

PENALNET: Secure e-communications in Criminal Law practice

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Introduction

The European Commission's Communication on e-Justice (*Towards a European e-Justice Strategy*²), has set as objectives of the European Union in this field the improvement of the access to justice, the cooperation between legal authorities and the effectiveness of the justice system itself. Beyond any shadow of a doubt, the use of information and communication technologies (ICT) provides excellent tools for developing the area of freedom, security and justice recognized by the Treaty on European Union³. At any rate, as the European Parliament has pointed out, "*the Internet has also been used as a platform for violent messages such as the ones intentionally inciting terrorist attacks, as well as for websites which can specifically incite hate-based criminal acts, and whereas cybercrime threats more broadly have increased worldwide and are endangering individuals (including children) and networks*"⁴. It follows that the Internet can improve such rights as the freedom of speech, but at the same time, it facilitates potential threats which have acquired a cross-border profile. This fact, forces member States to cooperate closely, as the Council Framework Decision 2002/584/JAI of June 13 shows⁵.

It was the European arrest warrant which underlined that the legal profession requires a professional network to be established among lawyers which gives top priority both to professional confidentiality and security in communications in line with the legal and police co-operation set by institutions such as EUROJUST (the European Union's Judicial Cooperation Unit) or EUROPOL (the European Police Office). Nowadays, lawyers send fully confidential information to other lawyers relating to their clients. But the transmitting of information can be improved (ie, become faster) using the facilities provided by the Internet. But the use of Internet it is

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² COM (2008) 329 final, 30.05.2008

³ Article 2 TEU : "*to maintain and develop the Union as an area of freedom, security and justice, in which the free movement of persons is assured in conjunction with appropriate measures with respect to external borders controls, asylum, immigration and the prevention and combating of crime*"

⁴ Report with a proposal for a European Parliament recommendation to the Council on strengthening security and fundamental freedoms on the Internet (rapporteur: S. Lambrinidis). Doc: A6-0103/2009

⁵ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2002:190:0001:0018:EN:PDF>

not enough, because this use must be based on security. For that reason, the legal professions of five EU member States decided to undertake a project focused on improving coordination of the defence in cross-border criminal cases and making communications more secure by providing a secure platform among accredited colleagues. Co-financed by the European Commission's Criminal Justice Programme 2007 (Directorate General of Justice, Freedom and Security), PenalNet has also become the first project that the legal profession has undertaken in the framework of the abovementioned EU's e-Justice strategy.

Security in the online Criminal Law practice

Professional secrecy is one of the core values of the lawyers' profession, recognised by national Constitutions and a fundamental principle in the Criminal Law field. The clients' confidence and right to privacy as well as the information that they entrust to lawyers, and the necessity of a rapid reaction in order to obtain and share information which could deprive rights and liberties, justify the emphasis given to the security of professional communications. Geographical distance and the difficulty of establishing a close relationship between colleagues from different countries transform the Internet into the optimal means of communication when considering cross-border criminal cases.

On the other hand, as Carlos Carnicer, the President of *Consejo General de la Abogacía Española*, has pointed out "*the citizen's right of defence is the door to the exercise of all other Rights*". It must be facilitated by means similar to those provided to the prosecutor, defining as such technical or electronic communication devices. With the aim of creating proficient professional relationships between lawyers, our departure and arrival point shall be SECURITY. The four pillars of e-communications (identification, confidentiality, integrity and no repudiation) must be applicable to the third pillar of the European Union. Based on those characteristics, PenalNet guarantees the professional contacts established through its network, creating a new concept: "PenalNet, secure e-communications".

It goes without saying that several European legal instruments have implemented cross-border criminal justice, creating the necessity to establish immediate and secure communication between lawyers from different member States. One example is the European Arrest Warrant which embodies a rapid

proceeding in order to facilitate the availability of a person under arrest or a convicted person to the issuing country. Within this procedure, PenalNet helps to locate a lawyer and allows both lawyers to initiate an immediate contact in order to provide an efficient defence to their client by receiving a directly binding communication, facilitating the exchange relevant information and even electronic evidence which can be used in the case. Moreover, PenalNet will be even more useful when its application is considered in connection with other legal instruments such as the Convention on Mutual Assistance in Criminal Matters between the member States of the European Union⁶, the Council Framework Decision on the execution in the European Union of orders freezing property or evidence⁷, or the Council Framework Decision on the European Evidence Warrant for the purpose of obtaining objects, documents and data for use in proceedings in criminal matters⁸.

Judges, prosecutors and policemen, in the framework of their European organization (Eurojust and Europol), operate in an environment of continuous, rapid, and direct interaction, which creates an excellent capacity of reaction. Therefore, the criminal lawyers need the same level of efficiency as it was stated by the European Court of Human Rights in the case *Artico v. Italy* (6694/74 of 13 May 1980)⁹. Hence, in order to implement the contradictory principle, the defence must be enabled to use similar means to those used by the prosecutor, defining as such technical or securitised electronic communication devices.

Project Description

PenalNet is the first European e-network for fluent, secure and inviolable e-communications among criminal lawyers. It is an initiative co-financed by the programme Criminal Justice 2007, from the Directorate-General for Justice, Freedom and Security of the European Commission, and it is being developed by the Bar Councils of France, Hungary, Italy, Romania and Spain (as project leader).

The main objective of PenalNet is to develop better communications and improve professional relationships between lawyers through e-communications that

⁶ More information available at : <http://europa.eu/scadplus/leg/en/lvb/133108.htm>

⁷ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:196:0045:0055:EN:PDF>

⁸ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:350:0072:0092:EN:PDF>

⁹ <http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=artico%20%7C%20v%20%7C%20italy&sessionid=20648126&skin=hudoc-en>

will strengthen cross-border confidence and interoperability between legal practitioners.

Users of PenalNet will be necessarily provided with a certified electronic signature (which proves that the recipient is a qualified legal practitioner), according to the recommendation of the Council of Bars and Law Societies of Europe (CCBE) on Technical standards for interoperability of electronic ID cards. The Bar will certify that the owner of the digital certificate is a practicing member of the Legal Profession. The electronic ID card is based on Directive 1999/93/EC on a Community framework for electronic signatures. Therefore, PenalNet will guarantee the authenticity of the document exchanged through the network and identify the author of these documents as a practising lawyers, member of a Bar Association. In addition, the electronic signature guarantees that the documents have not been amended during communication, as well as providing encrypted communications which allow greater security and coordination in cross-border criminal cases in Europe. The digital certificate will be inserted in a plastic European Lawyer Professional Identity Card of the CCBE which allows its owner to identify himself/herself physically as a lawyer in other European Countries as well as in front of the European Courts.

Furthermore, access to the secure intranet (through the website www.penalnet.eu), will allow registered criminal lawyers to reliably search for lawyers with the aim of collaborating in cross-border criminal issues and establishing encrypted communications which are digitally signed. The platform delivers on acknowledgement of receipt and online time stamping for every message, and all the information is stored in a database hosted in a secure center process data.

PenalNet is being implemented as a pilot project in five EU Member States, each of them selecting 300 criminal lawyers bringing a total of 1500 lawyers. In the long term it aims to establish a secure platform for all the European Bars and Law Societies. Partner institutions are responsible for design and coordination of every country's group of lawyers, compile user data, and deliver certificates and kits to users always following the defined procedures. National partners are also responsible for users training and technical support, after being trained by the experts appointed by the Consejo General de la Abogacía Española.

Using PenalNet will imply a notable decrease of burocratical delays, allow faster interaction and efficiency, reduce travel costs and increase confidence between the professionals and amongst clients/citizens whilst protecting their right to

privacy. It will also help to promote a culture of safe communications within the legal sector and closer cooperation at a European level.

PenalNet services

PenalNet is offering, and will offer, a wide range of advantages that will have a direct repercussion in the daily work of lawyers. A non exhaustive list of these services includes:

- Access to PenalNet's on-line database where lawyers may locate accredited criminal lawyers both inside their borders and from countries which form part of the project.
- Secure communication through the use of a digital certificate which guarantees, compared with communications means such as e-mail, integrity and non-manipulation of the message and attached documents.
- Advanced digital signature which allows encrypted communications (SSL sessions) and guarantees the confidentiality and authenticity of the documents.
- Improvement in the coordination of the defence in cross-border and national criminal cases.
- Storage of the information in a maximum security centre adequately audited.
- Direct access to the European Judicial Network for Criminal matters.
- Direct access to the most important national and European case law.
- PenalNet's bi-monthly gazette with information on the most important criminal issues at European level, including court decisions and legislative measures.

At any rate, depending on available funding by Bars and Public administrations, the project can be extended to other services using the certificate to allow lawyers a new service that will improve legal practice within the EU:

- Obtaining on E-pass to access prisons.
- Filing and consultation of administrative and court files and certificates.
- Access to files on management of Legal Aid and crossborder Legal Aid proceedings.
- Access to administrative licenses related to criminal matters (i.e. hunting, environment, etc.).

- Submission of proof of payment.
- Submission of legally binding consultations.
- Extensive database (potentially in agreement with Caselex).
- On-line bookshop.
- Virtual training campus.
- Back-up service.

All these services have already been implemented at a national level in Spain (for more information, please visit: www.redabogacia.org). All future additions which improve the results of PenalNet will have one purpose: the creation of useful tools for lawyers using ICT in order to improve the effectiveness of the European and national legal instruments that have been or will be adopted.

Conclusions

Today, following four working meetings and many hours invested in its development, we can assure that PenalNet is walking to its main objective: being a completely secure platform where international criminal lawyers can identify themselves and communicate with each other.

Furthermore, it has to be pointed out that PenalNet will guarantee the fulfillment of the European Commission's primary objective in e-Justice: *"to help justice to be administered more effectively throughout Europe, for the benefit of citizens"*¹⁰.

¹⁰ Communication from the Commission to the Council, the European Parliament and the European Economic and Social Committee: Towards a European e-Justice Strategy, COM (2008) 329 final.