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PRACTICING AS A JUDGE

THE INTERPRETATION OF LAW AS A PRACTICE AND THE DIALECTICS BETWEEN WRITTEN LAW AND PRACTICING OF JUDGES

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Abstract

Interpretation of law, far from being a purely cognitive activity, it is a concrete and material practice, which is created and reinforced through experience and through the individual and collective learning opportunities. Being a magistrate doesn't mean to acquire a body of abstract knowledge on how to interpret written laws, but vice versa signifies really to be able of practicing in a court of justice. In the light of the debate of Practice-Based Studies (PBS), on the basis of the data collected during an ethnographic research developed in over two years in four Italian courts of justice, this paper aspires to paint the functioning of the tribunals and to reflect about the dialectics between written law and practicing of judges.

Keywords
practice, law, interpretation, court of justice, judges.

1 Laws, judges and interpretations

Laws are linguistic propositions that have to be interpreted. Judge is continually called upon to "translate" the text of these rules in decisions that has to express. Interpretation is a complex and dialectical system based on argumentations, thesis and hypotheses to test. The resolution of a legal dispute is something of processual, which is based conceptually on three distinct steps (Pascuzzi 2008: 85): recognition of problem, research of rule to apply, effective application of norm to issue.

Magistrate generates her/his decisions on the base of a dialectical interpretative-argumentative process (Marinelli 2008: 21). Application of a rule to a judicial case, in the legal context, assumes the characteristics of a process of problem solving (Greenebaum 2003). A motivated sentence of a judge, in this sense, could be considered as the final resolution of a legal issue.

Law, being naturally general and abstract, couldn't regulate any possible empirical situation. The distance between law and practice doesn't highlight the presence of a dysfunction, but expresses exactly the "space" of interpretation of magistrate.

Each judge is always obliged to make a judgment, even in cases of obscurity, ambiguity, vagueness, imprecision, incompleteness and antinomy of the rules (Marinelli 2008). Each legal operator performs necessarily an interpretative activity. Every jurist is constantly called upon to reconstruct, in a rational and coherent way, the normative system in force (Chiassoni 2004). Essentially the legal sciences aspire to establish a true "rational rigour", different from that of mathematics, but no less necessary (Marinelli 2008). In this context, hermeneutics is configured as the "*workshop of living law*" (Marinelli 2008: 8). Every interpretative act is always inserted within a specific "living law". The "living law" is a "dialectical synthesis" that incrementally is formed during repeated interpretations of the legal texts.

Law, in absolute and general terms, collects the norms of a legal system ("*positive law*") and the concrete application of these same rules in the judicial context ("*living law*"). The "living law" is crystallized in case law, in the "precedents", in a whole of acts (sentences, ordinances, decrees, etc.) emanated by jurisdictional organs. This legal system is constantly influenced by doctrine, by a complex of knowledge accumulated over time by legal operators, academics and professionals-at-work. Doctrine and jurisprudence contribute to the continuous evolution of the "living law". The validity and sharing of these elements directly affect on the theoretical and interpretive framework that every judge utilizes for argue and justify his/her decisions (Marinelli 2008; Pascuzzi 2008).

Every judge, far from being a "*mere mouth of law*" (Bobbio 1979; Cappelletti 1984), through her/his interpretation of the formal norms, contributes to the continuing realization of the "living law". Law is not something static, but vice versa is a construction that evolves over time paralelly to the transformations of society. Each legal system is built on dialectical relationship between positive and living law (Ehlich 1913). The living law is an historical-cultural product, with peculiar characteristics, that follows the social and cultural changes of a society (Marinelli 2008).

In the Italian jurisdiction, in particular, each judge constructs her/his decisions on the basis of her/his personal "*knowledge and belief*"[2]. Legal system, as recalled many times by Italian Constitutional Court, must subtract the authority of magistrate from any formal or substantial restriction, so as to ensure impartial and autonomous decisions.
Several authors have defined the judge as an authentic and peculiar "*creator of law*" (Kelsen 1934; Cappelletti 1984). This conception, especially in the Civil Law systems, has been heavily criticized, because represents a potential strong "threat" for the balances between State's powers. Without going into this debate, which often lends to ideological readings, it's necessary to point out that the interpretative discretion of magistrates could potentially lead to a strong disparity of judgment, theoretically capable of calling into question the fundamental principle that "*law is equal for all*"[3].

2 The interpretation of law as practice

The "translation" of the written law in practice characterizes the activity of each judge. The legal world is exactly founded on continuous and repeated transposition of formal norms in the legal proceedings.
Judge, during his/her daily activities in a court of justice, contextually works on two levels: "merit" and "method" (Verzelloni 2009).
Every magistrate operates in the "merit" when constructs the legal resolution of a lawsuit on the basis of her/his interpretation of law. Decisions on "merit" are built during the different stages of the proceeding and are expressed through the motivated sentences and the other forms of judgment that are produced by the magistrate. This dimension is strictly related to the substance of legal issues. The job of a magistrate is largely based on his/her technical skill of judging the "merit" of the lawsuits presented to the court by the lawyers.
Beside to "merit", there is the dimension of the "method", the two variables are, in fact, intrinsically linked. The "method" represents the set of activities that allow the judge to reach at moment of decision on a lawsuit. The sphere of "method" is related to the procedural dimension, includes all issues inextricably connected at legal route that brings to the definition of a proceeding. The word "method" derives etymologically from Latin (*mèthodus*) and from Greek (*methòdos*) and refers to way or manner to conduct an investigation. Its etymological meaning transmits effectively the concept of "method" in the judiciary system. The sentences and the other forms for conclude a lawsuit are only the final acts of a complex process, made by a sequence of procedural steps, tasks and deadlines. A judgment is directly connected to the "method" in which it is constructed. Each judge, with her/his "method", determines the development in time of the proceedings. The sphere of "method" is strictly joined to the organization of the work of single magistrate.
Interpretation of law, which daily is expressed in the decisions of "merit" and "method" of the judges, far from being a merely cognitive activity, it is something socially constructed, concrete and material, which is created, recreated and reinforced through experience and through continuous individual and collective learning occasions.

Being a magistrate doesn't mean to acquire a body of abstract knowledge on how to interpret the laws, but vice versa signifies to be able to practicing in a court of justice. *Knowing-in-practice* (Gherardi 2000) every magistrate builds her/his own peculiar *competence-to-act* in context (Gherardi and Nicolini 2000). Each judge produces and re-produces specific "*local orders*" (Giglioli 1990). Magistrate, like any other practitioner (Gherardi 2006), learns by repetition. Interpretation of law is not based on perennial and immutable axioms, but instead it's something built in practice, through subsequent "translations" of formal and abstract rules into the "concrete" lawsuits.

3 Behind the judges' desk

A court of justice often appears, at the eyes of someone who is not part of legal world, as something mysterious and unknown (Barshack 2000; Latour 2002). Courts are "*black boxes*", "*opaque institutions*" impenetrable from outside (Meyer and Rowan 2000; Zan 2003). These "*temples of law*" (Barshack 2000), basing their activities upon complex procedures and highly specialized languages, unlike other working places, are often perceived as closed contexts, which are characterized for being far from society in which operate.

Since the interpretation of law is not only a cognitive process, but conversely a practical and situated activity, for study the logics that characterize the "*fabrique du droit*" (Latour 2002) it is necessary to pass beyond the "institutional facade" of tribunals for investigate the "real" doings of practitioners.

In particular, for consider the figure of judge, crucial subject of the continuing and repeated translation of law into practice[4], it is necessary to go beyond the norms and procedures, and to analyze the situated activities of magistrates and the continuous processes of learning located in the courts of justice.

This conviction is summed up effectively with the image of "*go behind judges' desk*". The expression, which directly refers to the famous motto "*follow the actors*" (Hughes 1971, Callon 1986), prefiguring something to be discovered, emphasizes the ambition to explore mysterious world of the law from a situated viewpoint.

4 Aims and methodologies

In the light of the debate of the *Practice-Based Studies* (PBS) (Gherardi 2000; Corradi, Gherardi, Verzelloni 2010), on the bases of the data collected during an ethnographic research developed in over two years, this paper aspires to paint the practical activities of Italian judges and, in general terms, to reflect on the dialectics existing between written law and practicing of judges.

The data presented in this paper have been picked up during different ethnographic research periods in four Italian courts, respectively identified with the pseudonyms of Alpha, Beta, Gamma and Delta. Courts have been chosen on the basis of the matching of two criteria: dimension and geographical location. All courts of the analysis are

specialized in treatment of legal arguments at first instance related to labour relationships, assistance and welfare. In these legal trials the judges work alone and not in a board.
This paper relates mainly to the dimension of "method" (Cfr. 2), at all issues connected to legal route that brings to the definition of a proceeding. Unlike the “merit”, this dimension is less technical and it is intrinsically linked to the work organization of the judges and to the functioning of courts.
In the complex this research has studied 16 judges: 6 in the Alpha court, 2 in Beta, 3 in Gamma and 5 in Delta. These judges, all identified with colours names, have been chosen on the basis of their experience in Labour procedure. The analysis has contextually considered novices (with less of 2 years of experience), experienced judges and direction-charged judges.
The methodologies of research have been essentially three: participant observation, in-deep interviews and documents analysis. During observation time, this research has studied judges in all their activities and has considered every formal and informal meeting between magistrates.
Reflections of this paper have been built also on the basis of a one-month period of participant observation in the Alpha's chancellery, especially in the office of acts reception. This experience has definitely been crucial to comprehend the whole of practices that characterize everyday activities of a court of justice.

5 The first dimension: the written law

All Italian judges, as required by article 101 of Italian Constitution, are subject only to the law. Law is by definition unique, reliable and equal for all. The judges decide on the basis of the same normative texts.
The activity of the judges specialized in treatment of lawsuits at first instance related to the labour relationships – objects of this research – is mainly governed, beside to the Constitution, by the dispositions of Civil Code and Code of Civil Procedure.
Rules of Code of Civil Procedure (henceforth c.p.c.) that define the functioning of the rite of labour have changed with introduction of law 533/1973[5]. Compared to other legislative forms, labour procedure is based on a limited number of articles. This particular procedure is defined by articles 409-447 of the Code. First part, before article 432, is dedicated to first instance, the second part to the appeal procedure, and third, from article 442, to assistance and welfare.
Labour procedure is applied to a multitude of ambits:

- individual labour disputes;
- disputes in public employment;
- disputes related to public assistance and welfare;
- other residual cases of voluntary jurisdiction.

For example belong to this specific procedure several instances, as: impugnment of dismissals; objection to disciplinary sanctions; contractual disputes between employer and employee; payment claims and contractual disputes between parties; disputes relating to professional positions of employees; disputes relating to assistance and welfare between employer, worker and local and national assistance structures.
Labour procedure, being a sensitive matter, is founded on a “special” rite. This iter is characterized for rapidity of procedures, a strong inclination in favour to the conciliation and the wide powers granted to judge.
Labour procedure is based on three guiding principles:

- orality of discussion and debate of the case;
- concentration of hearings;
- immediacy of decision of judge.

The rapidity of procedure is primarily guaranteed by orality. Labour procedure, since establishment of litigation in court, suggests an iter driven entirely on oral discussion between parties and judge. Processual tools such as the free interrogation of parties, the witness evidence or the final discussion between advocates, generate a flexible rite, immediate and fast.
This rite is based on the presupposition of the immediacy of judicial response, pursuant to the rule that: "*the mere postponements of hearings are prohibited*" (art. 420 c.p.c.). Unlike other civil procedures, judge is not configured as a simple "referee" between parties, which is acting only at the conclusion of hearings, but is a subject active and proactive. Magistrate, in this framework, has a direct and strong power in the managing of proceedings times.
Law, in several articles of the Code, provides numerous deadlines and responsibilities for the judge. Beside specific powers, such as the possibility of bringing more evidences, every magistrate detains a real “organizational power” in the determination of the timing of proceedings. For all these peculiarities, Italian labour procedure, much more than any other rite, requires a constant study of acts, the definition of adequate spaces for orality and the ability to organize various procedural tasks.
The application is proposed through petition. Access to judicial protection through recourse requires at the parties to clarify, from introductory phase, their processual line. Each application must necessarily be preceded by an obligatory attempt of conciliation (art. 410 c.p.c.). In labour process there aren’t taxes for registration. After deposit of application, judge has to fix through a decree the “first” hearing in 5 days. This hearing has to be celebrating within 60 days. The defendant actor that intends to support its position in the dispute must necessarily present a defence act or a reconventional memory (art. 416 c.p.c.).
In general terms we can divide the labour process in three fundamental sequences:

- first hearing[6];
- possible phase of inquiry;
- discussion and decision.

Judge during the first hearing initially attempts a reconciliation and makes a free interrogation of parties (art. 420 c.p.c.). Also in reason of these institutes, Code clearly states that parties must personally attend to first hearing. In the same hearing judge may invite the parties to discussion and may pronounce sentence, not definitive, giving immediate reading of device. Conversely, if the cause is not yet "ready" for decision, judge may further on admit witness evidences.
Evidences should be completed in the same hearing or during the "*working days immediately following*" (art. 420 c.p.c.). These proofs must take place no later than 10 days after first hearings. Judge may also require the assistance of a registered expert (c.t.u.) (art. 424 c.p.c.).
Exhausted the oral discussion between lawyers, the sentence of judge is rendered in hearing through the reading of device. Device is simply a summary of final decision, not yet motivated. Judge must read the device in the same hearing.
Device of judge must necessarily be followed by a definitive sentence (except the contextual decision, art. 281 *sexies*). The sentence is a document that justifies, in respect to facts and laws, the decision of magistrate. Judge must deposit the sentence in chancellery within 15 days or, after the law 133/2008, within 60 days from the reading of device.
Legislation has also reserved some special procedures to serious grounds of urgency[7] (art. 700 c.p.c.). These procedures, which are often utilized in the cases of dismissal or accident at work, must necessarily be treated within 15 days.

6 The second dimension: practicing of judges

This paragraph will present the practices of judges studied in four Italian courts of justice specialized in labour relationships, assistance and welfare[8]. As anticipated, the analysis will refer mainly to the dimension of the "method", to the texture of practices that daily are implemented by judges to managing various judicial proceedings in time.
For exposition clarity, the practices of judges will be described in an analytical and concise manner: narration of the activities of each magistrate will be built on the basis of similarities and differences in behaviour with colleagues of section.
This narrative choice, which inevitably penalizes the illustration of the ethnographic data collected in the field, is appropriated for highlight the differences between written law and practicing of judges.

6.1 Practicing in the Alpha Court[9]

Context. Alpha is the court of a city in central Italy, capital of province and region. Tribunal can be considered medium-large. In labour section operate six judges, including a President (Black). Judges are predominantly male: there is only a woman (Green). Most of the judges have several years of experience, only two magistrates

dealing with labour cases from less than two years (Yellow and Black[10]). This research has examined activities of all the magistrates of section: Blue[11], Red, Green, Yellow, Black, Cyan[12].

Postponements and length of proceedings. Although law has established a labour process founded on orality, concentration of hearings and immediate decisions of judge, magistrates of Alpha Court very often use the tool of postponement of hearings. This choice affects the duration of proceedings. No judge directly proposes to make the discussion between lawyers. Each magistrate prefers to postpone decision to a subsequent hearing, in order to prepare and ponder his/her sentence.
Green dilutes her procedural duties over time. These postponements are expression of a precise choice of the magistrate: doesn't charge too much of activities the days of hearing. Usually Green postpones the hearings not earlier than 7-8 months. Yellow and Black usually define their discussions at 6-8 months away. Both the judges, when deciding the postponements, also for lack of experience, don't take count of the total duration of proceedings. Blue and Red, unlike other judges, set their hearings at limited distance. A discussion is usually postponed from a minimum of 2 to a maximum of 6 months.
Judges of Alpha section are generally averse to provide postponements on request of parties. Only Black is far less rigid in concessions. Unlike other courts, all judges admit often assistance of technical advisers (c.t.u.), especially on medical-legal questions.

Timing of hearings. Judges of section organize their hearings in different ways. Some judges, like Red and Black, group into each day all cases that require same task: first hearings, evidences or discussions. Other judges, instead, mix the different proceedings. Red always defines 2-3 days of hearing. The judge, wanting to concentrate all first hearings in a single day, is often unable to devote much time to reconciliation attempts. Black dedicates 3 days to the hearings. The president divides the first hearings at a distance of 15-30 minutes, depending on the complexity of recourse.
Green, instead, organizes 2-4 days of hearing a week. Like other colleagues, Green doesn't have fixed days for the hearings. Usually the magistrate sets her hearings on subsequent days. Yellow destines only 1-2 days a week to the hearings. The mornings of judge are therefore very dense of procedural tasks. Many times the hearings overlap and space for orality is limited. Blue, like Yellow and Green, mixes the different procedural tasks. The judge organizes 3 days of hearing. Blue articulates his working day on the base of prevision of times requested by the evidences.

Organizing hearings. During the first hearing all judges of Alpha section always try a reconciliatory solution. These procedures are however very hasty and rarely lead to effective results. Like the reconciliation, even the free interrogation of parties often appears as a mere procedural formality. In most cases, the judges simply ask to the parties if they have read and if they confirm the acts of proceedings.

Evidences are handled in different ways. Red and Yellow, compared to the colleagues, dedicate less time to the investigative hearings. The two judges, during the investigative procedures, always follow the requests made into processual acts by the lawyers.
Space for orality is generally limited. All the Alpha's judges, unlike other contexts, provide relatively little time to the discussions. In particular, orality is practically nonexistent in the hearings of Yellow.
Writing of devices is an activity that differs significantly between the judges of section. In general terms, Red and Blue pronounce their devices in public during the hearings. The others, instead, despite the Code of Civil Procedure fixed the contrary, deposit the devices directly in chancellery. Green and Black, in particular, write their decisions in the afternoons of the days of hearing.
All judges of court rarely respect the deadline of 15 days for the deposit of motivations. The only that occasionally observes this precept is Red, but only for less complex cases, that don't require much processing time.

Occasions of comparison between judges. In the Alpha section are totally absent "formal" opportunities of comparison between the judges. The president of section (Black), although a law explicitly requires the opposite[13], doesn't encourage: "*the exchange of information into the section*" (art. 47 *quarter*, Italian Judicial Order). Black operates only as "simple" judge and doesn't promote the occasions of encounter between magistrates.
The rare occasions of comparison between the judges are mostly informal. Sometimes the magistrates encounter themselves in front of the coffee machine. However judges never speak about the method's issues, but converse only about the general facts of the lawsuits.
The judges of Alpha don't know effectively in which manner operates the colleague of the next door. No magistrate is aware, for example, of the length of postponements of the other judges or of their way of managing the first hearings. Even if they work at a very short distance, the magistrates ignore in which way the colleagues interpret the same normative dispositions.

6.2 Practicing in the Beta Court[14]

Context. Beta is the court of a city in central Italy. The tribunal could be defined medium-small. Labour section is composed only by two judges: a man (White) and a woman (Violet), who have several years of experience. Having limited size, section hasn't a President. This research has analyzed the both magistrates of section.

Postponements and length of proceedings. Judge White dilutes his hearings in an extended time. Like Green of Alpha, judge often postpones the discussions at 15 month away. These delays are expression of a specific choice: judge, in fact, always makes a clear distinction between urgent lawsuits and fascicules without solicitude.

Unlike White, Violet has postponements of hearings less extensive. Magistrate fixes her discussions at 2-4 months. Violet, differently from White and the judges of Alpha section, as defined by art. 420 c.p.c., often invites the lawyers at make an immediate debate, without setting a new hearing.
Judges of Beta section generally grant only few postponements requested by the parties and evaluate the real effectiveness of these delays. Both judges give priority to urgent procedures, at cost of treating them in the late afternoon of the hearings days.

Timing of hearings. Magistrates of Beta section adopt different criteria to manage their procedural tasks in time. Every week, White celebrates 2-3 days of hearing and divides the different types of duties: first hearings, evidences and discussions. The postponements during the days of hearing are very close and sometimes the legal processes overlap each other. Violet, unlike the colleague, celebrates only 1-2 days of hearing and mixes different types of litigations.

Organizing hearings. Differently to the judges of the Alpha court, the magistrates of section dedicate much time to the reconciliations. Both judges try to produce a real encounter between the processual parties and study in detail the fascicules. Besides the reconciliation, judges always make the free interrogation of parties. Unlike colleagues of the Alpha court, magistrates really interrogate the parties.
In general terms, judges of Beta section devote ample space to orality. Both judges don't fix limits to lawyers' speeches, which often last for long time. White, in particular, considers orality as the real basis of his work. Judges always pronounce their decisions during the hearings. White writes his devices after each debate. Violet instead composes her decisions at the end of the morning of hearings days.
Both judges rarely respect the deadline of 15 days for filing the motivations. Violet and White always produce their motivations within 60 days. Judges justify the non-compliance of this term emphasizing attention devoted to orality.
The two judges often use the tool of contextual decision (art. 281 *sexies* c.p.c.), especially for deciding simple cases or the lawsuits of assistance and welfare.

Occasions of comparison between judges. Judges of Beta court, even for the limited size of the office, regularly confront each other on the possible interpretations of "merit" and "method". Climate between the two judges is really based on collaboration and dialectic.
Although there aren't "formal" occasions of comparison, in absence of a President of section, judges meet each other informally in the breaks between the hearings and during a weekly meeting devoted to interpretative problems.
Empirical evidence shows that White and Violet, also if don't operate exactly in the same way, daily translate into practices, in a similar manner, a plurality of written rules.

6.3 Practicing in the Gamma Court[15]

Context. Gamma is the court of a city in south of Italy, capital of province. In complex, the judicial office is medium-large. In labour section effectively operate six judges, including a President. The office suffers four vacancies in staffing. These voids have a direct impact on duration of judicial proceedings. This research has investigated three judges of Gamma section, all women: Magenta, Coral and Purple. Coral and Magenta have several years of experience, Purple, instead, is a novice.

Postponements and length of proceedings. Procedural timings in Gamma appear completely out of control. The three judges, having a huge number of fascicules, extend as possible in time the various procedural tasks. In this section, postponements, far from being "residual" mechanisms, appear as "tools" for postponing in time the decisions.
Judicial trials of Coral last on average 5 years. Usually the magistrate defers her first hearings to 24 months. Discussions are postponed until 34 months. Like her colleague, times of proceedings of Magenta are much dilated: typically she postpones her hearings at 23-24 months away. Also urgent cases are procrastinated at least 8-9 months. Timing of Purple, which is just arrived in the section, are influenced by postponements decided by colleague who preceded her. Purple is not yet able to define her delays and postpones all hearings at least 15-17 months.
In complex, magistrates easily grant postponements requested by lawyers. These continuous delays inevitably expand exponentially the length of proceedings. All judges, despite expressly forbidden by the Code of Civil Procedure (art. 420 c.p.c.), very often concede postponements for reconciliation attempts or for lack of documents and postal notifications.

Timing of hearings. In the Gamma tribunal each day of hearing contains many proceedings. On average, daily, the magistrates of section deal 40-50 cases. Hearings are often very chaotic. Coral, Magenta and Purple never fix their hearings after 13:30-14:00. The three magistrates always make two days of hearing a week and mix the different procedural tasks. Coral and Magenta, early in the morning officiate first hearings and discussions and, before lunch, from 10:30, the evidences. Purple hasn't yet developed her organization of time.

Organizing hearings. In Gamma section the attempts of reconciliation are never really officiated. The parties, although the Code requires of participating to hearings, are rarely attended. Spaces for the orality are almost nonexistent. In practice, every trial ends with the deposit of the writing notes produced by lawyers. Sometimes the hearings seem mere formalities that have to be completed quickly.
Unlike other judges of this research, magistrates of the Gamma section study the fascicules for less time. Frequently, during the hearings, Coral, Magenta and Purple clearly show that haven't even read the processual acts. Analysis of documents often occurs directly during the hearings.

Coral, Magenta and Purple don't read in public their devices. Usually magistrates write their decisions in the afternoon and directly deposit the devices in chancellery the next morning. Purple and Coral, on average, write their motivations in 18-20 days. Magenta, instead, deposits them within 60 days. The first two judges, deciding quickly, usually conclude fewer proceedings. Purple and Coral, in fact, don't want to accumulate delays in the deposit of motivations. Purple, Coral and Magenta always produce extensive motivations. None of the three judges use the tool of the contextual decision (art. 281 *sexies* c.p.c.). Coral and Purple even ignore the existence of this processual instrument.

Occasions of comparison between judges. In the Gamma section are totally absent formal and informal occasions of comparison between the judges. The president of section is essentially a "normal" judge and doesn't support at all: "*the exchange of information into the section*" (art. 47 *quarter*, Italian Judicial Order). Magistrates work absolutely alone, many times in different days of the week, and don't know effectively in which manner operate the other colleagues. In most cases[16], the relations between the judges of the Gamma court are limited to simple and fast greetings in the corridors of the tribunal. The Gamma section, far for being an integrated organization, is only a place where different judges work absolutely in an independent way.

6.4 Practicing in the Delta Court[17]

Context. Delta is the tribunal of a large city in northern Italy. The court of justice is one of the largest in country. In labour section operate 13 judges, including a President. This research has analyzed 5 of the 13 magistrates of section: Turquoise (man, expert), Grey (man, expert), Pink (woman, novice), Orange (woman, expert), Brown (man, expert, President of section).

Postponements and length of proceedings. All judges of the section focus their procedural tasks in limited times. First hearings are generally fixed in 2 months. This lapse of time decreases for the urgent procedures. Evidences, also with many witnesses, are always officiated in 1-2 months. Discussions, instead, are never postponed beyond 30 days from the conclusion of preparatory phase.
These timings seem unthinkable when compared to those defined in the other courts analyzed in this research. While in Gamma section some processes are postponed to 34 months later, into Delta the judicial lawsuits are usually terminated in few hearings concentrated in time.
Very often judges don't postpone the final debates. All judges, in fact, after evidences, invite the parties to discuss directly the case. Unlike other magistrates, judges of Delta are always ready to decide in any moment[18]. This ability is based on a very deep knowledge of the processual fascicules.

Timing of hearings. Judges of the Delta section make many hearings. Orange and Turquoise celebrate usually 4-5 days of hearing, Pink, instead, 3. The young magistrate dilutes her hearings to have more time to study the processual fascicules.
President of section (Brown) stands out between judges for to keep a pace of work absolutely out of ordinary. Brown organizes 5-6 days of hearing a week. President articulates his hearings in reason of the needs of parties and lawyers.
Several judges dedicate days of hearing to specific types of proceedings: first hearings, evidences, discussions. All magistrates separate the lawsuits of assistance and welfare.

Organizing hearings. Conciliations are one of pillars of the Delta section. Often these procedures go on for several hours. A large number of lawsuits are resolved during the first hearings. Judges always celebrate the free interrogations. All magistrates devote a portion of their work to this procedural task. Grey, in particular, considers this tool a cornerstone of his activities. Interrogations of Grey go on even for 2-3 hours.
Orality has great space in the hearings. Judges always grant a lot of time to lawyers for to explain their defensive thesis. Often discussion of a complex case goes on for 3 hours. No judge, despite the potential delays of subsequent hearings, ever interrupts the speeches.
The study of procedural documents is a fundamental activity of the judges of the court. During hearings, magistrates show many times to know in detail the fascicules. All judges are always ready to make their decisions.
Every judge of the section reads in public, during the hearings, his/her devices. Only Pink, sometimes, being yet inexperienced, postpones her decisions at the afternoons of days of hearing. Magistrates use different timings for writing their motivations. Pink and Grey usually deposit their sentences within 60 days. Orange, instead, produces her motivations in 15-20 days. Unlike other colleagues, Turquoise and Brown always complete their decisions within 15 days. Paradoxically, Turquoise and Brown are the only judges of this research which respect perfectly the limit defined by Code of Civil Procedure. Judges of section frequently use the tool of contextual decision (art. 281 *sexies* c.p.c.). This mechanism is used in particular to define simple cases or related to interpretative matters largely consolidated.

Occasions of comparison between judges. Everyday magistrates of Delta court meet themselves and discuss about interpretative issues. Also thanks to a President of section (Brown) especially careful to promote dialogue (art. 47 *quarter*, Judicial Order), in the Delta section there are a huge number of formal and informal collective encounters between judges. Judges see themselves in corridors, have lunch together and call each other by phone several times during a day.
Magistrates more experienced (Brown and Grey) are a constant reference for novices (Pink). Delta section is not a merely bureaucratic division, but appears an integrated organizational unit, in which every magistrate, although independent in his/her decisions, is always connected to the other colleagues that operate in the same context.

7 Discussion

In front to an unique procedural written law, certain and equal for all, the sixteen judges analyzed in this research put in practice the thirty articles of the Code of Civil Procedure that governing the labour procedure[19], in ways so often profoundly different.
These behavioural differences, besides to calling into question the principle that "*law is equal for all*" and to represent an implicit critic to Juspositivism reflections, highlight the eminently practical character of the interpretation of law.
Interpretation of law, far from being a cognitive activity, it is a concrete and material practice, which is created, recreated and reinforced through experience and through continuous individual and collective learning occasions.
Interpretation of law is not based on perennial and immutable axioms, but it's an activity built in practice, through subsequent "translations" of the formal and abstract rules into the "concrete" lawsuits. The distance between written law and practicing of the magistrates doesn't highlight a dysfunction, but expresses exactly the "space" of interpretation of each judge. Being a magistrate doesn't mean to acquire a body of abstract knowledge on how to interpret the laws, but vice versa signifies really to be able to practicing as a judge in a court of justice.
Every judge, through the decisions of "method" that formulates, daily builds his/her personal organization of work. Applying her/his own specific, and often idiosyncratic, interpretation of law to the lawsuits, organizing hearings, delays and procedural tasks, each magistrate paralelly defines her/his work activities and the development in time of proceedings.
Novice judges, like Purple or Pink, learn how to formulate their decisions on "method", and also on "merit", through experience. Influence of doctrine and of national and local jurisprudence, especially as regarding to method's issues, is limited and fragmented.
Interpretation of law, moreover, while remaining clearly a prerogative of the single magistrate, is potentially linked to the context in which each judge operate and to the occasions of comparison with the colleagues of the section.
In some courts, such as Alpha and Gamma, judges appear as "monads", that work in a totally independent way, so that they don't know effectively in which manner operates the colleague of the next door. These courts look like "condominiums" (Zan 2003), physical spaces, formally defined, where paralelly practice a plurality of magistrates. Judges of these courts are "craftsmen", who daily individually produce, experiment and translate into practice their interpretations of law.
Only in other courts, instead, as Beta and, especially, Delta, judges really interact each other and give rise to occasions of individual and collective learning. In these contexts, knowledge that derives from the interpretative activities of magistrates does not remain confined into the "flats" of the "condominium", is not a personal heritage of the single judges, but it is spreads, is shared and potentially institutionalized among the various practitioners. Beyond the differences of behaviour, judges of Beta and Gamma, far from appearing as "monads", are specific "communities of practitioners", who daily discuss on the possible "translations" of the written law into practice.

Once again, therefore, the interpretation of law, being socially recognized (Gherardi 2006), can be identified as a concrete and material practice, which is created, recreated and reinforced through experience and through continuous individual and collective learning opportunities.

Concluding remarks

In light of these reflections, for to study the real functioning of the courts, it is indispensable to go beyond the dimension of written law, and to analyze the activities of magistrates and the processes of learning located in tribunals.
Since the interpretation of law is not a cognitive activity, but something eminently practical and material, as many times reminded in the large debate of the *Practice-Based Studies* (PBS) (Corradi, Gherardi, Verzelloni 2010), it is necessary to overcome the distinctions among the dimensions of doing, thinking, deciding, knowing, organizing, learning, and investigate in overall sense the situated practices of the actors within an organizational context.
In conclusion, this paper intends to represent an "humus" for to discuss on the dialectics between written law and practicing of professionals in a plurality of organizations, even different from the courts of justice.

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Notes

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[2] Quote of the famous sentence n. 135/1982 of Italian Constitutional Court.
[3] Art. 3 of Italian Constitution.
[4] Alongside to magistrates it is crucial also the role of lawyers.
[5] Law 533/1973 on labour proceedings.
[6] Code of Civil Procedure doesn't use explicitly the expression: "*first hearing*".
[7] There are also special procedures for verify anti-union conducts (Statute of workers, art. 28, L. 300/1970).
[8] For a complete description of practices of judges see Verzelloni (2009).
[9] Research experience on Alpha court is lasted 8 months (October 2006-May 2007).
[10] President Black has no experience in the labour procedure.
[11] Blue has been studied with the methodology of "*shadowing*" (Verzelloni 2009).
[12] Cyan has refused to be studied during his hearings.
[13] Italian Judicial Order: Royal Decree 12/1941.
[14] Research experience on Beta court is lasted 1 month (October-November 2007).
[15] Research experience on Gamma court is lasted 2 weeks (March-April 2008).
[16] Excluded rare cases, like the personal relation of friendship between the judges Purple and Coral.
[17] Research experience on Delta court is lasted 1 week (May 2008).
[18] Only Violet, sometimes, does the same.
[19] The part of the Italian Civil Procedure Code dedicated to the labour procedure is composed by 39 articles, 30 reserved to the first instance (24 on labour and 6 on assistance and welfare) and 9 to the appeal procedure (Cfr. 5).