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PHYSICAL DECONTEXTUALIZATION IN ITALIAN CIVIL PROCEEDINGS: ONLINE COURTS AND A MEASURED USE OF ICT

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ABSTRACT: The recent reform of Italian civil procedure has accelerated the digitalisation of justice, building on solutions tested during the Covid-19 emergency. At the same time, other legal systems have experimented with forms of public online dispute resolution. This article examines these developments in light of the principles of Italian civil procedure, assessing whether a measured and sectorial use of online courts may enhance access to justice without undermining core procedural guarantees.

KEYWORDS: Digitalization of Justice; Online Dispute Resolution and Online courts; Access to Justice and Justice efficiency system; Oral and written hearings in civil proceedings.

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1. TOWARDS A MORE DIGITAL JUSTICE

While civil proceedings still retain a structural connection with the face-to-face hearing[1], the extrajudicial sphere has long relied on digital solutions capable of fully dematerialising disputes[2].

Along the same lines, certain jurisdictions have also moved towards the introduction, within the judicial system itself, of Online Dispute Resolution (ODR) platforms, giving rise to forms of so-called "public" ODR[3]. These developments have taken shape, in particular, in pilot projects for online courts implemented within the judicial systems of the United States, Canada, the United Kingdom, Australia, and China[4].

Unlike private-sector ODR mechanisms, online courts constitute an authentic exercise of judicial power, in which technology operates as a functional instrument aimed at improving access to justice[5], as well as enhancing the efficiency and overall quality of judicial proceedings. Within this framework, the digital resolution of disputes is entrusted to the judiciary, while the role of private actors external to the conflict is confined to a possible attempt at amicable settlement, serving a deflationary function and preceding the strictly jurisdictional phase of the proceedings.

The association of judicial proceedings with a notion traditionally linked to the extrajudicial sphere is only apparently inappropriate. A structurally oriented reading of the ODR phenomenon allows this category to be extended

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[1] On the divergence between the public and private sectors in the digital transformation of litigation, see Wagner & Eidenmüller (June 22, 2021), available at SSRN: *https://ssrn.com/abstract=3871612*.

[2] Reference may be made to the implementation of eBay's ODR pilot project in the late 1990s, whose systemic orientation is outlined by Rabinovich-Einy (2006), p. 253, p. 273. The author describes its nature no longer as a mere digital tool for individual conflict resolution, but as an instrument of dispute prevention. Comparable systems include those developed by PayPal and SquareTrade, as well as applications such as Opus2, Case Law Analytics, Modron, X.ai, and Modria.

[3] This acronym refers to alternative dispute resolution systems within public justice (Alternative Dispute Resolution) that make use of digital tools. In this sense, ADR is sometimes identified with electronic ADR (e-ADR), although, in the private sector, it is also referred to as iDR (Internet Dispute Resolution), eDR (Electronic Dispute Resolution), or oADR (online ADR). On the interaction between ADR and ODR, and on the possibility of identifying the latter as a conceptually independent category from ADR, see Nauss Exon (2017), pp. 614 ss.

[4] On U.S. initiatives, see Larson (2019), pp. 78 ss.; on developments in China, see Shi, Sourdin, & Li (2021). See also the Federal Court of Australia's eCourtroom and the Dutch projects (later discontinued), on which see Reiling (2017). More generally, see Rabinovich-Einy & Katsh (2017); Giacalone & Salehi, pp. 192 ss.

[5] "Access to justice" is linked to the idea of a legal system that does not relegate proclaimed rights to the level of mere formal enunciation (Cappelletti & Garth (1978), pp. 8 ss.). It is widely understood as a fundamental right, grounded in constitutional sources (Arts. 24 and 111 Cost.) and in supranational instruments (Arts. 67 and 81 TFEU; Art. 47 of the Charter of Fundamental Rights of the European Union; Arts. 6 and 13 ECHR). It aims to secure effective judicial protection whenever the enjoyment of a substantive right is hindered, which in turn requires removing barriers that prevent access to the justice system. For Cappelletti (1988), pp. 1 ss., this constitutes the "third", purely "social" dimension of law and justice. See also Galanter (1981); Cuniberti (2008); Dalfino (2014); Capponi (2014); Carratta (2019), pp. 6 ss.; Colesanti (2019).

beyond extrajudicial practice, to encompass any dispute-resolution process conducted largely through digital platforms accessible via the internet, thereby including proceedings before online courts[6] as well.

The purpose of the following remarks is precisely to assess the extent to which space may exist, within the Italian legal system, for the introduction of an online court. At present, as will be further illustrated below, Italian civil justice already displays a relatively advanced level of digitalisation: civil proceedings are conducted primarily in electronic form through the Civil Trial Online system (Italian: *Processo Civile Telematico*, or PCT)[7]. Nevertheless, a strong physical and symbolic anchoring to courtrooms and face-to-face hearings persists. This prompts an inquiry into the feasibility of a complete dematerialisation of civil proceedings, to be conducted considering the fundamental principles governing their structure and operation.

2. THE ONLINE COURT AS A THEORETICAL MODEL

In its more technical dimension, the online court may be defined as a judicial system for dispute resolution conducted entirely by digital means, without any necessary anchoring to the physical space of courtrooms[8]. Dialogue between the parties and the judge, the taking of evidence, and, more generally, every procedural activity—whether defensive or entrusted to the adjudicating authority—take place through a continuous exchange of communications and documents, structured within a defined time frame and channelled entirely through a dedicated digital platform. Judicial proceedings are therefore not organised around a hearing, even a virtual one, but are instead managed through a fully asynchronous handling of the case[9],

[6] The expression "online court" is used here as a term of art, referring to a model of judicial adjudication that is distinct both from the mere digitisation of civil proceedings and from the simple use of remote hearings. In this sense, it denotes not a technological modality of conducting a case, but a broader reconfiguration of how disputes are managed and resolved. For an initial account of the model, see Susskind (2019), pp. 62 ss.

[7] An "entirely digital" justice system is envisaged in *Un libro bianco per la giustizia e il suo futuro* (2021), at 20 ff. (available at www.giustizia2030.it). A similar understanding informs recent EU legislation (in particular, Regulation (EU) 2020/1783 on the taking of evidence in civil or commercial matters and Regulation (EU) 2020/1784 on the service of judicial and extrajudicial documents in civil or commercial matters), as well as broader EU initiatives. See, inter alia, Council Conclusions, *Access to justice—seizing the opportunities of digitalisation* (8 Oct. 2020); COM(2020) 710 final, *Digitalisation of justice in the European Union: A toolbox of opportunities* (2 Dec. 2020); COM(2021) 759 final, *Proposal for a Regulation on the digitalisation of judicial cooperation and access to justice in cross-border civil, commercial and criminal matters* (1 Dec. 2021); COM(2020) 712 final, *Proposal for a Regulation on a computerised system for communication in cross-border civil and criminal proceedings (e-CODEX)* (2 Dec. 2020). See also below, § 5.

[8] Susskind (2019), p. 60.

[9] For recent contributions on the relationship between procedural simplification and flexibility, considering the aims of speed and efficiency, see Carratta (2020); De Cristofaro (2020); Biavati (2019); and Lupoi (2018), pp. 57 ss., pp. 593 ss.

characterised by streamlined and simplified procedural forms [10]. In this sense, digitalisation is meant to enhance the overall efficiency of the justice system.

Alongside this technical understanding, a second and broader conception of the online court emerges, one that more directly addresses concerns of access to justice. It rests on the assumption that technology may support a judicial service that does not exhaust itself in the delivery of a decision and that is, for the most part, accessible even without mandatory legal representation. From this perspective, online courts take the form of so-called "extended courts" [11], capable of orienting parties—already at the pre-litigation stage—towards a clearer awareness of their rights and respective positions, as well as guiding them in the preparation of pleadings and in the identification of evidence relevant to the proceedings to be initiated.

A rethinking of the judicial function, in the sense of assigning the judge a more proactive role even after the proceedings have been instituted, represents the connecting element between these two conceptions of the online court, understood both as a fully digital form of adjudication and as an "extended court". The choice of a simplified and asynchronous procedural model, in fact, presupposes a flexible management of the dispute and a more pronounced degree of judicial autonomy in shaping its procedural development, an autonomy that, in certain respects, appears closer to the flexibility traditionally associated with arbitration than to the merely managerial powers ordinarily recognised to the civil judge [12].

At the same time, the combined requirements of efficiency and equal access delineate a model of adjudication marked by features that may be described as ideally inquisitorial [13], capable of offering an adequate level of judicial protection even in the absence of a synchronous hearing and, concurrently, of ensuring an effective right of defence for self-represented parties [14]. Such protection, however, can only partially be achieved through procedural simplification and through the very architecture of the court conceived as an "extended court" [15].

A "pure" model of online court—one in which legal representation is entirely excluded, and adjudication is conducted exclusively in written form, without any possibility of holding hearings—nonetheless encounters significant obstacles to its practical affirmation, nor do compelling reasons appear to support its adoption. The core issue raised by online courts does not therefore concern a generalised renunciation of hearings or of technical legal

[10] On streamlined and simplified procedural forms in digitally managed proceedings, see further the analysis in Lupoi (2018), pp. 57 ss.

[11] The expression "extended courts" is taken from Susskind (2019), pp. 6 ss.; the underlying idea also informs a substantial part of the scholarly and institutional debate on online courts.

[12] On flexibility in arbitration and its procedural implications, see Zucconi Galli Fonseca (2018), pp. 14 ss., esp. 67 ss.

[13] In this sense, see Susskind (2019), p. 146, esp. pp. 232 ss.

[14] In particular, the "one-shotter" litigants discussed by Galanter (1974), pp. 94 ss.

[15] Susskind (2019), pp. 154 ss.

defence, but rather the possibility that the holding of hearings may become a secondary mode of adjudication and that judges may assume, throughout all stages of the dispute, a more proactive role, in the sense outlined above[16].

3. ONLINE COURTS IN THE UNITED KINGDOM: A SYSTEMIC APPROACH

Among the various comparative experiences developed to date, two approaches to online courts stand out for their scope and for the heterogeneity of the solutions adopted: on the one hand, the United Kingdom's governmental platform, administered by Her Majesty's Courts and Tribunals Service (HMCTS); on the other, the Civil Resolution Tribunal (CRT) of British Columbia.

The British experience currently consists of a plurality of pilot projects covering a significant portion of civil litigation and extending also to certain disputes falling within the jurisdiction of tax courts and criminal courts[17]. The reform programme was launched in August 2017 with the pilot project known as Online Civil Money Claims (OCMC)[18]. It was designed to offer an alternative both to ordinary civil proceedings and to the pre-existing Money Claim Online (MCOL) service[19], with the specific aim of enabling disputes concerning low-value monetary claims to be dealt with under a faster and simplified procedural scheme[20].

However, the English model of online court appears to distance itself from the genuinely adversarial dimension of adjudication and does not display a strong ambition to manage the underlying conflict between the parties through procedural mechanisms within a fully-fledged adjudicatory framework. As a result, both the potential gains in terms of access to justice – which this form of digitalisation might otherwise deliver[21]– and the very objectives of procedural efficiency pursued by the reform are negatively affected.

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[16] See, infra, esp. footnotes 48 and 99.

[17] The guidelines of the reform programme are set out in the joint statement *Transforming Our Justice System*, issued by the Lord Chancellor and the Lord Chief Justice together with the Senior President of Tribunals in September 2016, available at *https://www.gov.uk/government/publications/transforming-our-justice-system-joint-statement* (accessed January 2026).

[18] Enforceable for claims up to £10,000, or £25,000 where both claimant and defendant are represented by a lawyer. Currently operative until 1 October 2026, the scheme is governed by Practice Direction 51R.

[19] The service applies to claims under £100,000 and is regulated by Practice Direction 7C.

[20] Giacalone & Salehi, pp. 192 ss.

[21] Legal representation is not always required; proceedings are characterised by very short timeframes and low costs; and the upper value limit of the claim—especially under MCOL—is sufficiently high to make the online procedure an attractive alternative to traditional litigation. Moreover, usability is enhanced by the requirement that each procedural step, starting from the filing of the claim, be carried out through standardised forms, partly pre-filled, containing the minimum information necessary to allow parties to make informed choices. Issues of territorial jurisdiction arise only at a later stage and, in any event, no longer *in limine litis*, but only if the proceedings continue under traditional procedural forms.

In proceedings for payment orders, whose basic structure is replicated across other forms of digital adjudication[22], the dispute may be handled entirely online only where the claimant's credit is fully acknowledged in the defendant's initial response, or where the defendant remains in default[23]. What follows are procedural schemes of varying degrees of complexity. In these schemes, the most significant form of judicial intervention is essentially confined to an assessment of the economic sustainability of the payment proposal submitted by the claimant to the debtor. This occurs where the latter does not intend to adhere to the payment offer already advanced by the opposing party at the time of entering an appearance, provided that the debtor is a natural person[24].

It follows that only in a limited number of cases—each of them linked to the absence of any substantive contestation of the claim—does the proceeding unfold entirely online. Even in such cases, digitalisation is most often confined to the introductory phase of the proceedings[25]. Ultimately, the judicial function appears to be reduced to a formal ratification of an agreement already reached by the parties as to the outcome of the dispute[26].

4. THE CIVIL RESOLUTION TRIBUNAL OF BRITISH COLUMBIA

More closely aligned with an understanding of online courts as a model of full digitalisation of both the dispute and the mechanisms entrusted with its resolution is the institutional design of the Civil Resolution Tribunal (CRT) of British Columbia. The CRT is expressly conceived to ensure a comprehensive digital handling of the conflict throughout all procedural stages, thereby offering a more structurally coherent implementation of online adjudication than the models developed in other jurisdictions[27].

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[22] In particular, the system has been extended to claims for damages (see Practice Direction 51ZB), to possession claims (see Practice Direction 55B), and to a range of family and personal status proceedings, including divorce and dissolution of civil unions, as well as certain proceedings concerning minors, labour disputes, and challenges to administrative measures in immigration matters.

[23] Where the claimant's request is contested, and unless the parties consent to mediation, the case is referred to a County Court Hearing Centre, which decides the dispute without a face-to-face hearing.

[24] The procedure varies depending on whether the defendant, while admitting the claim in full, makes an immediate offer of payment or proposes a payment plan spread over time. In the latter case, the plan must be accepted by the creditor or, alternatively, any different proposal advanced by the claimant must pass the court's affordability assessment.

[25] Where the defendant is a legal person and the claimant proposes a different repayment plan, the case is invariably referred to the Civil National Business Centre.

[26] For claims submitted under Practice Direction 7E, the parties may nonetheless file pleadings and annex documents with the County Court Hearing Centre by e-mail. See Practice Direction 5B.

[27] The CRT forms part of British Columbia's public justice system. Party pleadings and final decisions are subject to character limits, which vary depending on the procedural act and may be extended upon request to the case manager (Rule 7.3 Civil Resolution Tribunal Rules; version in force since February 2024). As with online payment order proceedings in the UK, the tribunal's jurisdiction is limited by the multi-party nature of litigation (Rule 1.3 CRT Rules), unless representation by a primary applicant preserves the bilateral structure of the dispute. Multi-party proceedings resulting from the joinder of linked disputes are nevertheless permitted (Rule 1.18 CRT Rules).

The CRT is vested with sector-specific but exclusive jurisdiction[28], encompassing selected corporate and condominium disputes, claims for damages arising from motor vehicle accidents—provided that their value does not exceed CAD 50,000—as well as small claims up to CAD 5,000. Proceedings before the tribunal are conducted through a cloud-based platform structured around two digital services, corresponding to the two main phases of the procedure.

The first service, known as the Solution Explorer, performs a preliminary analysis of the dispute. It offers an interactive framework through which the claimant may explore consensual avenues for satisfying the claim, while simultaneously assisting in identifying the judicial application most appropriate to the circumstances of the case. Where the dispute is not resolved at this preliminary stage, the claim is transmitted to the tribunal for the continuation of the proceedings.

In such cases, the tribunal is required to carry out a prima facie assessment of its jurisdiction, taking into account both subject-matter requirements and the additional conditions prescribed for digital adjudication[29]. At the same time, the tribunal assesses the reasonable prospects of success of the claimant's request, through an evaluation which—if favourable—does not preclude a different determination once adversarial proceedings have been formally instituted.

Following the respondent's entry of appearance[30], the procedure moves to a preliminary negotiation phase conducted entirely online. An exception applies to small claims arising out of motor vehicle accidents, which proceed directly to the decision-making stage. Where negotiation fails, a case manager is appointed. Acting as a procedural facilitator, the case manager assists the parties in a further attempt at amicable settlement and may, where necessary, request the production of evidentiary material in support of their respective positions.

Despite the clear preference accorded to consensual solutions—more pronounced than in the UK models of online courts—the Canadian design achieves a close integration between amicable dispute resolution and judicial protection. The latter does not recede but remains firmly anchored to the persistence of the conflict between the parties[31]. Where no settlement is reached, the dispute is resolved through a judicial decision comparable, in terms of reasoning requirements and legal effects, to one rendered in ordinary proceedings, albeit following a decisional process shaped throughout by the digital form.

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[28] See Rule 113 ss. Civil Resolution Tribunal Act.

[29] See Art. 11 Civil Resolution Tribunal Act.

[30] The respondent may file counterclaims or third-party claims under Part 3 of the Civil Resolution Tribunal Rules.

[31] This feature marks the most significant divergence from the UK model of digital adjudication.

If the facilitation phase also fails to produce an amicable outcome, the proceedings enter their strictly adjudicatory stage through the assignment of the dispute to a member of the CRT. The judge's decision is formed within an adversarial framework that is ordinarily conducted in writing. An in-person hearing may nevertheless be convened where the judge considers it necessary[32]. Such hearings are held only on an exceptional basis[33], digital forms of interaction being preferred, including, where appropriate, asynchronous communication[34].

With specific regard to the Civil Resolution Tribunal, therefore, the concept of online court finds concrete implementation in both of its core dimensions: that of an extended, immediate, and accessible form of justice[35], and that of adjudication ordinarily conducted online, flexibly adapted to the needs of the individual case. This form of adjudication is not necessarily confined to written proceedings alone, yet it reshapes the exercise of procedural rights and guarantees—particularly in evidentiary matters—where, as a rule, evidence to be taken is translated into written reproductions or, at the very least, detached from the traditional physical setting of the courtroom.

5. POST-PANDEMIC DIGITALISATION OF ITALIAN CIVIL JUSTICE

The comparative overview reveals that online courts may be implemented through a variety of institutional configurations, depending on how digitalisation is combined with existing procedural structures. Against this background, certain features typically associated with online adjudication—especially those drawn from the experience of the UK—can already be observed within the Italian system of civil justice[36].

Despite the terminology commonly used to describe it, the Italian Civil Trial Online essentially amounts to a dematerialisation of the case file and

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[32] The parties alone may request the holding of an in-person hearing; such a request is in no case binding on the tribunal.

[33] In assessing the appropriateness of an in-person hearing, the judge must take into account the nature of the dispute and any extraordinary circumstances. An order to appear in person or to take evidence in traditional form may be issued only where this is deemed necessary "in the interests of justice" (Art. 39 Civil Resolution Tribunal Act; Rule 9.1 CRT Rules).

[34] Pursuant to Art. 39 of the Civil Resolution Tribunal Act, the means of communication specified by the tribunal need not allow all parties to attend the hearing at the same time.

[35] Art. 20 Civil Resolution Tribunal Act requires parties to appear in person, limiting legal representation to cases in which a party lacks procedural capacity or where representation is permitted by law or by the tribunal itself.

[36] In Italy, the idea of computerising the civil justice system had already gained ground in 1997, but became a tangible reality with Presidential Decree No. 123 of 13 February 2001, which laid down its guiding principles, and, in practice, with the introduction of mandatory electronic filing of certain procedural documents through Decree-Law No. 179 of 12 October 2012, as converted and subsequently amended. On the intentions and stages of implementation of the telematic civil process, see Costantino (1999), pp. 77 ss.; Ferrari (2010), pp. 1379 ss.; De Santis (2017), pp. 749 ss.; the contributions collected in Ruffini (2019); and, more recently, Brunelli (2021), pp. 957 ss., as well as the critical analysis by Punzi (2022), pp. 2 ss.

procedural acts rather than to a reconfiguration of adjudication itself[37]. Civil proceedings are today conducted primarily in electronic form, with pleadings and documentary evidence filed and managed digitally.

With Legislative Decree No. 149 of 2022, the Italian civil process has additionally incorporated certain modes of conducting hearings that had already been experimented with during the Covid-19 public health emergency[38]. As a result, the hearing is no longer conceived exclusively as a face-to-face moment of oral interaction but may also take place in written or virtual form.

The judge's power to order a written hearing or to conduct the hearing through audiovisual connection, however, retains a residual character and remains subject to the conditions set out in Arts. 127-bis ss. Code of Civil Procedure (c.p.c.). Written hearings are admissible only where participation is limited to the parties' counsel. Remote hearings—typically conducted through videoconferencing platforms such as Microsoft Teams—are confined to the participation of the parties, their lawyers, the public prosecutor where applicable, and judicial auxiliaries. Third parties, such as witnesses or court-appointed experts, are excluded from these formats. Consequently, whenever the taking of evidence requires their involvement, the hearing must necessarily be held as an in-person (face-to-face) hearing.

Art. 196-duodecies of the Implementing Provisions to the Code of Civil Procedure further requires that remote hearings be conducted in a manner that preserves the adversarial principle and ensures the effective participation of all parties. In practice, this requirement has resulted in the virtual reproduction of the formal dynamics typical of in-person hearings: following audiovisual identification, each participant is required to confirm that no unauthorised persons are present in the place from which the connection is established and that the hearing is not being attended by third parties[39].

Taken together, these elements show that, while the Italian civil process has undergone a significant degree of technological modernisation, digitalisation has so far operated primarily at the level of procedural infrastructure. It has not entailed a rethinking of the adjudicative model comparable to that embodied by online courts, nor has it displaced the centrality of the in-person hearing as the paradigmatic setting of judicial decision-making[40].

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[37] In this specific sense, in addition to the literature cited in the previous note, see Tedoldi (2021), p. 860, and the emblematic definition referring to the PCT as an "ultra-form".

[38] For the detailed rules set out in Art. 221 of Decree-Law No. 34 of 2020, also with reference to the timing of the judge's communication of the telematic modalities and the further measures envisaged, see Fabiani & Piccolo (2020), pp. 1028 ss.; Brunelli (2021), pp. 957 ss.

[39] Apart from favourable assessments of the emergency regime—largely linked to the exceptional and ideally temporary nature of the measures—the alternative ways of conducting proceedings have prompted scholarly debate on the possible stabilisation of emergency procedural law and its compatibility, in particular, with the principles of orality and immediacy in civil proceedings. Without claiming completeness, see Carpi (2021), pp. 43 ss.; Biavati (2021), pp. 135 ss.; Cecchella (7.3.2021); Pagni (15.12.2020); Scarselli (13.5.2020); Corea (4.6.2020); Villa & Imbrosciano (2020), pp. 1 ss.

[40] On the recent technical and regulatory developments affecting the digital infrastructure of Italian civil justice, see Prandini (2025) and Brunelli (2025), which highlight both the consolidation of

6. THE "EXTENDED COURT" AND ACCESS TO JUSTICE

It is nevertheless clear that, in a legal system which has never generally renounced the holding of in-person (face-to-face) hearings, the possible institutionalisation of an online court—even if limited to only one of the two meanings outlined in paragraph 2—raises issues that go beyond the purely technical dimension of procedural design and affect the very essence of judicial protection[41].

It is therefore appropriate to start from the broader understanding of online courts and to focus, as a first step, on the questions raised by the possible introduction of an "extended court".

In order to assess its potential benefits in terms of access to justice, it is necessary to engage preliminarily with the regime governing mandatory legal representation. Under the current framework, parties may appear in court without legal counsel only in disputes before the giudice di pace where the value of the claim does not exceed €1,100[42], unless the party holds a personal qualification enabling it to act as counsel pursuant to Article 86 c.p.c., or in disputes before the tribunale governed by labour procedure, up to the limit of €129.11, under Article 417 c.p.c.. Further instances of optional legal representation are provided for by specific statutory provisions[43] and by a substantial body of case law, which nevertheless links the necessity of legal counsel to a case-by-case assessment of the contentious nature of the individual proceedings[44].

The reasons underlying the legal requirement of mandatory legal representation are traditionally identified in the difficulties a party would encounter, in its absence, in effectively presenting its defence. These difficulties stem both from the high degree of technical complexity—procedural and substantive—and from the inevitable emotional involvement that may hinder an objective assessment of one's own claim[45]. From this perspective, the role of legal counsel performs an instrumental function in ensuring the effectiveness of the right of defence guaranteed by Article 24 of the Italian Constitution[46].

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digital tools and the persistence of critical issues concerning system reliability, interoperability and procedural guarantees.

[41] See Carpi (2021), p. 45.

[42] Art. 82(2) of the Code of Civil Procedure further provides that the justice of the peace, having regard to the nature and extent of the dispute, may authorise a party to appear without legal representation even where the value of the claim exceeds the prescribed threshold.

[43] See, inter alia, disputes concerning the payment of lawyers' fees and dues (Art. 14(3) of Legislative Decree No. 150 of 1 September 2011) and, limited to first-instance proceedings, disputes concerning opposition to orders imposing administrative sanctions (Arts. 6(9) and 7(8) of Legislative Decree No. 150 of 1 September 2011).

[44] Nappi (2018), pp. 886 ss., with further references.

[45] On the role of the lawyer, see Carnelutti (1940), pp. 65 ss.; Pavanini (1957), pp. 246 ss.; Mandrioli (1959), pp. 383 ss.; and, more recently, Punzi (2020), pp. 1 ss.

[46] See Corte cost., 27 May 1996, No. 171, in Foro it., 1997, I, 1027 ss.; Corte cost., 16 March 1971, No. 47, in Foro it., 1971, I, 835 ss. On the right of defence in general, see Comoglio (1970).

These concerns, however, could be at least partially mitigated through the institutional architecture of an online court conceived as an "extended court"[47]. Nor should this give rise to doubts as to the impartiality of the judge, understood as equidistance from the opposing interests of the parties[48], or to specific issues regarding the availability of evidence[49]. Case law has, moreover, clarified that the constitutional grounding of legal representation does not exclude the legislature's discretion in identifying situations in which legal counsel may be optional, provided that such choices are not unreasonable and do not undermine the guarantees of the adversarial principle[50]. It may further be observed that, notwithstanding the corrective measures adopted in December 2011[51], the value threshold laid down in Article 82 c.p.c.—still expressed in lire—could have had a broader impact on the number of disputes effectively eligible for exemption from mandatory legal representation. What remains to be determined, therefore, is primarily an appropriate value threshold on which such an exemption could be anchored[52].

Even in the absence of legislative intervention aimed at extending the scope of self-representation[53], the introduction of an online court could nonetheless

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[47] . This issue should not be understood in terms of automating lawyers' work or predicting litigation outcomes. Rather, it concerns a rethinking of the function of courts—conceived as a "service"—and of the role of judges, who would be called to adopt a more proactive stance both before proceedings are initiated and throughout their course. In Susskind's theorisation (2019), p. 154, the structuring of proceedings through "online continuous hearings" serves precisely this objective, although he also envisages a less interventionist approach in view of a gradual implementation of digital formats, which nonetheless affects the modalities of the proceedings (p. 158).

The reference to the architecture of the court is here intended as relating to interventions at the pre-litigation stage. From this perspective, a system of access to the court—more or less interactive and linked to a typology of disputes destined for online adjudication—could guide parties in drafting pleadings (by highlighting the issues most relevant to the decision) and in identifying the relevant evidence. This does not necessarily imply form-based justice (on which see infra), but rather the preliminary provision of information on the substantive framework and procedural rules, particularly as regards evidence, applicable to the specific case..

[48] On judicial impartiality, see also, with further references, Cappelletti & Vigoriti (1971), pp. 604 ss.; Fazzalari (1972), pp. 193 ss.; Trocker (1974); Scarselli (1996), pp. 3616 ss.; Tiscini (2000), pp. 40 ss.

[49] Without prejudice to the principle of party disposition, the parties' control over facts and evidence sets a technical limit on judicial decision-making. If judicial activity remains within the scope of the parties' claims, openness to a more active role in evidentiary matters—understood here as indicating the types of evidence normally required for a given category of dispute and making such information available to all users prior to the initiation of proceedings—appears to be primarily a matter of legal policy. On this point, see Liebman (1960), pp. 551 ss.; Cappelletti (1962), pp. 317 ss.; Taruffo (2011), pp. 101 ss.; Mandrioli & Carratta (2022), pp. 88 ss.; contra Monteleone (2012), pp. 323 ss.

[50] See Corte cost., 10 July 1975, No. 202, in Foro it., 1975, I, 1575 ss.; Corte cost., 28 December 2006, No. 460, in Foro it., 2007, I, 1668 ss.; Corte cost., 22 December 2010, No. 368, in Giust. civ., 2011, I, 28 ss.

[51] Decree-Law No. 212 of 22 December 2011, converted with amendments by Law No. 10 of 17 February 2012.

[52] A resolution would require a preliminary definition of the disputes to be assigned ratione materiae to digital adjudication (see para. 7), as well as an assessment of the implications of fully digital proceedings for the fair management of the trial (para. 8 ss.). Ultimately, this appears to be a matter of legal policy.

[53] This perspective remains distant from the current reform of civil proceedings, which, on the contrary, has reinforced the requirements of Art. 163 c.p.c. by adding an express warning to the defendant as to the mandatory nature of legal representation in proceedings before the court.

produce significant benefits in terms of accessibility. On the one hand, it could operate as a procedural deflator for disputes that already fall within the scope of optional legal representation[54]. On the other hand, for disputes requiring legal counsel, it could eliminate costs related to travel and, where applicable, to the need for domiciliation before lawyers practising in the competent forum.

There nevertheless remain issues of a more distinctly "systemic" nature, primarily concerning whether recourse to an online court should be conceived as mandatory or optional. This question has already arisen in the past with reference to so-called compulsory arbitration and was resolved in the sense of its constitutional illegitimacy, due to its incompatibility with Articles 24, 25, and 102 of the Italian Constitution[55]. Regarding the possible voluntary or mandatory introduction of online adjudication, however, the issue appears to arise mainly for extra-legal reasons, linked to the perspective of self-representation[56], and in particular to the differing degrees of users' familiarity with digital tools. In this respect, the integration of online courts into the public justice system may be capable of removing, at the outset, the structural distortions that characterised the experience of compulsory arbitration.

7. DEFINING THE JURISDICTION OF ONLINE COURTS

Which disputes may, then, be allocated to forms of adjudication conducted entirely online?

First, disputes arising in the field of electronic commerce appear particularly suitable for online adjudication[57], as they originate within an environment intrinsically detached from traditional notions of territoriality and materiality[58]. The extension of the dematerialisation of conflicts generated online to their resolution phase, moreover, already represents a consolidated practice among e-commerce operators[59].

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[54] The purpose of online courts conceived as extended tribunals is primarily to make parties aware of their rights and of the merits of their respective positions and, in this sense, could—at least ideally—prevent the institution of proceedings based on manifestly unfounded claims (see supra note 49).

[55] See, in general, Corte cost., 14 July 1977, No. 127, with note by Andrioli (1977), pp. 1143 ss.; Corte cost., 27 December 1991, No. 488, with note by Recchia (1992), pp. 247 ss.; as well as Recchia (1994), pp. 477 ss.

[56] The issue could arise again at a supranational level through Art. 6 ECHR if the mandatory use of digital tools were combined with additional admissibility requirements capable of rendering access to justice unreasonable. This risk, however, appears to be avoided where the choice between legal representation and self-representation remains voluntary.

[57] Given the origin of this category of disputes, concerns regarding users' digital skills do not appear sufficiently compelling to preclude the establishment of an online court with mandatory access.

[58] For some references, see Martin (2002), pp. 125 ss.; Crawford (2002), pp. 383 ss.

[59] Along these lines, see Katsh (2001), pp. 93 ss., who observes that technology may act as a "fourth party" in a dispute, assisting the parties in reaching an agreement either independently or in cooperation with a third party (mediator, arbitrator or judge). This view was later developed, inter alia, by Lodder (2006), pp. 143 ss., who introduced the figurative notion of a "fifth party", referring to the provider of the technological solution. See also Pappas (2008), pp. 16 ss., who, already with reference to online courts, notes that "if technology serves as the 'fourth party', courts have a unique opportunity to

While it is true that out-of-court dispute resolution mechanisms offer an adequate response for many e-commerce disputes—especially where no full judicial fact-finding is required and recourse to public justice would provide limited added value for the parties—in other cases judicial intervention remains indispensable, either due to the nature of the dispute or to the widespread impact of the alleged violation[60].

The characteristics of disputes originating from electronic commerce, which are predominantly documentary and often serial in nature, allow for a further extension of the potential jurisdiction of online courts to cases that do not require oral evidence[61], or that do not raise issues of novelty such as to qualify as leading cases within the relevant field.

In line with the approaches observed in the comparative experiences discussed above, disputes concerning debt recovery could likewise be assigned to fully digital forms of adjudication, including opposition proceedings against payment orders—particularly in the banking sector, where litigation is ordinarily documentary—as well as disputes characterised by a limited degree of adversarial conflict. This would allow, at least about this category of cases, a reduction in the concerns associated with a possible extension of situations in which legal representation is not mandatory[62], concerns that already appear mitigated in the field of electronic commerce[63].

From this perspective, the scope of online adjudication could also encompass certain proceedings traditionally classified under voluntary jurisdiction[64], such as applications for *amministrazione di sostegno*[65], the revocation of a strata manager or the appointment of a joint ownership administrator[66],

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serve as a 'fifth party'", thereby identifying advantages of judicial digitalisation that cannot be achieved through more informal ODR mechanisms.

[60] As noted by Gioia (2018), p. 42, such disputes would in any event end up before the courts once the uncertainty surrounding the protection of the relevant rights reaches levels that can no longer be tolerated, thereby generating an ever-increasing flow of litigation.

[61] By way of a reductive but paradigmatic example, consider proceedings for the correction of material errors pursuant to Art. 287 ss. c.p.c., on which see the amendments suggested by Art. 1(8)(g) of Law No. 206 of 26 November 2021.

[62] The assessment as to whether legal representation is required must, in any event, be carried out on a case-by-case basis.

[63] Given that the value threshold provided for labour disputes does not apply to the category of disputes under consideration, the current limit set at €1,100 may already prove sufficient to meet the accessibility needs typically associated with e-commerce litigation.

[64] In this regard, it is worth noting the delegation for measures aimed at the de-jurisdictionalisation of "certain administrative functions", subsequently brought back within the scope of voluntary jurisdiction, as provided for by Art. 1, para. 13, lett. b), of Law No. 206 of 26 November 2021 and implemented by Art. 21 of Legislative Decree No. 149/2022.

[65] In compliance with the provisions of the reform set out in the above note, on 1 March 2024 a pilot project was launched for the introduction of "online courts" in voluntary jurisdiction proceedings before selected Italian courts. The service—accessible via the dedicated platform (*https://smart.giustizia.it/to?id=to_servizi_menu*)—allows for the electronic handling of proceedings such as *amministrazione di sostegno*, management of dormant estates, authorisation of extraordinary acts involving minors, and the issuance of passports for minors.

[66] On this point, see Tommaseo (2005), p. 196, as well as the considerations set out in the preceding note.

as well as joint proceedings for separation and divorce or those concerning the regulation of parental relationships, including the modification—upon joint request—of conditions established by prior judicial decisions, even where such decisions were authoritatively adopted. These are, moreover, proceedings that the recent reform has already subjected to a predominantly written form of treatment[67].

Finally, it would appear intuitive to envisage the allocation to online adjudication of disputes characterised by limited complexity or low economic value[68].

Leaving aside the latter category[69], it is apparent that, with respect to disputes of limited complexity, definitional issues already addressed in legal scholarship in relation to the summary proceedings model formerly governed by Articles 702-bis ss. c.p.c. (now Articles 281-decies ss. c.p.c.) resurface.

These issues are, however, enriched in the present context by an additional evaluative dimension concerning the very notion of complexity. If the aim is to assess the institutionalisation of an online court in both dimensions outlined in § 2, such an assessment should not be limited to the telematic, written or virtual modalities of adjudication and the simplified procedural rules applicable thereto[70], but should also consider the perspective of party self-representation.

The criteria delimiting the scope of online adjudication could therefore be anchored to the value of the dispute and to the complexity of the evidentiary phase, excluding cases that are particularly difficult to reconstruct in factual or legal terms[71]. Thus, for instance, cases raising purely legal issues, where the relevant facts are undisputed, may be regarded as displaying limited complexity; the same may hold true for cases based exclusively on documentary evidence, which do not require the examination of witnesses; and possibly also for those that hinge upon the preparation of a report by a court-appointed expert, where such report is expected to resolve exhaustively all outstanding factual issues.

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[67] See Cass., 23 June 2017, No. 15706

[68] Again, these are proceedings that culminate in a measure which does not affect rights or personal status.

[69] Greater difficulties arise when envisaging the handling—purely in written or possibly virtual form—of family litigation proceedings, where the high degree of conflict that often characterises such disputes requires a communicative effort by the judge that may lose effectiveness if conducted through means other than a face-to-face hearing. This is one of the contexts in which the "ritual dimension" of the courtroom (see infra § 9) appears to be most valued; see, however, also the contributions collected in Dalla Bontà (2021).

[70] See the considerations above in note 54, to which add Susskind (2019), p. 150, who rejects the idea that the value of the dispute may serve as a dividing line between ordinary and digital adjudication, while nonetheless acknowledging that any systematic attempt to identify the types of cases most suitable for online courts would require empirical data that only the implementation and use of such courts could provide.

[71] It should be noted, however, that some authors, in addressing simplified forms of summary proceedings and the greater procedural freedom entrusted to the judge therein, have considered the deformalized procedure more suitable than the ordinary one for dealing with complex cases. In this sense, see Balena (2018), p. 339. On the possibility of converting the procedure *in itinere*, see infra.

Given that complexity is a variable and fluid category, difficult to predetermine before proceedings are instituted[72], it would be advisable to provide for a safeguard mechanism capable of preserving access to ordinary judicial protection for disputes of greater complexity, along the lines of Article 281-duodecies c.p.c.[73]. Accordingly, the judge should be empowered to convert proceedings initiated entirely online where the relevant requirements are found not to be satisfied.

This solution should be distinguished from the more radical option of generalising the online hearing model—whether written or virtual—to all categories of disputes[74]. Such a generalisation has already occurred, albeit within the limits of the measures experimented during the pandemic period[75].

8. PROCEDURAL DESIGN AND SYSTEMIC TENSIONS

Once the scope of disputes suitable for fully online adjudication has been outlined, further difficulties emerge when considering whether such adjudication should be conceived as mandatory, understood as the possibility of conducting the proceedings entirely through a digital platform, either without hearings or through virtual hearings, and—if so—which phases of the dispute may be validly handled online and which, by contrast, would require a return to an in-person hearing[76].

Unlike solutions limited to the introduction of virtual hearings, the outright abandonment of the hearing in favour of a continuous but asynchronous exchange between the parties and the judge represents the development that most clearly conflicts with the current structure of Italian civil procedure[77].

Despite its idealistic appeal, the model of so-called continuous online hearings raises significant risks and potential inefficiencies[78]. In the absence of

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[72] On the relationship between complexity, simplification and elasticity of procedural rules, in addition to the references already cited in note 9, see Graziosi (2009), pp. 137 ss.; Costantino (2015), pp. 654 ss.; Costantino (2017), pp. 1440 ss., all of whom emphasise the requirements of foreseeability and predetermination of procedural rules; see also Cipriani (2002), pp. 1243 ss.; Caponi (2009), pp. 136 ss.; the contributions collected in Dondi (2011); and the proposal advanced by Pagni (2019), pp. 113 ss.

[73] See Biavati (2020), p. 441, referring to Taruffo (2011), p. 179.

[74] See Lupoi (2018), pp. 407 ss., with further references. For the opposite view, see Biavati (2020), pp. 440 ss., and, more extensively, Biavati (2019), p. 1158, note 12, who limits complexity factors to factual, substantive or procedural elements, such as the presence of multiple claims or a plurality of parties. In similar terms, see also Caponi (2009), p. 136.

[75] This is the position advocated by Susskind (2019), pp. 148 ss., which nevertheless appears preferable not to endorse. Notably, Susskind himself observes that it is not highly complex cases that occupy courtrooms daily, which seems sufficient, at least at present, to ground a discussion on the possible implementation of the adjudicatory model conveyed by online courts.

[76] Suggested in the speech *The Modernisation of Access to Justice in Times of Austerity* (2016) by Ernest Ryder, Senior President of Tribunals in the United Kingdom, and later taken up by Susskind (2019), p. 146.

[77] On this distinction, see supra note 71.

[78] Susskind (2019), pp. 144 ss.

evidentiary preclusions, for instance, a party's defensive position may be undermined by an excessive and unstructured documentary production by the opposing party—an occurrence far from unlikely in disputes involving large economic operators—especially where the weaker party appears without legal representation[79].

The point of greatest tension, however, concerns the role that such a model would assign to the judge. The latter would be called upon to manage proceedings characterised by a high degree of regulatory essentiality[80] and, in pursuit of maximum procedural simplification, to guide the parties whenever a submission or an item of evidence appears incomplete or insufficient[81]. In this perspective, the risks stemming from the absence of evidentiary preclusions might appear, at least in part, mitigated[82].

Nevertheless, such a proactive exercise of judicial powers would inevitably raise concerns regarding judicial impartiality[83], particularly in light of the fact that the ordinary civil judge is not endowed with a form of managerial autonomy comparable to the inherent jurisdiction typical of common law systems[84], nor with unrestricted powers of evidentiary initiative or of adjudication over facts and issues not placed within the scope of the dispute by the parties themselves[85].

9. THE RIGHT TO BE HEARD, ORALITY AND ASYNCHRONOUS ADJUDICATION

Both modes of online adjudication—written and virtual—also affect the Italian civil procedure's long-standing oralist tradition, to the point that, according to some accounts, its very persistence has been called into question[86].

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[79] Susskind (2019), pp. 157 ss.

[80] Susskind (2019), p. 146, may be read in this sense, where the author expresses openness to procedural rules departing from the adversarial model to promote simplification and a less confrontational framework for self-represented parties, although such a solution does not appear fully convincing or decisive.

[81] On the principle of party disposition in relation to digitalisation, see Comoglio (2018), pp. 83 ss. See also Fabiani (2008), pp. 107 ss.; Nieva-Fenoll (2014), pp. 943 ss.

[82] See the definition proposed by Jacob (1970), pp. 23 ss., spec. p. 51, and its evolutionary reinterpretation by Sime (2020), pp. 269 ss.

[83] See the observations of Rule (2021), pp. 181 ss., according to whom the implementation of ODR systems within public justice has been pursued particularly in jurisdictions characterised by more flexible judicial structures. See also the convergence between civil law and common law systems described by Cavallini (2022), pp. 161 ss., and Carratta & Cavallini (2022), pp. 427 ss.

[84] See the considerations above concerning pre-trial judicial intervention (supra note 52), together with the statutory exceptions provided for by the legislature (inter alia, Arts. 117, 118 and 281-ter c.p.c.).

[85] While rejecting a general exclusivity of the parties over the subject matter of the dispute, the court's power of ex officio intervention nonetheless does not extend to facts that may be raised only by way of strict exceptions. On the scope of this power, see Colesanti (1965), pp. 172 ss.; Colesanti (2016), pp. 273 ss.; Denti (1961), pp. 22 ss.; Oriani (2005), pp. 1011 ss.; Mandrioli & Carratta, pp. 117 ss., with extensive references to case law.

[86] The principles of orality, concentration and immediacy that inspired the procedural model proposed by Chiovenda found only limited implementation at the time of the promulgation of the Code of

These implications of digitalisation appear particularly close to the current—and prospective—reality of Italian civil proceedings. Yet, where confined to a delimited set of disputes, they do not seem to entail such a radical departure from the ordinary procedural paradigm[87].

As is well known, orality does not merely consist in the prevalence of spoken argument over written submissions[88]. Rather, it reflects a broader conception of how proceedings are conducted and of the very structure of adjudication[89]. Its paradigmatic locus lies in the assessment of evidence[90], and it presupposes both immediacy and concentration in the handling of the dispute[91].

Before qualifying as a principle, however, orality functions as an instrument aimed at facilitating the judge's understanding of the factual grounds of the case[92], more than as a decisive factor in the formation of the legal reasoning eventually crystallised in the decision[93]. Through direct interaction with the parties and witnesses, the judge may articulate doubts and request clarifications[94]. Nonetheless, oral interaction remains ancillary to an adversarial exchange that has already unfolded—and will continue to unfold—primarily in written form[95], and, above all, to an evaluation of evidentiary material which, at the decisional stage, is conducted mainly based on the records of hearings. This is even more evident in a procedural system which, at present, encounters structural difficulties in satisfying the requirements of concentration typically associated with procedural orality[96].

Civil Procedure of 1940, before being taken up and affirmed first in labour proceedings with the 1973 reform and later also in ordinary proceedings. On the scope of these principles, see Chiovenda (1924), pp. 1 ss.; Calamandrei (1939), pp. 174 ss. (now in Id. (2019), pp. 450 ss.); Carnelutti (1958), pp. 153 ss.; Costa (1950), pp. 77 ss.; Cappelletti (1962); as well as the critical reflections of Vocino (1980), pp. 592 ss.

[87] While, for some, an exaltation of orality appears no longer feasible due to the erosion of its underlying premises (cf. Verde (2021), p. 1172), others maintain that the rituality of justice—expressed through courtroom dynamics and formalities—is what renders the constitutional order perceptible and, in this sense, essential. In these terms, see Garapon (2021), p. 116, who also warns against perceptual distortions associated with mediation through a digital screen.

[88] Giabardo (2022), pp. 132 ss.

[89] Chiarloni (2019), pp. 134 ss.

[90] Cappelletti (1962), pp. 104 ss.

[91] Chiovenda (1928), pp. 681 ss.; Chiovenda (1931), pp. 413 ss.; Calamandrei (2019), pp. 452 ss.

[92] Cappelletti (1962), pp. 46 ss. This assumption, while deeply rooted in procedural tradition, has increasingly been questioned considering contemporary insights into the cognitive dynamics of adjudication. On the epistemic risks connected with an overestimation of immediacy and judicial interaction as reliable tools for fact-finding, see Nieva-Fenoll (2025), who emphasises how cognitive overload, fragmentation of information and the loss of stable procedural landmarks may ultimately impair, rather than enhance, the quality of judicial decision-making in digitally mediated proceedings.

[93] Giabardo (2022), recalling Mortara (1923), p. 5586; see also Cecchella (7.3.2021), p. 17.

[94] Picardi (1973), pp. 1 ss.

[95] Cappelletti (1962), pp. 76.

[96] See Nieva-Fenoll (2019), pp. 71 ss., and the studies on the psychology of witness evidence referred to therein. While undoubtedly relevant to understanding the concrete value of testimonial evidence, such studies do not entirely negate the practical relevance of oral evidence where it alone may clarify decisive factual elements.

Against this background, when choosing between written proceedings and virtual hearings within the framework of online adjudication[97], it appears appropriate to reserve the former for purely documentary disputes or for procedural models already tested and consolidated during the pandemic[98]. Otherwise, one must accept a different—and more proactive—role for the judge. Virtual hearings, by contrast, may offer an opportunity to address the uncertainties inherent in evidence yet to be taken when it is forcibly channelled into a written format—now no longer exceptional under Italian law (Art. 257-bis c.p.c.)—while at the same time preserving those managerial and guarantee-related features typically associated with procedural orality, both in terms of evidentiary assessment and in relation to the contemporaneous unfolding of the adversarial exchange[99].

At this juncture, it becomes apparent that preserving an alternative in the form of an in-person (face-to-face) hearing may represent the preferable solution, not as a residual attachment to traditional forms, but as a structural safeguard against the risks of procedural over-simplification[100]. This would require defining the conditions under which in-person hearings may be admitted, to prevent the procedural flexibility potentially afforded by online adjudication from degenerating into a purely normative construct, detached from actual practice. A contribution in this respect may come from that strand of legal scholarship which has already reflected on the relationship between the procedural forms imposed during the pandemic and the traditional hearing.

Beyond the specific aims of this study—which are primarily directed at assessing the impact of a possible digital implementation of civil justice as conceived in legal theory—it appears that, in order not to nullify the advantages that an online court may bring as an online form of adjudication, some degree of sectionalization is unavoidable. This may occur either upstream, by circumscribing the court's jurisdiction, or—where alternative hearing formats are generalised—by limiting the availability of in-person hearings to narrowly defined cases. Both approaches entail an equivalent definitional effort, which, at present, does not appear sustainable, especially where one seeks to combine the two.

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[97] On the need to rethink the relationship between online adjudication and hearing formats, see supra § 8.

[98] Dalfino & Poli (2020), pp. 225 ss.; Brunelli (2021), pp. 977 ss.

[99] For a nuanced position on the relationship between oral and written forms of adjudication in digitally mediated proceedings, see Punzi (2024), who argues that digital technologies may transform—rather than suppress—procedural orality, while warning against both its uncritical preservation and its complete dematerialisation. See also Ruffini (2021), p. 17; Giabardo (2022), pp. 152 ss.; Gradi (2019), pp. 549 ss.

[100] In this broader cultural perspective, see Nieva-Fenoll (2025), who frames digitalisation as part of a wider transformation of the meaning of adjudication, calling for a reflective and normatively guided approach capable of preserving fairness and legitimacy in technologically mediated forms of justice. See also Carpi (2021), pp. 47 ss. on "secondary" orality; Ruffini (2021), pp. 15 ss.; Pagni (15.12.2020), pp. 9 ss.; Brunelli (2021), pp. 974 ss.; contra, Costantino (2.5.2020); Scarselli (13.5.2020), pp. 2 ss.; Punzi (2022), pp. 7 ss.; Biavati (2021), pp. 139 ss.; Biavati (2022), p. 54.

Conversely, omitting altogether any association between online adjudication and specific categories of proceedings, or any minimal predetermination of the circumstances under which in-person hearings should be retained where alternative forms are generally preferred, would risk undermining the very paradigm shift between in-person and virtual orality (or between orality and writing) on which the idea of the online court rests—and which distinguishes it from the procedural model imposed during the pandemic. It would also risk leaving the choice of virtual adjudication to the technological inclinations of the court and the parties, irrespective of the actual needs of the dispute.

Between sectionalization in terms of jurisdiction and the definition of conditions governing access to in-person hearings, the former appears preferable. In practice, however, the provision of a safety valve for disputes of limited complexity (see supra § 7), if insufficiently regulated, might lead to outcomes not dissimilar from those resulting from a complete lack of association between online adjudication and any qualifying element. If properly regulated in its prerequisites, the first solution would ultimately be equivalent to the second. In that case, there would be no need to address the issue of the parties' consent to a shift between different forms of adjudication—an issue that inevitably arises wherever an alternative to in-person hearings is preserved (and all the more so where such alternative becomes the rule rather than the exception), but which becomes irrelevant where the choice of procedural modality is entrusted exclusively to the judge on the basis of an assessment of complexity, as is currently the case under the procedure governed by Arts. 281-decies ss. c.p.c.

10. ONLINE COURTS AND THE IDEA OF JUSTICE

Each of the moments of interaction between digitalisation and civil procedure reconstructed above ultimately points to a further and more general question, in which the various issues examined appear to converge: namely, whether justice delivered through an online court—albeit not implemented in its "pure" theoretical configuration—may nonetheless be regarded as a distinct expression of jurisdiction.

An affirmative answer may reasonably be advanced about the categories of disputes hypothesised as suitable for online adjudication in the preceding § 7[101], and, to a certain extent, may be extended where a paradigmatic shift in the roles of judges and lawyers is assumed. Such a conclusion, however, cannot be generalised to all forms of litigation in light of the objectives pur-

[101] Consider, for instance, simplified procedures for low-complexity disputes, such as the European small claims procedure established by Regulation (EC) No. 861/2007 (as most recently amended by Regulation (EU) No. 2017/1259), on which see, inter alia, Leandro (2009), pp. 65 ss.; D'Alessandro (2010), pp. 39 ss.; and, more recently, Lupoi (2018), pp. 33 ss. On the subject, see already Biavati (2002), pp. 752 ss.

sued by digital justice. In particular, it does not appear transferable to small claims or disputes lending themselves to immediate resolution, which have long benefited from simplified procedural mechanisms[102].

Nor can digital justice be regarded as genuinely "new" when considered in light of the trajectory followed by the most recent reform, in which digitalisation—whether in the form of virtual hearings or predominantly written proceedings—has already been largely internalised within legal practice.

Against this background, the model of digital implementation considered here would be characterised by a more limited scope of application. It is precisely in its relationship with disputes remaining outside the sphere of online adjudication that such a reform could prove most valuable. While not, in itself, decisive in achieving the objectives of speed and efficiency in civil justice[103], it could nonetheless enable a more rational allocation of time and resources, to be devoted to the oral handling of other, more complex and socially significant disputes.

Such an option would evidently require the establishment of a preferential procedural track, grounded in the mandatory recourse to a dedicated court and in the definition of procedural rules tailored to the specific adjudicatory model adopted.

From this perspective, written proceedings would need to be carefully structured, to prevent the conduct of the trial from being unnecessarily burdened by repetitive submissions or hearing notes merely reproducing earlier pleadings. Indeed, this might provide an opportunity to give concrete effect to the principle of conciseness of procedural acts, long aspired to by the system[104] and only timidly implemented by the most recent reform[105]. This need not entail the adoption of rigidly form-based models, which nevertheless might be considered—at least—in connection with the possibility for parties to appear without legal representation[106].

At the same time, reflection would be required on the State's heightened responsibility for ensuring the proper functioning of the justice service, as

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[102] It is widely recognised in the literature that purely technical procedural initiatives cannot be decisive unless accompanied by system-wide organisational measures.

[103] In this sense, see already Biavati (2022), p. 56, with reference to the possible articulation of the principle of conciseness introduced by Law No. 206 of 26 November 2021.

[104] On this issue, see, inter alia, Taruffo (2017), pp. 453 ss.; Biavati (2017), pp. 467 ss.; Finocchiaro (2013), pp. 853 ss.; Capponi (2014), pp. 1075 ss.; De Santis (2017), pp. 749 ss.; Panzarola (2018), pp. 69 ss.; Scarselli (2017), pp. 323 ss.

[105] Although the principles of clarity and conciseness are today affirmed in the Code of Civil Procedure as immanent to civil proceedings, there is no direct sanction for their violation, which may at most be considered by the court for the purposes of allocating costs. On this subject, see Ghriga (2023), pp. 415 ss. For a stricter implementation of the principle in administrative proceedings, see, inter alia, Consiglio di Stato, 13 April 2021, No. 3006.

[106] While noting the criticisms levelled by some scholars against form-based justice (see, most recently, Scarselli (23.6.2021)), it is worth observing the extensive use of standardised forms in EU legislation and, in particular, in proceedings governed by Regulations (EC) No. 805/2004, No. 1896/2006, and No. 861/2007, in addition to the initiatives already mentioned above in note 101.

well as on the precise procedural consequences arising from failed or defective virtual connections[107]. Concerns repeatedly voiced in the literature would also persist regarding a potential loss of the ritual dimension of civil justice resulting from the conduct of proceedings in virtual environments[108]. This is far from a marginal issue, as it affects not only the social perception of justice but also the capacity of the process to fulfil its institutional function. From this standpoint, the physical courtroom would likely need to retain a meaningful connection with the lived reality of adjudication[109].

With specific regard to the evidentiary phase, however, the issue of so-called "de-ritualisation" may lose some of its relevance in light of the considerations developed above on orality and of the recognition that justice does not reside in a place as such, but rather manifests itself as a service[110]. Finally, since the forms and settings of the trial contribute to conveying a certain idea of justice, while that perception is also shaped by the broader cultural context of a society, these concerns may, over time, be mitigated or even gradually dissolve.

Technology, after all, enables more efficient and rationalised forms of interaction and, in some respects, entails profound transformations whose implications have yet to be fully explored. Yet it remains, first and foremost, a cultural evolution[111]—one that can, and must, be accompanied by a conscious and critically oriented legal reflection.

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[107] Brunelli (2021), p. 978, identifies the postponement of the hearing as the only viable solution.

[108] On the continuing relevance of the physical hearing as a space of symbolic and communicative density, even in technologically advanced systems, see Punzi, (2024), especially on the risk that a purely virtual setting may weaken the dialogical and relational dimensions traditionally associated with procedural orality. In addition to Garapon's remarks (2021), see also, inter alia, Scarselli (23.6.2021), pp. 2 ss.; Tedoldi (2021), pp. 868 ss.; Biavati (2022), p. 54.

[109] See the considerations above in note, which further support reserving sectorial adjudication for online courts, together with the view that orality and de visu case management remain valuable resources currently sacrificed to the volume of litigation handled by a justice system with limited human resources.

[110] Thus Brunelli (2021), p. 979.

[111] Garapon & Lassègue (2021), pp. 35 ss., who speak, in this regard, of a "revolution".

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