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Looking for common solutions to the courts' problems: The Italian Observatories of civil justice

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Abstract: The Italian judicial system has been living a long season of strong criticality. Over the past 30 years, several factors have aggravated the difficulties of the system operation. To solve this situation, in the period 2005-2013, Italian Governments have developed 12 major reforms of the Italian Code of Civil Procedure. Paradoxically, the succession of continuous reforms has ended to slow the activity of the practitioners, called constantly to adapt to the change of the "rules of the game", with obvious repercussions on the functioning of the courts and, indirectly, on citizens' rights. The constant changes of the Italian Code of Civil Procedure have pushed many "actors" to establish opportunities to meet, in a more or less formalised and structured way, in order to discuss the possible "practical translation" of the regulatory norms. In this sense, the article intends to present and critically discuss the phenomenon of the "Observatories of civil justice", which represents a unique experience in the European panorama.

Keywords: Reforms, judicial system, governance, civil justice, observatories.

Introduction[3]

The word "innovation" is one of the most widely used labels of recent times. In general, people always say "conducive to innovation": the common sense of the concept, in fact, conveys something right, positive, charming, to support without any hesitation. A simple on-line search of this term produces a myriad of results: contributions, theories and empirical references. Even in the legal field, professionals eagerly declare themselves ready to innovate, to eradicate inefficiencies and contribute to the improvement of the service. Despite all this, beyond the physiological resistance to change, there is an increasing evidence indicating that, especially in the judicial systems of the southern Europe, there is a paradox: regardless of proclamations, in fact, reforms are rarely fully implemented and investments to support the innovation hardly ever produce any actual, widespread and long-lasting results.

In light of this premise, the paper intends to present and critically discuss the Italian case. The fundamental hypothesis of this research is that the reforms of recent years have not only failed to eliminate the inefficiencies, but have produced new problems and diseconomies both

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for judicial offices and legal practitioners, with repercussions on the functioning of the courts and, indirectly, on citizens' rights.

This article bases its arguments on the results of a long period of empirical research on the Italian judicial system. From a methodological point of view, the research has exclusively used qualitative methods, such as semi-structured interviews, participatory observation and documental analysis. It should be noted that the article will refer only to civil sector and will not consider the aspects and peculiarities of criminal justice.

I. A never-ending season of reforms

Until now the Italian judicial system has been living a long season of high criticality (CEPEJ, 2012, 2014; EC, 2015). Over the past 30 years, several factors have aggravated the difficulties of the system operation. In particular, the increasing rates of litigation, the lack of human, financial and material resources (Van Dijk and Dumbrava, 2013), the ever-increasing duration of proceedings and the general atmosphere of distrust of citizens and firms have had a direct impact on the Italian judicial administration (Sciacca *et al.,* 2013; Castelli *et al*., 2014).

In the last 20 years, many regulatory reforms have been introduced in the Italian judicial system to remedy this situation. Since 1995, the 13 successive governments in the country leadership have introduced 22 major reforms of Code of Civil Procedures (c.c.p.). The changes have been so fast, repeated and significant that some authors have spoken explicitly of a "tsunami of civil justice reforms" (Costantino, 2005a: 1167).

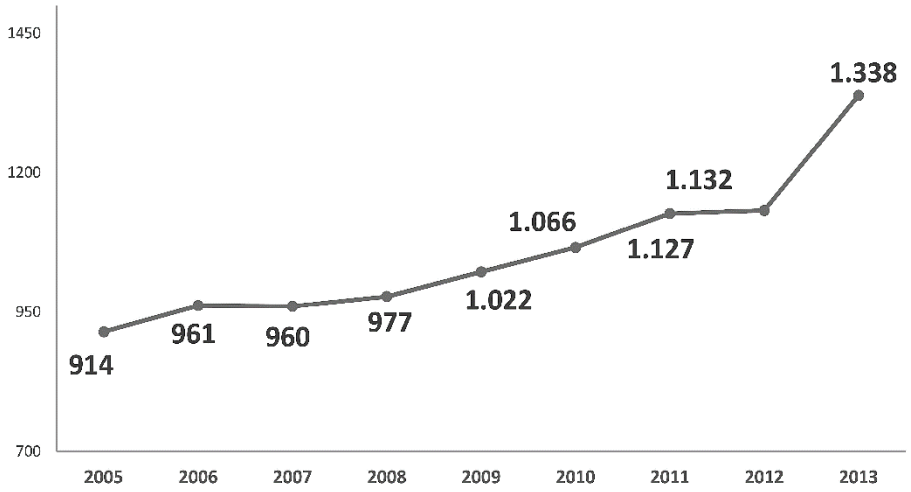
Without taking into account the latest measures taken by the Renzi's Government (Decree-Law 24.06.2014, n. 90, converted in Law 11.08.2014, n. 114; Decree-Law 12.09.2014, n. 132, converted in Law 10.11.2014, n. 162), which effects will be evaluated only in the coming years, in the period 2005-2013, the six Italian Governments have developed numerous projects of reform of civil justice. Many proposals were never brought to completion and, despite having been for long periods the objects of discussion in the academic world, in the public debate, in the decision-making arenas and within the different professional categories, they have remained only on paper, without lead to a regulatory text. Alongside these unfinished projects, in the eight-year period, have been enacted 12 major reforms of the Code of Civil Procedure (c.c.p.):

- Decree-Law 14.03.2005, n. 35, converted in Law 14.05.2005, n. 80;
- Law 28.12.2005, n. 263;
- Legislative Decree 02.02.2006, n. 40;
- Law 24.02.2006, n. 52;
- Decree-Law 25.06.2008, n. 112; converted in Law 06.08.2008, n. 133;
- Law 18.06.2009, n. 69;
- Legislative Decree 04.03.2010, n. 28;
- Law 04.11.2010, n. 183;
- Decree-Law 13.08.2011, n. 138, converted in Law 14.09.2011, n. 148;
- Decree-Law 22.06.2012, n. 83, converted in Law 07.08.2012, n. 134;
- Decree-Law 18.10.2012, n. 179, converted in Law 17.12.2012, n. 221;
- Decree-Law 21.06.2013, n. 69, converted in Law 09.08.2013, n. 98.

These interventions have concerned both the so-called "judgments of ordinary cognition"[4] and specific sectors, such as executions, bankruptcies, employment and labour. The common denominator of these reforms was the reference to simplification, competitiveness and development, in order to encourage growth and economic recovery. In this framework, it is necessary to remember the introduction of mediation and the review of the institutions of conciliation and arbitration. All these measures were inspired by the urgency of accelerate the judicial proceedings, simplify the procedures, reduce the incoming flows and eliminate the backlog. Some articles have been changed several times: for example, article 420 c.c.p. on the discussion hearings in the labour proceedings has been re-written 3 times in the space of 22 months.

Beyond the announcements, what is the real effect of these interventions? If we consider an indicator: the average length of ordinary cognition proceedings in the Italian first instance courts – which represent the vast majority of civil and commercial lawsuits – it is possible to see that in the period 2005-2013 the duration has not diminished, but paradoxically has increased of 424 days, equal to 14 months, with an ever-increasing curve (Figure 1).

Figure 1. Average length of ordinary cognition proceedings in the Italian first instance courts (in days)



Source: Ministry of Justice (2015).

In general, empirical evidence shows that the recent reforms have completely failed to eliminate the inefficiencies of the Italian judicial system. This data (Table 2) shows in an extremely clear way that the attempt to solve the problems of justice only through regulatory interventions, mostly in the procedural context, is an illusory ambition, which risks to produce a set of workarounds, simplistic and uneven solutions.

[4] The ordinary cognition proceedings represent the vast majority of civil affair disputes. In these proceedings, judge is called upon to settle a dispute between the parties, usually through a decision in the form of reasoned judgment.

Table 1. Average length of proceedings (in days)

	2005	2013	Δ
Court Cassation	1.082 days	1.222 days (40 months)	+140 days
Appeal Courts	846 days	1.061 days (35 months)	+215 days
Juvenile Courts	641 days	668 days (22 months)	+27 days
Ordinary Tribunals	485 days	423 days (14 months)	-62 days
Justice Of The Peace Offices	240 days	345 days (11 months)	+105 days

Source: Ministry of Justice (2015).

Beyond the possible effects of these regulatory changes, the sequence of reforms had a direct impact on the professionals. Any reform requires, by definition, a certain period of time to be fully transferred into the operators' working practices, with obvious repercussions on the functioning of the courts and, indirectly, on citizens who need to protect their rights. The regulatory uncertainty creates instabilities. Lawyers and judges, in fact, were constantly asked to adapt their daily work to the changes of the "rules of the game". For this reason, the continuous changes of the procedural rules became a widespread problem – rather than a solution – for all legal practitioners.

This reflection will be taken up in the next two paragraphs, since it represents one of the main issues to the Observatories experience. The next section will present just the case of the Italian Observatories of civil justice.

II. The Observatories of Civil Justice

The "Observatories of civil justice" (in Italian, "*Osservatori sulla giustizia civile*") – as these entities define themselves – are spontaneous groups that have been developed in various Italian judicial offices. These interprofessional working groups represent a totally unique experience in the European panorama. They work to define and promote shared solutions to the interpretation and the organisational problems that affect the courts (Costantino, 2005b; Caponi, 2007; Verzelloni, 2009, 2015; Berti, 2011).

The idea of these groups appeared in the first half of the 90's, but it was developed mainly over the last 15 years. The constant changes of the Italian Code of Civil Procedure have pushed – and continue to push – many different "actors" to establish opportunities to meeting, in a more or less formalised and structured way, to discuss the possible "practical translation" of the regulatory norms.

The interview excerpts below highlight, through the protagonists' words, the reasons that

led to the Observatories emergence. These groups, in fact, represent a local functional response to the everyday problems faced by the operators, such as the continuous changing of the procedural rules, the debasement of their work, the excessive number of backlog and the scarce predictability of judicial decisions, especially in terms of operating procedures for the proceeding files management. The Observatories were created to seek out practical and shared solutions for a better work, with more dignity, taking into account the needs of professionals who work in the court at different levels.

> We started in 1994, to discuss the reform of the Code that would take effect in 1995. We wanted to reflect on how the rules would change our work organization. [...] Today, things are not very different, due to the flow of new regulations in the past few years.[5]

> The Observatory started with us – the judges. We were all just newly appointed, we found an enormous amount of work: 1800 files per judge. [...] We could not go on like this. Our work was no longer decent. [...] We began to discuss with the lawyers and the court staff in order to find common solutions that would allow us to work.[6]

> The purpose of the Observatory is to seek out "virtuous practices", in order to do a better work. [...] It is not possible that the same injunction is rejected in a room and accepted next door. When I ask for justice, I must know not the final result, but at least how my practice will be treated.[7]

Since 1993, the year of the foundation of the first Observatory of Milan, these experiences have been spread in many other locations: currently there are at least 30 such Observatories in many ordinary courts, although cases have been reported of dissolution – as Avellino – or partial inactivity – as Bari and Messina. These particular communities, as mentioned, are spontaneous phenomena that, in the vast majority of cases, have developed from the "bottom-up". Such groups have exceeded the role divisions and are not affiliated with any professional, political or trade union entities. The Observatories are therefore "changing agents" or, quoting an interviewed lawyer, "cultural engines" that, in particular, are contributing to the gradual overcoming of the "professional barriers" between lawyers and judges.

> The Observatories are free: they do not make specific reference to any professional, trade union or political entity.[8]

> The Observatories are spontaneous aggregations of judges and lawyers, who are tired of working under bad conditions. To improve our work, we can no longer operate separated from each other. [...] The idea is to try to bring together those who want to enhance the dignity of their work. [...] The Observatory is a «cultural engine».[9]

The initiators are usually lawyers or judges and, rarely, chancellors and university professors. Only in some situations, the vertices of court or Bar Association sponsored such initiatives. Most of the members of the Observatories are volunteers, who willingly commit their time and participate with their individual capacities. However, there are exceptions: in some contexts, the Observatories are composed by delegates appointed by the different professional groups (e.g. Bologna). The internal composition of the Observatories is very variable. In some groups, lawyers are the majority, while in others it might consist of a large

[5] Interview with a lawyer of the Observatory of Bologna.
[6] Interview with a judge of the Observatory of Reggio Calabria.
[7] Interview with a lawyer of the Observatory of Bari.
[8] Interview with a judge of the Observatory of Milan.
[9] Interview with a judge of the Observatory of Napoli.

number of judges and court clerks. Other frequent participants are university professors, experts, consultants, interns, trainees, IT specialists and judges of peace. Given their technical and specialised nature, the Observatories are never composed of "ordinary" citizens. In some cases, the rotation is frequent, especially among lawyers (e.g. Reggio Calabria), but almost never affects the original core of "promoters".

The interview excerpts show that the Observatories are always composed by lawyers and judges, who participate voluntarily in these initiatives. In this sense, it is interesting to note that lawyers, although technically "users" of the justice system, are identified by magistrates as being part of their organization, or as "internal actors" of the courts.

> The minimum requirement to speak about an Observatory is to count with the participation of both lawyers and judges. Observatories are working groups made up of «good will» people.[10]

> The premise is that things work out badly, but we can make them work better [...] eliminating our self-reference. [...] We all must be involved in the discussion. We have to accept the idea that we are all part of the same organization.[11]

The Observatories are "participative structures", which aim to involve new people, willing to provide their input. For this purpose, the communities use mailing lists, web sites, public events, publications, as well as rely on word of mouth. The encounters are basically of three types: plenary sessions, coordination meetings and restricted working groups. Participants communicate via e-mail, as well as through a dedicated mailing list that allows a wider dissemination of information and documents – this applies, in particular, in the cases of Milan, Reggio Calabria and the National Movement.[12]

In the course of their evolution over time, almost all of the Observatories have established roles and internal bodies; in some cases, the path of institutionalisation has transformed those that were originally created as informal comparison groups into articulated, formally defined structures, ruled by the statutes and internal regulations. In some situations, this metamorphosis has paved the way to local legitimation. After this stage, in fact, some Observatories have got the right to speak at the opening ceremonies of the Judicial Year (e.g. Florence and Milan) and, pursuant to a resolution passed by the Superior Council of Magistracy, to express non-binding opinions on the organisational "tables" of the courts (e.g. Florence, Milan, Turin and Verona).

Many Observatories have defined one or more referents, other secretariats or coordination structures and other nominated specialised working groups on specific topics (e.g. mediation, legal fees, telematic, internships, bankruptcies, minors, etc.). Only a few Observatories (e.g. Bari, Modena and Verona) have developed stable forms of funding: most of these organisms, in fact, are self-financed by the participants themselves.

In general, the stated objectives of the Observatories are:

- spread of a "culture" based on comparisons;
- search for solutions to the relevant courts' problems;
- research and dissemination of the "best practices";
- definition of shared interpretative and behavioural practices;
- accountability of the "actors" in the courts;
- updating and training.

[10] Interview with a lawyer of the Observatory of Bologna.
[11] Interview with a judge of the Observatory of Cagliari.
[12] Since 2004, the "National Movement of the Observatories" operates as a network, linking the different experiences and spreading the "model" of the Observatories in other judicial offices.

Quotes reveal the main goal of all Observatories: to develop locally, at individual courts, a permanent dialogue between lawyers and judges. These groups appear, in fact, in specific locations of face-to-face discussions, oriented to the search for common solutions to solve the courts' problems. The Observatories represent a completely new experience, very far from the controversies and dialectical collisions, which have characterized the relations between lawyers and judges, especially in the past.

> The main goal is the dialogue between lawyers and judges. [...] That was almost entirely missing. [...] With the Observatory we have created a meeting place, to improve the service through simple shared solutions.[13]

> The Observatory's main goal is methodological: to create a method of participation, of cooperation between all those involved to solve everyday problems, namely the interpretative and organizational issues, which impact on our work.[14]

> The Observatory is a studying place, of common processing, interprofessional. [...] Here we discuss, in a collaborative way, while recognizing different roles. [...] Outside the Observatory this is impossible.[15]

The Observatories deal with a plurality of activities, including, in particular:

- organize workshops, conferences and debates;
- archive the local jurisprudence;
- elaborate and disseminate questionnaires;
- define some specific "hearing protocols".

The Observatories regularly organise numerous public events, both for training and "popular purposes". Through these initiatives, on the one hand, these communities are looking to involve new participants and, on the other, to present the group's activities to the wider public, including gaining legitimacy and approval in civil society. The topics range from specialised subjects to issues of general interest. The speakers are usually members of the Observatories, often joined by academics – mostly lawyers, but also organisational scientists, sociologists, linguists and statisticians. The meetings are also attended by professionals from other disciplines (e.g. notaries, accountants, etc.). Some of the Observatories work to collect, systematise and share local jurisprudence. Among others, Turin has set up a special working group for the creation of a judgements database, in collaboration with the local University.

Several Observatories have compiled and administered some questionnaires. These initiatives represent an attempt – more or less structured – to collect some shared interpretative and behavioural practices. These questionnaires are often a starting point that leads to the development of a hearing protocol or its update. The Observatories of Florence, Milan and Verona make a regular use of this tool.

Finally, the vast majority of the Observatories devote most of their forces to the definition of some specific hearing protocols. This activity is central to the life of these communities and, in many cases, justifies their existence.

III. The Hearing Protocols

The "hearing protocols" (in Italian, "*protocolli di udienza*") – as they are called by the members of the Observatories – are documents that collect, comment and regulate some

[13] Interview with a judge of the Observatory of Modena.
[14] Interview with a judge of the Observatory of Florence.
[15] Interview with a judge of the Observatory of Genova.

shared interpretative and behavioural practices. These documents are closely linked to the contexts in which they were compiled: with the exception of some isolated cases, the protocols are a "product" of the comparison that takes place within the Observatories. These documents formalise common ways of acting and interpreting the written governing procedures and functioning rules of judicial offices.

The statements of the interviewed judges and lawyers allow, once again, an evaluation of the Observatories' intentions. The protocols represent "models" of shared behaviour, considered virtuous by the operators themselves, to ensure the proper conduct of the hearings. Although not binding, these documents are a "cultural tool" that, according to the members of the Observatories, should guide the interpretative and the behavioural practices of all the professionals.

> The civil law is the "sick" of our society. [...] We try to reverse the course. [...] The purpose of the protocol is to bring the operators closer to functional and «positive» behavioural models, but then everyone is free to decide whether to adopt them or not.[16]

> We mainly achieved "cultural" results with the protocol. We discussed and we understood that the problems were in the hearings management. [...] Now there is a sort of motion of "social stigma" against judges who run the hearing in a different manner from the one recommended in the protocol.[17]

These texts deal with various issues, both general as, for example:

- adjournments;
- conduct of the hearings;
- priorities of treatment;
- attempts at reconciliation;
- minutes;
- attorneys' fees;
- notifications;
- telematic communications;
- structure of acts of defenders and judges.

And highly specialised issues, such as:

- witness testimony of the minors;
- concessions in cases of conflictual separation;
- compensation for damage caused by road accidents;
- executions;
- bankruptcies;
- leases;
- labour and social security.

The quotes below show some examples of the hearing protocols.

> Art. 4. Both the judge and the defenders will put great care to comply with the time fixed for the beginning of a hearing and for dealing with each proceeding. [...] Art. 11. Judges and defenders will take care to come to the hearing with an actual knowledge of the case, so as to: ensure the effective treatment of the issues relevant to the proceedings; the decision at the hearing is made with due priority to substantive and procedural matters.[18]

[16] Interview with a lawyer of the Observatory of Milan.
[17] Interview with a judge of the Observatory of Roma.
[18] Excerpt of the hearing protocol of the Observatory of Modena (2007).

> Art. 3. To identify the deadline for the entry of appearance of the actor, as provided by art. 165 c.c.p., the court shall have regard to the time of completion of the notification to the defendant and not to the time of delivery of the act to the judicial officer. Art. 3-bis. It is desirable [...] that the defender ensures the delivery of notice to the respondent within 20 days prior to the hearing pursuant to art. 183 c.c.p. [...] Art. 5. At the hearing, pursuant to art. 183 c.c.p., will be decided instances under artt. 648 and 649 c.c.p., in cases of opposition to the injunction and requests under art. 186-bis and 186-ter c.c.p., in compliance with the adversarial principle.[19]

> Art. 2. The hearing of witness testimony of a minor should be organised in a way that prevents any exasperation of the conflict and, in any case, during a scheduled hearing, to be organised preferably outside school hours, in a suitable environment and behind closed doors. [...] Art. 5. The hearing will take place only in the presence of the minor, the titular judge, the possible auxiliary and, if such is appointed, defence attorney of the minor or the minor's curator. In order to avoid constraints, it does not seem appropriate to consider the presence of the parties and of the defence attorneys. The parties and their attorneys will therefore consent to leave and move away from the hearing room, to assist in making the atmosphere less threatening.[20]

At the national level, more than 90 protocols have been prepared over the years. The first document of this kind was made in Salerno in 2002. Some of the Observatories have developed various protocol texts – in this sense, the most active realities are Bologna (12), Milan (10), and Verona (9).

The genesis of a hearing protocol is often a complex negotiation process, which develops in multiple steps. As evidenced by the quote below, incidents of conflict between members of the Observatories are very frequent, especially on the selection and the definition of the interpretative and behavioural practices to be included in the hearing protocols. In this sense, the Observatories are "places of mediation", which try to identify the solutions that meet the needs of all operators.

> Inside the Observatories you argue, you are always discussing, but in the end, you come out with a common solution. This is the spirit of the Observatories.[21]

A large number of Observatories have established some internal working groups dedicated to these documents. These units operate to prepare drafts to be submitted to other members. The groups are usually composed of magistrates and lawyers, and in isolated cases chancellors and academics. Some communities have formed a single group – as Turin, Salerno and Reggio Calabria – others have created several different ones. For example, the first hearing protocol of Verona has been realised through the parallel work of five teams, which later have presented the results of their work at several public discussion events.

The Observatories also examine the protocols produced in other contexts. These texts are often a source of ideas and practical solutions, to be adapted and, if so, exported to the concerned entity. Only in isolated cases, this activity takes shape of a simple “copy-and-paste” of documents produced elsewhere.

There are four main ways to promote the hearing protocols dissemination: posters in the court; websites and mailing lists; public events; promotion by the vertices of court and Bar Association. In particular, the dedicated events represent a channel to collect suggestions, and the approval of the presidents of the court and of the presidents of the Bar Association is a powerful “lever” for the legitimacy of the protocol.

[19] Excerpt of the hearing protocol of the Observatory of Florence (2008).
[20] Excerpt from the hearing protocol on the subject of minors of the Observatory of Milan (2007).
[21] Interview with a lawyer of the Observatory of Napoli.

Some Observatories periodically update the text of the hearing protocols, especially as a result of legislative changes. Only rarely, these interventions lead to the drafting of a new protocol. By contrast, no Observatory has established mechanisms to monitor any practical application of the hearing protocols. If we exclude the case of Rome – where in 2003 was distributed a questionnaire which, however, got only a small number of responses – the other Observatories do not seem to have this need. Thus, there are no estimates of practical adhesion of the professionals, or application of the rules contained in the protocols in the local courts of the respective Observatories.

IV. Concluding remarks

Empirical evidence shows that the attempt to solve the problems of justice only through regulative interventions, mostly in the procedural context, is an illusory ambition, which risks to produce a set of workarounds, simplistic and uneven solutions.

Notwithstanding that, as pointed out by several authors (Chiarloni, 1999; Costantino, 2005a), the Italian civil procedure system requires a revision – with a view to streamlining procedures, eliminating cumbersome bureaucracy, adaptation to the changes introduced by the so-called "On-Line Civil Trial" (PCT). Overall, difficulties of the Italian judicial system cannot be attributed only to defects and/or shortcomings in the procedural rules. Problems of the Italian justice also stem from issues and implications of an organisational nature that, in some ways, make the Italian case a *unicum* in the European scene (Di Federico, 1975; Fabri *et al.*, 2003; Zan, 2003; Verzelloni, 2009; Guarnieri, 2011; Piana, 2014).

In this framework, the Observatories of civil justice are a multifaceted and complex entity, which lends itself to different interpretations. The case allows us to analyse many of the issues currently under discussion in the broad debate on the Sociology of Law (Santos, 1995; Arnaud and Fariñas Dulce, 1996; Pedroso and Ferreira, 1999; Gessner and Nelken, 2007; Ferrari, 2012).

Firstly, the phenomenon of the Observatories is totally unique in the European legal panorama. In no other country have been developed interprofessional working groups of this nature. The Observatories, in fact, are places of face-to-face meetings between operators from different professional, cultural and political backgrounds. These communities of volunteers, initially created as informal groups of "good will" people, have been institutionalized to become real organizations, with a structure and roles. Therefore, the Observatories are configured as places of continuous, systematic and structured discussions among professionals. These realities are points of reference for many operators.

Secondly, the Observatories provide workable answers to the problems perceived by the professionals, who attend the courtrooms. These groups are set up at territorial level, precisely because they deal with the interpretative and behavioral practices, that impact on the operators' daily activities. These groups do not discuss the interpretation of the written laws in abstract, but they try to "translate" the regulatory provisions, in order to adapt them to their specific situation. In this sense, the Observatories were founded precisely as a response to the ever-changing procedural rules, to the difficulties of operation of the courts, to the lack of predictability of the procedures and, in general, to the gradual degradation of the professionals' work.

These groups base their action on the "method of comparison" among operators from different backgrounds (lawyers, judges, clerks, etc.). These communities are, therefore, arenas for the exchange of experience and practical knowledge, or, in other words, contexts for continuous and shared training. The Observatories are familiar with the problems faced by the Italian courts, precisely because they analyse them from an interprofessional

perspective.

The Observatories are specific "change agents", who promote the overcoming of "professional barriers", especially between lawyers and judges. These groups, in fact, are contributing to the construction of some "bridges" between Italian lawyers and magistrates who, until recently, appeared in all respects as two distant "islands", unable to communicate with each other. In this sense, the real result of the Observatories is that they have created the conditions for the development of a permanent dialogue between judges and lawyers – as confirmed by the quotations in the article – who started seeing each other as an "indispensable partner".

The available statistics do not indicate any causal relationship between the presence of an Observatory and the efficiency of the local court, in what concerns the timing to settle a dispute, the ability to reduce the backlog and the efficiency of the services provided to the citizens. However, this conclusion does not conflict at all with the community's stated objectives. The purpose of the Observatories is to become a "cultural engine" or, in other words, to spread the "method of comparison" through the different operators.

In this sense, the hearing protocols have a strong symbolic value. Although there are no reliable data on their enforcement, these documents constitute some "virtuous models", defined by the same professionals. As a result of agreements between the operators, the hearing protocols may serve to limiting boundaries for the discretion of individual professionals who, especially on certain issues, risk to turn into "free agents". Although not formally binding, the protocols define a set of practices that can guide behaviour and decisions of the "actors" who work at different levels in a court (judges, lawyers, clerks, etc.). Given their covenantal nature, the protocols are not only simple catalogues of rules of "good behaviour", but they can also become an "accountability tool", even if informal and soft, to evaluate and, potentially, to sanction, under the aspect of reputation, those who do not operate in the agreed manner.

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