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Communication from Italy concerning the cases of TRAPANI v. Italy (Application No. 45104/98) and Muso v. Italy (no.1) (Application No. 40969/98)

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Réunion : 1419e réunion (décembre 2021) (DH)

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Communication de l'Italie concernant les affaires TRAPANI c. Italie (requête n° 45104/98) et Muso c. Italie (n°1) (requête n° 40969/98) ***(anglais uniquement)***

Rappresentanza permanente d'Italia presso il Consiglio d'Europa

Action Report

Case TRAPANI v. Italy (Application n. 45104/98)
Judgment of 12 October 2000 - final on 12 January 2001
and
Case MUSO v. Italy (Application n. 40969/98)
Judgment of 14 December 1999 - final on 14 March 2000

I - Cases Summary

The two cases at hand, *Trapani and Muso v. Italy* (formerly part of the *Ceteroni Group)* concern the excessive length of proceedings before the civil courts and violation of art. 6 § 1 of the Convention.

During the Committee of Ministers' examination of the *Ceteroni group* in December 2017 (see below), 1,723 cases of this group in which the question of the individual measures was settled were closed. The Committee of Ministers decided that outstanding questions concerning the general measures will continue to be followed in these two cases.

II – Individual measures

The just satisfaction awarded by the European Court was timely paid to the applicants. Therefore, the Government considers that no further individual measure is required in these cases.

III – General measures

Following the last assessment of the cases falling within the Group, the Committee of Ministers took note with satisfaction that thanks to some legislative measures very encouraging results had been achieved in terms of shortening of the length of civil proceedings and clearance of the backlog (see Decision adopted at the 1302nd CM-DH meeting).

The Italian Government represents that the reformative process has gone on and currently a thorough reform of the justice system is underway; even wider and more effective measures at several levels and with multifaceted approach have been taken in order to, *inter alia*, shorten the length of the proceedings, clear the backlog and definitely to enhance the efficiency of the justice.

Thus, for the purpose of intervening in the most effective way possible the reform process of the justice system has developed in different directions, regulatory, organizational, personnel recruitment and tools.

1) <u>The Legislative reform of the civil proceedings</u>

1.1) General overview

A significant legislative reform is currently under discussion in Parliament and is very close to be finalized.

The bill for the reform of the civil trial (DDL n. 3289) provides for *the "Delegation to the Government for the efficiency of the civil process and for the revision of the regulation of tools for alternative resolution of disputes and urgent measures to rationalize the procedures in the field of the rights of individuals and families as well as in matters of forced execution "* (see attachment herewith – annex 1).

It has just been approved by the Senate, on 21 September 2021, and has been assigned to the Justice Commission of the House of Representatives (*Camera dei Deputati).*

Within one year from the entry into force of this law, the Government will have to adopt one or more legislative decrees concerning the formal and substantive reorganization of the civil process, through amendments to the code of civil procedure and to the special procedural laws, with a view to objectives of simplification, expeditiousness and rationalization of the civil procedures, in compliance with the adversarial guarantee, in accordance with the principles and the guidelines provided for by the Delegation Law (art.1).

This reform aims to simplify civil proceedings, both in form and in time, to provide faster answers to the daily needs of citizens and businesses, with a view to safeguarding fundamental rights to a fair trial and an increase in the collective well-being. Moreover, it has had a further acceleration and is foreseen to be quickly finalized in order to fulfil, in addition to the obligations under the Convention, also the stringent economic commitments recently undertaken by the Government with European Union in the PNRR ("*Piano Nazionale per la Ripresa e la Resilienza*" annex 2).

The supporting architecture of the civil justice reform, just for the purpose of responding to the need for speeding up the proceedings, intervenes on the existing system aiming to rationalize some of its crucial points according to the following key principles.

1.1.a) The enhancement of alternative forms of dispute resolution.

One of the main points of the reform was to strengthen the judicial instruments of alternative dispute resolution.

The recourse to the <u>mediation</u>, has, in fact, been enhanced through two sets of provisions.

The first concerns fiscal incentives: recourse was made to forms of tax credit consisting of a reduction in taxes in relation to legal costs for mediation. Additionally, the benefit of legal aid is also introduced for mediation and assisted negotiation.

The second consists of the widening of the catalogue of areas in which mediation is mandatory under penalty of inadmissibility of the application. In particular, mandatory mediation is extended also to the area of contracts with long-lasting effects among the parties (such as work contracts, franchising, trade partnerships, etc.), where this instrument of alternative resolution has greater chance of success due to the circumstance that the parties can be induced to reach a settlement agreement in order to maintain (and possibly implement) the contractual relationship.

The mediation mandated by the judge is also enhanced and encouraged, having it demonstrated, in the practise, to be a successful judicial instrument. To that effect, the reform purposely provides training courses in mediation for judges and that the number of proceedings concluded by settlement agreements could be positively considered in the career of the magistrate concerned.

The assisted negotiation is extended to labour disputes (provided that each party is assisted by a lawyer), to those one concerning the custody and maintenance of children born out of wedlock. The assisted negotiation could be also an avenue to allow the spouses to reach an agreement on the divorce allowance in lump-sum.

Finally, the institution of the arbitration is strengthened through the enhancement of the guarantees of impartiality of the arbitrators (with the obligation of detection / disclosure of any causes of recusal). Furthermore, if so provided for by the arbitration clause or by the arbitration provisions "*compromesso in arbitri*", the arbitrators have also the power to issue precautionary measures, that can in any case be disputed.

In this case, it is also provided that before the arbitration office is established, the parties can always apply to the Court for interim measures.

1.1.b) The ordinary procedure of cognition. The first instance proceedings.

The rationalization of the first instance judgment, by intervening on the phases that take the most time, is the starting point of the reform.

The objective is to achieve a greater concentration of activities in the context of the first hearing intended to the participation of the parties and the discussion of the case.

In particular, according to the current regime, the introductory acts of the judgment (the writ of summons (*atto di citazione)* and the defendant's defences) are not required to indicate, in addition to the subject matter of the request, the facts and the legal reasons – in the respective perspectives-, also evidentiary requests (which are postponed to a later stage of the procedure).

On this assumption, after the first hearing the parties are granted with new terms for the specification of the questions and the indication of the evidence and another subsequent hearing is set for the assessment of these requests, often some months after due to the workloads of the courts.

The reform therefore intervenes on this temporal space according to a principle of concentration, ensuring that the evidence is indicated in advance and that in the first hearing the *thema decidendum* and the *thema probandum* are already clear to the judge and to the parties.

In this way, the judge will be able to proceed to formulate a pertinent conciliatory proposal and to set the timing of the trial. The hearing for the acquisition of evidence must be scheduled within 90 days, but if that is not necessary the case can be decided immediately or a hearing for final conclusions can be scheduled.

This will definitely contribute to shorten the timeframe of the proceedings and save a significant amount of time.

The reform also intervenes on other phases able to weigh down the procedure, for example by eliminating the hearings dedicated to purely formal activities. Thus, the hearing intended to the swearing of the judicial expert could be replaced by a written declaration allowing a quicker start of the expert activities.

Furthermore, the reform, stabilizing the digital innovations introduced during the covid emergency, provides that the judge can order that the hearings that do not require the presence of subjects other than the defenders, the parties, the public prosecutor are replaced by the electronic filing of written notes within peremptory terms, unless the parties request for the hearing to be held in presence.

The final phase of the proceedings is also simplified, by suppressing the hearing intended to the conclusions and providing an exchange of concluding briefs prior to the proper decision-making step.

1.1.c) Interim measures.

The reform also provides that, pending the first instance proceedings concerning rights of disposal (*diritti disponibili)*, the court could adopt provisional executive measures by which it provisionally upholds or rejects the application; in both cases such measures can be challenged and in the event the complaints are allowed, the proceedings on the merits continue before a different magistrate at the same office.

The reform envisages the introduction of a very simplified procedure to adjudicate on an interim basis in favour or against the claimant when, respectively:

- the constituent facts are proved and the defendant's defences appear manifestly unfounded; or
- the claim is manifestly unfounded or its subject-matter, statement of facts or grounds are omitted or wholly uncertain pursuant to Article 163 (3) c.p.c. [see art.1 §. 5 (o) of the bill].

The expected impact is in terms of reduction of frivolous litigation, increase of discontinued proceedings and settlements and backlog reduction.

1.1.d) The ordinary procedure of cognition. The appeal instance proceedings.

The reform also intervenes in the appeal judgment, first of all enhancing the specificity of the reasons for the appeal.

Furthermore, the provisional enforceability of the first degree decision is suspended only under certain conditions, that is, on the basis of a prognostic judgment of manifest validity of the appeal or, alternatively, of the possibility of serious and irreparable prejudice to one of the parties, even in terms of possible insolvency.

A “filtering” mechanism at appeal level has been enhanced by the legislative reform.

Therefore, the appeal that does not have a reasonable probability of being upheld must be declared manifestly unfounded with a concisely motivated ruling.

Moreover, for the purpose of eliminating the numerous appeals submitted only to dispute the part of the decision concerning the settlement of the legal costs, it has been foreseen that correction procedure of *re judicata* could be pursued.

1.1 e) The legitimacy instance proceedings before the Court of Cassation.

With specific reference to the proceedings before the Court of Cassation, the reform has provided, among other things, that the defensive acts comply with the principles of conciseness and clarity, the simplification of the procedures - attributing to the same section entitled to deal with the case also the task of the preliminary scrutiny - and , as an important novelty in the system, the introduction of a completely new institution for the Italian legal system, called "Referral to the Court of Cassation for a preliminary ruling".

In the current system, the Court of Cassation, as a judge of legitimacy, intervenes at the end of the procedure, often even years after the start of the disputes on a specific subject matter.

Therefore, a "nomophylactic" indication by the Court of Cassation, in a short time and in parallel with the first rulings on the issue, can play a significant deflationary role, by preventing possible contrasting case-law and, accordingly, the multiplication of disputes.

In such a way the Supreme Court, pursued by the courts dealing with merits, could rule at an earlier stage of the case and with binding effects with the respect to the interpretation of law. For this reason and in order to preserve its role of interpreter of the law (*nomofilattico*), the referral mechanism could be triggered under specific conditions.

1.1.f) The simplified procedure in the merits instance.

With the introduction of the “simplified procedure”, which replaces the summary procedure, the reform provides that the applicant can opt for this type of procedure in cases in which the court rules as single-judge, where the facts are not controversial or the investigation of the case is based on evidences of documentary or of prompt acquisition nature or a non-complex investigation activity has required. This procedure however ends with a court judgement but it’s more streamlined than the ordinary one.

1.1.g) Simplification for judgments on employment matters.

With regard to the lay-offs, a unique procedure and a priority treatment for the issues of possible reintegration in the workplace are envisaged in the reform, also for the purpose to reduce the waiting time in the employment relationship as much as possible.

1.1.h) The establishment of a Court for family proceedings.

The reform, rationalizing the current system (which provides different procedures based on the different issues related to the family law matter), provides for a single unique procedure, featured with a determined timing to process the questions concerning only the "adult" parties and, at the same time, with the possibility for the judge to issue different provisions from the requests of the parties, if it is in the best interest of the child.

The reform, then, aims to reinforce the safeguards in cases of family and domestic violence to protect the victims.

Moreover, in order to limit the time and avoid duplication of litigation, it is also possible to present the divorce application in the separation proceedings, always after the expiry of the legal terms and the partial sentence on the separation has become final.

Furthermore, family mediation and the figure of the special curator for the protection of the minor are valued when there is a risk of harm to the minor.

1.1.i) The establishment of the Specialized Courts for persons, minors and families.

The system of the family courts will be established at local *(Tribunali circondariali*) and district (*Tribunale distrettuale*) level; the Juvenile Courts are not suppressed but, by virtue of their specialization, are transformed into the district family courts.

The Court of Families will also be supported by a Trial Office (*Ufficio del Processo*), made up of honorary judges, whose skills will be an added value for both the local and district courts.

Uniform, organic and coherent procedural rules are also introduced for juvenile judgments, for a more solid guarantee of the rights of the parties: adversarial, respect for times, content and deposit of documents, powers of the judge, etc.

1.2) The impact assessment of the reform

Having made the aforementioned general overview on the key lines of the ongoing legislative reform, reference is, then, made to the whole text of the bill (attached herewith), whose key norms and their expected impact on the civil procedures system in terms of length and efficiency are recalled hereinafter.

I) Preliminarily, a set of norms of the reform provides for the following measures of amendment of the current framework of the civil proceedings aimed at "*simplifying, speeding up and rationalizing the civil proceedings*" at all levels of instances.

The expected beneficial effects of the following measures result in a higher number of cases adjudicated with the simplified procedure and a shorter length of proceedings; a reduction of frivolous litigation, increase of discontinued proceedings and settlements and a backlog decrease; the reduction of judges' workload; greater use of filters in the second instance proceedings; the quick clarification of relevant issues, reduced grounds for and/or number of appeals; reduced risk of restarting proceedings.

In the particular, strongly positive effects are expected to be achieved, among others, by:

a) Strengthening the existing summary procedure under Article 702-bis et seq. of the Italian Code of Civil Procedure ("c.p.c."), renamed "simplified procedure", which:

- becomes compulsory for any dispute, including those falling within the jurisdiction of the court in collegiate composition, when the facts of the case are uncontroversial, when the case is based on documentary evidence or requires non-complex evidentiary activity;
- has shorter terms than those provided for the introductory, evidentiary and final phases of ordinary proceedings, without prejudicing the adversarial principle, and is concluded with a judgment by the tribunal **[art.1 § 5 (n) of the bill]**;

b) Introducing a very simplified procedure to adjudicate on an interim basis in favour or against the claimant when, respectively:

- the constituent facts are proved and the defendant's defences appear manifestly unfounded; or
- the claim is manifestly unfounded or its subject-matter, statement of facts or grounds are omitted or wholly uncertain pursuant to Article 163 (3) c.p.c. [**art.1 § 5 (o) of the bill];**

c) Reducing the cases in which the tribunal rules as a panel, taking into account the objective legal complexity and the economic and social relevance of the disputes **[art. 1 § 6 (a) of the bill]**;

d) Identifying (and increasing) the competences of the *giudice di pace* **[art. 1 § 7 (b) of the bill]**;

e) Providing that appeal proceedings are directed by the investigating judge (*consigliere istruttore*) rather than the panel **[art. 1 § 8 (b) of the bill]**;

f) Reviewing the current regulation of "filters" in appeal proceedings, so that the appeal that does not have a reasonable likelihood of being upheld may be declared manifestly unfounded and that the decision of manifest unfoundedness may be taken following the oral hearing with a brief judgement, which may also be motivated by referring to previous case law; subsequently, amending articles 348-bis and 348-ter c.p.c. **[see art. 1 §. 8 (e) of the bill]**;

g) Introducing an accelerated procedure to declare appeals before the Supreme Court inadmissible, improper or manifestly unfounded **[art. 1 §. 9, letter e) of the bill]**;

h) Introducing a preliminary ruling mechanism to the Supreme Court, in order to enable judges on the merits, when the decision involves a question of law on which the parties have already been heard, to request a preliminary ruling on the matter directly to the Supreme Court [**art. 1 §. 9, letter g) of the bill**];

i) Providing that the simplified procedure applicable for the correction of judgments shall take place:

- Without a hearing in case of a joint request by the parties;
- By filing written briefs only, without a hearing, if the judge so orders;
- In cases relating to the challenge of costs decisions which have already become final **[art.1 § 8 (g) and (h) of the bill]**;

l) Creating a unified procedure called "proceedings relating to persons, minors and families" applicable to all proceedings relating to the status of persons, minors and families falling within the jurisdiction of the ordinary court, the juvenile court and the tutoring judge, with the exclusion of proceedings for the declaration of adoptability, proceedings for the adoption of minors and proceedings falling within the competence of the specialised sections on immigration, international protection and free movement of EU citizens, and providing inter alia for an increase of the matters falling within the competence of the monocratic judge **[art.1 § 23 of the bill];**

m) Expressly providing that court orders and party submissions for which the law does not require a specific form may be carried out in the form most suitable to achieve their purpose, in compliance with the principles of clarity and conciseness, and that the violation of technical specifications or drafting criteria and limits may be taken into account in the award on costs **[see art.1 § 17(d) and (e) of the bill]**.

II) Another set of norms introduced by the reform for the purpose of reducing the length of the proceedings and concentrating the activities performed therein provides for the introduction of specific measures addressed to the parties and to the judge, in addition to the suppression of unessential hearings, the reinforcement of IT tools and the possibility of remote hearings.
Also in this case the beneficial impact expected is in terms of greater efficiency and shorter length of proceedings
Among other things, the reform thus envisages:

a) Greater concentration in relation to the introductory phase of the trial, providing that, after the parties have filed their application and introductory statements, they may submit a written memorial to clarify and amend their arguments and to make their definitive evidentiary requests, as well as a further memorial to submit replies and proof to the contrary; all of this aims to ensure that at the first hearing the judge has all the elements at his disposal to attempt the conciliation of the parties provided for by article 185 c.p.c, as well as to assess whether the case is ready to be decided, to order continuation of the proceedings with the simplified procedure or to decide on the evidentiary requests **[art. 1 §5 (i) of the bill]**;

b) Mandating the judge to prepare a schedule for the proceedings (*calendario del processo*) at the end of the first hearing [**art. 1 §5 (i) of the bill**];

c) Introducing a time limit not exceeding 90 days from the first hearing for the hearing for the acquisition of evidence [**art. 1 §5 (i) of the bill**];

d) Suppressing certain hearings such as the hearing for the swearing in of the court-appointed expert [**art. 1 §17 (n) of the bill**];

e) Streamlining the final phase of the proceedings by suppressing the hearing for the indication of the conclusions (*udienza di precisazione delle conclusioni*) and by introducing a final hearing with prior, short time limits for the filing of the final submissions [**art. 1 §5 (l) of the bill**];

f) Extending compulsory digital filing for documents and submissions, with the exception of cases of urgency and malfunctioning of computer systems of the justice domain [**art. 1 § 17 (a) of the bill**];

g) Giving the judge the power to order that hearings that do not require the presence of persons other than the counsel, the parties, the public prosecutor and the judge's assistants be conducted remotely, unless the parties object [**art. 1 §17(l) of the bill**];

h) Introducing a time limit not exceeding sixty days within which the public administration must transmit any information requested pursuant to Article 213 c.p.c. or it must communicate the reasons for its refusal [**art. 1 § 21(c) of the bill**].

III) Another set of key norms of the civil reform aims at shortening the length of proceedings by providing also the strengthening of the alternative dispute resolution tools through specific important measures on mediation, assisted negotiation and arbitration.

The expected impact of these norms substantially results in higher number of out-of-court settlements and greater efficiency, greater quality of mediation-related services and the reduction of frivolous litigation.

As matter of facts, as regards mediation and assisted negotiation, the reform envisages, *inter alia*:
a) Strengthening tax incentives relating to out-of-court dispute resolution procedures and the simplification of the relevant rules, as well as extending legal aid to mediation and assisted negotiation procedures **[art.1 § 4(a)]**

b) Harmonising and collecting in a consolidated law the legal regulation of ADR means and procedures **[§ 4(b)]**;

c) Extending mandatory mediation as a condition to accessing the courts to apply to matters relating to contracts of joint ventures, consortia, franchising, works, networks, administration, partnerships and subcontracting, as well as monitoring and assessing, after five years from the entry into force of the relevant legislative decree and on the basis of statistic results, whether such mandatory mediation procedure should stay in place **[§ 4(c)]**;

d) Reviewing the provisions on the mediation procedure in order to encourage the personal participation of the parties **[§. 4(e)]**, as well as to strengthen its quality and transparency, and reforming the standards of seriousness and efficiency for public or private mediation centres **[§ 4(m)]**;

e) Improving the training and updating of mediators, also through the revision of the eligibility criteria for the accreditation of trainers, providing that those who have not obtained a degree in legal studies may qualify as a mediator after obtaining an adequate training through specific courses in legal topics **[§ 4(l)]**;

f) Encouraging and increasing effectiveness of judge-ordered mediation, by establishing:

- Cooperation networks between trial offices, universities, lawyers, mediation bodies, local professional and trade bodies and associations, in order to achieve stable training of operators, monitor results and trace judicial orders for the parties to attempt mediation;
- Training courses in mediation for judges, with measures aimed at encouraging such training and the settling of disputes through mediation or conciliation, also for the purposes of the judges' career evaluation **[§ 4(o)]**;

g) Simplifying the assisted negotiation procedure, also through the preparation of special agreement models by the National Bar Association **[§ 4(r)]**;

h) Introducing the possibility for lawyers to collect evidence in specific out-of-court procedures, which consist in the acquisition of statements by third parties on relevant facts in relation to the subject-matter of the dispute, which may then be used in any subsequent proceedings **[§ 4(s) and (t)]**;

i) Extending assisted negotiation to family disputes with the provision that agreements reached following assisted negotiation may also contain agreements on the transfer of immovable property with binding effects and may provide for the payment of the divorce allowance in a lump sum **[§ 4(u)]**.

l) As regards arbitration, strengthening the guarantees of impartiality and independence of the arbitrator by:

- Introducing a ground to challenge the arbitrator based on serious reasons of convenience and by providing that the relevant appointment is null and void if the arbitrator has not made a specific declaration of impartiality and independence or has failed to declare the circumstances that may be relied upon as grounds for the challenge **[§ 15(a)]**;
- Providing that the appointment of arbitrators by the judicial authority shall comply with principles of transparency, rotation and efficiency **[par. 15(h)]**.
- Providing that the appointment of arbitrators by the judicial authority shall comply with principles of transparency, rotation and efficiency **[par. 15(h)]**.

m)Expressly providing for the enforceability of the decree by which the president of the court of appeal declares the effectiveness of the foreign award **[par. 15 (b)]**;

n) Granting arbitrators the power to issue interim measures in case of agreement by the parties, and limiting in such cases the judge's power to issue interim measures only if the application is filed prior to the constitution of the arbitral tribunal [**par. 15(c)]**;

o) Reducing to six months the time limit for challenging the annulment of the award pursuant to Article 828 c.p.c. **[par. 15(e)]**.

Conclusively, with specific reference to the role assigned to mediation, it's worthy to be noted that the recourse to it does never result in a limitation of the procedural rights of the parties. The mediation procedure, in fact, even in matters in which it is mandatory and a condition of admissibility for legal proceedings, does not compel the parties to find an

agreement and may be interrupted at any time by a party. Participation in the first meeting is sufficient for this purpose.

Accordingly, the right to justice and the right to apply to the courts are always guaranteed.

IV) Another group of key principles aims at enhancing and reinforcing the respect of judicial orders, by intervening on the grounds for requesting a suspension of the enforceability of orders and, more generally, on the complex system of the enforcement process.

Also for these provisions the beneficial effects expected result in a reduction of frivolous litigation and shorter length of proceedings.
For this purpose, the reform provides:
a) Tightening measures on the provisional enforcement of judgments which have been appealed, and providing that enforcement of the appealed judgment shall be suspended if the judgment's enforcement is liable to cause a serious and irreparable prejudice, also in relation to the possibility of insolvency of one of the parties; introducing fines if the appeal is declared inadmissible or manifestly unfounded **[par. 8 (f)]**;

b) Amending the enforcement process, including by:

- Suppressing the enforcement formula, thereby enabling to proceed to enforcement with a simple copy of the decision;
- Shortening procedural deadlines relating to the fulfilment of obligations prior to the issuance of the order of sale;
- Transposing best practices in the field of custody and release;
- Introducing a strict judicial control on the work of the sale officer (*delegato alla vendita*), limiting the time to proceed to any subsequent attempts at sale that may be necessary to place the goods on the market;
- Introducing a private sale procedure to enable debtors to place assets on the market directly, to the benefit of the creditors;
- Introducing measures aimed at allowing the rapid release of the sums attached in third-party foreclosure proceedings (*pignoramento presso terzi*), in the event that after the notification of the attachment the relevant proceedings are not annotated in the court register;
- Granting the enforcement judge the power to order indirect coercion measures in order to compel compliance.

V) Other rules, then, for the purpose of enhancing the efficiency of the justice, provide for a monitoring system able to encourage the productivity and a uniform performance across the courts, with beneficial effects of greater efficiency, shorter length of proceedings and backlog reduction.
at that end is provided:

a) assigning to the trial office the tasks of analysing and preparing data on workflows **[§. 18 (b) (5) and (c) (2.1)]**.

b) By monitoring experiences and ensuring the traceability of court orders referring parties to mediation **[par. 4 (o)]**.

VI) The legislation in question also gives raise to the pivotal intervention on the system and one of the most significant innovations of the reform process as a whole, the establishment of the Trial Office (ufficio del Processo).
In the context of the civil proceedings reform, the Trial Office has been provided by law providing the establishment in lower courts, courts of appeal and the Supreme Court of such organisational structures.
The reform aims at regulating the matter consistently and stabilize the already approved rules on the trial office in the context of the Recovery Plan, in order to set up the various trial offices structures and apparatuses that may support the judges in the performance of their duties.
The reform sets forth a diversified framework in relation to the structure of the trial office in lower courts and courts of appeal, on the one hand, and in the Supreme Court, on the other hand, in order to reflect the differences in the structure of the respective judicial bodies and the proceedings before them.

As far as the Courts of appeals is concerned the following principles and criteria have been laid down:

a) Provide that the trial office, under the direction and coordination of one or more judges of the office, shall be organised by identifying the professional requirements of the staff to be assigned to this structure by referring to the figures already provided for by law;

b) Provide that the trial office is responsible of carrying out the following tasks, after training the staff of the structure:

1. Support the judges including through, among others, preparatory activities for the exercise of the judicial function such as the study of the files, an in-depth study of case law and doctrine, the selection of the conditions for the mediation of the litigation, the preparation of draft orders, drafting minutes, helping implement organisational projects aimed at increasing the productive capacity of the office, to reduce the backlog and prevent its formation;
2. Support for the optimal use of IT tools;
3. Coordination between the judge and the registry;
4. Cataloguing, filing and making available case-law precedents;
5. Analysis and preparation of workflow data.

In respect of the Supreme Court, on the other hand, the reform envisages the setting up of one or more organisational structures called Supreme Court trial office, after identifying the professional requirements of the staff of this organisational structure consistently with the specificity of the functions of the Supreme Court. The Supreme Court trial office, under the direction and coordination of the President or of one or more delegated judges, shall be responsible for carrying out the following tasks:

(a) Provide assistance in the analysis of pending cases;
(b) Support the judges through, *inter alia*, preparing the file of the appeal and summary notes, assisting in the organisation of hearings, including by researching serial case law, performing preparatory activity for jurisdictional measures, such as research into case law, legislation, scholarship and documentation in order to contribute to the overall management of the appeals and the relevant judicial measures;
(c) Support for the optimal use of IT tools;

(d) Collection of material and documentation also for the activities necessary for the opening of the judicial year;

In addition, the reform envisages the establishment, at the General Prosecutor's Office at the Supreme Court, of one or more organisational structures called the Office of perusal, analysis and documentation, with specific requirements and tasks of support to the General Prosecutor Office in terms of preliminary scrutiny of the case, deepening of the case-law on the subject matter **(see art. 1 § 18 bill**)

2) The organizational measures

As already said, Italy has addressed the question of the reform of justice system with a multilevel approach.

In addition to the thorough legislative reform, the Government has put in place many other measures, of organizational support and human resources nature, to intervene on the system as more effectively and thoroughly possible so that all these measures together could lead to the expected and stable solution.

2.1) The Trial Office (l'Ufficio del Processo)

The Trial Office (Ufficio *del Processo*) is one of the main tools at which the reform strategy aims to strengthen the efficiency of the system and, in parallel, the clearance of the backlog (see annex 3).

This Office is already established in the courts of appeal and first instance courts, in order to guarantee the reasonable duration of the trial, through the innovation of organizational models and ensuring a more efficient use of information and communication technologies.
Honorary justices of peace (Giudici di Pace) , trainees and *stagiaires* are assigned to the trial office.

Currently, over 170 merits courts (140 first instance and 30 appeal instance) there are 363 Trial Offices, 322 in first instance courts and 30 in the appeal courts).

The office for the trial is responsible for all the activities supporting the performance of the judicial work, including the preparation and research tasks necessary for the resolution of the case and the drafting of measure. To the Trial Office can also be assigned tasks to support the efficient use of IT systems, such as, coordination and monitoring of electronic deposits, as well as the timely detection of the possible problems raising from the adoption of new technologies and new organizational models.

Within the context of the PNRR, with specific reference to the Justice system, Italy has committed to invest, *inter alia,* on human resources to strengthen the Trial Office, overcome the disparities among judicial offices, improve their performance both in the first instance and in the appeal and accompany - completing it - the digital transition process of the Judicial system.

For the purpose of clearing the backlog, the intervention planned has the following main characteristics: promptness, since effective already at the first year of its implementation; actual possibility to increase the performance, already very high in comparison with other countries, of the national courts.

Therefore, support to the proper judicial function, in conjunction with an appropriate distribution on the territory and steady monitoring has been considered a key intervention to achieve the objective.

The goals of an extraordinary hiring plan of full and fixed time personnel is to:
a) temporarily strengthen the trial office in order to:
1. support the judges in the containment and reduction program of pending cases, while improving the overall working context;
2. allow the judge to focus on decision- making process
b) ensure technical skills to support the management of the transition, at technological level too;
c) stably strengthen the administrative ability of the judicial system through the staff training and knowledge transfer.

Thus, the expected results are:

- elimination of the backlog and containment of the overall pending cases;
- increase in productivity (number of rulings issued);
- increase and improvement of the digitalization of offices;
- decrease in the overall time of reaction of the administration to regulatory changes;
- improvement of the coordination tasks within the courts management;
- overcoming the operational disparities among the courts of the territory.

As far as the question of the length of proceedings and clearance of backlog is concerned, the expected results,
- in terms of decrease of the *disposition time* of the civil procedure as a whole within the Plan horizon (30.6.2026), are -40% in comparison with the 2019 data;
-in terms of *clearance of the backlog,* are planned on the basis of two time-limits: a mid-term target by the end of 2024 (- 65% for the courts and – 55% for the appeal courts in comparison with the 2019 data) and a long-term target by 30.6.2026 (-90%t for both courts and appeals courts).

The implementation of the intervention results in an extraordinary plan for recruitment of temporary administrative staff (see law 6 August 2021, n. 113) aimed at improving the performance of the judicial offices and accompany and complete the digital transition process of the judicial system in the effort to reduce the backlog and the length of the proceedings.

The project is then to invest in strengthening the Trial Office with a great contribution of human resources constituting efficient support teams for the magistrate.

In this context, pursuant to the decree-law of 9 June 2021, no. 80, converted, with amendments, by law 6 August 2021, n. 113, it's foreseen the 3 years fixed-term employment recruitment of:

- n. 1.660 administrative and technical personnel - graduated;
- n. 750 units of administrative and technical staff;
- n. 3.000 administrative and technical staff.

Likewise, the hiring with a fixed-term employment contract of n. 16,500 units is also provided:

- up to 16,100 for first and second instance judicial offices, in two rounds of 8,050 units

(a first round of 8,050 for a maximum of 2 years and 7 months, a second round of a further 8,050 for a maximum of 2 years);

- up to 400 units for the Court of Cassation, in two rounds of 200 unit (the first 200 units for a maximum of 2 years and 7 months, a second round of additional 200 units).

All the formal steps to proceed to such a massive recruitment of personnel have been already taken.

Therefore, the imminent assignment to appeal courts and first instance courts of such a huge contribution of human resources (8.050 at first) goes in the direction of the increase of the judicial performance, as target set in the PNRR and expected to be achieved for a full compliance with the ECHR judgments.

What is more, it's worthy to be noted that the key role played by the Trial Office in the strategy of intervention on the justice system efficiency has been acknowledged also by the Legislator and has been taken in the due consideration in the legislative reform of the civil procedure, where such institution, in line with the Trial Office designed in the PNRR, has been codified with the same main characteristics (see above sub V and VI - art. 1 § 18 of the bill).

2.2) Human resources policy

2.2 a) Administrative Staff

The policy of personnel and staff recruitment have been considered an essential part of the process of reform and strengthening of the justice system.

In acknowledging that human resources play a decisive role in the smooth running of the Justice system (also in terms of length of proceedings), the Administration has, for some time now, been implementing an impressive recruitment plan.

This plan has involved the whole territory and has been implemented by relocating the recruited units based on various factors such as: the needs of the different areas, the projects of enhancement of the functionality of the offices, the clearance of the backlog as well as organizational and technological innovation activities.

On the other hand, the willingness to improve the performance of judicial offices through the contribution of new human resources is demonstrated by the constancy with which the recruitment procedures, despite the concomitant Covid-19 pandemic emergency, were carried out and are still ongoing.

As matter of facts, on the basis of the new political-administrative guidelines that have marked the end of a long time blockage of turnover and public competitions, all the lines of action taken in the field of personnel management have been aimed at strengthening the workforce operating in the Justice Sector.

The following brief summary of the administrative action intended to the ordinary recruitment of administrative personnel is a proof of the utmost attention always paid to ensure by means of human resources the appropriate and efficient support to the judicial system as a whole.

After the competition for 800 judicial assistant posts, published in November 2016, which allowed the hiring of 4,492 new units, there has been a resumption of the personnel recruitment policies, which then continued through the launch of further calls for selection of different professional profiles to fill the vacancies in the judicial offices throughout the national territory.

It's noteworthy that over years 2015/2021 more than 9,000 recruitments have been accomplished, of which 3,547 in years 2020/2021, and others are still in progress.

In particular, only in 2020 and despite the numerous organizational difficulties imposed by the pandemic emergency, hiring procedure has been completed for 1,187 staff units (including the 275 judicial assistants in the ranking list who started on 11 January 2021) and four new competitions have been launched for a total of 4,250 staff units (1,000 judicial operators, 400 Directors, 150 officials for Northern Italy, 2,700 expert clerks), already fully recruited.

Another public call for 2.242 posts, already launched in 2019, is going to be resumed; and other hiring procedures have been implementing, namely:

- additional 1,095 fixed-term judicial operators;
- selection by start-up of those registered in employment centers, for 616 judicial operators (published on 4.10.2019);
- selection for 109 vehicle drivers (published on 31.12.2019).

Additionally, a further strengthening of the workforce is expected as a consequence of the recruitments established in the PNRR, with which it has been estimated the enrolment of about **21,910 units to be employed** both in carrying out those activities that require specific technical and organizational-managerial skills and, above all, in clearing the backlog.

Moreover, this reduction will be functional to the concrete implementation of the "principle of the reasonable duration of the process" set forth also in the PNRR, according to which "The fundamental objective of projects and reforms in the field of justice is the reduction of judgment time".

More specifically, among the actions envisaged for the purpose of reducing the length of the proceedings, the implementation of the **trial Office** is of primary importance.

Introduced on an experimental basis by the Legislative Decree. n. 90 of 2014, it is an organizational structure established for the purpose of guaranteeing the reasonable length of the proceedings, through innovative organizational models and more efficient use of IT technologies.

A team of qualified personnel supports the judge in order to facilitate him in the preparatory activities of the judgment and in the drafting of the measures, by collaborating in the study of the dispute and jurisprudence, in preparing the draft rulings, in the organization of the office and in general in all the activities related to the proceeding and the decision.

Indeed, on 6 August 2021 the public call for the fixed-term hiring of **the first contingent of 8,171 units** has been published in the Official Gazette and it's planned that they will be assigned to the districts on the territory as follows:

ADDETTI ALL'UFFICIO DEL PROCESSO - PDG 6 AGOSTO 2021	
DISTRETTO	POSTI
CORTE DI CASSAZIONE	200
ANCONA	140
BARI	306
BOLOGNA	422
BRESCIA	248
CAGLIARI	248
CALTANISSETTA	106
CAMPOBASSO	51
CATANIA	331
CATANZARO	304

FIRENZE	446
GENOVA	251
L'AQUILA	190
LECCE	303
MESSINA	148
MILANO	680
NAPOLI	956
PALERMO	410
PERUGIA	107
POTENZA	125
REGGIO CALABRIA	208
ROMA	843
SALERNO	218
TORINO	401
TRIESTE	141
VENEZIA	388
TOTALE	8.171

Furthermore, as announced on the Ministry of Justice website, "After the summer, a new call will be published for **79 posts for employees of the trial office** in the judicial offices of the Autonomous Provinces of Trento and Bolzano and for a **further 5,410 fixed-term of technical units** (IT, accounting, construction, management, statistical) and legal-administrative personnel. In 2024, another contingent of **8,250 employees in the trial office will be hired**, which in total will be **16,500** ".

Another important step taken is the strengthening of the administrative capacity of the system, in order to enhance human resources, integrate the staff of the registries and make up for the lack of technical professional essential for implementing and monitoring the results of the organizational innovation.

Thus, the enhancement of the professionalism of the staff on duty and of those who will soon become part of the judicial administration, is a priority goal, that the Justice administration pursues in parallel with the hiring policies.

Due to the increasing evolution of proceedings, services and related organizational models, also an intervention in terms of training of those serving within the Justice organization will be ensured, in order to strengthen also the management of the wide range of tasks – also of those not strictly judicial- and of the digital services and the IT technologies, that since long time have been featuring the Digital Civil Proceedings (*Processo civile telematico*) and, in general, the court registry activities (*attività di cancelleria*).

Therefore, in the light of the foregoing, it can certainly be considered proven how constant and considerable the efforts made by the Government to achieve the objective have been and continue to be, in terms of investments in human resources and tools aimed at guaranteeing the better functioning of the Justice Sector and, in particular, the shortening of length of the proceedings.

2.2 b) Judiciary

The current total national staffing of the judiciary is 10.751: 9.745 are actually covered and remaining 1.006 are vacant.

Judiciary staff policies have been strategically focused on enhancing the human resources of the different offices along the territory, through increasing staff numbers, and on developing more flexible intervention tools in critical organizational situations through the introduction of the so-called flexible human resources (*piante organiche flessibili)*.

In particular, an increase of 600 units in the fixed plan of the "ordinary" judiciary has been established by law, with the consequent increase in the allocation from 10,151 to 10,751 units. By Ministerial Decree of 14 September 2020, the human resources of the judicial offices judging on the merits were redefined through an increased distribution of a total of 422 units.

Additionally, also district flexible stuffing plans (*piante organiche flessibili*) have been established by law in order to create a pool of magistrates at district level, who, by replacing the magistrate absent or supporting the local courts in addressing temporary difficult situations of performance, offer a prompt solution to unexpected difficulties.

The aim of these organizational solution was to provide a flexible and effective tool to deal with temporary difficult situations in judicial offices due to the sudden increase in the demand for justice or the absence from office of the magistrates in charge.

In this path, in October 2020 the total national contingent of the flexible stuffing plans was set at 176 units, 122 of which with judicial functions and 54 with prosecuting functions.

As for the next recruitment of magistrates, it's pointed out that a public competition has been recently carried out and is still ongoing; therefore, the actual hiring of those selected is expected to take place within 2022.

3) Toolkit : the Digitalization of Justice.

The Digitalization as working tool has been being an objective of the justice policy for long time.

The objective of the full and generalised computerisation of the civil trial is an important result fully achieved by Italy after a long experimentation, and made compulsory in almost all stages of first and second instance since 2014. The compulsory use of the telematics civil process in first and second instance has made identical throughout the country the way magistrates access and manage the process. The PCT has been adopted everywhere in Italy and the mode of filing acts is uniform throughout Italy for lawyers, technical consultants, magistrates and registry staff.

Moreover, the recent legislative reform, as said above, have furtherly enhanced the use of the IT in the civil proceedings by providing the mandatory digital filing of acts with all judicial instances (from the Justice of peace up to the Court of Cassation) and the conduction of the hearing via videoconference when it is not required the presence of individual others than the counsel, the parties, the public prosecutor and the collaborators of the judge (see. Art. 1 § 17 a) and e)- see above sub II) f).

Moreover, the civil sector systems are being significantly developed, aiming at the unification of technologies and functionalities that will allow the sharing of data and documents in a circular way by the Justice of the Peace and "Honorary" Judges, up to the Supreme Court with an ever greater involvement of external qualified parties in particular from the Bar.

Also the Country Report on the Rule of Law by the EU issued in 2021 highlights such an achievement by Italy.

Additionally, some other initiatives at civil proceedings level have been adopted in the perspective of enhancing the efficiency of the system.

- Civil Sectors of the Supreme Court of Cassation and of the General Prosecutor's Office at the Court of Cassation:, a Protocol, signed by the Ministry of Justice with the Court of Cassation,

the Avvocatura Generale dello Stato [State Legal Advisory Office], the CNF [National Lawyers' Council] and the Lawyers' Congress Body [Organismo Congressuale Forense] planned the use, on an experimental basis, of *e*-filing - which started on 26 October 2020 - by lawyers, through the use of a new management module for these filings, integrating the functionalities of the current electronic registers of the Court's Registry.

- For Supreme Court judges, an application called "desk of the legality judge" was developed to remote access to the computer file of proceedings, the drafting of measures and their consequent electronic filing. The use of the new module for the management of filings and the desk will also be extended to the civil sector of the Prosecutor General's Office at the Court of Cassation.

- Portal of *e*-Services, PEC Registers and *e*-payments: activities are underway aimed at updating the portal of *e*-services with which citizens, companies and professionals interact with the Judicial Offices, using some online services. Moreover, access to services will be possible through SPID, the National Service Card and the Electronic ID Card pursuant to the new provisions of the code.

- Computerized registers: to allow smart working of staff, remote access was implemented, through the use of smart cards and laptops registered in the justice domain, to the management system of civil registers of civil litigation, non-contentious jurisdiction and labor disputes, in use by the courts and appeal courts;

- Justices of the peace: more than two hundred offices have experimented with e-service of documents, starting the procedure for the recognition of their legal value. To date, 145 ca offices of the Justice of the Peace have concluded the relevant administrative procedure and are currently operational. The PCT [Digital Civil Trial] has been launched at the offices of the Justice of the peace experimenting with the filing of appeals for injunctions and remote access to the registers by the Registry staff.

Also within the context of the PNRR, the digitalization of justice has been considered, together with the other aforementioned interventions, to play a key role in the clearance of the backlog and the shortening of the length of proceeding.
The project line based on the digitalization will make it possible to eliminate the paper component of court files of pending or concluded cases, in the Courts and Courts of Appeal, in the last 10 years, for the double purpose of enabling the digital consultation of documents and eliminating the management of paper archives.

For the Supreme Court of Cassation is also provided the digitalization of the case files in order to allow a quicker access to information, documents and data.
Furthermore, such amount of digitalized data, will be also able to feed the data-bank systems of the PCT and of the legitimacy proceedings before the Court of Cassation, in addition to those IT instruments of information sharing that will be implemented within the project of "Artificial intelligence and Justice *Datalake"* and that, in such a way, will have a more extended information and analysis capacity.

4) Statistics

As for the trend of the length of proceedings and clearance of the backlog, first of all, it has to be highlighted that even before and regardless the implementation of the paramount

reform exposed above, the trend of the data has been being increasingly positive in the last years on both point of view (see attachment annex 4).

As to the *disposition time*, related to the length of the civil proceedings, the trend from 2016 to 2021 was markedly positive and, above all, well established in its direction towards a progressive reduction in the length of all three levels of justice.

In fact, for the proceedings before court of cassation, from 1424 in 2016, the data gets down to 1293 in 2019 and 1256 in 2021.

For the court of appeal proceedings, the length of proceedings from 827 in 2016 the data gets down to 627 in 2019 and 658 in 2021.

For judgments at first instance, from 367, without enforcement and bankruptcy proceedings, and 384, including enforcement and bankruptcy proceedings, in 2016 the data gets down to 339 -348 in 2019 and 338 -353 in 2021.

A separate consideration must be made with reference to the 2020 figures, which is clearly affected by the effects of an exceptional circumstance such as the pandemic emergency and its impact on the management of the judicial system.

So much so that, in fact, the data for the period 1.7.2020-30.6.2021, although still affected by this extraordinary fact, nevertheless record a clear reduction and a return to the decreasing trend, which, in the light of that, can be surely found well-established.

Also with regard to *backlog clearance* of civil proceedings, the trend is remarkably positive, in terms of the percentage reduction of pending cases.

In the period under consideration, 2016 - 2021, for proceedings before the courts of first instance of merit, there is a backlog clearance of -28%; for proceedings before the Courts of Appeal there is an even more remarkable decrease of -40%.

With reference to proceedings before the Court of Cassation, where the figure fluctuates over time, it should be noted that, on average, the 50% and more of the backlog is made up of tax proceedings, therefore of different nature with respect to the proceedings object of the two cases at hand.

IV. Conclusions

In the light of the foregoing, the Government draws the attention of the Secretariat and of the whole Committee of Ministers on the deep reform process that has been going on for a long time and that has recently been further accelerated.

As already pointed out, the approach of the Italian Government has been holistic, in the full conviction that a profound reform process could not be limited only to regulatory changes but that it was also necessary to intervene on the organisational and structural aspects of the system.

Moreover, it is important to highlight that all the measures devised and implemented concern all levels of judgement, from the merits to the legitimacy, precisely in order to intervene on the single steps of the entire procedural process to the benefit of the whole system.

Therefore, also the phase of legitimacy, which in recent years has been confronted with a backlog issue, is the subject of in-depth support measures, which will be definitely able to give raise to a very positive trend.

Therefore, as mentioned above, alongside the strongly deflective effectiveness of the regulatory reform, epoch-making policies on personnel, organisation and digitalization of the systems have been put in place in the judicial system.

The width and depth of the interventions carried out and planned show the seriousness of the commitment and the intensity of the efforts made by the State to achieve the objective.

The results of this can already be seen in the figures which, for several years now, have shown a constant positive trend both in reducing the length of trials and in cutting the backlog.

It has to be also highlighted that the inclusion of the expected results among the economic commitments undertaken by Italy within the PNRR of the European Union makes the prospect of a further effective improvement of the civil procedure, in terms of duration and disposal of the backlog, even more imminent, with a short-term timing already set, which for the regulatory reform - as seen - is one year from the entry into force of the enabling law (Article 1)

Therefore, in the light of the foregoing, the efforts and the commitment deployed in the wide plan of reform and the results achieved, until now and in a short time-frame, are definitely positive and compliant with principles set in the Convention.

The Government of Italy, considers, then, that all the necessary individual and general measures in the execution of these judgments have been adopted and the positive obligations under art 46 of the Convention have been fulfilled, so that there are all the grounds for the Committee of Ministers to adopt a final resolution and close the examination of the case.

Strasbourg, 15 october 2021

ANNEX

1) Legislative Decree (DDL) n. 3289 “Delegation to the Government for the efficiency of the civil process and for the revision of the regulation of tools for alternative resolution of disputes and urgent measures to rationalize the procedures in the field of the rights of individuals and families as well as in matters of forced execution “.

2) Brief table of PNRR (“*Piano Nazionale per la Ripresa e la Resilienza*”) Focus Upp e Capitale Umano.

3) Brief table of Trial office

4) Statistics.