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# Building Bridges between the Legal Professions: The Case of the Italian Observatories of Civil Justice

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**Abstract:**
Where are the legal professions heading? What are they trying to do to overcome the difficulties of the judicial systems and, at the same time, to reaffirm their role in society and improve the citizens' confidence in the legal system? This article will focus on the Italian case presenting the phenomenon of the "Observatories of civil justice": inter-professional groups that have spontaneously developed in various Italian judicial offices, in order to define some shared interpretative and behavioural practices. The article bases its arguments on the results of a long period of empirical research, conducted with qualitative methods. This case, one of a kind, will give grounds to analyse many of the issues currently under discussion in the broad debate of the emergent socio-legal studies.

**Keywords:**
Legal professions, Lawyers, Judges, Inter-professional groups, Observatories.

## 1. INTRODUCTION

The legal professions, perhaps more than other occupations based on a complex set of practical skills and specialised knowledge (Abbott 1988; Burrage *et al.* 1990; Freidson 2001; Sciulli 2005; Kasher 2005), are experiencing a period of great transformation[2]. For several reasons, the old ways to conceive and to exercise the legal professions are no longer capable of responding adequately to the needs of people, especially in terms of assuring and protecting their rights. In general, the ancient system of roles and attitudes of the legal professions is no longer able to maintain a "climate of trust"[3] in the society

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[2] As evidenced by the vast literature on this topic, all the professions are changing, in order to maintain their social role, to meet the new needs of customers-users, to adapt to the changing global economy and to take advantage of the potential of ICTs. These transformations have significant impacts on the education, selection, practical training, career and evaluation of the professionals.

[3] The crisis of confidence towards the legal professions is strictly linked to people's growing skepticism about the effectiveness of the activity of the professionals (Schön 1983). These discourses are highly relevant, as evidenced by the amount of publications on "professionalism" (Freidson 2001), professional accountability and quality of professional services.

(Sciulli 2005). Driven by the need to preserve and, at the same time, to reaffirm their social role, professionals – both as individuals and as social groups – are trying to change, in a more or less conscious, coordinated and widespread way. These changes – which are under development and still with unpredictable results (Evetts 2011, 2013) – are based on the will of the legal professions to defend a monopolistic control in their respective fields. The explicit aim of these transformations is to preserve their "social utility" and to avoid the risk of losing their "professional charisma" in the context in which they operate (Young 1955; Abbott 1981, 1988; Freidson 2001).

The operating difficulties that characterize some judicial systems are accelerating these processes of transformation. The problems of the judicial systems have, in fact, a clear and direct impact on the activity of all the individual professionals and, at the same time, affect the social credibility of the legal professions and the citizens' confidence in the legal system. In particular, the judicial systems of South European countries are facing a critical period. In the last few years, many issues[4] have had a great impact in this difficult situation, to the point of questioning the ability of the courts to ensure their crucial service, which is of fundamental importance for the protection of people's rights (Santos 1995, 2009; Ferrari 2004).

In the light of these processes, this article is based on a general research question, which cuts across the large debate of the socio-legal studies: where are the legal professions heading? Or, in other words, what are legal professionals trying to do to overcome the difficulties of the judicial systems and, at the same time, to reaffirm their role in society?

The article will focus on the Italian case, presenting and critically discussing the phenomenon of the "Observatories of civil justice", which represent a unique experience in the panorama of Italian legal professions. The main hypothesis of this article is that the very existence of the Observatories signals the advent of a new way of understanding and exercising the legal professions, in the name of overcoming the ancient separation of roles between lawyers and judges, in order to define some shared solutions to deal with the courts' functioning problems. The Observatories contributed and are contributing to the development of a dialogue between practitioners: in some contexts, in fact, lawyers and judges now consider each other as essential[5]; they see the need to discuss together in order to better carry out their work and improve judicial service.

This article bases its arguments on the results of a long period of empirical research on the phenomenon of the Observatories. The analysis was launched in 2006 and divided into several phases. Overall, the research has considered 19 Observatories, operating in various courts across the Italian peninsula: Avellino, Bari, Bologna, Cagliari, Catania, Florence, Genoa, Messina, Milan, Modena, Naples, Reggio Calabria, Rome, Salerno, Turin, Trento-Rovereto, Trieste, Udine and Verona. Along with the local entities, another subject of the analysis was the so-called "National Movement of the Observatories", which since 2004 operates as a network, linking the different experiences and spreading the "model" of the Observatories in other judicial offices.

[4] In particular, growing of litigation rates; lacking of resources (human, financial and material); increasing of the length of proceedings; and a general atmosphere of distrust of citizens and firms.

[5] As you will see in the next section, Italian lawyers and judges were often "counterparties" or, in other words, islands not communicating between each other.

From a methodological point of view, the research has exclusively used qualitative methods and was divided as follows:

- Semi-structured interviews with the main promoters/facilitators of the local Observatories and of the National Movement, based on a list of open-ended questions[6], with face-to-face (31) and telephone interviews (5). Overall, 36 interviews were carried out, which involved 15 lawyers, 20 judges and 1 clerk. The local Observatories have selected the people to be interviewed on a voluntary basis[7];
- An open questionnaire, distributed electronically to all Observatories, which got a limited number of answers (2 structures of 19)[8];
- Analysis of the documents produced since 2006 by the Observatories;
- Participatory observation at numerous meetings and public events of local Observatories – in particular, Genoa, Bologna and Florence;
- Participatory observation at coordination meetings and annual assemblies of the National Movement of the Observatories;
- Participatory observation of the *mailing list*[9] of the National Movement and of some Observatories – in particular, Milan and Reggio Calabria.

The following section introduces the Italian case from an overview of the legal professions' system in Italy. The use of the plural form highlights a peculiarity of all *Civil law* systems and, in particular, of the Italian case, where the two main legal professions – judges and lawyers – have always been clearly different, at a legislative, historical and cultural level.

## 2. MAGISTRATES AND LAWYERS IN THE ITALIAN SYSTEM

All countries of *Civil law* tradition are characterized by a high level of separation between the legal professions. Merryman, in his famous essay on *Civil law* systems, explicitly spoke of "*balkanization of the legal professions*", to emphasize the risk of an excessive role differentiation (Merryman 1969; Merryman and Pérez-Perdomo 2007, p 103; Guarnieri 2006). In this sense, Italy is an emblematic case (Cappelletti *et al* 1967; Guarnieri and Pederzoli 2002), much more than other *Civil law* jurisdictions both European and non-European, which over time have introduced or strengthened stable mechanisms for "lateral" recruitment of the judges[10], especially in the advocacy.

[6] The interviews consisted in 24 open questions, divided into 3 sections: 1) genesis, 2) actors, 3) activities and products. All interviews (face-to-face and by telephone) were recorded and fully transcribed. The analysis of the interviews was conducted on the basis of the main items in the list of open-ended questions, in order to define similarities and differences between the local Observatories.

[7] I attempted to interview at least one judge and one lawyer in each Observatory. However, this was not possible in all the cases, given the unavailability of the persons to be interviewed.

[8] The questionnaire consisted in 27 open questions, divided into 4 parts: 1) genesis, 2) actors, 3) activities and products, 4) updating and new initiatives. Overall, 19 questionnaires were distributed to referents, secretariats or coordination structures of the Observatories. The low number of responses was due to the complexity of the required answers and to the time needed to complete the questionnaire.

[9] This methodology refers directly to the so-called "virtual ethnography", which studies the interactions between people in a virtual context. See: Kozinets (2010).

[10] The entrance into the judiciary of some "experts" with specific scientific and professional titles, such as, in particular, academics and lawyers.

Actually, in Italy, judges and lawyers are not two branches of the same professional community, but they are based on different legislative frameworks, both by the sources and by the application of the rules:

- Lawyer's code: Law n. 247/2012 (which replaced the Royal Decree n. 1578/1933);
- Judiciary: Royal Decree n. 12/1941 as subsequently amended.

After the common period of initial training, at the faculties of law and eventually at the graduate schools, the career paths of lawyers and judges are clearly divided. To become an ordinary judge, in fact, it is necessary to overcome a public selection process, which is available to Italian citizens in the following cases:

- Graduated from the graduate schools for legal professions (measure introduced in 1997);
- Graduates who have spent a professional training of 18 months at the judicial offices or at the State Legal Advisory Service (measure introduced in 2014);
- Doctorates in legal research;
- Honorary judges;
- Persons authorised to practice the legal profession, who have passed the oral examination, even if they are not registered as lawyers;
- Lawyers of state;
- Civil servants with managerial qualification;
- University law professors;
- Administrative judges and accountants.

The practice of the legal profession by no means gives the person preference for access to the profession of judge, since even those who have not practiced for one day of professional activity have access to the public selection process. The same is valid for the access to the honorary judiciary – to all those roles of non-vocational judges and prosecutors, held for a certain period of time – for which it is enough to have passed the examination to practice law. There is only one exception to the recruitment for the public selection process: the Italian Constitution considers the possibility of a "notable merits" nomination of professors and lawyers with at least fifteen years experience (art. 106 Constitution), to the function of counsellor of the Supreme Court of Cassation. However, this procedure is more like a "school case", given that since 1948 the nominations of this kind have been less than ten (Didone 2010).

The bureaucratic or, vice versa, professional nature of the Italian judges has been discussed in literature (Pagani 1969; Freddi 1978; Di Federico 1978, 1989; Zan 2006). While representing one of the three branches of the state, the Italian judiciary combines internal professional features – such as the degree of autonomy from the outside world, the spirit of community among its members and the control of education and vocational training – with other typically bureaucratic features – as the contractual status or the career progression mechanisms. This is not the occasion to go into this discussion, but rather to point out once again, firstly, the particularity of the Italian case, and secondly, the significant differences between the Italian judiciary and the Italian advocacy. While sharing valuable knowledge and skills, these professions represent, in fact, two different "islands".

All this appears extremely clear when you consider that advocacy and the judiciary have two perfectly parallel institutional systems, as a direct expression of their power of professional self-regulation:

- Self-governing bodies: CSM for the judiciary and CNF for advocacy[11];
- Training schools: SSM for the judiciary and SSA for advocacy[12];
- Political or trade-union associations: ANM for the judiciary (and its currents) and OUA for advocacy (and other national and local associations)[13].

This separation, of an indefinite origin, is not only formal compared with the current regulatory framework, but also historical and cultural. Italian lawyers and judges were often "counterparties", especially in certain historical periods and during the debates that preceded the approval of some major reforms. As can be seen from the examples below – the statements of a well-known judge of the Supreme Court of Cassation and of the president of the political trade union association of advocacy (Box 1-2) – each profession openly criticized the other, considering it as the main cause of the operational difficulties in the Italian judicial system.

> "*With fewer lawyers and more engineers the country would be in a better situation*". [...]"*The political class has failed to bend a weak lobby such as that of taxi drivers, imagine how it will handle a strong one such as that of lawyers*".

Box 1: Declarations to the press by the judge P. Davigo of the Supreme Court of Cassation.

> "*The cliché that lawyers earn more with long processes is false. It is exactly the opposite, and it is impossible to understand how no one speaks about the timings of the judges' referrals, often arbitrary and almost always excessive*".

Box 2: Declarations to the press by the lawyer N. Marino, President of OUA.

In light of all this, the following section aims to clarify the context of difficulties that led to the phenomenon of the Observatories of civil justice. It should be noted that the article will refer only to civil sector and will not consider the aspects and peculiarities of criminal justice.

## 3. WHEN REFORMS ARE A PROBLEM, NOT A SOLUTION

The Italian judicial system has faced a long season of critiques to its performance. Over the past 30 years, several factors have aggravated the difficulties of the system's operation. In particular, the increasing rates of litigation, the lack of human, financial and material

[11] *Consiglio Superiore della Magistratura* (Superior Council of Magistracy) and *Consiglio Nazionale Forense* (National Bar Council).
[12] *Scuola Superiore della Magistratura* (Higher School of Judiciary) and *Scuola Superiore dell'Avvocatura* (Higher School of Advocacy).
[13] *Associazione Nazionale Magistrati* (National Association of Magistrates) and *Organismo Unitario dell'Avvocatura* (Unitarian Organism of Advocacy).

resources (Van Dijk and Dumbrava 2013), the ever-increasing length of the proceedings and the general atmosphere of distrust on the part 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. 22 major reforms of the Code of Civil Procedures (c.c.p.) – in Italian, the so-called "*novelle*"– have been introduced since 1995 by the 13 governments which have subsequently lead the country. In particular, from 1995 to 1998, 10 major reforms of the procedural rules were adopted. The changes have been so fast, repeated and significant that some authors have spoken explicitly of a "*tsunami of civil justice reforms*" (Costantino 2005a, p. 1167).

These interventions concerned both the so-called "judgment of ordinary cognition" and specific sectors, such as executions, bankruptcies, employment and labor. In particular, the common denominators of the last reforms were simplification, competitiveness and development, in order to encourage growth and economic recovery[14]. 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 accelerating the judicial proceedings, simplifying the procedures, reducing the incoming flows and eliminating the backlog.

Nevertheless, empirical evidence shows that the recent reforms have completely failed to eliminate the inefficiencies of the Italian judicial system. In the 2005-2013 period, the average length of ordinary cognition proceedings in the Italian first instance courts[15] – which represent the vast majority of lawsuits – has not diminished, but, paradoxically, it has increased 424 days (14 months)[16]. This data shows very clearly that the attempt to solve the problems of justice only through regulatory interventions, mostly in the procedural context, is an illusory ambition, which risks producing a set of workarounds, simplistic and uneven solutions (Zan 2003).

Beyond the possible effects of these regulatory changes, the sequence of these reforms had a direct impact on professionals. Any reform requires a certain period to get fully implemented in the operators working practices, with obvious repercussions on the functioning of the courts and, indirectly, on citizens who need to protect their rights. Lawyers and judges were constantly asked to adapt their daily work to the changes of the "rules of the game" (Piana 2014). 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 pages, since it represents one of the main issues to the Observatories experience. The next section will present the case of the Italian Observatories of civil justice.

[14] Also due to the economic crisis, in recent years there has been a large debate on the costs for citizens and firms arising from inefficiencies and slowness of the Italian judicial system. The Bank of Italy has estimated that the overcoming of these difficulties would represent a gain of more than a percentage point of the national gross domestic product. This topic has established itself into the public debate and has influenced the political agenda of the last governments.

[15] In this process, the judge is called upon to settle a dispute between the parties, usually through a decision in the form of reasoned judgment.

[16] Source: Ministry of Justice, 2015 [https://reportistica.dgstat.giustizia.it/]; our elaboration.

## 4. THE OBSERVATORIES OF CIVIL JUSTICE

The "Observatories of civil justice" – as these entities define themselves – are spontaneous groups that have developed in various Italian judicial offices (Costantino 2005b; Caponi 2007; Verzelloni 2008; Berti 2012). These inter-professional working groups represent a unique experience in the European panorama[17]. They work to define and promote shared solutions to the interpretation and the organisational problems that affect the courts. The idea of these groups was brought forward in the first half of the 1990'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 meet, in a more or less formalised and structured way, to discuss the possible "practical translation" of the regulatory norms (Costantino 2005b; Caponi 2007; Verzelloni 2009).

The interview excerpts below (Box 3-4-5) 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, in particular: the continuous changing of the procedural rules, the debasement of their work, the excessive 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*".

Box 3: Interview with a lawyer of the Observatory of Bologna.

> "*The Observatory started with us, 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 clerks in order to sort out common solutions that would allow us to work*".

Box 4: Interview with a judge of the Observatory of Reggio Calabria.

[17] Many other structures are called "Observatory", both in Italy and in other European countries, but unlike the Italian "Observatories of civil justice", the other organizations are not inter-professional groups, which have spontaneously developed in various judicial offices located across the national territory.

"*The purpose of the Observatory is to seek virtuous application 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*".

Box 5: Interview with a lawyer of the Observatory of Bari.

Since 1993, the year of the foundation of the first Observatory of Milan, these experiences have spread to many other locations: currently there are at least 30 such Observatories in many ordinary courts; although cases have been reported of dissolution – as in Avellino – or partial inactivity – as in Bari and Messina. These particular communities, as mentioned, are spontaneous phenomena that, in the vast majority of cases, have developed from the "bottom-up"[18], at the initiative of participants and not as an institutional mandate.

The following quotations (Box 6-7) put us "in touch" with the Observatories nature. Such groups, in fact, exceed 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 contribute 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*".

Box 6: Interview with a judge of the Observatory of Milan.

"*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»*".

Box 7: Interview with a judge of the Observatory of Naples.

The initiators are usually lawyers or judges and, rarely, chancellors and university professors. Only in some situations, the vertices of courts or Bar Associations sponsored these 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:

[18] This represents an attempt to reform the Italian judicial system from the "bottom", which is involving even the same judges. In general, after years of almost total closure, the Italian courts are opening to the outside, or in other words, to the society in which they operate. This transformation is slowly eroding the traditional opacity of judicial institutions (Barshack 2000; Latour 2002; Ciocchini 2015).

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 variable. In some groups, lawyers are the majority, while others might be integrated by a large number of judges and court clerks. Other frequent participants are scholars, experts, consultants, 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 turnover is frequent, especially among lawyers (e.g. Reggio Calabria), but this almost never affects the original core of "promoters".

The interview excerpts (Box 8-9) 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 judicial system, are identified by the judges as being part of their organization or, in other words, as "internal actors" of the courts.

> "*The minimum requirement to say that there is an Observatory is to count with the participation of both lawyers and judges. The Observatories are working groups made up of «good will» people*".

Box 8: Interview with a lawyer of the Observatory of Bologna.

> "*The premise is that things work 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*".

Box 9: Interview with a judge of the Observatory of Cagliari.

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, and they also rely on word of mouth. The encounters are basically of three types: plenary sessions, coordination meetings and restricted working groups. The participants are used to communicating 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.

In the course of their evolution, 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 statutes and internal regulations (Box 10).

> "*Art. 1. This is to establish, among the legal practitioners, the Observatory on justice in the district of Salerno. The objectives of the Observatory are the research, study and monitoring, aimed at disseminating and making proposals for the more efficient admini-*

*stration of justice.* [...] *Art. 2. The members shall be individual practitioners of the legal professions and, through their delegate, the associations of such.* [...] *The vote is personal; each participant, even if delegated by an association, has the right to one vote. All decisions are taken by simple majority of those present.* [...] *Art. 4. Each year, the assembly shall choose a secretariat of five members, with the task of external representation*".

Box 10: Excerpt from the rules of procedure of the Observatory of Salerno (2004).

In some situations, this metamorphosis has paved the way to local legitimacy. 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 (CSM), 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; others have secretariats or coordination structures; and others nominated specialised working groups on specific topics (e.g. mediation, legal fees, telematics, internships, bankruptcies, minors, etc.). Only a few Observatories (e.g. Bari, Modena and Verona) have developed stable forms of funding, as most of these organisms, in fact, are self-financed by the participants themselves.

In general terms, the stated objectives of the Observatories are:

- Spreading a "culture" based on comparisons;
- Search for solutions for relevant courts' problems;
- Research and dissemination of "best practices";
- Definition of shared interpretative and behavioural practices;
- Accountability of the "actors" in the courts;
- Updating and training.

The quotes (Box 11-12-13) 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, specific contexts of face-to-face discussions, oriented to the search for common solutions to solve the courts of justice's problems. The Observatories represent a unique experience, completely new, far from the controversies and dialectical collisions, which have characterized the relations between lawyers and judges.

"*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*".

Box 11: Interview with a judge of the Observatory of Modena.

> "*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 the organisational issues which impact on our work*".

Box 12: Interview with a judge of the Observatory of Florence.

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

Box 13: Interview with a judge of the Observatory of Genoa.

The Observatories deal with a plurality of activities, including:

- Organize workshop, 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 other more popular purposes (as, for example, conferences, initiatives with schools, citizens' open days, etc.). Through these initiatives, on the one hand, these communities are looking to involve new participants and, on the other, they seek to present the group's activities to the wider public, to gain 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 are working to collect, systematise and share local jurisprudence. Among others, the Turin group 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 commit most of their forces to defining the hearing protocols. This activity is central to the life of these communities and, in many cases, justifies their existence.

## 5. THE HEARING PROTOCOLS

The "hearing protocols" – as they are called by the members of the Observatories – are documents that collect, comment and regulate some 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 (Box 14-15) allow, once again, the 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 who carry out their activities in the given context.

> "*Civil law is the disease 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*".

Box 14: Interview with a lawyer of the Observatory of Milan.

> "*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*".

Box 15: Interview with a judge of the Observatory of Rome.

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

- Adjournments;
- Conduction of the hearings;
- Priorities of treatment;
- Attempts at reconciliation;
- Minutes;
- Attorneys' fees;
- Notifications;
- Telematics communications;
- Structure of acts of defenders and judges.

And others highly specialised issues, such as:

- Witness testimony of minors;

- Concessions in cases of conflictual separation;
- Compensation for damage caused by road accidents;
- Executions;
- Bankruptcies;
- Leases;
- Labour and social security.

The boxes below show some examples of the hearing protocols:

- The first box defines generic rules of "good conduct" (Box 16);
- The second box provides an interpretation of certain provisions on the Code of Civil Procedure (Box 17);
- The third box deals with the specific issue of the testimony of a minor (Box 18).

> "*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; that the decision at the hearing is made with due priority to substantive and procedural matters*".

Box 16: Excerpt of the hearing protocol of the Observatory of Modena (2007).

> "*Art. 3. To identify the deadline for the 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, for the purpose of scheduling,* [...] *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 art. 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*".

Box 17: Excerpt of the hearing protocol of the Observatory of Florence (2008).

> "*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, the defence attorney of the minor or the minor's curator. In order to avoid constraints, it does not seem appro-*

*priate 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*".

Box 18: Excerpt from the hearing protocol on the subject of minors of the Observatory of Milan (2007).

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 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 (Box 19), incidents of conflict between members of the Observatories are very frequent, especially on the selection and the definition of the interpretative and behavioural practice 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*".

Box 19: Interview with a lawyer of the Observatory of Naples.

A large number of Observatories have established internal working groups dedicated to these documents. These units operate to prepare drafts to be submitted to the 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 accomplished through the parallel work of five teams, which later 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 form 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 courts and Bar Associations. 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.

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 a questionnaire was distributed 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.

## 6. DISCUSSION

The Observatories 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 of the emergent socio-legal studies.

Firstly, the phenomenon of the Observatories is totally unique in the European legal professions. In no other country have inter-professional working groups of this nature been developed. 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 organisations, 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, recognized even by those who do not actively participate in their activities.

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 behavioural practices that impact on the operators' daily activities. These groups do not discuss the interpretation of the written laws in the abstract level, 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 actions on the "method of comparison" among operators from different backgrounds (lawyers, judges, clerks, academics, etc.). These communities are, therefore, arenas for the exchange of experiences 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 inter-professional perspective.

The Observatories' innovative nature is found in the challenge of the ancient separation of roles, particularly among judges and lawyers. A few years ago, it was unthinkable that some Italian lawyers would attend the halls of the courts in the late afternoon or on Saturdays to discuss with some magistrates, for example: how to overcome some interpretative doubts, how to manage the local jurisprudence or, in general, how to resolve the courts' functioning problems. Before the advent of this phenomenon, a meeting outside the hearing between judges and lawyers would be seen with suspicion and distrust, be-

cause it would be considered a threat to the judge's impartiality[19]. In this sense, these inter-professional groups are contributing to the affirmation of a new mentality, based on the comparison and on the research for common solutions.

The Observatories are "change agents", which promote the overcoming of "professional barriers" between lawyers and judges. These comparison 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 this article – who started seeing each other as indispensable partners, which will allows them to effectively exercise their profession in the courts.

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 this community's stated objectives. The purpose of the Observatories is to become a specific "cultural engine" or, in other words, to spread the "method of comparison" through the different operators. The Observatories are entirely spontaneous groups, where only a few actually enjoy full legitimacy. Any intervention on the efficiency of the courts requires a certain type of "levers" which these communities do not have, as they are in the hands of the presidents of the courts and Bar Associations. For this reason, the activities of the Observatories may have specific effects, in terms of service improvement, only when there is a clear and direct support of the judges and lawyers with managerial duties.

In this sense, the hearing protocol has an especially strong symbolic value. Although there are no reliable data on their enforcement, these documents constitute the "virtuous models", defined by the same professionals. As a result of the agreements between operators, the hearing protocols may serve as limiting boundaries for the discretion of individual professionals who, especially on certain issues, risk turning into free agents. Although not formally binding, the protocols define a set of practices that can guide the 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 – as it is, instead, in some local cases – simple catalogues of rules of "good behaviour", but they can also become a sort of "accountability tool", even if informal and soft, to evaluate and, potentially, to sanction, on the reputation side, those who do not operate in the agreed manner. The risk of informal sanctions, applied by the professional communities, could promote the development of a collective compliance regarding the rules contained in the protocols.

## 7. CONCLUSIONS

This article, based on the results of a long period of empirical research, has presented and discussed the case of the Italian Observatories of civil justice. In order to reach a

[19] The Observatories do not call into question the autonomy and independence of the judges, since they are spontaneous groups that try to define some shared interpretative and behavioral practices, which are not formally binding for the same professionals.

conclusion, we have to recall the general research question of this article: where are legal professions heading?

Firstly, it should be noted that the Italian legal professions are changing. This first conclusion, far from being obvious, is based on the awareness that the legal professions are trying to change, in order to defend and, at the same time, to reaffirm their social role. As it is often the case, the crisis encourages the change. In this sense, in face of a difficult situation, the legal professions are gradually abandoning the sphere of "it has always been done so" to explore new areas of interest, new techniques, new interactions and, in general, new ways to conceive and to exercise their activities. The change is still going on; its outcomes are difficult to predict (Evetts 2011, 2013), but the legal professions do not seem resigned to the idea of losing their "professional charisma" in the society in which they operate (Abbott 1981, 1988; Freidson 2001).

This transformation is questioning the previous separation of roles. The legal professions, in fact, are redefining their respective boundaries. The building of some bridges between the professions is creating new experiences of dialogue and exchanges among the different professionals. The case of the Italian Observatories of civil justice is an emblematic example of these processes. Given the impossibility to solve the problems of the judicial systems independently, the legal professions are opened to the other professional communities. In particular, the actual rapprochement between judges and lawyers is a clear signal of an epochal change. The two profession protagonists of the jurisdiction, in fact, are trying to solve together the difficulties of the Italian judicial systems.

Lawyers and judges are no longer "counterparties", accusing each other and discharging on the other party the responsibility of the problems of the justice. The professionals participating in the Observatories enter regularly into discussion, looking for common solutions in a project perspective. This has significant impacts both on the status of professionals, who can work better, with more dignity and, potentially, in an indirect way, on the trust of citizens and companies on the Italian judicial system.

In the light of these changes, to understand where legal professions are heading – especially in the South European countries, but also in the other judicial systems within and outside Europe – it is necessary to develop some comparative research projects. Moreover, it is indispensable to analyse, from a longitudinal perspective, the evolution of these processes over the time. Finally, it would be fundamental to verify the effects of these changes on the system of the legal professions, in terms of selection, training, career and evaluation of individual practitioners and on the different professional self-government bodies.

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