium (27 February 1980), Eckle v. Germany (15 July 1982).
[11] Öztürk v. Germany (21 February 1984).

3. An Independent And Impartial Tribunal

The principle that a court of law should be independent and impartial is firmly embedded in all legal systems and in all major international human rights instruments[12].

The requirement of "an independent and impartial tribunal established by law" is one of the key parameters of the right to a fair trial, and thus vital to the protection of constitutional and human rights, is not questionable. This is because the guarantee ensures that the individual human and constitutional rights of a party to a dispute are decided by a neutral authority.

The criteria for judicial independence were drawn up by the European Court of Human Rights[13] in many cases, one of which is the decision in Le Compte, Van Leuven and De Meyere v Belgium[14].

With regard to judicial impartiality, Strasbourg Court has used the 'objective and subjective approach'[15] . These are objective and subjective tests. The issue to be considered in objective test is whether the judge is objectively biased.[16] As to the subjective test, this comes into play when determining the lack of impartiality because of a judge's personal bias. Because all judges are presumed impartial until strong evidence is adduced to the contrary[17].

4. Publicity

Judicial publicity may give rise to a contravention of the European Convention on Human Rights (ECHR), in particular the right to a fair trial under Article 6. Publicity is seen as one guarantee of the fairness of trial.

The right to be present at trial is particularly important in criminal cases, as the defendant ought to be allowed to confront and challenge his accusers.

5. Presumption Of Innocence

The presumption of innocence represents first of all a procedural guarantee for the conduct of the criminal trial itself: Courts are not to proceed on the assumption that the accused committed the act charged. It is a fundamental principle protecting an accused against being treated by public officials as guilty of an offence before this has been established by a court.

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[12] Article 14 (1) of the International Covenant on Civil and Political Rights (ICCPR); Article 6(1) of the European Convention on Human Rights (ECHR); Article 8(1) of the American Convention of Human Rights (ACHR).

[13] From now on Strasbourg Court.

[14] Le Compte, Van Leuven and De Meyere v Belgium, (18 October 1982).

[15] http://www.kas.de/upload/auslandshomepages/namibia/Independence_Judiciary/bangamwabo.pdf , p.261,
Thus, in Incal v Turkey, the Court held as follows:
'As to the condition of impartiality, there are two tests to be applied: the first consists in trying to determine the personal conviction of a particular judge in a given case and the second in ascertaining whether the judge offered guarantees sufficient to exclude any legitimate doubt in this respect.'

[16] Belilos v Switzerland, (1998).

[17] Piersack v Belgium, (1983), Le Compte, Van Leuven and De Meyere v Belgium.

REASONABLE TIME

1. WHAT IS REASONABLE TIME?

In the determination…of any criminal charge against him, everyone is entitled to a …hearing *within a reasonable time*…

ECHR, Art. 6/1

In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality: … To be tried *without undue delay* …

ICCPR, Art. 14/3

Every person has the right to a hearing…*within a reasonable time*…

ACHR, Art. 8/1

It is often said that *'justice delayed is justice denied'*. The sense of justice will suffer, if a decision, however fair it is, comes only after many years.[18] If we want to make a description for reasonable time we can explain it as there will not be any unnecessary delay or adjournment in a trial.

There is a distinction between reasonable time for detention ECHR Article 5(3) and reasonable time for trial ECHR Article 6(1) has to be done. First of all Article 5(3) entitles only to the people who are detained on remand but Article 6(1) is applicable for wider situations including criminal cases and civil rights and obligations. Some circumstances in which accused person is detained and proceedings exceed reasonable time, Strasbourg Court will find violation of the two articles.

During the evaluation of proceedings in a case compliance with reasonable time requirement of ECHR Strasbourg Court reiterates that the reasonableness of the length of proceedings is to be assessed in the light of the circumstances of the case[19]. So any precise limit for all kinds of cases to indicate proceedings exceeded reasonable time does not exist. What Strasbourg Court uses for determining a violation about reasonable time is four criteria. Before analysing these in detail we will specify the period that Strasbourg Court takes into consideration adjudicate in breach of reasonable time.

2. LENGTH OF PROCEEDINGS

On the one hand Strasbourg Court ignores the time elapsed before the applying of Convention[20]. Strasbourg Court defines 'the period' as *all parts of the jurisdiction* even constitutional court proceedings which have direct effect on the case are involved to the process[21]. But starting and ending time points depend on the kind of case, criminal or civil case.

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[18] MANTZOUTSOS, A.: '*The Rights of the Accused – Aspects of the Protection In the European Court Of Human Rights Case-Law*',http://www.eplo.eu/alfaII/docs/2nd%20seminar/Speeches/ECHR%20-%20Rights%20of%20the%20Accused%20-%20Case%20Law%20(Final)%20MANTZOUTSOS.pdf, p. 11.

19 Oyal v. Turkey (23 March 2010), Evcimen v. Turkey (23 February 2010), Narin v. Turkey (15 December 2009), Cahit Demirel v. Turkey (7 July 2009)

[20] Yağı and Sargın v. Turkey (8 June 1995), Kalasnikov v. Russia (15 July 2002), Panek v. Poland (8 January 2004), Sahini v. Croatia(19 June 2003).

[21] Diaz Aporicia v. Spain (8 December 2009).

2.1. PERIOD IN CRIMINAL CASES

The time starts running with the criminal charge[22] (look up page 2 for the definition of this term). Strasbourg Court accepts as a reasonable time violation not only official notion but also the time when accused person begun to be affected from investigation[23]. The period ends with the proceedings have been concluded at the highest possible instance when the determination becomes final[24].

2.2. PERIOD IN CIVIL CASES

Strasbourg Court accepts that the period begins to run bringing a suit but in some circumstances it may start before applying to the domestic court[25]. For example if people should make a challenge to an authority before suing then the period will start from this time. The period ends with termination of the dispute.

3. THE CRITERIA OF THE COURT

Assessing the judicial period Strasbourg Court has not ruled any definite time limits for violation of Article 6/1; instead of this it performs the criteria. Not only one or two of them cause the result of violation in themselves, Strasbourg Court evaluates all of the criteria together.

3.1. COMPLEXITY OF THE CASE

It is very obvious that the time required for the proceedings will increase in proportion to the complexity of the case[26]. All aspects of the cases are evaluated for determining whether this criterion exists or not. In every situation and incident this term may be in different forms so identifying typical conditions as complex is impossible. Some circumstances are below relevant illustrate this;

- ✓ the number of accused persons and witnesses involved
- ✓ join of the other cases
- ✓ intervention of the other persons in the proceedings
- ✓ difficulty of inquiry
- ✓ obstacles while gathering the evidences
- ✓ size of file[27]
- ✓ political offences[28]
- ✓ Offences have an international dimension and involve letters rogatory or extradition[29]

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[22] Deweer v. Belgium (27 February 1980).
[23] Mitap and Müftüoğlu v. Turkey (25 March 1996), Zana v. Turkey (25 November 1997), Sarı v. Turkey (8 November 2001), Pantea v. Romania (3 June 2003), Bertin-Mourat v. France (2 August 2000).
[24] Scopelliti v. Italy (23 November 1993), B v. Austria (28 March 1990).
[25] König v. Germany (28 June 1978).
[26] TRECHSEL S., '*Human Rights in Criminal Proceedings*', 2005, Oxford University Press, p.144.
[27] Eckle v. Germany(15 July 1982), Hozee v. Netherlands(22 May 1998), Kangasluoma v. Finland (15 February2011).
[28] Mitap and Müftüoğlu v. Turkey (25 March 1996).
[29] Sarı v. Turkey (8 November 2001), Neumeister v. Austria (27 June 1968).

Judicial competence problems or lack of connection among governmental bodies are not seen as complex by Strasbourg Court. Also it does not accept the contact problems among the countries. It should be aware of not only being a complex case is enough to prevent a violation judgment if elapsed time is exceeded.

3.2. WHAT IS AT STAKE FOR THE APPLICANT

Strasbourg Court pays a serious attention to this criterion especially at criminal cases in which the applicant is under arrest. The conditions and principles of pre-trial detention are determined and evaluated in scope of Article 5(3) and Article 6(1) together[30]. Other examples of criminal case reasons are death penalty[31], age or ill health of the accused person[32].

On the other hand in Strasbourg Court's point of view some kinds of civil disputes have to be dealt with speedily and in a diligence manner. For example; child care cases, employment disputes, personal injury cases.

3.3. CONDUCT OF THE APPLICANT

The attitude of the applicant, affects the length of trial time, is important for judicial proceedings. Using of legal rights is not accepted as a fault for exceeding periods but if the applicant acts in bad willed, the government will not be liable for delaying.

In many countries principle of governance of the case by the parties is valid in civil courts. Even if parties cause the delaying Strasbourg Court considers domestic courts should finalize the case in a reasonable time.

In practice of criminal cases, there is no obligation for accused persons to make an active cooperation with judicial bodies. Also applications all the ways of appeal cannot be assessed as a fault of applicants. On the other hand if accused person is fugitive and the domestic court could not end the trial because of that, this period will be ignored.

Some instances of this criterion;

- ✓ 17 times the applicant asked suspension for compromise and 6 times accepted other party's request on the same reason[33]
- ✓ In a divorce case the applicant asked suspension of final decision two times[34].

3.4. CONDUCT OF THE DOMESTIC AUTHORITIES

The domestic courts also included in this term and proceedings should be completed in a reasonable time.

[30] Jablonski v. Poland (21 December 2000)
[31] Portington v. Grece
[32] Beljanski v. France, X v. France
[33] Viola v. Italy (5 October 2006)
[34] Monnet v. France (27 October 1993)

The best solution is prevention, but where concerns arose, there should be a remedy designed to expedite proceedings which are lingering, this is more satisfactory than a system of compensation for proceedings which go on too long[35].

Italy is the state that has been found to be in breach of the reasonable time guarantee most frequently and a Grand Chamber ordered a decision for Bottazzi v. Italy case which is one of the most accepted as a precedent for excessive proceedings. The Court mentioned these statements indicating the responsibility of the Contracting States' clearly:

The court notes at the outset that Article 6/1 of the Convention imposes on the Contracting States' the duty to organise their judicial systems in such a way that their courts can meet the requirements of this provision. It wishes to reaffirm the importance of administering justice without delays which might jeopardise its effectiveness and credibility[36].

Strasbourg Court also emphasised that States had a general obligation to solve the systemic problems underlying violations found by the Court of the reasonable time guarantee[37]. In order to cope with these problems Strasbourg Court, like Slovenia example[38], urges the Contracting States to address 'that has resulted from inadequate legislation and inefficiency in the administration of justice'[39].

Strasbourg Court never restricts itself with the case but it inspects the structural delays as well. If there is a problem that occurs the system this will be assessed together with case. For example chronic workload is one of the violations of governments' responsibility[40]. Furthermore an accumulation of identical breaches which are sufficiently numerous to amount not merely to isolated incidents which are reflect to continuing situation that has not remedied and in respect of which litigants have no domestic remedy[41].

Some examples of this criterion;

- ✓ Adjournment of proceedings pending the another case
- ✓ Delay in the conduct the hearing by court
- ✓ Presentation or production of evidence by state
- ✓ Delays by court registry or other administrative authorities

[35] Jacobs,White and Owey, '*The European Convention on Human Rights'*, Oxford University Press, 2010, p. 274.
[36] Bottazzi v. Italy, (28 July 1999).
[37] Mole Nuala/Harby Catharina, The Right To A Fair Trial, Human Rights Handbooks, No.3, 2006, p.25
[38] ECoHR stated at Lukenda v. Slovenia (6 October 2005) p.98 "To prevent future violations of the right to a trial within a reasonable time, the Court encourages the respondent State to either amend the existing range of legal remedies or add new remedies so as to secure genuinely effective redress for violations of that right."
[39] E. Friberg, Pilot Judgements from the Court's Perspective in The Council Europe, Towards Stronger Implemention of The European Convetion on Human Rights at National Level, Council of Europe, Strasbourg, 2008, p.86
[40] Klein v. Germany (27 July 2000)
[41] Bottazzi v. Italy, (28 July 1999), p. 22.

✓ Transfer of cases between the courts[42].

INFORMATION AND COMMUNICATION TECHNOLOGY AND TURKEY

1. INFORMATION AND COMMUNICATION TECHNOLOGY IN THE JUDICIAL SYSTEM

In the modern society, proper administration of justice has become to have a great importance. Today, every interest of individuals and community is effected by judicial decisions. As a result of economical and social developments, workload of judicial systems has witnessed a huge increase, additionally the content of the cases has become more complex than they were ever. Recently almost every country faces with the giant problem of increasing court delays.

The most referred solution to solve this problem by lots of the countries is to increase the number of judges, prosecutors etc. and material resources: New and more functional courthouses, more financial resources etc. And also newly the alternative dispute resolution devices, such as conciliation, arbitration etc. have been touched seriously by the current legal arrangements. However, all of these probable measures need to time to be effective. It is not easy to train people till they become judges and prosecutors possess professional standards. And also it might take time to make alternative dispute resolutions accepted by the community.

The IT practices have progressively been solution in lots of countries for the last decades. Using IT provides *'' greatly simplify, render more effective and less costly the work of judges and that of non judicial personnel of the courts, greatly improve the monitoring and management of the human and material resources of the courts, enormously simplify and expedite the working relations between courts and lawyers and those between the courts and public.''*[43]

The more usage of IT broadens among the judicial personnel, the more quickly judicial process will be. At this point we should touch on advantages of IT usage. With the IT, judges and prosecutors will not have to look at their large amount of books to reach professional literature. They can reach easily to the specific legal arrangements and the documents they personally created whenever they need. They also might have the opportunity to reach standardized documents and have a chance to focus on more creative parts of their work. Moreover, it will be easier to govern the court from training of non judicial personnel to human and material resources.

"IT and the adoption of the electronic signature can simplify and expedite the work relation between lawyers and the courts by eliminating a good many of time consuming occasions in which the lawyers had

[42] Zimmermann and Steiner v. Switzerland (13 July 1983),Guincho v. Portugal (10 July 1984), Buchholz v. Germany (06 May 1981)

[43]Fabri M./Contini, F.*Justice and Technology in Europe: How ICT is Changing the Judicial Business,* Foreword by Giuseppe Di Federico, Netherlands,2001, p. VI. (Fabri M./Contini, F.*Justice and Technology)*

traditionally to go to the court premises in order to obtain information, to acquire or deposit documents, etc. Equally important are the advantages for the citizens who want information on the scheduling of court work or who need to obtain various court documents or certificates[44]"

2. REASONABLE TIME AND TURKEY

In the early of 80'ies, Turkey experienced an extreme time period. Following the military coup, martial law courts were founded. The jurisdictions ruled by martial law courts form the majority of the cases which are claimed against Turkey at Strasbourg Court. After these martial law courts removed, pending cases were sent to the criminal courts and the cases remaining in the Military court of Appeal were sent to the Court of Cassation. As a result, those cases could be completed in a long time and a number of applicants complained these implementations in Strasbourg Court. These antidemocratic circumstances were the main reasons of why Turkey was complained that much by Strasbourg Court. Such cases caused that Turkey faced with serious violation judgments.

During the last decade, Turkey has made a strong effort to overcome the problems of judicial system. A huge number of legal arrangements have been completed within the context of European Union adaptation process. Lots of the main codes were amended; such as codes of civil and criminal procedure etc. All of this judicial reforms aim to solve ingrained judicial problems and contribute to make judicial process shorten.

At this point, we should touch on one of the innovations of the Turkey's new code of criminal, which is named refuse of indictment. With this new arrangement, if the public prosecutor does not consider the criminal event in all its bearings and does not do enough investigation, the judge refuses indictment and sends it back to Office of Prosecution and don't accept until the deficiencies are filled. But what we actually want to explain is the giant step of Turkey at the informatics area to solve judicial problems: Uyap.

UYAP SYSTEM

Turkey is one of the most twenty populous countries in the world with its 75 million populations. The justice authorities in Turkey have annual hard workload. The Ministry of Justice[45] has prepared a "National Judiciary Informatics System (UYAP[46])", which is to implement an effective information system between the Courts and all other institutions of the Ministry, including prisons to deal with these circumstances.

UYAP equipped these institutions with computers, network and internet connection and let them access to all the legislation, the decisions of the Court of Cassation, judicial records, judicial data of the police and army records. Thus UYAP establishes an electronic network covering all Courts, Offices of Public Prosecutors and Law Enforcement Offices together with the Central Organization of the Ministry of Justice.

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[44] Fabri M./Contini, F.*Justice and Technology,* p.VII
[45] From now on MoJ
[46] http://www.uyap.gov.tr/english/index.html

1. WHAT IS UYAP?

UYAP is such an informatics system that establishes a judicial network all over the country and by this network not only all the judicial proceedings and transactions are conducted, but also all documents are stored.

UYAP is an e-justice system as a part of the e-government, which has been developed in order to ensure fast, reliable, soundly operated and accurate judicial system.[47] UYAP, the most outstanding judicial information system in Europe, has been created by MoJ to improve the functioning and efficiency of the judiciary and to decrease bureaucratic proceedings for each concerned institutions and citizens.

2. FUNCTIONS OF UYAP

After UYAP, MoJ has integrated the provinces and centre and exchanged all the electronic documents. At present, all kinds of data, Information, documents are flowing in documentation management system between MoJ and other units electronically. This system makes it possible to exchange of the electronic documents not only between the provinces and centre but also among provinces.

In addition, all documents in UYAP can be signed by an electronic signature and sent to target units electronically. All units have carried out their all processes via UYAP from the beginning of dissemination (26.04.2004) and 10.140.265.232 documents and 57.240.073 files have been entered via UYAP by now. In all of the units taken into operation, nearly more than 1.000.000 new documents are being entered to the system every day. By means of the document management software, all documents are just a few clicks away.[48]

UYAP provides an Intelligent Warning System (IWS), one of the extraordinary electronic services, prevents judges, prosecutors from making mistakes during the course of proceedings by displaying some warnings with pop ups on the screen. Procedural mistakes are reduced to a minimum level. The aims of this facility are to prevent procedural errors during legal proceeding, to minimise other possible errors, to provide accuracy and speed to the legal proceedings and to accumulate public trust in justice. 1.350 warning have been produced in the system till this time and they are presented for the use of the users. IWS contributes to rapid the proceedings and prevents unnecessary appeals which are due to the simple personal mistakes. Owing to this it manages that there can be 80 % decrease in the number of cases returned from Court of Cassation because of proceeding error.

In every stage of investigations, especially during the hearings, IWS may suggest some proposals to the users whenever they request or may warn the users in order to prevent basic judicial errors. For example

[47] Frydlender v. France, (27 June 2000) , Håkansson and Sturesson v. Sweden, (21 February 1990).
[48] Annex II

while controlling whether persons are fugitives or not, it enables determination and arresting of those by pop up on the screen. In addition it warns that accused or victim person is under 18, there should be thus an advocate in all the stages of criminal proceedings.

When it comes to UYAP Databank, judges and prosecutors are given opportunity to reach updated legal sources on line by using databank fastly. Databank includes; legislation, regulations, circulars, template texts, holding of the courts, jurisprudence, studies, exemplary texts, template texts, sample decisions.

3. FACILITIES FOR CITIZEN AND LAWYER

Lawyers and citizens can examine all their files, deposit their cases fees, submit any document or claim and file a case to any Turkish court through the Internet by using their e-signature. In other words, the usage of lawyer and citizen portal has been grown significantly as it allows lawyers and citizen to pay court fees on line and file their suit without having to go to the court in person and pay for the fees by cash. Hence, a large amount of time, which is spent for judicial proceedings, can be used for juristic mental activities to serve sense of justice.

They can access and examine their case information via the Internet and learn the day fixed for the trial without going to courts. Huge workload of staff due to answering enquires of citizens in courts has been decreased significantly.

3.1. LAWYER PORTAL

Lawyer portal is an unique services for the advocates enabling them to do all their judicial jobs through internet without going courthouses. They can manage every kind of tasks regarding to their duty via internet from their offices. They can examine the content of the files, submit any documents, file a case and deposit their cases fees by online banking. According to the latest figures 63340 lawyers have been registered to the lawyer's portal.

3.2. CITIZEN PORTAL

Citizens can reach and examine their case information via Internet. They can learn hearing dates and some basic information by using their citizen ID number without going courts. And also by using their electronic or mobile signature they can examine their files, deposit their cases fees, submit any document or claim and file a case to any Turkish court through internet. They can also calculate the amount of possible case expenses and access some legal sources by this portal. The number of citizens using this system has reached 81.742 and nearly 500 citizens are being daily added in recent days. Hence, a large amount of time, which is spent by citizens for complicated judicial proceedings, can be used to consider and prepare their defences.

4. SMS INFORMATION SYSTEM

The SMS judicial information system provides an outstanding service for the citizens and lawyers which enables them to receive SMS messages containing legal information such as ongoing cases, dates of court hearings, the last change in the case and suits or dept claims against them. Therefore, they can be instantly informed by SMS about any kind of legal event related to them without going to courts.

A cooperation agreement has been signed with the GSM operators in order to establish this system that makes it possible to send SMS to the concerning parties' mobile phones. This system informs automatically all related parties of cases when any legal event, data or announcement (which has to be forwarded parties) realized by the judicial units such as courts, public prosecutor offices and enforcement offices. Sending an SMS does not replace official notification, however it provides information to the parties so that they can take necessary measures on time without delay in order to prevent from lossing of legal rights. National Judicial Informatics System's infrastructure is used for this system which is a nationwide central e-justice system providing fast, reliable, and paperless judicial process. Thanks to this system, as soon as judicial authorities make any legal action with their roles in National Judicial Informatics System, related parties are automatically informed by an SMS. The nationwide obligation of using citizen unique ID number in every process is one of the features making it possible to implement this system.

There are two types of SMS services. The first one is through basic query of the user for single use, and the second is subscription for prompt notification of every action. It is completely free to subscribe this system by sending SMS to 4060 containing citizen ID number and the phrase of "ABONE" (SUBSCRIBE). After being subscribed, in order to provide the continuity of the service and prevent unnecessary usage, citizens are charged with the only 7 SMS fare, which is less than a cost of public transportation to go courts.

Lawyers can also subscribe to lawyer SMS information system. Lawyers can also determine some of the files and content which they wish to inform by using lawyer portal. The number of daily SMS instead of legal summons sent by the courts or public prosecutors to the citizens is nearly 2000.

4.1. ADVANTAGES OF SMS SYSTEM TO COURTS

The courts and public prosecutors can also send SMS to the citizen's mobile phone instead of preparing and sending physical legal summons. By this way it has been saved from the expenses of postal costs, time and paper. In most cases it proves to be more effective and quicker to send SMS to invite witnesses for giving evidence in the cases because they take it serious when they receive this message.

4.2. PERFECT LEGAL PROTECTION AND ALARMING SYSTEM

The SMS information system provides a perfect legal protection and alarm system for citizens enabling them learning proceedings at first hand. Citizens have a chance to check their cases without time and location restrictions ensuring full transparency[49] in legal proceedings. It also accelerates the judicial processes. The system has decreased administrative and judicial burden so to enable workload practitioners to focus on their other priorities. After this system, expenses of bureaucracy and postal costs are removed. By the time system has been operated it has facilitated to lawyers and citizens. It is not necessary to go to courthouses to get information about the phase of the case or to learn the date of the hearing and also they no longer have to pay travel costs to go to remote courts.

Hence usage of this system makes the justice system more efficient and transparent, engendering greater public trust and confidence in the judiciary and respect for the rule of law. Once a file or a claim is initiated by electronic means or any change occurs in the files, within UYAP system, it directly falls into citizen's and lawyer's mobile phone and after that point it is so difficult to ignore it. Delivery of information through the use of SMS will facilitate and accelerate the access to courts as required by the ECHR.

It also provides better access to justice for the disabled, old, ill etc. people, allowing them to learn about their cases without going to courts. In addition SMS information system has increased the awareness and the knowledge of the citizens making them strong in relations with their advocates and confident before courts. This may contribute to the quality of the judiciary. Furthermore, SMS information system works as a perfect alarming service, enabling citizen to take precautions without delay in case their ID is stolen, used and as a result they became a culprit.

Moreover; global warming is considered one of the biggest threats for the humans in recent decades. SMS service is known to be effective in reducing CO_2 emissions by helping to minimize the movement of people and goods and the usage of paper and other office supplies.

5. BENEFITS OF UYAP

5.1. SPEED AND EFFICIENCY OF OPERATIONS:

UYAP created fast, secure and efficient information system enabling the appropriate sharing of information across the wider Turkish judicial services by transferring key work processes of the judicial system into central electronic means.[50] Instructions to other courts in order to collect evidence can be instantly sent and received on-line. Access to information and make transaction on-line, instant and secure. It takes only a few

[49] Pretto and Others v Italy (8 December 1983).
[50] Annex I

seconds to request and deliver a related case from another court or sending a writ for examining a witness who is resisted in different city.

5.2. ALL DOCUMENTS, PROCESSES AND FILES ARE STANDARDISED:

Before UYAP, courts and other judicial units have being written the writs one by one. After UYAP similar writs are being written through stencils in a very quickly way. Due to all the data of IDs and cases complete automatically into the documents like warrants, indictments, interlocutory judgments, trial records, decisions and others so as to finish cases faster and more efficient and not to wait for days. It enabled court staff to produce common form documents without having to type each of them out one by one. It is nearly saved on labour force by 30 %. In the past it took so many times to prepare all the documents during the case or hearing but now it takes only minutes and it provide us speed and reliance.

5.3. PERFORMANCE MANAGEMENT THROUGH INTEGRATED MANAGEMENT INFORMATION:

To provide the capability to measure performance and report on the effectiveness of Turkish judicial services in terms of such performance indicators are defined by Government and stakeholders. The data required for this would be captured and made available through the operational UYAP system. The performance of the personnel can be followed via the electronical environment. This ensures rapid, accurate and elaborated information for evaluating a judges and prosecutors performance.

5.4. DATA MINING IN JUDICIAL FIELD:

Data mining means that collection and dissemination of aggregated data for future plans. By this way it became easy to provide a research capability, to evaluate the impact of offender-crime assessment tools and programmes and to assess the effectiveness of interventions designed to reduce crimes. Evaluation of statistics (papering crime maps, data mining) will be possible. The users who have the authority to gain access to these data, can see those data simultaneously and currently and can make processes.

6. SECURITY

UYAP possesses a number of international informatics security certifications[51]. In UYAP SSL security[52] structure and digital signature are used. Therefore, electronic sign has been implemented in recent days and

[51] Contractor of the UYAP, HAVELSAN has the following Quality Certificates and implemented them in UYAP system:

- SW CMM (Software Capability Maturity Model) Level 3 Certificate
- TS-EN-ISO 9001 Quality System Certificate;
- AQAP-150 NATO Quality Assurance Certificate for Software
- AQAP-110 NATO Quality Assurance Certificate for Software and Design, Development and Production.Besides, HAVELSAN has the NATO Secret and National Secret Facility Security Certificates, that are mandatory for the defense companies in Turkey.

online case has just begun. For the item privacy articles on protection of the private data have been included in the new Turkish Penal Code. Moreover a firewall has been installed to the central system against viruses and other attacks for the benefit of users. Furthermore antivirus programmes have been installed to the users computers and to the servers.

PREVENTION OF CORRUPTION: Destruction of files is impossible because of electronic recording and all the activities are logged in the system. In every lawsuit's case a part is separated for showing the changes and deletes.

Uyap System Centre And Disaster Recovery Centre is the unique in the judiciary world in europe in terms of capacity and capability according to IBM AND ORACLE which are the experts in this area. The capacity of the centre is sufficient for more than seventy thousand users and it can be upgraded when needed. In the system all recognised security hardware and software are preferred. All data is backed up instanly and regularly in the recovery center.

CONCLUCION

It is complained that cases last long time in lots of European countries including Turkey. The reason why delayed justice is accepted as unjustness is the confliction with human honour while people suffering and wondering for years how their future is going to be. The purpose of the Article 6 of the ECHR is to protect people seeking their rights against the threat of their cases' lengthening. In this study, we aimed to tell how Turkey has made its judicial system working faster, easier and more effective. In this context UYAP is the usage of the IT at every stage of criminal and civil jurisdictions. This technology provides a sole and secure administration on entire justice system and the fastest communication between units.

The main goal of this system that we tried to illustrate is to provide a fair trial within a reasonable time.

In additional these certificates MoJ want to obtain soonest for UYAP ISO 17799 Standard and ISO/IEC 15408 CC Standard. Therefore MoJ is in preparation

[52] Secure Sockets Layer: This technology protects online transactions and helps incresae trust in websides

ANNEX

PUBLIC PROSECUTORS		
PROCESS	BEFORE UYAP	AFTER UYAP
Instruction to other units	Half a day	0-1 mn.
Monthly statistics	1-2 day	0-3 mn.
Annual statistic	1 week	0-5 mn.
Preparing take overs	3 day	0-1 mn.
General forms	1 week	0-5 mn.
Birth certificate	1 week	0-1 mn.
Criminal record	1 week	0-1 mn.
Searching file	10-15 mn.	30 sn.-1mn.
Preparing standard forms	5 mn.	0-30 sn.
Examining stage of files	10 day	0-30 sn.

CRIMINAL COURTS		
PROCESS	BEFORE UYAP	AFTER UYAP
Writing edits	3-5 mn.	3 mn.
Post lists	10-20 mn.	1 mn.
Statistics	15-20 day	15-20 mn.
Criminal record	1-15 day	1 mn.
Birth Certificate	1-15 mn.	1 mn.
Take over files	7-15 day	1 mn
Transfering files	15-20 day	2-3 mn.
Promotions	1 day	0–1 mn.
Annual statistics	1 week	0–5 mn.

CİVİL COURTS		
PROCESS	BEFORE UYAP	AFTER UYAP
Take over list	3 day	0-1 mn.
Work list	3 day	0-1 mn.
Adis form	1 week	0-5 dk
Financial reports	10 mn.	0-4 mn.
Work list for the financial units	10 mn.	0-4 mn.
Getting information	1-3 hour	0-4 mn.
Communication writs	10 mn.	0-1 mn.
Issue table	2 hour	0-1 mn.
Hearing list for 50 files	2 hour	0-1 mn.
Search for files in archive	1 day	0-4 mn.
Search for files in archive of court	3 hour	0-2 mn.
Search for status of files	5-30 mn.	0-1 mn.

ANNEX

2)

The Number of Document	452.857.657
The Number of Users	57.558
The Number of Concurrent Processes	1.750
The Number of New Files per a day	200.000
Average System Login per a day	39.778
The Number SQL per second	3.200
The Number of Documents per a Day (Insert-Edit)	1.400.000
The Number of Case Files On the System	57.240.073

3)