



Oñati Socio-Legal Series, v. 1, n. 9 (2011) – Autonomy and Heteronomy of the Judiciary in Europe

ISSN: 2079-5971

“Judge-Only” Justice V. Collaborators: Introduction

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Abstract

Who and how many are the collaborators of judges? The answer may differ according to the perspective under which Justice is considered. In this introduction, and in the light of the papers submitted in the first session of the workshop, a distinction is proposed between “direct” and “indirect” collaborators of judges, according to the side of Justice observed. If Justice is confined simply to the classical function performed by courts, i.e. deciding cases according to the law, it seems quite obvious to remark that judges never act alone, since they normally benefit from the help of different kinds of assistants who, at different levels, help them in their daily work. But when paying attention to the facet of Justice concerning the concrete enforcement of decision, it becomes inevitable to take into account different categories of subjects involved in the “administration” of justice. Under this second perspective, justice is a matter for everyone: not only judges and prosecutors, but other professionals and bodies, including also Governments and other public institutions, since their decisions concerning, for example, human and material resources assigned to the judicial system have inevitably an impact on Justice considered as a public service. Lastly, the aptitude of the public opinion cannot be ignored: the degree of public satisfaction with the judicial system may influence the demand of justice as well as its material functioning. Accordingly, even common citizens could be seen as a very peculiar sort of “collaborators” of judges.

Key words

Judges; Collaborators; Administration of Justice; Public service; Public opinion

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Is it appropriate to state that Justice is a "judge-only" matter? Instinctively, the answer could be affirmative: *ars iudicandi* is usually perceived in terms both of a duty and a responsibility imposed on judges, placed at the top of judicial institutions. On the other hand, even if it sounds as a common sense remark, in practice judges never act alone; under this perspective, it becomes natural to take into consideration the role played by the "collaborators" of judges, a term relating to different categories of professionals and people working together or simply surrounding those who can be undeniably considered as the "front men" of any judicial system.

According to dictionaries, "collaborators" work together with others in order to reach a common and shared goal. The problem with establishing who are the collaborators of judges becomes immediately evident. Judges are called to give justice in the interest of society: but from a theoretical viewpoint, it is well known that the meaning and the purposes of Justice may vary according to values prevailing in every social system. Consequently, it would not always be easy to identify a unique aim shared by all those working within a justice system and to determine who can be indisputably defined as a "judge's collaborator".

However, Justice is defined not only as the act of determining rights and assigning rewards or punishments; it is not confined simply to "giving" judgment or orders – that is, to the classical function performed by the courts: resolving disputes and deciding cases according to the law –, but has to do also with the concrete application, execution or enforcement of sentences and rulings: what could be defined, in general terms, the "administration" of justice.

Bearing in mind the degree of conventionalism always implied in each labelling or classification exercise, a distinction could be proposed between "direct" and "indirect" collaborators of judges, according to the facet of Justice taken into consideration.

In the first group we can include collaborators working *directly* with judges and assisting them in their everyday activities. Of course, different categories of this kind of assistants can be observed¹, depending for example on the position that judicial institutions have within a specific legal order (whether courts of first or last instance, single judges or collegiate tribunals, and so on) as well as on their "dimension" (domestic, international or supranational courts): suffice is to mention registrars or other officials of registry, staff supporting judges in researches, and so on².

In lay justice systems relying on a division of the judicial roles or functions of fact-finding and law-application, a relevant role is played by the members of the jury, the jurors; indeed, they can be considered as the type of collaborator most involved with the judicial fact-finding function, or the assignment of "guilt". They are indispensable "direct" collaborators for judges.

A quite peculiar kind of "direct" collaborators is represented by legal secretaries (référéndaires) within European courts: their role is not strictly limited to helping in reasoning and deciding the concrete case or even in materially drafting judgments, since very often they become truly advisers for courts' members. Advocates generals, who give their opinions on cases presented to the European Court of Justice, can be also included in this group, considering their peculiar interaction with ECJ's judicial members.

Particularly as far as supranational courts are concerned, the notion of direct collaboration should be interpreted in a flexible and dynamic way, being strictly

¹ Some some kinds of judges' assistants are similar or even common to different legal systems.

² Among "direct" or "immediate" collaborators it is possible to include also technical staff assigned to judicial bureau or units. As it has been underlined, specialised courts tend to have (or in fact need) more collaborators than "ordinary" courts.

linked to the nature and the importance of each concrete case. Consequently, also lawyers and national authorities called to give information to ECJ or ECHR could be numbered among direct collaborators.

Within this group of "direct" collaborators we can include of course people assisting courts' members in their concrete and material daily work, overseeing the contacts between judges and the external world, like assistants, spokesmen or people responsible for relationship with media and press³.

Finally – but surely many other figures could be evoked – it is worth considering the position of who can be defined the "hidden" collaborators of judges, bearing in mind how important could be the role played by their family members, who so often are decisive for helping judges to face their work with calm and serenity or for developing public relations – an aspect which is particularly important for members of supreme or international courts.

When considering the second facet of Justice – the one concerning the concrete enforcement of decisions – the analysis becomes more complex and the range of possible collaborators of judges can automatically be extended.

Particularly socio-legal studies made us accustomed to conceiving justice in term of a "system", not only as one of the powers in which national, international and supranational legal orders are articulated, but also as a service granted to common citizens, enterprises and public institutions. Regarded under this perspective, the definition of Justice is in a way broadened, including not only judges and the norms, rules and laws they apply, but also a set of bodies, institutions and workers operating under the authority of the government for executing the tasks assigned to the system and that should be coordinated in order to ensure the quality of the service provided. In this sense, the notion of "administration of justice" has been developed referring either to the processing of grievances and to the management of courts and tribunals. The administration of justice is one of the crucial functions granted by the State to citizens. It is defined with reference to the personnel, activity and structure of the justice system and it is consequently intended either as a jurisdictional and administrative function⁴.

Consequently, this particular and quite articulated notion evokes a wide range of human and material resources ensuring the concrete functioning of any justice system. As it is well known, a unique or a perfect model of administration of justice is impossible to identify. First of all, for theoretical reasons, since – as already mentioned – the concept of Justice and the related social needs and objectives pursued through the justice system may vary according to the legal order in which it is applied. Secondly, because the techniques employed in order to perform this peculiar task may be very different from one country to another. Thus, when approaching the concept of administration of justice, many levels of analysis may overlap, like in a sort of Chinese box game, and the contribution of different kind of professionals, even if not directly involved with judicial activities, may prove to be extremely important for guaranteeing the proper and efficient implementation of the judicial system.

In general terms, good administration means good organization: the way in which a service is materially organized, and particularly its operating times, may affect its efficiency. This means that, when evaluating the administration of justice conceived

³ Another example of "direct collaborators" concerning domestic courts: officials of judicial police forces cooperating with magistrates and prosecutors.

⁴ Extensive studies and enquiries have been conducted in each country about justice and justice administration and this is not the proper place to recall the rich literature devoted to this topic. As far as Italy is concerned, I shall confine myself to referring here to two wide research projects which gave rise to a number of publications. The projects were coordinated by Renato Treves (between 1967 and 1976: *L'amministrazione della giustizia e la società italiana in trasformazione*) and Vincenzo Ferrari (*L'amministrazione della giustizia e la società italiana del 2000*, focussing on the Italian situation over the course of the last ten years).

as a public service, a number of concrete factors are to be taken into consideration, alongside all different technical, professional and specialised figures revolving around the justice system.

Among the concrete factors that may affect the quality and efficiency of justice, some depend upon specific choices of public authorities – particularly as far as public expenses is concerned – or even on the overall social structure: for example, decisions relating to the allocation of human as well as material resources, the way in which these resources are employed, and the relationships existing between different professional levels. For a good organization of the justice system, those different concrete elements should be directed and coordinated towards the same primary aims, involving judges and administrative staff at the same degree and bearing in mind that, even if it could appear obvious, justice “works” when it is perceived as fair and speedy.

In other terms, the administration of justice can be regarded as a public service, that is as a function or a set of activities aimed at providing goods and services to a community of end users. This entails taking into consideration also the quantitative and qualitative level of all the activities that have to be carried out, and that are in their turn influenced by the existing human and material resources assigned by public authorities to this service.

If it is true that the allocation of financial resources may affect the quality of judicial activity, it cannot be forgotten that a great attention has to be paid also to the citizens’ interest, who are the final users of the judicial system and who incontestably have a decisive role in activating and in enhancing its legitimacy.

In almost all reports and enquiries concerning the situation of justice and of its administration, both at national and international level, a specific section is always dedicated to evaluating the public satisfaction with the judicial system⁵. And this satisfaction depends on how much the “justice” service is perceived as easily accessible, understandable and fair. Therefore, in assessing the quality of justice as a public service, attention should be paid also to rules existing in a legal order that allow users to access this service, and that may have a direct impact on their demand of justice as well as on the functioning of the overall system and of its different stages. In that regard, and without pretending to be exhaustive, a distinction could be made between:

- rules affecting the workload of a judicial bureau: e.g. concerning delays and misconduct by public administration, or the costs of proceedings, interests and their evaluation, punitive damages, the scale of lawyers’ fees, alternative dispute resolution procedures⁶, measures aimed at decriminalizing certain kinds of violations, etc.;
- rules concerning the organization of the resources: e.g. rules on professional and administrative careers and on the salary of judges, the management of judicial units, sections and departments, etc.; and
- rules concerning specifically the proceedings: e.g. introduction of special procedures, guidelines concerning the role played by judges, etc.

⁵ Regarding the situation of justice administration in Europe, reference can be made to reports on the efficiency and quality of justice promoted within the Council of Europe: see European Commission for the Efficiency of justice, *European Judicial Systems*, Edition 2010 (2008 data). As far as Italy is concerned, see for ex. the 2010 Report of the Minister of Justice (www.giustizia.it).

⁶ In Italy, in March 2010 the government approved a legislative decree to implement the EU Mediation Directive (2008/52/EC) and introduced, by the Legislative Decree 28/2010, a compulsory mediation stage for resolving civil and commercial disputes, with the aim of reducing the number of cases pending before the Italian courts. The Decree entered into force in March 2011 and it is therefore impossible to give here an assessment of its efficiency. Nevertheless, it is worth mentioning that much criticism has been raised by some branches of legal professions, as well as a number of doubts concerning the consistency of this new procedure with the Italian Constitution. And a reference for a preliminary ruling has been brought before the European Court of Justice, in order to ascertain the consistency between the European directive and the Italian law on the compulsory Mediation.

Again, acting on functioning rules is not enough, given the importance of the level of expertise and competence of those who have to elaborate those rules as well as all of other collaborators revolving around the justice system. Therefore, consideration should be paid also to the development of a culture of the organization of justice: and, for this purpose, the various professionals composing the justice system should develop a result-oriented mind, a practice and an aptitude to reasoning in terms of result.

This kind of approach – considering justice as a specific public service – is followed also by the Council of Europe. As it is well known, in 2003 this organisation created the European Commission for the Efficiency of Justice (CEPEJ)⁷. In the perspective of this institution, the main point is to monitor and analyse how judicial systems function, in order to develop policies aimed at improving judicial time management, promote the quality of public service and making the different judicial systems more and more user-oriented, respecting at the same time the fundamental principles enshrined by the European Convention of Human Rights. Among those principles, the independence of the judiciary figures most prominently. Respecting this principle implies or should imply that any action aimed at affecting or influencing judicial administration and management with a view to improving the quality of justice, should preserve at the same time the independence of justice and of the judiciary.

As is constantly highlighted, even in CEPEJ's reports, when purporting to evaluate the efficiency and the level of satisfaction towards a judicial system, one of the leading indicators is represented by the length of proceedings, which too often exceed the reasonable time principle as defined in international Conventions. This is a problem common to many legal orders (and it is particularly well known in Italy) but which appears to be one of the most difficult to manage in a systematic and structured way. It could be dealt with by adopting measures relating to judicial institutions (by improving their economic and material resources), or affecting the procedures (establishment of alternative dispute resolutions systems or institutions, introduction of measures for management of workloads, implementation of new technologies⁸, etc.), as well as concerning directly the various categories of people or professionals revolving around the judges.

The speediness or celerity with which justice is dispensed depends, in turn, on more complex (and I would say social) factors: for example, the cultural and education standards and the wellbeing of society, the technologies used, the organization of legal professions, the proper functioning of the public administration, the aptitude and propensity of society for preventing litigation (litigation aversion or litigation attraction), the enactment of material and procedural rules which may stimulate or discourage litigation (for example, dissuading or facilitating rules regarding costs and interests), the career system provided for judges and judicial staff. And other elements could be added to this list.

But agreeing with this consideration means that the list of potential "collaborators" of judges should be automatically extended. Consequently, the amount of financial resources made available to the Judiciary in the national budget is crucial, and this makes Parliament, or its members, indirect collaborators for the proper functioning of a justice system as a whole.

Yet, a limit to the notion of collaborators needs to be established. If we compare these occasional collaborators to the more systemic ones, like those professionals

⁷ The CEPEJ is made up of qualified experts from the 47 Council of Europe member States, to monitor and assess the efficiency of judicial systems and propose practical tools and measures for working towards an increasingly efficient service to the citizens.

⁸ In Italy, with the law d.p.r. 13 February 2001, n. 123, the use of new technologies in civil trials has been enhanced, enabling the different subjects involved in a process to create documents and communicate through information and communication technologies. The aim is that of reducing times and costs for both citizens and Public Administration.

or technicians who make up the "administration of justice" we see that the main focus and role of the latter is precisely to make it possible to administer or render justice, whereas the former are only incidentally instrumental to that aim.

To conclude, it is inevitable to take into consideration different categories of subjects involved in the administration of justice. It has to be kept in mind that justice is a matter for everyone: not only judges and prosecutors, but also various categories of professionals cooperating with the elaboration, enactment and implementation of judicial decisions: in particular, lawyers and legal representatives, but also judicial secretaries, registrars, notaries in certain countries, staff responsible for different administrative and technical matters, as well as court management, and last, not least, in bilingual or multilingual systems, language collaborators (translators and interpreters).

There are also other professionals involved, which can not be defined properly as "judicial" or "juridical", but who cooperate as well to the functioning of justice or the process or trial, and should consequently be taken into consideration: I am referring for example to social workers or to psychotherapists, and expert witnesses generally.

Among the stakeholders involved it is possible to include also Governments and other public institutions, since decisions and choices coming from political leaders and rulers regarding human and material resources assigned to the justice system have inevitably an effect on justice considered as a public service. And, as already underlined, the importance of the aptitude of common citizens towards justice cannot be neglected. In this respect, it is well known how much the public opinion about law and justice can be influenced by the way in which judicial news are communicated and diffused by television and press: under this perspective, mass media also should be listed among those who can give a great contribution to the judges' work (or even complicate it).

All those subjects play an essential role in making possible for the justice system to operate and should be constantly associated to the management of jurisdiction, which implies, for example, to make regularly available to them information about the operation of the judicial system or to improve contacts between those "non-judicial collaborators" and presidents of courts and tribunals. Finally, the training of judges and of all the professions interested should also be developed and improved: a better training could have a positive direct impact both on the efficiency and the motivation of different actors involved into the justice system.