DOSSIER

Diversity and the Italian Judiciary: Challenges and Gaps

La magistratura italiana di fronte alla diversità: sfide e criticità

a cura di C. Cavallari and A. Lacchei

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Introduction: Diversity and the Role of the Judiciary

Introduzione: diversità e ruolo della magistratura

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1. The Judiciary: Responses to Diversity

The relationship between the judiciary and diversity has historically been characterized by ambivalence. While modern legal systems have frequently addressed diversity, they have done so in an instrumental and often superficial manner, treating difference as a problem to be regulated rather than as a constitutive element of legal reasoning (Meccarelli 2016). Diversity, however, should not be understood in a narrow or static sense. Cultural, social, economic, and gender disparities are all part of this complex and dynamic issue. It challenges the fundamental tenets of law, calling for a reexamination of the ideas of justice, equality, and rights themselves rather than just a collection of extraneous elements to be accommodated within preexisting legal frameworks (Neuenschwander Magalhães 2016; Stara 2016).

The tension between law and social differences has deep historical roots. Legal responses to diversity have frequently shifted between two poles: the drive toward assimilation through universalistic abstractions and the reluctant accommodation of particular identities (Cazzetta 2016). However, the rise of identity politics, multiculturalism, and the judicialization of human rights in recent decades have put fresh pressure on courts to address diversity as a constitutive aspect of justice rather than as a side issue.

Today's justice systems are under growing pressure due to the heightened visibility of diverse identities and social configurations. These pressures – fueled by global phenomena such as migration, evolving family structures, and shifting social norms – are not something external to legal systems but integral to their functioning. They challenge conventional ideas of judicial functions and modify the day-to-day operations of courts, reminding us that society continuously transforms law rather than only responding to it (Garapon 2013). This is crucial because, as Febbrajo (2009, p. 122) notes,

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"the ability of facts to change norms and, correspondingly, the ability of norms to learn from facts."

This evolving legal landscape demands a rethinking of the judiciary: indeed, courts can no longer be regarded as neutral enforcers of a static legal order (De Sousa Santos 2002; Cotterrell 2006; Latour 2009). On the contrary, they must be understood as sites where rights, identities, and power are continuously negotiated. In this sense, courts increasingly function both as institutions of state power and as public services—what Verzelloni (2020) has described as a "justice service" shaped by actors and processes beyond the courtroom, making judges and legal experts active participants who help to shape social reality rather than just interpreting rules.

Law plays a constitutive role in organizing political, economic, and social life. It does so, in part, through its classificatory practices—through the ways it names, frames, and categorizes lived experiences (Griffith 2005; Rosen 2006). Legal classifications possess performative value and are not neutral instruments. They do simplify society, but they are also creations of frameworks that are influenced by history and culture (Decarli 2018). Once institutionalized, legal classifications delineate who is afforded protection, who is subjected to criminalization, and who remains excluded from recognition. For marginalized groups, such classifications can deepen pre-existing forms of exclusion and inequality. Labeling individuals or groups as "vulnerable" is a particularly illustrative example. Such labeling is never a neutral act – especially when vulnerability is attributed automatically based on group identity rather than assessed contextually (Parolari 2012). The concept of diversity in relation to vulnerability is interpreted critically in this dossier. It is crucial to examine vulnerability as a result of systemic inequalities, which means that social structures – rather than personal characteristics – are what create and sustain vulnerability.

Understanding how courts engage with diversity also poses distinct methodological challenges. Judicial institutions remain among the most opaque in democratic societies, protected by formalism, confidentiality, and institutional autonomy. Penetrating this opacity requires empirical and interdisciplinary approaches, such as ethnography, critical discourse analysis, and in-depth interviews (Kapiszewski, Silverstein, Kagan 2013). Such methods are crucial, particularly as courts increasingly confront issues left unresolved or unregulated by legislatures.

2. Focus and Orientation

This dossier sets out to explore the multiple challenges posed by increasing social complexity and to analyze how judicial responses – or the lack thereof – affect the justice system's ability to meet the evolving needs of

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society. It brings together three contributions that examine key areas where the judiciary needs to address diversity, in its broader meanings: family law, international protection, and mental health.

Each article adopts a socio-legal perspective, integrating multiple levels of analysis, namely individual, organizational, and systemic. Methodologically, the contributions highlight the added value of combining theoretical reflection with empirical research. In particular, the empirical studies underscore both the potential of using diverse methodologies, such as interviews with legal professionals, critical discourse analysis of judicial decisions, courtroom observation, and shadowing, to investigate a domain like the judiciary, which is traditionally considered difficult to access.

2.1 Cultural Diversity

One of the most consequential categories shaped by legal classification is that of cultural diversity, particularly as it pertains to immigrant communities. Legal systems often approach cultural differences through specific markers such as immigration status, country of origin, or religious affiliation, that create boundaries between those who are granted full legal recognition and those relegated to the margins. From deciding access to public services and fundamental rights to influencing the evaluation of trustworthiness in asylum proceedings and the interpretation of culturally particular family customs, these categories have far-reaching effects. Implicit presumptions on integration, loyalty, and threat are commonly embodied by these categories. In this sense, immigrant groups are frequently presented as culturally "other," rather than as recent arrivals, which serves as an excuse for exclusion, mistrust, or increased monitoring.

Contemporary societies – and the global order they are embedded within – are far more complex than what classical liberal legal theory has traditionally assumed (De Sousa Santos 2002). Plurality has become a defining feature of modern social life, and Europe – and Italy – is no exception. While cultural, linguistic, and religious diversity is by no means a new phenomenon in European history, it has significantly expanded in both scope and visibility in recent decades, largely driven by post-World War II migration and the steady rise in refugee movements (Kymlicka 2016). In Italy alone, the presence of more than 5.3 million foreign residents signals the pressing need for legal institutions to engage meaningfully with cultural differences as a structural rather than exceptional reality.

Legal pluralism and cultural heterogeneity, therefore, are not marginal elements but constitutive features of today's interconnected societies. Legal pluralism, understood as the coexistence of multiple legal systems or normative frameworks within the same political or social space, is no longer the

exception – it has become a defining characteristic of contemporary legal life (De Sousa Santos 2002; Griffith 2005; De Lauri 2013). This phenomenon generated a great and fruitful debate in different fields. Foundational legal anthropology works (Pospisil 1971; Moore 1973; Roberts 2000) established the framework for comprehending the interactions and coexistence of various legal orders. Furthermore, while later theorists (Teubner 1991; Tamanaha 2008; De Sousa Santos 2002) examined legal pluralism in the context of globalization, transnational governance, and fragmented state authority, other contributions by scholars like Griffiths (1986) and Merry (1988) offered empirically supported definitions that differentiate between formal and informal normative systems.

Although this introduction does not seek to engage directly with the theoretical dimensions of legal pluralism, it is important to underscore its relevance. As evidenced by changes in judicial practice, legislative reform, and policy interpretation, culture and cultural claims have emerged as major areas of conflict and negotiation in both the political and legal spheres (Van Rossum 2007). Even the institutional frameworks used to envision and administer justice are changing, as noted by Bhamra (2011), as is our understanding of justice in general and the demands that increasingly varied societies place on it. However, pluralism in the law is not always emancipatory. What is frequently hailed as plurality can actually be a form of exclusion, as De Lauri (2012) warns. Although there may be multiple legal frameworks in theory, not everyone has equal access to them. Many marginalized people may find that such plurality has no practical significance, especially those who lack economic, social, or legal capital. Instead of challenging established hierarchies in these situations, legal pluralism runs the risk of strengthening them, giving advantages to those who can successfully negotiate complicated legal issues while effectively denying others access to recognition or redress.

These issues are dealt with transversally in two contributions. *Judging Cultural Diversity in Italian Family Law* by *Claudia Cavallari* investigates how Italian judges interpret sociocultural diversity in family law cases. Using a triangulation of data – interviews and judicial decisions – the article shows a dissonance between the understandings judges articulate in interviews and the more rigid, schematic representations found in the judicial decisions. The analysis shows how their reasoning is shaped by institutional constraints, professional routines, and implicit cultural biases, rather than depicting judges as neutral interpreters of the law. It thus draws attention to the structural factors that hinder context-sensitive adjudication and underscores the need for more inclusive and reflective judicial practices in multicultural societies.

In *Handling Diversity on the Ground in Italian Asylum Appeals*, *Alice Lacchei* examines how the daily work of international protection judges

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with linguistic, socio-cultural, and geographical diversity, linking individual and organizational levels. Drawing on ethnographic research in immigration court sections, the author also reflects on the potential for analyzing judicial sector dynamics, combining qualitative methods like semi-structured interviews and shadowing.

2.2 Mental Health

As previously mentioned, the law relies fundamentally on categories (Decarli 2018) – but once these classifications are defined and sanctioned by legal authority, they can carry powerful and far-reaching consequences. They do more than organize legal thinking; they help determine who is recognized as a full legal subject and who is positioned outside the boundaries of legitimacy. In this sense, legal categorization plays a crucial role in shaping processes of inclusion and exclusion, often reinforcing the marginalization of already vulnerable or stigmatized groups. One of the clearest examples is the treatment of mental health. The legal system has historically played a role in characterizing people with mental illness as subjects to be regulated, managed, or confined rather than as active citizens with rights. The relationship between psychiatry and the legal system – both in Italy and internationally – has been deeply rooted in the institutional management of deviance and social difference (Basaglia 1982; Canosa 1979; De Bernardi, De Peri, Panzeri 1980; De Bernardi 1982).

The asylum has long been understood not simply as a place of care, but as a powerful institutional device aimed at identifying and isolating those deemed "unproductive" or "dangerous." Far from being a neutral space, it has been critically examined as a site of subjugation (Foucault 1974), a totalizing institution that strips individuals of agency (Goffman 1961), and a space focused more on containment than on healing (Esposito 2019). Historically, it has disproportionately targeted marginalized and subaltern groups (Basaglia 1968), functioning as a tool for managing the "surplus" populations created by industrialization and the rise of the modern nation-state (Canosa 1979; Fontana 2003).

In Italy, the turning point in the field of mental health was triggered by the oppositional movement in Gorizia (Basaglia 1968), which led to Law 833/1978 and the establishment of the National Health System (SSN). Up until that moment, psychiatric internment in Italy – governed by Law 36 of 1904 and its later amendments in 1909 – was used not primarily for therapeutic purposes, but as a tool of public order. People were often institutionalized less for clinical reasons than for being perceived as threats to social stability, reflecting a logic of containment rather than care (Girolimetto 2025).

It was necessary to wait for the Prime Ministerial Decree of April 1, 2008, and the so-called "empty the prisons" decree (Decree Law of December 22, 2011, no. 211, amended by Law 9/2012) to reach the "definitive" closure of the judicial psychiatric hospitals (OPG).

The introduction of the REMS (Residences for the Execution of Security Measures) replaced the OPG, permanently closed in 2015, and marks what has been called a "gentle revolution" in the field, shifting the focus from a custodial to a more therapeutic paradigm (Corleone 2018).

Placement in these new facilities is meant to be both exceptional and temporary. According to the Ministry of Justice, it can only be applied "in cases where there is clear evidence that it is the only measure capable of ensuring appropriate treatment while also addressing the social dangerousness of the mentally ill or partially mentally ill individual" (Ministero della Giustizia 2018). This signals a shift away from indefinite institutionalization toward a model that emphasizes proportionality and individualized care.

Unlike the traditional model of institutional confinement, REMS were therefore conceived with a clear socio-healthcare mission, aiming not simply to detain but to offer rehabilitation and support, representing a significant change in how assistance is understood (Girolimetto 2025).

Against this backdrop, when dealing with mental health and the judiciary it is considered here the Involuntary Psychiatric Treatment (TSO). The TSO is marked by an inherent, almost ontological ambiguity. It functions simultaneously as a measure of care and a mechanism of control. On one hand, it is intended to provide urgent medical assistance to individuals experiencing severe mental health crises; on the other, it involves a suspension of personal autonomy and the imposition of external authority (Di Luciano, Miravalle 2023).

Unlike therapeutic sanctions in criminal law – such as penalties or security measures – the TSO does not rely on a verifiable or legally established event, such as the commission of a crime (Ronco 2018).

In the realm of criminal justice, therapeutic interventions are considered only in the presence of an offense. Similarly, the security measure of psychiatric hospitalization, now carried out in REMS, is reserved for individuals with psychiatric conditions who have committed a crime and have been declared not criminally responsible due to their mental state at the time of the offense (Miravalle 2015).

While in the criminal justice system, the goals of control are explicit and openly acknowledged, in the case of TSO, control operates as a more latent and implicit function. This distinction points to a classic theme in the sociology of law: the differentiation between penal control and social control. Whereas penal measures are justified through legal procedures in response to a defined offense, TSO embodies a subtler form of regulation, one that relies on medical authority but still serves to manage deviance and main-

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tain social order, often without the same level of transparency or procedural oversight (Di Luciano, Miravalle 2023).

In *Law and Incapacitation: Empirical Insights into Mental Health Compulsory Treatments*, *Carolina Di Luciano and Michele Miravalle* analyze over 1,000 judicial files concerning TSO. Their study exposes the routinization of legal safeguards, revealing how courts often become administrative checkpoints rather than sites of substantive review. Foucault's insight into the intersection of psychiatry and law as a site of biopolitical control becomes particularly salient here. The judiciary, intended as a guardian of rights, risks legitimizing practices that reduce legal subjectivity to clinical management.

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Between Norms and Practice. Cultural Diversity in Italian Family Courts

Tra norme e prassi. La diversità culturale nel diritto di famiglia italiano

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Abstract

This article examines how judges in Italy deal with sociocultural diversity in family law cases. The aim is to investigate how understandings about culture are shaped and constructed in legal reasoning and what institutional dynamics influence this process. Based on qualitative research – semi-structured interviews with judges and critical discourse analysis of judicial decisions – the study explores the tension between individually held understandings of culture and the institutional conditions under which legal decisions are produced. Some judges show awareness of the dynamic nature of culture, but such perspectives rarely translate into the rulings. On the contrary, culture is often treated as a fixed attribute, made legible through essentialist classifications shaped by procedural, bureaucratic constraints and reliance on external assessments. Combining Practice-Based Theory and Critical Discourse Analysis, the article shows how judicial reasoning is constructed in routines that reinforce dominant cultural assumptions, suggesting the need for structural change to support more context-sensitive, pluralistic forms of legal interpretation.

Keywords: Judicial Practices; Legal Discourse and Stereotypes; Qualitative Approaches to Judicial; Family Law

Sommario

Questo articolo analizza come i giudici in Italia affrontano la diversità socioculturale nei procedimenti di diritto di famiglia. L'obiettivo è indagare in che modo le rappresentazioni della cultura vengono costruite nel ragionamento giuridico e quali dinamiche istituzionali influenzano tale processo. Basato su una ricerca qualitativa – attraverso interviste semi-strutturate con

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giudici e analisi critica del discorso delle decisioni giudiziarie – lo studio esplora la tensione tra le concezioni individuali della cultura e le condizioni istituzionali entro cui vengono prodotte le decisioni. Alcuni giudici dimostrano una maggiore consapevolezza della natura dinamica e relazionale della cultura, ma tali prospettive difficilmente si traducono poi nei vari provvedimenti. Al contrario, la cultura viene spesso trattata come qualcosa di fisso, resa leggibile attraverso classificazioni essenzialiste, influenzate da vincoli procedurali e burocratici e dal ricorso ad accertamenti esterni. Combinando la Practice-Based Theory e la Critical Discourse Analysis, l'articolo mostra come il ragionamento giudiziario si sviluppi all'interno di routine che tendono a rafforzare assunzioni culturali dominanti, suggerendo quindi la necessità di un cambiamento strutturale a favore di interpretazioni giuridiche più sensibili al contesto e pluraliste.

Parole chiave: Pratiche Giudiziarie; Discorso Giuridico e Stereotipi; Approcci Qualitativi alla Giustizia; Diritto di Famiglia

1. Introduction

In Italy, as in many other multicultural societies, courts are frequently required to adjudicate cases where cultural issues and religious beliefs intersect with national legal frameworks (Grillo et al. 2009; Renteln, Foblets 2009). Since the 1990s, there has been a steady rise in cases where the "cultural" variable has played a decisive role in shaping judicial outcomes, reflecting a broader global trend in which courts negotiate cultural diversity within legal decision-making (Ruggiu 2017). Despite the general perception that the legal system applies universal principles of justice, judges actually have to balance the conflicting legal traditions and fundamental rights, which raises important issues regarding how the law is interpreted and applied in culturally diverse contexts (Cotterrell 2018; Grillo et al. 2009; Renteln, Foblets 2009; Ruggiu 2017).

Family law is a key domain where cultural diversity is at stake, especially in disputes concerning parental rights, religious upbringing, and child custody (Ronfani 2020), where courts must determine the extent to which cultural and religious norms should be recognized (Renteln, Foblets 2009; Shah et al. 2014; Cavallari 2024). Family issues fall within the regulatory framework of Italian family law, historically based on Articles 29, 30, and 31 of the Constitution and progressively redefined by legislative measures that have expanded the protection of the interests of minors and family relationships. The recent reform of civil procedure (Legislative Decree No. 149/2022) introduced a single procedure for disputes concerning individ-

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uals, minors, and families, thus redefining the organizational structure of judicial jurisdiction in family matters, aimed to ensure efficiency, specialization, and uniformity of interpretation within the justice system[2] (Cecchella 2023).

The extent to which legal systems should adapt to cultural diversity remains a subject of scholarly discussion (Phillips 2010; Renteln 2004; Ruggiu 2017). The notion of *reasonable accommodation*, first developed within North American jurisprudence, has significantly shaped European debates regarding the judicial treatment of cultural and religious exemptions (Mondino 2017). Although European courts have increasingly recognized the pluralism inherent in contemporary societies, their rulings frequently reaffirm prevailing institutional frameworks, thereby reproducing hierarchical understandings of cultural legitimacy.

To examine how judges engage with sociocultural diversity in legal practice, this article draws on Practice-Based Theory (PBT) and Critical Discourse Analysis (CDA). PBT offers a framework for understanding judicial reasoning as a cognitive process and as a practice shaped by institutional norms, professional routines, and courtroom interactions (Verzelloni 2012; Gherardi 2006). On the other hand, CDA highlights the role of legal discourse in constructing and legitimizing cultural hierarchies, thus showing how courts shape cultural legitimacy through the use of language (Peroni 2014; Gunnarsson et al. 2007). Therefore, judges do apply legal norms, but they reinterpret the law in their daily practice.

Against this backdrop, this article aims to answer the following research question: how can the integration of qualitative approaches (semi-structured interviews and Critical Discourse Analysis) enhance our understanding of how judges construct their legal interpretations of sociocultural diversity in family law cases?

This research is based on a qualitative analysis combining semi-structured interviews with judges and an examination of judicial decisions in cases involving cultural diversity. Interviews offer useful insight into the ways judges understand cultural diversity and articulate the reasoning behind their decisions, while judicial rulings are used to show how such interpretations are shaped within the broader framework of legal discourse.

2 Although aimed at streamlining the judicial system and reducing trial times, the reform has been criticized by practitioners and scholars, who have questioned its ability to adequately respond to the complexity of contemporary family situations. It was highlighted the risk of a weakening of the multidisciplinary approach traditionally guaranteed by the juvenile court and the lack of operational tools to address issues related to cultural diversity and new family forms (Spada, Cartasegna, Costella, 2023). At the time of the interviews, however, the reform had not yet come fully into force, which is why the issue has not been addressed systematically either in the decisions analyzed or in the judicial discourse that emerged from the interviews.

The objective of this study is to deepen the understanding of how cultural diversity is managed in judicial practice, questioning conventional notions of judicial impartiality and promoting a more contextually grounded approach to legal reasoning. By emphasizing the interpretive and institutional aspects of judicial decision-making, the research advocates for stronger interdisciplinary collaboration, the systematic inclusion of cultural mediation within court procedures, and a critical reconsideration of how legal language shapes mechanisms of inclusion and exclusion in the judicial sphere.

2. The Cultural Variable

In Italy, the number of court cases where the "cultural" variable has been used to determine the case's outcome has increased since the 1990s. This phenomenon is worldwide and occurs in "all systems that regulate multicultural societies" (Ruggiu 2017), forcing judges to consider the broad category of "culture" on a case-by-case basis. Though their interpenetration is extremely difficult, the theory of fundamental rights and the theory of plurality of legal systems are currently the two dogmatic constructions within which multicultural conflicts are framed (Ruggiu 2012, 2017). This puts judges in an antinomian situation where, on the one hand, culture is conceived as a right, or at least a principle of constitutional importance, on the other hand, it is a harbinger of external norms that may conflict with its obligation to be subject to the law. At least in the Italian context, the contentious discussion surrounding the endeavour to develop useful diversity doctrines in the legal system is relatively new. It coincides with the steadily rising number of so-called multicultural disputes that judges are asked to settle (Ruggiu 2017).

For what concerns civil matters, the question of how much protection should be given to potential norms and values that come from a different legal culture, and thus how much our legal system should adapt to a multicultural society, first arose about religious differences. Particularly in the US and Canada, the first focus was on modifying legal requirements to conform to the requirements set by employees' religious convictions. As a result, the mechanism of reasonable accommodation – which can take many different forms –was implemented as a remedy. The idea of reasonable accommodation, which first appeared in American civil rights courts in the 1970s, required public or private employers to make "reasonable accommodations" to protect their workers' religious practices and beliefs, unless doing so would place an excessive burden on the employer (Mondino 2017).

In November 2000, Council Directive 2000/78/EC established the word in Europe, taking influence from the US and Canadian contexts. This directive focuses on fighting social discrimination and working to promote sub-

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stantive equality under the law, even while it does not directly address cultural or religious distinctions. In the current socio-legal debate in Europe, "accommodation" refers to actions in which the law or social actors, acting in a relatively covert manner, show consideration, sensitivity, and a readiness to accept values and meanings that are different from their own (Ballard et al. 2009; Shah, Foblets 2014). This discussion is particularly relevant in the context of family law and religious diversity, as explored by Shah et al. (2014), who analyze how European legal systems engage with religiously diverse family structures. Some other studies have focused on legal pluralism and the intersection of secular and religious legal orders (Menski 2014; Rohe 2014), as well as the role of religious institutions in family matters, including unregistered marriages and religious divorce (Jänterä-Jareborg 2014).

3. Italian Judiciary and the Interpretative Space

Judicial offices have long been recognized, in both political science and organizational studies, as complex organizations (Catino 2009; Zan 2011; Dallara, Verzelloni 2022; Garapon et al. 2014). In this sense, judges operate within these structures as highly qualified professionals who enjoy substantial discretion and autonomy, supported by administrative staff working under bureaucratic constraints (Guarnieri, Pederzoli 2002; Verzelloni 2019). Within this context, interpreting the law is both applying cognitive skills and involving practical and situated activities shaped by the organizational and cultural environments in which judges work (Verzelloni 2012; Nicolini et al. 2003).

The Italian judiciary, in particular, reflects a hybrid identity, blending the professional autonomy typical of liberal professions with bureaucratic elements such as hierarchical careers and standardized procedures (Dallara, Verzelloni 2022). Over time, there has been a gradual departure from the positivist notion of the judge as the mere "mouthpiece of the law" (Bobbio, 1989). Interpreting the law has increasingly been understood as a dialectical, problem-solving process that demands active reasoning, negotiation, and argumentative engagement (Marinelli 2008; Greenebaum 2003).

The gap that separates factual adjudication from abstract legal norms indicates the interpretive discretion granted to magistrates (Verzelloni 2009): indeed, judges actively create the meaning of the law by routine procedures ingrained in particular institutional, technological, and social settings rather than merely "applying" it. Therefore, practices must be viewed as systems of activity where doing and knowing are interwoven, in accordance with Gherardi (2019). In this sense, learning is a process that is embodied, col-

laborative, and continuous, creating and reproducing social reality, rather than a cognitive accumulation of knowledge.

The theoretical framework of practice-based studies provides an interesting lens to understand such dynamics. Emerging in the early 1990s with scholars like Brown and Duguid (1991) and later developed by Orlikowski (2002) and Gherardi (2019), PBS challenged traditional notions of knowledge as static and individual. In this sense, knowledge is seen as situated, dynamic, and socially produced through real-world practices (Corradi et al. 2010), and from this perspective, judicial interpretation is best understood as a continuous process of situated learning, negotiation, and knowledge-in-practice.

Judges, through their interpretations, participate in the ongoing construction of what has been called the "living law" (Verzelloni 2012), constantly translating written norms into concrete decisions. Legal norms do not exist in a vacuum; they are enacted, modified, and stabilized through the day-to-day work of courts. As Gherardi (2006, p. 34) suggests, practice is a "relatively stable, socially recognized way of ordering heterogeneous elements into a coherent whole."

Seen from a practice-based viewpoint, judicial rulings are not isolated logical outputs but the products of complex social processes. They emerge from the interplay of professional routines, technological infrastructures, material artefacts, and interactions among legal actors. Judges exercise considerable *margins of manoeuvre* (Dallara, Verzelloni 2022), yet their discretion remains embedded within wider institutional frameworks and collective professional understandings. Within this dynamic, documents assume a crucial role. Drawing on Ferraris' theory of social ontology (2007, 2009), documents are not merely repositories of information; rather, they are constitutive components of institutional reality. In this perspective, legal decisions are indeed performative acts that describe the law but also actively participate in its formation (Silvi 2020). The written judgment thus functions as a document that stabilizes legal meanings, delineates rights and obligations, and reaffirms the authority of the legal order. Accordingly, judicial decision-making should be viewed as a situated practice, namely a negotiated outcome shaped by social, material, and discursive processes. So, in this sense, judgments operate as performative utterances: they both declare and produce law, generating new legal meanings through institutionalized routines (Febbrajo 1995; Barra 2015).

Indeed, in doing so, courts resolve individual cases but also participate in the continual reproduction – and, at times, transformation – of the legal field. PBT and CDA, in summary, provide distinct and useful perspectives for examining judges' interactions with sociocultural variety: PBT emphasizes the routine and contextual nature of legal work and how knowledge is implemented through practice. On the other hand, CDA stresses more

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how institutional discourse and language create social meaning and legitimize power dynamics. Together, these methods help provide insight into how professional habits and organisational routines shape cultural interpretations and how legal language either reinforces, reproduces, or challenges such readings.

4. Research Design and Method

This article draws on data originally collected during my Ph.D. research, conducted between 2022 and 2023. Gaining access to the judiciary as a field of empirical inquiry presented significant challenges. Initial attempts to recruit participants were often met with skepticism, especially given the perceived sensitivity of the topic. As one colleague remarked, "You want to interview judges? Good luck." Indeed, only those magistrates with a marked interest in the research themes agreed to participate, resulting in a non-random sample and a potential selection bias[3].

Therefore, the study adopted a qualitative methodology (Cardano 2011; Della Porta, Keating 2008; Silverman 2008), combining two main methods: the analysis of judicial decisions and semi-structured interviews. This strategy enabled methodological triangulation and helped reduce the limits of relying on a single data source. The interviews explored judges' experiences and reasoning in handling culturally sensitive family law cases, while the document analysis sought to uncover how such issues are represented within written judicial decisions. Eight semi-structured interviews were conducted with judges from the IX Civil Section of the Court of Milan, with jurisdiction over family law, separation, and divorce matters. Milan was selected as the research site due to the size and complexity of its family court, the diversity of its caseload, and the city's broader multicultural composition[4].

3 Participation bias is particularly problematic if the response is low since the research participants are less likely to be representative of the source population investigated. In general, selection bias is the systematic mistake that happens when the sample of participants or cases analyzed is not representative of the population of interest. Instead of choosing a random sample that is typical of the population, this might happen when researchers purposefully or inadvertently choose individuals or instances that are more likely to yield specific results or support their assumptions.

Social desirability bias refers to the trend of presenting oneself and presenting one's answers in a way perceived as socially acceptable, but not always wholly reflective of reality. It usually tends to emerge on issues that participants find controversial or sensitive (Grimm 2010).

4 The northern Italian city of Milan now has a population of more than 1.3 million. Non-communitarian citizens make up about 14% of its population; if we additionally include undocumented and registered regular inhabitants who are not formally listed as residents, this number rises by an additional 3.5% (Ministero del Lavoro e Delle Politiche Sociali 2023; Menonna and Blangiardo 2014). Notably, one in every five individuals is a

Each interview lasted approximately one hour and was audio-recorded, transcribed in full, and then systematically coded and analyzed using NVivo software. In order to minimize social desirability bias, interviews took place in a neutral, non-evaluative environment, and participants were encouraged to discuss real cases they had adjudicated. At the same time, the research incorporated an analysis of 37 judicial decisions. This sample included 18 adoption cases (primarily from the Court of Cassation), five rulings on religious education (from both the Court of Cassation and lower courts in Milan and Novara), seven decisions regarding separation and divorce (from various judicial levels), five cases concerning kafalah (all from the Court of Cassation), and two judgments on child recognition. All decisions from the Court of Cassation were issued by the First Civil Section, which oversees matters involving personal status, family, and minors. Cases were selected through targeted searches in major legal databases – such as CED Cassazione and DeJure – and were further supplemented by relevant decisions published in legal periodicals. Instead of adopting a predetermined theoretical notion of "culture," it was decided to study cases where judges made explicit references to cultural factors. This methodological approach enabled the research to investigate how cultural diversity is understood, interpreted, and operationalized in judicial practice, while avoiding reductionist or abstract conceptualizations.

The interviews provided insight into judges' personal reasoning and professional self-understanding, while judicial decisions – texts written for formal legal purposes – offered a different perspective: they enabled analysis of how legal categories such as family, childhood, and parental authority are constructed and applied in a multicultural context. Taken together, the two data sources reveal both the normative framings and the discretionary practices through which Italian judges engage with cultural complexity in family law.

5. Judicial Narratives and the Interpretation of Sociocultural Diversity

Judicial reasoning in cases involving sociocultural diversity reflects both the mechanical application of legal norms and is shaped by judges' interpretive practices, institutional constraints, and discursive strategies. The following sections explore three interconnected dimensions that emerge across the data collected: (1) Judicial Categorization of Culture in Legal Reasoning,

minor, with over 60% of them born in Italy. Migration-related diversity is becoming increasingly obscured in these statistics due to the rising rate of naturalization. In just the past two years, approximately 13,000 foreigners acquired Italian citizenship in Milan.

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(2) Implicit Bias and the Essentialization of Cultural Identity, and (3) Institutional Constraints and the Limits of Judicial Interpretation.

5.1 Categorization of Culture in Legal Reasoning

Judges' engagement with sociocultural diversity occurs within the constraints of legal reasoning, which demands the categorization of facts into recognizable legal frameworks. This process often necessitates translating complex cultural identities into legally legible terms, typically leading to reductive representations of culture. In the absence of clear statutory definitions, judges develop working concepts of culture that vary across cases but generally reflect dominant legal and institutional logics (Decarli 2018; Ruggiu 2019).

Interviews with judges revealed a recurring difficulty in articulating a clear definition of culture. Many participants tended to avoid direct conceptualizations, indicating the perceived complexity and sensitivity of the topic. Nonetheless, when asked, some judges offered nuanced perspectives that framed culture as a multifaceted phenomenon extending beyond ethnic or national identities. As one judge observed: "When I talk about cultural factors, I mean the background of education, upbringing, social conventions within which a specific individual grows (Interview no. 2, female judge)." Another judge emphasized the layered nature of cultural influence in family dynamics:

> They are challenging thematic areas, such as approaches to parenthood. It seems to me that they always turn out more complex, because there are different family conceptions, or religious contexts, or the interests of the minor (Interview no. 6, female judge).

These reflections suggest that judges are aware of the complexity of cultural identity. However, their conceptualizations remain largely intuitive and case-specific rather than theoretically grounded. The judges' difficulty in articulating a clear, stable definition of "culture" is not a deficit of knowledge but a reflection of the way legal meaning is constructed through contextualized and ongoing practices. When explicitly asked to define culture, some judges articulated layered perspectives. However, this more complex understanding emerged only under direct prompting. As one judge candidly admitted:

> We do not have a standardized use of the term culture. In fact, I think there really is no shared code. It's not a factor, I'm afraid, that is considered in an institutional way, so I can tell you what my perception is. (Interview no. 1, male judge)

This quotation highlights the lack of a common and institutionally defined framework for addressing cultural diversity. In this way, judges are left to rely on personal interpretations shaped by individual experience and perception. In spontaneous references to cultural issues – particularly when discussing casework – judges tended to invoke geographically anchored, fixed conceptions of culture, linking identity to national origin and ethnicity.

This discrepancy might be partially explained by social desirability bias. By contrast, in routine judicial practice, where decisions must be made within established institutional frameworks, simplified and essentialized understandings of culture often reassert themselves, illustrating the gap between reflective knowledge—what actors articulate when asked to reflect – and knowledge-in-practice – the habitual, situated production of meaning embedded in everyday work.

Even though in interviews (some) judges tend to present a narrative of what is culture – one that encompasses different levels of analysis and is influenced by social, legal, and individual dynamics – the analysis of court rulings reveals a less complex and more schematic representation in practice, more in line with what emerged when discussing real cases in the interviews.

Considering the understanding and application of the idea of culture in relation to family lives, some situations stood out.

For instance, in *Cassazione civile* n. 3947 (29/02/2016), the court-appointed expert report linked the mother's cultural background to an alleged inability to provide an adequate environment for the child's development:

> The personality characterized in a referential and irritable sense within a problem of acculturation, where difficulties related to ethnic data were mistaken for racist elements and where the spirituality of the woman led to further integration difficulties. The court-appointed expert had noted that "this set of data partly limits the parental capacity, presumably not so much for the child's material care, but concerning the actual possibility of adequately developing the minor in this cultural environment" [...] "the path of awareness where responsibilities are at least shared is therefore very long and hardly compatible with the evolving needs of the child in this social environment of belonging" [...] As for the reports of the National Institute for the Promotion of the Health of Migrant Populations […] produced by the appellant, they emphasized the difficulties faced by Z., despite many years in Italy, in understanding the values of the cultural context in which she was placed, highlighting that our legal system, as noted by the court-appointed expert, placed a decidedly different emphasis on the rights and protection of the child, not conceived as an undifferentiated expression of the maternal.

In this context, culture is portrayed as a fixed "condition", used to evaluate parental competence, and not as something dynamic or possibly changing. Although in interviews judges acknowledge that cultural background can-

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not be neatly contained within a single legal framework, the rulings often delineate strict boundaries around what is deemed an 'acceptable' cultural environment for a child. The language used in expert assessments and judicial discourse portrays the mother as struggling with acculturation, emphasising her supposed inability to adapt to Italian cultural and legal norms. The claim is that she has failed to grasp 'the values of the cultural context', positioning her as an outsider and reinforcing a binary opposition between the dominant Italian legal order and a supposed deficient 'other' cultural heritage. This framing illustrates how institutional discourse constructs cultural adaptation as a legal imperative, therefore suggesting that non-Western cultural backgrounds are problematic or inadequate for responsible parenting. Furthermore, the sentence 'personality characterised in a referential and irritable sense within a problem of acculturation' shows us the pathologisation of cultural differences. In this case, the judge translates cultural identity into a psychological or behavioural matter, implying that Z.'s difficulties in navigating the legal system stem from individual or emotional lacks rather than systemic or structural constraints. Within this framework, cultural differences are presented as problems to be solved and not as conditions to be recognised, while legal discourse consolidates institutional authority by presenting Western legal norms as the standard for child protection.

The expert's assertion that "our legal system places a decidedly different emphasis on the rights and protection of the child" suggests that Z.'s cultural background affords lesser value to child welfare, thereby reproducing an ethnocentric hierarchy that elevates the Western model of family law as inherently superior. Moreover, the expert's claim that cultural differences "limit parental capacity" and are "hardly compatible with the evolving needs of the child in this social environment" effectively constructs integration as a legal prerequisite for parental legitimacy. This framing generates a power imbalance in which parents from non-Western origins must demonstrate their capacity to adapt to prevailing cultural norms in order to be considered fit carers, with the National Institute for the Promotion of the Health of Migrant Populations report used as evidence of failure to integrate and to fully acquire Italian cultural norms. Such an institutional discourse thus has a performative purpose, supporting a legal narrative that justifies judicial decisions based on cultural factors. By framing the problem as an integration failure, the discourse shifts blame away from the legal system and onto the individual, hiding the role of structural and systemic hurdles in the integration process. Such word choices help to normalize court outcomes, making them look objective, neutral, and unavoidable, rather than reflecting subjective institutional interpretations of cultural difference. This linguistic framing is not neutral; it reflects an institutional discourse that systematically constructs non-Western family models as deficient, reinforcing a hierarchical understanding of parental legitimacy.

A similar categorization process can be seen in rulings concerning religious upbringing. In *Cassazione civile* n. 21916 (30/08/2019), a conflict arose between the religious beliefs of the child›s parents – one practicing Catholicism, the other following Jehovah's Witnesses – and the court criticized the observations made in the previous judgment.

> The court therefore deemed that given the conflict between the parents, the decision […] falls to the judge and thus affirmed that, "while refraining from any intent of discrimination based on religious grounds, it must be considered that the father's choice predominantly corresponds to the child's interest, allowing for easier integration into the *social and cultural fabric of the belonging context*, which, although notably secularized, still retains a Catholic matrix (consider, for instance, the Italian artistic heritage inspired by the Catholic religious dimension, the youth gatherings fostered at the parish level with initiatives for children and adolescents linked to catechism, youth centers, summer camps, etc.); while respecting the beliefs of the mother, it cannot be overlooked the *sectarian nature of the religious community to which she adheres, closed in on itself and hostile to dialogue with any other interlocutor, being tied to a formalistic and biased interpretation of certain Old Testament texts, which has not inspired (at least in Italy) any literary or artistic work of cultural significance.*
> […]
> With the first ground of appeal, it is alleged a violation of the paramount interest of the child in maintaining a significant relationship with both parents and in receiving their *cultural and religious heritage*, in the absence of harm to the child and legal grounds to prohibit G.'s mother from involving him in her Jehovah's Witness religious activities.

This reasoning shows how courts might construct a sort of hierarchy of religious and cultural belonging, considering some identities as more socially and legally recognizable than others. Here, the Catholic identity of the father is seen as "predominantly corresponding to the child's interest," with the justification based on its inclusion in the Italian social and cultural context. On the other hand, Jehovah's Witnesses are seen as a "sectarian" and "closed" community, lacking cultural contributions in literature and art, showing that legal decisions incorporate social assumptions and historical narratives about which traditions align with the dominant culture.

This decision reflects how judicial actors work within institutional expectations that shape their understanding of what constitutes an "appropriate" upbringing. Judges may not consciously intend to discriminate, but their reasoning follows an established approach that prioritizes the continuity of dominant cultural-legal norms over pluralistic interpretations of religious identity.

This reveals a crucial tension between judges' reflective awareness of cultural complexity and the institutionalized practices through which legal

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reasoning about culture is managed. While judges can and did articulate understandings of cultural identity and complexity when prompted, their routine judicial practices tend to produce simplified, geographically fixed, and normatively ranked conceptions of culture.

Therefore, law participates in the performative construction of social and cultural hierarchies, stabilizing contingent realities into legally actionable categories.

Judges must often face these complexities without systematic institutional support such as intercultural mediation mechanisms or interdisciplinary expertise, further limiting their capacity to engage with cultural diversity in a reasoned way, which is going to be explored in the last section of this article.

5.2 Implicit Bias and Cultural Identity

As emerged in the previous section, despite efforts to present legal reasoning as neutral and objective, judicial decisions often rely on implicit biases that essentialize cultural identity, transforming it into a stable, unchangeable characteristic rather than a dynamic and socially negotiated practice. Legal discourse, by structuring and stabilizing meanings, reflects and sustains the courts' perceived legitimacy and normative authority.

After highlighting the differences in how culture is represented in interviews and judicial decisions – and, consequently, how judges construct legal interpretations in cases involving sociocultural diversity – this section examines how courts represent and engage with cultural diversity in legal decision-making through a critical discourse analysis. It explores how legal discourse actively contributes to the social construction of culturally relevant concepts and categories, thereby deepening the broader analysis of cultural diversity's impact on legal outcomes in Italy.

Courts often engage in two distinct processes of exclusion: they elevate a cultural or religious practice to the status of a group's defining identity, establishing it as the essence of group membership. Furthermore, they identify a particular trait or experience as representative of the entire group and, crucially, link this trait to negative assumptions. This results in the creation of exclusions and hierarchies within and between groups, with specific features being privileged as representative and practices associated with minorities being positioned as inferior.

A preliminary review of judicial language reveals a widespread tendency to objectify and generalise the attributes of applicants. Terms such as 'culture', 'Muslim religion', 'way of life', and 'cultural context' frequently appear as objectified, homogeneous labels. These generalisations are often presented as neutral, necessary features of legal reasoning (Peroni 2014), and the ostensibly objective tone of legal documents obscures the rhetorical and

argumentative work they perform. Therefore, understanding judicial texts requires attention to what is omitted or taken for granted, thereby revealing the construction of norms and hierarchies.

Portraying applicants through collective representations and generalised attributes produces two problematic outcomes. Firstly, it facilitates negative stereotyping, whereby the applicant is reduced to an essentialised feature that associates the group with preconceived notions of inferiority. Secondly, it creates a binary division between 'us' and 'them', reinforcing the perception of cultural difference as deviant or problematic.

This essentialisation is particularly evident in rulings that assess parenting capacity through cultural markers. In *Cassazione civile* n. 31057, the Court of Cassation evaluated a father's parenting skills by referencing his alleged cognitive and cultural inadequacies:

> The father, still bound to his original culture and to a representation of the family that does not correspond to ours, is not aware of his parental role, imagining he can delegate the upbringing of the child to others, according to a vision of the family and family relationships different from that applicable in Italy.

Through this statement, a normative contrast between an acceptable "ours" and an inferior "other" is constructed, reinforcing a hierarchical framework of cultural legitimacy. The applicant's cultural background is presented not as diversity but as a deficit in parental competence.

A similar process of othering appears in religious upbringing cases, here disputes between Catholic and Jehovah's Witnesses parents. In *Cassazione civile* n. 12954 (24/05/2018), one of the grounds raised in the appeal is that the Court of Appeal had uncritically accepted the court-appointed expert's conclusions and demonstrated prejudice against the Jehovah's Witness faith. It was ruled that the child must continue to participate in "the manifestations of the Catholic tradition which have been part of her experience since birth", without taking into account that the father had introduced his daughter to his new faith when she was three years old and that the mother was not a practising Catholic. On the other hand, in *Cassazione civile* n. 21916 (30/08/2019), the Court reasoned:

> Given the disagreement between the parents, the decision falls to the judge […] and thus affirmed that, while refraining from any intention of discrimination for religious reasons, it must be considered that the father's choice is more in line with the child's interests, allowing him to more easily integrate into the social and cultural fabric of the context to which he belongs. This context, although notably secularized, still has a Catholic background.

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While claiming neutrality, the Court constructed a contrast between the Catholic Church, presented as integrated within Italy's cultural fabric, and the Jehovah's Witnesses, depicted as "sectarian," "closed," and disconnected from national culture. By invoking Italy's Catholic heritage – artistic traditions, parish activities, and communal life – the Court framed Catholicism as the normative religious background, thereby marginalizing alternative affiliations.

This contrast helps us to stress the sociological prevalence of Catholicism and introduces a structured preference, where some religious identities are seen as naturally compatible with civic life and others as alien or problematic. The Court's language exemplifies what Van Leeuwen (2008) calls moral evaluation: legitimizing dominant traditions by appealing to authority, custom, and national identity.

The Courts' objectification of minority religious practices has unsettling implications. By delegitimizing religious practices outside the Catholic tradition, judicial discourse participates in a process of authorization (Van Leeuwen 2008), reinforcing majoritarian norms as the standard for cultural legitimacy. Religious affiliations that diverge from dominant traditions are subtly framed as incompatible with core civic values such as tolerance, equality, and respect for difference.

Judges, in interviews, often resist explicitly acknowledging these dynamics. However, a critical discourse analysis of rulings reveals that judicial discourse, in describing cultural reality, is performative in the sense that it actively shapes cultural understandings, producing and reinforcing social hierarchies within the legal system.

5.3 Institutional Constraints and Limits of Judicial Interpretation

Judicial engagement with sociocultural diversity is not merely the product of individual reasoning, but is deeply shaped by systemic and organizational constraints that influence how cases are processed, interpreted, and resolved. From a Practice-Based Theory perspective, legal interpretation emerges not only through cognitive decision-making but through situated practices shaped by institutional routines, material limitations, and professional expectations. This section identifies three key constraints – linguistic barriers, delegated cultural assessments, and the absence of cultural mediation – that limit judges' ability to engage contextually with diversity.

The lack of linguistic accessibility is a recurring structural problem in proceedings involving foreign litigants. An interesting example is the case *Cassazione Civile* n. 21110 (10/2024), in which the appellants argued for the nullification of a declaration of adoptability due to the absence of translation into the language of the parents. The Court upheld the appeal, citing

multiple procedural failures: the court-appointed expert mistakenly identified the parents as Sinhalese instead of Bengali, relied on a cultural mediator unable to communicate with them, and did not consider the parents' sociocultural background or educational context, therefore restricting parental access and violating core principles:

> With the first ground of appeal, it is argued that the judgment under appeal and the entire proceeding […] are null and void due to the *lack of translation* into a language known to the parents. Furthermore, the appellants complain that the court-appointed expert did not take into account the observation of the parental couple and the child lasting over a year and carried out by Dr. [...] from the Child Neuropsychiatry service, as well as the evaluations she expressed. The same court-appointed expert did not consider the *socio-cultural aspect*, the *environment of origin* of the parental couple, and the influences of *different cultural and educational models*, to the extent of even confusing the area of origin of the present appellants, defined by the court-appointed expert as Sinhalese instead of Bengali.

This case illustrates how institutional limitations can compromise the fairness of proceedings and contribute to cultural misrecognition. Here, the issue reflects deeper assumptions about whose knowledge and communication styles are prioritized in the legal process, therefore going beyond mere technical issues.

In these cases judges frequently rely on external experts, like social workers, psychologists, court-appointed consultants, for assessments of parental capacity and family dynamics. While this delegation is necessary, it also creates distance between the judiciary and the lived experiences of those appearing in court. One judge openly reflected on this detachment:

> I am afraid that we tend to do a package delegation. You tell me and you use the tools you think you should use. […] In fact, we don't even know who they are done by. By a guy who signs them, but who he is, what qualifications he has, and what skills he has, we don't know (Interview n.1, male judge).

From a PBT lens, this form of delegation is not simply a pragmatic choice but a routinized practice: a standard way of "doing" justice under institutional constraints. Over time, such routines become normalized and difficult to contest, reinforcing hierarchical knowledge flows that treat cultural interpretation as external rather than integral to legal reasoning.

Despite the relevance of cultural mediation in complex cases, it remains largely absent from institutional practice. Judges themselves are aware of this absence but also point to the structural and financial obstacles that prevent its implementation. One judge remarked:

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> As feedback, I tell you that I have never seen a report from the services where a cultural mediator also intervenes. We have never had that requirement. […] If I told the services to use a mediator, they could quietly say: mind your own business, I don't have the money for the mediator anyway, so you're on your own!" (Interview n.1, male judge).

Another judge echoed this concern:

> [...] since there is no money of any kind going around, I might even think that I would be well assisted by the expert, but I can't even foresee it because when we paid a few consultants [...] we already have people who cry when they have to pay the lawyer and this would be a figure of extra-luxury don't know how to put it (Interview n.4, female judge).

These reflections that emerged from the interviews indicate that cultural mediation is not institutionally rejected, in theory. However, such a figure is quite often excluded due to systemic underinvestment and administrative inertia. As a result, judges are left to navigate cultural complexity without adequate tools, relying instead on pre-existing professional networks that may lack cultural expertise.

One judge summarized this systemic gap clearly:

> For what is my little slice of experience, the feeling is that it is an issue in general that perhaps is talked about, in the sense that both in the acts of the parties, and perhaps in an implicit sensitivity on the part of the judges, it emerges how much cultural factors have influenced certain choices. But I do not see this institutionalized attention in a specific channel, that is... we have a South American or Sri Lankan couple, to understand their dynamics we must have someone to explain what they are. I don't see that. Then it may be that in other sections it happens in a much more massive way (Interview n.1, male judge).

In conclusion, it is possible to argue that these structural constraints do not (always) result from individual indifference but rather from routinized judicial practices shaped by institutional inertia, resource scarcity, and procedural standardization. These testimonies reveal that judges are aware of the possible importance of cultural mediation, but their ability to act on this awareness is constrained by a lack of institutional support and structural pathways. The gap between perceived need and actual resources highlights a disconnect between individual sensitivity and systemic responsiveness. As a result, cultural complexity is often flattened or externalized, reinforcing dominant legal norms and contributing to the exclusion of minority cultural perspectives through the daily reproduction of practices that have become normalized within the judicial system.

6. Judicial Discourse and Practices

This article has examined how Italian judges engage with sociocultural diversity in family law, highlighting the tensions between personal awareness, institutional routines, and legal discourse. Through the interview and judicial decision analysis, a recurrent gap is revealed by the research: although some judges, when questioned directly, express views of culture as something complex, relational, and context-dependent, these kinds of perspectives rarely translate into legal decisions. As a process influenced by institutional customs, time constraints, and legal writing conventions, judicial reasoning is not a simple application of legal principles, and through the structure and language of the law itself, these forces reinforce cultural hierarchies in addition to structuring decisions.

One of the most striking patterns to emerge is how cultural identity is made legible and manageable within the legal system through categorization. In the texts of the judgments, culture is often reduced to a static, essential trait attached to individuals or groups, rather than approached as something fluid and complex, in lived experience. As Practice-Based Theory reminds us, judges work within what Gherardi (2019) calls "knowing-in-practice": institutionalized routines that rely on recognizable categories to process legal claims efficiently. Categorization, however, is never neutral. Rather, it shapes how people are seen and what claims are seen as legitimate (Fairclough 2003; Silva Niño de Zepeda 2022). Against this backdrop, legal discourse tends to frame certain cultural practices as problematic or even deficient. Such a tendency is particularly clear in cases involving parenting, religion, or family norms. Despite some judges acknowledging, in the interviews, that these issues are influenced by social and cultural factors, judicial decisions often reflect a more rigid and schematic view of culture that aligns with dominant legal and institutional logics. As Decarli (2018) notes, legal reasoning has a tendency to abstract and objectify group identities, stripping them of the complexity that exists in everyday life. By turning culture into a technical variable, courts frequently sideline important intersecting factors like socioeconomic status, migration background, or educational experience.

Judicial discourse further reinforces this simplification through subtle, but powerful, forms of implicit bias. Even when judges avoid overtly discriminatory language, their decisions often rely on generalizations, namely assumptions about certain communities that are treated as common sense. From a CDA perspective, this functions as a form of moral evaluation or "authorization" (Van Leeuwen 2008), where mainstream cultural norms are presented as neutral, while the minority ones are presented as exceptional or even deviant. For instance, in a case presented in this article, Catholic traditions are described as aligning with the child's best interests, while Jehovah's

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Witnesses are portrayed as incompatible with societal integration. These framings do not just reflect societal biases but rather shape them, reinforcing a sense of who "fits" and who does not within the boundaries of legal legitimacy (Peroni 2014).

Importantly, these biases are rarely conscious. Rather, as Practice-Based Theory shows, they are embedded in the everyday routines and expectations that guide judicial work. Interviewees pointed to a lack of tools to manage cultural complexity meaningfully, including the absence of institutionalized cultural mediation, the reliance on external experts and social services. These are core to understanding why the translation of cultural understanding into legal practice so often fails. As one judge put it, reflecting on budget limitations and bureaucratic constraints: "If I told the services to use a mediator, they could quietly say: mind your own business, I don't have the money for the mediator anyway, so you're on your own!" (Interview n.1, male judge).

This kind of exclusion is, first of all, structural. It is built into the way legal institutions reproduce themselves. As Gherardi (2019) notes, institutions solidify around practices that are repeated so often they become invisible, determining what gets done and even imagined. Against this backdrop, the absence of cultural mediation does not signal a rejection of pluralism but a deeper failure to see cultural difference as legally relevant. As a judge noted, "We don't have a specific channel. That is... we have a South American or Sri Lankan couple, and to understand their dynamics we should have someone to explain what they are. I don't see that" (Interview n.1, male judge). This is not the failure of intention—it is a consequence of how the system is organized.

The effects of this institutional design are evident not just in decisions but in the language of law itself. Legal discourse, with its technical vocabulary and formal structure, creates a symbolic boundary between those who can navigate it and those who cannot. As Gunnarsson, Svensson, and Davies (2007) point out, this kind of language can act as a mechanism of exclusion, reinforcing the authority of legal professionals while making it harder for outsiders to be heard. As Conley and O'Barr (1998) wrote, "law is talk," and that talk shapes which voices count, which stories are taken seriously, and which identities are recognized.

7. Conclusion

This article explored how judges in the Italian family law system construct legal interpretations of sociocultural diversity, using qualitative methods to examine both their discursive practices and institutional con-

straints. Through the integration of semi-structured interviews and Critical Discourse Analysis, guided by Practice-Based Theory, the research reveals a clear dissonance between how judges describe culture in conversation and how cultural diversity is represented in legal decisions. While judges often articulate an awareness of cultural complexity in interviews, rulings tend to simplify and essentialize culture, framing it as a fixed trait or even a deficit that threatens legal compatibility.

What emerges from this study is that the gap between how judges talk about culture and how they rule on it is not just about personal blind spots or implicit bias – it is deeply rooted in the way the judicial system is built. Judges are expected to translate messy, layered, real-world cultural experiences into neat legal categories, all within an institutional framework that gives them few tools to handle that complexity. There is little room for cultural mediation, interdisciplinary input, or sustained engagement with the lived realities of the people before them. Instead, they rely on standardized templates, external assessments, and assumptions that often reflect dominant cultural norms – norms that can end up marginalizing anything that does not fit.

By treating legal reasoning as something that happens within real, situated practices, this research shows that judicial decisions are not just the logical application of law. Instead, they are shaped by routine, by institutional habits, and by the kinds of language the system allows. If we want courts to engage more meaningfully with diversity, the system itself has to change. That means making space for cultural mediation but also rethinking how legal discourse frames certain identities as "neutral" and others as "problems," finally dealing with diversity not as an exception but as part of the everyday reality of judging.

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Handling Diversity on the Ground in Italian Asylum Appeals

Affrontare la diversità dal basso nei ricorsi in materia di asilo in Italia

Alice Lacchei[1]

Abstract

In administrative, civil, and criminal courts, Italian judges are increasingly called upon to rule on crucial aspects of managing migration. One of the critical areas is undoubtedly asylum policies regarding access to asylum and the procedure for determining international protection. This article explores the daily work of international protection judges, who face challenges in accomplishing their tasks due to linguistic, socio-cultural, and geographical diversity. It links individual and organisational levels, showing how their work context shapes judges' practices. The study highlights the consequences of these practices in reinforcing social inequalities. Data was collected by combining semi-structured interviews with judges and shadowing in five court sections. The article reflects on the shadowing technique's potential for analyzing judicial sector dynamics, especially when combined with semi-structured interviews.

Keywords: diversity; courts; social inequalities; refugee status determination; Italy

Sommario

Nei tribunali amministrativi, civili e penali, i giudici italiani sono sempre più spesso chiamati a pronunciarsi su aspetti cruciali della gestione delle migrazioni. Uno dei settori più delicati è senza dubbio quello delle politiche di asilo, in particolare l'accesso all'asilo e le procedure di riconoscimento della protezione internazionale. Questo articolo esplora il lavoro quotidiano dei giudici della protezione internazionale, che si confrontano con diversità linguistiche, socio-culturali e geografiche. Il testo collega il livello individuale a quello organizzativo, mostrando come il contesto lavorativo influenzi le pratiche dei giudici. Lo studio evidenzia le conseguenze di tali pratiche, dimostrando come possano contribuire a rafforzare le disuguaglianze so-

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ciali. I dati sono stati raccolti attraverso interviste e attività di osservazione dei giudici in cinque sezioni di tribunale. L'articolo riflette sul potenziale della tecnica dello shadowing per analizzare le dinamiche del settore giudiziario, soprattutto se combinata con metodi qualitativi come le interviste semi-strutturate.

Parole chiave: diversità; corti; disuguaglianze sociali; determinazione della protezione internazionale; Italia

1. Introduction

Public institutions frequently overlook diversity, resulting in significant consequences for access to and fairness of public policies. This issue has gained prominence in Western countries due to increased migration, which has challenged public administrations to address migration-related issues while delivering public services, particularly at the front line. Among other public administrations, the judiciary in EU countries faces new challenges due to rising migration. Italy represents a clear-cut example: Italian civil courts exemplify this trend, with migration and asylum cases accounting for 20% of civil proceedings (Perilli 2023). Most of these cases involve Refugee Status Determination (RSD), the process by which governments or agencies, such as the UNHCR, decide whether an individual qualifies as a refugee. In Italy, 26 court sections created in 2017 handle RSD appeals, ensuring an effective remedy for first-instance asylum decisions.

The article argues that the rapid increase in asylum appeals since 2017 has forced Italian judges to confront significant diversity challenges (Italian Ministry of Justice 2024). RSD highlights the complexity of public administration in addressing diversity and migration issues. Specialised agencies, such as UNHCR and EUAA, provide training and guidelines for bodies and adjudicators facing these challenges. Researchers from various disciplines have studied how linguistic and cultural diversity complicates RSD decision-making. Drawing on this debate, this article focuses on how these challenges shape the service of justice for asylum seekers by concentrating on how asylum judges face diversity in their daily work and the consequences of their daily practices on implementing asylum appeals. This perspective can provide insights into the judicial profession within a transforming society.

Scholars in migration studies have noted the political nature of addressing migration-related diversity (Vertovec 2007), where linguistic, ethnic, and cultural differences can lead to social inequalities (Brubaker 2014). Intersectionality among various diversity axes can reinforce inequalities in

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interactions with government agencies (Capers, Jilke, and Meier 2024). The article argues that the responses of asylum judges to diversity-migration challenges may have consequences in the reproduction of social inequalities in RSD, particularly in the interactions between the state and the asylum seekers. In this regard, further investigation is needed to understand how asylum judges conceptualize and respond to diversity in their daily practice, particularly in encounters with asylum seekers, and how these conceptualisations and responses shape appellants' access to justice.

The article employs the Street Level Bureaucracy (SLB) framework, introduced by Michael Lipsky (1980), to examine policy implementation at the micro level. SLB research can bridge public administration and socio-legal studies, offering a valuable tool for investigating the judiciary's role in implementing public policies. To this aim, the article draws on socio-legal research arguing for the benefits of SLB research in understanding judges' discretion and organisational transformations affecting the judiciary (Mack and Roach Anleu 2007; Tata 2007; Dallara and Verzelloni 2022).

The article is structured as follows. It first develops the theoretical framework of the research, situating it within the existing literature on the diversity challenges faced by asylum adjudicators and the consequences of reproducing and reinforcing social inequalities in RSD. The case study, methods, and data analysis are then presented, highlighting the relevance of combining shadowing and semi-structured interviews in studying diversity challenges in courtrooms. Finally, the findings present two main diversity challenges: the language and socio-cultural knowledge barrier, focusing on judges' responses and their consequences on RSD.

2. Asylum judges' diversity-related challenges and strategies in context

The article examines the various challenges that judges encounter in direct interactions with asylum seekers and how they address these challenges. It considers asylum as street-level bureaucrats (Asad 2019; Dallara and Lacchei 2021; Glyniadaki 2024). These are frontline workers providing public services in direct contact with users. Despite working for different agencies and exercising various functions, street-level bureaucrats have common characteristics: i) they work within public services and allocate benefits or sanctions provided by their organisation to citizens; ii) in doing so, they interact directly with citizens during their daily work; and iii) they exercise 'wide discretion in determining the nature, amount, and quality of benefits or sanctions provided by their agencies' (Lipsky 1980, p. 3).

Due to their discretion, street-level bureaucrats are not mere implementers of top-down norms but crucial actors in policy implementation. They

interpret and adapt rules to specific situations, making numerous decisions that significantly impact policy application and content, effectively becoming de facto policy-makers (Lipsky 1980; Brodkin 2012).

Socio-legal scholars of the 'judgecraft' tradition – who focus on the process through which judges go about their tasks in the courtroom – argue that socio-legal research should benefit from SLB research (Mack and Roach Anleu 2007). Indeed, it offers an additional lens to investigate actors' relations within the courtroom (Tata 2007). SLB research can contribute to grasping social factors that affect judges' discretion by revealing the strict connection between judges' actions and their work environment and institutional context (Biland and Steinmetz 2017).

While existing literature focuses on how diversity-related challenges affect credibility assessments, more research is needed to understand how adjudicators perceive and address these challenges. Investigating adjudicators' views on diversity can help understand its impact on the RSD process. Thus, the article aims to examine asylum judges' diversity challenges, focusing on whether and how they conceptualise these challenges (RQ1).

Policy-makers and practitioners are increasingly aware of the difficulties arising from cultural, linguistic, geographical, and biographical differences among adjudicators and asylum seekers. UNHCR has highlighted these challenges since the early 2000s, and the European Asylum Support Office (EASO) has noted issues such as language diversity, cultural differences, and stereotyping risks. These factors can affect evidence and credibility assessments, leading to disparities in treatment and reinforcing social inequalities (EASO 2018).

Academic research supports these findings, emphasising the impact of language and cultural norms on the asylum process. Linguistic diversity poses a significant challenge in Refugee Status Determination (RSD), with institutional spaces often serving as sites of linguistic inequality (Maryns, Smith-Khan, Jacobs, 2023; Maryns, 2006). In asylum hearings, interpretation is crucial for managing processes and constructing narratives about asylum seekers (Maréchal 2025). Interpreters play a central role in shaping and legitimising asylum claims, revealing the connection between interpretation and power (Maréchal 2025).

The lack or low quality of interpreters can significantly influence asylum determinations and credibility assessments. Asylum seekers may struggle to convey their experiences accurately in a second or third language due to a scarcity of interpreters for less common languages or dialects (Pöllabauer 2015). Misinterpretations, caused by inadequate training or structural deficiencies, can lead to inconsistencies in applicants' statements and negative credibility assessments (Amato and Gallai 2024; Maréchal 2025).

Cultural differences, often linked to linguistic aspects, complicate asylum procedures. Adjudicators may assess credibility based on their sociocultural

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expectations, which can differ from those of asylum seekers (Dahlvik 2018; Glyniadaki 2022). For example, adjudicators might expect detailed, linear, and emotionally appropriate testimonies, but trauma and cultural norms can lead to fragmented or emotionally restrained accounts, raising credibility doubts (Spijkerboer 2005).

Policy-makers highlight the risk that adjudicators may unconsciously rely on stereotypes related to nationality, religion, or gender (EUAA 2018). Despite the available information and knowledge of the socio-cultural context of the asylum seeker, which can help reduce this risk, this knowledge is not neutral. Instead, it may reinforce stereotypes and overlook individual circumstances (Smith-Khan 2017). Expert evidence and *Country of Origin Information* (COI) may be biased or limited (Lawrence and Ruffer 2015).

After identifying the diversity-related challenges judges experience, the article aims to understand how they respond to them (RQ2). The article argues that judges, as street-level bureaucrats, adopt context-dependent practices and investigate contextual factors that can explain how judges respond to diversity challenges. Particularly, it focuses on the influence of the work environment, namely the court. Research has emphasised the importance of organisational culture, time pressure, efficiency goals, and available resources in shaping asylum adjudicators' street-level practices (Spire, 2007; Dahlvik, 2018). Relying on this literature, the article hypothesises that understanding asylum judges' responses to diversity challenges involves examining the relationship between micro and meso levels and how meso-level influences are interpreted and transferred into judges' practices.

3. What are the consequences of social inequalities?

RSD research has investigated the influence of adjudicators' practices on outcomes and the implementation process, for instance, showing the effects regarding disparity in treatment.

Contributing to this debate, the article discusses the consequences of diversity-related challenges, particularly the implications of reproducing and reinforcing social inequalities in asylum appeals (RQ3). Investigating this aspect can enrich migration studies focusing on RSD. Additionally, it aligns with SLB research more broadly, which must reflect more on social inequalities in implementation processes at the street level (Lotta and Piras 2019). Finally, the focus on judges and courts allows contributions to the literature on fair procedures and access to justice (Gutterman 2022), especially for vulnerable groups, such as asylum seekers (Gill et al. 2021).

SLB research can offer a valuable lens to investigate how social inequalities are reinforced and shaped in the courtroom when asylum judges respond to diversity challenges (Holzinger 2019). While conducting their tasks,

street-level bureaucrats must develop a particular client conceptualisation, and it often occurs by adopting normative judgements, reproducing and stigmatising social identities (Dubois 2010), such as gender, race, and education, as well as their behaviour and attitudes (Lipsky 1980; Maynard-Moody and Musheno 2003; Harrits and Moller 2014).

RSD research applying the SLB framework to asylum adjudication has shown these dynamics, demonstrating how the construction of the refugee, for instance, the categorisation of the 'true' or 'deserving' refugee, influences the adjudication process (Tomkinson 2018). Asad (2019) explains how US immigration judges responsible for asylum and deportation proceedings tend to interpret norms in a way that disfavour those they consider deportable immigrants, while adopting favourable decisions for those considered deserving to remain in the country.

Instead, few scholars have emphasized the challenges of street-level bureaucracies in mediating between government policies and the public, while confronting diversity, highlighting the relevance of SLBs' diversity conceptualization and responses in reproducing social inequalities.

For instance, Holzinger (2019) focuses on the linguistic discrimination experienced by Hungarian migrants when interacting with the Austrian Employment Service. More precisely, the author highlights the challenges of managing linguistic diversity for both institutions and individuals, exploring how language-related issues can lead to experiences of inequity for migrants in accessing labour market mediation services and benefits.

Another interesting case study on asylum is the work of Spire (2007), who demonstrates how coping mechanisms adopted by asylum workers in France can serve as instruments that reinforce inequalities. For instance, French asylum case workers prefer to process straightforward cases to work more efficiently. However, this can lead to avoiding processing situations of greater vulnerability and need. This neediness makes it difficult for asylum seekers to submit a complete and accurate asylum application. Being unable to present demands, possess organised documentation, or meet bureaucratic timelines and etiquette are signs of precariousness. This organisational strategy has the unintended consequence of disfavouring the most needy and vulnerable people.

To enrich this debate, the article examines the unique setting of the judiciary, particularly what occurs in the courtroom. In doing so, it aims to demonstrate that the SLB approach should be applied to examine judges' behavior and practices in encounters with appellants in the courtroom, which is conceived as a critical locus for reproducing social inequalities (Lotta and Piras 2019).

Why focus on the direct encounters between asylum seekers and judges? SLB literature highlights the unavoidable power asymmetry characterizing

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SLB-user direct relations, which cannot be overlooked when investigating the reproduction of social inequalities (Lotta and Piras, 2019).

In street-level organisations, users depend on the state for crucial services or sanctions (Lipsky 1980). In asylum cases, individuals seek state protection from severe human rights violations. Information asymmetries exacerbate power imbalances, as clients struggle to understand bureaucratic processes (Dubois 2010). This is particularly relevant in asylum hearings, where decision-makers, such as asylum officers, judges, and tribunal members, hold significant authority. These professionals control interactions due to the complex legal framework and their technical knowledge (Böhmer and Shuman 2007). Asylum seekers often lack legal terminology and bureaucratic discourse expectations, disadvantaging them. Despite their agency to construct narratives (Nikolaidou, Rehnberg, and Wadensjö 2022), asylum seekers rely on informal networks, leading to narratives shaped by survival strategies that decision-makers may penalise (Eule et al. 2019). Legal support and resources significantly impact RSD outcomes (Gill et al. 2021). The article examines the challenges of diversity in direct encounters between asylum seekers and judges, considering the roles of interpreters and lawyers.

4. Case study and methods

The article focuses on the Italian case for several reasons. First, Italy is an interesting case to study, where asylum cases are analysed by specialised court sections within civil courts. As mentioned, asylum proceedings have been a significant challenge for the Italian judiciary, which has been confronted with a rapid and substantial increase in asylum appeals. This remains a pertinent issue today. Finally, the Italian case, which is different from other EU cases, can offer relevant insights since asylum judges are responsible for adjudicating on the merit of the case, with the possibility to ask for clarifications, having direct contact with the asylum seeker in asylum hearings and conducting a complete examination of the case – not only on law or on paper, as in other EU countries (Gill et al. 2025).

Regarding methods, the research combines semi-structured interviews with the less common shadowing method in terms of research strategy. The research shows the suitability of combining these two methods for studying judges within their organisational environment.

Shadowing is a one-on-one ethnography, as it involves following a person throughout their daily activities, much like a shadow, even during breaks or informal moments (Czarniawska 2007). Notably, it involves taking notes, participating in events, and asking for clarifications from the person being shadowed. The aim is to 'see the world from someone else's point of view' (McDonald 2005, p. 464). It is beneficial to understand individual agen-

cy, which is defined as the capability of actors to choose specific courses of action in combination with roles, practices, and perspectives developed during daily work activities (Verzelloni 2019).

The research relies on shadowing conducted with 22 judges. It was possible to follow asylum judges for several days during their daily work, sitting in their offices before and after hearings and speaking with them in informal moments, such as during lunch breaks. The author conducted shadowing in five court sections specialised in migration and asylum, across all 26 court sections. All judges currently conducting hearings during the field research period have been shadowed. In Court B, only one judge was responsible for conducting hearings during the fieldwork period, while in Court A, the president of the court section scheduled a limited number of hearings. During the research period in the court, no hearings were scheduled. In one of the courts (Court F) where interviews were conducted, shadowing was not allowed due to restrictions imposed by the COVID-19 pandemic.

Data from shadowing have been analysed using 32 semi-structured interviews conducted with asylum judges from May 2020 to October 2021. The elite status of the interviewees justifies the choice of semi-structured interviews, given their knowledge, prestige, and power (Liu 2018). The interviews – conducted within a broader research project – were focused on three main aspects: a) their work practices before, during, and after the hearing; b) the asylum decision-making process, its peculiarities, and challenges; and c) their opinions about the asylum seekers, their job, the organisation they work for, and the institution of asylum more broadly. During the interviews, attention was paid to judges' diversity-related challenges in conducting their work and how they coped with them.

Interviews lasted an average of one hour each and were mainly conducted in person, although a few were conducted online through Microsoft Teams. In-person interviews have been conducted in judges' offices. They have been transcribed verbatim and analysed in the original language (Italian). Only quotes to be inserted in the article have been translated into English. Table 1 summarises the data collection.

Regarding data analysis, an initial codebook was developed based on the theoretical framework, modified, and then transformed into an iterative process that moved from theory to data. The use of MAXQDA supported the coding process. The codebook distinguishes between three principal codes: 1) judges' diversity challenges, 2) strategies to face these challenges, and 3) the consequences of these strategies in reproducing social inequalities. Each code has subcodes based on the literature and is integrated with the findings that emerged from the data.

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Table 1. Data collection: semi-structured interviews and shadowing with Italian asylum judges

Judges	Court	Date of the interview	Shadowing
Judge 1	A	28 May 2020	Yes
Judge 2	A	6 July 2020	Yes
Judge 3	A	31 July 2020	Yes
Judge 4	A	10 November 2020	Yes
Judge 5	A	10 November 2020	Yes
Judge 6	A	12 November 2020	Yes
Judge 7	A	16 November 2020	Yes
Judge 8	A	28 May 2020	No
Judge 9	B	1 February 2021	No
Judge 10	B	2 February 2021	No
Judge 11	B	3 February 2021	No
Judge 12	B	4 February 2021	No
Judge 13	B	30 March 2021	Yes
Judge 14	C	7 May 2021	Yes
Judge 15	C	10 May 2021	Yes
Judge 16	C	11 May 2021	Yes
Judge 17	C	13 May 2021	Yes
Judge 18	C	18 May 2021	Yes
Judge 19	D	16 June 2021	Yes
Judge 20	D	17 June 2021	Yes
Judge 21	D	22 June 2021	Yes
Judge 22	D	23 June 2021	Yes
Judge 23	D	28 June 2021	Yes
Judge 24	D	28 June 2021	Yes
Judge 25	E	14 October 2021	Yes
Judge 26	E	19 October 2021	Yes
Judge 27	E	20 October 2021	Yes
Judge 28	F	25 June 2020	No
Judge 29	F	2 July 2020	No
Judge 30	F	8 April 2021	No
Judge 31	F	9 April 2021	No
Judge 32	F	12 April 2021	No

Source: author's elaboration of data collection

5. The barrier of language

Significant linguistic barriers persisted in Italian asylum hearings at the time the research was conducted. Under asylum law, Italian judges may decide to conduct the asylum hearing by requesting clarifications and additional statements from the asylum seeker – the so-called audition – when they believe further information is needed to assess the case. At the time of the research, two different mechanisms for interpreters' appointment co-existed. On the one hand, the generalist approach, which is in place in the entire judicial system, involves a case-by-case appointment of professionals registered as interpreters in a court. On the other hand, at the end of 2020, a project funded by the European Union Agency for Asylum (EUAA) allowed judges to appoint an interpreter for asylum hearings, recognizing the specificities and peculiarities of asylum appeals. The research was conducted during a period of transition, when this mechanism was in the implementation phase in various court sections.

Data from shadowing and interviews suggest that the scarcity of professional interpreters led to significant communication difficulties between the judge and the asylum seeker (Dallara and Lacchei, 2021). According to interviews, all judges experienced difficulties in conducting their tasks due to communication problems with asylum seekers, and they were aware that this had relevant consequences for decision-making, particularly in credibility assessment. They often complained that they were tasked with the complex responsibility of asylum adjudication within an organisation, the court, which did not provide the necessary support for a quality service.

As mentioned, asylum judges could, in theory, appoint an interpreter, as in criminal hearings. However, courts often lack sufficient interpreters on their lists, particularly for certain languages. On the rare occasions it occurred, mechanisms of appointment through the court often worked informally, without standard procedures and relying on individual judges' efforts:

> I checked with the administrative office, and no Pashtu interpreter is in the registry of interpreters usually used for criminal hearings. Furthermore, finding interpreters would not be a typical administrative office job. I typically call them because I might hear about an interpreter appointed by another judge, but it is still tough (Shadowing Judge 26).

Other procedural barriers were also raised due to vague guidelines governing interpreters' payment in asylum proceedings. As explained by one judge after observing the first hearings in Court A, administrative impediments discourage interpreters from being appointed via the courts. During the lunch break, the shadowed judge said the situation [of interpreters] was complicated. She explained that they rarely appoint an interpreter because the court often fails to pay them. They have a problem with reimbursing

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these professional figures since it is unclear to whom the payment is due, whether to the Ministry of Justice or the Ministry of the Interior, in the event of a successful appeal. The judge explains that the existing provision only states that the interpreter is paid, but not by which institution; therefore, they risk not being paid (Shadowing Judge 4).

All these aspects reveal that the regular procedure cannot provide adequate instruments for addressing the specific needs of specialised sections on migration and asylum, posing challenges for asylum judges in their daily work. Specialised sections within the Civil Court Sections have been created to respond efficiently to the increase in proceedings in this policy area. However, no dedicated funds have been allocated to hiring needed professionals, such as interpreters (Law 46/2017). In this sense, despite the efforts to adapt the organisational arrangements in civil courts, there was no full awareness and response at the institutional level to the different needs required for quality justice in asylum appeals, where interpreters' appointments are not the exception, as it is in other fields of justice, but the rule.

As street-level organisations, local asylum courts respond to these institutional limitations by adopting different strategies, navigating a tension between, on the one hand, inadequate resources and vague guidelines and procedures, and, on the other, the goal of providing a good service of justice. These various strategies can have different consequences regarding asylum seekers' access to justice.

5.1. "We should rely on what we have."

Data highlights that, except for judges in court F, who rely only on interpreters appointed through the EUAA project, as described in the next paragraph, all other judges often ask asylum seekers to bring their trusted interpreter to the asylum hearing. However, they frequently complain about the quality of these interpreters. While in some instances, interpreters and mediators are available from the reception centres where asylum seekers are hosted, in several cases, these are non-professional interpreters, including friends and other asylum seekers (Interview Judge 13).

This raises questions about impartiality and the quality of the translation:

> Another difficulty is that of the interpreters, and since the courts do not pay them […], we should rely on what we have and ask asylum seekers to bring their [trusted] interpreters, but the quality is not good. Some people add or change things, thinking the appellant said something wrong. I understand when they speak in French, and it has happened to me several times that I interrupted the interpreters because they had omitted things, which, according to them, were not important (Interview Judge 18).

Shadowing confirms that most courts adopted this strategy as the primary response, which often resulted in a low-quality interpretation, with interpreters having difficulties speaking Italian. Only in one court did this mechanism often result in a complete lack of interpreters during hearings, which in some cases became impossible due to communication barriers between the judge and the asylum seeker:

> The main difficulties during the hearing are mainly linguistic because sometimes there are no interpreters […]. Sometimes, they bring a trusted interpreter, while other times, unfortunately, we do not have interpreters, so I must try to understand [the asylum seekers]. However, they often do not speak Italian, which is very complicated (Interview Judge 9).

This strategy, through which asylum judges tried, despite the structural deficiencies, to accomplish their task in a way that was as good as possible, had relevant consequences for asylum seekers and can contribute to reinforcing social inequalities. First, asylum seekers are asked to take on the burden of the host country's shortcomings while confronting the state's power. The state is asking them to provide proper, additional, yet fundamental resources: they are not only asked to tell the story to convince the authority of their right to be protected, but they also need to provide the instruments through which they will be able to tell that story. Thus, the state puts the future of asylum decisions in the hands of asylum seekers, especially if we consider that the presence and quality of interpreters can largely influence the credibility assessment.

Additionally, this request to alleviate the state's burden can affect certain asylum seekers more than others. For instance, for victims of human trafficking, trusted interpreters can be instruments of control, limiting their possibility of disclosing their conditions. In this sense, this practice can exacerbate power inequalities, affecting the most vulnerable and limiting their effective right to access justice.

Furthermore, this practice has significant consequences for those asylum seekers who cannot rely on a network or quality legal and social support. This is, for instance, the case of asylum seekers outside the reception centre. They are not supported in their asylum appeal and cannot rely on the limited number of interpreters available in the reception centres. In this case, the equity of their treatment depends on their human capital, namely, their social network (Kosyakova and Brücker 2020), and/or the lawyer's efforts in finding a quality interpreter (Stoufflet 2025).

Finally, since the contact between asylum seekers and interpreters occurs informally and independently of the court's role, this practice raises questions about economic inequalities, especially in cases where interpreters are not provided free of charge but at the asylum seeker's expense.

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On the court side, the lack of qualified interpreters may justify reducing asylum hearings, which can be very important in evaluating the case (Lacchei, 2023). For instance, in Court D, as confirmed by shadowing, asylum hearings were rare and represent an exception. In interviews with judges in this court, they rarely mentioned diversity-related difficulties that arise from direct encounters with asylum seekers. This finding can be attributed to the consolidated practice of holding asylum hearings only in exceptional cases. One judge, who was the most experienced, having worked in the specialised section since 2017, explained that they gradually reduced the number of asylum seekers' interviews because they realised that in most cases, they were useless. This has been attributed to the increasing expertise of the court section, which has helped identify cases that truly require a court interview, as well as the improvement in the quality of decisions by the first-instance adjudication body. In addition to this increased specialisation, s/he stated that language was a significant barrier and argued that, combined with cultural barriers, it often rendered asylum hearings useless (Interview Judge 21). In this sense, the structural lack of intervention to overcome these limitations can, under certain conditions, favor on-paper decisions, which are considered the most efficient way to conduct RSD in court, in a context of time pressure and resource cuts characterizing the contemporary judiciary (Colaux et al. 2023).

A fair procedure, including a quality interpreter, cannot be a matter of luck. The 'lottery' of refugee adjudication manifests through structural inequalities, which reinforce inequality and affect the most vulnerable. Indeed, the results indicate an increase in disparity among asylum seekers, based on their personal human capital, social network, and geographic location (Gill 2009; Marshall 2025).

Data also shows how a structural shortage of crucial resources and dedicated funds to properly respond to the peculiar needs of asylum courts, such as those of interpreters, can have important consequences for adjudicators' practices on the ground. In responding to a challenging working environment, they can adopt practices that may have the unintended consequence of reducing the quality of the adjudication process and access to effective remedies.

Locating these dynamics within a broader context, it appears that over time, the state has abandoned these crucial institutions, choosing not to invest largely in quality asylum adjudication systems, while investing in border control to limit access to the territory (Sunderland 2024). Instead, RSDs are left behind, undermining refugees' fair procedures and access to justice.

5.2. Support from outside

The few interventions aimed at overcoming structural limitations originated from outside, primarily through targeted projects funded by the European Union. As mentioned earlier, the research was conducted during the period when the EUAA project for interpreters' appointment was in its implementation phase.

What emerged from interviews and shadowing is the adoption of highly different strategies among courts, as confirmed by other studies (Perilli 2023).

Only one of the courts had implemented the project on a large scale at the time of data collection (Court F). Particularly, judges of Court F explained that they did not experience linguistic barriers anymore after benefiting from an EUAA project, which allowed them to hire professional interpreters:

> Before the collaboration with EASO [now EUAA], we had this terrible practice of having the asylum seeker bring their trusted interpreter. So often, the hearings were tough because of communication difficulties. Since this collaboration started, the level of interpreters has been very high, and there are no more problems. We email the EASO unit [of the court section] and ask for a mediator for a particular dialect and of a specific gender, and that is it (Interview Judge 31).

This data was not triangulated with shadowing: there was no opportunity to observe asylum hearings in this court. However, considering organisational aspects, the court, at the time of the interview, could rely on several EASO research officers, who supported judges in Country-of-Origin Information research and other related aspects[2]. These qualified professionals worked in a specific organisation unit responsible, among other tasks, for overseeing and organizing the call of mediators/interpreters at the judges' request.

The support from several specialised human resources from EUAA in the court section likely facilitated the project's implementation.

Other courts faced completely different situations, in which this opportunity was only partially implemented (Court A, Court C, Court E) or not implemented at all (Court B) at the time of data collection.

In courts A, C, and E, judges did not use the instrument as standard practice. For some judges, it is because the court section needed additional time to actually implement the appointment procedures in their daily work,

2 EUAA research officers have been appointed in Italian court sections specialized in asylum and migration since 2020 to support judges in conducting a preliminary analysis of the cases and conducting COI research. The number of EUAA researchers has recently reduced, and their work is more of consultancy and coordination.

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while others show a more skeptical approach. These judges considered the EUAA appointment mechanisms to be time-consuming and, according to the judges' experience, did not guarantee the quality of the interpreters.

Despite differences, judges were aware of the risks associated with relying on asylum seekers' trusted interpreters and have adopted a prioritisation mechanism, often developed at the court-section level. For instance, in court C, the court-section president decided to ask for EUAA interpreters only for vulnerable asylum seekers, especially those who showed indicators of trafficking, to guarantee the safety of the asylum seekers in disclosing their history (Shadowing Judge 18).

Even in other courts, a mix of strategies is applied, with certain applicants having EUAA-appointed interpreters while others ask to bring trusted interpreters. In the first case, what emerged from shadowing, at least in these contexts, was a not-so-evident higher quality of translation but more professional behavior and impartiality during the asylum hearing.

Despite being used by judges in some courts, the EUAA's appointment had some practical challenges, which had relevant consequences for asylum seekers. In court D, in three of the nineteen observed asylum hearings, EUAA interpreters did not attend the asylum hearing, which was postponed for several months. According to one judge, this sometimes occurred because there was no interpreter for a specific language on that day and due to a lack of rapid communication among the institutions involved (Shadowing Judge 25). The consequence was prolonging an already extended limbo for asylum seekers, who wait years for a final decision.

Finally, despite the possibility of adopting this strategy, it was not implemented at all, or at least not in the data collection, in one court involved in the study. The judge explained the reason:

> It is not always easy, as the interpreter's intervention should be organised in advance; however, the volume of work does not allow for this. I want to do that, for instance, by grouping the hearings by country so we can call the mediator paid by EUAA, but it is not easy to do that (Interview Judge 13).

In this court, only one judge was fully allocated to asylum claims, and he had no previous experience in the topic. Moreover, it was supported only by one EUAA research officer responsible for COI research, a proposal for an interview hearing structure, and a summary of each case before the hearing. In this context, there was no established practice to prepare in advance for the asylum hearing, as required by the appointment of an EUAA interpreter. This case shows how judges perceived organisational arrangements and human resources as barriers to implementing innovations to address courts' diversity-related challenges.

Relying on external support from the EUAA means that the organisation and institutional level prefer it, as is often the case with Italian migration and asylum governance (Campomori and Ambrosini 2020). This emergency approach does not guarantee structural change in these organisations, which rely on external funds and time-limited projects. The precarity of this mechanism can disincentivise judges from investing energy in implementing the measure, especially when the efforts required are countless due to work conditions. Indeed, the implementation process appears to be largely in the hands of the court sections and, particularly, court-section presidents, who are tasked with developing local procedures to implement the EUAA appointment system concretely in their daily work, with little to no support. Indeed, the implementation process is ruled by vague guidelines (e.g., who will appoint the interpreter and through which mechanism?) without considering the court section's actual resources, particularly human resources.

To sum up, on the side of asylum seekers' access to interpretation services and the ability of court sections to respond to the diversity-related peculiarities proper to their task, a targeted project, such as that of the EUAA, can offer a short-term response, allowing them to address all concerns mentioned in the previous paragraph. However, it can exacerbate territorial inequalities, with different levels of justice quality depending on the court sections and their shortage of human resources in terms of both numbers and asylum specialisation, as well as a different approach at the managerial level, especially from the court presidency.

6. The barrier of socio-cultural knowledge

Diversity-related challenges emerging from the interview also concern cultural aspects. This quote summarises the challenge experienced by asylum judges in RSD, who are confronted with asylum seekers from different socio-cultural contexts:

> There is serious incompetence on our part, of knowledge that we do not have; we need to know the context of origin of these people, their countries, because we read everything with a Western lens (Interview Judge 20).

Most interviewed judges shared this feeling, arguing that to assess the case properly, the judge must be familiar with the socio-cultural context of the asylum seeker. Indeed, they are aware of the effect it has on decision-making and particularly on credibility assessment, compared to other areas of law:

> The credibility assessment is different [from other fields] because we have a different culture than the applicants, so it is not easy because we apply our

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> maxims of experience and cultural maxims. In contrast, the applicant comes from a very different world, and you do not understand what world he comes from (Interview 16).

As emerged from the quotes, judges often rely on general experience principles while adjudicating, for instance, in criminal proceedings. However, in asylum proceedings, they often decide to rely on facts that occurred in the asylum seeker's country of origin, which increases the complexity of the adjudication and makes it extremely challenging. This challenge is particularly relevant for RSD but is exacerbated by structural aspects related to judges' training and educational path. Despite the increasing opportunities for specialised training organised by the Italian School of the Judiciary, which is responsible for judges' training, or by the EUAA, among the interviewed judges, only a few participated in these trainings, which primarily rely on a single judge's interest, but also available time, considering the significant workload they have experienced since 2017 (Interview Judge 7; Interview Judge 13). In this context, the training provided by the organisation to judges on international protection was considered insufficient to adequately address the diversity challenges arising from the different socio-cultural backgrounds of the asylum seekers:

> It is a meta-legal subject, and we have not been trained. During my studies and training as a judge, the subject of international protection practically did not exist. We must also change the legal training of magistrates. This subject goes beyond the approach that we magistrates have. We must understand that we must study the socio-economic and legislative aspects of the world's countries and change our perspective in exercising our functions (Interview Judge 11).

This lack of training is experienced by the most experienced judges and new judges who have just been appointed. This judge, for instance, was appointed as a judge only the year before:

> The subject of international protection suffers from the lack of training that characterises our profession, even during the training we do before practicing as judges. It is also less in-depth by judges who want to establish themselves, to make a career, for instance, in the Supreme Court… it is a bit of a second-class subject […], and therefore it is left to itself (Interview Judge 15).

As for the interpretation service, the specialisation of court sections on asylum and migration did not lead to structural interventions to make the judiciary fully capable of responding to the difficulties resulting from the peculiarity of RSD. In this context, asylum judges were tasked with accomplishing this crucial task in a challenging work environment, which has

significant consequences for both the institution and the asylum seekers (Holzinger 2019). In this work context, judges adopted individual strategies to overcome the challenges they experienced. However, these responses vary among judges. More precisely, data analysis shows two groups of judges: 1) the *inquisitive judges*; 2) the *disillusioned judges.* As explained in the following paragraph, they differ significantly in their approach to their job, which shapes their practices, with consequences regarding inequalities in asylum proceedings.

6.1. Inquisitive judges and efforts to overcome barriers

Inquisitive judges stressed in the interviews that the most essential characteristic of the asylum judge – fundamental to accomplish their job well – is to be open to learning from the asylum seekers' stories of different cultures and societies and the available information on the countries of origin (COI). One judge says:

> There is an almost inevitable influence [of your values and culture] when you decide on stories about a world very different from yours. What we can do to conduct our job well is listen and pay attention to the asylum seeker, discuss, question, and study a lot (Interview Judge 29).

Regarding asylum hearings, *inquisitive judges* tend to ask more open questions and clarifications related to the country of origin, the cultural norms and values, directly to the asylum seekers during the hearing. Interviewees argued that they put in place strategies for learning the socio-cultural context of the asylum seeker in the courtroom:

> Sometimes, however, we hear an absurd fact and do not question it; we consider it absurd, and that is all. Instead, by asking a few more questions, we can realise that what the asylum seeker told us makes sense. For example, during a hearing, an asylum seeker told us: 'I was taking a shower, and enemies came, and I ran off into the fields." At first glance, we did not believe it was possible, but I asked how it was possible to leave the house without being seen, and he explained that the shower was outside the home, as always in his village (Interview Judge 18).

Shadowing – when conducted – confirms that *inquisitive judges* stress this aspect during interviews, concretely develop these strategies during hearings, leaving questions more open, and often ask for clarifications and explanations from asylum seekers.

Despite most-experienced judges mentioning that experience made them more open towards the asylum seekers during hearings, data suggest that ex-

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perience was not a relevant factor, since even less experienced asylum judges displayed this attitude.

Additionally, they often prepared for the hearing by studying the country-of-origin information. When possible, they relied on the EUAA research officers to support judges in these types of activities. For instance, during shadowing in court A, in the office of Judge 6, the judge looked at the hearings set for next week and asked the EUAA officer in the room what s/he knew about Sikh minorities in Pakistan. He mentioned that next week, s/he would have an asylum seeker claiming refugee protection for religious persecution. The EUAA officer stated that there was available information on this aspect and will provide it to the judge. S/he also said that EUAA had specific guidelines for conducting interviews concerning religious persecution, and s/he would send them to the judge if interested. The judge accepted enthusiastically, thanked the EUAA officer, and said preparing for the hearing would be extremely useful (Shadowing judge 6).

In interviews with the author, judges emphasise that a preliminary study of the context and COI is necessary to conduct the asylum hearing properly, asking pertinent questions of the asylum seeker. They viewed these instruments as valuable tools for evaluating the case and were able to overcome the knowledge barriers faced by the adjudicator. Their attitude toward their job, particularly their interest in studying and learning subjects other than law, was the main factor explaining their behaviour. However, as explained in the paragraph below, the work environment can provide additional insights into the dynamics at stake.

6.2. Disillusioned judges, simplification strategies, and stereotypes

A different approach characterised *disillusioned judges*. In facing socio-cultural barriers, they feel unable to overcome them, and this attitude often leads to the reinforcement of these barriers and a widening gap between themselves and asylum seekers. While acknowledging the importance of socio-cultural context, these judges express frustration and a sense of helplessness due to the lack of resources to bridge this knowledge gap. As one judge noted: "You should be informed about everything, and it would be wonderful always to have an expert by your side, but unfortunately, this is impossible" (Interview Judge 15).

This frustration is exacerbated by the perceived difficulties in understanding asylum seekers' experiences, leading to a sense of disconnect. Another judge highlighted this challenge:

> Then I feel frustrated sometimes because you cannot understand or reach the point when you have an expectation. Still, there are difficulties in understand-

> ing the language, and even my ignorance is the cause. After all, maybe I do not know how certain things work, sometimes I say [to the asylum seeker]: 'Why didn't you call the police?' and they laugh in my face (Interview Judge 7).

Disillusioned judges perceive socio-cultural differences as a barrier to communication and understanding of asylum seekers, attributing this to the nature of RSD, which requires decision-makers to make decisions with minimal information at stake. For instance, these judges also argue that COI research cannot respond to these challenges, since "it usually only offers general context information, making it difficult to find specific details useful for decision-making" (Interview Judge 15). With this in mind, *disillusioned judges* often do not conduct in-depth Country of Origin Information (COI) research before hearings. Compared to *inquisitive judges*, they stress that COI research is not always so relevant for asylum hearings and prefer analysing them before deciding. They justify their strategy by referring to work contraints, arguing that COI research is highly time-consuming. For this reason, due to the high workload they experienced, they would rely entirely on the support of EUAA officers, which, however, was limited, especially in some courts (Interview Judge 11; Interview Judge 23).

Despite giving responsibility for the structural deficiencies of RSD, their professional training, and the scarce resources combined with the high workload, some *disillusioned judges* often add asylum seekers' responsibilities. More precisely, they argued that asylum seekers did not have the instruments for providing the required information:

> Some experiences are impossible to summarise in an hour's hearing, mainly because of the cultural or educational differences. They [the asylum seekers] are often illiterate or have a very low level of education, and therefore, they usually cannot even understand the depth of our question. We perhaps demand a depth that they may not even be able to give, for cultural or other reasons (Interview judge 20).

When this approach was adopted, it reinforced the power asymmetry in the adjudicator-appellant relationship, thereby reproducing social inequalities. They considered the vulnerabilities of asylum seekers, such as being illiterate, while navigating a complex bureaucratic procedure in a host country, as a barrier to communication, rather than an aspect to address during the asylum hearing, for instance, by adopting specific strategies to foster a positive relationship. The risk of this approach is that it may reproduce and reinforce power asymmetries during hearings and social inequalities in RSD (Bohmer and Shuman, 2007; Eule et al., 2019).

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7. Conclusion

This article has explored the diversity-related challenges asylum judges face in Italy while conducting Refugee Status Determination at the appeal stage. Particularly, it focused on navigating diversity-related issues in their daily work while directly encountering asylum seekers in the courtroom. By employing the Street -Level Bureaucracy (SLB) framework, the study has shed light on the complexities of implementing asylum appeals at the micro level and the connections between judges' practices and the work environment in which they operate. In this sense, the article presented a picture of the deficiencies of the contemporary judicial system in addressing the newly emerging diversity challenges specific to RSD. At the same time, it emphasised the need to examine the concrete responses of individual judges to these deficiencies and their impact on access to justice and fair procedures for asylum seekers.

The article uses the case of asylum appeals to reflect on the influence of power asymmetries and socio-inequalities inherent in the implementation process from a bottom-up perspective (Dubois 2010; Lotta and Pires 2019).

The findings reveal that asylum judges encounter two primary diversity-related challenges: linguistic barriers and socio-cultural knowledge gaps. These challenges are exacerbated by structural deficiencies within the judicial system, including inadequate resources, vague guidelines, and insufficient specialised training. The ways judges face the lack of professional interpreters and the judges' limited knowledge of the socio-cultural contexts of asylum seekers in the encounter with the appellants impact the quality and fairness of the asylum determination process. Under certain conditions, they contribute to reproducing and reinforcing social inequalities in the RSD process. Asylum seekers, already vulnerable, face additional burdens due to the state's inadequacies, exacerbating power asymmetries and information disparities. The study underscores the need for structural interventions to address these challenges, including allocating dedicated funds for hiring professional interpreters, providing comprehensive training for judges, and establishing clear guidelines for implementing specific measures in asylum courts.

In conclusion, this article emphasises the critical role of asylum judges in shaping the implementation of asylum policies. Doing so contributes to the broader debate on fair procedures and access to justice for vulnerable groups, highlighting the importance of addressing diversity-related challenges in the judicial system. Future research should continue to explore judges' work, looking at the new challenges arising in the transformed judicial office. To this end, it is essential to analyse the concrete functioning of the judiciary, shaped by individual practices. At the same time, keeping the micro and meso levels together is relevant, and SLB research can be a

valuable theoretical lens for this aim. Finally, the combination of shadowing and interviews contributes to this goal, permitting the investigation of professionals' behaviors and practices within their organisation.

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Law and Incapacitation: Empirical Insights into Mental Health Compulsory Treatments

Il diritto che genera incapacità: evidenze empiriche sui Trattamenti Sanitari Obbligatori (TSO) per salute mentale

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Abstract

Compulsory Health Treatment (TSO) for mental illness constitutes the primary form of "coercive care" in Italy, as recently reaffirmed by the Constitutional Court (judgment no. 22/2022). Drawing on the work of the Observatory on TSOs in the City of Turin, this study analyzes over 1,000 case files relating to TSO procedures carried out between 2017 and 2023, including validation orders issued by both the mayor and the guardianship judge. In addition, semi-structured interviews were conducted with healthcare professionals and local police officers involved in the procedures. The findings reveal a high degree of standardization within the administrative-judicial process which, despite being formally grounded in robust legal safeguards, operates in practice as a form of routinized justice characterized by medical dominance over other institutional actors. The analysis further suggests that the TSO is increasingly embedded in a paradigm marked by a renewed emphasis on practices of social control and can be interpreted as a *dispositif of incapacitation.*

Keywords: psychiatric care, coercive treatments, routine justice, medical dominance, mental health

Sommario

Il Trattamento Sanitario Obbligatorio (TSO) per malattia mentale rappresenta il principale caso di "cura coattiva" in Italia, come recentemente ribadito dalla Corte Costituzionale (sentenza n. 22/2022). Nell'ambito delle attività dell'Osservatorio sui TSO della Città di Torino, sono stati analizzati oltre 1000 fascicoli relativi ai TSO eseguiti nel territorio cittadino nel periodo 2017-2023, contenenti i provvedimenti emessi dal sindaco e dal giudice tutelare. Inoltre, sono state condotte interviste con operatori sanitari e di

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Polizia Locale coinvolti nelle procedure. Dallo studio emerge la standardizzazione della procedura amministrativo-giurisdizionale che, pur strutturata su un iter fortemente garantista, si configura oggi come un tipico esempio di giustizia routinaria e di dominio del sapere/potere medico rispetto agli altri attori coinvolti nella procedura. L'analisi conferma come il TSO si inserisca sempre più nel paradigma di un ritorno a pratiche di controllo sociale e può essere considerato un *dispositivo di incapacitazione.*

Parole chiave: assistenza psichiatrica; trattamenti coattivi; giustizia routinaria; dominanza medica; salute mentale

1. The Compulsory Health Treatment (TSO) "in action", the case-study of Turin[3]

Mental health compulsory medical interventions constitute the core focus of this study. They are a highly contentious subject within the both domains of medicine and law. These measures pertain to scenarios wherein an individual is hospitalized and/or subjected to treatment against their will. Compulsory interventions are generally justified on the basis of two fundamental conditions: first, the protection of the health or life of the individual concerned; and second, the protection of others. As further explained below, Italian legislation provides that the principal legal mechanism for imposing medical treatment without informed consent is the procedure known as *Trattamento Sanitario Obbligatorio* (TSO) procedure.

The objective of the present research is to empirically ascertain how such procedure is interpreted by the local professional cultures of the various actors involved.

In designing this empirical research, we have decided to explore a specific case study, the city of Turin. The analyses and reflections presented in this article are therefore specific to this particular field of research, and it would be incorrect to extend or generalise them. Instead, this methodology could be replicated in other contexts in the future. This metropolis, located in northern Italy, is home to over a million inhabitants and exemplifies the distinctive features of large European urban agglomerations in the post-industrial era. Indeed, Turin was recognised as one of the world capitals of the automotive industry in the twentieth century, subsequently it has faced radical urban and socio-economic transformations in recent decades. In the contemporary era, the city of Turin is an economic entity that is predom-

3 The research has been jointly conducted by both authors. Michele Miravalle has written paragraphs 1, 2 and 3, Carolina Di Luciano has written paragraphs 4, 5, 6 and 7. Conclusions have been edited by both authors.

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inantly reliant upon the tertiary sector and the provision of services, with tourism being a recent addition to the economic landscape.

In this scenario, the overall objective of the research was to comprehend the manner in which mental health protection aligns with the dual imperatives for *care* and *control*.

The city of Turin is an intriguing case study in this regard, due to a tragic event that occurred in 2015.

In Turin, on 5th August 2015, Andrea Soldi died as a consequence of a compulsory health treatment (TSO) that was conducted in an improper manner and with excessive force by the local police and healthcare professionals. Andrea, aged 45 at the time, had been living with a diagnosis of schizophrenia. He was a well-known patient by local healthcare professionals and the neighborhood community. His death occurred in a public square in broad daylight. This event has had a profound impact on the collective consciousness of Turin (Spicuglia 2021).

Consequently, the municipality, in collaboration with healthcare authorities and law-enforcement agencies, implemented specific training initiatives and a comprehensive overhaul of TSO procedures: a new collaborative protocol has been signed between healthcare professionals and law enforcement agencies concerning operational practices.

Andrea Soldi's tragic death could be considered as a collective trauma, frequently recalled during our research, especially in interviews and focus-groups. It surely remains firmly entrenched in the collective memory of health and police workers even ten years later. However, Andrea Soldi's name is never mentioned, and instead expressions such as "the serious incident" or simply the "incident" are used.

The most recent output of the activities carried out in Turin regarding the Compulsory Health Treatments is the Observatory on TSOs, formally established in 2022 by the City of Turin[4]. Thus far, the experience has been without parallel at the national level. The Observatory has been established with the objective of analysing TSO cases that have been carried out in Turin over the past decade. Among different qualitative and quantitative methods implemented by the Observatory, in this article we will mainly analyse semi-structured interviews and focus-groups conducted with personnel involved in administering these treatments[5]. This research activity in

4 The Observatory is composed of the University of Turin, the Municipality of Turin – in particular, the Ombudsman for the Rights of Persons Deprived of Liberty, the Welfare Department with the TSO delegation, and the Department of Security Policies and Local Police – as well as the Local Health Authority (*A.S.L. and A.O.U. Città della Salute e della Scienza*) and the Court of Turin.

5 Semi-structured interviews were conducted with psychiatrists, some working in the city's main SPDC (Mental Health Department of the hospital), others in two different CSMs (Community Mental Health Services), one interview with the Commander of the

particular has been undertaken by a team of sociologists and lawyers from the University of Turin between 2023 and 2025. This article presents some of the findings resulting from such empirical socio-legal analysis.

2. The assumptions to disprove: the Compulsory Health Treatments as emergency and extraordinary procedures

At the beginning of the research, a series of assumptions were formulated, primarily inspired by the in-depth analysis of the national legal framework, specifically with regard to the definition of Compulsory Health Treatments (TSOs). In accordance with the prevailing legal framework, we have assumed TSOs represent a set of *extraordinary* procedures that are undertaken in an *emergency* where there is an imminent threat to the patient's well-being or that of others. As will be demonstrated in the following pages, both of these assumptions – the *extraordinary* and the *emergency* related to an existing *danger* – have been disproved by the research results.

We define TSOs as *extraordinary* in light of the fact that they should be interpreted within the broader Italian psychiatric tradition. This tradition differs radically from that of other countries. Italian psychiatry is significantly influenced by the "revolutionary" vision proposed by the school of psychiatrist Franco Basaglia (Foot 2023), which is characterized by its dem-

Local Police responsible for TSO activities, and two focus groups with local police personnel, both from the territorial service and the special operational service assigned to this activity. The empirical insights have been also collected from official meetings of the Observatory (six sessions in total). The personnel selected for the interviews were chosen according to the following criteria. For healthcare personnel, two CSMs were identified, easily accessible for the field due to the inclusion of the director of the reference DSM within the working group. In any case, the centers were located in an area of the city where, according to the quantitative data collected, there was a high use of compulsory health treatments. Furthermore, although belonging to the same territorial unit (so called ROT), they are located in two different areas of the city: one more central and affluent, the other more peripheral and working-class. The chosen SPDC is located within the city's university hospital and also serves as a reference for admissions from outside the province and region. In selecting the interviewees, attention was paid to years of professional experience and gender. As for police personnel, members of the ROS (special operational service), trained to carry out TSOs, and members of the territorial service, with various years of professional experience, were interviewed. Again, the selection took into account different qualifications (officers, agents) and the gender of the interviewees.

The quantitative data presented come from a long-lasting analysis of all the files of TSOs carried out in the city of Turin between 2017 and 2023. These files are stored in a specific public office of the City of Turin. Every file has been read, anonymized giving an alphanumerical code to each case and then a series of relevant data regarding both the patients and the procedures have been extracted and finally compared.

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ocratic approach. This tradition will reach its zenith with the "great reform" of closing civil asylums with l. 180/1978.

Indeed, between 1968 and 1990, Italy established the most notable example of deinstitutionalization, adopting a community-based and non-segregating approach to individuals with mental disorders (*ex multiis,* Saraceno 2024).

In the contemporary era, Italy stands as a rare example of a nation where psychiatric asylums are not only illegal but have also been permanently closed. The regulatory choice made in 1978 endures, despite much criticism and several attempts to revise it. As a consequence, every involuntary treatment of psychiatric patients is prohibited by law. Also, hospitalization can only take place on a voluntary basis and are confined to public hospitals, within designated wards known as Psychiatric Diagnostic and Treatment Services (the so called, SPDCs).

In accordance with such a reforming spirit, all forms of segregation and degradation of the mentally ill have been formally abolished, thereby recognising the full agency and autonomy of the mentally ill person in the choice of treatment.

Consequently, since 1978, all forms of involuntary or forced hospitalization have been deemed unlawful, with one exception: precisely Compulsory Health Treatment, the subject of this research. In all legal systems, forms of coercive treatment that can "overcome" the refusal to treatment deemed urgent and not deferrable are provided (Hachtel et al. 2019). However, in Italy, these forms of treatment take on a peculiar meaning.

The legal provision known as Law 833/1978, which was enacted in the period following the passing of Law 180/1978, does not impose any restrictions on the practice of compulsory health treatment. This legislative act acknowledges the nature of compulsory health treatment as an exceptional measure, a standpoint that assumes particular significance when evaluated from the perspective of socio-legal studies. The legislative body conceptualised the TSO procedure as a means to ensure consistency with the principle of emancipating and not segregating psychiatric patients.

The primary feature that renders TSOs *extraordinary* is their capacity to incorporate distinct groups of actors, each reporting to disparate lexical registers, modes of operation and hierarchies. Consequently, a complex procedure is envisaged, albeit with contingent and expeditious time frames, involving healthcare practitioners, administrative authorities, law-enforcement agencies and, lastly, the judicial authority.

In the field of healthcare, there are distinct roles and responsibilities that individuals assume in relation to the administration of compulsory health treatment. At the core of this process is the function of the healthcare professionals, whose duty it is to "*propose*" such treatment. These professionals

are tasked with the evaluation of the existence of the requirements of the norm.

Subsequently, the administrative authority, such as the mayor and his delegates, plays a crucial role in authorising the compulsory treatment. Then, the judicial authority, as the jurisdictional operator, is entrusted with the responsibility of validating the entire procedure. A fourth group, the police operators, are responsible for the material execution of the treatment or involuntary assessment, including through the use of force. At the normative level, law enforcement agencies, most commonly municipal police forces, are seldom designated as the primary actors in the procedural process. However, when considering the factual level, these agencies assume a significantly relevant role, as delineated by the recommendations established and endorsed in 2009 by the State-Regions Conference (Passerini, Arreghini 2019).

Each of these operators is thus obliged to fulfil a specific role, which, in a complicated system of checks and balances, depends on and is conditioned by that of the others.

From a socio-legal standpoint, it is evident that the objective of this intricate procedure is to establish TSO as a measure that transcends mere health concerns. So, TSO is justified by health conditions, but it is not solely a health practice. It is possible to interpret the legislature's intention as being to limit the power of the medical and psychiatric professions within the context of a procedure that can be regarded as a form of deprivation of personal liberty and a restriction on an individual's rights.

As will be demonstrated in the following analysis, this legislative intent is not reflected in the observations made during the course of the research. The reason for this is the dominance of healthcare practitioners in every phase of the procedures, which renders the other actors' roles almost irrelevant.

The definition of TSOs as an *emergency* measure to prevent possible danger has been our second assumption. In other words, the manifest purpose of involuntary treatment seems to "sacrifice" the need for the patient to provide informed consent, on the grounds that this would endanger the patient themselves and others.

However, an analysis of the empirical material collected reveals that practitioners tend to distinguish between *"emergency"* and *"urgency"*, even at the lexical level. This is one of the most interesting data that emerges from the research. It is evident that both terms share a common characteristic, namely that of being non-deferrable. However, there is a divergence in the level of predictability. Emergency situations are inherently unpredictable, whereas urgency is a more predictable phenomenon. In accordance with the prevailing interpretation in the local context, TSOs in Turin are classified as urgent procedures, i.e. they are not subject to deferral but are predictable.

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While superficially reducible to issues of lexis and semantics, this phenomenon exerts a profound influence on the practices and the legal nature of the type of interventions that health care and police concretely carry out. Indeed, as will be demonstrated in the following discussion, all interventions classified as emergency are legally interpreted as those carried out within the limits of the *state of necessity*. In such cases, the TSO procedure is never initiated.

3. The Compulsory Health Treatments as a contemporary example of dispositif of incapacitation

Therefore, if, considering the "law in action" perspective, TSOs are not merely extraordinary and urgent medical procedures, how should they be interpreted from a socio-legal perspective?

The sociological definition that bests frames TSOs as observed during the research is that of a *"dispositif of incapacitation"*.

We therefore explicitly refer to Foucault's concept of "dispositive" (or "apparatus", as Agamben would translate it). In Foucault's interpretation the dispositive is the

> Heterogeneous ensemble consisting of discourses, institutions, architectural forms, regulatory decisions, laws, administrative measures, scientific statements, philosophical, moral and philanthropic propositions–in short, the said as much as the unsaid (Larroche 2019, p. 83).

If we also recall the concept of incapacitation, we would define a dispositive of incapacitation as the articulated ensemble of practices, knowledges, norms, and institutions through which a society actively excludes certain individuals from full participation in social, political, and economic life, legitimizing such exclusion through diagnostic, moral, or legal categories. Unlike mere material exclusion, incapacitation operates on a discursive and performative level: it does not simply remove, but actively constructs certain subjectivities as "incapable"—unreliable, irrational, or non-autonomous—thus legitimizing protective, segregative, or neutralizing measures. As such, the dispositive of incapacitation functions as a mechanism of power that acts through the social production of minority or incompetence. It often unfolds within biopolitical regimes and manifests in institutional contexts such as psychiatry, juvenile justice, welfare systems, and the governance of disability and poverty.

Foucault and post-Foucauldian authors such as Judith Butler, Nikolas Rose and, above all, Robert Castel base their reflections on incapacitation

devices, bearing in mind what George Canguilhem wrote in his revolutionary work *The Normal and the Pathological* (1966).

Canguilhem strongly criticizes the neutrality of medical knowledge and in particular of psychiatry, saying that concepts such as "normality" and "pathology" are neither subjective nor scientific, but normative, i.e., the result of evaluations and interpretations.

In order to draw the line between what is normal and what is pathological, medicine also needs incapacitation devices.

Traditionally, incapacitation devices have been reserved for "dangerous classes", as defined by Louis Chevalier in his *Classes laborieuses, classes dangereuses* (1958). An individual and his social group became dangerous depending on economic, social and historical factors and the definition is a constantly evolving assessment.

Robert Castel (1991), however, points out that incapacitating devices in contemporary society affect not only "dangerous" individuals, but also those who merely pose a "risk".

Therefore, Robert Castel defines the concept of "risk" distinctly from the concept of "dangerousness", which had previously characterized the treatment of marginalized or vulnerable social categories. In his analysis, risk does not refer to an immediate and tangible threat stemming from an individual's intentions or actions (as was the case with dangerousness), but is understood as a predictive and probabilistic condition.

This shift is not merely semantic; it entails a structural transformation in the logic of intervention. "Dangerousness" presupposes a subject endowed with a certain psychological or moral coherence, who can be analyzed and, if necessary, corrected or neutralized. "Risk", by contrast, refers to a set of impersonal variables, to a predictive profile situated on a probabilistic continuum. The subject is no longer judged based on what they are, but on what they might potentially become under certain conditions.

For Castel, risk represents a potential harm that may arise from a set of interconnected factors, but it is not directly attributable to a specific behavior. In other words, the individual is no longer judged based on their individual characteristics (such as deviance or pathology), but classified according to their position relative to certain statistical or probabilistic criteria. Risk is therefore linked to an anticipatory assessment of the conditions that could lead to a problematic event, such as illness, poverty, or criminality.

In this new logic, the subject is no longer seen as someone "who must be reformed", but as a "potential source of risk" requiring management. Risk is not tied to an intentional threat but to a set of factors that must be monitored and, in some cases, contained or mitigated.

In the shift from "dangerousness" to "risk", as Castel notes, control and management devices no longer act directly on the person as an individual, but on collective categories, on groups or populations, for whose manage-

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ment surveillance and preventive intervention mechanisms are employed. Managing risk involves constructing profiles of vulnerability and activating devices that intervene before a potentially problematic situation materializes.

For Castel, risk represents a form of preventive management that shifts attention from correcting deviance to regulating future probabilities through continuous management of social vulnerability.

This analysis has fundamental implications for understanding "dispositifs of incapacitation", for it is precisely within this context that subjectivity is deactivated. The subject is de-responsibilized—no longer addressed as a moral or legal agent, but treated instead as a bearer of risk factors: an object of technical intervention. Castel demonstrates that, in doing so, control mechanisms gradually erode the capacity for self-determination, rendering individuals increasingly dependent on logics of surveillance and assistance that, while framed as protective, in fact enact a profound delegitimization of social and political subjectivity.

Therefore, in Castel's vision

> what is emerging is not the administration of a definitive status, but the management of floating populations, or at least of populations perceived as unstable, precarious, or problematic. They are no longer dealt with in terms of integration or rehabilitation, but in terms of monitoring, support, or containment. The individual becomes less a subject of rights or obligations than the bearer of a potential risk, a case for intervention (Castel 1991, p. 288).

This dependency on medical treatment and erosion of subjectivity is clearly confirmed in the research, especially when we have discovered that 22% of people receive more than one TSO in the period considered[6]. This regularity definitely changes the aim of TSOs into a systematic apparatus on managing specific categories of individuals "at risk".

4. Old and new legal trajectories for the Compulsory Health Treatment (TSO)

Involuntary admissions and coercive psychiatric treatments, when regulated by specific legislation, generally follow one of two main models: the medical model and the legal model. In the medical model, healthcare professionals have the authority to impose treatment with little or no involvement from external authorities. In contrast, the legal model grants legal authorities the power to authorize, supervise, or enforce medical treatments, thereby limit-

6 Out of 1,058 individuals who underwent a TSO, 234 received more than one during the period under consideration.

ing the discretion of healthcare professionals (Wasserman et al. 2020; FRA 2012). Italy, in theory, aligns with the legal model; however, in practice, it more closely resembles the medical model, as we will further illustrate.

In the Italian legal system, healthcare is voluntary and contingent upon the patient's free and informed consent, in accordance with Articles 2, 13, and 32 of the Constitution and Law No. 219/2017. However, there are cases of non-voluntary medical treatments, that is, treatments administered without the consent of the individual. On this point, the Constitutional Court, in ruling no. 22/2022, although addressing a different issue[7], provided an important interpretation by distinguishing between compulsory health treatments and coercive medical treatments[8]. This distinction applies in the case of compulsory health treatment (TSO), mainly applied for psychiatric conditions and governed by Articles 33, 34, and 35 of Law No. 833/1978.

Beyond its coercive nature, there is another key distinction that sets the TSO apart from other forms of compulsory health treatment. According to the Court of Cassation, the TSO is a measure aimed exclusively at protecting the patient and cannot be regarded as a tool for social defense (Cass. civ., Ord. N. 509/2023; Cass. civ., Ord. N. 4000/2024; above all, most recently, Constitutional Court judgment no. 76/2025. See below). Historically, the TSO has represented the final stronghold of public authority exercised against the will of the individual, particularly individuals with mental illness. However, at least in formal terms, it is not a measure of public order and is therefore not intended to serve the protection of society. As affirmed by the Court (Cass. No. 509/2023), the TSO cannot be used to prevent or address a potential threat to the community.

According to the law, Compulsory Health Treatment (TSO) is a forced psychiatric admission carried out in the psychiatric departments (Servizi Psichiatrici Diagnosi e Cura - SPDC), and can only be ordered when three conditions are met simultaneously: (a) the person refuses medical care; (b) there are mental and behavioral disorders that require urgent therapeutic intervention; (c) there are no conditions or circumstances that allow the adoption of timely and suitable extra-hospital healthcare measures. For this procedure, the law establishes a three-layered safeguard: the validation of

7 The constitutional issue concerned the principle of legality, the legislative reserve, and the authority of the Minister of Justice in relation to the imposition of the security measure involving placement in a REMS (Residential Facility for the Execution of Security Measures).

8 According to the Constitutional Court, a health treatment is considered compulsory when it is mandated by law and its non-compliance is sanctioned with an administrative or criminal penalty. A paradigmatic example is compulsory vaccination. A treatment is defined as coercive when it may be enforced through the use of physical force, thereby limiting an individual's personal freedom.

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the first proposed treatment by a specialist in psychiatry, a reasoned decision by the mayor, and finally, a second judicial validation by the guardian judge, chosen by the lawmakers for being considered the "least criminalizing" figure[9].

The initial admission period lasts seven days and may be extended, indeed, the law does not set a maximum limit on the duration of coercive hospitalization. Any extension must be proposed by the attending physician and approved by the mayor, with subsequent validation by the magistrate. The law also sets out provisions to safeguard the rights of individuals during compulsory admission, ensuring that treatment is administered with respect for the person's dignity, moreover, hospitalization must be accompanied by efforts to secure the patient's informed consent and active participation[10].

In this context, a final mention must be made on a reform proposal currently under discussion in Parliament. The draft law n. 1179, in fact, introduces a significant innovation through Article 5, titled "Emergency Situations and Health Interventions", which substantially redefines the framework for compulsory health assessments (ASO) and compulsory health treatments (TSO).

The draft law codifies many of the practices we will examine later. Briefly, its re-centers attention on the use of ASO and TSO outside hospital settings—contexts that typically involve fewer procedural safeguards. It broadens the scope of permissible treatment locations and introduces the possibility of initiating compulsory treatment even before the mayor's validation is received. Moreover, the draft introduces a new condition for resorting to coercive treatment: "d) a high risk of clinical deterioration in the absence of intervention" (Article 5, paragraph 9). This effectively legitimizes the practice of preemptively imposing coercive measures to prevent crises, rather than responding to them, which is one of the most frequently observed practices in this research.

5. Medical dominance in compulsory treatments

The analysis of TSO validation files in the City of Turin allows for an assessment of the extent to which the legal safeguards described above are effectively upheld. As of this writing, files from the years 2017 to 2023 have been analyzed, encompassing a total of 1,468 TSO procedures—averaging approximately 200 per year.

9 Stenographic record of the XIV Commission on Hygiene and Health, session of May 2, 1978.

10 Individuals subjected to such treatment, as well as any other interested parties, may file an appeal before the competent Court. Article 35 also outlines the procedure for appealing the guardian judge's validation of compulsory health treatment.

The procedural data collected in the study reveals that mostly every TSO requests were automatically validated by both administrative and judicial authorities. Of the 1,468 cases examined, only nine were rejected, primarily due to procedural irregularities or subsequent developments—such as the physician withdrawing the request or the patient being untraceable[11].

In practice, all administrative or judicial TSO orders are typically issued using standardized pre-printed forms, with no specific reference to the individual case. This underscores a high degree of procedural standardization, in which validation is granted with little to no consideration of the unique circumstances of each case.

Such a formalistic approach raises concerns, particularly given that individuals subjected to TSO are not afforded an opportunity to be heard or to challenge the decision. The process is so routinized and automatic that it effectively excludes the patient from any participation. This lack of involvement significantly undermines the possibility for meaningful defense or personal agency in the process.

> Q: To what extent are patients aware that they are receiving coercive treatment, and do they know they can intervene personally?
> A: Yes, except for patients who are delirious, that is, those who have a TSO due to natural incapacity, other patients are aware that they are under TSO because we tell them so. They ask to leave or refuse the treatment, and you have to say no. The hospitalization was done precisely because they refuse the treatment, so there are also quite a few protests; some are even aggressive, trying to break down the door. It's not the norm, but there are those who express their dissent clearly.
> Q: And does it ever happen that they ask to speak with the judge?
> A: Very rarely, it has happened to me once or twice in 24 years.
> Q: Instead, do other officials, for example, municipal administrative staff or judges, ask you for information?
> A: Yes, it has happened that the TSO office asks because there are some errors in the ordinance, and they ask for clarifications, things like that.
> Q: But procedural, not regarding the patient's condition?
> A: No, someone has approached the guardian judge, I think one or two times in 5 years. Then, more than one patient, protesting, says they will now call their lawyer, but then they don't actually do it. Sometimes they call the police from the ward saying they are being detained, and then the more diligent officers might call and ask if Mr. So-and-So is hospitalized and if they are under

11 The administrative authority denied validation only in five cases: one due to a violation of notification deadlines, one for lack of territorial jurisdiction, and three because the request was withdrawn by the physician prior to the issuance of the order. The judicial authority denied validation in an additional four cases: two for delayed notification, one due to revocation by the mayor, and one because the TSO involved a minor and was carried out with the consent of the guardian, and was therefore considered voluntary.

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> TSO. (Interview with A., psychiatrist at the hospital's Department of Mental Health (SPDC), female, with over 20 years of service).

> They are absolutely told that if they are upset with the idea and do not agree, they can contact the lawyers. We even give them the phone number of the doctor's office to contact them, and if they want, we can also speak with the lawyer on their behalf. If they want to call the police, because that happens, or sometimes they call from their own phone, we explain to them that they can speak with the guardian judge if needed or write to them. I must say that, generally speaking, when they are this upset, it calms them down, meaning that they almost never do it. Maybe they call the lawyer, but the lawyers tend to be sensible and explain to them that the doctors believe… and sometimes they come to visit them...however, I have to say that by giving them this space, this somewhat aggressive need to throw it back at us—claiming that we are forcing them—often subsides. They are absolutely given the possibility, if they wish, to write with paper and pen. We give them paper and pen to write, rather than making phone calls. But I've never had to go to a magistrate to justify why I had to carry out a compulsory health treatment. (Interview with C., psychiatrist at the hospital's Department of Mental Health (SPDC), female, with over 20 years of service).

The formal issues briefly outlined above were addressed in a recent judgment of the Constitutional Court. For the first time, the Court amended the legislative provisions governing TSO, finding them to be in violation of the constitutional rights to defence and access to a fair trial[12]. The Court intervened by introducing the hearing of the person concerned by the guardianship judge during the course of the procedure, as well as the notification to that person of all acts relating to them, thereby restoring the individual's right to participate in the proceedings. At present, it is not possible to assess the impact that this amendment has had on the implementation of compulsory treatments; however, it is noteworthy that the Court left open the possibility for the judge, within the context of the hearing, to activate formal and informal protective measures for the patient. In doing so, the Court urged the legislature to intervene with regard to the direct appointment of a special guardian, circumstances that would bring the event of compulsory treatment closer to a recognition of the individual's legal incapacity, with significant consequences for the person concerned. In light of the observations made above (par. 3), this interpretative opening may be read as framing compulsory health treatment as a device of incapacitation.

The findings of the present study, developed prior to the legislative amendment, show that the existence of merely formal legal guarantees of participation and defence legitimises medical intervention overriding any individual safeguards, thereby reproducing the very "asylum logic" that the Basaglia

12 Constitutional Court, judgement no. 76/2025.

Law sought to dismantle[13]. Although the intention of the legislature at the time was to strengthen the system of guarantees in order to prevent medical necessity from justifying a measure involving deprivation of personal liberty, such guarantees today appear devoid of substantive meaning in light of a clear and concrete imbalance of power between healthcare professionals, on the one hand, and administrative and judicial authorities, on the other. This situation is unlikely to change if the newly introduced safeguards remain purely formal in nature.

> We never interface with anyone. Sometimes it happens with the TSO office, but only on formal matters, like signature, date, time, or something unclear from a formal point of view. But we don't have any contact with judicial authorities anymore. (Interview with C., psychiatrist at the hospital's Department of Mental Health (SPDC), female, with over 20 years of service).

> As far as I'm concerned, the figure of the guardian judge, who has 48 hours from the mayor's ordinance to validate the treatment, is someone I absolutely respect, of course, and I am sure they will do their job according to their expertise and conscience, but for me, they never interact with me. If the guardian judge, as they say, looks at my work, I don't know, I have no idea. If the patient is hospitalized, it gets to the SPDC, but the guardian judge, who I am sure does their job, is for me an irrelevant figure. (Interview with B., psychiatrist at the Community Mental Health Services (CSM), female, over 30 years of service).

> The judge doesn't even do a check, it's just a procedure now… Yes, it happened to me only once that I received a phone call asking for a clarification, maybe, but it happened two or three times as far as I can remember. (…) Once, maybe, for example, because the patient was already hospitalized and they asked, but it was really trivial things, absolutely. (Interview with C., psychiatrist at the hospital's Department of Mental Health (SPDC), female, with over 20 years of service).

> In my opinion, this bureaucratic process is protective for the patient in a certain sense, and I believe that the TSO, as a tool, is objectively a powerful tool. There's a significant limitation on freedom, and I realize that it has complicated implications. If you take a crazy psychiatrist, and there are some, and give them the power to carry out TSO, what can come out of it is terrifying. I think it has even happened in the past, so obviously there must be a system to protect the patient. I'm not sure if this method is working and functional for that, because right now it really seems like just a series of checkboxes that need to be ticked, because in the end no one has real control. It's true that it's not purely a healthcare task, but the procedure is in fact absurd (Focus group,

13 Cass. Civ., judgement no. 24124, 09/09/2024, para 4.8.

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psychiatrists of Community Mental Health Services (CSM), female, less than 10 years of service).

Drawing on Pierre Bourdieu's theory of the juridical field (Bourdieu 1987), the observed dynamics within the TSO process reveal a clear disjunction between the formal structures of legal oversight and the informal distribution of actual decision-making power. In the case of compulsory psychiatric treatment, the medical field, endowed with substantial symbolic capital, tends to colonize the juridical field, transforming what should be procedural safeguards into mere formalities. As stated by the interviewed psychiatrists, the safeguard authorities provided for by the law of the mayor and of the guardian judge seems to play an almost non-existent role in the actual implementation of coercive measures. Instead, the medical profession occupies a central position in defining, controlling, and legitimizing practices of psychiatric containment. This form of medical dominance (Freidson 2002) is grounded in the core assumption that only healthcare professionals possess the specialized knowledge required to act competently in such matters, thereby reducing other involved actors, such as the patient, family members, and non-medical professionals (the mayor, the guardian judge), to mere bureaucratic formalities. The full medicalization of the procedure effectively endows the physician with decision-making authority that goes well beyond therapeutic considerations, enabling control over the patient's coercive subjection within the context of compulsory admission (for instance, by influencing the duration of hospitalization).

6. The oxymoron of the "planned" TSO

The standardized nature of the administrative-judicial procedure appears even more incongruous when considering additional significant factors. In 70% of the TSO files analyzed in Turin, the subject was identified as a "known", "familiar", or "previously followed" individual. This data suggests that coercive treatment primarily targets individuals already in contact with or under the care of mental health services. This trend is further confirmed by the recurrence of TSOs: as mentioned, at least 22% of individuals during the analyzed period had undergone more than one TSO.

As revealed in interviews, the City of Turin, in the aftermath of Andrea Soldi's death, has developed a distinctive organizational model for managing psychiatric emergencies. This includes a shared intervention protocol between the local police and the Community Mental Health Services (CSM), a model now largely adopted across the region.

When the local psychiatrists detect early signs of a patient's potential relapse—such as missed appointments for long-acting medication or con-

cerns raised by family members—they initiate a graduated response. This typically begins with a relational approach, encouraging the patient to comply with treatment, which may include home visits or a compulsory health assessment (Accertamento Sanitario Obbligatorio, ASO). This is commonly a prelude for the TSO. If the patient remains unwilling, a mandatory medical evaluation is conducted, which may lead to further coercive measures if necessary.

This intervention requires careful coordination: the availability of a physician to conduct the visit, a second doctor to validate the treatment, the presence of law enforcement, and the assurance of an available bed at the hospital's psychiatric ward (SPDC).

Extensive information gathering is carried out by both CSM personnel and police officers. When possible, officers prepare a "risk assessment" of the patient, using data from CSM or their own inquiries. This assessment determines the composition of the intervention team, whether it should include specially trained officers from a dedicated unit (established in the wake of the Andrea Soldi case) or officers from the local territorial service. Although, as noted by the operators, a TSO is often predictable in how it begins but not in how it ends, the structured organization of the intervention provides them with greater confidence in achieving a successful outcome—defined as one that avoids excessive use of force and minimizes the expenditure of time and resources.

> The current situation is as follows: We are here, and then, well... The events that occurred here in Turin, aside from creating agreements with the ASL and so on, and that famous round table that was an attempt to... We set ourselves this goal, which is to work with maximum security to carry out this procedure, since the TSO is never an "emergency" intervention, but it is always a planned activity, which always allows for 24-48 hours to be organized. Sometimes there are relations with psychiatry, and we can even plan with more time... The goal is to collect as much information as possible about the person. The information is very diverse, but, for example... Clearly, we are not doctors, but knowing what kind of pathology they have is important for... the body type of the person, because depending on the body type, we can prepare the service with suitable staff, and so on... If they have had previous TSOs or even non-TSO situations where they have been violent... If they have engaged in anti-conservative actions... [..] For example, knowing if the person has a communicable disease, if they have any particular pathologies, if they are cardiopathic, etc., [...], we also need to know if there are relatives who can help or, sometimes, if not, sometimes relatives can be a triggering factor for particular situations, so we need to know that in order to try to identify non-obvious ways of managing things. [...] Based on all this information we gather, both from psychiatry, if they are already known subjects, from neighbors, or from other police interventions that may have occurred in other

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> situations, relatives, or anyone who can provide us with information, we basically decide which department should intervene. Usually, it's the territorial department from the area where the subject lives, so where the CSM (Mental Health Services) is located. If the situation, based on the information we have received, seems a little more delicate, the personnel from the Territorial Command is supported by personnel from the Special Operational Department. (Interview with D., senior officer of the local police force, male, with over 20 years of service).

The "planned" TSO has thus become a standard practice among Community Mental Health Services (CSM) and local police in Turin. Far from its original conception, TSO is often employed either as an anticipatory measure to prevent the onset of acute episodes — conditions which, according to the law, would typically justify the use of coercive treatment — or as a means of administering specific therapies, particularly in the case of long-acting injectable treatments. This constitutes a typical example of the control exercised over patients who avoid scheduled appointments for therapy administration, allowing for forced treatment through a single intervention that may not necessarily require prolonged hospitalization. While a full discussion falls beyond the scope of this work, the issue clearly raises numerous contradictions, particularly concerning the possibility of enforcing the validity of consent in relation to a therapy whose effects unfold over the long term (Daly 2024, p. 189).

> I'm not sure if it's still the case, but last year the officers were available only on Tuesdays and Thursdays. Not because you wake up in the morning and decide to do it, obviously these are emergency interventions. Sometimes the problem is that the legal definitions of what you're doing and the practice you can carry out, both for clinical reasons—which I think is the most important reason—and for bureaucratic reasons, which I find absurd, don't match up. Because sometimes I carry out an intervention that, by its very nature, must be done urgently. But in theory, I schedule a TSO a week ahead—does that make sense? Clearly, it makes no sense, but either you do it like that, or... (Focus group, psychiatrists of Community Mental Health Services (CSM), female, less than 10 years of service).

In different cases, it is not possible to "plan" the TSO, being perceived as too slow, bureaucratic, and obstructive. In such cases, actions are instead taken under the legal justification of a "state of necessity", as defined by Article 54 of the Penal Code. Medical professionals involved in these situations do not consider this legal framework to be a post hoc justification for unlawful conduct, but rather as "another procedure", an alternative and legitimate procedural route.

There is also another procedure, which is the state of necessity, where we intervene without TSO, because in real emergency situations, sometimes there's no time to organize everything. It happened to me once with a patient on a balcony who was about to jump, and you have to catch them and contain them, you can't perform this procedure because it's a state of necessity; you do it and then you calmly do everything else... But in somewhat planned situations, generally, we have a moment with the law enforcement officers where we explain the problem a bit, even from a logistical point of view because everything is planned to minimize the risks. For example, the situation is clearly different if you are going to a raised floor with a single window that opens onto a small courtyard, or to the eighth floor of a building. The police also ask about these logistical situations to understand how to intervene.
[...]
But I definitely think that some procedures are not that efficient, because it's fine for there to be a psychiatrist, it's fine that a proposal is made for validation, etc. But the fact that you don't lift a finger until the request from... that in fact, let's be honest, is a bureaucratic practice because there's no one assessing if what you wrote is true or not. I mean, you just stamp it and sign it, okay, fine, but this is an aspect that often holds us back, and from our point of view, in our intervention, it can become problematic. I've spent four hours with a severely ill patient, in an acute psychotic crisis, at home, yes, with law enforcement, and I'm supposed to wait for that paper to arrive. In my opinion, this is a critical aspect because it can be dangerous. Every minute you're in such a situation with the patient, who may be thinking of how to act against you, and you have to wait for this damn paper signed by the mayor to arrive, sometimes it puts us in check... (Interview with E., psychiatrist at the Community Mental Health Services (CSM), male, over 30 years of service).

Well, I wouldn't know how to think differently or better. It's clear that we find ourselves a bit between a rock and a hard place, almost always operating within the framework of Article 54 of the Penal Code. We almost always act based on a state of necessity, yes, it's clear I don't know if it can be done differently, because it's evidently not going against a rule which, in my opinion, is fair enough. But it's clear that 48 hours from the proposal for validation to a possible ordinance can feel like an eternity, and another 48 hours from the confirmation of a guardian judge, well, then anything could happen, so in reality, a lot of what is done clinically with patients, to hold them still if they want to jump off a balcony or administer therapy because they are doing things that put them and others at serious risk, is done under Article 54. That's the problem, though—it's a big gap because Article 54 wasn't designed for a medical act. The TSO, on the other hand, is designed in a healthcare context, but perhaps one is too protective, the other is too vague, and there's no middle ground. (Interview with F., psychiatrist at the hospital's Department of Mental Health (SPDC), male, with over 20 years of service).

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The outlined framework reveals the selective criteria through which healthcare professionals regulate therapeutic practices within the context of compulsory treatment. The TSO emerges as a practice predominantly applied to a particular patient profile—typically Italian, already engaged in treatment for a specific diagnosis, and possessing a social support network. It also reveals a legal gray area, wherein coercive measures are sometimes implemented via the formal procedure, while in other instances actions are taken without clear procedural safeguards. In such cases, the assessment of consent and medical necessity is left entirely to the discretion of the healthcare provider. This approach reveals an underlying criterion of selectivity - and almost of perceived eligibility - in determining who will be subjected to a TSO, complete with its formal, albeit hollow, safeguards, and who will instead be managed through an emergency intervention.

7. The metamorphic scope of the TSO

The TSO thus functions as a metamorphic instrument, primarily used to manage known patients whose adherence to treatment requires oversight. In other cases, the boundaries of its application become blurred, hinging on the specific behaviors exhibited by the individual. Not infrequent, but more marginal, are the instances in which a person displays behavior that, although socially nonconforming, does not pose an immediate danger nor constitute a criminal offense. In such situations, law enforcement may turn to healthcare authorities in search of an immediate response. However, since no actual medical emergency is present, the use of TSO in these cases would not be appropriate. Ultimately, the decision rests with the individual operator, who must navigate the delicate balance between care and control.

> Because they know and don't know, because sometimes they bring in the internist, for instance in the emergency room, which is the front line, but then they tell you that the police arrived with a TSO, because they come in saying, "You have to do the TSO," maybe at triage, and then they leave. They tell you, "You have to do the TSO because there's a behavioral emergency," but they don't explain why, and then they leave, expressing a judgment that is healthcare-related. The TSO is something I decide if it should be done or not, the doctor decides, not the police officer. I need you, the police officer, to help me understand what happened because you brought the patient here, but you might tell me the patient is drunk, and when they've sobered up from their four beers, they'll go back to being their usual self. So, obviously, they don't need a TSO. (Interview with C., psychiatrist at the hospital's Department of Mental Health (SPDC), female, with over 20 years of service).

Law No. 180 of 1978, which laid the foundation for the regulation of compulsory health treatment, aimed to close psychiatric hospitals while simultaneously opening local centers for the care and treatment of individuals with mental disorders. Within this framework, the doctor–patient relationship assumed a central role, emphasizing personalized treatment paths that considered not only clinical symptoms but also environmental, social, and relational factors. Today, however, territorial mental health services face increasing pressure due to various factors, including the expansion of diagnosable psychiatric conditions and the reduction of stigma surrounding mental health issues. Despite these developments, there has not been a corresponding enhancement of available services, which are now often unable to provide timely and comprehensive care. This gap has led to a growing reliance on pharmacological interventions as the primary form of treatment.

> There is also the organizational aspect, in the broad sense, that we have fewer resources. So, when you can't manage, we are three, and we cover a population of 50-60 thousand people, with about 2,000-2,500 patients in care. Now, you understand that out of these 2,500, we mainly focus on the most severe conditions. Being three doctors, you understand that following these patients consistently can be difficult at times. It's clear that with fewer resources, patients are seen less frequently, so there is less monitoring. Therefore, it's easier that when you do see the patient, they are either decompensated or are in the process of decompensating. So, certainly, with a stronger territorial system, it would likely be easier to prevent this. (Interview with E., psychiatrist at the Community Mental Health Services (CSM), male, over 30 years of service).

> So, in my opinion, there are cases where unfortunately you can't do otherwise because you have to do it. Mental illness is complex, and at certain times, a person may not be able to make decisions for themselves. However, sometimes it may be slightly, let's say, abused. Not all the TSOs I've carried out and witnessed fit perfectly into the situation I'm describing. It's also true that when you have few resources—whether it's personnel, economic resources, or time—the result is that those patients are not followed as they should be. And then, at some point, you find yourself in a situation where if a caregiver didn't have 450 patients, they probably would do fewer TSOs, but when you have 450, you end up losing track of some patients. (Focus group, psychiatrists of Community Mental Health Services (CSM), female, less than 10 years of service).

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8. Conclusions

The analysis of Compulsory Health Treatments (TSO) in Turin certainly reveals a contrast between the formal legal safeguards designed to protect individual rights and the routine practices observed in the field. While the law establishes the TSOs as an emergency and extraordinary measures with specific legal guarantees, in practice these mechanisms often amount to little more than formalities, with limited oversight and minimal patient involvement. Following this interpretation, the pervasive role of medical dominance is evident, as a structural imbalance that allows healthcare professionals to exercise considerable discretion and authority within a system ostensibly based on inter-institutional checks and balances.

Medical dominance is not merely symbolic and it finds its clearest expression in the emergence of the "planned" TSO. Rather than representing an urgent or exceptional response, the TSO is frequently applied to patients already well known to the system, typically those perceived as noncompliant or at risk of decompensation. The power to selectively determine when and to whom coercive care is applied illustrates the extent of professional discretion. In this way, the TSO—stripped of its symbolic status as an exceptional intervention—becomes a routine therapeutic practice, or a preventive tool for managing the perceived risks associated with individuals experiencing mental health issues.

Although this issue requires further empirical investigation, the analysis points to a significant division between so-called "long-term" —or "elite"— patients, for whom authorities mobilize complex and resource-intensive procedures such as TSOs, and less visible, institutionally marginal—or "underdog"—patients, for whom more informal or expedited practices are adopted to obtain adherence to treatment. Following Robert Castel and the post-Foucauldian tradition, TSOs can thus be seen as a contemporary manifestation of a *dispositif of incapacitation*.

Reform projects aimed at "simplifying" the TSO procedure, by expanding the discretionary authority of healthcare professionals and dismantling safeguards framed as bureaucratic obstacles, would further distance Italy from the tradition of democratic psychiatry that has historically defined its approach to mental health care. At the same time, they would contribute to transforming TSO into an increasingly routinized healthcare practice, including for interventions such as the administration of long-acting medication.

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