Preface

Communication, or more precisely the information which goes with it, is the basis for all social order. Law, as a manifestation and product of this social life, also depends on flows of information. For this reason, the form and content of the law have continuously changed with the type of communicative instruments available. The jump from the oral to written word or the handwritten form to large-scale reproduction via the printing press wrought many cultural changes, the consequences of which were not fully visible until after long periods of time. As such, we can say that legal systems and contemporary judicial structures and procedures are the result of many centuries of development, in which the dominant communicative infrastructure and its supports (the spoken word, the written word, the printed word, and, as of now, the "digitalised" word) have determined both the form and content of the law.[1] The nature of the law and the way in which justice is administrated is without doubt conditioned by the underlying system of information. In this way, the information undercurrent also determines, up to a certain point, the complexity of the law, its structure, and the speed of the regulatory changes.

The end of the twentieth century has been marked by the appearance of information and communication technologies (ICTs) which, in themselves, represent the start of a new era. The establishment of these extensive communication networks linked to the potential of instruments that allow information to be stored, managed, and transmitted rapidly and cheaply is creating a rapid transformation of traditional modes of social and economic organisation. Ways of governing and administrating the public domain are not immune to these changes, nor is the administration of justice, also a public service.

Academic and professional literature on electronic government is growing steadily. The majority of developed countries already have nearly two decades of experience behind them in designing and implementing e-government strategies in many areas of the public administration, beginning in the management of taxes through to health services. Nevertheless, in the field of judicial administration, the practical advances in the application and use of ICTs have been, until quite recently, generally much slower and problematic.

Law and justice are not immune to changes in the prevailing communicative infrastructures because they are extremely information intensive. What happens after the introduction of information and communication technologies? How does or how can this new medium of ICT effect the judicial system? As one author cited in this volume puts it, too many of our courts are still like "islands of paper" in an "electronic ocean."[2] However, since the very organisation of judicial systems is based on the exchange of information, the potential to be attained by the introduction of ICTs is even higher than in other fields. And yet the judiciary (lawyers and judges) are divided between the extremes of cyber-optimism and cyber-pessimism, between those who recognise the range of benefits aris-

ing from the unstoppable advance of networked technologies and those who only see the negative aspects of a process they consider to bring with it legal insecurity, threats to fundamental rights, illegal use of information, and so on. It is not surprising that this should be the case, in as much as we find ourselves in a phase of transition and therefore "crisis," if you take the term literally as that conjuncture of change to an organised reality where all that is old seems useless and what is new is too unstable, as that which is still in motion and subject to evolution and therefore experienced with a certain level of uncertainty.

The truth is that information and communication technologies have appeared at a very opportune moment: the "juridification" of our societies has caused our judicial systems to become enormously complex, submitted to constant change and practically impenetrable even to the experts. This has also had immediate repercussions at litigation level, in such a way that our courts are put under great pressure if they really want to offer the service to which they are entrusted.

The extent and success that the use of ICT have had in other areas, particularly the management of public services, has meant that during the last decade the judicial powers from the majority of developed countries have started to implement electronic solutions in the government and administration of its services. There is little doubt that the capacity, turnover, and output of our judicial system could be markedly improved and that ICTs could contribute to the most efficient way of achieving that improvement.

It is often expounded that since the domains of law and justice are very bureaucratic fields and at the same time bound by a plethora of procedures, the resistance to change is strong. Certainly, there is a lot of reason in this analysis. However, it is also possible that the slow uptake and problems encountered in the introduction of ICTs into the world of justice—not taking into account the idiosyncrasies and specific problems of each country—could also lie with the need of judges and lawyers to minimise the risks implied by the implementation of new methods of courts management where the consequences on the global system have not yet been fully evaluated. We are, as we have said, in a very uncertain territory, and there is nothing lawyers fear more than uncertainty. When we ask the real actors—judges, lawyers, prosecutors, and so on—their opinion, the answer is always the same: technologies YES, but they have to guarantee the basic principles of legal certainty, integrity, and authenticity of documents, data privacy, and an independent judiciary. So, currently there is consensus—and empirical evidence, as some of the contributions of this volume show—in the affirmation that the application of ICTs in courts carries with it a multitude of benefits. Among the benefits, we should mention:

- **A more efficient judicial system** in the way it increases productivity and diminishes costs of transaction from a system which, as we have said, is highly information intensive;
- **A more effective judicial system**, by reducing the duration of procedures—thus saving both time and money—and through putting systems for document resource administration as well as other associated tools (video-conferencing, software for working in collaboration online, etc.) within the reach of judges and courts;
- **Increasing the citizens' level of access to the judiciary** by providing the best information available and a better understanding not only of the way the courts work but also, more importantly, of the legal instruments in their reach to ensure recognition of their rights;
- **Improved transparency** of the way the judiciary works, in that the technologies facilitate an improved control of cases and allow a better qualitative evaluation of outputs;

- **Increase in the confidence of citizens and business in the judicial system**. The sum of which results in a,
- **Greater legitimacy** of judicial power.

New forms of law and new doctrinal questions are arising due to the new economic and social realities driven by technological changes. Changes in the models of administration, the rules and procedures of our laws and statutes, cannot be implemented without going deeper into what our judicial powers are grounded on. The reform of the management of the judicial process following the widening use of networks is a must because legal efficiency and effectiveness are not only requirements but also a fundamental part of the due process. This additionally implies the elimination of unnecessary delays and a more collective, horizontal, and collegiate management of the courts.

It is clear that technological advances will not be held back, and judicial powers would do well to understand this and to respond positively to the challenge, putting trust in the incorporation of technologies into their everyday work, albeit in a way that is sure to guarantee keystone legal principles which safeguard democracy, the rule of law, and the fundamental rights of citizens.

An in-depth study is therefore required in order to look at and reflect upon the phenomena taking place, in order to determine with greater precision the direction in which the changes cited are leading us and the way in which to avoid risks. To this end, we contribute this collection of articles, written by a group of researchers and experts in the field.

The book includes contributions from different parts of the world (Australia, Belgium, Brazil, Italy, Russia, Spain, or the United States of America). However, this is not the most important aspect. Chapters have been written by world leading researchers on e-justice working from the most prestigious research centres in this field, that is, the *Research Institute on Judicial Systems of the Italian National Research Council* in Bologna (Italy), the *National Center for State Courts* of the United States of America, the *Institute of Law and Technology* at the Universitat Autónoma de Barcelona (Spain), or the *Centre de Recherches Informatique et Droit* in Namur (Belgium).

The chapters have been organised into two sections. In the first section, entitled **E-Justice and Change in the Administration of Justice**, we have included those articles that try to show the impact of information and communication technologies on the culture and the organisation of the administration of justice, and how they have helped to improve its effectiveness and efficiency. There are many elements that are analysed in the section: cultural change, organizational change, strategic plans, privacy, transparency, and corruption in the court system, knowledge management, decision making, and security and risk management.

Marco Fabri, in *The Italian Style of E-Justice in a Comparative Perspective*, presents some of the findings of an ongoing research on e-government in judicial administration. It illustrates how European Union countries are harnessing information and communication technologies to support the operation of their legal systems. The chapter not only identifies different strategies as well as tools developed, but also common trends between European countries. In particular, the top-down bureaucratic logic of actions to implement information and communication technologies in Italy is analysed. Finally, the lack of exchange of information on e-justice between European countries and the problem of interoperability between organisations and systems is noted.

In *E-Justice and Policies for Risk Management,* Davide Carnevalli tries to explain why only a few countries are using information and communication technologies in operational systems in justice. From risk management theories, the author provides indications to support the development

of information and communication technologies strategies in the development of judicial electronic data interchange.

Marta Poblet, Joan-Josep Vallbé, Núria Casellas, and Pompeu Casanovas present in *Judges as IT Users: The Iuriservice Example* the main conclusions of a research project whose main object was to identify, organise, model, and use practical knowledge produced by judges in judicial settings. They describe Iuriservice, a Web-based system intended to provide the Spanish judiciary with a tool to facilitate knowledge management in daily judicial practice.

In *The Potential of Computerized Court Case Management to Battle Judicial Corruption*, James E. McMillan presents opportunities to develop processes and procedures that can battle corruption. In particular, the chapter provides information on the development of a computerised court management system implemented in Bosnia and Herzegovina and looks towards future potential developments in this area. The use of this system also entails greater efficiency and speed in the daily work of the courts.

In *Justice Beyond the Courts: The Implications of Computerisation for Administrative Justice in Social Security,* Michael Adler and Paul Henman consider the implications of computerisation for administrative justice in the field of social security. They attempt to determine whether, and if so how, the use of information and communication technologies affects the balance of power between competing models of decision making and also those who seek to promote them. The chapter is based on a study carried out by the authors in 13 OECD countries. This study allows us to see different effects of computerisation in different models of decision making in administrative justice.

The first section is closed with a chapter written by Melissa H. Conley Tyler on *Online Dispute Resolution*. In this chapter, the main uses of information and communication technologies to resolve disputes and conflicts are shown. In particular, the emergence of the area called online dispute resolution, which is used in new areas such as domain name or e-commerce, is analysed.

The chapters included in the second section, entitled **Experiences of E-Justice in the World**, start from the explanation of the evolution of the uses of information and communication technologies in the court system and the description of the different applications used, and goes on to try to explain why each country has reached a certain level of e-justice development.

Agustí Cerrillo, in *E-Justice in Spain*, sets out the different applications of information and communication technologies within administration of justice in Spain. The chapter, after analysing the institutional framework of justice in Spain, shows its impact in the development of e-justice.

Francesco Contini and Antonio Cordella, authors of *Italian Justice System and ICT: Matches and Mismatches Between Technology and Organisation*, analyse matching and mismatching between institutional and technological constraints and how the organisation of judicial offices can influence to a great extent the success or failure of information and communication technologies in the judiciary. They see how although information and communication technologies are mainly conceived as tools to improve management, efficiency, and consistent applications of rules, they have failed to improve the judiciary in Italy.

Roberto Fragale and Alexandre Veronese in *Electronic Justice in Brazil* examine how information and communication technologies make their way through and are shaping the future of the Brazilian judiciary. They show three stages in the development of e-justice in Brazil that have positioned this country as a leading country in e-justice in Latin America.

J. William Holland, in *Digital Government and Criminal Justice*, outlines the history of digital government in criminal justice in the United States of America and sets out questions about the

impact of this new model of justice on traditional constitutional safeguards, including individual liberty and privacy.

In *The E-Court Roadmap: Innovation and Integration of an Australian Case Study*, Sandra Potter, Phil Farrelly, and Derek Begg show rapid advances of information and communication technologies in Australian courts. It shows how despite early resistance and a reactive approach to technology, Australian courts have been transformed by the challenges of implementing the use of information and communication technologies.

Yves Poullet, in *The Belgian Case: Phenix or How to Design E-Justice Through Privacy Requirements and in Full Respect of the Separation of Powers?*, after setting out the main characteristics of the Phenix project, a global project for the whole computerisation of all courts and tribunals in Belgium, analyses its relation to data protection and privacy.

Alexei Trochev, in *Courts on the Web in Russia*, analyses the use of Web sites by Russian courts and shows its potential for improving the administration of justice and the image of judiciary in the eyes of the public.

Finally, in *E-Justice: An Australian Perspective,* Anne Wallace explains nearly two decades of experience the Australian courts have in the introduction of information and communication technologies. The chapter shows how the implementation of ICT in courts has concentrated on enhancing traditional methods of delivering justice and the potential of technology in the future.

ENDNOTE

1 Vid. Benyekhlef, K., Sénécal, F., 2007: "Groundwork for Assessing the Legal Risks of Cyberjustice", Manuscript. See also Susskind, R., 2003: *Transforming the Law. Essays on Technology, Justice and the Legal Marketplace*. Oxford: Oxford University Press.

2 Leeuwenburg & Wallace, 2003, p.11.