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THE ROLE OF THE COURT OF APPEALS TO TACKLE CASE BACKLOG: THE FLEXIBILITY TO RESPOND ON AN EXPEDITED BASIS TO MATTERS BROUGHT BEFORE IT

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I. The Appellate Court: The General Perception Of The Right To a Court In Europe

A modern, fair, and reliable system of justice requires that all Court users have **equal access to services** and **equal treatment** from judicial and administrative bodies. The latter, in turn, requires the recognition of undeniable procedural rights. In Europe, these rights have been clearly stated and balanced under the European Convention on Human Rights.

II. The Right to a Court

The right to a fair trial, guaranteed by Article 6 § 1 of the European Convention on Human Rights, must be construed in the light of the rule of law, which requires that litigants should have an effective judicial remedy enabling them to assert their rights[1]. Everyone has the right to have any claim relating to his "civil rights and obligations" brought before a court or tribunal. In this way Article 6 § 1 embodies the "**right to a court"**, of which the **right of access**, that is, the right to institute proceedings before courts in civil matters, constitutes one aspect[2].

However, **the "right to a court" and "the right of access" are not absolute**. They may be subject to limitations, though the latter must not restrict or reduce the access left to the individual in such a way or to such an extent that the very essence of the right is impaired[3]. So it may be assumed that domestic legal systems have a margin of flexibility in regulating those rights.

In any case, the right to a court has to be practical and effective. Notwithstanding the possible presence of some statute limitations, it is commonly assessed that the right of access to a court must be "**practical and effective**" [4]. For the right of access to be effective, an individual must "have a clear, practical opportunity to challenge an act that is an interference with his rights"[5]. The rules governing the formal steps to be taken and the time limits to be complied with in lodging an appeal or an application for judicial review are aimed at ensuring a proper administration of justice and

[1] Article 6 of the European Convention on Human Rights – Right to a fair trial "1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice. 2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law. 3. Everyone charged with a criminal offence has the following minimum rights: (a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him; (b) to have adequate time and facilities for the preparation of his defense; (c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require; (d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him; (e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court." See also, Běleš and Others v. the Czech Republic, § 49.

[2] Golder v. the United Kingdom, § 36

[3] Philis v. Greece (no. 1), § 59; De Geouffre de la Pradelle v. France, § 28; Stanev v. Bulgaria [GC], § 229

[4] Bellet v. France, § 38

[5] ibid., § 36; Nunes Dias v. Portugal, regarding the rules governing notice to appear

compliance with the principle of legal certainty [6]. That being so, the rules in question, or their application, should not prevent litigants from using **an available remedy** before an independent court[7].

What stated above in terms of right to a court underlines that an Appellate Court, as a court of second instance, is not indispensable if there is a Supreme Court at the last level, since for the justice system to be fair it is sufficient to provide for **an available remedy** before an independent court with full jurisdiction and an application for judicial review on grounds of legitimacy.

III. The Importance of the "System Response Time" in Judicial Services

Judicial services of mature democracies are evaluated not only through the capacity of the courts to give an available remedy to a litigant, but also through their **administrative ability and flexibility** for providing a timely and adequate response to a massive request of justice in a ever changing world.

Consequently, in Europe, the "**system response time**" of a justice system is evaluated today under different points of view, namely in terms of **quality, quantity and good timing of proceedings at reasonable costs[8].** All these requirements need to be enforced by an impartial and independent judiciary that works in full respect of the due process rule.

These elements, obviously, do not necessarily head in the same direction. On the contrary, they can be in conflict with each other.

For example, it may result that even a well-reasoned decision may be perceived as fruit of a bad justice system if it is the result of an impervious or time and money consuming procedural track. In the same view, it is generally considered that a fast-tracked trial is not always compatible with a scrupulous search for truth and, at the appellate level, with accurate written reasons.

Today an easy access to justice implies choices and efforts in the administrative organization of the justice system that were unthinkable only some decades ago. Since quality, quantity and good timing at reasonable costs are forces that may struggle against each other, every domestic legislator has to identify **a rating scale** among them. In fact, the main task of a modern justice system is to check and balance the different competing forces through a **flexible organization** that complies with social expectations of good response and full respect of the principle of fair trial and parity of arms .

For example , the Italian experience has epitomized all the drawbacks related to negative records in terms of "system response time". The Italian system, allegedly poorly organized and inefficiently administrated to tackle an enormous quantity of case backlog growing year after year, it has been widely considered one of the most non-competitive systems of modern times, even if supported by an independent and committed judiciary. Time consuming proceedings strengthened the general perception of an instable and unreliable justice system, notwithstanding the fact that the final decision in most cases couldn't be really evaluated as a "product" of bad quality. By contrast, considering the possibility to correct human mistakes and to claim for judicial decisions before independent and professional judges, the quality of the Italian judicial system has been always unquestionably high. Professional judges are lifetime appointed, independent, irremovable and

[6] Cañete de Goñi v. Spain, § 36
[7] Miragall Escolano v. Spain; Zvolský and Zvolská v. the Czech Republic, § 51
[8] See the site of the European Commission for the Efficiency of Justice (**CEPEJ**) and its biannual activities: www.coe.int/T/dghl/cooperation/**cepej**/ .

continuously trained by an internal independent body[9] in order to perform at best. However, a judicial system that proves to be internally inefficient in order to cope with the quantity of demand of justice and individual expectations, judicial independence and constitutional guarantees can be perceived as a void privilege of a selected and untouchable caste.

It is therefore undeniable that most problems lie in the fact that, for a long time, the Italian system has admitted a **general high rate of instability**. Such instability of decisions means that civil decisions may undertake a long process in order to become definitive, but not that they are normally reversed at the upper level if appealed[10]. Disposition time for clearance (DT), in fact, should be better monitored in the future, since the average length of a first instance civil trial in 2014 was still 532 days[11].

Indeed, also the possibility to appeal against every first instance decision at fairly low costs for lawyers up to the third level of the judiciary increased the percentage of disputes that are brought on after the first decision. The third level could not be restricted with strong filters of admissibility since there are constitutional barriers for doing so,[12] while the Courts of second instance have worked as certifiers of the first decisions in most cases. The consequence of such nearly costless - and useless - access to justice was the possibility even for small law firms to handle a considerable amount of files at the same time. This resulted also in the impossibility for judges to cope with such a high flow of proceedings that caused delays and repeated adjournments of the time schedule.

Legislator's attempts to avoid such a lawyers' misbehaviour, in the past, proved to be in vain because of the huge backload that almost every civil judge had to deal with. This was the reason why deferrals of civil trials were welcomed by judges who had to handle many cases at every date.

In the first decade of this century, the amount of case backload to be done and the strict performance rules given by the High Council of the Judiciary spurred judges to work in a fast but less accurate way than in the past, causing an even larger increase in the number of appealed

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[9] The High Council of the Judiciary (Consiglio Superiore della Magistratura) and, since 2010, the Superior School of the Judiciary (Scuola Superiore della Magistratura).

[10] see CEPEJ report of 2016 on data until 2014, p.196 "As regards the " Disposition Time " the situation in Germany, Lithuania, Norway and Poland can be considered acceptable because the Disposition Time has remained below 200 days. Andorra, Slovakia and (slightly less so) France show a worrying trend, as they have a very high Disposition Time for civil and commercial litigious cases..... The situation should be closely monitored in 4 other states: Greece, Italy, Serbia and Turkey. The first two States have recorded a strong increase in the Disposition Time of civil and commercial litigious cases of first instance between 2010 and 2012 and a reduction thereof between 2012 and 2014. As already noted, both states have enacted reforms to improve performance and to enhance the quality of the statistical information By contrast, Turkey and Serbia have recorded a deterioration of the Disposition Time between 2012 and 2014, following a noticeable improvement in the previous period (no data was provided for Turkey for 2010). With regard to Serbia the trend inversion should be considered in the light of a legislative reform that changed the way of presenting solved and unsolved cases in statistical reports and resulted in the decrease of the number of solved cases. (532 days in Italy for first trial)".

[11] CEPEJ report of 2016, p.196 : "Disposition Time is obtained by dividing the number of pending cases at the end of the observed period by the number of resolved cases within the same period multiplied by 365 (days in a year): $Calculated\ Disposition\ Time = Number\ of\ pending\ cases\ at\ the\ end\ of\ a\ period\ Number\ of\ resolved\ cases\ in\ a\ period \times 365$. By contrast, Turkey and Serbia have recorded a deterioration of the Disposition Time between 2012 and 2014, following a noticeable improvement in the previous period (no data was provided for Turkey for 2010). With regard to Serbia the trend inversion should be considered in the light of a legislative reform that changed the way of presenting solved and unsolved cases in statistical reports and resulted in the decrease of the number of solved cases. (532 days in Italy for first trial)".

[12] Article 111of Italian Constitution states: "*Jurisdiction is implemented through due process regulated by law. All court trials are conducted with adversary proceedings and the parties are entitled to equal conditions before an impartial judge in third party position. The law provides for the reasonable duration of trials. In criminal law trials, the law provides that the alleged offender shall be promptly informed confidentially of the nature and reasons for the charges that are brought and shall have adequate time and conditions to prepare a defense. The defendant shall have the right to cross-examine or to have cross-examined before a judge the persons making accusations and to summon and examine persons for the defense in the same conditions as the prosecution, as well as the right to produce all other evidence in favor of the defense. The defendant is entitled to the assistance of an interpreter in the case that he or she does not speak or understand the language in which the court proceedings are conducted. In criminal law proceedings, the formation of evidence is based on the principle of adversary hearings. The guilt of the defendant cannot be established on the basis of statements by persons who, out of their own free choice, have always voluntarily avoided undergoing cross-examination by the defendant or the defense counsel. The law regulates the cases in which the formation of evidence does not occur in an adversary proceeding with the consent of the defendant or owing to reasons of ascertained objective impossibility or proven illicit conduct. All judicial decisions shall include a statement of reasons.* ***Appeals to the Court of Cassation in cases of violations of the law are always allowed against sentences and against measures affecting personal freedom pronounced by ordinary and special courts****. This rule can only be waived in cases of sentences by military tribunals in time of war. Appeals to the Court of Cassation against decisions of the Council of State and the Court of Accounts are permitted only for reasons of jurisdiction".*

decisions. Even if recently things have significantly improved, some concerns do remain. In particular, the difficulties in coping with a high demand of litigation are related to the great number of practicing lawyers present in Italy, since there are 246.786 lawyers out of about 60 million of inhabitants. In addition, any lawyer of certain seniority can plead before the Supreme Court[13], while in other countries, only lawyers with certain specific qualifications are allowed to plead before the Highest Court. Thus, it becomes clear why the latter is considered one of the main factors that cause the increase not only of the number of incoming case files, especially before the Supreme Court, but also of the Disposition Time for case clearance (DT) [14].

In fact, one of the key obstacles to stability is the apparent overload in work of judges who have to cope with a great amount of cases at all levels of the jurisdiction. In practice, this may make it impossible for the judge to provide reasons for the decision in a way that complies with fair trial standards and at the same time meets time pressure demands. It is therefore important that judges are allocated **a manageable caseload** to make sure that access to justice is not impeded by excessive workload. In fact fair trial rights require and depend on a high quality of judgments based on clear reasoning and analysis.[15] Among other things, a reasoned decision serves as a safeguard against arbitrariness.[16] It also allows parties to make effective use of any existing right to appeal.[17]

Regardless of the serious situation created by the inefficiency of the system - certainly suitable for the restricted needs of justice of past centuries when free access to justice was balanced by a scarce demand, but inadequate to withstand the requests of modern times - , more recently both the Ministry of Justice and the High Council of the Judiciary (*Consiglio Superiore della Magistratura*) reported satisfactory results with respect to case backlog rate and DT at the first two levels of the jurisdiction. However, bottlenecks remain a serious problem at the top of the judicial hierarchy (*Corte di Cassazione*).

Under this profile, national statistics show that in 2015, for what concerns civil cases, 50,8% (8.721) over 17.166 appeals before the Supreme Court have been overruled, with the consequence that those decisions taken by the Courts of Appeal have been upheld. Over the 17.166 appeals before the Supreme Court, 30,2% (5.187) has been granted; in those cases the decision taken by the second instance judge has been annulled. The remaining percentage has been the result of settlements or declarations of inadmissibility of the claims before the Supreme Court.

By contrast, the stability rank of the Court of Appeal of Milan district is striking against the national average: 98,2% of total district civil decisions remains stable or is upheld by the Supreme Court. In 2015, 83% of decisions remained stable without any appeal[18]. Data records of 2015 showed that the total amount of pending proceedings in civil cases has diminished of - 4,8 %, while the incoming proceedings diminished of -16,60 %; this trend does not seem to have changed during the recent past year. The average duration of a civil trial stands at roughly 24 months, whereas at the Supreme Court level these results haven't yet been reached.

[13] In Italy more than 50.000 lawyers can plead before the Supreme Court , compared to 50 in France and 40 in Germany

[14] President Lupo, Inaugural Address of 2012.

[15] *H. v. Belgium* (1987) ECHR 30, para. 53; OPINION No.11, para. 3.

[16] Consultative Council of European Judges, Opinion No 11, The Quality of Judicial Decisions, para. 35.

[17] *Hirvisaari v. Finland* (2001) ECHR 559, para. 30.

[18] Focusing on the Court of Appeal of Milan, it should be stressed that during the year 2014 only the 19,3% of first degree decisions were appealed before the Court of Appeal of Milan compared to the 20% of appeals registered on a national level. In the 52% of the cases, the Court of Appeal of Milan upheld the first instance decision whereas a partial confirmation was taken in the 26% of cases. Only the 13% of appeals has led the Court to reverse the first instance decisions, while the remaining cases have been closed by different decisions. Since the 80% of decisions have been upheld or partially upheld by the Court, it may be stated a low reversal rate of first instance decisions in comparison with the national percentage that amounts to about 68%. The 27% of the decisions have been appealed before the Supreme Court and the 80% of those have been upheld. As on the second instance level, the reversal rate amounts to 20% compared to 32,2% registered on a national level. In the 52% of the cases, the Court of Appeal of Milan upheld the first instance decision whereas a partial confirmation was taken in the 26% of cases. Only the 13% of appeals has led the Court to reverse the first instance decisions, while the remaining cases have been closed by different decisions.

	DECISIONS TAKEN BY THE SUPREME COURT IN CIVIL CASES 01.01.2015 – 31.12.2015				
SECTION	*GRANTING*	*REJECTION*	*INADMISSIBILITY*	*OTHER*	*TOTAL*
JOINED CHAMBERS	137	176	98	91	502
FIRST	630	1.055	516	235	2.436
SECOND	613	1.168	196	166	2.143
THIRD	617	1.505	360	144	2.626
LABOUR	1.250	3.349	433	254	5.286
TAXATION	1.940	1.468	546	219	4.173
TOTAL	**5.187**	**8.721**	**2.149**	**1.109**	**17.166**
VAL %	**30,2%**	**50,8%**	**12,5%**	**5,5%**	**100%**

The data concerning the Court of Appeal of Milan are undoubtedly a good result for an industrialized region that registers the most important cases at a national level.

The above records show that the past negative trend is progressively changing in terms of performance of the Tribunals of merits, supported by efficient Courts of Appeal that are able to reduce the litigation rate. That could happen in most Appeal courts through widespread reforms that touched various different aspects of the justice system and fostered the **quality** and **good timing** of the justice system, even though some of them have not reached the purpose yet.

I will focus on some of those reforms.

IV. Reconsidering the Judicial Map and the Appellate Courts Functions in order to Tackle Case Backlog.

At the very beginning of this century, time consuming civil trials overloaded by a large quantity of case backlog, led Italy to face severe condemnations before the European Court on Human Rights. The domestic legislator was then forced to undertake strong emergency measures in order to modify priorities and patterns in giving access to justice. Procedural measures were taken mostly through putting time limits to the trial at all levels[19]and introducing internal and disciplinary responsibility for judges in order to improve performances in terms of the duration of trials . Other procedural measures were taken allowing written reasons in a concise style [20]and introducing a preliminary filtering system for civil appeals both at the second and third instance. [21] All those measures put a lot of stress on the shoulders of Italian judges, who are still considered as the most over loaded judicial force in Europe, although fairly rewarded in terms of a relatively good salary increasing with seniority.

In 2001 the Pinto Law[22] attempted to improve reliability on the *system by giving litigants* ***right to damages in case of excessively lengthy court*** **proceedings**. These cases are lodged before the Courts of Appeal because of their sensitivity. The Pinto Law, however, did not have the intended effect of speeding up the process because it failed to build in the necessary incentives for the judiciary to reform; instead, it generated additional litigation and budgetary costs for the State[23].

[19] Time limits are : three years for first instance proceedings, two years for appeal and one year for the latter level before the Supreme Court
[20] See article *281 sexies* of the Italian code of civil procedure
[21] See article *348 bis* and article *360 bis* of the Italian code of civil procedure
[22] Law no. 89/2001
[23] Indeed, funds used to compensate litigants for excessive delays in the judicial process could have been used to improve the efficiency of the justice system, considering that the compensation awarded for actions filed under the Pinto Law was significant (€ 200 million by 2011). In response to Council of Europe's Committee of Ministers Interim Resolution CM/Res DH (2010) 224, the government enacted legislation in 2012 which aimed at clarifying the scope of the Pinto Law, but it did not address the underlying incentive problems. However, it reduced incentives for opportunistic

Besides those measures, the efficiency of the justice system seemed deeply, and necessarily, linked to the refinement of **a rational circuit of Tribunals of first instance**, and not only to time statute barriers and procedural changes**.**

For this reason, in 2013-2014 the Italian judiciary map was strongly reconsidered through the **elimination of small Tribunals of first instance** that turned out to be one of the first causes of inefficiency: 1000 local tribunals (-50%) have been eliminated and now the density of courts in the territory is very low compared to other jurisdictions (France, Germany). In some territories these measures have been perceived as impairing the right to a court, but after a while the new reality was accepted as in compliance with public good. In fact the CEPEJ report of 2016 shows that some European States have decided to accompany the general decrease of the number of courts by a stronger specialization of their court system (Austria, Italy)[24].

Within this strategy, the existing number of **appellate courts has not changed (26), but to the latter were assigned new tasks in the reorganizational process**. The courts of second instance, in fact, seemed having substantial importance in the development of the judicial system, mainly because they are at the junction of different local needs and common national and international expectations.

On the one hand, the appellate courts have not only proved able to guarantee the establishment of judicial precedents, according to general principles of law settled by the Supreme Court at the latter level, but they have also contributed to the settlement of new judicial precedents, according to general social needs. On the other hand, the legislator stressed their function to perform an effective and proactive vigilance of local tribunals and to boost strategic administrative means in order to cope with case backlog.

More recently, the Italian authorities have undertaken a consistent number of **statutory measures** against the inefficiencies as, for instance, measures that aim to reduce the case inflow, by **increasing court fees, creating appeal filters and raising judicial costs**.

The latter good scores are also the result of the **strict monitoring activity** made by the High Council of the Judiciary (C.S.M.) over the activity of judges in terms of **career advancement** and **disciplinary proceedings**, although these latter measures have been questioned as somehow unfair. This monitoring activity is made with the support of a territorial organ that seats in every appellate Court (the Council of the Judiciary).

Besides that, the Presidents of the Courts are responsible for the compliance with the **Annual Plan of General Organization** (Documento di Organizzazione Generale) approved by the High Council of the Judiciary for each court. These general provisions are working in a fair way inside the judiciary body in order to cope with case backlog and other functional inefficiency, since their compliance require preventive acceptance by the presidents of the chambers.

The introduction of **preliminary mandatory mediation** and **negotiation** proceedings in 2010-2013 for a large amount of civil matters was another important corrective measure[25] taken according to a European directive. While it was originally limited to specific disputes only, the scope of the law was extended in 2013 up to case files of a maximum value of fifty thousand euro. Even if the new

behavior by introducing caps. Indeed, the number of cases filed at Courts of Appeal has significantly decreased (from 15.300 new cases registered in the second semester of 2012 to 5.700 in the first semester of 2013).

[24] CEPEJ 2016, p.176

[25] Decree Law no. 28/2010

system faced a number of challenges, both logistical and institutional, reports indicate that the use of out of court mediation or negotiation increased following the enactment of the law and it was successful in siphoning off civil cases from first instance courts for at least some procedures[26] .

Further changes included **streamlined court proceedings and online civil case management in pilot courts, nationally extended in 2010**. Other measures such as "**backlog-reduction teams**" in certain courts, and **civil procedure reforms** were also adopted. These measures proved successful in some pilot courts and were extended nationally [27]. Some of these measures were supported by EU structural funds.

The **central Government** has also taken a stronger role in program management since 2010-2011, with the Ministry of Public Administration setting up an effective **central monitoring system** and the Ministry of Justice putting in place **professional management** in 2012. This helped to secure the EU structural funds, which do not weigh on the national budget.
The so-called "**Decreto del Fare**" [28], approved by the legislator in 2013 and whose main objective was to simplify a series of existing normative measures and make them more effective, included, *inter alia*, the following additional measures for justice:

- law-clerk apprenticeships in courts in order to support judges work;
- task force of 400 honorary magistrates to clear the backlog in the Courts of Appeal;
- compulsory mediation for most civil trials;
- new associate judges in the Supreme Court.

The "**Destination Italy**", another proposal presented in September 2013 by the legislator, reaffirmed the government's commitment to tackle problems in the judicial system. The first draft of "Destination Italy" initiative pointed to a number of proposals in the judicial area in line with the National Reform Program, outlining Italy's targets towards the Europe 2020 strategy. These include measures to:

- extend the competences of the commercial courts, which, since 2010, have worked with specialized judges at a faster path to all commercial litigation (implemented) ;
- introduce value restrictions to appeals (yet to be implemented) ;
- allow parties to a mediation even if not assisted by a lawyer (yet to be implemented) ;
- extend the competences of judges of the peace (implemented) ;
- ensure the full operation of the "digital process" –the so-called Processo Civile Telematico- to civil and criminal trials (partially implemented);
- complete the "data warehouse" project (that still need to be improved) ;
- monitor the implementation of the Administrative Procedure Code (implemented).

In other words, the appellate Courts have worked in the districts as peripheral watchdog of the compliance with those measures by local courts of first instance.

V. The Appellate Courts as a Milestone in a Fair Multilevel Justice System

Generally speaking, in terms of quality and rational access to the justice system, so far the European experience proved that the appellate Courts played the role of a **milestone in a fair multilevel justice system**.

[26] Severino 2012, Bank of Italy Communication, June 29, 2013
[27] The Torino and Bolzano courts are often presented as successful examples.
[28] Law no. 98/2013, August 2013

It is interesting to note that, under the Italian Constitution, the right to appeal is safeguarded as a constitutional right only with regard to the right to make an appeal to the Supreme Court (Corte di Cassazione) on grounds of legitimacy[29]. It is even more meaningful that, even in an emergency caused by a great amount of backlog, the Italian legislator didn't conceive to erase the courts of second instance in order to aim for time and money saving, but added new tasks to them.

At the European Union level it has been recently assessed that the attempts of some scholars to promote the elimination of second instance courts in favor of construing a unique strong first instance trial, integrated with a limited appeal on grounds of legitimacy, would turn out to be fallacious, as the appellate Courts proved to work as check point sentinels of territorial and European needs and rights[30].

As regards money and time saving policies, some European countries have preferred measures for banning claims of appeal which appear likely to be overruled, introducing **a preliminary filtering system**, as it happened in England, Germany and lately in Italy in 2012[31]. The "filters" are applied in the course of the first hearing by a judgment of inadmissibility.

By contrast, those legal systems that don't allow any additional full revision of the decision on grounds of merits, but only a second instance judgment on grounds of legitimacy, or even provide appeals only for cases of a relevant amount of value, are generally questioned by European legal scholars, since they do not guarantee a multilevel justice system capable to build safeguard measures against human mistakes and judicial misconduct. From this point of view, also the implementation of the filtering systems has been somehow questioned in terms of fairness and coherence with the rule of law, because free access to justice implies also the right to an effective remedy against judicial mistakes. However, to the Italian legislator this last measure seemed the lesser of two evils in order to enhance the stability rate and reduce the so called Disposition Time.

Indeed, in Italy the combination between the "filtering system" introduced in 2012 at appellate level and the fundamental right to appeal before the Supreme Court valid for all decisions seemed as protecting the citizens right to a court in a sufficient way. In this respect it may be argued that limitations to the right of appeal as regards to civil appeals did not endanger fundamental rights under domestic constitutional law.

VI. The Right to Appeal and the Time Saving Measures

The same conclusion about the legitimacy of the filtering measures can be drawn in the light of the rules set by the European Convention on Human Rights.

In particular, the European Convention on Human Rights establishes the right to appeal as essential in criminal matters[32]. The wording of the rule is clear and a limitation on the right to appeal has to be allowed only when there is a Superior Court. On the other hand, art. 6 ECHR shall not be considered as a criterion in order to guarantee an unlimited right to appeal. Such rule, indeed,

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[29] The last section of Article 111of Italian Constitution states: "….**Appeals to the Court of Cassation in cases of violations of the law are always allowed against sentences and against measures affecting personal freedom pronounced by ordinary and special courts**. This rule can only be waived in cases of sentences by military tribunals in time of war. Appeals to the Court of Cassation against decisions of the Council of State and the Court of Accounts are permitted only for reasons of jurisdiction.

[30] See the recent conference of European Appellate Courts held in Turku, Finland, in September 2015 on *" the Role of the Courts of Appeal in the Changing World*".

[31] See Article 348 bis of Italian Code of Civil Procedure.

[32] Art. 2 protocol 7 of the ECHR reads: "*everyone convicted of a criminal offence by a tribunal shall have the right to have his conviction or sentence reviewed by a higher tribunal. The exercise of this right, including the grounds on which it may be exercised, shall be governed by law. This right may be subject to exceptions in regard to offences of a minor character, as prescribed by law, or in cases in which the person concerned was tried in the first instance by the highest tribunal or was convicted following an appeal against acquittal*".

focuses on the fairness of the trial in terms of impartiality of the tribunal, publicity of the process, presumption of innocence and minimum rights that might be equally guaranteed by the Supreme Court, the third instance Court. However, also under the ECHR terms, it should be considered more advisable a system where the right to appeal a decision is guaranteed by two levels of jurisdiction, given the fact that the Court of Appeal may revise the interpretation of facts and enhance stability of precedents and efficiency of justice at a territorial level.

In this respect the European countries share the same clear-cut principles as regards the right to appeal. In fact, there are minimum requirements to be observed in order to preserve the right to appeal, as established by the European Court of Human Rights in its precedents.

First of all, in the European Convention on Human Rights, the guarantees enshrined in Article 6 § 1 include the obligation for courts to give sufficient reasons for their decisions[33]. That means that, although a domestic court has a certain margin of discretion when choosing arguments and admitting evidence, it is obliged to justify its activities by giving reasons for its decisions[34]. A reasoned decision, in fact, shows the parties that their case has truly been heard.

Moreover, the reasons given must be such as to enable the parties to make effective use of any existing right of appeal.[35] However, while Article 6 § 1 obliges courts to give reasons for their decisions, it cannot be understood as requiring a detailed answer to every argument.[36] In fact, the extent to which the court's duty to give reasons applies may vary according to the nature of the decision[37] and can only be determined in the light of the circumstances of the case: it is necessary to take into account, *inter alia*, the diversity of the submissions that a litigant may bring before the courts and the differences existing in the Contracting States with regard to statutory provisions, customary rules, legal opinion and the presentation and drafting of judgments[38].

However, where a party's submission is decisive for the outcome of the proceedings, it requires a specific and express reply [39].

To summarize, according to the ECHR, the courts vested with full jurisdiction are required to examine: i) the litigants' main arguments [40]; ii) the pleas concerning the rights and freedoms guaranteed by the Convention on Human Rights and its Protocols: indeed, the national courts are required to examine these with particular rigor and care[41] . **In the case of an appeal**, it is also clear that iii) Article 6 § 1 does not require an appellate court to give additional elaborations when it simply applies a specific legal provision to dismiss an appeal on points of law as having no prospects of any success, without further explanation [42]; iv) similarly, in the case of an application for leave to appeal, which is the precondition for a hearing of the claims by the superior court and the eventual issuing of a judgment, Article 6 § 1 cannot be interpreted as requiring that the rejection of leave be itself subject to a requirement to give detailed reasons[43] ; v) furthermore, in dismissing an appeal, an appellate Court may, in principle, simply endorse the reasons of the lower court's decision[44].

[33] H. v. Belgium
[34] Suominen v. Finland, § 36
[35] Hirvisaari v. Finland, § 30
[36] Van de Hurk v. the Netherlands, § 61; García Ruiz v. Spain [GC], § 26 ; Jahnke and Lenoble v. France (déc.); Perez v. France [GC], § 81
[37] Ruiz Torija v. Spain, § 29; Hiro Balani v. Spain, § 27
[38] Ruiz Torija v. Spain, § 29; Hiro Balani v. Spain, § 27
[39] Ruiz Torija v. Spain, § 30; Hiro Balani v. Spain, § 28
[40] Buzescu v. Romania, § 67; Donadzé v. Georgia, §35
[41] Wagner and J.M.W.L. v. Luxembourg, § 96
[42] Burg and Others v. France (dec.); Gorou v. Greece (no. 2) [GC], § 41
[43] Kukkonen v. Finland (no. 2), § 24; Bufferne v. France (dec.)
[44] García Ruiz v. Spain [GC], § 26; contrast Tatishvili v. Russia, § 62

It is clear also that the notion of a fair trial requires that a national court which has given sparse reasons for its decisions, whether by incorporating the reasons of a lower court or otherwise, did in fact address the essential issues which were submitted to its jurisdiction and did not merely endorse the findings reached by a lower court without further ado [45]. This requirement is all the more important where a litigant has not been able to present his case orally in the domestic proceedings, like it happens in administrative or minor proceedings .

Since the appellate Courts regulate the right of appeal in order to guarantee stability and intelligibility to the system, their own internal flexibility has to comply with the right of appeal under the above mentioned terms: that is, what the system needs, no more and no less.

All above shows that the appellate Courts in mature democracies, even when regulated in various and flexible ways by domestic statutes and procedure, are strongly perceived as a necessity for the stability of modern legal and multilevel justice systems, rather than a luxury that can no longer be afforded.

VII. The Role of Appellate Judges in Fostering Trust in the Judicial System

For judges at upper levels, and certainly those in the Courts of Appeal, far more work has to be done out of court rather than in court. In order **to ensure effective use of court time**, the relevant documentation for every case has to be carefully read in advance; and many cases at this level are of such complexity or importance that time has to be taken in considering the submissions and preparing a written judgment after the hearing, rather than delivering an immediate oral judgment.

In other words **an appellate judge does not have a 'typical' day** and cannot be evaluated through the apparent presence in court rooms. Every judge has at least one day a week kept free for reading case papers or judgments writing. On days when a judge is sitting in court, generally in panel, cases are listed for hearing between 9.00 am and 1.30 pm, with only a short break during the morning. Every judge usually hears 8/10 cases per hearing, that means about 30 cases per panel.

Additional preparation and judgment writing, together with judicial meetings and other work commitments, have to be fitted round these sitting times till late afternoon. It is frequently necessary to work in the evenings and weekends in order to get everything done.

The appellate European judge has a varied work because every chamber of a Court of Appeal has to deal with many different issues. The work itself is interesting, and sometimes very challenging, no matter how the economic value at stake is. In fact, most of the cases raise issues of internal and European law, but many are also of very real human interest in terms of respect of human rights under the European Convention on Human Rights or the European Union Charter of Fundamental Rights.

In addition to the work of judging individual cases, most members of the Court of Appeal have additional responsibilities within its internal organization or the wider court system or in other bodies related to the justice system and judicial traineeship.

The evaluation of a judge's activity, however, is undoubtedly made in terms of how well he/she organizes the agenda, prepares the hearings and writes the reasons of the decisions. Moreover, recently the appellate Courts experienced that Court assessment is shaped more by **court users'**

[45] Helle v. Finland, § 60

perceptions of how they are treated in court and whether the court's process of making decisions seems fair before them. In modern times, the legal systems in fact have to seek **feedback about eventual deficiencies in the services** provided by the courts. Therefore, even if case backlog is a problem to be tackled and continuously monitored, best efforts are driven towards the implementation of services of good quality.

In this respect, the Italian legislator made a fundamental choice that already changed the working style of civil judges of first and second instance, enabling them to have a better understanding of the needs of court users and consequently, implementing their capacity **to promote procedural fairness and transparency in the courtrooms.** After a long period of regional experimentation in some Tribunals of Northern Italy supported by the European Union[46], between 2011-2015 the use of **digital instruments** (Consolle of the Judge) has been established as mandatory at national level for all courts of merits.

In particular, digital **proceedings have become compulsory** for the first instance in 2011 and subsequently, in 2015, for the second instance courts. Among those new instruments that support the work made by the judge, the program "Consolle", as fine-tuned by the Ministry of Justice, gives a substantial assistance in organizing and recording civil proceedings and decisions.

Indeed, nowadays 70% of Court clerks use the national "Consolle" as an essential support to their work and for the notification of acts to parties and lawyers. Digital proceedings concern notice of pleadings, answers and decisions**,** registration of documents and briefs, public clerks communications, case management and Court management. Every legal professional has its own protected digital signature and all the work is easily and internally traceable. The new means through which the judicial job can be performed have definitely increased the general working capacity in terms of quantity, quality and rational distribution of work. More importantly, those tools have helped judges to review and study the cases without paper support, accessing documentation easily through their own well protected portable digital instruments.

In practice, an important change, if not a revolution, occurred considering the use of digital recording of papers and signatures by judges and Court clerks, which implied immediate feedbacks to those involved in proceedings, as well as transparency in the internal distribution of proceedings .

The digital recording system has also impacted on the unity of local case-law creating the possibility of having an **instantaneous digital internal library of local precedents**. The chance to consult previous decisions and to adopt the constant interpretation of law promotes uniformity and stability of decisions. The digital process indeed offers also a web storage of decisions that all lawyers can easily consult. Academics may also create a digital catalogue raisonné containing the reasons of judicial decisions of main interest [47]. In Italy nowadays most judicial decisions are found on the web and this fact enhances doctrinal debate on different issues.[48]

Thanks to this efforts leading towards enhanced uniformity and transparency, also **the certainty rate in the applicable law increased.**

In fact, the use of digital instruments has improved a standardisation process in terms of *formats* used by judges and lawyers for written papers and decisions. Even if the Courts do not normally provide a format that *Lawyers&Judges* should use, but only recommendations for paper drafting,

[46] Milan, Reggio Emilia, Bologne, Bozen and Turin

[47] See the site www.giurisprudenzadelleimprese.it that collects in raisonné form all the commercial law decisions of the most important tribunals and courts of Italy.

[48] See www.ilcaso.it

the digital system automatically spurs *Lawyers&Judges* in adopting rational and efficient as well as uniform formats.

The main concerns regarding the digitalization process relate to its implementation with respect of rights of privacy and its continuous efficiency. However, so far the Courts have found a valid support in the cooperation with young trainees and the Lawyers Associations in organizing a full digital service that guarantees both privacy and efficiency. Some judges are appointed as supervisors of the digital process in order to coordinate local and national necessities.

To conclude, nowadays the "typical day" of an appellate civil judge includes not only **case studying**, **reasons writing, participation to judicial meetings, case management, continuous digital apprenticeship and professional adjournment**, but also the **implementation of new formats and patterns** for building a well-protected and transparent decision making process.

VIII. The Challenge of a Digitalized Justice System

In law it is clear that communication means used in a trial fundamentally influence the trial itself and the rights stemming from it. Therefore, in the European area, **Italy certainly represents the most advanced attempt to implement widespread adoption of digital technology in the civil trial** in order to build up a transparent and reliable procedure.

The technological environment in which the civil trial operates nowadays requires a planning process carefully evaluating the available resources and the need of normative changes. An interesting aspect of the Italian situation has been that, despite the governmental failure in supporting it locally in a satisfactory way, cooperation has developed among judges, lawyers and jurists from academy who have drawn up many kinds of skills and new patterns in governing the new digital trial.

It is worthwhile to note that while in Italy a simple digital procedure is locally working almost everywhere, in Spain IT was blocked by the local élites resisting innovation[49]. Italy, instead, is advancing rapidly thanks to an original and unexpected mix of **centralized interventions and horizontal cooperation** developed in order to face the enormous procedural work that the IT process involves for its implementation.

Indeed, a certain amount of **administrative flexibility caused by central inefficiency** (due to the lack of efficiency of the central government in implementing local services), happened to favor technological innovation in governing the civil trial. In fact, Italy established a long experimental period, starting in 2001, during which the use of IT in civil trials has been granted only in departments and cities that had proper level of technological development[50]. The Digital Procedure in Italy has often been described as a "leopard skin" to indicate the isolated spots where IT was used in courts. However, since the beginning it has been clear that significant collective savings could have been reached by reusing data relating to the proceedings. An interesting aspect of the Italian situation is that, in spite of the governmental lack of efficiency in supporting local implementation of IT procedure, in some districts of the Court of Appeal a strong cooperation has developed among judges, lawyers and jurists from the academy. The innovation path and the

[49] See the Spanish " Plan de Modernizacion de la Justicia" of 2008. This plan encountered strong resistance among Spanish judges and professionals. The IT process was therefore limited to the video recording of hearings.
[50] Decree of the President of the Italian Republic no.123/2001

implementation still relies nowadays much more on this kind of local input rather than on the general action of the Ministry of Justice and the Government as a whole.

In 2015 the Italian Ministry of Justice estimated that just the step of digital communication (about 12 million a year), instead by a bailiff, produced savings for 44.000.000,00 Euros per year. Italy has not yet faced the revision of the procedure in an organic way, but the Italian experience of horizontal cooperation shows that inserting an IT procedure in a traditional trial system leads to a broad revision of the trial itself. This process encourages all legal players to focus on how rules need to be changed due to technological environment, rather than on a technologically driven change[51].

At the European Union level things are still far away from being implemented in a coordinated and widespread way. The European Case Law Identifier Code (ECLI) enables the national decisions to be published in a system accessible to lawyers and judges, but at present there is no EU dedicated directive to build a shared approach to digital trials, beyond the mere provisions for interoperability between systems that are still legally and technologically different. Nevertheless, making national jurisdictions able to talk to each other in the same terms under a common concept of rule of law is a priority for EU policy[52].

The technological revolution has shown some weak and strong points as well.

In fact, in Italy the IT trial was enforced against the backdrop of a traditional trial system mostly based on written papers that inevitably is showing the need of a broad revision. Jurists and law faculties should find new ways to encapsulate legal reasoning and papers into structures matching the demands of the new technological environment. In fact, the latter does not require verbose and long-winded papers, given that all the evidence is collected in the digital file and it may be easily consulted through internal *iperlink* techniques. Under these terms, collected evidence can be easily found and consulted while reading the digital papers, without need of mentioning its content in the *corpus* of the legal paper. In this way, a full comprehension of the legal paper implies a quick technological reference to the original source of evidence. By way of a relatively simple example, court digital filings should meet certain formal requirements that facilitate good record keeping and mutual intelligibility.

In particular, the aspects that should be -and that have been- considered in the improvement of a digitalized justice system do not concern only procedural laws, organizational reforms and strict case management, but also the monitoring of quality and quantity of human resources, as well of the role of jurists in correctly enforcing **the rule of law in a technological environment**.

In this respect, a circular letter of 4th of May 2016 from the High Council of the Judiciary (C.S.M.) stressed the importance of an internal organizational system based on accepted and shared objective parameters as well as on some discretionary power and trust given to the Courts' chief executive judges in order to guarantee a rational and impartial distribution of judicial work[53]. Indeed, it is

[51] See "The Challenge of Innovation in Law" The Impact of technology and Science on Legal Studies and Practice, by Amedeo Santosuosso, Oliver R. Goodenough and Marta Tomasi (eds), in Internet, edited 2015, pp 35 fol. .

[52] The Council of Europe Recommendations of the Committee of Ministers to member states on the delivery of court and other legal services to the citizens through the use of new technologies R (2001) 3 (28/2/2001) is indicative of the general practice of member of the Council of Europe to make court decisions public and the desirability of making accessibility to court as easy as possible to the general public.

[53] As to the rules normally applied in the case files distribution inside a Court, it is necessary to consider that some of them became mandatory:

i. there should be a reasonable distribution of human resources in civil and penal courts;
ii. plans and reports should underline the goals for the future and causes of specific past failures;
iii. it should be prepared a program for the management of backload that is present in some chambers ;
iv. each president of a chamber should receive no less than 50% of the average caseload allocated to each judge;
v. a judge may choose another court not before four years of full assignment in a post;

precisely that essential possibility recognized to each Court to manage its own case assignment with a certain amount of **discretionary power -that means flexibility-** that allows the entire system to be well organized and fair.

In conclusion, nowadays, particular attention is given to the status of digital procedure and to the annual management program that every President of each section has to draft in order to deal with case backlog and the allocation of incoming case files, as well as in order to define intermediate and final goals. The President of the Court of Appeal is personally responsible for the compliance with the general plan (D.O.G.) as approved by the C.S.M.; however, that power is counterbalanced by the assignment to presidents of appellate courts of emergency powers before the C.S.M. approval of new plans.

It is true that in the long run technology will give more freedom to every jurist in terms of working hours and legal research, but it is even more true that most human energies now run away in continuous adjournments and monitoring new forms of cooperation and challenges that the IT process implies.

IX. Reorganizing Human Resources and Internal Organization in a Technological Environment

The amount of proceedings that require to be dealt by the Courts of merits and the new tasks assigned to the appellate Courts led to a deep internal reorganization of the judicial structure. Even if the total available financial resources did not increase, except for the high costs of the new technological environment, the Courts managed to reorganize well at moderate costs .

In particular, such reorganization has impacted on the judicial body, the lawyers behavior, the administrative body, the role of legal trainees and the use of space and procedures[54].

Focusing on the recent experience of the Court of Appeal of Milan, each of the following aspects has been crucial in the implementation of the new technological process in **synergy with internal human resources** .

- **Judicial body.**

  Judges are evaluated exclusively by their capability to work and organize their own work also in the new IT environment[55]. Nowadays every appellate judge has to manage about 180 case files per year and the new IT environment helps in assuring an automatic and rational allocation of case files[56].

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vi. every section has to be organized in terms of rational distribution of work and efficiency with objective criteria for the composition of panels and dates of hearings. In other words, the President of the Court predetermines the number of annual hearings and dates for each section with predetermined and specialized competences; moreover, the allocation of case files to judges is programmed by the President of the section and it is normally automatic according to the files number of the enrolment, even though the President of the section may derogate to this rule with a reasoned decision;

vii. every two months the President of the section has to call a section meeting in order to discuss about the major legal issues that the section is facing and internal organizational aspects.

[54] From a quantitative point of view, the important role of the Court of Appeal of Milan is proved by the number of lawyers that operate in an industrial town such as Milan (about 11.000) and the number of inhabitants (6,6 millions that represent the 10% of the national population) and factories (at least 817.113 in the west part of Lombardy) territoriality connected to the city. Indeed, records show that every year about 5000,00 civil proceedings are filed before this Court. The number is progressively decreasing thanks to all the measures taken by the legislator (mandatory ADR proceedings, rising costs, filtering systems, digital process). In fact, In 2013 - 2014 the legislator has introduced, over certain matters, a mandatory negotiation as a precondition for taking action. Those areas mainly concern cases about traffic accidents and requests for payment up to 50.000 euro. Compared to mediation, this form of ADR so far seems to be more successful and it is strictly monitored by Local Lawyers Associations.

[55] Significant is the percentage of women involved as a judge: the 63,4% of judges are women, a percentage that is considerably higher compared to the national one (which is about 43%). The strong presence of female judges in the judicial body fosters a "**no gender oriented" justice**, whereas in other working contexts the law had to establish the minimum percentage of female presence in order to break the so called "crystal ceiling" (*plafond de verre*) that generally jeopardizes the achievement of leading positions to female workers (i.e. public corporations)

[56] The judicial body consists of 112 professional judges; 18 of those are presidents and 94 are judges although the organic plant has a capacity of 131 unities. Judges work in panels of three components and decisions are taken by the majority through a collegial method

- **Temporary Judges.**

In order to cope with the case backlog, 30 new honorary judges (experienced lawyers) work as temporary judges in the Court after a public selection made by an internal commission. These judges are not always present in Courts, but the IT process helps in keeping constant contact with them and building common values.

- **Temporary Clerks**.

As to the administrative body, only 176 out of the total 227 established in the organic plant are public servants. Administrative and accounting tasks are dealt by 37% of those employees[57]. In order to increase efficiency and help several economic regional sectors in crisis, in 2007 a new statute law introduced the possibility for the Court of Appeal to cooperate with younger workers coming from declining industries. That law contributed to improve, from a quantitative and qualitative point of view, the internal work and to increase the level of common trust in the justice system. Nowadays the Court counts 69 temporary workers.

- **Law Graduates**

In the light of a spontaneous cooperation with law faculties and academics, in 2013 the legislator introduced the possibility for graduated students, on grounds of merits, to take part in the work through an unpaid **traineeship,** sometimes sustained by scholarships. The support given by this new working force has increased the work capacity of single judges (plus 30%) and showed the first steps in the creation of a new motivated class of competent lawyers and judges. So far, there are about 300 trainees employed in the Tribunal and in the Court, about 100 of those in the latter. They proved to be a big help in the advancement of the digital proceedings and internal technology.

- **Space Rationalization**

Internal procedures and regulations have been rationalized by the President of the Courts. In practice, such **rationalization** implies the possibility for lawyers to keep their own documents and briefs in paper. The introduction of a digital procedural system at a national level helped in saving space, internal human energies, and paper.

- **President of the Court surveillance**

The process aiming to an inexpensive and efficient reorganization of the Courts has been supported by the a constant multilevel analysis on length and quality of work favored through digital reliable and homogenous data. The cooperation between those involved in different levels of the justice system is the key element for achieving a fair system of justice. An important role has to be recognized to the Presidents of Tribunals and the Presidents of the Courts, chief clerks and presidents of chambers who assist the President of the Court in data analysis and introduction of new forms of organization in order to reduce case backlog and avoid inefficiencies in general[58].

- **District Chamber of the Judiciary Consulting Function**

This internal body, composed by the President of the Court, the General Attorney of the Court, Appointed Representatives of Judges and Prosecutors of Tribunals and the Courts, Law Academics and Lawyers, plays a fundamental role in exercising an itinerant full surveillance

[57] Insufficient financial resources has stopped the Government in planning to hire new resources since several years (at least 25 years) and this has caused an increase on the average age of the administrative body. The 46% of public servants is over the age of 50 and this fact initially entailed a negative attitude towards technical adjournment.

[58] As a result of this constant multilateral surveillance, in some Courts now energies are driven to develop action plans for improving the quality of internal court services and judicial performance evaluation, instead of concentrating only on case backlog.

over the territorial Tribunals of first instance and the Court of Appeal itself. Moreover, it studies and approves new methods of internal organization in order to guarantee transparency and impartiality of the judicial body, giving opinions on career advancements and administrative proposals; its weekly assemblies are open to judges and also to European visiting judges. Its opinions are fundamental for the decisions taken by the High Council of the Judiciary, the only public body entitled to appoint, move, remove and promote judges.

- **Official Lawyers Associations (OLAs)**

In analyzing those institutions involved into the reorganizational process, the Official Lawyers Associations (OLAs) definitely gave a substantive support to the Courts and tribunals; in particular, concrete results have been achieved through their cooperation with judges and presidents of the Courts in implementation of the digital process.

The Court of Appeals and the Tribunals cooperate with the local Official Lawyers Associations in order to improve best practices in the light of a better system of civil justice. This cooperation commonly results in financial support by the OLAs that show their interest in the refinement of the digital process.

Furthermore, the legislator has recently highlighted the importance of the role attributed to lawyers in the advancement of the rule of law and in avoiding litigation through **fine-tuned strategies to close the implementation gap in administering backlog**, including taking a closer look at latest business transformed by digital technologies. In fact the efficiency of the digital process is monitored by lawyers associative bodies that help them in building up deontology rules for a fair use of technology during the digital trial.

Lawyers have been trusted also in order to implement new forms of Alternative Dispute Resolution (ADR). As an example, negotiation and mediation assign a leading role to parties' lawyers in helping those involved in the dispute to find a joint final resolution. These resolutions are the way to finally achieve the goal of stability for most litigations.

However, so far the huge presence of lawyers in the Italian justice system is still a problem to be solved in terms of reducing the access to professionals before the courts of appeal.

- **Continuous local traineeship of judges and lawyers at appellate level.**

Continuous professional traineeship of lawyers and judges is locally organized by both the **Superior School of the Judiciary** and the (recognised) **OLAs.** This makes jurists coming from both sides feel as a part of a common project, that is, a feeling of belonging to the same reality, which ultimately improves the entire justice system.

X. Conclusion

Today our exploration of the judiciary planet ought to teach us to value more its internal possibilities, and showcase its expertise and latest technological progress, even if Justice may appear to many as a territory populated by old buildings and untouchable traditions. Technology, as we have seen, has dramatically improved the efficiency of the judiciary, and not only helped in tackling case backlog[59].

[59] It is generally perceived that in our times, a civil justice system, like a common service competitor, should pursue the following strategic advantages: attract new business in a country, check out its foreign competitors in order to enhance good policies, demonstrate new products in terms of services to citizens, increase networking opportunities among other jurisdictions and legal players, increase visibility and brand recognition by its users, meet with citizens' needs as current customers, showcase its expertise and latest technology

Individual rights need also a justice system that guarantees accessible judicial remedies and avoid strategic delays and deferrals. In this respect, the appellate Courts system proved to be crucial for giving them a strong voice, since they are at the junction of individual needs and social expectations

The new paths that have been undertaken, or that are imminent, proved that action speaks louder than words.

However, I will leave you by stressing a final point which I deem extremely important from this perspective

Technology of today is used to enhance procedural rules and forge internal best practices in order to put legal players in the condition of governing the huge demand of justice. So far, the experience of the digital process at the level of Courts with full jurisdiction proved that a new system can simply grow next to the old one when appropriate conditions, supported by the broader acceptance of all legal players, exist.

But while computation is replacing human services in the legal process, it hasn't yet touched the core analytical and expert functions of the traditional lawyer or judge, who finally deals with irreducible human uncertainty, which is an essential ingredient in law. Nevertheless, even though computational law may serve the purpose of adding a sprinkle of logic, transparency and predictability into the system, however it still requires a more theoretical and ethical approach in order to ensure it operates both for internal stability and individual well-being.

In a nutshell, a more philosophical approach to legal studies will serve to make computational law even fairer, transparent and reliable, without substituting a robot or a technological Leviathan at the final step of the legal reasoning.

This is not a simple wishful thinking, but a goal to reach in an extreme and inflexible way.

In fact, although the human function in legal reasoning still remained untouched, in the near future the opposite may happen. At that point all legal players will be involved in finding ethical rules in order to preserve the dignity and the basics of a fair justice system.

Actually, some new internal policies show the power of expansive dreams; others argue for better grounded and watchful wisdom.

May the coming years bring about a little of both.

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