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CIVIL JUSTICE IN ITALY: RECENT TRENDS

by Silvia Giacomelli*, Sauro Mocetti*, Giuliana Palumbo* and Giacomo Roma*

Abstract

In this paper we document the changes in the functioning of the Italian civil justice system in the current decade. We highlight that the measures undertaken in recent years have helped to reduce the number of new cases and, therefore, the number of pending cases. However, the number of resolved civil cases has also decreased, following the decline in new cases. This pattern does not seem to be explained neither by the increased complexity of incoming cases nor by the prioritizing of the most dated and therefore presumably more difficult cases. The length of proceedings remains very long, with significant differences between courts, reflecting, among other things, organizational inefficiencies. The recent geographical reorganization of the court system does not seem to have yet improved the system's efficiency, but has contributed to the decline in the new ordinary cases.

JEL Classification: K4.

Keywords: civil justice, litigiosity, regional divide, geographical reorganization of the court system.

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1. Introduction*

Civil justice is a critical component of an economy's institutional system since it is responsible for the legal protection of investment and trade, the two key elements of economic activity. The empirical analyses demonstrate, for our country as well, that inefficiencies in the administration of justice have quantitatively significant effects on the economy (see the box 'Civil justice and the economy').

Our civil justice system has long suffered from considerable dysfunctions, as documented in various studies¹ and as indicated in the annual reports of the highest judicial bodies.² Emblematic of these problems are the enormous backlog of cases and the excessive length of trials. At the beginning of 2010 about 5.8 million civil proceedings were pending before the Italian courts, the highest amount ever. According to the World Bank, in that same year, to resolve the same kind of commercial dispute, more than twice the number of days were needed in Italy than in the other advanced countries.

To address these problems, especially starting from the summer of 2011, under pressure exerted by the crisis to undertake action to correct structural weakness that weigh upon the economy, the civil justice system underwent considerable reform.

The actions undertaken, of varying natures and importance, were designed, on the one hand, to reduce the number of legal disputes and, on the other, to improve the productivity of the courts. In pursuit of the first objective, conditions for accessing the system were modified, both the rules and the costs required to initiate a case; alternative dispute resolution instruments were introduced; and a number of procedural steps were modified. As to the latter, there was a redistribution of the trial courts throughout the country; investments were made and rules introduced to encourage the use of information technologies; finally, incentives for court managers to reduce their backlogs were introduced. The legislative measures were accompanied by changes to the organization and management of court activities. Often arising spontaneously, some of these changes then formed the basis for drafting legislative measures (e.g. the judicial assistance office and plans for clearing backlogs). Furthermore, projects were launched to promote the spread of best practices.

With this as the backdrop, this paper has a dual objective. The first part documents the evolution of the functioning of the civil justice system in the present decade, describing its contribution to the demand (number of new cases filed) and the supply (number of cases resolved) of justice and, where possible, indicating their nexuses with the reforms carried out. As a measure of performance, our analysis uses the change in the stock of pending proceedings and is conducted at the aggregate level and by type of court. The second part of this work focuses on the trial courts (*tribunali*) (and on the most recent years), for which the most information is available. For this type of court, we conduct an empirical analysis of the factors responsible for the demand and supply trends observed, we describe the differences in the performance of the courts at the local level and we examine their possible causes. Moreover, we provide an initial evaluation of the effects of the reorganization of the geographical distribution of the courts on their ability to dispose of trials and on the litigation rate.

* The work has benefitted from the data made available by the Ministry of Justice. The authors would like to thank Fabio Bartolomeo for his valuable cooperation in providing the data and for his suggestions. We also express our gratitude to Magda Bianco, Giacomo Rodano and Paolo Sestito for their helpful comments and Cristina Petrassi for her editorial assistance. The opinions expressed are those of the authors only and do not necessarily reflect the official position of the Bank of Italy.

¹ See, among others, Marchesi (2003), Bianco et al. (2007), Esposito et al. (2014).

² See most recently, *Relazione sull'amministrazione della Giustizia nell'anno 2016 del Primo Presidente della Corte di Cassazione*.

The results suggest that, in the current decade, the civil justice system has improved, especially in reducing backlog: from the end of 2010 to the end of 2016, the total number of pending proceedings fell by 25 per cent. With the exception of the Court of Cassation, the decline occurred across all the types of courts. However, for the offices of the justice of the peace and for the courts of appeal, it was of a size comparable to the increase observed in the 2005-09 period and therefore the present stock is only slightly lower than that of a decade earlier.

The reduction in pending proceedings is attributable mainly to the decline in the number of new cases that are filed annually with the courts, with no improvement in the capacity to clear them. On the contrary, the trend in resolution of cases generally tracked that of cases initiated, although for the former the reduction was lower. The correlation is observable in all types of courts and, within them, by subject matter handled.

The reforms that, up until now, have had the most visible effects in reducing the number of disputes are those concerning specific subject matters characterized by a high litigation rate. These measures include, specifically, the introduction of a filing fee to appeal fines before the justice of the peace, the entrusting to administrative bodies of some procedural steps in the disputes involving social security, and the restrictions on appealing to the courts of appeal for compensation for damages arising from excessive trial length. The decline in demand owing to these factors was responsible for 42 per cent of the overall reduction in lawsuits for 2010-16.

The current scenario is still, however, plagued with problems. Analysis at the level of the trial court shows that the reduction in the stock of pending cases had limited impact on trial lengths, which remain very high compared internationally. In 2016 the actual average trial length before the trial courts was about 1,100 days for ordinary disputes and 1,250 days for commercial disputes. Even the most virtuous Italian trial courts fall far short of the average for the main European countries.

The national data masks large differences between the macro-areas of the country, generally unfavourable to the South, but also within each area. In the trial courts in Southern Italy, the actual trial length is almost 40 per cent higher than in Central and Northern Italy; the share of proceedings that have been pending more than three years is about 9 percentage points higher. These divergences reflect differences in productivity: in the trial courts in the South, the ratio of cases resolved to the number of civil court judges is more than 25 per cent lower than in Central and Northern Italy. These differences persist even after taking account of the different caseloads of the trial courts (cases filed and pending per judge) and of the complexity of the disputes they are called to adjudicate (approximated by caseload composition by subject matter).

The positive correlation observed between the decline in cases resolved and those filed had a dampening effect on the process of reducing the stock of pending actions. Such correlation could reflect a caseload composition. On the one hand, the reduction in the number of cases filed could have led to a shift in litigation towards more complex subject matters and/or disputes, which in turn could explain the decline in cases resolved. On the other, the adoption of policies for clearing backlogs, giving priority to the examination of older, and therefore presumably more difficult, cases may have raised the average complexity of the lawsuits handled. The analysis at the level of the trial court, which incorporates the measures of such composition effects that can be derived from the data currently available, does not however confirm that this is so. Similarly, the drop in the number of cases resolved compared with those filed does not appear to be attributable to a reduction in the availability of resources. It therefore appears to be ascribable to unobservable residual factors that lead to, for example, a slower pace of activity of the trial courts in response to a change in inflow.

Overall, the supply-side measures taken up until now do not appear to have had an appreciable impact on the trial courts' productivity, which declined on average between 2014 and 2016. In particular, the reorganization of the geographical distribution of the courts has not yet had positive effects on their ability to clear cases, presumably because of the difficulties, including organizational, encountered in transitioning to the new arrangement. The reorganization, which took effect in September 2013, consolidated minor trial courts and closed all the satellite court locations in order to increase the average size of the trial courts and to exploit economies of scale. Indirectly, the reform also had the effect of increasing the distance from the trial court having jurisdiction – and, therefore, the costs of accessing the judicial system – for users in areas whose courts were consolidated with others. This cost increase is responsible for a 7 per cent decline in ordinary disputes (which represent around 30 per cent of total disputes). By contrast, there are no significant effects observed regarding the other subject matters potentially affected by the reform.

This paper is organized as follows. Section 2 describes the developments in pending, incoming and resolved cases over the last decade at the aggregate level (Section 2.1) and by type of court (justices of the peace, trial courts, courts of appeal, Court of Cassation; Sections 2.2 to 2.5). Section 3 focuses on the trial courts. Specifically, Section 3.1 investigates the relationship between the trends in resolved and incoming cases, Section 3.2 delves further into the analysis of geographical heterogeneity in the performance of the trial courts, while Section 3.3 provides an analysis of the effects of the geographical reorganization of the trial courts on both supply (productivity) and demand (litigation rate). Finally, the Appendix describes the changes that have been made in the court system in recent years on the legislative and organizational level.

Box: Civil justice and the economy

The judicial system sustains the proper functioning of the economy by ensuring protection of property rights and enforcement of contracts. The first ensures those who invest that they will be able to reap the returns of their investment, thereby encouraging capital accumulation and expanding the sources of financing available to firms. Efficient protection of contracts ensures fulfilment of the obligations assumed, and in doing so makes it possible to take full advantage of trading opportunities in all markets (financial, goods and factors of production), and efficient employment of resources in the economy and within firms. This occurs through several channels.

In the first place, an efficient judicial system removes entry barriers, improving credit conditions, thereby loosening the financial restraints on the creation of new business initiatives,¹ and encouraging the establishment of commercial relationship with young companies that have not yet developed a reputation for reliability. Vice-versa, in the absence of 'formal' protections, 'informal' mechanisms, such as trust or long-term relationships, step in to fill the gap and end up favouring companies that have been operating in the market longer, even if less efficiently.² In the second place, an efficient judicial system contributes to the proper functioning of insolvency legislation by enabling a quicker, less costly redeployment of the productive resources of firms in crisis. This occurs both by encouraging the reorganization of companies facing temporary difficulty and by hastening the exit from the market of those that are no longer profitable.

At the level of the individual enterprise, the importance of an efficient judicial system can be easily appreciated if we liken the enterprise to a network of contractual relationships of various kinds (financial, employment and commercial). It follows that efficient productive and allocative conditions can be achieved only if all these contracts are sufficiently protected. In the absence of this, the enterprise will find it difficult to obtain financing; it will see an increase in uncertainty and in the costs associated with disputes that arise with employees and commercial partners; it will be discouraged from investing, especially in innovative or risky activities that are more difficult to protect;³ and it will be led to making suboptimal choices concerning the organization of production⁴ and design of its internal structure.⁵ The totality of these factors keep it from reaching a minimally efficient size.⁶

With reference to Italy, the empirical analyses have demonstrated that higher trial lengths have negative effects on the participation of firms in global value chains (Accetturo et al., 2015) and on their size (Giacomelli and Menon, 2016). Giacomelli and Menon demonstrate that reducing the length of civil trials by 50 per cent would increase the average size of manufacturing firms by around 10 per cent. In addition, the inefficiencies of the judicial system worsen financing conditions for households (Fabbri and Padula, 2004) and firms (Jappelli et al., 2005; Magri, 2010). Jappelli et al. estimate that increasing the number of pending trials by 10 cases per 1,000 inhabitants would reduce the lending-to-GDP ratio by 1.5 per cent. Finally, Coviello et al. (2017) finds that delays in the delivery of public works increase where courts are more inefficient due to the decrease in the expected value of the penalty imposed.

¹ See, among others, Bae and Goyal (2009) and Qian and Strahan (2007).

² See Johnson et al. (2002).

³ These are industries in which the production of final goods requires intermediate outputs that are not fully available on the market and that must be contracted for with their suppliers, Nunn (2007).

⁴ Ferguson and Formai (2013).

⁵ Bloom et al. (2010).

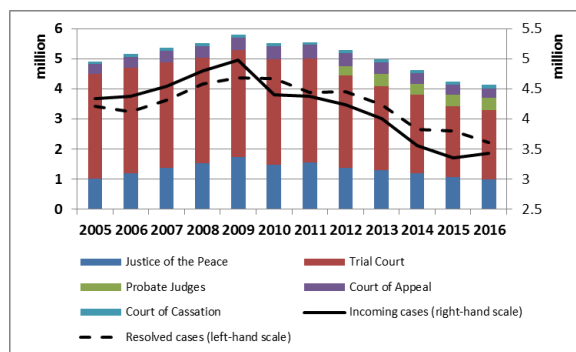
⁶ Kumar et al. (2001); Laeven and Woodruff (2007).

2. Developments over the present decade

2.1 Overview

The number of total civil³ proceedings pending at the end of the year⁴ declined by 25 per cent from 2010 to 2016 (Figure 1).

Figure 1 –Pending, incoming and resolved civil proceedings
(number of proceedings)



Source: Based on Ministry of Justice data.

For the years prior to 2011, the data referring to probate judges have been included in those of the trial courts.

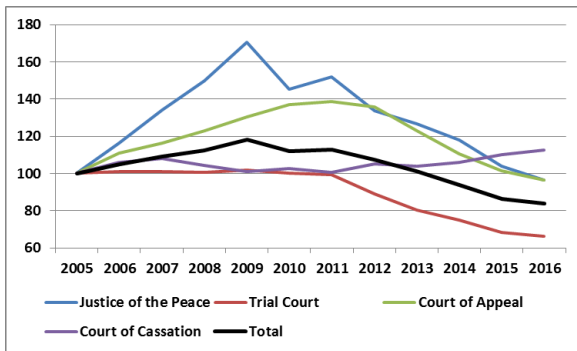
The decline was observed across all types of courts, with the exception of the Court of Cassation, where the stock of pending cases rose by 9 per cent (Figure 2). For the justices of the peace and for the courts of appeal, the size of the reduction was comparable to the increase that was observed in the 2005-09 period, and therefore the current stock is only slightly lower than that of a decade earlier.

³ All the courts, except for juvenile courts, are considered.

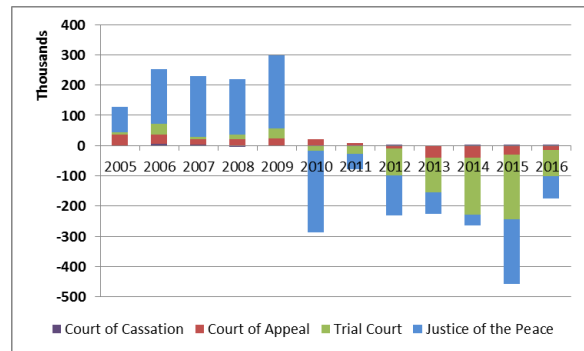
⁴ This performance measure was chosen due to the fact that the existence of a considerable backlog is one of the indicators of system malfunction and that, for the time period considered, other measures, such as actual trial length, are not available. This measure makes no distinction between cases that are very different in terms of complexity (by subject matter and within each subject matter).

Figure 2 – Change in pending proceedings and balances by type of court

(a) Change in pending proceedings by type of court



(b) Balances by type of court (1)



Source: Based on Ministry of Justice data.

(1) The balance represents the difference between incoming and resolved cases and is calculated by type of court.

A comparison of the trend in the annual flow of cases filed (incoming cases) and those disposed of (resolved cases) reveals that the reduction in pending cases observed during the current decade is attributable solely to the decline in demand (Figure 1). The number of cases resolved also fell, although to a less marked extent. The average clearance rate (ratio of resolved cases to incoming cases) for the period was 106 per cent;⁵ in absolute terms the number of cases resolved each year was higher than the number of incoming cases by around an average of 240,000 cases.

2.2 *Justices of the peace (giudici di pace)*

The cases pending before the justices of the peace between 2010 and 2016 decreased by one third, thanks to the steep decline in demand, accompanied by a reduction in resolved cases, though of a lesser amount (Figure 3a).

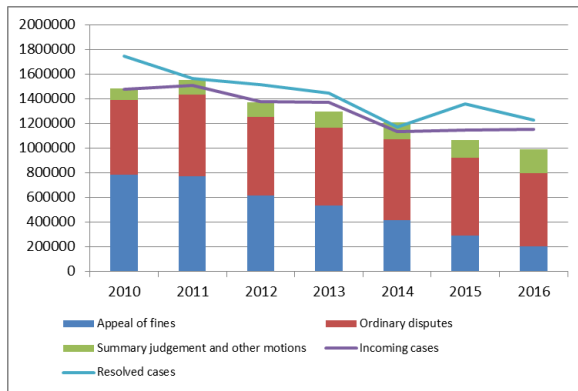
A look at the trends by subject matter paints a different picture (Figure 3b): while there was a drastic decline in pending cases to appeal the imposition of fines, equal to more than 80 per cent, there was an increase in summary judgment motions⁶ (however they decreased as a percentage of total actions), presumably connected with the economic conditions; ordinary disputes basically remained stable.

⁵ Values greater than 100 per cent indicate the ability of a court to clear, in addition to its current caseload, a portion of its backlog as well; by contrast, values below 100 per cent indicate a tendency to accumulate a backlog.

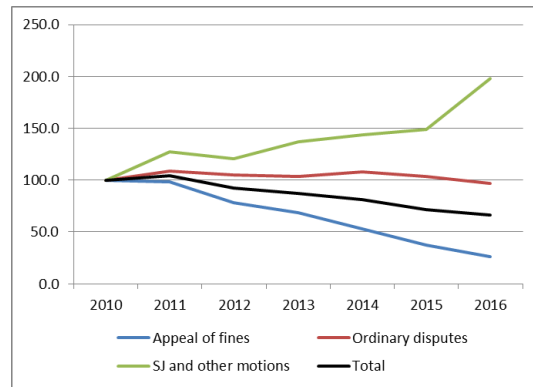
⁶ These are cases in which the petitioner asks the court to issue an order to the debtor to pay an amount receivable that is certain, of a fixed amount and due (summary judgment).

Figure 3 – Change in flows and stocks of proceedings before the justices of the peace

(a) Incoming, resolved and pending proceedings by subject matter



(b) Change in pending proceedings by subject matter



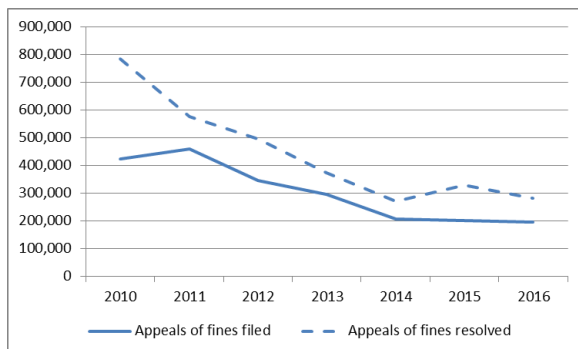
Source: Based on Ministry of Justice data

The reduction in pending appeals of fines is largely due to the decrease in inflow as a result of the introduction in 2010 of a fee for filing such appeals. The fee, originally set at 30 euros, caused the flow of appeals to drop by 60 per cent compared with 2009 (around 600,000 cases in absolute terms); the number of appeals continued to decline, albeit at a less intense pace, in the years following and, in the last three years, it stabilized at around 200,000 (Figure 4a).

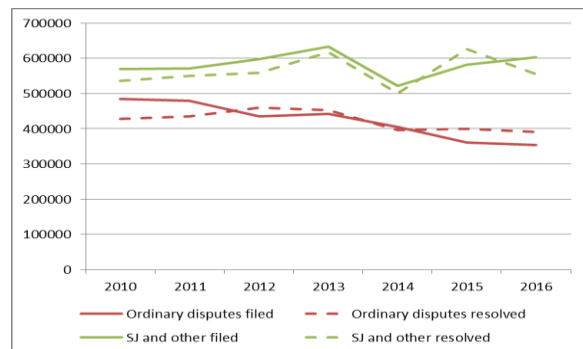
Figure 4 – Incoming and resolved proceedings before the justices of the peace by subject matter

(number of proceedings)

(a) Appeals of fines



(b) Ordinary disputes and summary judgment motions



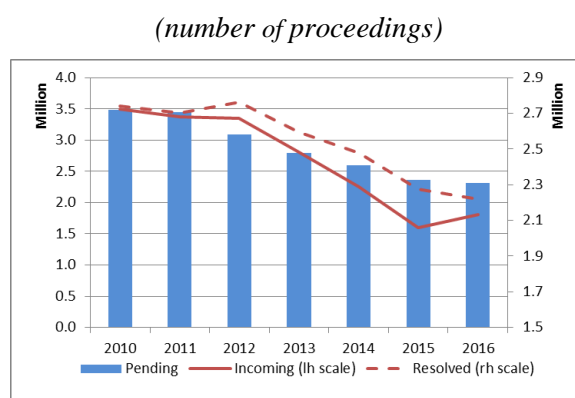
Source: Based on Ministry of Justice data.

Overall, the lower caseload owing to the decline in demand for appeals of fines, in effect an administrative appeal, does not appear to have helped improve the functioning of the justices of the peace in resolving true civil disputes, for which the number of pending cases even rose slightly. Cases resolved increased in the early years following the decline in the caseload of appeals of fines, but thereafter fell, especially for litigation (Figure 4b).

2.3. Trial courts (tribunali)

In the trial courts, too, the stock of pending proceedings declined by just over one third between 2010 and 2016, owing entirely to a decrease in demand (Figure 5). New cases have fallen since the start of the decade, beginning to climb again slightly only in the last year. Resolved proceedings did similarly, although the decline was more contained; furthermore they remained at levels higher than incoming cases for the entire period, thereby reducing pending cases.

Figure 5 – Pending, incoming and resolved proceedings in the trial courts



Source: Based on Ministry of Justice data.

Despite this progress, trial length is still very long (Table 1).

Table 1 – Average trial length

(years)

Ordinary disputes*	3
Commercial disputes*	3.4
Labour and social security disputes*	1.5
Bankruptcy ^o	7.6
Foreclosures ^o	4.2
Enforcement of pledges of movable assets ^o	0.7

Source: Based on Ministry of Justice data.

Note: (*) data for 2016; (°) data for 2015.

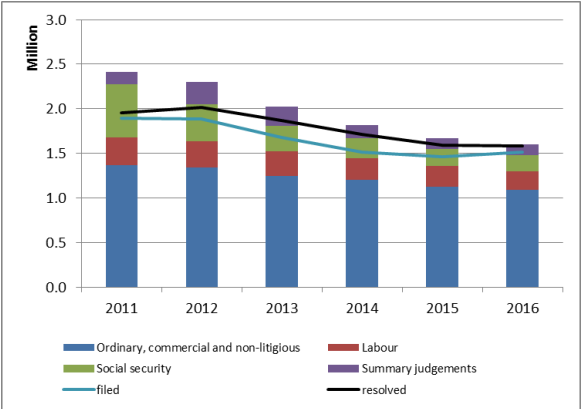
Civil and non-litigious cases. – Civil (ordinary disputes, commercial disputes, labour and social security disputes and summary judgements) and non-litigious cases are the main

components of the trial courts’ activities (in 2016 they represented around 70 per cent of pending and incoming cases).

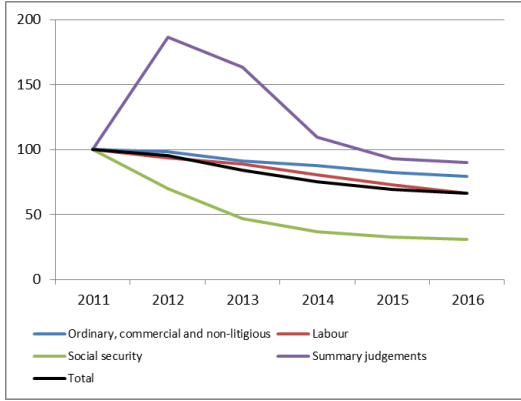
In this area, pending cases fell by about one third from 2011 to 2016 (Figure 6a).⁷ The decline occurred across all subject matters, with the exception of summary judgements, and was particularly strong for social security disputes (-70 per cent), which contributed more than 50 per cent of the reduction in pending cases (Figure 6b).

Figure 6 – Changes in flows and stocks of proceedings before the trial courts (civil and non-litigious)

(a) Incoming, resolved and pending proceedings by subject matter



(b) Change in pending proceedings by subject matter



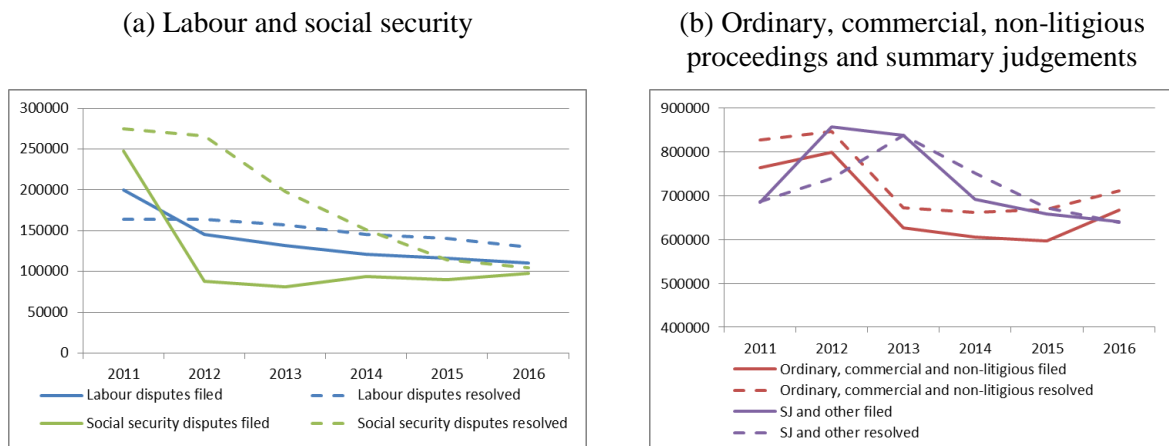
Source: Based on Ministry of Justice data.

The decline in demand played an important role in causing the trends described. The contraction was particularly marked for social security disputes, especially for the 2011-12 period (Figure 7a), corresponding to the entrusting to administrative bodies of some procedural steps in these type of disputes (so called “preliminary technical assessments” - PTA⁸). Between 2011 and 2016, the decline in social security disputes accounted for 28 per cent of the overall decrease in demand. There was also a significant drop in incoming labour disputes filed (-50 per cent in the 2010-16 period, Figure 7a) and smaller declines in ordinary and commercial litigation (-15 per cent, Figure 7b). For all subject matters, the reduction in new cases filed was followed by a decrease in resolved cases (Figure 7).

⁷ The 2011-16 period is considered since the classification by subject matter of the 2010 data is not comparable to that of subsequent years.

⁸ Essentially, an expert, rather than judge, is given the task of verifying that the conditions supporting the filing of the claim are met, for example, incapacity, blindness or deadness, handicaps and disability. See the Appendix.

**Figure 7 - Incoming and resolved proceedings before the trial courts
by subject matter (civil and non-litigious)
(number of proceedings)**



Source: Based on Ministry of Justice data.

In addition to the introduction of the PTA, during the period examined there were additional reform measures that could have had an impact on the decline in new cases filed. These include increasing the cost of accessing the trial courts by changing the filing fees and introducing alternative dispute resolution instruments.

Direct access costs were increased by imposing filing fees on claims that were previously exempt (such as labour and social security disputes) and by raising the amounts charged in the other cases. The increases between 2011 and 2014 were considerable: for example, the filing fee on an appeal involving 52,000 euros rose by 50 per cent. However, the fee as a percentage of the total cost of bringing an action before the trial courts remains fairly small (in the example above it is equal to 2 per cent of the amount in dispute)⁹ and much less than that of attorney's fees.¹⁰

Since 2011 measures have been introduced to encourage the use of alternative dispute resolution instruments (ADR), such as mediation, assisted negotiation and attempts at conciliation in matters of employee termination (see the Appendix). For some subject matters, the use of these instruments is mandatory: the petitioner must first attempt to come to an agreement with the opposing party; only if this attempt is unsuccessful can a suit be filed. Information concerning the effectiveness of these measures is only available for mediation. The data tell us that in 2016, the percentage of disputes resolved was a little above 10 per cent (corresponding to 5 per cent of ordinary and commercial disputes presented to the trial courts that same year) compared with an estimated number of new cases filed with conciliation bodies, equal to just over 180,000. However, for those subject matters for which an attempt at mediation is mandatory, there could still be an indirect impact on the demand for justice since ADR involves additional costs – and further lengthens the time to resolution – for those who nonetheless plan to bring a court action.

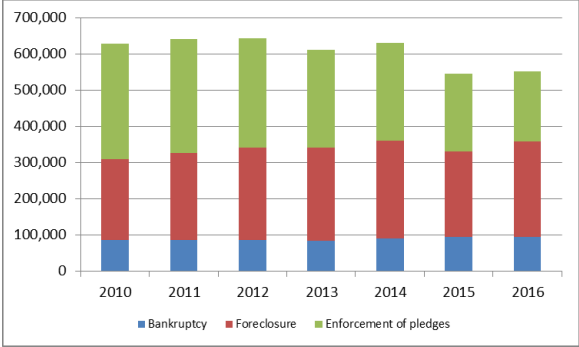
Bankruptcy, foreclosure and enforcement proceedings. – Contrary to the trend for litigation, pending bankruptcy and enforcement proceedings in just the last two years hit levels far below those of preceding years (Figure 8). The aggregate data reflects the differing patterns in the various types of actions: while for the most complex proceedings (bankruptcy

⁹ In the example, the court costs would be 518 euros.

¹⁰ According to World Bank data, in Italy the cost of legal fees (attorney's fees and costs incurred by the attorney) for an action worth about that in the example are five times higher than the filing fees (World Bank, 2016).

and foreclosure) the stock of cases pending rose pretty much throughout the entire period, the stock of actions to enforce pledges of movable assets began to fall as of 2011 (Figure 8).

**Figure 8 – Pending actions by subject matter
(bankruptcy, foreclosure and enforcements)**
(number of proceedings)



Source: Based on Ministry of Justice data.

The accumulation of pending cases on these subject matters is closely linked to the business cycle, which affects both new and resolved cases. On the one hand, the long crisis period prompted a significant rise in the number of credit recovery and bankruptcy proceedings; on the other hand, it made the court-ordered sale of assets more difficult and therefore the resolution of these actions as well. Only starting in 2014, when the business cycle improved, did the number of new cases filed begin to decline.

2.4 Courts of appeal (*corti d'appello*)

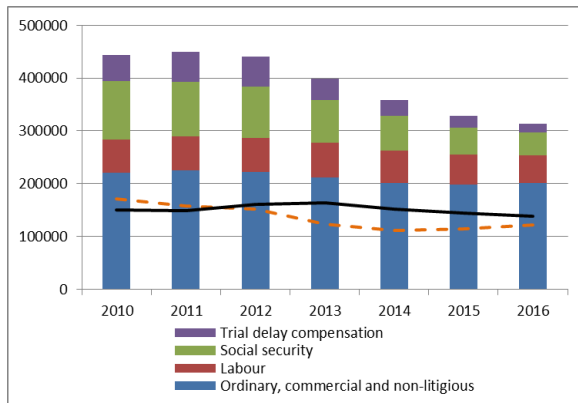
The stock of proceedings pending before the courts of appeal decreased by 29 per cent between 2010 and 2016. This decline reflected a reduction in new cases compared with an essentially stable number of those resolved, resulting in a clearance rate of more than 100 per cent in the last five years (Figure 9a).

Looking at the trends by subject matter, it emerges that the decline, although generalized, is more limited for ordinary and commercial litigation and for labour matters (-5 and -9 per cent, respectively) and more pronounced for social security disputes and claims for trial delay compensation¹¹ (-60 per cent in both cases, Figure 9b). The sharp decrease in pending social security actions, given the large percentage of the courts' caseload that these constitute, is responsible for almost half of the overall decline for the period analysed.

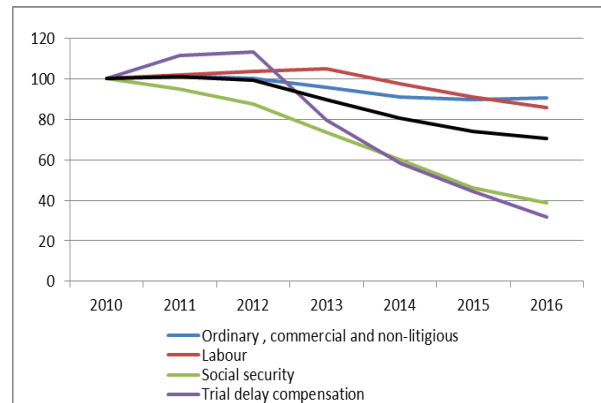
¹¹ Claims for trial delay compensation are actions through which the party demands compensation from the State for having suffered an 'unreasonably' lengthy trial.

Figure 9 – Changes in flows and stocks of proceedings before the courts of appeal

(a) Incoming, resolved and pending proceedings by subject matter



(b) Change in pending proceedings by subject matter



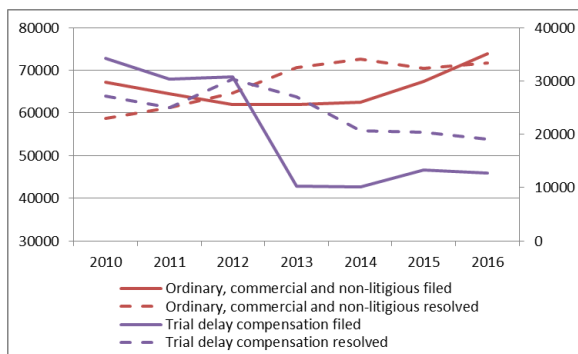
Source: Based on Ministry of Justice data.

While for ordinary and commercial disputes the reduction in pending cases reflects the courts' growing capacity to dispose of cases in the face of rising demand, for other subject matters the decline is mainly due to a drop in demand (Figure 10).

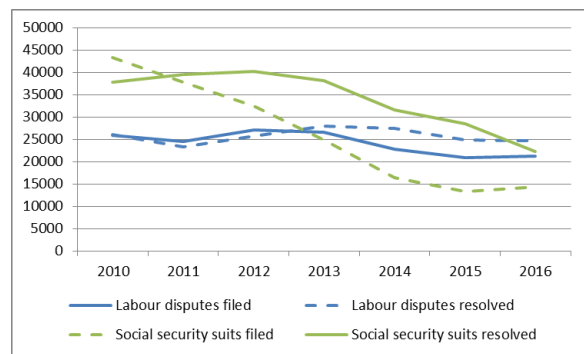
In the courts of appeal as well, the decline in demand is partly due to specific measures taken to reduce such demand, in particular regarding trial delay compensation. In 2012, to reduce its impact on the public finances and the functioning of the courts of appeal, steps were taken to restrict the grounds for bringing these types of suits (see the Appendix). Following the reform, the number of cases per year declined by two thirds; the data for the last two years indicate stabilization at a level just above that of the early post-reform years.

Figure 10 – Incoming and resolved proceedings by subject matter

(a) Ordinary, commercial, non-litigious and trial delay compensation claims



(b) Labour and social security



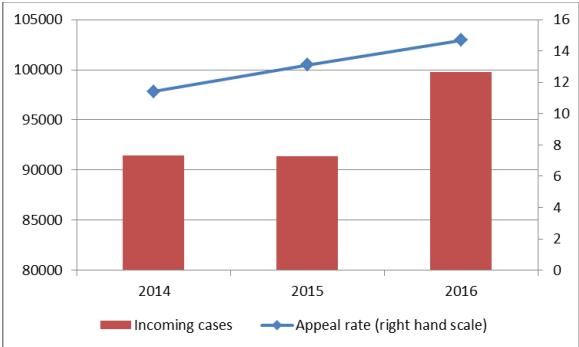
Source: Based on Ministry of Justice data.

Changes in the number of new cases filed with the courts of appeal may reflect both changes in the number of potential disputes – measured by the number of cases resolved at the trial court level – and in the percentage of these that are appealed. The data for the last three years show that an increase in appeal rates contributed to the rise in new cases¹² (Figure 11). It should be pointed out, however, that based on the data available, it is not possible to interpret this evidence as a sign that the measures taken to reduce appeals since 2011, such as

¹² The appeal rate is the ratio of the number of appeals filed with the appellate courts in year 't' to the number of cases resolved by the trial courts in year 't-1'.

increasing court filing fees and restricting appeals of decisions by the court of first instance, are basically ineffective (see the Appendix). Rather, it is because the propensity to appeal to a higher court depends primarily on the extent to which the lower court decision is a good predictor of the decision that will be made by the higher court. Therefore, a higher appeal rate could reflect deterioration in the quality of the decisions of the courts of first instance and/or higher variability in the *jurisprudence* by the courts of appeal.

Figure 11 – Rate of appeal



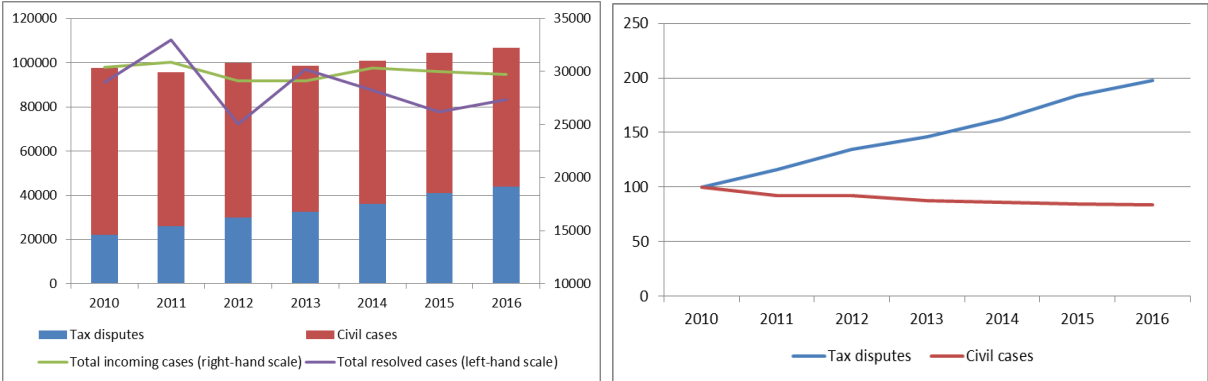
Source: Based on Ministry of Justice data.

2.5 Court of Cassation (*Corte di Cassazione*)

In addition to appeals of appellate court decisions (and, in cases provided by law, decisions taken in first and final instance), the Court of Cassation handles also appeals of regional tax courts (RTC) decisions, which are judicial bodies specializing in tax matters.¹³ As shown below, the substantial flow of appeals involving this subject matter has a considerable impact on the functioning of the Court.

Figure 12 – Changes in flows and stocks of proceedings before the Court of Cassation

(a) Incoming, resolved and pending proceedings by subject matter (b) Change in pending proceedings by subject matter



Source: Based on data from the Statistics Office of the Court of Cassation.

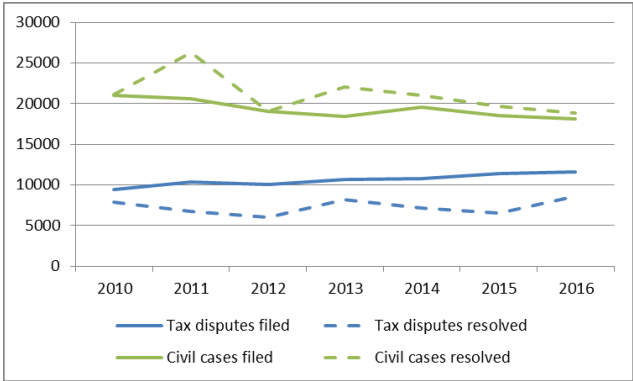
At the end of 2016 there were almost 107,000 civil cases pending before the Court; this figure was just under 100,000 at the start of the decade (Figure 12a). The current level of pending cases reflects the sharp rise that occurred in the early 2000s (78 per cent from 2000 to 2006). A breakdown by subject matter reveals widely diverging trends: the number of

¹³ The RTCs in turn have jurisdiction over appeals of the decisions of the provincial tax courts (PTC).

pending tax cases doubled this decade, compared with a 17 per cent decline in civil disputes (Figure 12b).

The increase in tax disputes is due in large part to the rise in new cases filed (Figure 13). In 2016 tax disputes accounted for 39 per cent of all civil matters before the Court, compared with 31 per cent in 2010 (22 per cent in 2006). By contrast, the number of new civil cases is falling and the clearance rate averaged 110 per cent. Moreover, the slower decline in new civil cases reflects a longer-term trend, which does not appear to have been accelerated by measures introduced between 2011 and 2012, such as increasing filing fees¹⁴ and restricting the grounds for appeal.¹⁵

Figure 13 - Incoming and resolved proceedings by subject matter
(number of proceedings)

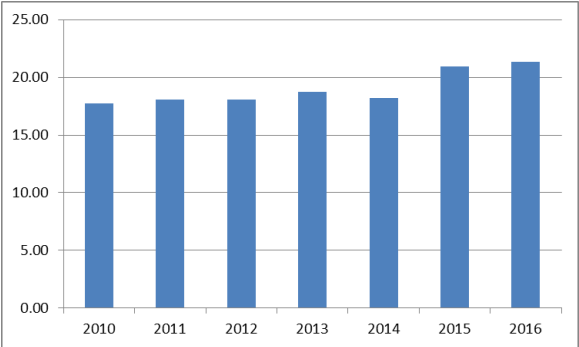


Source: Based on data from the Statistics Office of the Court of Cassation.

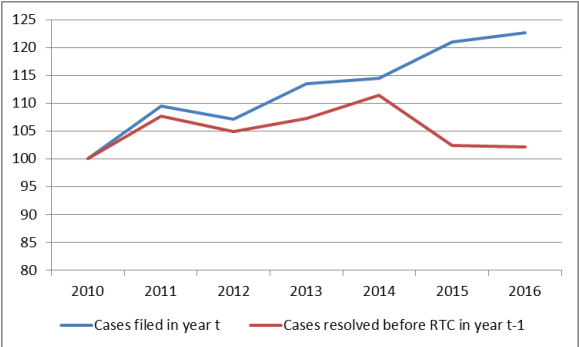
With regard to tax disputes, the increase in new cases filed seems to be in large part attributable to the higher appeal rate,¹⁶ which rose from 17.7 per cent in 2010 to 21.3 per cent in 2016 (Figure 14). As already shown for the courts of appeal, the data could indicate deterioration in the quality of the decisions made by the tax courts and/or higher variability in the case law of the Court of Cassation.

Figure 14 – Changes in tax disputes

(a) Appeal rate



(b) Change in the appeal rate



Source: Based on data from the Statistics Office of the Court of Cassation.

¹⁴ In 2012 a filing fee for tax disputes was introduced and the fee for other matters was doubled (see the Appendix).

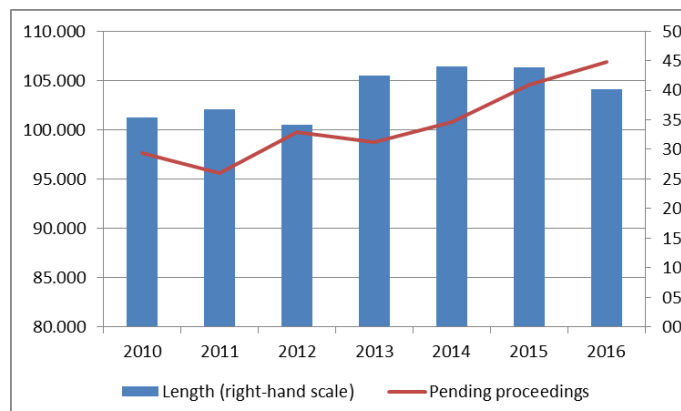
¹⁵ Decree Law 83/2012; see the Appendix.

¹⁶ The appeal rate is the ratio of the number of appeals of tax court decisions filed with the Court in year ‘t’ to the number of cases resolved by the RTCs in year ‘t-1’.

In 2016 the actual average length of civil actions before the Court was 3 years and 4 months, marking an increase of 13 per cent during the 2010-16 period (Figure 15).

Figure 15 – Length and pending proceedings

(number of proceedings; length in months)



Source: Based on data from the Statistics Office of the Court of Cassation.

The data on trial length reflects the activity of the Sixth Chamber or ‘filter chamber’, which is responsible for making a preliminary review of appeals in order to more rapidly dispose of them when certain requirements are met. Established in 2009, the Sixth Chamber has contributed considerably to clearing cases since 2012 (Table 2). Although the Sixth Chamber is responsible for more than one third of resolved cases and has much lower disposal times, overall average length has not fallen since its introduction.

Table 2 – The activity of the Sixth Chamber of the Court of Cassation

Year	Resolved by the Chamber	Share of total resolved proceedings	Length of time before the Chamber (months)	Length of time before the ordinary chambers (months)
2010	564	1.9		
2011	4,341	13.2		
2012	8,546	34.2	17.7	42.8
2013	11,132	36.9	20.2	55.6
2014	10,592	37.6	21.0	56.0
2015	9,033	34.5	21.6	55.6
2016	9,926	36.3	21.0	51.3

Source: Based on data from the Statistics Office of the Court of Cassation.

3. The trial courts

The analysis up until now has highlighted two main stylized facts: first, a generalized decline in the number of new cases and the simultaneous deterioration in the courts’ ability to clear cases. From a theoretical standpoint, there are multiple factors that could potentially explain the relationship observed between the trends for new and resolved cases; therefore the importance of these factors must be assessed empirically. Second, despite a drop in the stock of pending cases, the average length of trials before the trial courts is still high. The average might mask local differences that, in turn, could potentially reflect numerous factors.

These issues are addressed in-depth in Sections 3.1 and 3.2 below. Since the data necessary is available for the trial courts only, our work concentrates on them. Furthermore, the specific profile of the trial courts is of interest because it is the only type of court affected by the geographical reorganization of the court system; the effects of this reform on both demand and supply are analysed in Section 3.3.

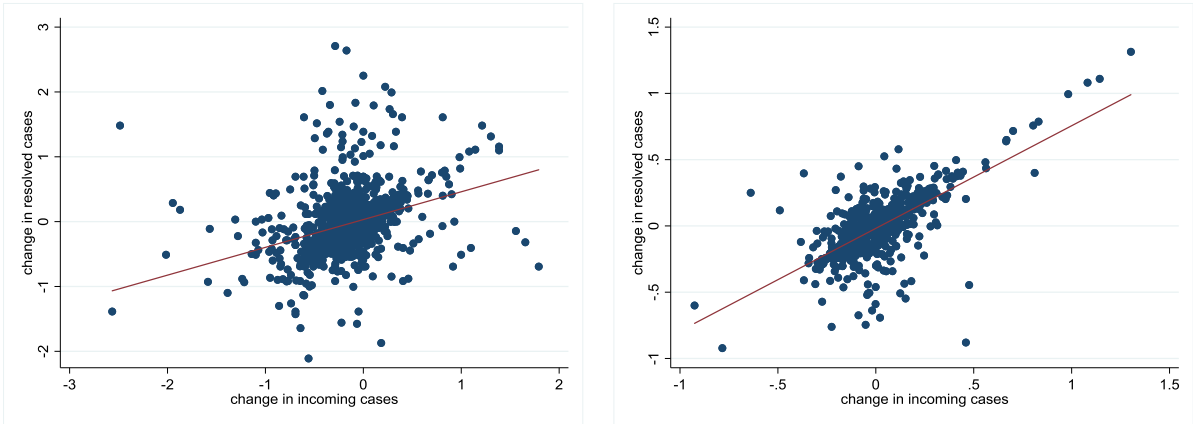
3.1. The relationship between the trends for resolved and new cases before the trial courts

The trends for new and resolved cases – both at the aggregate level and by court and subject matter – are very similar. In particular, the time correlation at the national level between the percentage changes in the flows of new and resolved cases over the last decade was 0.9. Analysing the data between 2014 and 2016 (period for which homogenous, more detailed data are available), the correlation between the changes in resolved and new cases by trial court and subject matter was greater than 0.3 (Figure 16a), if we consider the sum of civil bankruptcy and foreclosures cases; it stood at almost 0.7 if we limit ourselves to analysing civil cases (Figure 16b).

Figure 16 – Change in incoming and resolved cases by trial court and subject matter

(a) Civil, non-litigious, bankruptcy, foreclosures and enforcement

(b) Civil and non-litigious



Source: Based on Ministry of Justice data.

Each point corresponds to a court-subject matter cell (139 × 9 observations). The subject matters include civil cases (ordinary and commercial disputes, labour and social security disputes, special proceedings), non-litigious cases and those relating to bankruptcy and other insolvency proceedings, foreclosure, enforcement of pledge of movable assets. The changes refer to the 2014-16 period.

From a theoretical standpoint, various factors could explain such correlation. First, there are possible effects of caseload composition. The decline in new cases filed could be associated with a shift of incoming flows towards matters of greater complexity and/or, within

each subject matter, more difficult trial management. Analogously, the strategies of the trial courts to give priority to resolving the oldest (and therefore presumably the most complex) pending cases could hinder their ability to clear their caseloads. Second, the decrease in new cases could have been accompanied by a reduction in staffing (both judges and administrative personnel), which would have had a negative impact on the trial courts' ability to dispose of pending actions. Third, an external shock (such as, for example, the geographical reorganization of the court system) could have simultaneously affected developments in the litigation rate and the ability of courts to resolve cases. Finally, another explanation could be connected to behavioural strategies: the pace of activity of the trial courts could be correlated with workflows, tapering off when these decline and ramping up when these increase.

In order to verify the significance of these factors, we conducted an empirical analysis on the pattern of resolved and new cases by trial court and by subject matter for the 2014-16 period. The specification used is the following:

$$\Delta D_{i,m} = \alpha + \beta \Delta I_{i,m} + \delta C_i + \gamma \Delta P_i + \vartheta \Delta R_i + (\rho_i) + \theta_m + \mu_{i,t}$$

where the dependent variable $\Delta D_{i,m}$ measures the percentage variation in cases resolved by trial court i and by subject matter m between 2014 and 2016 and where the variable of interest is $\Delta I_{i,m}$, which measures the change in new cases filed with the same court, on the same subject matter in the same span of time. The coefficient of interest is β , which measures the elasticity of resolved cases compared with new cases.

Among the other potential factors that can influence the performance of resolved cases and that we are able to measure, we included, first of all, C_i , which measures the complexity of new disputes before court i , for the component connected with subject-matter composition. For each subject matter, the complexity is approximated by the national average length of trials. The complexity of new cases filed with each court is calculated as the average of the lengths of the individual subject matters, weighted by the percentage of each out of the total new cases. A change in composition with a shift towards subject matters with structurally greater lengths indicates that the new cases are more complex. Second, we included ΔP_i , which measures the change in actions pending for more than three years to take account of any strategies, at the level of the individual court, to tackle the backlog. Third, we included ΔR_i , which measures the change in human resources (making a distinction between judges and administrative personnel) at the trial court level.¹⁷ These variables, however, could not capture other unobserved factors at the trial court level that are potentially correlated with the trends in new and resolved cases. Therefore, in some specifications we introduced fixed effects at the trial court level (ρ_i) that are able to capture these factors (for example, a difference in the efficiency of the court, different infrastructure, any asymmetric effects of the geographical reform of the judicial system among the various trial courts, etc.). Finally, the fixed effects by subject matter (θ_m) capture trends in the supply of justice that are specific to the individual subject matters and common to all the trial courts. The data available do not permit us, by contrast, to capture differences in the complexity of the flow of new disputes within each subject matter and we do not have time-varying measurements that approximate the efforts of judges and administrative staff. The unexplained variability is attributed to unobservable factors.

The results of the regression (Table 3) demonstrate that the elasticity of resolved cases compared with incoming cases at the level of the trial court/subject matter is equal to 0.36 (Column I). To check whether this ratio can be explained by other factors we progressively enriched the specification. First, we controlled for the complexity of the incoming cases and for the changes in disputes pending beyond three years (Column II). Second, we controlled

¹⁷ Given the limited data available to us, the change in the number of judges and administrative staff refers to the 2013-15 period.

for changes in staffing, both judges and administrative personnel (Column III).¹⁸ Finally, we included the fixed effects at the level of the trial court to capture unobservable idiosyncratic characteristics (Column IV). The coefficient of interest nonetheless remains constant in all the specifications. In the lower panel we replicate the analysis, limiting it to just “civil cases”: the results are qualitatively similar although the elasticity of the resolved cases (about 0.7) to that of new cases is greater.

Overall these results suggest that the positive correlation between the change in resolved cases and new cases is not attributable to the variables that we are able to measure but rather to unobservable residual factors such as, for example, an adjustment in the pace of activity of the trial courts in response to the change in incoming flows.

Table 3 – Change in incoming and resolved proceedings

Dependent variable:	Change in resolved cases			
	<i>Civil, non-litigious, bankruptcy, foreclosures and enforcement</i>			
Change in incoming cases	0.370***	0.369***	0.371***	0.363***
	(0.065)	(0.065)	(0.066)	(0.066)
Fixed effects by subject matter	YES	YES	YES	YES
Complexity of the proceedings	NO	YES	YES	YES
Staffing changes	NO	NO	YES	YES
Fixed effects by trial court	NO	NO	NO	YES
Number of observations	1,214	1,214	1,214	1,214
R-squared	0.300	0.300	0.305	0.394
	<i>Civil and non-litigious</i>			
Change in incoming cases	0.670***	0.668***	0.670***	0.717***
	(0.065)	(0.065)	(0.066)	(0.068)
Fixed effects by subject matter	YES	YES	YES	YES
Complexity of the proceedings	NO	YES	YES	YES
Staffing changes	NO	NO	YES	YES
Fixed effects by trial court	NO	NO	NO	YES
Number of observations	556	556	556	556
R-squared	0.512	0.516	0.526	0.637

OLS estimates. The variables of interest are the changes in resolved and new actions by trial court and by subject matter between 2014 and 2016. Robust standard errors in parentheses; *** p<0.01, ** p<0.05, * p<0.1.

¹⁸ We find that the complexity of incoming cases increased slightly in the three-year period considered. As for staffing, the number of judges rose while that of administrative personnel decreased.

The correlation between the change in resolved and incoming cases is, furthermore, stronger where the initial productivity levels, measured as the ratio of the number of cases resolved to the number of judges, were lower than the median (Table 4); this result therefore suggests that the factors underlying such correlation are more significant in the less-efficient trial courts.

Table 4 – Correlation between incoming and resolved cases by type of trial court

Dependent variable:	Change in resolved cases			
	<i>Civil, non-litigious, bankruptcy, foreclosures and enforcement</i>		<i>Civil and non-litigious</i>	
Initial productivity level	Low	High	Low	High
Change in new cases	0.459*** (0.088)	0.279*** (0.095)	0.759*** (0.085)	0.660*** (0.110)
Fixed effects by subject matter	YES	YES	YES	YES
Complexity of the proceedings	YES	YES	YES	YES
Staffing changes	YES	YES	YES	YES
Fixed effects by trial court	YES	YES	YES	YES
Number of observations	588	626	276	280
R-squared	0.421	0.381	0.706	0.560

OLS estimates. The variables of interest are the changes in resolved and new cases by trial court and by subject matter between 2014 and 2016. Productivity is measured at the start of the period and refers to the ratio of the number of actions resolved during the year to the number of civil court judges; *** p<0.01, ** p<0.05, * p<0.1.

3.2. Territorial differences in the performance of the trial courts

The data available allow us to measure the performance of the trial courts based on three different indicators: a) the number of pending civil¹⁹ cases (compared with the population); b) the actual trial length of civil cases; and c) the percentage of proceedings pending for more than three years.

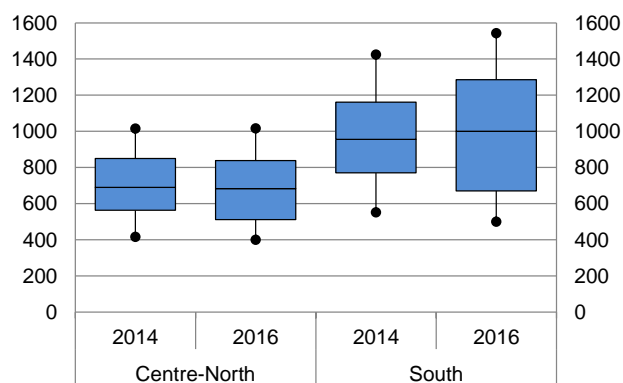
A comparison of trial courts reveals strong heterogeneities along all the dimensions considered. The territorial disparities are in large part attributable to those existing between Italy's macro areas, generally with Southern Italy faring poorly, but are also significant within each area. The number of pending cases in 2016 was equal to 56 per 1,000 inhabitants in Southern Italy compared with 26 in Central and Northern Italy. The average length of

civil proceedings in Southern Italy was 1,000 days compared with 680 days in Central and Northern Italy (Figure 17). The South continues to be at a disadvantage when we consider the percentage of cases pending for at least three years (in 2016 the share was 33 per cent in Southern Italy compared with 25 per cent in Central and Northern Italy).

The variability of the performance of the trial courts may depend on multiple factors, such as, for example, the quantity and quality of litigation, the resources available and how work is organized. To analyse the significance of these factors in explaining the differences uncovered, multivariate analysis was performed on 139 trial courts.²⁰ For each trial court, the following observable characteristics were considered: the home geographical area, the average size (measured by the number of judges), the caseload (taken as the ratio of the sum of pending and new cases to the number of civil court judges), the complexity of the disputes (approximated by the composition by subject matter, each of which is structurally characterized by different average lengths), and the vacancy rate for judges and administrative staff in relation to the workforce as a whole (to take account of any dysfunction arising due to lack of personnel).

In Southern Italy, the number of pending actions (as a ratio of the population) is more than 70 per cent higher than in Central and Northern Italy; the highest actual average length is almost 40 per cent greater and the share of actions pending for over three years is about 9 percentage points higher; these differences do not change significantly when we consider the differing characteristics of the trial courts and diverse demand for justice before the trial courts in the two geographical areas (Table 5).

Figure 17 – Actual length of proceedings (days)



Source: Based on Ministry of Justice data.

The chart shows the distribution of the variables described: the upper and lower extremes indicate the 90th and 10th percentiles, the rectangle is the interquartile range, the line in the centre is the average. The actual average length refers to the following subject matters: ordinary disputes, commercial disputes, labour and social security disputes and separation and divorce actions.

¹⁹ For data availability reasons, in this and in the following sub-section we use a slightly different definition of “civil cases”, which includes ordinary disputes, commercial disputes, labour and social security disputes and separation and divorce cases and it does not include special proceedings and non-litigious cases.

²⁰ The trial courts of Naples and Northern Naples are treated jointly.

Table 5 – Territorial disparities in the performance of the trial courts

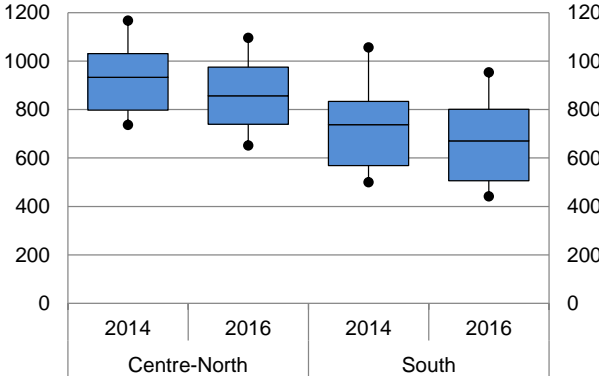
Dependent variable:	Pending cases per inhabitant		Length		Share of cases pending for more than three years	
Southern Italy	0.759*** (0.072)	0.786*** (0.070)	0.370*** (0.0626)	0.328*** (0.070)	0.088*** (0.017)	0.071*** (0.017)
Dimension		0.012*** (0.003)		0.008** (0.004)		0.003*** (0.001)
Dimension^2		-0.000* (0.000)		-0.000* (0.000)		-0.000*** (0.000)
Caseload		0.753*** (0.122)		0.436*** (0.119)		0.121*** (0.030)
Complexity of the caseload		0.005** (0.002)		0.006*** (0.002)		0.003*** (0.000)
Vacancy of judges		-0.155 (0.311)		0.115 (0.316)		0.048 (0.086)
Administrative staff vacancy		0.378 (0.311)		0.095 (0.284)		0.082 (0.073)
Number of observations	139	139	139	139	139	139
R-squared	0.454	0.622	0.210	0.347	0.170	0.440

Cross-sectional OLS estimates. The dependent variables are: (i) the number of pending cases per inhabitant; (ii) the number of average days of proceedings resolved in 2016 concerning ordinary and commercial disputes, labour and social security disputes and separation and divorce cases; (iii) the share of cases pending for more than three years, which was reconstructed using the stratigraphy of actions pending in 2016 and covers the entire civil area.

The high performance variability is matched by high productivity variability. In 2016 the number of cases resolved by each judge was 870 on average in the trial courts in Southern Italy compared with 1,010 in Central and Northern Italy. Controlling for observable characteristics of the court - in particular, the differing caseloads and the different complexities of the subject matters handled – the productivity gap falls slightly, but remains wide (almost 15 per cent). In addition, productivity decreases in almost 9 courts out of 10 between 2014 and 2016; the decline is slightly more pronounced in Southern Italy (Figure 18).

In the presence of strong geographical heterogeneity, one would like to know whether the gap with other countries persists if we consider just the best performing trial courts or whether the gap closes. The comparison, based on the World Bank’s *Doing Business* data, outlines a picture that better matches the first hypothesis (see the box ‘An international comparison’). The trial court in the lowest decile on the distribution of the length of commercial disputes performs over 40 per cent better than the average of the Italian trial courts but more than 10 per cent worse than the OECD average. These results suggest that, although the spread of best organizational and managerial practices is key to closing the considerable gap in performance between the courts, other factors – common throughout the system – hinder reaching a standard of efficiency in line with the international average.²¹

Fig. 18 – Productivity of the trial courts



Source: Based on Ministry of Justice data. The chart shows the distribution of variables described: the upper and lower extremes indicate the 90th and 10th percentiles, the rectangle is the interquartile range, the line in the centre is the average. Productivity is measured as the ratio of the number of actions resolved during the year to the number of civil court judges.

²¹ In other countries the opposite trend is observed. In France, for example, only ten commercial courts reported lengths of actions (excluding accelerated procedures; French Ministry of Justice data) that were higher than the OECD average calculated by the World Bank.

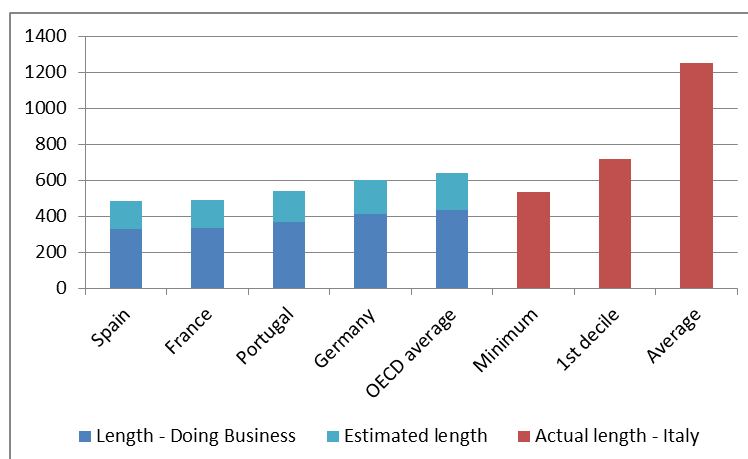
Box: An international comparison

The data set out in the World Bank's *Doing Business* report provides information on the time needed to resolve a specific type of commercial dispute in various countries (World Bank, 2016). Both the time needed to file the claim and conduct the trial from the preliminary phase through decision and the time required to enforce the judgment are included. To allow comparison with the data for the Italian trial courts, the latter was excluded, extracting from the *Doing Business* data just the length of the stages of filing the claim, conducting the preliminary phase and receiving the decision of the trial court.

Based on these data, in comparison with the other OECD countries, Italy ranks second to last with a trial length of 850 days, followed only by Greece (1,460 days). The times are significantly shorter in Spain (330 days), France (335), Portugal (367) and Germany (409).

The trial length for Italy measured by the World Bank is in any case one-third lower than that reported by the Ministry of Justice, according to which it took an average of 1,248 days to resolve commercial disputes in 2016. This deviation could be due to the different degree of complexity that, in reality, characterizes the heterogeneous disputes pending before the trial courts, compared with the relatively simple case study considered in the *Doing Business* report.

Figure 19 – Length of a commercial dispute before the court of first instance



Source: World Bank (2016), Ministry of Justice

To take this factor into account, we added to the times reported in *Doing Business* for the other countries a number of days corresponding to the percentage difference observed for Italy between the actual average length based on Ministry of Justice data and the length according to *Doing Business* (Figure 19).

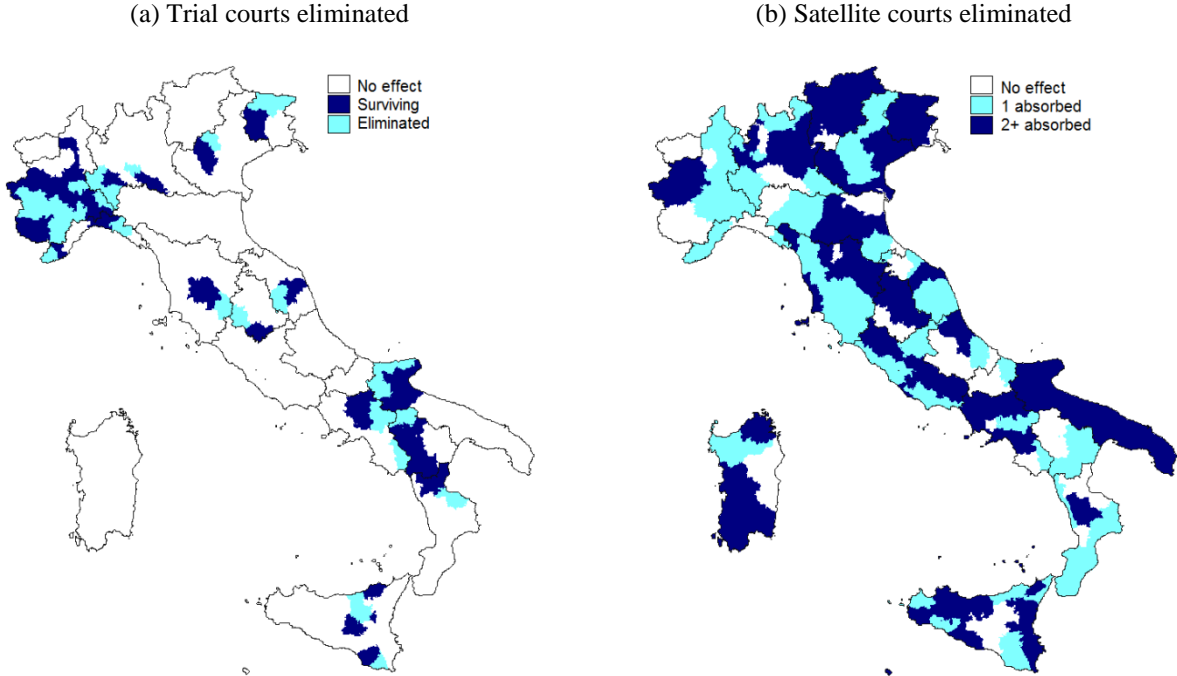
Even taking account of this increase, only 6 per cent of the Italian trial courts have trial lengths that are shorter than the OECD average; only the top four are shorter than that of Germany.

3.3 The effects of the reorganization of the geographical distribution of the courts

In September 2013 the reform reorganizing the geographical distribution of the courts came into force; it called for reducing the number of trial courts by consolidating minor courts of first instance and closing all the satellite court locations. More specifically, as a result of the reorganization, the number of trial courts went from 165 to 140; this number resulted from 23 trial courts absorbing one or more trial courts that had been eliminated (Figure 20a). The

220 satellite courts existing prior to the reorganization were eliminated and absorbed by the trial courts: 107 trial courts absorbed one satellite court, 56 at least two (Figure 20b).

Figure 20 – The geographical reorganization of the court system



Source: Based on Ministry of Justice data.

The reorganization’s primary objective was to improve the productivity of the trial courts by exploiting economies of scale and court specialization owing to the larger average size of the trial courts. However the reform also had the effect, indirectly, of increasing the distance – and therefore the costs of accessing justice – between the trial court having jurisdiction and users in the affected areas; presumably this effect was greater on proceedings for which the value of the claim is smaller.

To examine whether and to what extent the reform affected the supply and demand of justice, we looked at its differing impact at the local level. However, since the reform is relatively recent, we can only focus on the short-term effects. These may differ in sign and size from the long-term effects, especially on the supply side; in fact, in the short term the transition and reorganizational costs required to implement the reform might balance out or more than offset the expected efficiency gains.

On the supply side, for each surviving trial court, the impact of the reform is given by the amount of proceedings that were pending before the satellite courts and the trial courts consolidated. Since this data is unavailable, the pending actions were approximated based on the population served, on the assumption that the ratio between these two amounts is similar for the surviving and consolidated courts. Overall, the pending actions that were transferred to the surviving courts represented on average 35 per cent of the total pending cases, of which 27 per cent from the eliminated satellite courts and the rest from the eliminated trial courts. For about 30 per cent of the surviving courts, more than half of their total pending cases had been transferred from the eliminated courts.

To analyse the effects of the reform on the capacity of courts to clear their backlogs, we adopted the following specification:

$$\Delta D_i = \beta \Delta A_i + \delta X_i + \mu_i$$

where ΔD_i represents the percentage change in cases resolved between 2013 and 2016 in area i (with $i = 1, 2, \dots, 139$),²² which corresponds to the geographical boundaries of the new trial courts as designated by the reform; ΔA_i measures the impact of the reform on trial court i , measured as the ratio of pending cases, approximated by the population, that have been transferred to the surviving trial court; X_i contains some control variables that could affect capacity to resolve cases (for example, change in incoming proceedings and complexity of new cases or changes in staffing).

Based on the econometric analysis, the overall change in civil disputes resolved is not correlated with the territorial reorganization features described (Table 6). This result is confirmed when we separate the consolidation of the satellite courts from that of the trial courts. It could reflect various factors: failure to make the changes in court caseload organization and management that are expected to yield benefits under the reform, a lag in time before the expected efficiency gains materialize, or, in the short term, they may be ‘masked’ by the costs of transitioning and adapting to the new structure.

²² For the period prior to the reform, the Ministry of Justice aggregated the data of the trial courts designated for elimination with those of the trial court designated to absorb them. In this way, two comparable sets were constructed composed of the same number of observations, equal to the number of trial courts resulting from the reform. Furthermore, in the analysis the trial courts of Naples and Northern Naples are considered jointly.

Table 6 – The geographical reorganization of the trial courts and the change in resolved proceedings

Dependent variable:	Total	<i>of which:</i>			
		Ordinary disputes	Commercial disputes	Labour and social security disputes	Separation and divorce actions
Share of pending cases received	0.036 (0.092)	0.015 (0.115)	0.188 (0.144)	0.110 (0.108)	0.156 (0.140)
Controls	YES	YES	YES	YES	YES
Number of observations	139	139	139	139	139
R-squared	0.295	0.134	0.062	0.265	0.101
Share of pending cases received (from consolidated trial courts)	0.081 (0.124)	0.015 (0.147)	0.325 (0.206)	0.142 (0.161)	0.391** (0.163)
Share of pending cases received (from satellite courts)	0.015 (0.096)	0.015 (0.119)	0.124 (0.140)	0.095 (0.120)	0.045 (0.153)
Controls	YES	YES	YES	YES	YES
Number of observations	139	139	139	139	139
R-squared	0.296	0.134	0.069	0.265	0.128

OLS estimates. The dependent variable is the change between 2013 (year prior to the reform) and 2016 (the latest year available) in proceedings resolved before the trial court; the control variables of interest measure the ratio of pending cases (approximated by the population) that have been transferred to the surviving trial court. The other control variables (not reported in the table) include the change in inflows, the complexity of the new disputes and changes in staffing. Robust standard errors in parentheses; *** p<0.01, ** p<0.05, * p<0.1.

To examine, instead, whether and to what extent the pattern in the litigation rate was influenced by the geographical reorganization, we looked at the differing local impacts it had in terms of increasing the distance between residents and the relative court location.²³ Specifically, for each municipality we calculated the distance (in kilometres and travel time²⁴) that separates them from the courts having jurisdiction, before and after the geographical reorganization. We therefore calculated the average distances at the level of the trial court, weighting the distance of each municipality belonging to its district by resident population. The reorganization increased the average distance between resident and court by almost 9 kilometres (the distance rose from 12 to over 20.5 kilometres) and in travel time by 7 minutes (from 11 to 18 minutes). This effect was heterogeneous given the differing effects of the reorganization: in 25 trial courts the reform did not increase the distance, while for a similar number of courts it increased it by more than 15 kilometres.

²³ Espinosa et al. (2017) studied the effects on the litigation rate of a similar reform in France that resulted in the closure of about one-fifth of the courts having jurisdiction over labour disputes, observing a decline in demand at the national level following its entry into force.

²⁴ The travel times were estimated by Istat assuming different traveling speeds for the various types of roads (city streets, secondary highways, etc.).

To analyse its impact on the litigation rate, the following specification was used:

$\Delta I_i = \beta \Delta D_i + \delta X_i + \mu_i$ where ΔI_i is the percentage change in the number of new proceedings filed between 2013 and 2016 in area i (with $i = 1, 2, \dots, 139$); ΔD_i measures the change in distance (in kilometres or minutes) that the average resident of the district of that trial court must travel to reach it, compared with that for the old court locations prior to the reform; X_i contains some control variables that could influence the demand for justice (for example, the size of the trial court and the resident population of the reference area, the change in persons employed in the province where the trial courts are located).²⁵

Based on an econometric analysis, the overall change in new civil cases filed is not correlated with the territorial reorganization features described (Table 7). However, if we limit the analysis to ordinary disputes, which comprise about 30 per cent of the total, we observe a significant decline in new cases: an increase of 10 kilometres in the distance from the courts is associated with a decrease in new cases of around 9 per cent. By contrast, there is no effect on commercial, separation and divorce and labour and social security disputes. The results using travel times instead of physical distances are basically analogous.

²⁵ Similar results (not reported herein for the sake of brevity) are obtained if we consider additional specifications that contain fewer/more controls (including, for example, regional fixed effects as well).

Table 7 – The geographical reorganization of the trial courts and the change in the litigation rate

of which:

Dependent variable:	Total	Kilometres			
		Ordinary disputes	Commercial disputes	Labour and social security disputes	Separation and divorce cases
Change in distance	-0.001 (0.003)	-0.009** (0.004)	0.000 (0.004)	0.001 (0.003)	0.005 (0.006)
Controls	YES	YES	YES	YES	YES
Number of observations	139	139	139	139	139
R-squared	0.026	0.099	0.038	0.118	0.053
Minutes					
Change in distance	-0.003 (0.003)	-0.015*** (0.005)	-0.002 (0.005)	0.0010 (0.003)	0.007 (0.007)
Controls	YES	YES	YES	YES	YES
Number of observations	139	139	139	139	139
R-squared	0.032	0.116	0.040	0.117	0.052

OLS estimates. The dependent variable is the change between 2013 (year prior to the reform) and 2016 (the latest year available) in new cases before the trial court; the control variables of interest measure the distance between the users and the court location (in kilometres in the upper panel and in minutes of travel in the lower panel). The other control variables (not reported in the table) include the geographical area in which the court is located, the size of the court, the population of the court's district, and the change in the number of employed persons in the province where the court is located. Robust standard errors in parentheses; *** p<0.01, ** p<0.05, * p<0.1.

The correlations observed do not necessarily have to be interpreted in causal terms. If, for example, the legislature planned to close court locations for which a decline in demand for justice was expected, then the correlation observed would not be directly attributable to the increase in distance (and would be, by contrast, an example in inverse causation). To identify the causal impact of the geographical reorganization of the court system on the demand for justice we can take advantage of the fact that the distance changed in a heterogeneous manner for the different subject matters and, specifically, that the satellite courts did not have jurisdiction over labour disputes, which were instead handled only by the trial courts. For this subject matter, therefore, the increase in the distance produced by the reform was on average more limited. Exploiting this, we can rewrite the specification as follows:

$$\Delta I_{i,m} = \beta \Delta D_{i,m} + \rho_i + \theta_m + \mu_i$$

where $\Delta I_{i,m}$ is the percentage change in new cases filed between 2013 and 2016 in area i and in subject matter m ; $\Delta D_{i,m}$ measures the change in the distance that the average resident of that court's district must travel to access it, compared with that from the old court locations prior to the reform; for labour and social security disputes the distance prior to the reform is calculated with respect to the trial court having jurisdiction, for the other subject matters with respect to the satellite court having jurisdiction; the fixed effects of the trial court (ρ_i) capture all the idiosyncratic characteristics or unobservable shocks that affects trial court i in the period considered; finally, the fixed effects by subject matter (θ_m) capture trends in the supply

of justice that are specific to each subject matter and common to all the courts of first instance.

Based on these estimates (Table 8), a 10 kilometre (10 minute) increase in distance led to a 6 per cent (7 per cent) reduction in the litigation rate, although the coefficient is imprecise and only weakly significant.

Table 8 – The geographical reorganization of the trial courts and the change in the litigation rate

Dependent variable:	Change in new cases	
Change in distance (kilometres)	-0.005*	
	(0.003)	
Change in distance (minutes)		-0.007*
		(0.004)
Fixed effects by trial court	YES	YES
Fixed effects by subject matter	YES	YES
Number of observations	556	556
R-squared	0.670	0.670

OLS estimates. The variables of interest are the changes at the level of the trial court and of subject matter of resolved and new cases between 2014 and 2016. Productivity is measured at the start of the period as the ratio of the number of proceedings resolved during the year to the number of civil court judges. Robust standard errors in parentheses; *** p<0.01, ** p<0.05, * p<0.1.

APPENDIX

CHANGES IN THE JUDICIAL SYSTEM

The changes that have been made to the judicial system in recent years can be grouped into two broad categories: *i*) changes in the operating rules prompted by legislative reforms, and *ii*) changes in the ways courts' activities are organized and managed through 'internal' initiatives.

Legislative reforms. – In the last few years, and with greater intensity since the summer of 2011, the civil justice system has undergone significant reform, a process that is still under way.²⁶ The reform strategy has two main objectives: reduce litigation (demand-side measures) and increase court productivity (supply-side measures).

On the demand side, the measures follow four main principles: *a*) redirect part of the litigation towards alternative dispute resolution instruments; *b*) 'discourage' opportunistic lawsuits, especially for certain types of disputes that are often targets for this approach; *c*) make filing a lawsuit more expensive; *d*) restrict appeals (before the courts of appeal and the Court of Cassation).

The first group includes measures introducing mandatory mediation²⁷ and assisted negotiation²⁸ that require, for certain disputes, the parties to try to reach an agreement prior to turning to the court, and a new form of arbitration through the Bar Association.²⁹ Suggestions for strengthening these institutions are set out in the final report of the Alpa Commission, formed within the Ministry of Justice and tasked with developing a plan for systematic reform in this area.³⁰

A specific intervention regarded labour law. With regard to the firing of individual employees for objectively just cause, in 2012 it was introduced the requirement that the parties make an attempt at conciliation before the regional labour ministry office (now replaced by the Labour Inspectorate).³¹ If the attempt is successful, the firing is transformed into a consensual termination.

The second group is composed of specific measures for certain kinds of disputes (compensation for damages arising from excessive trial length ('Pinto law'),³² disputes

²⁶ In October 2017, the so-called Rordorf bill, which enables the Government to regulate some crucial aspects of bankruptcy law, entered into force (Law 155/2017). The legislative decrees provided for by Law 155/2017, which shall be adopted by October 2018, may affect considerably court system operation; court specialization on bankruptcy and other related subject matters is notably provided for. The enabling law regarding civil trials ('Berruti bill') was under consideration during the 17th legislature, but the parliamentary scrutiny was not completed before the end of the parliamentary term.

²⁷ Mandatory mediation was first introduced with Legislative Decree 28/2010, implementing Law 69/2009. It was abolished in 2012 after the Constitutional Court found it to be unconstitutional, but was later reintroduced, with some modifications, in 2013 (Decree Law 69/2013). The main types of disputes covered are those involving condominiums, property rights, inheritance, leasing, loans for use, compensation for damages arising from medical malpractice and libel, and insurance, banking and financial contracts. Disputes concerning auto accident liability, initially included, were removed in 2013.

²⁸ This is a procedure for out-of-court resolution of disputes co-managed by the attorneys for the parties, introduced with Decree Law 132/2014. The parties must attempt assisted negotiation before a lawsuit can proceed to trial in disputes regarding auto or boat accident liability and demands for payment of amounts of less than €50 thousand, except for cases for which a preliminary petition for mediation has already been made.

²⁹ The measure, introduced with Decree Law 132/2014, envisages the option for the parties to transfer the pending dispute before an arbitration panel chosen by the attorneys.

³⁰ The commission presided over by Guido Alpa, which was set up to study and propose alternative dispute resolution tools, completed its work in January 2017. The commission's recommendations have not yet been translated into a legislative proposal.

³¹ Law 92/2012 ('Fornero Law'), which modified Article 7 of Law 604/1966 on the firing of individual workers.

³² Decree Law 83/2012 simplified the process of trying a case, introduced pre-determined and capped compensation and envisaged cases in which no compensation is due (when the party's behaviour is negligent, causes delays or is abusive).

regarding social security³³) that are targets for opportunistic behaviour on the part of plaintiffs, and broader-reaching measures, such as raising the legal interest rate.³⁴

The costs of access increased for all types of disputes. The filing fee for ordinary civil cases was raised several times.³⁵ Filing fees were also imposed on matters previously exempt, such as in 2010 on appeals of fines before the justices of the peace³⁶ and in 2011 on disputes involving labour, social security and mandatory assistance issues.³⁷ The increase in the filing fees has been particularly significant for higher instance courts (a 50 per cent increase in fees for filing appeals and 100 per cent for the Court of Cassation as of 1 January 2012).³⁸

The increase in the filing fees for the courts of appeal and cassation was accompanied by other measures intended to restrict the opportunities for appeal. As for the courts of appeal, Decree Law 83/2012 introduced a filter of inadmissibility of appeals, based on a ‘determination of no reasonable grounds to challenge’ made by the appellate judge. With regard to appeals to the Court of Cassation, Law 69/2009³⁹ introduced a filter based on two cases of inadmissibility⁴⁰ and established a new special chamber (Sixth Chamber) whose task is to evaluate all appeals for whether there are grounds for inadmissibility and whether they can be decided using the simplified procedure.⁴¹ In 2012, cases in which appeal to the Court of Cassation was allowed were also reviewed using narrower criteria.⁴²

On the supply side, the goal of increasing productivity was pursued through actions intended to: *a*) exploit economies of scale and make the courts more specialized; *b*) make it possible to perform electronically a number of procedural steps; *c*) introduce more streamlined trial procedures and strengthen the role of the judge in carrying out the procedural steps.

As to the first point, the most significant action taken was to reorganize, through consolidation, the distribution of the courts throughout the country, which involved closing the locations of 30 trial courts,⁴³ 220 satellite courts and 667 offices of the justices of the peace.⁴⁴ The trial courts were reorganized using objective and standard criteria based on the

³³ Decree Law 98/2011 envisaged that any lawsuits regarding social security matters pending in the courts of first instance at 31 December 2010 in which the National Social Security Institute (INPS) is a party and the amount in dispute is not over €500 would automatically be decided in favour of the petitioner, and introduced a filter (preliminary technical assessment) for appeals concerning incapacity status and disability and incapacity benefits.

³⁴ Decree Law 132/2014; the same decree law limits the situations in which the judge is given the power to divide the legal expenses, rather than order the losing party to pay them all.

³⁵ Decree Law 98/2011 and Decree Law 90/2014.

³⁶ Law 191/2009 (2010 Finance Law).

³⁷ Decree Law 98/2011.

³⁸ Law 183/2011 (2012 Finance Law).

³⁹ In addition Law 69/2009: expanded the jurisdiction of the justices of the peace in terms of amounts and matters in dispute; eliminated the specific rules of procedure for corporate law disputes; envisaged accelerated measures, consisting in particular in the reduction of numerous procedural deadlines, in the provision of new procedural sanctions for delaying tactics by the parties and in the simplification of the rules for introducing evidence, in particular through written testimony.

⁴⁰ An appeal is inadmissible if *i*) the order challenged decided the questions of law in accordance with the Court’s case law and the examination of the grounds does not offer reasons for affirming or changing its policy; *ii*) the objection concerning violation of the ‘principles of due process’ is manifestly baseless.

⁴¹ The proceeding before the filter chamber was modified by Decree Law 168/2016 to ensure greater speed. Specifically, the hearing officer’s report was eliminated and the presiding judge was given the option of directly indicating any cause of inadmissibility.

⁴² With Decree Law 83/2012, the appeal for ‘omitted, insufficient or contradictory reasons concerning a disputed or decisive fact for the case’ was replaced by the more restrictive ‘omitted examination of a fact decisive for the case that was debated by the parties’. This change was finalized to avoid abuse of appeal to the Court of Cassation based on errors in the statement of reasons of the decision appealed.

⁴³ The reorganization for the districts of L’Aquila and Chieti has been suspended until September 2020 (Decree Law 8/2017). Therefore, in Avezzano, Lanciano, Sulmona and Vasto the trial courts and the relative satellite courts remain in operation.

⁴⁴ Of these, more than 200 justice of the peace offices have remained in operation owing to the regulatory provision that allows them to continue operating provided that the local authorities assume responsibility for funding them. The Ministry of Justice, through its Decree of 10 November 2014, initially authorized the continued operation of 201 justice of the peace offices. Of these, 26 were subsequently suspended due to local authorities’ inability to ensure appropriate levels of funding. Ministerial Decree of 27 May 2016, adopted in connection with the extension of the deadline for requests to maintain courts open as provided by Decree Law 192/2014, reopened another 51 justice of the peace offices.

characteristics of the territory (land area, number of inhabitants, geographical distribution of the pool of users, organized crime rate) and of the court (caseload, incoming cases), in addition to those connected with administrative distribution (maintaining the court location in all provincial capitals and at least three trial courts for each appellate district). The Ministry of Justice followed up the geographical reorganization with new staffing distribution plans.⁴⁵

Special chambers of the trial courts and of the courts of appeal were established in 22 cities to handle business law disputes (Commercial Court).⁴⁶ The devolution of additional functions to these chambers is envisaged by the civil court reform being examined by Parliament, which also contains other court specialization measures (e.g. family court).

With regard to digitalization, the Online Civil Trial (OCT) system has been extended to all civil proceedings, whether litigious or non-litigious, making it mandatory for the parties' attorneys to electronically file trial pleadings and documents.⁴⁷ Use of the OCT was encouraged by making it possible for attorneys to also electronically transmit pleadings that are not required to be filed in this manner (e.g. writs of summons, appearances) and not requiring, in such cases, that paper copies be filed.

On the procedural level, the most significant measure was the introduction of a new type of action that is more streamlined than and alternative to ordinary proceedings (summary proceedings).⁴⁸

Organizational changes. – Alongside specific measures undertaken at the level of the individual courts, some actions taken cut across the entire judicial system. Some of these, such as plans for clearing backlogs and the judicial assistance office, were subsequently translated into legislation.

The law had envisaged plans for clearing backlogs since 2011.⁴⁹ The measure requires the presiding judges of the courts to prepare each year a plan for handling pending matters, setting trial length reduction targets and performance targets. Upon reaching a backlog reduction target of at least 10 per cent, the court is entitled to monetary incentives meant to reward the most virtuous courts – and, within them, administrative staff in particular.

The plans for clearing backlogs were given new life by the Strasburgo 2 programme, launched by the Ministry of Justice in 2014. The Ministry, after collecting statistical data on the length of the proceedings of individual courts, encouraged court managers to adopt organizational measures designed to clear their oldest cases. These plans were to follow the 'first in - first out' principle, so as to give absolute priority to the least recent casts and to limit to the extent possible trial delay compensation ('Pinto risk').⁵⁰

A central tool for improving efficiency is the judicial assistance office, an organizational structure that supports the judges' activities.⁵¹ The judicial assistance office includes the staff of the court clerk's office, court trainees and lay judges of the trial court. The judicial assistance office was conceived as a tool for addressing the most critical situations; therefore, in identifying the judges it is to support, the presiding judge for the

⁴⁵ The ministerial decrees of 17 April 2014 and 1 December 2016.

⁴⁶ Decree Law 1/2012. In addition to all the regional and autonomous provincial capitals (with the exception of Aosta), the Commercial Court was established in Brescia and Catania.

⁴⁷ Decree Law 179/2012, Art. 16-bis.

⁴⁸ The summary proceeding was introduced by Law 69/2009 and reformed by Legislative Decree 150/2011, which made it mandatory for some types of cases, as well as Decree Law 132/2014, which enabled the court at its own motion to 'convert' an ordinary proceeding into a summary proceeding, based on the assessment of the complexity of the dispute and the evidence gathering.

⁴⁹ Decree Law 98/2011, Art. 37.

⁵⁰ To enable quick payment of compensation owed under the Pinto Law, a cooperation agreement was signed in 2015 between the Ministry of Justice and the Bank of Italy.

⁵¹ Article 16-octies of Decree Law 179/2012, inserted by Decree Law 90/2014.

jurisdiction must take account of the number of incoming and pending cases, as well as, for the civil sector, the nature of the proceedings and plans for handling pending cases.⁵²

⁵² Ministerial Decree of 1 October 2015 on organizational measures needed for the functioning of the judicial assistance office.

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