

URBANIZATION AND ADMINISTRATION OF JUSTICE IN TURKEY

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1 — During the last twenty years dissatisfaction regarding the functioning of criminal justice has been shared by many countries and after thorough examination and study the diagnosis has been expressed as "Crises in Criminal Justice".

The reasons of this crises is accepted to be as follows: Increasing number of Crimes; defaults of the functioning of Criminal Justice; mistrust reflected through the public opinion with regard to the role of Judicial Institutions; unsuccessful results of the implementation methods of the executions of punishment; the present systems' hinderence with the reforms needed in crime policy¹.

2 — Today, the statistical results of researchs are sufficient to show us that there has been an icrease in crimes, especially in the United States. Politicians find themselves in a position to convince the public that all necessary procautions will be considered to improve the Criminal Justice thus eliminating the possibilities of increase in crimes which are threat and disturbance to the society². An example to this situation can be found in the New York State of the United States of America where the number of crimes for 10 major offences is 4.080.724³ and total number of arrests is 5.773.988

- 1) **M. Ph. Robert**, *La Recherche operationnelle dans le systèm de Justice Criminelle, Etudes relatives à la recherche Criminologique*, vol. VIII, Strasbourg 1971, 59.
- 2) **Jean Pinatel**, *La société Criminogène*; Paris 1971, 44.
- 3) **Sulhi Dönmezer**, *Ceza Adaletinde Reform, "Ceza Adaletinde Reform İlkeleri Sempozyumu"*, Istanbul, 1972.

in 1969. The very same situation is found in Western European Countries within the 10 years, to follow the States. It is also said that the quality and the quantity of crimes in Turkey will no longer continue to be specific as the social and structural growth of urbans lead to.

3 — It is believed that this is an issue caused by the pressure created due to load of work the Judicial Institutions find themselves involved with, and resulted by total confusion and crises. This leads to the fact that the Judicial Institutions remain to be outdated and uneffective, continuing with the statu quo but not able to cope and to keep up with the changes taking place in the society, therefore, as a result of which also unable to deal with the changing phase of the crimes.

4 — This situation, naturally, results to develop some doubts and concerns as to the effective and efficient functioning of the Criminal Justice. Actually, it should in all fairness be accepted that this dilemma is a direct result of the growth and development of a democratic society, but nevertheless, due to the serious effects of this crises concerns beyond the scope of liberal and constructive criticism extended.

On the other hand, it is also a fact that neither the earlier nor the recent execution methods seem to have proved to be effective and satisfactory. This point of view is well supported by the statistical numbers given to indicate the increase of crimes as well as recidivism.

5 — As for the crime policy, one needs to consider its history before making an evaluation. For many years, within the scope of classical approach, "crime" has been a legal term. It is only after the second World War that the "criminal" became the center of attention as the individualisation of punishment has become the favourable policy in criminal law. This new concept brought along the need for reconsideration and revision of the legislation pertaining to this issue, which took place parallel to growing urbanisation and increasing population. With the effects of this population growth and urbanisation as well as the new rights and freedoms granted in a democratic society, new form of crimes have been

realised and began to be dealt with⁴, thus even more increasing the work load of Justice Administration. The Courts, unable to cope with this work loads either began leave a good portion of the cases aside or handled them without thorough and due consideration, which is of course an undesirable process.

6 — In Turkey: This claim is said to be true for Turkey as well. The events of the last decade, the increase of crimes, and the uneffectiveness of all measures to prevent the crimes led the thoughts towards a search for a reformative change in the Criminal Justice.

Efforts to develop a new doctrine and attempts to make legislative changes have been followed by further efforts to determine the facts and forces leading to this crises through a Symposium for the Reform of Criminal Justice, held in February 1972, organised by the Institute of Criminal Law and Criminology, University of Istanbul.⁵

Principally accepted and shared opinion for the need to change the judiciary mechanism to concord with the socially and economically changing structure of our society has been taken into consideration in the third five year plan with a new strategy expressed as "a total reform to cover both the institutions and regulations, and structures and contexts⁶. It is observed that in view of the new strategy the third five year plan has accepted the existence of such a crises.

7 — It is well known that the opinions differ as to the nature of this crises being structural or conjunctural⁷. In contrast to those who claims that the crises in criminal justice is structural in its

4) **Andre Normandeau - Philippe Robert - Alfred Sauvy**, Protestation de groupes, violence et système de justice Criminelle, Criminalité Urbaine, 1973, 47.

5) Bk. : Ceza Adaletinde Reform İlkeleri Sempozyumu, 24 - 26 Şubat, 1972, İstanbul, 1972.

6) Bk. : Yeni Strateji ve Kalkınma Plâni, Üçüncü Beş Yıl, 1973 - 1977, DPT, yayın no : 1272, Ankara 1972, 911.

7) **Dönmezer**, Ceza Adaleti, 3.

nature, it is said by those⁸, who, seeing the issue as a need for balance between the aims of criminal justice and the means to serve to these aims, claims that the nature of this crises is conjunctional⁹, that the measures to balance the norm with the social facts will be sufficient to overcome the existing dilemma. This solution accepted and deflected in the third five year plan is expressed as follows: "The capability of our law system to respond to the changing social and economical conditions of our society is almost nil. The legislative measures seem to be insufficient despite the improved approach towards the crimes and criminality, and punishment and its execution.

With no structural norms set to establish the proper Institutions to serve Justice, studies and attempts to make reforms in this respect become difficult and almost impossible. Our institutions of execution are not modernized or up dated. The existing administrative problems are continuing to have negative effects on the Administration of Justice.

The difficulties faced both by the citizens and the administrators with regard to the implementation of Justice; the high cost of achieving "rights" due to delays; the confusion caused by legal terms and expressions and the conflicting differences between the respective laws and legislations; the increased volume of legal disputes based on the above mentioned confusion; have not even begun to be corrected and solved. No preparatory measures have been taken to train and educate eligible personnel of high caliber, and no means are provided for developing and improving professional skills while performing service. Buildings, furnishings and equipments, and supportive means have not been developed sufficiently to meet the purpose. Control mechanism is not brought to a level of effectiveness."¹⁰

8) **Jose M. Rico - Severin C. Versele**, *La Criminalité Classique, La Criminalité Urbaine*, 15.

9) *The challenge of crime in a free, society*, Report the President's Commission on Law Enforcement and Administration of Justice, U.S. government Printing office, Washington, 1967, Zik. Dönmezer.

10) *Üçüncü Beş Yıllık Kalkınma Planı*, (1973 - 1977), 911, 912.

After determining the present situation as explained above, efforts are extended towards legislative fields and primary alterations are brought to speed the procedures but no substantial changes are made to renew the basic structures of the laws under reference, (Such as the Laws of Criminal and Civil Procedures)¹¹, and that these changes can be considered as temporary measures rather than real treatment. On the other hand it is understandable that no substantial change could have been made in such a short time. And that it is far better that the reforms are based on thorough and scientific evaluations and studies.

8 — It is observed that Turkey faces the same difficulties as the western democratic countries due to technological developments, urbanisation, motorized transportation, social and cultural conflicts, political events, women's liberation movements, generation gaps, and such. All of these social changes naturally resulting the changes in the quality and quantity of the crimes in general. And it is under these circumstances that the Criminal Justice is deprived from proper and desirable functioning.

9 — We should mention at this point that this crises in Criminal Justice should be considered as a whole together with the Police, Administration of Justice, and execution of penalty. We have briefly touched the issues of crime increase in volume and changes in nature without much attention focused on the general aspects of crimes.

We only wish to mention one observation with this regard and that is the assimilation of the crime phenomenon by the members of the society. For example, although it was the acceptable procedure in the past to isolate the criminals from the society, today the society seems to be prepared to extend a totally different attitude towards the criminals, as a result of which many crimes are fast forgotten without even being brought to the attention of the Courts. Or, in some cases, acts of crimes are dealt with methods other than the procedures of criminal law and the police,

11) Code of Criminal procedure has been changed by law number 1696 dated 5.3.1973; Code of Civil Procedure has been changed by Law number 1711 dated 30.4.1973.

due to the volume of work required, tends to be selective among the crimes brought to its attention according to the serious nature and importance of the acts.

Therefore, it can be said that the prosecutors who are to initiate legal action against the criminal, are also filtering the crimes through their evaluations. In despite of all these tendencies mentioned above the number of cases brought to the care and attention of the Courts are not any smaller.

Black Numbers :

10 — The very first indication of the fact that the crimes are being assimilated by the society is that of the black numbers as they represent the unknown crimes in a given society. The crimes listed under the "black numbers" would be those crimes without victims, or those where the victim places no complaint, or the parties reach an agreement among themselves although the act committed constitutes a crime.

Abortion may be an example for the crimes without victims. The statistics show that during 1959 and 1960 only 7 or 10 cases of abortion were handled through the prosecution. Should these numbers be accepted close to reality; the black numbers for this crime will stand high. It is also noticed that the victims of the sexual crimes refrain from^{12a} making a complaint and a research completed in England shows that only 28% of the convicts can be traced when the victims do not place complaints^{12b}. The percentage reads %1 for the same in France. In the United States of America 58% of the victims have said to refrain from placing a complaint due to bother some work involved as well as their lack of confidence about achieving a worthy result and also their minimizing approach towards the act committed^{12c}. In commercial life, parties

12) See, the situation in France, **Jean Pinatel**, 173.

12a) Adalet İstatistikleri, 1960 - 1965, Devlet İstatistik Enstitüsü, Yayın no : 528, 270.

12b) **Radzinowidz - Odgers - Mc. Clintock**, Sexual Offences Report of the Cambridge department of Criminal Science, London, 1957, ss. 30 - 31.

12c) **Hans Von Hentig** - Crime Causes and Conditions, Newyork, 1947; **Sulhi Dönmezer**, Kriminoloji, 4. bası, İstanbul, 1971, 25.

usually reach an agreement without initiating an official complaint and in big commercial institutions sanctions of administrative nature is used to handle such situations. The effects of the black numbers on the public has also been discussed and the opinions in this regard expressed by some saying that the black numbers creates doubts about Justice, and some claiming that it serves the interests of those above the standard of living. In reality the black numbers are not anything besides the assimilation of crimes by the public thus leading, the crimes to be screened by the public before by the courts and legal actions.

The works of the office of public prosecutor :

11 — The assimilation of the crimes by the society is reflected through the black numbers and followed by the decision not to prosecute. For example, there is a noticeable increase in the number of cases presented to the public prosecutors between the years of 1960 and 1970, — as only 595.396 new cases are brought to the Courts in 1960 where as the number was 1.179.301 in 1970. — In 1970, together with the cases turned over to the new judicial year, the total number reaching 1.534.371. In view of these facts there is a 138% increase in ten years.

The following chart shows that the number of crimes increased 1,5 times within the 10 years period.

TABLE 1

All cases handled by the office of Public Prosecutors in TURKEY

Years	From previors year	New Cases	Total	Increase %	Concluded	To next year
1960	48.208	595.566	643.764		603.513	40.211
1965	163.210	999.872	1.163.082	80	965.367	197.715
1968	223.792	1.090.397	1.314.189	1,26	1.031.130	283.059
1970	355.070	1.179.301	1.534.371	1,9	1.123.116	405.255

Source : Adalet Bakanlığı, 50. Yil, Ankara 1973, 113.

Along this line, we also notice an increase in the number of the decision not to prosecute. Although this increase does not seem to be too high as shown in the following table.

TABLE 2
Decisions not to prosecute in Turkey

Years	Lack of evidence	incompetence	nonpublic	others	increase	Total
1963	167.072	20.339	79.576	20.680		287.667
1964	148.168	22.703	73.312	18.133	— 9.1	262.310
1967	148.518	26.241	73.475	16.999	+ 1.01	265.223
1968	155.583	31.685	72.783	16.148	+ 1.04	276.199

Source : Adalet Bakanlığı İstatistikleri, Devlet İstatistik Enstitüsü, 1967 - 1968, 1960 - 1965.

This is indicative of only a small difference between the known crimes and that of prosecuted¹².

In fact, a great number of crimes are not being subject to trial. Crimes with unknown offender, cases with insufficient proof and evidence, acts of minor crimes are usually kept out of the frame of criminal justice; therefore, creating an atmosphere to force the assimilation of such acts by the Society.

Crimes brought to trial :

12 — It is noticed that the majority of the cases are brought to trial before the Courts by the Public prosecutors. The number of cases brought to the courts in 1963 reads 333.582 while those handled during 1968 is 381.910 which shows a 14% increase within 5 years period¹³. We would find an interesting breakdown of the works of Public prosecutors of Istanbul as compared to those of

13) Adalet İstatistikleri, 1960 - 1965 ve 1967 - 1968, Devlet İstatistik Enstitüsü, Yayın No : 528 ve 630.

Turkey in general. The following table shows a decrease in the number of the cases brought to trial during the year of 1972 than compared to that of 1969.

TABLE 3
All cases handled by the office of Public
Prosecutors in Istanbul

Years	From Previous Year	New Cases	Total	increase %	Concluded	To next year
1969	19.849	42.312	62.161		41.410	20.751
1970	20.751	42.662	63.413	+ 1,02	43.225	20.188
1971	20.188	39.752	59.940	- 0.94	40.950	18.990
1972	18.990	38.297	57.287	- 0,95	35.735	21.534
1973 (*)	21.534	11.249	32.783		17.524	—

(*) The figures of 1973 are for the first 6 month.

Source : Reports of the office of Public Prosecutor in Istanbul.

The figures shown that the numbers in 1970 is at its peak whereas the numbers in 1972 is far below than that of four years ago. One of the reasons for this, is naturally the Martial Law announced in 1971.

The same results can also be seen in the number of decisions regarding not to prosecute, incompetence, or consolidation. These numbers are the 27.30 percent of the total cases and is a considerable amount.

TABLE 4
Decisions not to prosecute in Istanbul

Years	Decision not to prosecute	Percentage for all cases	Cases brought to courts	%
1970	18.620	29,3	24.605	38
1971	16.437	27,4	24.533	40,8
1972	13.867	24,2	21.886	36,9
1973 (*)	6.275	19,1	11.249	

(*) The figures of 1973 are for the first 6 month.

Source : Reports of the Office of Public Prosecutor in Istanbul.

The functions of the Criminal Courts :

13 — While evaluating the functions, in other words the work load, of the Criminal Courts, it is noticed that the first complaints come among those heading the judicial mechanism. President of the Court of Cassation has expressed in one of his speeches that the need is felt for the trained personel, better equipped and well established judicial mechanism, efficient and practical procedural legislation, all helping to eliminate the possibilities of problems arising from the work loads which creates slow and unefficient functioning of Courts. According to the President of Cassation Court is unable to carry out its own tasks and obligations. Therefore it is essential that the Courts of Appeal is established, since the increase of the number of Divisions and personnel of the Cassation Court would only be a temporary measurement¹⁴.

14 — The latest statistical data we could ind shows a decrease in the number of criminal cases brought to the Court of Cassation between the years of 1960-1970. 1960 calender year receives 69.880 new cases and ends 70.581 whereas in 1970 the number of new cases brought is 64.806, 64.227 of which is brought to an end during the same calender year¹⁵.

As it will be observed there is a noticable decrease within a ten year period in the number of cases brought to the attention of the Cassational Courts However, we must also add that the new Law, no: 1730 dated 16.5.1973 established two more divisions bringing the total of divisions to 9 all together.

15 — On the other hand all of the statistical data indicates the increase of the work load of the Criminal Courts, with a lowest rate of 0,1 % at the Court of Peace, and a highest rate of 41,81 % at High Criminal Courts, and 45.81 % at Criminal Courts of first instance. Yet, it should also be mentioned that the rate of increase

14) **Ferruh Adalı**, 1970 - 1971 Judicial Year Opening Speech AHFD., 1971, 1 - 8.

15) Bk. : Adalet Bakanlığı, 50. Yıl, Ankara, 1973, 121 - 135.

should be evaluated in consideration of the major increase in population during this period of time^{16, 17}.

16 — The same rate of increase is not seen in the work scope of the Istanbul, Criminal Courts of First Instance. Four of these Courts in Sultanahmet, Istanbul, have handled 3864 cases in total during 1972 whereas this total reads to be 5363 during 1969.

TABLE 5
New Cases brought before certain Criminal
Courts in Istanbul

Years	7 th Court f. instance	6 th Court f. instance	9 th Court f. instance	11 th Court f. instance	2. nd. Justice Peace	3 rd. High Court
1969	1197	1194	1059	913	1401	361
1970	1139	1138	1191	1230	1377	355
1971	1026	1030	1085	1009	1484	402
1972	966	934	973	838	1270	400

It is clearly seen in the table above that the Courts hereto referred had a noticable decrease in the amount of cases they have handled within five year period. As mentioned above the effects of the Martial Law should not be undermined while evaluating the statistical data of these years. When the years prior to Martial Law is taken into consideraton for comparision, it can in all fairness be said that the decrease in the number of cases handled was caused by protests and mass movement which prevented the authorities to give due attention to other crimes in general, as a result of which many of the crimes committed during this period have not been followed up and left to be assimilated by the society.

16) Adalet Bakanlığı, 50. Yıl, 99.

17) Turkey's, population is 27.755.000 in 1960 and 35.605.000 in 1970. Population increase is 28.28 %.

Efficiency rate of the Criminal Courts :

TABLE 6

**The number of cases being handled in some of the
(Istanbul Courts)**

Years	High Court			Cour of first instance			Court of Peace		
	handled	concluded	%	handled	concluded	%	handled	concluded	%
1969	841	358	42,5	913	330	36,1	1893	1304	68,8
1970	838	342	40,8	1813	942	51,9	1966	1331	67,7
1971	898	405	45,1	1880	980	52,1	2119	1623	76,6
1972	893	334	37,4	1758	732	52,2	1766	1207	68,4

17 — Among the Courts covered by our research the Peace courts seem to be the most efficient of all with a rate of 70,37 % while the others read High Criminal Court 41,4 % and court of first instance 45,5 %. When these results are compared with that of a Military Court located in Istanbul the efficiency rate is to the favour of the latter by 96,2 %¹⁸.

Combined Press Court :

18 — The indexes of the last five years show a very low efficiency rate of 33,44 % of the Combined Press Courts of Istanbul. When one recalls the reasonings behind the efforts to establish these courts some years ago, one cannot help questioning their present

18) Military Court's work in 1972.

Year	From Previous Year	New Cases	Total	Concluded	To next Year	Rantability %
1972	33	1483	1518	1463	22	96,2

state which is far from meeting the expectations and causing constant nuisance to all parties concerned¹⁹.

TABLE 7

Number of cases of combined press court in Istanbul

Years	From previous		Total	Concluded	To next	
	Judicial year	New Cases			Judicial year	Rantability %
1968	249	214	463	142	321	30,6
1969	321	381	702	136	566	19,3
1970	566	335	901	288	613	32,0
1971	613	257	870	359	511	41,20
1972	511	232	743	328	415	44,1

19 — The new cases brought to the Courts within a year —one year being considered an approximate 250 work days— the average cases handled per day would be 1,6 at High Criminal Court 4,0 at the Courts of First Instance and 5,5 at the Peace Courts. When compared to those numbers given in the developed countries of the western world it will be noticed that the work load of the Courts in Turkey is relatively low. One may easily call the Judges of the Criminal Courts in New York and in Montreal "the busiest judges in the world" as they have to handle approximately 200-300 cases a day (deciding whether or not a trial will be required) or for the latter 34 cases a day²⁰. It should also be mentioned here that the 17% of the cases before the Courts in the United States are that of Traffic Crimes²¹.

20 — The results based on the data gathered through the research carried out about the functioning of the Criminal Justice:

19) **Sulhi Dönmezer**, *Basın Hukuku*, Istanbul 1969.

20) **Rico - Versèle**, 26.

21) *The challenge of Crime in a free society*, Report on Law Enforcement and Administration of Justice Wash DC. U.S. Government Printing office, 1967.

1. The statistical results obtained indicate that Turkey is still far from the existing problems of the western world.

2. But again the very same numbers are indicative of the slow pace functioning of the Criminal Justice. As a matter of fact the acceptance of this reality is expressed through the opening speech by the President of Supreme Court for the Judicial year of 1971-1972²².

RESEARCH BASED ON THE 1984 COURT DECREES TAKEN BY CERTAIN COURTS IN ISTANBUL

Method and Presentation of the Research :

21 — Our research is aimed at determining the operations of the Courts in big cities and the effects of the urbanisation on these courts. We tried to reach a generalisation through our studies on the decrees of 3 major Courts in Istanbul, covering the year of 1972. We have followed a "sampling system" for our research method, and focused our attention on the final decrees the period between the time of commitment of the crime and the time of decree, the effects of the Law of flagrant offences on these periods.

Our hypothesis is that the urbanisation in Turkey has not yet had a noticeable affect on the Criminal Justice. However the process of criminal justice is still not favourably swift.

22 — Our research covers 1984 Court decrees reached within the year of 1972. The breakdown of these is as follows:

Court	High Criminal Court	Criminal court of First Instance	Justice of Peace Courts	Total
	305	735	943	1984

Punishment in summary Criminal Jurisdiction of Justice of the Peace is not included in our tables here. And the Court Decrees resulting as shown in the table below:

22) Dönmezer, 7.

TABLE 8

	acquittal		Conviction		Suspension	Fine	Dismissed	Postpone	Total	
High Criminal Court	74	% 24,5	181	% 59,1	11	4	32	4	306	
Court of first instance	208	% 28,3	196	% 26,6	182	70	70	9	735	
Court of Justice of Peace	194	% 20,5	258	% 27,3	91	194	% 20,5	160	46	943
Total	476	% 24,4	635	% 32,5	284	268	262	59	1984	

23 — Among all cases referred to in our research decrees of acquittal hold a percentage of 24.4. Dismissal of case, suspension of punishment or postponement of sentence, conversion to fine, sentences for imprisonment cover a 32,5 percent of the total Court decrees taken into consideration in our research. High Criminal Courts decrees show a higher percentage of 59.1 in this respect. On the other hand, at the Criminal Courts of First Instance sentences for imprisonment are far below the acquittal sentences. The results also show that out of all cases handled 25% is acquittal and only %32 is sentenced for punishment without suspension or postponement. In view of the fact mentioned in paragraph 12 that only %38 of the total crimes is being tried, it can be said that the percentage of crimes punished is %12,5.

Trial Periods :

24 — The results of our research shows that a period of 9,5 months is essential for the completion of a trial at the Justice of Peace, and 18,9 and 18,8 at the High Criminal Court and Court of First Instance beginning from the date of commitment till the date of court decree.

Therefore, although in reality the time between the date of committment and the date of the bringing the suit before the Courts should not be considered as the part of the trial period, wishing to determine the amount of time required for one single

case, we chose to include it all. 79,7 percent of the cases handled at peace Court takes 12 months, whereas the 46 percent of the cases at High Court and the 32,3 percent of the cases at court of first instance requires the same period of time. The cases concluded within a 24 month period is the 71% of all cases handled at High Court, and 67% of all at Court of first instance. It will be noticed that a case requires a certain period of time in order to be concluded at these two Courts and it is considered a lengthy period.

The implementation of the Law n. 3005 :

25 — Justice of the Peace Courts have only been able to conclude 2.7% of all the cases they handle within a year for a less period of time than two weeks. On the other hand, we notice that no conclusion is reached within a month at the High Criminal Court. Also, among the cases studied under this research only 5.9% has been taken care under the Law n. 3005 for flagrant offences.

When the Law no. 3005 is applicable 79% of the cases are usually concluded at least within 9 months. And 74 cases out of 126 are concluded within the three months following the commitment of crime.

TABLE 9

Application of Law number 3005 on flagrant offences

	applied	non applied	Total
High Criminal Court	16	290	306
Court of First Instance	38	697	735
Justice of Peace	72	871	943
Total	126	1858	1934

TABLE 10

Application of Law n. 3005 according to the decision

	applied	non applied	Total
Acquittal	23	453	476
Conviction	53	583	636
Suspension	12	272	284
Conversion to fine	15	252	267
Dismissed	23	239	262
Postpone	0	59	59
Total	126	1858	1984

CONCLUSION

26 — Through the evaluation of the data considered for our research, we reach the following conclusions:

- The work load of the present Criminal Courts in Istanbul are less heavier than those of other developed countries.
- The period of trial at the Justice of Peace Courts is shorter than that of High Criminal Courts and the Courts of First Instance.
- The cases are concluded much swiftly when the Law no: 3005 is applicable.

These above mentioned conclusions are sufficient to support our hypotheisis. When the number of cases brought to the attention of the Courts in Istanbul, the largest city in Turkey, compared to those of other developed countries, one can see that they are relatively low. Also the percentage of the conviction reached among the cases on trial is rather low. It can be said that the reason for this latter is the load of work which forces the judges to rush through some cases and in order to avoid the possibilities of mistaken judgement, to preferably decide for acquittal. It is also a fact that although the load is comparatively low, the swiftness is not possible due to other reasons. All of these lead us to say that there is a slowness in the implementation of Justice in Turkey. Our

claim is also that this is due to lack of organisation and proper management rather than the work load, as would be the case in other developed countries.

27 — Therefore, the lack of trained personnel and sufficient means of operation is the basic grounds for the existing inefficiency in Turkish Criminal Justice. The President of the Court of Cassation was referring to the very same fact when recommended a higher cultural and social standard for the personnel serving Justice. So, the diagnosis is mutually accepted and the cures are being sought through the third five year plan.

28 — The general concensus is that the modern management techniques should be applied to help to improve the efficiency of the functioning of Criminal Justice²³. Today, the Turkish Courts are carrying out their tasks without having based their operational techniques on any of the contemporary methods of management. With very limited financial support for any kind of supplementary help their working conditions are made even more difficult. The lack of financial sources is, of course, an important factor in this existing poor management situation.

29 — The working conditions are not properly arranged for the Courts as well as other related offices. Secreteriat of more than one Court are piled up in one small room. Filing system is based on temporary miracles. President of the Lyon Bar Association has once visited the Istanbul Palace of Justice and commented that it resembled to the historical Covered Bazaar²⁴. Today, at the more developed Western Countries, it is now being discussed whether the Court Houses should be built in one big unit, as the Palaces of Justice, or in small regional units²⁵. We would tend to think that this would be a bit too early to start this argument in Turkey at this stage, and a luxerious effort to discuss the styles of these buildings when the quantity and the efficiency needs to be our

23) **Alice Parizeau, Pietro Nuvolone**, *Criminalité et Justice Pénale dans les Zones Métropolitaines; futuribles, Criminalité Urbaine*, Montréal 1973, 146.

24) *Son Havadis Gazetesi*, 16.11.1973.

25) **Parizeau - Nuvolone**, 172.

primary concerns for the time being. However, we shall mention here that small regional Court Houses are operating, and seem to be doing well in a coordinated and orderly manner, in Kartal, Kadiköy, Beykoz, Zeytinburnu, Bakırköy, and Eyüp provinces of Istanbul, although still without access to necessary supplementary equipment. The consequences of small regional Court Houses' operations and their effects on the subjects are beyond the scope of this paper although interesting enough to be suggested for further consideration.

30 — Judges of the Criminal Courts have a certain well accepted status in the Turkish Society. They do carry a heavy burden on their shoulders when compared to their colleagues. Especially in big cities, and due to the public interest and curiosity with regard to criminal cases, mass media often brings them to the public's attention. In public opinion, the responsibility of the functioning of administration of Justice lies with the Judges themselves. There should be no need to try to contradict the public opinion in here. It should also be acceptable that within the scope of classical legal education the judges are bound to perform a less successful and desirable function. Naturally, their professional experience do provide the additional knowledge they may need or find helpful with regard to sociology, economy, criminology, or such. These experiences can be further supported by the availability of training workshops and seminars to bring their knowledge up to date with the most recent changes and developments. This is the type of practice accepted in some countries such as Sweden, Canada, France, and United States of America²⁷.

31 — Some claim that the effectiveness of the judges' functions can be provided by a control mechanism as well²⁸. Our reference to the Military Courts' efficient operations, (in paragraph no : 17) seems to be supportive of this idea. The only difficulty in this case would be the careless speed of the judges who feel they have to meet a certain deadline to clear their work load. This is called

26) Parizeau - Nuvolone, 172.

27) Parizeau - Nuvo'one, 172.

28) Dönmezer, 23.

the "Assembly line justice" and especially the suspects without defense attorney would usually be the one to most suffer from this type of operation²⁹.

32 — It should also be mentioned here that the defense attorneys are sometimes the cause of the delays in the procedures themselves. Especially to submit a petition to be excused from the hearing, without having a sound reason but merely to gain time for legal prescription is a common practice in our country. Similar kinds of tactics are also used in many other countries for the psychological effect such actions provide.

33 — It has been subject for discussions for a long time either to eliminate some of the acts from being considered as crimes or to eliminate the execution of their perscribed sanctions. The reasons behind this argument are generally due to the presence of out-dated norms which still dominate the Criminal Justice. The Penal Laws to which the public react and reject need to be reconsidered and revised thus eliminating some of the fears about injustice.

Some of the criminal acts can be left to be punished by other administrative authorities in order to lessen the work load of the Courts. German "Gesetz Über Ordnungeswidrikeiten" can be given as an example to this practice³⁰. This same method can very well be adopted into our legislation in order to reduce some of the present work load of the Court and to help to bring swiftness to the administration of Justice. For example, article 565 of the Turkish Criminal Court with regard to the reckless driving which constitutes 30% of the cases handled in the Justice of Peace Courts can be turned over to be handled by some administrative authorities. Usually the sentences are not of heavy nature and generally turned into legal admonition. The courts kept occupied with these types of petty crimes fail to give due consideration to those with serious nature³¹.

29) **Dönmezer**, 9.

30) **Duygun Yarsuvat**, Trafik Suçları, İstanbul, 1972, 36.

31) **Öztekin Tosun**, Adalet Reformu yönünden Türk sisteminde, ah-zırlık, ilk ve son soruşturma, Ceza Adalet Reformu İlkeleri Sempomyumu (24 - 26 Şubat 1972), İstanbul, 1972, 37.

34 — As explained in the paragraphs above, the results of our research leads us to say that there is no direct effect of urbanisation on the implementation and administration of Criminal Justice, as yet, although, due to population growth and industrialisation, the problem today existing in more developed countries can be expected to occur in Turkey in the near future. The advantages of an early diagnosis should help us to look for the solutions to prevent this occurrence before it becomes a serious issue. A few of the suggested methods to overcome these expected problems would be: to simplify the trial procedures for petty offences, to eliminate some of the acts to be considered as petty offences, to allow administrative authorities to carry out some sanctional measures, and such. We believe that the traditional procedures, if followed without undesirable delays, will be sufficient to gain the confidence in equality and justice. Certainly, the exact and thorough execution of the Court decisions is another important factor to support this confidence. This practice seems to be failing in Turkey today. The following chart shows the inefficiency of the office of the public prosecutor for execution.

TABLE 11

**The work chart of the office of prosecution
for execution**

Years	From Previous years	New cases	Total	Concluded	to next year
1960	5470	9460	14630	12062	2568
1965	10162	19204	29366	15184	14182
1970	30882	30300	61182	23888	37294
1971	37294	34797	72091	28371	43720

It is also to be seen that this office suffers from lack of adequate means and personnel just like the other legal institutions. Although there is an evidence of an increase of personnel in recent years the lack of means are still an effective negative factor in the proper functioning of the Criminal Justice, which, to our opinion

is the main reason for the crises felt about this administration. Without these supplements, all contemporary methods and principles are bound to be still-born. The confidence in future can only be achieved through a proper functioning Criminal Justice, and this can only be achieved through the methods suggested above. We also hope to see that similar suggestions to enlighten our goals and to serve our purposes can be gathered through discussions of this topic by the people concerned.

