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Journal of Public Budgeting, Acco
& Financial Manag

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Journal:	*Journal of Public Budgeting, Accounting & Financial Management*
Manuscript ID	JPBAFM-07-2023-0132.R2
Manuscript Type:	Research Paper
Keywords:	KIPO, resistance, Courts, Hybridization, Trial clerk

Title

Reforming Resistant KIPOs to Achieve Justice: Can the Judiciary System Hybridize?

Structured abstract

Purpose:

Knowledge-Intensive Public Organizations (KIPOs henceforth) rely heavily on knowledge as the primary resource to provide public services. This study deals with a specific kind of KIPO in the judiciary system: the Courts. The paper aims to explore the Court's managerial and organisational change resulting from the NRRP reform in response to Covid-19, focusing on how this neglected KIPO responds to change, either by showing acts of resistance or undergoing a hybridisation process.

Design:

The paper adopts a qualitative research design, developing an explorative case study to investigate the process of a Court's managerial and organisational change caused by NRRP reform and to shed light on how this neglected KIPO reacts to change, showing resistance acts and developing the hybridisation process. Thirty-one interviews in six months have been conducted with the three main actors in Courts: judges, clerks, and trial clerks.

Findings:

The paper shows that in this understudied KIPO, judges fiercely resist the managerial logic that decades of reforms have been trying to impose. The recent introduction of an office for speeding up trials (UPP) was initially opposed. Then, the resistance strategy changed, and judges started to benefit from UPP delegating repetitive and low-value tasks while retaining their core activities. Clerks approached the reform with a more positive attitude, seeing in UPP the mechanism to bridge the distance between them and the judges.

Originality/Value:

Considering their relevance to society, Courts must be more addressed in KIPOs' studies. This paper allows the reader to enter such KIPO and understand its peculiar features. Secondly, the article helps to understand micro-practices of resistance that may hinder the effectiveness of managerial reforms.

Keywords:

KIPO, Courts, Resistance, Hybridization, Trial Clerks.

1. Introduction

Knowledge-Intensive Public Organizations (KIPOs henceforth) rely heavily on knowledge as the primary resource to provide public services. These organisations create value through the work of a highly skilled workforce that accumulates, develops, and disseminates knowledge to many stakeholders (Grossi *et al.*, 2020). This study deals with a specific kind of KIPO in the judiciary system: the Courts. Although these have never been explicitly defined as KIPOs, looking at previous studies, several contributions have investigated the role that knowledge plays for these public organisations (e.g., Banasik *et al.*, 2022; Resnick, 2018; Brdulak and Banasik, 2015; Casanovas *et al.*, 2005; Costa and Neves, 2000). As knowledge-based organisations (Brdulak and Banasik, 2015), Courts engage in a distinctive and intensive intellectual activity that implies and creates knowledge to provide efficient, prompt, and reliable services to protect individual and collective rights (Resnick, 2018). Specifically, Judges are expected to possess theoretical knowledge from legal textbooks, statutes, and codes, along with practical understanding from court experience (Casanovas *et al.*, 2005; Economides *et al.*, 2015). This knowledge-intensive process involves handling vast amounts of legal documents not limited to rendering judgments but addressing novel legal questions and emerging issues by applying interdisciplinary expertise (e.g. from medicine, forensics, finance, and technology).

Like many other KIPOs, the Courts' activities and performance significantly impact many stakeholders (Banasik *et al.*, 2022). The effective functioning of the court system and its positive impact on stakeholders rely on the expertise, knowledge, and information management capabilities of individuals and Court systems. However, although judges work autonomously, they also depend on each other (to create uniformity in working practice) and administrative and technical staff (being part of a complex service production process) to carry out their duties (Taal *et al.*, 2014). The interaction between judges, administrative Court staff, and Court technicians is characterised by knowledge sharing.

Building upon this understanding of Courts as knowledge-intensive organisations, their activities affect individuals and organisations, requiring efficient services to protect individual and collective rights. The World Justice Project's Measuring the Justice Gap report (WJP, 2019) reveals that 5 billion people worldwide still lack access to justice, facing everyday problems of extreme injustice. Recognised for its prominence as an instrument of social peace, the judicial system plays an essential role in reconstructing a sustainable social model (Lee *et al.*, 2016). Within the framework of the UN 2030 Agenda for Sustainable Development (UN, 2015), the effectiveness of the judicial system plays a crucial role in achieving SDG 16. This involves establishing an easily accessible judicial system with independence, impartiality, integrity, and credibility, upholding the right to a fair and timely trial. As outlined in the agenda, these aspects are essential for promoting peaceful and inclusive societies for sustainable development. Additionally, the OECD Council adopted the Recommendation on Access to Justice and People-Centred Justice Systems on July 12, 2023, advocating a justice approach that prioritises the needs of individuals through a well-defined legal and institutional structure to ensure effective leadership for people-centred justice.

In Italy, numerous reforms spanning several decades have aimed to achieve this delicate balance, focusing on reducing the bottlenecks that cause delays in legal trials (Esposito *et al.*, 2014; Busetti and Vecchi, 2018). Despite these efforts, Italy faces the most significant backlog and the slowest pace of case processing, both civil and criminal matters, compared to all Western Countries (D'Agostino *et al.*, 2013; Caponi, 2016; CEPEJ, 2014; Esposito *et al.*, 2014). As a result, the country has received repeated condemnations from the European Court of Human Rights (Fabri, 2000). The problem hinders foreign investment, erodes confidence in the legal system, and significantly impacts the growth of the Eurozone's third-largest economy (Jeuland, 2018). As a crucial step to address the

socio-economic consequences of the COVID-19 pandemic and unlock billions of euros of Next Generation EU funds through 2026, the European Commission has made reducing the excessive duration of trials an imperative condition. The Italian National Recovery and Resilience Plan (NRRP) focuses on reforming strategies to reduce trial length, clear backlog, and enhance the overall quality of the judicial system, aiming to align with SDG 16 targets.

Within this context, this paper aims to explore the Court's managerial and organisational change resulting from the NRRP reform, focusing on how this neglected KIPO deals with the co-existence of multiple institutional logics within organisations (Pilonato and Monfardini, 2022). The study seeks to uncover acts of resistance or undergoing a hybridisation process, examining the strategies adopted by individuals and the mechanisms employed in the face of conflicting institutional demands and newly imposed procedures (Pache and Santos, 2010; Reay and Hinings, 2009). Additionally, it aims to investigate whether individuals tend to identify more with specific logics or exhibit a dialectic approach, as suggested by Pache and Santos' model (2013). To reach th~~i~~ese objectives, the paper answers the following research question: *How does NRRP reform impact the institutional logic, individual identity and resistance mechanism within Judicial KIPOs?*.

~~For such aims, t~~The paper is organised as follows: the next section deals with the literature review about institutional logic, resistance, and hybridisation in public sector organisations and KIPOs. Then, the context of the analysis is briefly described to allow the reader to grasp the main features of the selected KIPOs, followed by the method section and the results. Finally, some reflections and conclusions are offered.

2. Literature review

The co-existence of multiple institutional logics within organisations is nowadays shared among scholars and is also an investigation topic for researchers adopting neo-institutionalism (Brignall and Modell, 2000; Greenwood *et al.*, 2011; Lounsbury, 2008). Hybrid organisations – as they are defined when they "constantly incorporates, at the very core of their identity, elements from different institutional logics" (Busco *et al.*, 2017, p 192) – are commonly considered to be a relevant share of existing organisations, both in private and public sectors. This phenomenon is explained by the increasing complexity of society that makes the dichotomy between public and private organisations blur (Vakkuri *et al.*, 2021). On the one hand, the necessity to simultaneously fulfil economic objectives and other social missions gives prominence to the so-called social enterprises. Conversely, managerial reforms are often common triggers of institutional complexity since they introduce private-sector logic and tools within public-sector organisations (Modell, 2022; Laguecir *et al.*, 2020), creating a wide sort of combinations of elements within such institutions (Vakkuri *et al.*, 2021). As mentioned in the introduction, KIPOs are emblematic examples of organisations that have undergone the adoption of private-sector practices (Grossi *et al.*, 2019).

The organisational literature suggests several ways to cope with such complexity. Such studies are essential in explaining reform failures and implementation gaps that may occur unexpectedly and in connecting administrative and managerial scientific contributions. Pache and Santos (2010) provide five strategies organisations can adopt to face conflicting institutional demands. Acquiescence, compromise, avoidance, defiance, and manipulation can be differently used, depending on various vital factors, such as the nature of the requests from the conflicting institutional logic and their internal representation. Reay and Hinings (2009) describe four mechanisms for allowing competing institutional logics to coexist in a healthcare setting. All such tools are based on collaborative relations between actors belonging to opposing logic. In higher education institutions, commonly included in the KIPOs definition together with healthcare organisations (Grossi *et al.*, 2019), conflicting logic may coexist (Grossi *et al.*, 2020), especially when researchers become hybrid professionals (Härström, 2022). Many studies deal with hybridisation, claiming that the outcome of a clash of logic

is often not the victory of one or another but a hybrid version of the two (or more) previous ones (Reay and Hinings, 2009).

More recently, scholars have started investigating the micro, individual level of institutional complexity caused by managerial reforms (Pilonato and Monfardini, 2022) and connecting it with the concept of resistance as one of the options to explain a common reaction to newly imposed procedures and logic (Mumby *et al.*, 2017). Resistance is aimed at opposing change (Macchia, 2019), impeding or slowing down the capacity of new procedures and logic to deploy within organisations, and it has been defined as "a constant process of adaptation, subversion, and re-inscription of dominant discourse" (Thomas and Davies, 2005, p. 687). Neoliberalism and introducing managerialism in the public sector constituted a favourable environment for resistance studies (Thomas and Davies, 2005). New Public Management logic is widely considered to have colonised organisations in which the existing paradigms were more connected with service ethics and work professionalism (Manes-Rossi and Spanò, 2022). This is especially relevant in KIPOs (Grossi *et al.*, 2019). Still, to our knowledge, studies on KIPOs deal with hybridisation much more than resistance (Vakkuri *et al.*, 2021). In general terms, studies on resistance discussed several characteristics that this phenomenon shows over time. Firstly, despite the definitions provided by the literature, acts of resistance are contingency-based, so what counts as resistance can change (Mumby *et al.*, 2017). Secondly, resistance can be framed against at least two different dimensions: from one perspective, it can be individually or collectively sustained, while from the other, it can be composed of hidden or public acts (Mumby *et al.*, 2017). Strategies and resistance mechanisms adopted will vary depending on what combination of the factors better applies to the organisation and the specific contingencies under investigation. The dichotomy between hidden and public resistance has recently been contested by Courpasson (2017), showing a clear interrelation between them along the process of struggle. Whenever resistance is played at the individual level, it opposes those changes that are deemed to threaten individual subjectivity and professionalism (Thomas and Davies, 2005; Giordano, 2020).

In Judicial KIPOs, judges clearly are the leading depositary of the professional logic posed under threat and therefore, they are expected to defend their professional identity individually. Interestingly, the outcome of defensive acts is often not a destructive force but a transformative, if not creative, one that changes the same agents and their role within organisations (Spanò *et al.*, 2022). Therefore, as Giordano (2020) suggested, institutional logics and individual identities and behaviours are strongly interconnected with mutual influence. Several studies show that individuals tend to compromise and to find a dialectic between pure opposition and compliance (Bristow *et al.*, 2017) or to respond to different logic in different circumstances (Härström, 2022). Pache and Santos (2013) offer a fascinating model to explain how individuals cope with conflicting senses depending on their adherence to each. Each actor may be a *novice*, *familiar*, or *identified* with each specific logic, and this creates several possibilities of behaviour whenever the organisation is exposed to a co-existence of logic or the entrance/imposition of a new one on the existing ones. Since KIPOs are characterised by high professionalism, the main actors might probably be assessed as *identified*, at least for their professional logic. Consequently, the model suggests that identified actors should manifest resistance by defying the new logic once a new logic is introduced in the organisation. In contrast, *novice* actors should fully comply with it (Pache and Santos, 2013). Organisational studies also show that resistance is often played generatively and creatively (Thomas and Davies, 2005). Interestingly, very often, management accounting tools represent, at the same time, the way through which changes are imposed on organisations by managerial reforms and the tools that individuals adopt and use to resist the same changes (Allain *et al.*, 2021; Sanson and Courpasson, 2022). Therefore, it would be interesting to analyse in our selected KIPO whether there are resistance actions by the different individuals as suggested by Pache and Santos' model and what tools and mechanisms are possibly used. Moreover, the model suggests hybridisation occurs whenever the actors become familiar or identify with the incoming logic (Pache and Santos, 2013). Again, it is interesting to deepen what

happens in the selected and often neglected KIPO that has not been under investigation due to its peculiar position in the institutional framework and the specific features and protection the law grants.

3. Context: the subjective dimension of KIPOs in the justice sector

Judiciary KIPOs stand out due to their unique characteristics. As Wilson (1989) noted, every bureaucracy has a distinct organisational culture, which influences how its members behave. The judiciary system, however, is marked by specific traits, including constitutional constraints, a culture of self-referentiality, career paths built on seniority and a coexistence of bureaucratisation and intense professionalisation (Ricci and Pavone, 2020). Notably, Italian magistrates and judges have always prioritised their autonomy and independence, emphasising their constitutional role (Busetti and Vecchi, 2018).

Italian Constitution establishes Judges' peculiar status and role (see articles 102 and 103) and ensures their independence from any other power of the State (article 104). Judges assume a central position around which the activity of judicial offices revolves since they are vested with the authority and autonomy to interpret and enforce the law. Over time, these peculiarities have somehow hampered the attempts to impose organisational improvements through managerialism, setting the judicial system apart from other KIPOs (Colaux *et al.*, 2023).

Since judges are the only ones who can exercise judicial function, their high proficiency and competence become of utmost significance. For this reason, the judge's career entails an exceptionally high entry threshold through a rigorous public selection procedure (Italian Constitution, article 106) limited to three attempts. If unsuccessful in all attempts, access is no longer possible (Legislative Decree No. 160/2006 and Law No. 111/2007). Successful candidates undergo an extensive initial training period (Legislative Decree No. 2006/26) that exposes them to various legal subjects through lectures, seminars, and case studies. This training provides them with a solid theoretical foundation of legal knowledge and practical experience working alongside tenured judges in actual judicial trials. Through in-service training (Legislative Decree No. 2006/26), judges maintain updated professional skills in response to the evolution of the law. The judicial system's characteristics encourage judges to identify with their profession and its values strongly. This connection shapes their self-perception within the legal context and guides their daily behaviour, influencing interactions with others based on principles and values (Giordano, 2020).

During both civil and criminal trials, judges, in their judicial function, apply legal knowledge to evaluate evidence, interpret laws, consider the case's specific circumstances, and make informed and impartial decisions. The trial is governed by the regulations of the Civil and Criminal Procedure Codes, which involve stages characterised by strict and fixed timelines. These timelines are designed to ensure fair treatment in every case but can sometimes cause delays in the administration of justice.

Since 2005, the central government embarked on a comprehensive reform initiative to reduce trial duration. Initially, the focus was on the strictly legal aspects of the procedure codes. However, in 2006-2007, reforms shifted their attention to the managerial aspects, and a vigorous debate regarding preserving judges' autonomy emerged. These reforms had procedural implications but clashed with judges' self-perception and professional identity and were unsuccessful in reshaping their roles within the judicial system (Busetti and Vecchi, 2018). Although Article 110 of the Constitution assigns the Minister of Justice the responsibility for organising and managing the judicial services, article 105 grants to a body called Consiglio Superiore della Magistratura (Superior Council of the Judiciary) the power to make decisions regarding the career of judges to protect judges' independence. As a result, the managerial reforms, which introduced performance-based evaluations and restructured the organisation of judicial offices, encountered strong resistance from the Consiglio Superiore della Magistratura.

Thus, the fundamental innovation on an organisational level consists of establishing the Ufficio Per il Processo (UPP henceforth, Trial Office). Due to the positive experiences gained from foreign countries (e.g. UK, USA, France, Spain), Italy recognised that judges need support staff to assist them in various activities that complement their primary jurisdictional responsibilities. By Law no. 90 of June 24, 2014, UPP was introduced among the administrative personnel of the Courts, alongside Court Clerks and other staff, so that it falls outside the scope of the Consiglio Superiore della Magistratura. This change in organisational structure, constrained by judges' professional identity, provides a chance to shift the dynamics of judges within the judiciary system. In contrast to judges over whom the Ministry cannot intervene directly, these individuals lack the more constitutionally guaranteed autonomy and independence. In this way, to ensure the proper functioning of the offices, the Minister organises the administrative personnel alongside the judges. As judges address legal matters and make judicial decisions, the administrative staff supports efficiently managing trials and related administrative activities.

The UPP was meant to include Clerks and law graduates undertaking internships within judicial offices, Auxiliary Judges (appointed by the Minister under Legislative Decree No. 69/2013 without the public selection procedure mentioned above), and Honorary Judges. Its establishment aimed to move from a model where the jurisdictional function was solely entrusted to a judge to a model where a team would support the judge. Clerks would have undertaken administrative tasks, Auxiliary Judges and Honorary Judges would have had jurisdictional functions, and trainees would have shared co-jurisdictional parts. However, a Ministerial Decree on October 1, 2015, clarified that Honorary Judges and clerks should only perform activities within their usual functions. Moreover, Constitutional Court judgment No. 41 on March 17, 2021, declared the introduction of Auxiliary Judges into the UPP unconstitutional. Therefore, the other UPP members retained their pre-existing organisational roles except for trainees, who continued interacting directly with the judge for training.

In 2021, Legislative Decree No. 80 introduced the figure of the Trial Clerk (TC henceforth) as part of the urgent measures aimed at enhancing the efficiency of the judicial system under the NRRP (National Recovery and Resilience Plan). The TC is a professional figure with a fixed-term contract that complements the clerks, trainees, Honorary Judges (in Courts), and Auxiliary Judges (in Courts of Appeal). The law tasks the TC with performing specialised support of the judge, such as studying case files, drafting simple measures, managing the parties' petitions, organising hearings, conducting legal research, and providing support for the office's digitalisation and organisational innovation processes. Its role lies between the judicial function of the judge and the administrative activities that precede and follow such a function. The Ministerial Circular of December 21, 2021, outlines a flexible, professional profile for the TC, which can be deployed in various ways according to the specific needs of the judicial function, both in the administrative management of case files and in supporting hearings and decisions. Indeed, the personnel assigned to the new professional profile must hold a law degree or – for a quota of reserved positions – in business, economics, or political science. The profile involves a twofold competence enabling the TC to be deployed in different roles: on the one hand, supporting hearings and decisions due to their competence alignment with the judges, or on the other hand, being involved in administrative case management and included in the ranks of the administrative staff.

4. Research question and methodology

This study aims to investigate the process of a Court's managerial and organisational change caused by NRRP reform and to shed light on how this neglected KIPO reacts to change, showing resistance acts and developing the hybridisation process.

Qualitative research design is considered appropriate when exploring institutional complexity through the individuals' perspectives and perceptions regarding introducing new managerial practices (Yin, 2018; Creswell and Poth, 2018; Scapens, 2004). Similarly, it is also widely used in recent studies dealing with organizational resistance to change (Allain et al., 2021; Sanson and Courpasson,

2022) since it is able to broaden the perspectives offered by quantitative research (Erwin and Garman, 2010). Accordingly, we have identified the case study as the preferred method to answer ~~this~~ the research question. This study has been made possible thanks to our involvement in the national project "Smart Justice: Tools and Models to Optimize the Work of Judges", directed at identifying factors that influence the excessive trial time and backlog disposal of judicial offices to identify possible courses of action to increase the effectiveness of NRP reform. The project was approached through a multidisciplinary lens, engaging academic experts in law, engineering, and management. The legal scholars delved into aspects related to legal procedures and regulations governing the judicial system, while the engineering researchers focused on how technology supports judges' work. Simultaneously, our Research Unit (RU) was explicitly tasked with assessing how introducing managerial tools could improve the performance of judicial offices in line with the NRRP reform goals. Alongside the project's objectives, the close dialogue that developed between members of our RU and judiciary staff allowed us to investigate the phenomenon of resistance to the introduction of the new instruments envisaged by the NRRP, which results are discussed in this article.

As an accredited RU designated by the Ministry of Justice, we were tasked with a specific geographical area of investigation within such a project. Under Italian law, the Ministry of Justice handles the organisational and managerial aspects of the judicial system, while judicial offices are responsible for administering justice in its strict sense. These judicial offices are organised into 29 Courts of Appeal, each operating within defined territorial competence. These Courts of Appeal coordinate 165 Ordinary Courts and 178 offices of Giudici di Pace. Our RU investigated the Courts closest to its geographical location, namely the Courts of Cagliari, Oristano, and Lanusei. Indeed, the advantages of geographic accessibility to Courts played a role in making the data collection process smoother and increasing our ability to create a fair dialogue with respondents and collect empirical material (Scapens, 2004).

Three critical actors affected by NRRP reform have been identified within the Courts: Judges (J), the Court's administrative officers or clerks(C), and UPP members (TCs). While judges are expected to show a strong familiarity with professional logic, and administrative staff is expected to be particularly embedded in the bureaucratic one, TCs are expected to be embedded in hybrid reasoning according to their educational background and know-how. Consequently, we expect dissimilar reactions, and therefore different forms of resistance, toward the managerial logic fostered by the NRRP reform, depending on its (un)compatibility with the reason for each investigated group. Since resistance to change is internal to the organisation and may affect the personnel differently, external parties such as lawyers, defendants and policymakers have been excluded.

An invitation to participate in the study was sent to the president of each Court, asking them to extend the invitation to current staff (magistrates, judges, administrative staff and UPP officers). For ethical reasons, the invitation letter outlined the study's objective, including using semi-structured interviews and the procedures to preserve confidentiality. Before the interviews, respondents were asked for informed consent, where they manifested an evident willingness to participate in the study behind the research unit's guarantee of confidentiality and anonymity of the information released.

It has to be noted that while it has been possible to interview respondents personally from Cagliari and Lanusei's judicial offices, personnel working in Oristano's Court were not available for a face-to-face interview. Instead, their participation was limited to providing written responses to the interview questions via email. The limited information gathered from Oristano's court constitutes a limitation of the study, reducing the overall amount of data at disposal. However, such refusal to participate in the interview is a sign of resistance against the logic imposed by the reform. On some occasions,

Oristano's personnel has manifested, in informal conversations with the research staff members, scepticism toward the ability of the NRPP reform to improve the Italian Judiciary System.

Regarding the involvement of professional figures, the most representative category was judges, with 18 individuals interviewed, followed by 10 Administrative Staff and 7 UPP officials (see Table 1).

[Table 1 here]

Data was collected through semi-structured interviews conducted over six months, from May to October 2022. Due to the complexity of the phenomena under investigation and the exploratory nature of the case study, the use of semi-structured interviews enabled the interviewers to adapt and tailor the questions according to the responses and needs of the participants within a pre-defined framework of topics. Interviews were conducted based on broad, open questions about critical themes emerging from the literature. Respondents were asked to answer several questions that widely investigated their approach to work, how NRRP reform has changed their work, what opportunities and threats they see in the new managerial system, and finally, their overall perceptions of the content of NRRP reform and the UPP, particularly. This allowed the interviewers to explore additional topics or details that emerged during the conversation. During the interviews, some time has been used to enable interviewees to raise attention on issues not covered by our set of topics but felt as of specific importance to them. In these cases, to minimise the risk of prejudice, the researchers ensured that any additional questions and prompts that emerged were consistent with the initial set of topics to be investigated.

Once the investigation stage had been concluded, interviews were anonymised and transcribed. Findings were gathered following the traditional three-phase analysis (O'Dweyer, 2004): data reduction, data display, and conclusion drawing/verification. This method is considered adequate to study a phenomenon for which the existing theory could be underdeveloped (Drisko & Maschi, 2016). During the textual analysis phase of transcriptions, we focused on the interviewees' used words, adjectives, idioms, and recurring phrases, which allowed us to identify key topics and their recurrence for data evaluation. The interviews were analysed using NVIVO software to facilitate the identification of critical issues and their repetition. Differences in coding have been reconciled among the researchers so that the next section shows the main results coming from the empirical evidence. An alphanumeric code has been used to identify the interviewees according to their professional category and progressive number attributed to each respondent, specifically (see annex 1 for details):

- (J) identifies statements provided by judges;
- (C) statements made by administrative staff; and
- (TC) declarations made by trial clerks.

5. Results

Overall, judges, clerks, and TCs are all fully aware of the massive problem of slowness affecting the Italian justice sector. Interestingly, they are all consistent in pointing out the causes for such criticality. The limited number of staff, including judges and clerks, and an increasing workload are perceived as the main reasons for the Courts' untimeliness. "*Staff shortages are being felt, despite our arrival. Both in the clerk's office and among the judges." (TC5).* On the one hand, over the years, the limited number of new hirings and the high retirement rate have considerably reduced the capacity of courts to produce justice. "*The problem is that the amount of work to be disposed of is greater than the disposal capacity of the individuals called upon to do it." (J6).*

Additionally, the judge may change during a trial for several procedural reasons. This is not a neutral event within the judicial life of a dispute. Judge turnover implies that the newcomer must study and

understand the newly appointed case before doing anything else. As a consequence, the speed of the procedure is dramatically slowed down, with some feasible implications on the quality of the final decision, since with "*the turnover of judges, too many hands have worked on the same case" (J2).*

On the other hand, the increase in crimes prosecutable by law, changes in social conditions, and high citizens' litigiousness have raised the claim for justice. New cases have added to a substantial backlog, generating a caseload per judge that is sometimes so large that some issues need more time.

"*We are squeezed between a crazy inflow plus a significant backlog." (J2).*

"*I can't send more than four, more than five to a decision every week, and so if I can't send more than five if the incoming flow is high, obviously it spans the time." (J10).*

Besides excessive workload, case complexity has a role in shaping the path of trials. Causes are manifold and diverse. The time each absorbs depends on its inherent complexity and the legal procedures the judge must comply with. Given these elements, the length of a trial is never predictable.

"*We can't decide the rules on our own, it's not like when I manufacture an artifact, where there is my creativity, and I follow technical rules, but then I can streamline; here, we have fixed rules that are given by the Civil Procedural Code and standards in general, it's standardisable because I have to follow those rules, but there is unpredictability. With experience, you can learn how to handle them, but, e.g., the duration of an expert evaluation is not predictable". (J1)*

Such statements clarify that Judges perceive a potential conflict between the request for faster decisions required by the norms and by the reform and the quality of the single decision they have to take: "*If you want to combine numbers and quality, you can't go above a certain number of cases.* […]. *The more you reduce the time for a decision, the less rigorously you analyse the cases.* " (J1). In such conflict, which exemplifies the clash of logics at stake, judges would not compromise the quality for quantity: "*The fact that more has to be produced should not affect the quality of the work.* " (J9).

Additionally, as stressed by some judges, lawyers usually support the trial, mainly for profitability reasons, even if their customers will indeed get convicted. *"Lawyers who are many and do not filter properly, i.e. instead of being able to induce their client to choose a rewarding procedure, and not to go to trial in other words, they oppose, for example, the criminal decree of conviction for driving under the influence of alcohol, with evidence such as the 2.5 alcohol test. " (J11).*

The Italian judicial system allows for several Alternative Dispute Resolution (ADR) methods. Increasing their use could reduce the number of controversies needing a court to be solved, allowing judges to address the existing backlog. However, as stated by several respondents, the use of ADRs is minimal. This, along with the need for fair legal fees discouraging massive and indiscriminate access to traditional trials and lawyers' attitude to push cases to reach the Court instead of alternative solutions, impact the Courts' efficiency and effectiveness. Bringing a claim to the Court should be the last option to settle a conflict where an alternative, cheaper way to define it exists. *"The trial should be the last resort on certain issues." (J11).*

The process is a complex task, both in terms of the kind of decision a judge has to take and its variability. In certain areas, there are rare cases leading to the possibility of a standardised sentence.

"The famous bottleneck in any field, both in the first instance and the second instance is the decision. more than a few I cannot decide, so even if I speed up during the preliminary investigation, it is useless; I have cases ready, but then the judgment has to be written, and I cannot write more than a few judgments a week and therefore the time is dilated and lengthened." (J10).

Within civil Courts, a judge's previous experience and deep knowledge are perceived as critical factors of judicial activity efficiency and effectiveness. However, if, on the one side, previous

experience helps in both planning the activity and analysing the cases, then speeding up the trial, on the other, the judge who relies excessively on his knowledge tends to do everything by himself, avoids work delegation to legal staff and limit their productivity potential.

Interestingly, there is broad agreement among the judges on possible solutions to the problem. Recruitment is considered to be the leading and most effective solution. For the respondents, more judges and more administrative staff are required to deal with the amount of work needed, and some changes need to be made in the Civil Procedure Code to avoid excess turnover: "*We wait for the staff because we are in pretty bad shape." (C6).*

In any case, Judges have expressively doubted their approach to managing the case or organising judicial activity as a factor potentially affecting the Courts' efficiency.

"We have reached 1,800 vacancies in the judiciary staffing plan this month, which had never happened, and by the end of the year, we will have 2,000 vacancies. This is staggering. This results from two phenomena: one is the flight from the jurisdiction: colleagues are not staying in service until the maximum service age but are retiring as soon as possible because it is becoming a worn-out activity. At the same time, admissions are slowing down, partly due to covid that has slowed down the selection processes but also because of difficulties in recruiting. At the last selection procedure, only 5% of candidates passed. There is difficulty in finding an audience among law school graduates suitable to pass that kind of test." (J9).

Clerks are instead more optimistic about improving the efficiency of trials: "*There are many things that can be improved, especially in administering the processes. Relations with other offices could be more efficient, but the mentality makes it difficult. I've been there briefly, but I used to get piles of documents without criteria. I'll give you an example: computer protocol. As soon as I took office, I would get paper binders of communications to read ... the operators who protocol are much better at sorting communications than I am, so now I am reborn, I use computer protocol." (C1).*

As mentioned in section 3, several reforms have tried to deal with the problem of Italian justice's slowness and the vast amount of backlogs. While some of such reforms have introduced changes in the procedural laws, other interventions have slowly modified the operation of Courts through the introduction of some tools of managerialism. Indicators and evaluation procedures have been introduced so that all judges are now evaluated: "*Every four years. There has always been the evaluation of the judge. We are evaluated with parameters: the Head of the Office makes the report, the individual judge makes a self-report, and the president makes a report on statistical data. For example, concerning the management program, how many files/sentences he has instructed in the year, how much he takes on in disposing of old files, more complicated, left by other judges that also has to be evaluated with statistical statements." (J1).*

Consistent with the judges' exclusion of considering their approach to work to be among the causes of the backlog of justice, some among them have rejected and firmly resist such methods, considering the whole evaluation procedure useless: "*I don't even think about it* [the evaluation]; *a sentence is always drafted as best as possible in light of all the difficulties it may or may not have, if it is a simple sentence it is clear that the time I spend on it will be less but personally I am not conditioned by the fact that every four years I am evaluated." (J3).* Similarly, concerning the indicators used to assess judges' performance, a respondent bearing relevant organisational responsibility claimed: "*No, I don't use them, in the sense that the individual judge, I don't know if he can calculate these indices; I am interested in organisation, but I don't use them." (J1).* All the activities related to performance evaluation and data gathering for statistical purposes are considered boring and often delegated to the administrative staff.

"*One of the biggest problems that we have in here, and that I have witnessed firsthand in these four years that I have myself had to take organisational measures, is the statistical data. Why? Because it*

is required by law for the Court of Appeals to have a person on staff in charge of statistics. This person, who, if I remember correctly, was supposed to be in common between us and the judicial offices of Sicily, has never arrived here, so the survey of statistical data is left, in this Court, to the good heart of those who want to give us a hand, with all the consequences of the approximation of the data that are surveyed, because they are surveyed in one way at one time, in one in another. […]. *So every time we have to deal with a problem, and all organisational problems necessarily presuppose that there is statistical data, we start to break out in a cold sweat." (J6).* Again, recruitment is considered the solution. "*There is a lack of someone within the court who knows how to process the data and teach us how to use it." (J1).*

More recently, thanks to the NRRP, UPP composition was modified, introducing and adequately financing the TC's positions. As mentioned, with most people with a law background, some business economists and statisticians have been recruited. The attitude towards TCs and their use has been quite differentiated among judges. As foreseeable, resistance appeared. A managerial approach and UPP are not considered by some judges a solution to the slowness of trials because they don't solve "*the real problem, which is that of insufficient staffing levels; we have been working for 20 years on all possible and imaginable joints to reduce the length, inside the clerks and the judges' offices." (J6).* This comment clearly explains the evident disillusion some judges feel about the effectiveness of the managerial logic and tools, including the UPP, in helping them work faster because: "*to judge is a one-man show." (J1).* As mentioned in the method section, some judges even refused to be interviewed once they understood that the aim was to investigate how speed could be increased by adopting managerial tools. In these cases, the resistance was complete and invincible. Other respondents were less stiff, but once asked whether the TCs could help in programming the judge's activities, one respondent claimed, "*It takes much experience to program, and the TCs are nowhere near capable." (J2).* Most of the concern is about the competencies the newly recruited might offer and the extra work generated by the necessity to train them. "*A graduate's ability is limited; he does not have the experience of the judge, and he has to be taught practically everything; the judge's work is a very complex job." (J1).* The overall strategic design behind the UPP establishment is also straightforward (even if not agreed upon) to the judges, meaning that they understand that trial duration is the problem and that the policymaker considers a managerial approach the most effective. "*The managerial push is now felt more, there is the additional motivation of the UPP, and there is no more excuse*. [..]. *Even if you are pressured to hurry, whenever you have the help of the UPP, you have no more excuses." (J1).*

Investigating the role of TCs, it is interesting to note that resistance only consists of a partial refusal of the tool over time. It is exerted in a more nuanced way, often limiting the work of TC to preliminary and less critical tasks and avoiding an intrusion into the core activity of the judges. Once asked whether TCs could be used to check the completeness of a case folder and similar core activities, the answer is negative: "*Are you kidding me? When can I ever have the proper constitution of the parties in the trial done by a TC? In judicial activity, it is critical! Even the GOP (Honorary Judges) get them wrong; sometimes, I get GOP orders/bills that I have to send back because they didn't check the notice and kept the process going when that's the first thing they teach you. TC can do none of these activities." (J6).* Not even the calendar of the hearings can be delegated: "*It would be a waste of time if a UPP set up a judge's calendar; it is the judge who knows when he has the hearing, and how many he can put in, he follows it, and he does it." (J6).* UPP members' limited experience and knowledge are used to justify their exclusion from some core tasks. "*The problem is to see how this backlog can be recovered. However, using the UPP is premature. We are talking about people who have been here for a few months." (J8).*

Moreover, the precarious nature of their contract and the necessity to train the TCs are perceived to be able to restrict the effectiveness of the help that the UPP may offer to the Judges. "*It depends a lot on the person, but it* [the collaboration] *can be done in topics that are not very complicated and with an effort and commitment to training TCs that maybe a judge would have written three drafts in the*

same time of writing a single draft with the TC. So, if we look at the purpose of the UPP, which is to reduce quantitatively the backlog, I am not sure [it will be achieved]*." (J10)*. Clerks showed a higher level of awareness about not only the presumable adverse attitude of some judges regarding suggestions concerning their work procedures but also about the inevitability of the direction taken by the Ministry to deal with the duration of the trials: "*We need to work on these flows, but we still need to improve. The Ministry has invested directly in the UPP and you; only the University can analyse our work method and tell us where to improve. Your work also suffers from two problems: you do not know our work well, and on our side, there is the attitude of those who ask: "What can you tell us?" (C4).*

A few judges started to appreciate the possibility of using TCs to speed up their work, especially those with repetitive trials: "*In my opinion, we need to make a distinction, depending on the role we have here as judges; we have a different potential way of how best to use the TCs. J2 has very complex cases, so complex that he, like many colleagues, feels that the TCs cannot be used on everything. On the contrary, I have very serial cases that are easily solved when you have the concept of law and the criterion to be applied." (J3).* As presumable, clerks are much more optimistic about the benefit of having TCs, especially those with managerial and statistical competencies: "*A TC with statistical competencies can definitively be useful." (C6).* In this way, the activities related to the data collection and the statistical analysis could be allotted to the TCs, relieving the same Clerks of a task they often do not like: "*My role is to coordinate the TCs, to organise if there is a need to provide data and make an Excel with the tasks they are assigned to because anyway we are constantly being asked for this data so that we always have the situation under control". (TC2).* Moreover, despite the different organising within the Courts, the allocations of TCs generally follow a familiar pattern. Judges tend to prefer TCs with a law degree and more experience, leaving the general coordination of activities for those with a different background of studies. "*Judges conducted preliminary interviews to assign duties. Based on aptitude and background: some are licensed attorneys, some had already interned here in Court, and some do not have a law degree, so they were assigned to cross-departmental services." (C3).* So judges tend to keep close those TCs with a law background, so those with the same logic, and drop the others: "*TC4 is employed as a coordination figure. All judges took away all TCs with legal training, and as a consequence, within each section, a residual resource was identified to do data collection and other coordination activities." (C4).* So, whenever possible, judges (but also clerks) tend to delegate non-core activities, such as data collection and statistics: the presence of TCs with adequate competencies creates the opportunity to keep the logic somehow separate. Nevertheless, clerks perceive a hybridisation process in place: "*Now, with the UPP, there has been a step forward in that the scope of activities has been broadened because the clerks' offices are now involved. Before, with trainees, the relationship was only with the judge. Now there is an involvement with the chancelleries, certainly much more complicated as a relationship, but still hopefully good." (C1).* Thus, the UPP has been placed and operates as an intermediary between judges and clerks: "*The main thing that needs to be overcome, and the UPP is an opportunity to do so, is to bridge the separation that there is between the judiciary staff and the administrative staff; they are two separate worlds, and this poses a huge problem. But this has always been there. In back-offices, it is stronger; in frontline offices, it is different; one needs the other, and there is more cooperation." (C1).*

6. Discussion and conclusions

Even if Courts as public organisations produce and provide services with such a high impact on the community to be included in the UN SDG n. 16, shockingly, scholars have yet to adequately consider such organisations in their empirical studies (Colaux *et al.*, 2023). This paper tries to bridge this gap with a qualitative and explorative case study that investigates the micro-practices of resistance and hybridisation of Courts against the imposed use of the tools and logic to reduce the trial duration. The adopted approach answers the literature claiming that the analysis of the judicial sector requires more

explicit, empirical evidence (Colaux *et al.*, 2023). As suggested by the literature, KIPOs are emblematic examples of organisations that have undergone the adoption of managerial practices (Grossi *et al.*, 2019) conflicting with a pre-existing internal logic. The interviews in this study offer the possibility to explore the perceptions of the main actors operating within such KIPO and understand their reactions and behaviours. Several changes have been imposed on the procedures through which tests are carried out to reduce the excessive duration of trials. Most of such changes surreptitiously introduce a managerial approach and logic in organisations where, on the one side, the law and its principles have been, for decades, the only existing reason and, on the other hand, the judges, whose prerogatives are constitutionally predetermined and protected, are the undisputed guardian of the juridical knowledge. Judges have been asked to work faster and compensated with new support staff, often unwanted. Consequently, a multiform kind of resistance practices emerged from the judges, as the literature would suggest (Pache and Santos, 2013), especially against the most recent tool that the law has introduced in the Courts, the UPP. Composed of TCs of different backgrounds, the UPP has been designed to help the judges and the clerks reduce the trial duration and backlog. This attempt to bridge judges and clerks through the UPP makes it a hybridisation tool, useful to make the different logic coexist (Reay and Hinings, 2009). In the interviews, the judges' initial reaction was often a complete rejection of the tool, a frontal and sharp resistance to the possible intrusion of other logic into their core tasks. Interestingly, some judges realised that the introduction of UPP was not transitory and changed their resistance strategy. They progressively use TCs, delegating several preliminary tasks related to the trial but often avoiding involving them in the core of their job and competencies (Colaux *et al.*, 2023). Only in a limited number of cases the involvement of TCs is accepted by judges, so, in this perspective, hybridisation still needs to be stronger in this peculiar KIPO. From the clerks' perspective, instead, resistance has been much weaker, and quite immediately, the UPP has been used to deal with tasks that the law imposes and that require competencies often outside the disposal of the clerks. Being more familiar with the managerial logic, clerks' resistance has been weaker, while hybridisation is perceived to be in place (Pache and Santos, 2013). It is possible to emphasise the contributions of this research. From a theoretical perspective, this paper allows the reader to enter a neglected KIPO and to understand its peculiar features, which are only sometimes consistent with what existing literature describes for other kinds of KIPOs, such as public health or education organisations. More in detail, within the judicial system, hybridisation processes seem weakened by the prerogatives of the judges. Secondly, the paper contributes to the organisational resistance literature showing that resistance acts are contingency-based (Mumby *et al.*, 2017) since the tools that have been implemented to introduce the managerial logic within the Courts have been captured by judges and used to protect them from hybridisation (Allain *et al.*, 2021; Sanson and Courpasson, 2022). The specific tool is, in this KIPO, represented by an organisational element composed of employed professionals and not by a managerial procedure or a single technology. In this sense, organisational resistance proves to be creative and dynamic (Thomas and Davies, 2005) over time, so it will be interesting to investigate in the future whether judges will become familiar with the managerial logic and hybridise as suggested by the literature or they will prefer to stay separated from it, keeping on perpetrating resistance acts. From a practical perspective, the paper helps to understand micro-practices of resistance that may hinder the effectiveness of managerial reforms. As in every piece of research, there are limitations worth mentioning. The chosen research design and methodology allow us to go deep into the selected case, but they refrain from generalising the results. Finally, the introduction of UPP in its present form is relatively recent, which can facilitate acts of resistance at the expense of the hybridisation processes. Further studies could overcome this shortcoming and offer a more nuanced longitudinal picture.

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Table 1. Respondents' composition

JUDICIAL OFFICE	Magistrates	Administrative Staff	UPP's officials	TOT. INTERVIEWED
COURT OF CAGLIARI	10	4	5	**19**
Civil Section	*6*	*2*	*3*	*11*
Criminal Section	*4*	*2*	*2*	*8*
COURT OF APPEAL OF CAGLIARI	2	3	0	**5**
COURT OF ORISTANO	3	2	2	**7**
COURT OF LANUSEI	3	1	0	**4**
TOT. INTERVIEWED	**18**	**10**	**7**	**35**

Annex 1.

N.	Code	Job role
1	J1	President of the Court
2	J2	Judge of civil litigation
3	J3	Judge of the first civil section
4	J4	Judge of the second civil section
5	J5	Judge of the first civil section
6	J6	President of the first civil section
7	J7	President of the penal section
8	J8	President of the Court
9	J9	Judge of the penal section
10	J10	President of the Appellate Court
11	J11	Judge of the Appellate Court
12	J12	Judge of the civil litigation
13	J13	Judge of the civil litigation
14	J14	Judge of the civil litigation
15	C1	Administrative manager of the prosecutor's office
16	C2	Administrative manager of the Appelate Court
17	C3	Administrative manager of the Appelate Court
18	C4	Administrative manager of the human resource office
19	C5	IT technician
20	C6	Administrative Manager of the office for preliminary investigation
21	C7	Clerk of the judge for preliminary investigation
22	C8	Clerk of the civil section
23	C9	IT technician
24	C10	Clerck of the penal section
25	TC 1	Trial clerck
26	TC 2	Trial clerck
27	TC 3	Trial clerck
28	TC 4	Trial clerck
29	TC 5	Trial clerck
30	TC 6	Trial clerck
31	TC 7	Trial clerck